

## CONFLICT OF INTEREST POLICY

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<b>Approved by:</b>	Council
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<b>Applicable to Unit(s):</b>	Organisation and Councillors
<b>Responsible Officer:</b>	General Manager Corporate Services
<b>Related Policies:</b>	Fraud Control Policy Procurement Policy Governance Rules
<b>Related Documents:</b>	Councillor Code of Conduct Employee Code of Conduct Councillor Conflict of Interest Declaration Form (hardcopy and e-form) Employee Conflict of Interest Declaration and Management Plan
<b>Statutory Reference:</b>	<i>Local Government Act 2020</i> <i>Local Government (Governance and Integrity) Regulations 2020</i>

### OVERVIEW

This policy has been developed to provide information and guidance to Councillors, staff and committee members in the identification, disclosure and management of conflict of interest (i.e. actual, perceived or potential).

While conflicts of interest are not wrong in themselves, and indeed cannot always be avoided, the potential for conflict of interest exists in all aspects of Council operations.

It is important that Councillors, staff and committee members act and are seen to act with integrity and are not inappropriately benefited or influenced by improperly using their position.

The most effective means to address conflicts of interest is to establish a system under which Councillors, staff and committee members are required to disclose and obtain evaluation of any conflict of interest.

The purpose of this policy is to assist Councillors, staff and committee members in the identification and management of conflicts of interest – and to assist in addressing conflict of interest issues. Council has a responsibility to ensure that its activities and those of its Councillors, staff and committee members conform to acceptable standards of integrity and good conduct. It recognises that a well-established system for identifying, disclosing, managing and reporting conflicts of interest increases its public accountability and reduces the risk of corruption, misconduct and bias in its operations and decision-making processes.

Council also recognises that conflicts of interest are not unusual in the exercise of public responsibility and cannot always be avoided. Where a conflict of interest occurs, the interests of the Council will be balanced against the interests of the individual. Unless exceptional circumstances exist, the balance of interests will be resolved in the Council's favour, and Managers, when notified of a conflict of interest, will deal promptly with the conflict and put in place arrangements that protect the integrity of the Council processes.

Conflict of interest is about transparency, Councillors, staff and committee members hold positions of public trust and should work to serve the interests of the community, not themselves or someone else's private interests.

## **THE POLICY**

It is the responsibility of Councillors, staff and committee members to identify a conflict of interest and disclose this when necessary. Failure to disclose conflicts of interest is a breach of the *Local Government Act 2020* (the Act) in which penalties can apply.

### **Areas of activity where conflicts may arise**

A conflict of interest may arise because of the council's involvement in any of the following matters:

- appointing and managing staff;
- providing sponsorships;
- use of resources or assets that could be used for private gain;
- entering into contracts to procure goods or services from the private sector or engaging in projects with the private sector;
- collecting, retaining, accessing or using confidential information;
- providing financial assistance and concessions;
- performing a regulatory role in relation to the monitoring of standards;
- disciplinary role; and
- providing advice.

### **Disclosure and declaration**

All Councillors, staff and committee members must consider the public interest when carrying out their duties and place this above their own private or personal interests. This is achieved by:

- carrying out all duties in accordance with Council and legislative ethical principles as documented in Council's Code of Conduct
- assessing their own private and personal interest to identify any conflicts of interest
- identifying and declaring all conflicts of interest
- disclosing all conflicts of interest that arise when compiling Council reports and workshop notes
- managing all conflicts of interest in accordance with agreed management strategies
- completion of Council's conflict of interest declaration forms.

The Councillor Conflict of Interest Declaration Form can be found on the Councillor Homepage and the Employee Conflict of Interest Declaration and Management Form can be found on the Governance page of Council's Intranet.

All levels of management will:

- encourage a culture of disclosure within Council,
- regularly remind employees of their obligation to identify and declare conflicts of interest,
- actively liaise with employees to resolve and manage conflicts of interest, and
- maintain confidentiality with regards to conflict of interest declarations.

## **Responsibilities of Managers**

- complying with the conflict of interest policy with respect to their own conflicts and potential conflicts of interest;
- ensuring annual completion of training requirements;
- facilitating the compliance of those they manage by:
  - ensuring that the staff they manage complete the annual training module;
  - being aware of the risks of conflicts inherent in the work of the staff they manage;
  - making Councillors, staff and committee members aware of relevant policies and procedures;
  - advising Councillors, staff and committee members about appropriate ways to manage conflicts;
  - recording the receipt of disclosures of conflicts of interest reported to them by staff;
  - assisting staff who disclose conflicts in preparing management strategies; and
  - monitoring the work of staff and the risks to which they are exposed.

## **Responsibilities of Employees**

Employees are responsible for:

- ensuring annual completion of training requirements;
- being aware of their obligation to avoid, where possible, conflicts of interest and manage those conflicts of interest that cannot be avoided;
- assessing their private and personal interests and whether they conflict, or have the potential to conflict, with their official duties;
- disclosing conflicts of interest they may have in accordance with this policy, specified procedures or to their Manager;
- complying with the requirements of this policy or related guidelines and procedures; and
- reporting suspected breaches of this policy by other employees to their Manager and the General Manager Corporate Services.

## **Responsibilities of Councillors/Committee Members**

All Councillors must comply with section 130 of the Act, Governance Rules and the Councillor Code of Conduct when declaring conflicts of interest by undertaking the following:

- disclose the conflict of interest at the beginning of a Council meeting and again at the agenda item in question and remove themselves for the meeting for the duration of the discussion/vote;
- if details are private in nature, then the interest can be declared to the Chair in writing prior to the meeting and the disclosure will simply be the type of interest and example;
- immediately prior to consideration of the matter;
- classify the interest as General (section 127) or specify the type of Material interest (section 128);
- describe the nature of the interest;
- where a Councillor or member of a delegated committee has two or more conflicts of interest on matters being considered consecutively, they must disclose the interests prior to the first matter being heard;

- while the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a delegated committee must;
  - leave the room and notify the Mayor or the Chair of the delegated committee that he or she is doing so;
  - remain outside the room; and
  - the Mayor or Chair of the delegated committee must invite the Councillor or member of a delegated committee to return to the meeting.

All declarations and mitigation strategies (i.e. leaving the room for the duration of the discussion) must be recorded in the meeting minutes. All reported conflicts of interest, including mitigation strategies, must also be recorded in the Conflict of Interest Declaration register maintained by the Governance Officer.

Councillors have full access to various guidance material, including the Councillor Conflict of Interest Guide, which is available on the Councillor Homepage.

Sections 127, 128 and 129 of the Act defines general and material conflicts of interest and provides exemptions for remoteness and interests in common with a substantial proportion of ratepayers along with other specific circumstances as set out in the following table.

General and Material conflicts of interest can give rise to the following conflict types:

1. An **actual conflict of interest** occurs when there is a real, current conflict between a public officer's duties and their private interests;
2. A **potential conflict of interest** arises when a public officer's duties could conflict with their private interests. A public officer can anticipate potential conflicts by thinking about how the particular private interests and associations they have might influence the types of functions they carry out and decisions they make in their Council role;
3. A **perceived conflict of interest** is where one or more third parties develop a reasonable view that a public officer's private interests have or could improperly influence their decisions or actions, or the actions or decisions of their organisation, in a particular matter. The perception is that a public officer may not be objective in their dealings as a result of the conflict.

Conflict Type	Definitions
<p style="text-align: center;"><b>GENERAL CONFLICT OF INTEREST</b> <b>(Section 127)</b></p> <p>(1) Subject to section 129 (Exemptions), a relevant person has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's <b>private interests</b> could result in that person acting in a manner that is contrary to their <b>public duty</b>.</p>	<p><b>Private Interests</b> (section 127(2))</p> <p>Any direct or indirect interest of a relevant person that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief.</p> <hr/> <p><b>Public Duty</b> (section 127(2))</p> <p>The responsibilities and obligations that a relevant person has to members of the public in their role as a relevant person.</p>
<p style="text-align: center;"><b>MATERIAL CONFLICT OF INTEREST</b> <b>(Section 128)</b></p> <p>(1) Subject to section 129 (Exemptions), a relevant person has a material conflict of interest in respect of a matter if an <b>affected person</b> would gain a benefit or suffer a loss depending on the outcome of the matter.</p> <p>(2) The benefit may arise or the loss incurred -</p> <ul style="list-style-type: none"> <li>(a) directly or indirectly; or</li> <li>(b) in a pecuniary or non-pecuniary form.</li> </ul>	<p><b>Affected Person</b> (section 128(3))</p> <p>For the purposes of section 128(3), any of the following is an <b>affected person</b>—</p> <ul style="list-style-type: none"> <li>(a) the relevant person;</li> <li>(b) a family member of the relevant person;</li> <li>(c) a body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of the governing body;</li> <li>(d) an employer of the relevant person, unless the employer is a public body;</li> <li>(e) a business partner of the relevant person;</li> <li>(f) a person for whom the relevant person is a consultant, contractor or agent;</li> <li>(g) a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee;</li> <li>(h) a person from whom the relevant person has received a <b>Disclosable Gift</b> (section 128(4)) - <ul style="list-style-type: none"> <li>means one or more gifts with a total value of, or more than, \$500 or if an amount is prescribed for the purposes of section 128(4), the prescribed amount, received from a person in the 5 years preceding the decision on the matter - <ul style="list-style-type: none"> <li>a. if the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received; or</li> <li>b. if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation - but does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a delegated committee.</li> </ul> </li> </ul> </li> </ul>

***Exemptions (section 129)***

A conflict of interest does not arise if any of the following applies—

- (a) the conflict of interest is so remote or insignificant that it could not be reasonably regarded as capable of influencing the actions or decisions of the relevant person in relation to the matter;
- (b) the interest that would give rise to a conflict of interest is held in common with a substantial proportion of the residents, ratepayers or electors of the municipal district and does not exceed the interest held by the other residents, ratepayers or electors;
- (c) the relevant person does not know the circumstances that give rise to the conflict of interest, and could not be reasonably expected to know those circumstances;
- (d) the interest only arises because the relevant person is the representative of the Council on a not-for-profit organisation that has an interest in the matter and the relevant person receives no personal advantage from the not-for-profit organisation;
- (e) the interest only arises because a family member of the relevant person is a member but not an office-holder of a not-for-profit organisation;
- (f) the interest only arises because the relevant person is a member of a not-for-profit organisation that has expressed an opinion or advocated for an outcome in regard to the matter;
- (g) the interest arises in relation to a decision by a Councillor on a matter or in a circumstance that is prescribed to be exempt by the regulations.

## **Failure to disclose a conflict of interest**

Councillors, staff and committee members have an obligation to disclose and manage conflicts of interest.

Failing to comply with this policy, including refusal to take any reasonable action as directed, to resolve a conflict of interest may constitute misconduct or serious misconduct which may result in disciplinary action or termination of employment.

## **Managing conflicts of interest**

The management of conflicts of interest will be determined by the General Manager Corporate Services or by the relevant General Manager for the Division.

The four recommended responses could be:

### **1. Avoid the conflict of interest**

Avoiding a conflict of interest which poses an unacceptable risk to, or impacts upon, Council's interests. This is the preferred strategy.

To avoid a conflict of interest, the staff member concerned may be removed from the decision-making process in relation to the matter concerned or requested to relinquish the interest which is creating the conflict.

### **2. Accept and reduce the conflict of interest**

A conflict of interest may be reduced by ensuring that the staff member concerned has restrictions placed on their involvement in the relevant matter, or that another staff member or organisational area takes responsibility for the matter.

### **3. Share the conflict of interest**

A conflict of interest may be shared by involving a third party to oversee part or all of the decision-making process that deals with the relevant matter.

### **4. Retain the conflict of interest**

A conflict of interest may be retained, and the staff member continues to be involved in the matter concerned, subject to a regular review of the situation.

This response is only suitable for low risk conflicts of interest.

## **Monitoring conflicts of interest**

All disclosed conflicts of interest must be reviewed by the General Manager Corporate Services, Governance Officer, the staff member and their Manager on at least an annual basis to ensure that the information remains correct and that the management responses continue to be appropriate and effective. Any change in the arrangements must be notified immediately to the relevant Senior Officer.

## **Breaches of this Policy**

Failure to comply with this policy will constitute a breach of the relevant Codes of Conduct and may result in disciplinary action or other serious sanctions as per the *Local Government Act 2020*.

## **HUMAN RIGHTS**

Wellington Shire Council is committed to upholding the Human Rights principles as outlined in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* and referred to in Council's Human Rights Policy. The Human Rights Checklist has been completed and this policy accords with Council's policy commitment to uphold human rights principles.