

## CONFLICT OF INTEREST POLICY

<b>Policy Number:</b>	2.4.6
<b>Approved by:</b>	Council
<b>Date Approved:</b>	December 2023
<b>Date of Next Review:</b>	December 2024
<b>Applicable to Unit(s):</b>	Organisation and Councillors
<b>Responsible Officer:</b>	Manager Organisational Performance and Governance
<b>Related Policies:</b>	Acceptance and Declaration of Gifts, Benefits and Hospitality Policy Fraud Control Policy Procurement Policy Delegations Policy Risk Management Policy
<b>Related Documents:</b>	Councillor Code of Conduct Employee Code of Conduct Governance Rules Personal Interests Returns 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, employees and committee members in the identification, disclosure and management of conflict of interest (i.e. actual, perceived or potential) when carrying out their Council duties.

Conflict of interest and duty is about transparency and accountability. Councillors, employees and committee members hold positions of public trust and should always work to serve the interests of the community, not themselves or someone else's interests. Councillors, employees and committee members must act with integrity and not inappropriately benefit or be influenced by improperly using their position.

The potential for a conflict exists in all aspects of Council operations. The most effective means to address conflicts of interest and duty is to establish a system under which Councillors, employees and committee members are required to disclose and obtain evaluation of any conflict they may have.

The purpose of this policy is to assist Councillors, employees and committee members in the identification and management of conflicts of interest and duty – and to assist in addressing and understanding how to manage any conflict issues. Council recognises that a well-established system for identifying, disclosing, managing and reporting conflicts 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 and duty are not unusual in the exercise of public responsibility and cannot always be avoided. Where a conflict 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 or duty, will deal promptly with the conflict and put in place arrangements that protect the integrity of the Council processes.

## THE POLICY

### Conflict of Interest

It is the responsibility of Councillors, employees and committee members to identify a conflict of interest or duty and disclose this when necessary. Failure to disclose any conflicts is a breach of the *Local Government Act 2020* (the Act) and penalties may apply.

In accordance with the Act, there are two categories of conflict of interest – **general conflict** of interest and **material conflict** of interest. Refer to *Appendix A – Conflict of Interest Legislative Guide* for the definitions of these categories.

### Areas of activity where conflicts may arise:

Conflicts may arise because of the council's involvement in any of the following matters:

- appointing and managing employees;
- 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.

There are four types of conflicts that may arise within general and material conflicts. Conflicts may be actual, potential or perceived, or represent a conflict of duty:

1. An **actual conflict** occurs when there is a real, current conflict between a public officer's duties and their private interests;
2. A **potential conflict** 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.
4. A **conflict of duty** arises when an individual is required to fulfil two or more roles that may be in conflict with each other – often known as 'wearing two hats'. For example, a Councillor may hold a position as a member of the board of another public entity or body that Council has a direct and/or ongoing involvement with. The conflict of duty will arise in situations where Council is

required to consider and/or make decisions where this public entity or body is involved. Conflict of duty scenarios are especially common in regional and rural settings due to the smaller size of communities and the existence of specialist industries. As it is not always possible to avoid a situation where a conflict of duty exists, it is vital that these situations are declared and managed appropriately to ensure the public interest is protected.

### **Disclosure and declaration**

All Councillors, employees 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 Codes of Conduct
- assessing their own private and personal interest to identify any conflicts of interest or duty
- identifying and declaring all conflicts
- 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 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 Plan can be found on the Governance page of Council's Intranet.

All levels of management must:

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

### **Responsibilities of Managers**

Managers are responsible for:

- complying with this policy with respect to their own conflicts and potential conflicts;
- ensuring annual completion of training requirements;
- facilitating the compliance of those they manage by:
  - ensuring that the employees they manage complete the annual training module;
  - being aware of the risks of conflicts inherent in the work of the employees they manage;
  - making Councillors, employees and committee members aware of relevant policies and procedures;
  - advising Councillors, employees and committee members about appropriate ways to manage conflicts;
  - recording the receipt of disclosures of conflicts reported to them by employees;
  - assisting employees who disclose conflicts in preparing management strategies; and
  - monitoring the work of employees 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 duty and manage any conflicts 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 any conflicts they may have in accordance with this policy and specified procedures 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 any conflicts at the beginning of a Council meeting and immediately prior to consideration of the matter and remove themselves from the meeting for the duration of the discussion/vote;
- if details are private in nature, then the conflict can be declared to the Chair in writing prior to the meeting and the disclosure will simply be the type of interest with a brief and general summary of the details;
- classify the conflict as General (section 127) or specify the type of Material conflict (section 128);
- describe the nature of the conflict;
- where a Councillor or member of a delegated committee has two or more conflicts on matters being considered consecutively, they must disclose the conflicts 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
  - return to the meeting only when invited to do so.

In meetings other than a Council meeting (i.e. Council workshop or Committee meeting), a similar format for the declaration of a conflict of interest must be undertaken whereby the conflict may be disclosed at the beginning of the meeting and/or immediately prior to consideration of the matter as set out above. Depending on the declaration itself, management of the conflict may also require that the individual remove themselves from the meeting for the duration of the discussion/vote until asked to return. The actual process followed will depend on the type of 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 and/or duty, 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 table at *Appendix A – Conflict of Interest Legislative Guide*.

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

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

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

### **Managing conflicts of interest**

The four recommended responses for managing conflicts are:

#### **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 employees 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 employee concerned has restrictions placed on their involvement in the relevant matter, or that another employee 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 employees 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.

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

### **Monitoring conflicts of interest**

All disclosed conflicts of interest must be reviewed by the General Manager Corporate Services, Coordinator Governance and Risk, the employee 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 or circumstance must be notified immediately to the relevant Manager.

### **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*.

## APPENDIX A – CONFLICT OF INTEREST LEGISLATIVE GUIDE

Conflict Type	Definitions
<p><b>GENERAL CONFLICT OF INTEREST</b> (Section 127)</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> <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><b>MATERIAL CONFLICT OF INTEREST</b> (Section 128)</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> <p>(a) directly or indirectly; or</p> <p>(b) in a pecuniary or non-pecuniary form.</p>	<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 publicbody;</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 (section 128(4))</b>: <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 -</li> <li>(a) if the relevant person held the office of Councillor, was a member of Council employees 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</li> </ul> </li> </ul>

	<p>campaign donation -</p> <p>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 employees or member of a delegated committee.</p>
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### **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.

## **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.

## **REVISION HISTORY**

VERSION	DATE	MAJOR / MINOR UPDATE	SUMMARY OF CHANGES
1.0	December 2022	Minor update	<p>Updated Responsible Officer title</p> <p>Conflict of Duty has been added to the legislated requirements relating to Conflict of Interest for greater clarity at the recommendation of Council's Audit &amp;</p>



			Risk Committee; as such the definition of conflict of interest and conflict of duty has been split and various reference to conflict of interest have been updated to include conflict of duty where applicable
1.1	August 2023	Minor update	<p>Addition of policies to the Related Policies list</p> <p>Addition of Personal Interests Returns to the Related Documents list</p> <p>Various minor grammatical updates throughout</p> <p>New paragraph added under 'Responsibilities of Councillors/Committee Members' to provide clarity for declarations made outside of a Council meeting</p> <p>Relocation of the conflict of interest legislative guidance table to Appendix A at the end of the policy</p>
1.1	December 2023	Minor Update	<p>Date of Next Review updated to: December 2024</p> <p>Minor formatting and ordering changes.</p> <p>Description of Private interests in main document removed as included in the appendix.</p> <p>Approved by: updated from CEO to Council</p>