



# Conflict of Interest Policy

## Policy – CP057

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Manager Governance & Performance	Executive Leadership Team	Council	May 2023	2023/0091
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### 1. The purpose of this policy is

To ensure Councillors, Council staff and members of delegated committees (known in this policy as relevant persons) are aware of, and comply with the requirements of the *Local Government Act 2020* (the Act) in relation to Conflicts of Interest.

### 2. Policy Statement

Conflict of Interest is about transparency, relevant persons hold positions of public trust and should work to serve the interests of the community, not themselves or someone else’s private interests.

It is the responsibility of each relevant person to identify a Conflict of Interest and disclose this as required by the Act and Council’s Governance Rules. Failure to disclose Conflicts of Interest is a breach of the Act in which penalties can apply.

The Chief Executive Officer and members of Council staff have increased responsibilities when discharging any delegated powers, duties or functions under the Act.

In addition to the statutory responsibilities outlined in section 126 of the Act, Council requires Council staff to assess Conflicts of Interest in both procurement and recruitment processes, as outlined in section 3.3 and 3.4 of this policy.

### 3. Principles

#### 3.1 Types of Interests

The Act describes the following two classes of interests:

- General Conflicts of Interest; and
- Material Conflicts of Interest

### 3.2 Recording requirements

In accordance with Council's Governance Rules, all disclosures of Conflicts of Interests made at Council, Delegated Committee or Council Auspiced Meetings will be recorded in the minutes of that meeting.

Each Councillor or Committee member is required to complete a Conflict of Interest Declaration Form that must include the following information:

- Type of interest as defined within Section 126(2) of the Act;
- An explanation of the nature of the interest;
- Details of the matter in respect of which the disclosure is made; and
- The date on which the disclosure is being made

Details of all Conflicts of Interests declared are to be provided to the Governance & Risk Team for registering in Council's Records Management system and inclusion on the Conflict of Interest register.

In declaring a Conflict of Interest at a Council or Delegated Committee Meeting, Councillors or Committee members are required to make the following verbal declaration:

I wish to declare that I hold a *general/material* Conflict of Interest. The nature of the interest is that *explain nature of interest*.

The following information must be recorded in the minutes of that meeting:

- The declaration of the Conflict of Interest; and
- The classification and nature of the interest

### 3.3 Recruitment

All staff must ensure they are aware of, and abide by the Conflict of Interest rules in relation to all recruitment processes.

Conflicts of Interest may arise where a person's personal or family relationships, work commitments or professional working relationships could, or could be perceived to, impact on a person's ability to act impartially.

Each panel member must apply the general and material conflict of interest provisions from the Act and complete a Confidentiality and Conflict of Interest Declaration Form prior to beginning the shortlisting. Where a conflict of interest has been identified, the staff member must state how they intend to manage the conflict.

Where a General Conflict of Interest has been declared, the Manager Organisational Development will review the declaration and may consult with an appropriate member of senior management to make a determination as to whether or not the proposed plan to manage the conflict is acceptable.

Where a dispute arises from a panel member's exclusion from a recruitment process on the basis of a General Conflict of Interest this can be escalated to the Chief Executive Officer for a review of this decision. The decision of the Chief Executive Officer is final.

Where a Material Conflict of Interest has been declared the staff member must not participate in that recruitment process.

Access to the applications will not be granted until the Confidentiality and Conflict of Interest Declaration Form has been completed.

If a panel member cannot participate due to a conflict of interest, it is the job owners' responsibility to find a suitable replacement.

Recruitment conflict of interest declarations are not required to be captured and included in the Conflict of Interest Register maintained in accordance with the Governance Rules. These declarations will be captured in Council's Record Management System and will be included within the recruitment file for future reference.

### **3.4 Procurement**

All staff must ensure they are aware of, and abide by the Conflict of Interest rules in relation to all procurement processes.

Conflicts of Interest may arise where a person's personal or family relationships, work commitments or professional working relationships could, or could be perceived to, impact on a person's ability to act impartially.

Each panel member must apply the general and material conflict of interest provisions from the Act and complete the Conflict of Interest Declaration Form prior to beginning any evaluation processes.

Where a General Conflict of Interest has been declared, the Manager Financial Services will review the declarations and may consult with an appropriate member of senior management to make a determination as to whether the staff member may continue participation in the evaluation process.

Where a dispute arises from a panel member's exclusion from a procurement process on the basis of a General Conflict of Interest this can be escalated to the Chief Executive Officer for a review of this decision. The decision of the Chief Executive Officer is final.

Where a Material Conflict of Interest has been declared, the staff member must not participate in the procurement process.

If in doubt as to whether you should be involved in a procurement decision due to a potential conflict of interest, you should remove yourself from the decision making process.

Procurement conflict of interest declarations are not required to be captured and included in the Conflict of Interest Register maintained in accordance with the Governance Rules. These declarations will be captured in Council's Record Management System and will be included within the procurement file for future reference.

## **4. Who is responsible for implementing this policy?**

Manager Governance & Performance

## 5. Definitions

Affected Person	<p>Means any of the following:</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 disclosable gift</li></ul>
Conflict of Interest	<p>A relevant person has a conflict of interest if the relevant person has:</p> <ul style="list-style-type: none"><li>(a) A general conflict of interest within the meaning of section 127 of the Act; or</li><li>(b) A material conflict of interest within the meaning of section 128 of the act</li></ul>
Disclosable Gift	<p>Means one or more gifts with a total value of, or more than, \$500 or if an amount is prescribed, the prescribed amount, received from a person in the five years preceding the decision on the matter:</p> <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</li></ul> <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 staff or member of delegated committee</p>

Family member	<ul style="list-style-type: none"> <li>(a) A spouse or domestic partner of the relevant person; or</li> <li>(b) A parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the relevant person or of their spouse or domestic partner; or</li> <li>(c) Any other relative that regularly resides with the relevant person;</li> </ul>
General Conflict of Interest	If an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duties
Governance Rules	The rules developed under Section 60 of the Act
Material Conflict of Interest	<p>If an affected person would gain a benefit or suffer a loss depending on the outcome of the matter</p> <p>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>
Matter	<p>Means a matter with which a Council, delegated committee, community asset committee or a member of Council staff is concerned and that will require –</p> <ul style="list-style-type: none"> <li>(a) A power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council, delegated committee or community asset committee in respect of the matter; or</li> <li>(b) A power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Council staff in respect of the matter</li> </ul>
Not-for-profit Organisation	<p>Means a body that:</p> <ul style="list-style-type: none"> <li>(a) Operates exclusively for charitable, civil, sporting or other social purposes; and</li> <li>(b) Does not share or allocate the funds or profile of the body or organisation with the owners, shareholders or executives of the body or organisation</li> </ul>
Private Interests	Means 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

Public Duty	Means the responsibility and obligations that a relevant person has to members of the public in their role as a relevant person
Relevant person	Means a person who is a: <ul style="list-style-type: none"> <li>(a) Councillor; or</li> <li>(b) Member of a delegated committee who is not a Councillor; or</li> <li>(c) Member of Council staff</li> </ul>

## 6. Legislation and other references

### 6.1 Legislation

For further information related to this policy see:

- *Local Government Act 2020*

### 6.2 Documents

This Policy is implemented in conjunction with the following documents:

- MRCC Governance Rules
- In the Public Interest: A conflict of interest guide for councillors, delegated committee members and council staff
- MRCC Conflict of Interest Guidelines for members of Council Staff

### 6.3 Risk Assessment Reference

<b>Risk Category</b>	✓	<b>Risk Category</b>	✓
Asset Management		Financial Sustainability	
Committees	✓	Human Resource Management	✓
Compliance – Legal & Regulatory	✓	Leadership & Organisational Culture	✓
Contract Management	✓	Occupational Health & Safety	
Contract Tendering & Procurement	✓	Organisational Risk Management	✓
Corporate Governance	✓	Project Management	✓
Environmental Sustainability		Public Image and Reputation	✓