

POLICY NO

C1:10

POLICY TITLE **MANAGING CONFLICTS OF INTEREST**

VERSION II: Adopted 19 August 2003

Last Reviewed: 19 August 2003

AIMS

This policy will:

- provide staff and councillors with a *definition* of conflicts of interest that includes pecuniary interests and shows that non-pecuniary interests (other interests not involving financial matters) can also give rise to conflicts. Examples of interests that cause conflicts are included to help people understand the issues.
- inform staff and councillors, in plain language, of their *obligations* under the *Local Government Act* regarding pecuniary interests. This includes the need to lodge annual returns and to declare interests as they arise in matters before council. Councillors and staff 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. If it is unclear whether a conflict exists and the individual does not want to remove themselves, they are encouraged to seek legal advice. They should also understand the risk of sanctions if they do not remove themselves while there is still the possibility of a conflict.
- explain that *non-pecuniary* conflicts of interest are just as important as pecuniary interests, even if the Act does not specifically address them or establish sanctions. Conflicts of interest need to be dealt with in a consistent and accountable fashion if councillors and staff are to meet their obligations and carry out their functions honestly and impartially.
- set out guidelines to decide whether a conflict exists and how it should be handled.

OBJECTIVES

The objectives of this policy are to:

- provide a documented process on managing conflicts of interest.
- ensure that councillors and staff have access to advice to help them in the identification of conflicts of interest.
- provide a clear and consistent framework for the reporting of, and appropriate application of sanctions for, breaches of this policy.

DEFINITIONS

Pecuniary Interest - Is defined by Section 442 of the Local Government Act 1993 which is reproduced hereunder:

1. **[Pecuniary interest]** For the purposes of this Chapter, 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 or another person with whom the person is associated as provided in section 443.
2. **[Remoteness]** 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 specified in section 448.

Non-pecuniary Interest - Is any private or personal interest which does not pertain or relate to money (eg kinship, friendship, membership of an association, society or trade union or involvement or interest in an activity).

The onus is on the individual to declare an interest, whether perceived or real. Such disclosure should be made promptly and in writing (or in cases of urgency made orally and confirmed in writing) to the Council, Mayor or General Manager as appropriate.

GUIDELINES

1. *How to decide what is a conflict of interest*

The following questions will help staff and councillors decide, in the first instance, whether a conflict of interest exists, or whether their behaviour could create the impression that it does, and so undermine confidence in the council.

- Do I, a relative, friend or associate stand to gain or lose financially from 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.
- 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 the 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 do 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?

To summarise, a conflict of interest arises if it is likely that the person with the private or personal interest could be prejudicially influenced in the performance of his or her job or professional duties by that interest or that a reasonable person would believe that the person could be so influenced.

2. Objective advice

The General Manager and Executive Manager Corporate Services are nominated as appropriate persons to provide objective advice to staff and councillors on conflict of interest matters. Where the matter involves a potential pecuniary interest, legal advice may be needed. This person would provide advice only and not be involved in making the decision on how the matter should be handled. If it is decided by the nominated person and/or legal adviser that a member of staff or councillor has a conflict of interest, then they would make recommendations to the general manager or council on how the matter could be handled.

This is illustrated in the following case study.

Case Study 1

A town planner lives near a site for which a development application (DA) has been submitted to council for the construction of a block of flats. Like any other member of the community, the town planner has the right to express her views to the council and in fact, this town planner wishes to object to the DA as she believes that the development will affect the amenity of her neighbourhood. The town planner reported the possible conflict of interest in writing to her superior, and this was also referred to the general manager. In consultation, the planner's superiors decided it would be appropriate to exclude the planner from working on the matter. Measures were put in place to ensure that she is excluded from any discussions on the matter and is not able to influence or be involved in the decision making process, yet still not lose her rights as a resident. The planner was still able to put her views on the DA to the council in writing, but was excluded from influencing any decision on the matter.

The final decision on how the conflict of interest should be managed rests with the general manager.

The purpose of providing the councillor or staff member with the opportunity to be involved in the process is intended to educate councillors and staff. It also assists them to more readily identify and declare any future conflicts of interest. It may also help the person with the conflict to accept the council's final decision.

3. Objective assessment and decision making

The best way of dealing with conflicts of interest is to prevent them from arising in the first place. If they do occur, however, it is important when deciding how conflicts will be handled, that matters are assessed against established criteria by someone experienced and objective.

For staff and others engaged by the council, conflicts of interest are handled by the general manager. The responsibility can be delegated, but it is important that it remain with someone senior in council with the necessary impartiality and sound judgement. Giving this responsibility to one person makes it easier to keep track of what matters are emerging and how they are being resolved.

For councillors, this role is filled by the general manager and the mayor.

Criteria for assessment includes:

- Does the matter fall within the definition of a pecuniary interest in the Act?
- Alternatively, is there a non-pecuniary interest?
- Is all the relevant information available to ensure a proper assessment?
- What is the nature of the relationship or association that could give rise to the conflict?
- Has appropriate legal and other advice been obtained?
- Is the matter or issue one of great public interest? Is it controversial?
- Could the individual's involvement in this matter cast doubt on his or her integrity?
- Could the individual's involvement cast doubt on council's integrity?
- How would it look to a member of the public?
- What is the best option to ensure impartiality, fairness and protect the public interest?

Where individuals disagree with the decision taken regarding their matter, they are able to state a case to those who made the assessment.

4. Detailed record keeping

Full and accurate records need to be kept by councils on conflicts of interest that arise. Records include:

- disclosures in relation to specific matters;
- periodic disclosure of interests that could give rise to a conflict;
- failures to disclose;
- disclosure by others (for example a colleague or member of the public); and
- vexatious claims.

Each record needs to show:

- the individual(s) concerned;
- the circumstances involved;

- an assessment of the matter;
- how the matter was resolved; and
- any action taken by the council.

5. *Dealing with conflicts of interest*

The Act requires that if a pecuniary interest is disclosed, the individual with the interest must not be involved in consideration or discussion of the matter in which they have the interest and must not vote on any question relating to the matter.

However a broader range of options exists for dealing with conflicts of interest that do not have a pecuniary component. Choosing the right option to deal with the conflict will depend on the circumstances of the matter and an objective assessment of it. Options include:

- take no action because the conflict is assessed as minor in nature;
- prohibit any involvement;
- require that the individual concerned remove the source of the conflict; and
- include an independent in the process to provide assurances of probity (for example, for tendering or recruitment selection panels).

The following case study illustrates how these options can be used.

Case Study 2

The Director of Corporate Services needs to hire an Information Technology consultant, which is the business her partner is in. It is a small country town and there are not many IT consultancy firms in the area. She is aware that her involvement in the process could create problems and is keen to ensure that the best person for the job is selected. She declared the potential conflict of interest to the general manager.

The general manager decides that he will oversee the process, including convening the selection panel, and that the Director of Corporate Services will have no involvement at all. He advertises the consultancy in the metropolitan, regional and local press and ensures that a comprehensive information package is provided to all potential bidders. To ensure independence, the general manager also includes the Director of Corporate Services from a neighbouring council on the selection panel. He keeps full records of the process adopted and decisions made, and invites unsuccessful applicants to have a meeting with him to discuss why they were not chosen.

While the steps above do not completely remove the potential conflict of interest, they at least reduce the likelihood of an unfair process and a biased outcome.

If a Councillor decides not to vote on an issue because of a conflict of interest, then it is necessary for the councillor to leave the room when the vote is taken, otherwise the vote will be counted in the negative.

6. Areas requiring special attention

The following is identified as an area which requires special attention:

Councillors and Club/Community Organisations Membership

The following case studies highlight the problems councillors may face where they are members of community organisations.

Case Study 3

A councillor is a member of a club in a small community. The councillor is very active in the running of the club and while not an office holder, he is well known to all club members. The councillor often discusses council business with other members, represents their personal interests as residents and ratepayers to the council and facilitates communication between them and council.

The club has recently submitted a development application (DA) to the council for a major extension of its facilities.

In this situation, the councillor has two distinctly different interests in the matter. The first is his interest as a councillor representing residents and ratepayers generally; the second is as a club member who is keen to see the club prosper and provide better facilities for its members. There is nothing wrong with a councillor having community as well as civic interests, though there are times when these interests may be perceived as a conflict of interest.

In this instance, there may be a public perception that the councillor's activities with the club would make it difficult for the councillor to view the matter before the council as a representative of residents and ratepayers generally. Therefore, the councillor should disclose his conflict of interest in the matter when it comes up for consideration. The councillor should then consider whether he will refrain from participating in council's discussion and voting on the matter. If the councillor decides not to vote then he should leave the room when the vote is being taken to ensure that the vote is not recorded in the negative.

Case Study 4

A councillor is a member of a large metropolitan club. However, she is not active in the club or involved with the management of the club. In this situation, the councillor merely enjoys the facilities of the club as a privilege of membership.

In this case study, should a matter relating to the club arise at council, it is appropriate that the councillor informs the council of her membership. However, it is unlikely on this occasion that her interest as a club member would overshadow her role as a councillor representing the view of residents and ratepayers generally. Therefore, she could participate in the decision making process.

The distinguishing features of the two cases are that:

- the councillor's interests as a club member in case study 3 are likely to overshadow his role as representative of residents and ratepayers generally. This would make it difficult for him to be objective; and
- the public perception of a lack of impartiality would be stronger in the first case particularly given the size of the community and the visibility of the councillor in the club's activities.

This policy requires that Councillors and staff who have declared a conflict of interest in a particular matter before Council, refrain from involving themselves in activities associated with that matter including committees of Council and workshops of councillors/senior management. At community/public meetings dealing with that matter Councillors and staff with the conflict of interest are entitled to attend such meeting but not to speak or be involved in discussions thereat.

7. Training and education

The effective management of conflicts of interest depends on all concerned being aware of their responsibilities, procedures to be followed and where to go for advice.

Councillors and staff members also need to be regularly reminded of their responsibilities. For example, it should be a requirement that those participating on tender or recruitment selection panels and contractors and consultants who provide services to council, declare any actual or potential conflicts of interest at the outset, as a matter of course.

Conflict of interest matters can be complex. Even if people are given training, they can still forget or not fully understand their responsibilities. Updates and reminders are essential to maintain awareness and commitment. Case studies, real life examples and discussion groups are useful to get the message across.

8. Reporting others' conflicts of interest

Procedures for dealing with conflicts of interest should allow for staff and councillors to report if they think that a colleague has a conflict of interest. Council's internal complaints management system will be used for this purpose. The aim is not to get staff and councillors to make complaints based on political motivations, but to ensure that the public interest is paramount and that all necessary steps are taken to maintain the integrity of decision making.

Members of the public are able to make a complaint if they have reason to believe that a councillor or staff member has a conflict of interest. They need to be informed of how to make a complaint and how the matter will be handled. Again, the complaints management system will be used for this purpose.

Reports are to be made, in writing, to either the general manager (for staff or contractors) or to the mayor or general manager (for councillors). It is emphasised that vexatious complaints will not be tolerated.

9. Sanctions

To be effective and to ensure that non-financial conflicts of interest are treated as seriously as pecuniary interests, the policy needs teeth. It needs to incorporate appropriate sanctions where breaches of policy and procedure are identified.

In the case of staff, sanctions can include counselling, disciplinary proceedings or dismissal, depending on the severity, scale and importance of the matter. The more

severe sanctions may only apply when there is repeated and deliberate concealment or failure to disclose.

The problem is more difficult when it is councillors who breach council policy in relation to non-pecuniary interests, as there are no prescribed sanctions associated with breaches of the code of conduct. However, this does not preclude a council from establishing its own sanctions, having satisfied itself that there has been a breach. Sanctions should only be imposed after consideration has been given to all issues and points of view. The decision to sanction a councillor should reflect the concern of the overwhelming majority of councillors about the conduct of a councillor and the impact on council's reputation or operations. Any sanctions imposed must not interfere with the councillor's common law right to conduct their civic duties but should send a clear message that the breach is unacceptable.

Practical sanctions include:

- passing a censure motion at a council meeting;
- requesting a formal apology;
- issuing a reprimand;
- counselling the councillor (by way of an independent person appointed by Council); and
- prosecuting any breaches of the law.

11. *Commitment from management*

For the policy to provide real assistance in the management of conflicts of interest, it needs the full support of senior management and council. If staff and others feel that those at the top do not have to comply with the same rules, they will not feel compelled to show care and honesty in relation to conflicts of interest.

12. *Keeping the community informed*

The community has a right to know that the council is aware of and takes seriously its obligation to perform its functions impartially and in the public interest. Informing the community that council has a detailed policy and procedures on conflicts of interest, that complaints concerning conflicts will be taken seriously, and how the policy and procedure have taken effect, is a useful accountability mechanism.

13. *Monitoring and review*

The policy needs to be periodically reviewed by the general manager, who then reports to council to ensure that it is still appropriate and workable. Staff and councillors need to be consulted in this process and the policy updated or modified as necessary and reissued. New issues or problem areas should be identified and appropriate guidance incorporated.

14. *Application of Policy*

This policy is intended to complement the requirements of the Local Government Act 1993 concerning conflicts of interest and duties of disclosure and Council's Code of Conduct. The policy is to be read in conjunction with the Act and the Code.

Date Policy Adopted	Minute No	Authority
16 September 1997	28710	Council resolution
19 August 2003	31593	Council resolution