

Kyogle Council

Conflict of Interest Policy



Adopted by Council 11 September 2017

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OBJECTIVE

To provide a framework for Council officials - Councillors, staff, delegates and advisers - to recognise and deal with conflicts of interest, both pecuniary and non pecuniary.

VALIDITY

This policy was adopted at Council's Ordinary Meeting held 11 September 2017 (Resolution No: 110917/18).

INTRODUCTION

Kyogle Council must be impartial and fair in its dealings with ratepayers, residents, suppliers and the general public in order to retain their trust, confidence and support. To do this it is essential that all possible conflicts of interest are appropriately handled. Council's Code of Conduct sets the minimum requirements of behaviour for council officials in carrying out their functions.

Council officials must ensure that opportunities do not exist for their interests, or those of people close to them, to conflict with the impartial performance of their Council duties.

Any potential, real or perceived conflict between an individual's interests and those of the Council must be resolved in favour of the Council.

RECOGNISING A CONFLICT OF INTEREST

A conflict of interest would exist where:

- you have a personal interest that could lead you to be influenced in the way that you carry out your Council work or duties;
- you have a personal interest that could lead a fair person to think that you could be influenced in the way that you carry out your Council work or duties; or
- a family member, relative, friend, associate or anybody close to you has a personal interest that could lead you to be influenced in the way that you carry out your Council work or duties, or could lead a fair person to think that you could be influenced.

Conflicts of interest include both pecuniary interests and non-pecuniary interests. Non-pecuniary conflicts of interests are just as important as pecuniary interests.

The Local Government Act, 1993 imposes requirements for Councillors, designated persons and advisers to declare any pecuniary interests they might have. The Act should be referred to in all matters concerning possible pecuniary interests.

WHAT IS THE DIFFERENCE BETWEEN PECUNIARY AND NON PECUNIARY INTERESTS?

(A) Pecuniary Interest

A pecuniary interest, as defined in Section 442 of the Act “...is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain”.

As provided by Section 443, you have a pecuniary interest in a matter if:

- you have the pecuniary interest;
- your spouse, de facto partner, relative, partner or employer has the pecuniary interest;
- a company or other body of which you, or a nominee, partner or employer is a member has a pecuniary interest.

As provided by Section 442 of the Act, a person does not have a pecuniary interest in a matter if the matter 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.

Section 441 of the Act defines designated persons to include:

- the General Manager
- other senior staff; and
- people holding positions or committee memberships that the Council considers makes them designated persons.

The Act provides opportunities for pecuniary interests to be disclosed both in writing and verbally (at meetings).

(i) Written Disclosures

If you are a Councillor or a designated person you must, as provided by Section 449 of the Act, complete and lodge a return in the form of Schedule 3 of the Local Government (General) Regulation 2005, with the General Manager:

- within 3 months after becoming a Councillor or designated person. You do not need to lodge a return within this period if you lodged a return in the previous year, or if you ceased to be a Councillor or designated person within the 3 month period; or

- within 3 months of 30 June in any year if you held your position at 30 June.

As provided by Section 454 of the Act, a general notice given to the General Manager in writing by a Councillor or a member of a Council committee to the effect that the Councillor or member, or the Councillor's or member's spouse, de facto partner or relative, is;

- a member, or in the employment, of a specified company or other body, or
- a partner, or in the employment, of a specified person,

is, unless and until the notice is withdrawn, sufficient disclosure of the Councillor's or member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the Council or Council committee after the date of this notice.

As provided by Section 459 of the Act, if you are a designated person you must disclose in writing to the General Manager any pecuniary interest you have in any Council matter with which you are dealing (see attachment)

(ii) Verbal Disclosures

As provided by Section 451 of the Act, if you are a Councillor or a member of a Council committee and you have pecuniary interest you must:

- if you are present at the meeting disclose your interest to the meeting as soon as practicable (usually at the start of the meeting but always prior to the matter actually being considered);
- not be present at, or in sight of, the meeting;
- not take part in any consideration or discussion of the matter; and
- not vote on any question relating to the matter.

As provided by Section 446 of the Act, the above requirement does not apply if you are a member of a Council committee that is wholly advisory.

A disclosure made at the meeting must be recorded in the minutes of the meeting as provided by Section 453 of the Act.

(iii) General

As provided by Section 456 of the Act, if you are giving advice to the Council or a Council committee you must disclose any pecuniary interest that you have in the matter to the meeting at the time that you give the advice.

Note: You are encouraged to err on the side of caution by declaring your interest and by not participating in discussion or in decision making if there is any doubt.

INTERESTS THAT NEED NOT BE DISCLOSED

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

- (a) an interest as an elector,
- (b) an interest as a ratepayer or a person liable to pay a charge,
- (c) 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,
- (d) 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,
- (e) 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),
- (f) 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,
- (g) 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:
 - (i) 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
 - (ii) 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,

- (h) 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,
- (i) 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,
- (j) 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:
 - (i) the performance by the Council at the expense of the relative of any work or service in connection with roads or sanitation,
 - (ii) security for damage to footpaths or roads,
 - (iii) 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,
 - (k) an interest relating to the payment of fees to the councillors (including the Mayor and Deputy Mayor),
 - (l) an interest relating to the payment of expenses and the provision of facilities to councillors (including the Mayor and Deputy Mayor) in accordance with a policy under Section 252 of the Local Government Act 1993,
 - (m) an interest relating to an election to the office of Mayor arising from the fact that a fee for the following 12 months has been determined for the office of Mayor,
 - (n) 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,
 - (o) 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,
 - (p) 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.

(B) Non Pecuniary Interests

A non-pecuniary interest is any private or personal interest not pertaining or relating to money. It may include kinship, friendship, membership of an association, society or trade union or involvement or interest in an activity.

CONFLICTS OF INTEREST – EXAMPLES

Examples of situations that may give rise to conflicts of interest include:

- a staff member having the responsibility for hiring a consultant where one of the applicants is a good friend;
- a staff member having responsibility for assessing a tender for the supply of equipment, where a close friend has submitted a bid;
- A member of a panel assessing tenders has shares in one of the firms

which has submitted a bid. This may affect, or it may reasonably be suspected that it could affect, his or her ability to make an unbiased decision.

- A member of a selection panel has a close relationship with one of the applicants for the job. This conflict of interest could bias, or could reasonably be expected to bias, the decision of the panel.
- A regular supplier offered a manager involved in making purchasing decisions free tickets to a major sporting event. The manager's impartiality when dealing with the supplier could be compromised if the offer was accepted.
- a councillor being very active, although not holding office, in the running of a club that has any form of application or request before Council;
- a councillor being involved in the decision making in relation to a matter involving the personal affairs of a close friend;
- a town planner lives near a site for which a development application has been submitted to Council for the construction of a block of flats and the town planner is involved in the processing of the application;
- a councillor participating in the decision making process of a development application submitted by a relative;
- a councillor may be tempted to influence an application to set up a new business in the town if his/her own business could lose custom as a result.
- a councillor making a decision about a club where one spends a great deal of one's time; and
- a staff member conducting a health inspection of a premises in which one has a financial interest.

Note: These examples are not necessarily actual instances and are not intended to be exhaustive. They are merely a sample of situations that could arise from time to time and are provided for the express purpose of helping Councillors, staff and delegates understand what could constitute a conflict of interest.

Some particular areas of concern which have been identified by the Department of Local Government and ICAC, where amplification may be useful, are set out below:

(i) Gifts and Benefits

You must never demand or request any gift or benefit in connection with your Council work or duties. This includes gifts or benefits for other people.

You must never accept any gift or benefit (other than of a token kind, or moderate act of hospitality) for yourself or for any other person or body, relating to your status with the Council, or the performance of any work or duty touching on or concerning the Council:

- if the person offering it, or a fair person, would expect you to be influenced in any way you do your job or carry out your duties;
- if you would feel a sense of obligation or debt to the person offering the gift or benefit; or
- if you or the Council are likely to be compromised.

Gifts and benefits may be considered as token if they are inconsequential or trivial and are not offered on a regular basis.

Token gifts not solicited, not having any significant monetary value, inconsequential or trivial and are not offered on a regular basis may be accepted but should be reported to a Manager, the General Manager and/or the Mayor. The offer of cash (any amount) is never considered acceptable.

Councillors, staff, delegates and advisers shall take into account the following issues when considering whether a gift is a token or hospitality is moderate:

- what an impartial observer may think;
- the scale, lavishness or expense/cost/value of the gift or benefit;
- the frequency of occurrence; and
- the degree of openness surrounding the occasion or gift.

Staff who are in any doubt about whether or not a gift is token, should discuss it with their Supervisor, Manager or the General Manager

(ii) Travel

Trips funded by suppliers or business associates of the Council, may only be accepted with the written permission of the General Manager for staff or the written permission of the Mayor or a resolution of the Council for Councillors, the General Manager or delegates.

(iii) Club Membership

Councillors, staff, delegates and advisers, who are members of clubs should seriously consider whether their club memberships could give rise to conflicts of interests in Council matters that may affect the clubs.

The greater your involvement with the club, the greater likelihood of a real or perceived conflict of interest.

Factors that should be considered include:

- whether or not you hold any positions of office in the club;
- whether or not you take on the role of an office holder even though you do not formally hold a position at the club;
- whether or not you previously held significant positions in the club, or are

- likely to in future;
- how much fundraising or organising you do for the club;
- how much time you spend at the club; and
- how involved your spouse, children and others close to you are with the club.

HOW DO YOU DETERMINE IF A CONFLICT EXISTS?

Questions to Consider

The following questions may help you decide whether a conflict of interest exists or whether your behaviour could create the impression that it does:

- Do I, a relative, friend or associate stand to gain or lose financially from Council's decision or action on the 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 this 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 my 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.

Perceptions

Not only must our actions be free of any conflicts, we must ensure that they are clearly seen to be free of any conflicts.

It is therefore important that you consider what other people might think of the

situation. This should include, for example, unsuccessful tenderers, other potential suppliers, other businesses, clients, ratepayers, residents and members of the public, other Councillors and staff members.

Responsibility

If you have a conflict of interest, or you think it is likely that you might have a conflict you must notify either:

- the General Manager or Mayor in writing; or
- the relevant Council or Committee meeting.

The objective of notification is to protect both yourself and the Council.

In many cases, only you will be aware of the potential for a conflict of interest. The onus for notification is therefore on you.

If a conflict arises during a meeting, such as a Council or Committee Meeting, or a meeting of an external body/committee to which the Council has appointed you, you should inform the meeting of the interest, preferably at the start of the meeting. Depending on the nature of the conflict, it may be appropriate not to vote on the matter. Unless this conflict has been assessed as being only of a minor nature, you must leave the meeting and not participate in discussions on the matter. The disclosure and subsequent actions will be recorded in the minutes of the meeting and in the case of Council and Committee meetings will be recorded in the Council's Register of Disclosures.

If you are uncertain as to whether or not you may have a conflict of interest in a particular matter, you should obtain independent legal advice.

Advice

During meetings, the General Manager or Mayor may advise if he/she considers a Councillor, staff member, delegate or adviser has a conflict of interest in a matter before the meeting.

At other times, the General Manager or Mayor may convey this advice to a Councillor, staff member, delegate or adviser personally, either verbally or in writing. In doing so, the General Manager or Mayor shall invite the Councillor, staff member, delegate or adviser to comment.

Ultimately, the onus for resolving conflicts of interest rests with the individual.

However, it is anticipated that once provided with advice that the perception of a conflict of interest exists;

- the Councillor or delegate should seriously consider whether he or she

- should continue to participate in decision making in relation to the subject matter; or
- the staff member or adviser must immediately disqualify himself or herself from reporting or providing advice to the Council in relation to the subject matter. Failing this the General Manager may arrange for another staff member to report or advise the Council or arrange for advice to be sought from another source.

WHO SHOULD REPORT CONFLICTS OF INTEREST

The individual who has or may have the conflict

As provided by this policy, the onus rests with the individual to report any conflicts of interest that he or she may have.

Others

Where a Councillor or staff member believes that a colleague, delegate or adviser has a conflict of interest, or where a member of the public believes that a Councillor, staff member, delegate or adviser has a conflict of interest, this may be reported (in writing) to the Mayor or General Manager.

While proof of a conflict is not required, the person reporting the conflict must have reasonable grounds for believing that the conflict exists. Frivolous or vexatious complaints, or complaints made solely or substantially with the aim of avoiding dismissal or other disciplinary action will not be tolerated.

If a conflict involves corrupt conduct, maladministration or serious and substantial waste of public money the report may be protected by the Protected Disclosures Act, 1994. In this instance, the matter will be dealt with in accordance with Council's Protected Disclosures Policy.

Where a complaint concerns a failure to disclose a pecuniary interest in contravention with the Local Government Act, 1993, it may be made to the Director General of the Department of Local Government (Section 460).

In all cases, the identity of the complainant will be treated as confidential and will be not revealed.

DEALING WITH CONFLICTS OF INTEREST

Where a Voluntary Disclosure is made

(A) Pecuniary Interest

If a pecuniary interest is disclosed, the person 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 in accordance with the Act and Council's Code of Meeting Practice.

(B) Non-Pecuniary Interest

If a non-pecuniary interest is disclosed, there are options available to deal with

the conflict, depending on the circumstances of the matter and objective assessment of it. Those options can include, but are not limited to:

- 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; or
- include an independent in the process to provide assurance of probity (eg tendering or recruitment selection panels).

Council may resolve to hear a brief address from a Councillor with a non-pecuniary interest, prior to the Councillor leaving the meeting.

Note: The above requirements can be communicated by a direction from the General Manager for staff, by direction of the Mayor for the General Manager or by resolution of the Council for Councillors.

Where a Conflict is not Disclosed and/or Where a Complaint is Received

(A) Assessment

Complaints alleging issues involving conflicts of interest will be investigated by the General Manager (or the Mayor in the case of complaints about the General Manager).

In assessing whether a conflict of interest exists, the General Manager (or the Mayor, as the case may be) will apply the following criteria:

- Does the matter fall within the definition of pecuniary interest as provided by the Act?
- Alternatively, is there a non-pecuniary interest?
- Is all the relevant information available to ensure 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 the matter cast doubt on his or her integrity?
- Could the individual's involvement cast doubt on the 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?

(B) Reporting

The General Manager (or the Mayor as the case may be) will compile a report containing details of his or her assessment and findings.

In cases involving staff, the report will be provided to the staff member concerned

in the first instance to enable that person to comment, following which the report will be finalised and a course of action determined by the General Manager. The General Manager may refer cases to the Internal Ombudsman for investigation.

In cases involving Councillors, the General Manager, delegate or adviser:

1. the initial report will be provided to the person concerned in the first instance to enable that person to comment;
2. if the complainant or the subject are unhappy with the General Manager's (or the Mayor's) determination, the option will be offered to them for the matter to be referred to Council's solicitor for an independent review;
3. the Council's solicitor will review the determination and refer his findings to the General Manager;
4. the General Manager (or the Mayor) will finalise his report (incorporating the findings of the Council's solicitor as necessary) and will determine whether or not the matter is one for consideration by Council.

(C) Sanctions

Breaches of this policy by staff may result in disciplinary action in accordance with the Award and/or any Council policies and the General Manager's responsibilities. Sanctions against Councillors, delegates or advisers for breaches of this policy may include:

- counselling;
- requesting a formal apology;
- issuing a reprimand;
- passing a censure motion at a Council meeting;
- public disclosure of inappropriate conduct;
- referring a possible breach of the pecuniary interest provisions to the Director General of the Department of Local Government and/or Pecuniary Interests Tribunal; and/or
- prosecuting any breaches of the law.

In all cases where a criminal offence has been committed, the matter shall be referred to the Police Service.



CONFLICT OF INTEREST DECLARATION

Date of meeting: _____

Name: _____

Position: _____

Matter under
Consideration: _____

Expected Role/duties to be performed by the person in dealing with the matter:

Private interests identified which have the potential to impact on the employee's ability to carry out, or be seen to carry out, their official duties impartially and in the public interest"

The conflict of interest has been identified as an (please check the appropriate boxes):

Actual conflict of interest **Pecuniary** Interest

Perceived conflict of interest **Non-Pecuniary** Interest

Potential conflict of interest

STATEMENT OF CONFLICT OF INTEREST RESOLUTION OR MANAGEMENT

Proposed action to be taken to resolve or manage conflicts of interest.

I hereby declare that the above details are correct to the best of my knowledge and I make this conflict of interest declaration in good faith.

Signature (officer)

Date

I hereby declare that I have received and appropriately noted this conflict of interest declaration.

Signature (General Manager)

Date