



Conflicts of Interest

A Guide for Councillors,
Delegated Committee Members
and Council Officers

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1. Introduction

Conflict of interest laws are prescribed under the Local Government Act 2020 (the Act) and in the Local Government (Governance and Integrity) Regulations 2020 (the Regulations). Managing conflicts of interest is about ensuring the integrity and transparency of the decision-making processes of Council.

The conflict of interest provisions in the Act apply to a 'relevant person'. A relevant person is:

- a Councillor,
- a member of a Delegated Committee who is not a councillor
- a member of Council staff (who is a member of a Delegated or Community Asset Committee, is providing advice to Council, a Delegated or Community Asset Committee, a Council officer exercising a delegation, or exercising a delegated function or statutory power).

These guidelines have been prepared in conjunction with the guidelines issued by Local Government Victoria to assist relevant persons to understand and meet their statutory obligations in relation to conflicts of interest. As a 'relevant person' under the Act, it must be clear that your private interests are not affecting your public duties and that you are not using your position for personal benefit.

A relevant person with a conflict of interest must disclose the interest and not participate in the decision-making process on the matter. This means the relevant person must exclude themselves from any discussion or voting on the matter at any Council meeting, delegated committee meeting, community asset committee meeting, or, if a Councillor, any other meeting conducted under the auspices of Council. The relevant person must also exclude themselves from any action in relation to the matter, including an action taken to implement a Council decision, e.g., issuing a planning permit.

Importance of Understanding Conflicts of Interest

Councillors are elected by their communities to make decisions on behalf of those communities. This is both a privilege and a duty. For Council staff, their public duty is to perform their role as a member of Council staff, acting in the public interest in accordance with the Act, the overarching governance principles and the policies of Council. For an external member of a Delegated Committee, their public duty is to act in the public interest as a Committee Member in the same way as a Councillor.

All of these roles have significant responsibilities and must be performed in the public interest and not in the interest of someone or something with whom you have a private association. To ensure that the public interest is served at all times, all relevant persons are required to separate their private interests from their public duties. This may mean stepping aside from a public duty if you have a conflict of interest. It is also good practice for relevant persons to avoid situations that may give rise to conflicts of interest, e.g., in relation to planning decisions that may come before Council. It is sometimes not enough to just have good intentions. Members of the public cannot always be certain what motivates your actions on a matter and in some instances, a failure to disclose and avoid a conflict of interest is widely perceived as an indicator of corruption.

People in many other roles also have to avoid conflicts of interest. This includes directors of companies, members of statutory bodies and members of certain professions, such as lawyers.

Personal Responsibility

The obligation to disclose a conflict of interest is a personal responsibility. Each relevant person must monitor their own circumstances and identify their conflicts of interests. If you have a conflict of interest, you must disclose it and exclude yourself from the decision-making process.

This guide is not the only source of advice. Where appropriate, relevant persons may also seek assistance from: Council's Chief Executive Officer, Director Corporate Services or Manager Governance, a lawyer or other suitably qualified person, the Municipal Association of Victoria or the Victorian Local Governance Association. Local Government Victoria can also provide information about the disclosure of conflicts of interest and general guidance but cannot provide legal advice. Irrespective of what advice is provided, it is ultimately the responsibility of each relevant person to accurately identify their interests and disclose any conflicts of interest.

Assistance from other people may be limited to helping you to understand the requirements of the Act, rather than advising you about a specific conflict of interest. This is particularly true for assistance provided by Council officers.

Failing to disclose a conflict of interest in accordance with the Act can result in criminal prosecution in a court, and/or a hearing by a Councillor Conduct Panel (for Councillors) and/or disciplinary action under the Code of Conduct (for Council staff).

There may be times when it is not clear whether you need to disclose a conflict of interest. It is ultimately your personal responsibility to determine whether a conflict of interest exists for you in relation to a matter. If there is a lingering doubt in your mind about whether you have a conflict of interest, it is probably better to remove yourself to ensure the integrity of the decision-making process.

The conflict of interest provisions should not be used as a mechanism to avoid decision-making responsibilities. Attempts to avoid decisions using the conflict of interest provisions may appear obvious based on the circumstances outlined in the disclosure, which may be publicly available.

Declarations of any conflicts of interest and the procedures you follow to exclude yourself from the decision-making process must be consistent with Council's Governance Rules and the relevant Codes of Conduct.

2. What is a Conflict of Interest?

Material Conflict of Interest

A relevant person has a material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter. The benefit may arise or the loss may be incurred either directly or indirectly or it may be in a pecuniary or non-pecuniary form (s. 128 of *Local Government Act 2020*).

For the purposes of a material conflict of interest, an affected person is (under the Act):

- the relevant person;
- a family member of the relevant person. (a family member is a spouse or domestic partner of the relevant person, a parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the relevant person or their spouse, or any other relative that regularly resides with the relevant person);
- a body corporate where the relevant person or their spouse is a director or on the governing body (a body corporate includes a company whether incorporated in Victoria or elsewhere and an unincorporated body that under the law of its place of origin, may sue or be sued, or may hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose and any incorporated associations. A community association that is not incorporated is essentially a grouping of its individual members. A decision that affects such an association should be treated as if each of the members is individually affected);
- the relevant person's employer, unless it is a public body (a public body is a government department, a municipal council or any other body established for a public purpose by an Act of Parliament of Victoria, any other State, or a Territory of the Commonwealth, or the Commonwealth);
- a business partner of the relevant person;
- a person for whom the relevant person is a consultant, contractor or agent;
- a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee; or
- a person from whom the relevant person received a disclosable gift (a gift includes any good or service (other than volunteer labour) that is provided for free or that is provided for less than its normal selling price. It includes the payment of an amount in respect of a guarantee and a payment or contribution at a fundraising function. A disclosable gift means any gift valued at or above \$500 or a higher amount (if prescribed in the Regulations) that a relevant person received in the preceding five years if the relevant person was a councillor, member of council staff or member of a delegated committee at the time the gift was received, or the gift was an election campaign donation or is required to be disclosed as an election campaign donation. If multiple gifts are received from a person, they must be treated as a single gift with an aggregate value. A disclosable gift 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. A gift includes any good or service (other than volunteer labour) that is provided for free or at an inadequate price. It includes a payment or contribution at a fundraising function.

Direct or Indirect Material Conflicts of Interest

A direct benefit or loss occurs where the affected person is the immediate recipient or suffers the loss themselves. An indirect benefit or loss occurs where the person is affected because of the impact on another person or body, or as an indirect effect of a process. Examples could include:

- a decision to grant a councillor a planning permit is a direct benefit for them,
- a decision to grant a planning permit to a Councillor's neighbour may be an indirect benefit or loss for the Councillor.

Pecuniary or Non-Pecuniary Material Conflicts of Interests

A pecuniary benefit or loss is one that can be measured in money. However, a benefit or loss does not have to be pecuniary. Some examples of non-pecuniary benefits or losses could include

:

- something that affects a person's residential amenity (such as a proposed change in use of a nearby property that will impact on their enjoyment of their home or a change to parking arrangements in their street), or
- a permit allowing a person to conduct an activity.

General Conflict of Interest

A relevant person has a general conflict of interest in a matter 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 duty (s. 127 of the *Local Government Act 2020*).

A general conflict of interest is therefore less specific and direct than a material conflict of interest. Declarable associations are captured under general conflicts of interest as they are a type of conflict of interest that can arise from a public officer's personal associations which may compromise the public officer's duties, functions or integrity (*Managing corruption risks associated with conflicts of interest in the Victorian Public Sector*, Independent Broad-based Anti-Corruption Commission, October 2019).

There are three parts of a general conflict of interest which must be considered:

- the private interest (a private interest is any interest a relevant person has that does not derive from their public duty. It can include any direct or indirect interest that they have. The scope for what can be a private interest is very broad and might include a change to personal circumstances that does not involve an identifiable gain or loss, a close friendship or association with someone who stands to benefit from a Council decision or significant past employment with a company with an interest in a matter. Private interests do not include an interest that is only a matter of personal opinion or belief);
- the public duty (Public duty means the responsibilities and obligations that the relevant person has to members of the public in their role. A relevant person should not act in a manner that is contrary to their public duty. A general conflict of interest arises if a relevant person's private interests could result in them acting in a manner, or being perceived to act in a manner, contrary to their public duty. A relevant person should therefore consider whether their private interest(s) may be perceived to affect the performance of their public duty); and
- what an impartial, fair-minded person would consider (Whether a relevant person's private interests could result in them acting in a manner contrary to their public duty is determined by whether an "impartial, fair-minded person" could reach that conclusion. It assumes the impartial, fair-minded person is in full possession of the facts and does not have any personal interest or bias in relation to the outcome of the matter).

Exemptions to Conflicts of Interest

A conflict of interest does not arise in some defined situations under s. 129 of *Local Government Act 2020*. These exemptions apply to both material and general conflicts of interest and are as follows:

- remoteness or insignificance (a relevant person does not have a conflict of interest if their 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);
 - interest in common (a relevant person does not have a conflict of interest if their interest in the matter is held in common with a substantial proportion of residents, ratepayers or electors of the municipal district and does not exceed the interest held by those residents, ratepayers or electors. When considering this exemption, a relevant person should consider if a particularly large proportion of residents, ratepayers or electors are affected in the same way and to a similar extent);
 - no knowledge (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);
 - Council representative (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. A not-for-profit organisation is a body that operates exclusively for a charitable, civil, sporting or other social purpose which does not share or allocate funds or profits to owners, shareholders or executives);
 - family memberships (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, such as a sporting club or community association);
 - advocacy organisations; and
 - Prescribed exempted council decisions and circumstances.
- It is important to note that these exemptions should not be relied on without proper consideration and care. Further detail on each exemption is included below.
- Advocacy organisations (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. A relevant person should consider if the organisation has another interest, such as applying for funding);

Exempted Council Decisions and Circumstances

In addition to the general exemptions for conflicts of interest under the Act, some Council decisions are exempted from conflict of interest. These are mostly decisions with limited scope for pursuing personal interests, where participation by all Councillors is important or where Councillors necessarily have a personal interest. These include the following:

- Council nominating or appointing a Councillor to a position for which the Councillor will not be remunerated;
- Council nominating or appointing a Councillor to a position in the Municipal Association of Victoria or any other body that has the purpose of representing the interests of councils;
- Council making a submission to an electoral structure review;
- Nominating and electing a mayor or deputy mayor;
- Nominating and appointing an acting mayor;
- A decision in relation to the payment of mayoral and councillor allowances under section 39(6) of the *Local Government Act 2020*, including a decision in relation to the payment of allowances to the Mayor or Councillors under section 74 or 74C(2) of the *Local Government Act 1989*;
- Adopting a Councillor Expenses Policy;
- A decision to deal with a matter in an alternative manner or to appoint a delegated committee under section 67 of *Local Government Act 2020* in order to manage a loss of quorum;
- Establishing a delegated committee and appointing a Councillor as a member or chairperson;
- Adopting, reviewing or amending the Councillor Code of Conduct;
- Making an application for an internal arbitration process;
- Making an application for a Councillor Conduct Panel or a VCAT review of a panel decision;
- Declaring rates and charges under section 158(1) of the Act;
- Dealing with Councillors' eligibility for the superannuation guarantee;
- Dealing with a matter related to preparing or adopting a budget or a revised budget if the budget or revised budget includes funding for that matter, it was previously approved by the Council and a Councillor who had a conflict of interest in respect of that matter disclosed the conflict when the Council previously considered and made the decision in respect of that matter and the proposed funding;
- Dealing with a matter related to preparing or adopting a Community Vision, Council Plan, Financial Plan, Asset Plan or Revenue and Rating Plan if the relevant document includes that matter, it was previously approved by the Council and a Councillor who had a conflict of interest in respect of that matter disclosed the conflict when the Council previously determined the matter;
- Dealing with a matter determined in an alternative manner by the Council under section 67 of the *Local Government Act 2020* if any component part of the matter in which a Councillor had a conflict of interest has been resolved and the Councillor disclosed the conflict of interest when the Council previously considered that component part;
- The Councillor is a representative of the council to a Local Government Waste Forum established under the *Environment Protection Act 1970*;
- The Councillor is a director of a Waste and Resource Recovery Group established under the *Environment Protection Act 1970*;
- The Councillor is a member of the Country Fire Authority appointed under section 7 of the *Country Fire Authority Act 1958*;
- The Councillor is a member of the governing body of a referral authority considering an application under section 56 of the *Planning and Environment Act 1987*;
- The Councillor is a representative of the Council, or councils, to the Municipal Association of Victoria or in another body that has a purpose of representing the interests of a council or councils;
- The Councillor is an employee of the Crown or of a body established by or under any Act for a public purpose, if the councillor has no current or expected future responsibilities as that employee that relate to a matter;
- The Councillor is a representative of the Council (with the Council's approval) to an organisation, if the Councillor receives no remuneration as that representative;
- The Councillor is a member of a Planning Application Committee established under the *Planning and Environment Act 1987* or as a member or co-opted member of a subcommittee of that Committee.

3. Disclosure Requirements

Relevant persons are required to disclose conflicts of interest in accordance with s. 130 of the *Local Government Act 2020*. In particular, these are in respect of a matter:

- to be considered at a Council meeting; or
- to be considered at a meeting of a Delegated Committee; or
- to be considered at a meeting of a Community Asset Committee; or
- that arises in the course of the exercise of a power of delegation by a member of Council staff; or
- that arises in the course of the exercise of a statutory function under the *Local Government Act 2020* or any other Act.

All disclosures of interest must be detailed on the appropriate Disclosure Conflict of Interest Form and lodged with Governance. Councillors are also required to disclose conflicts of interest at other meetings conducted under the auspices of Council. This includes a meeting organised by Council, resourced by Council or arranged with Council support and is not limited to:

- regular Councillor Briefing Sessions or forums; or
- other briefing meetings; or
- committees other than a Delegated or Community Asset Committee (such as advisory committees); or
- public consultations; or
- site meetings; or
- meetings Council arranges jointly with other organisations.

A Councillor must disclose any conflict of interest that arises in one of these meetings. The Councillor must comply with the procedures specified in Council's Governance Rules.

In most cases, disclosure requires disclosing the conflict of interest, removing yourself from the decision-making process. This includes not participating in any discussion or voting on the matter and not participating in any action in relation to the matter.

Council's Governance Rules include a detailed procedure for disclosing conflicts of interest in Council Meetings and Delegated Committee Meetings

Council officers providing information in relation to a matter to be considered at a Council or Delegated Committee meeting must also disclose any conflicts of interest in the documentation and follow the procedures outlined in the Governance Rules if they are in attendance at the subject meeting.

Whenever a Council officer is exercising a power of delegation or a statutory power, duty or function, they must disclose any conflict of interest, exclude themselves from the decision-making process and any action in relation to the matter. This includes actions an officer takes as an authorised officer. A Council officer with a conflict of interest must not:

- exercise the delegated power of the Council, or
- perform their function as an authorised officer, or
- perform any other function under the authority of an Act of Parliament.

A conflict of interest must be disclosed as soon as it becomes evident to the Council officer and prior to any of these actions arising. This must be done in accordance with the Governance Rules. Council staff providing advice to another staff member exercising a delegated power must also disclose any conflict of interest and follow the above procedures.

Council officers who are nominated officers under the *Local Government Act 2020* and are involved in any tender panels, tender processes or purchases of goods and services on behalf of Council are also required to complete a Disclosure Conflict of Interest Form if any conflict of interest arises and return it to Governance prior to being involved in any tender panels, tender processes or purchase of goods and services on behalf of Council. Any documentation produced in support of these activities must list any disclosures of interests made. Council is currently developing a Conflicts of Interest Policy which will capture all disclosure requirements for the organisation.

It should also be noted that any interests disclosed on Personal Interest Returns by affected persons, or any gifts received that were disclosed on Campaign Donation Returns by Councillors, should also be disclosed on Disclosure Conflict of Interest Forms prior to any individual matters being heard or dealt with in the course of any Council business.

Consequences of Failure

A failure to disclose a conflict of interest may result in criminal or conduct proceedings.

If the Chief Executive Officer (CEO) fails to meet the disclosure requirements, the Mayor must notify the Chief Municipal Inspector (CMI) as soon as practicable after the Mayor becomes aware that the CEO has failed to comply with the disclosure requirements.

If a Council officer fails to meet the disclosure requirements, the CEO must notify the CMI as soon as practicable after the CEO becomes aware of the failure and must deal with the failure in accordance with the Staff Code of Conduct.

If the person who fails to comply with the disclosure requirements is a person other than a Councillor or a Council Officer, the CEO must notify Council and make a recommendation as to the action that is to be taken.

The CMI has powers to investigate allegations of failing to disclose a conflict of interest and to initiate proceedings in a court or a hearing by a Councillor Conduct Panel.

Criminal Proceedings

Under s. 130 of the *Local Government Act 2020*, a Councillor, Delegated Committee Member or Council officer may be charged with a criminal offence if:

- they fail to disclose a conflict of interest which is a material conflict of interest; or
- they fail to disclose the conflict of interest as required under the Act; or
- they are a Councillor that has had a previous finding against them of a breach of conflict of interest requirements.

If found guilty, a fine of up to 120 penalty units may be incurred. A Councillor convicted of a conflict of interest offence could also be dismissed from office and disqualified from being a Councillor for eight years.

If a Councillor fails to disclose any conflict of interest, an application for serious misconduct may be made to a Councillor Conduct Panel by the Council following a resolution, a Councillor or a group of Councillors or the Chief Municipal Inspector. If a Councillor Conduct Panel makes a finding of serious misconduct it may:

- reprimand the Councillor; or
- direct the Councillor to make an apology; or
- impose a suspension of up to 12 months on the Councillor; or
- direct that the Councillor is ineligible to chair a Delegated Committee Meeting for up to the remainder of the Council's term;
- direct that the Councillor becomes ineligible to hold the office of Mayor or Deputy Mayor for the remainder of the Council's term.

A suspended councillor does not receive an allowance for the duration of the suspension. Unless the panel specifies otherwise, a finding of serious misconduct means the councillor is ineligible to be Mayor or Deputy Mayor for the remainder of the Council term.

A person who is, or has been, a Councillor or a Delegated Committee Member may be also charged with misuse of position if they intentionally misuse their position directly or indirectly to gain an advantage for themselves or for any other person or cause or attempt to cause detriment to Council or another person. If a person is found guilty of misuse of position, a court may impose a fine of up to 600 penalty units or a prison term of up to five years.

4. Conflict of Interests and Effective Decision-Making

Conflicts of interest and avoiding bias are separate legal obligations. Either or both may apply when dealing with a matter. Any relevant person might be biased or have a conflict of interest and must assess each of these obligations separately and take the appropriate action.

The *Local Government Act 2020* now provides for Council to consider and make decisions on any matter being considered by the Council fairly and on its merits and to institute decision making processes which ensure that any person whose rights will be directly affected by a decision of Council is entitled to communicate their views and have their interests considered

These requirements are designed to ensure community confidence in council decision-making by ensuring that it is free from bias and considers the views of people affected by those decisions.

Victorian councils are given powers under various Acts of the Victorian Parliament, including the *Local Government Act 2020* and the *Planning and Environment Act 1987*. These Acts authorise Councils to make decisions that affect the rights and interests of individuals and businesses living and operating within a council's municipal district.

Section 61 of the *Local Government Act 2020* enables a Councillor to vote at Council Meetings. Part 6, Division 2 of the same Act contains provisions to prevent Councillors with a conflict of interest from participating in certain Council decisions.

The provisions of the *Local Government Act 2020* however also operate within a framework of common law principles that bind all governmental decision makers. For Victorian councillors as decision makers, this means that in addition to the provisions of the *Local Government Act 2020*, they must also observe common law rules.

Over many years the courts have developed rules to ensure that decision makers at all levels of government act fairly and without bias when making decisions that affect the rights and interests of others. These rules are known as the common law rules of "natural justice" or "procedural fairness". Procedural fairness is about the fairness of the procedures used to arrive at a decision, and not the fairness of the decision itself.

When making administrative decisions, Councils must ensure they apply procedural fairness. Procedural fairness involves two rules: the "hearing rule" and the "bias rule". The "[hearing rule](#)" gives a person the right to present their case. The "[bias rule](#)" gives a person the right to have the decision made by a person who is not biased.

Note: In *Winky Pop Pty Ltd v Hobsons Bay City Council* (2007), the Supreme Court found that a Councillor's involvement in a Council decision about a proposed planning scheme amendment was sufficient to invalidate the decision. By making an individual submission through the process, the Councillor demonstrated that he had prejudged the matter in that he had made up his mind in advance of the formal Council decision-making processes and therefore had not been open to persuasion through Council's formal consideration of the matter.

These common law rules must be observed by an individual Councillor who exercises a statutory power to vote. If a Councillor cannot genuinely comply with those rules in relation to a particular matter, they must refrain from taking part in a Council decision about that matter. The guide *Ensuring Unbiased Democratic Council Decision Making: Principles to Guide Good Practice (2013)* is a useful resource for Councils when considering the rule that they bring an impartial and open mind to the task of making decisions that affect the rights and interests of others.

5. Checklist and Examples

This checklist may be a useful way to identify a possible conflict of interest and is followed by some examples of situations where conflicts of interest may need to be considered.

Checklist

A common mistake made when assessing conflicts of interest is to seek advice about a conflict regarding one type of interest and overlook another possible conflicting interest. For example, a Councillor may ask about a possible conflict of interest because they are a member of an action group opposing a development and forget to mention that they happen to own property adjoining the development.

As a matter of good practice, the relevant person should ask questions about all their possible connections with the matter. A list of starting questions might include the following:

- Are you be personally involved in the matter in any way, including past involvements?
- Are any members of your family likely to be affected by the matter in any way?
- Do you or members of your family own property that may be affected?
- Do you or your family have a financial interest in a company that is likely to be affected?
- Are any of your friends or other associates likely to be affected?
- Do you or any family member hold a position in an organisation that is likely to be affected?
- Do you or any members of your family work for a person or body that is likely to be affected?
- Are you or any member of your family a contractor, consultant or agent for someone likely to be affected?
- Is the matter likely to affect your or your family's residential amenity?
- Have you or any members of your family received any gifts or favours from anyone likely to be affected?

If the answer to any of these questions is "yes" the potential connection should be examined in detail and assessed against the conflict of interest definitions in the Act.

Examples

These examples are for illustration only. No two situations are exactly alike, and you must consider what the law requires on each occasion when you have a possible conflict of interest. While they seek to reflect issues that can arise in local government, they do not describe actual situations, refer to real people or reflect the expected outcomes of a consideration of a conflict of interest by an integrity body or a court.

Planning Permit

Background – Council is considering a planning permit that seeks approval to construct a multi-unit dwelling.

Councillor A

The application for the permit has been lodged by Councillor A, who owns the land. Councillor A is an affected person. Councillor A may have a material conflict of interest because she appears to stand to gain a benefit if the permit is approved. Approval to construct a multi-unit dwelling is a direct, non-pecuniary benefit as it may result in an improved lifestyle for Councillor A. If the value of the land increases because of the approval, Councillor A may gain a direct pecuniary benefit. She must disclose a conflict of interest.

Councillor B

Councillor B is a Council-appointed director of the regional water catchment authority which, as a referral authority, requires additional works as a condition of the planning permit. The regional water catchment authority is an affected person because it is a body corporate of which Councillor B is a director. A conflict of interest may not arise if Councillor B is the representative of the Council and does not receive a personal advantage, such as remuneration (this is an exemption under section 129).

Councillor C

Councillor C does not live near the proposed multi-unit dwelling but is a member of a resident action group that is opposed to multi-unit developments in the area. Councillor C is the affected person. A conflict of interest may not arise for Councillor C if the resident action group is a not-for-profit organisation that has expressed an opinion or advocated for an outcome in the matter (this is an exemption under section 129). Councillor C appears not to have a general conflict of interest because her private interest (opposition to multi-unit developments) is a personal belief or opinion. It is important to note that Councillors may have opinions on issues that come before them during their deliberations. However, it is expected that when considering matters that might adversely affect a person's rights and interests, Councillors will bring an open mind to those matters, free from bias and open to persuasion. (Note reference to Winky Pop decision above.)

Councillor D

The proposed rezoning may increase the value of Councillor D's land (a direct pecuniary benefit). Councillor D should consider whether he may suffer a loss if he is no longer able to farm the land. Councillor D appears to have a material conflict of interest in the planning scheme amendment.

Councillor E

Councillor E received an election campaign donation before the last election from a company that owns land in the proposed rezoning area. The donation has a value of over \$500. The company is an affected person because they are a person (which includes body corporates) from whom Councillor E received a disclosable gift. Because he received a disclosable gift from the affected person, Councillor E appears to have an indirect material interest in respect of the planning scheme amendment. The company has a direct pecuniary interest because they may gain a benefit or suffer a loss depending on the outcome of the matter.

Planning Scheme Amendment

Background

Council will consider a planning scheme amendment that, if approved, will rezone a substantial area of farmland for residential use.

Councillor D

Councillor D is a farmer and part of his farm is within the proposed area to be rezoned for residential. Councillor D appears to be an affected person.

Councillor F

Councillor F is a member of a community action group that opposes the rezoning and advocates maintaining a “village atmosphere”. Opposition to the development was also a significant focus of her campaign for election to the council. Councillor F appears not to have a conflict of interest just because she is a member of an organisation that has advocated a position on the rezoning. Neither do her campaign commitments appear to create a conflict of interest. However, Councillor F may want to consider whether she can bring an open mind to the matter, free from bias and open to persuasion.

Major Contract

Background - Council needs to approve a new contract for the municipality’s waste collection.

Councillor A

Councillor A owns \$5,000 of shares in a company that is a short-listed tenderer for the contract and is an affected person. As the company is very large, with a total share capital exceeding \$100M, it appears Councillor A would not gain an indirect pecuniary benefit because of the Council decision. This is because Councillor A’s interest is insignificant in terms of the size of the company so that it could not be reasonably regarded as capable of influencing the actions or decisions of Councillor A. Councillor A therefore appears not to have a material conflict of interest because of the shares. It should be noted that a higher proportion or value of a shareholding, especially for a company with a smaller total share capital, may result in a conflict of interest.

Councillor B

Councillor B held a senior position with the company for many years and maintains close personal friendships within the company. An impartial, fair-minded person may consider that Councillor B’s previous employment could result in him acting in a manner that is contrary to his public duty (e.g. influencing his decision-making). Councillor B appears to have a general conflict of interest in terms of the decision regarding the contract.

Councillor C

Councillor C is a non-remunerated Council representative on a waste coordination body that deals with municipal waste management matters at a regional level. Councillor C may not have a conflict of interest because they are the Council representative on a body that has an interest in the matter, so long as they receive no personal advantage from the waste coordination body.

Construction Contract

Background - A Delegated Committee is considering reconstruction of a local bridge and is finalising what type of bridge will be required.

Delegated Committee Member A

Delegated Committee Member A is employed by a company that may tender for the bridge construction contract. Delegated Committee Member A is the relevant person and the employer is the affected person.

Delegated Committee Member A appears to have a general conflict of interest regarding the bridge reconstruction. An impartial, fair-minded person may consider that Delegated Committee Member A's employment could result in him acting in a manner that is contrary to his public duty. As the company is not guaranteed work until contracts are let, there may be no definite benefit. It appears unclear whether Delegated Committee Member A would have a material conflict of interest in this case. However, the Delegated Committee Member A's employment with the company may create an interest that might reasonably influence the way he votes on bridge related matters, such as the consideration of different types of bridges. He therefore may have a general conflict of interest. If the company does tender for the bridge construction contract, Delegated Committee Member A's employer may be an affected person and appears likely to gain a benefit or suffer a loss depending on the outcome of the matter, which could potentially lead to a material conflict for Delegated Committee Member A.

Car Park

Background - A Delegated Committee is considering construction of a large new car parking area behind a shopping strip. It is proposed that the parking be free.

Delegated Committee Member B

Delegated Committee Member B leases premises and conducts a retail business in the shopping strip. Delegated Committee Member B appears to be an affected person. As the car park is likely to increase the amount of retail trade in the area, the Delegated Committee Member may have a direct pecuniary interest in the proposal. She appears to have a material conflict of interest.

Delegated Committee Member C

Delegated Committee Member C owns and runs a commercial car parking business which services the shopping strip. Delegated Committee Member C appears to be an affected person. Delegated Committee Member C may have a material conflict of interest because she may suffer a direct pecuniary loss if the car park was constructed. This is because the proposed new car park may reduce overall demand for commercial parking, either by reduced patronage in Delegated Committee Member C's car park or by a downward pressure on car parking prices.

Lease of Property

Background - A Delegated Committee is considering the renewal of a lease of a council property that is currently used as a private childcare centre.

Delegated Committee Member D

A close personal friend of Delegated Committee Member D is the lessee and operator of the childcare centre. Delegated Committee Member D appears not to have a material conflict of interest because the friend is unlikely to fall under the definition of affected person under the Act. A close friendship may create a private interest for Delegated Committee Member D. An impartial, fair-minded person may consider that Delegated Committee Member D's close friendship could result in him acting in a manner that is contrary to his public duty. It appears that Delegated Committee Member D may have a general conflict of interest.

Wind Farm Planning Permit

Background - Council is required to assess the proposal for a new wind farm for the purposes of a planning permit. The manager with responsibility for the assessment will be discussing the matter with Councillors in a Councillor Briefing Session.

Councillor A

Councillor A owns a farm near the facility and his home is within sight of some turbines. He formally opposed the wind farm proposal because he is concerned that it will damage his family's health. Whether or not there are health problems associated with wind farms may be a contested issue. If the Councillor is right, and there are demonstrated health problems associated with living near a wind farm, then he may have a material conflict of interest. However, the value of his property may decline as a result of the wind farm and Councillor A may suffer a direct pecuniary loss. He therefore may be considered to have a material conflict of interest. Councillor A also appears to have a general conflict of interest because his personal interests in the matter may influence the way he performs his duty as a Councillor.

Special Purpose Charge

Background - Council will consider whether to declare a special purpose charge to reconstruct a road and replace drainage.

Councillor A

Councillor A's parents live on the affected road and would be required to pay the special purpose charge. A family member may be an affected person. Councillor A may have a material conflict of interest because members of her family may gain an indirect non-pecuniary benefit (access to their property on a reconstructed road with improved drainage) and incur a direct pecuniary loss.

Councillor B

Councillor B lives near the affected road and suffers from drainage problems that will be fixed under the proposed scheme. Councillor B may be an affected person. Councillor B appears to have a material conflict of interest because he may gain a non-pecuniary benefit from replacement of the drainage. This may not be altered by the fact that he is not being required to pay the special charge.

Community Grants

Background - A Delegated Committee is scheduled to vote on community grants.

Council Officer A

Council Officer A is a member of the Delegated Committee and an ordinary member of the tennis club, which has applied for funding to refurbish its rooms. Council Officer A may have a general conflict of interest because an impartial, fair-minded person may consider that Council Officer A's membership could result in her acting in a manner that may be contrary to her public duty.

Delegated Committee Member B

Delegated Committee Member B's daughter is a member of a cricket club, which has applied for funding for wicket upgrades. It may not be a conflict of interest (exemption) if Delegated Committee Member B's interest only arises because a family member is a member (and not an officeholder) of a not-for-profit organisation.

Councillor C

Councillor C's domestic partner is the secretary of a local community service organisation that has applied for funding to conduct a community event. Councillor C may have a material conflict of interest because the community service organisation (being an affected person: a body corporate of which the relevant person's spouse is a member of the governing body) may gain a direct pecuniary benefit. It appears that Councillor C may be unable to rely on an exemption because her domestic partner is an officeholder.

Recreational Reserve

Background - Council is preparing a masterplan for the future development of an existing recreational reserve.

Councillor A

Councillor A lives in a house he owns with his partner on land adjacent to the reserve. Councillor A may have a general conflict of interest because an impartial, fair-minded person may consider that Councillor A's private interest could result in Councillor A acting in a manner that is contrary to his public duty, by influencing the content and direction of the masterplan. If the development would alter the value of his property, he may also have a material conflict of interest.

Councillor B

Councillor B is a professional horticulturalist employed by the company contracted to prepare a draft masterplan for the reserve. The company appears to be an affected person as the employer of Councillor B. Councillor B may have a material conflict of interest in relation to decisions relating to the adoption or appraisal of the masterplan because of the potential benefits or losses to his employer that may arise from Council decisions.

Councillor C

One of the options under consideration is to purchase land adjoining the existing reserve to provide more sports facilities. Councillor C is a real estate agent retained by the owner of the adjoining land to facilitate the sale. The landowner appears to be an affected person for whom Councillor C is a consultant, contractor or agent.

Councillor C may have a material conflict of interest because the landowner may gain a direct pecuniary benefit if the land is sold.

Councillor D

Councillor D is a Council-appointed member of the Community Asset Committee that manages the reserve for the council. The original recommendation for development was made by this Committee. Councillor D may not be an affected person. The Councillor may not have a material or general conflict of interest. Councillor D's interest appears to derive from her public duty.

Secondary Employment/Income

Background - Council is considering tenders for a road construction project with the final contract to be awarded by the Council.

Council Officer A

Council Officer A has been asked by her manager to be on the tender evaluation panel for the project. She is also a regular sub-contractor for a company who has tendered for the project. Council Officer A may stand to gain a benefit if the company is awarded the tender and subcontracts work to her. Were she to participate in the panel, a material conflict of interest may arise. A general conflict of interest may also arise if she participates on the panel, as it appears that her private interests as a regular subcontractor of the company may result in her acting in a manner that is contrary to her public duty. If she hasn't already done so and before agreeing to be on the panel, it appears that Council Officer A should declare a conflict of interest in relation to the company and follow the procedures outlined in the Staff Code of Conduct and Conflicts of Interest Policy (when developed).