



Ashfield Council

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# Conflict of Interest Policy - Staff

September 2011

This policy will be reviewed annually by: Governance

Next review date: September 2013

[Council Resolution:](#)

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<b>Document Title:</b>	Conflict of Interest Policy - Staff
<b>Summary:</b>	This policy defines conflicts of interest, guidelines for identifying such conflicts and declaration procedures for Council staff.
<b>Record Number:</b>	****
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<b>Approval:</b>	Council 27 September 2011
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<b>Contact Staff member:</b>	Manager Governance
<b>Relevant References:</b>	<i>Model Code of Conduct for Local Councils in NSW</i> , Division of Local Government, June 2008  <i>Identifying Conflicts of Interest in the Public Sector</i> , Independent Commission Against Corruption, November 2009
<b>Main Legislative or Regulatory References:</b>	<i>Local Government Act 1993 (LGA).</i> <i>Independent Commission Against Corruption Act 1984</i>
<b>Applicable Delegation of Authority:</b>	General Manager
<b>Related Ashfield Council Policy:</b>	Statement of Business Ethics Ashfield Council Code of Conduct Fraud and Corruption Prevention Policy Gifts and Benefits Policy Returns of Disclosures of Interest DA Declaration of Interest Policy Ashfield Council Staff Conflict of Interest Register Register of Voting on Planning Matters Ashfield Council Tendering Policy 2008 Ashfield Council Purchasing Procedures – Goods and Services under \$150,000 Procedure Secondary Employment Procedure Public Interest Disclosures Act 2009
<b>Related Ashfield Council Procedures</b>	Councillor Conflict of Interest Register



### ***Policy Background***

The conflict of interest policy is an overarching policy which guides how Council staff, delegates, contractors and consultants are to address and manage actual or potential conflicts of interest. Councillors are separately governed through provisions of the Local Government Act 1993, the Model Code of Conduct and the Code of Meeting Practice.

### ***Policy Purpose***

The purpose of this policy is to ensure that all Council employees act honestly in their dealings with members of the public and in carrying out their public duties. Similarly, this policy reaffirms Council's commitment to ethical decision making and assists in preventing maladministration and corrupt conduct in Council business.

This policy is to apply to all Council staff, delegates, contractors and consultants, members of the Council Committees and members of the community interacting with Council.

### ***Policy Objectives***

Ashfield Council supports an open, transparent and accountable public administration with a commitment to ethical decision making. Ashfield Council acknowledges that for effective governance, full disclosure of actual or perceived conflicts of interests is required. In turn, it is important that all conflicts of interests are disclosed promptly and fully so as to prevent bias in decision making and also to remove the appearance of bias in decision making.

This policy outlines Council's policy regarding conflict of interest matters and aims to:

- Ensure that all Council employees are aware of the duty to make decisions free of bias and carry out their official duties to a high ethical standard
- Remove any perception of bias
- Maintain appropriate records of declared conflict of interest
- Ensure that public confidence in Council is maintained
- Compliance with the Ashfield Council Code of Conduct
- Compliance with the Local Government Act 1993, Section 440



### **Implementation and access**

- Ashfield Council will maintain a conflict of interest register to record and manage conflicts of interest as disclosed by Council staff, contractors and consultants.
- The Manager Governance will be the responsible Council Officer for the conflict of interest register.
- For all declared conflict of interest, a record must be kept regarding the decision made in managing the conflict e.g. That the person no longer have any involvement in the matter.
- Subject to the Delegations Schedule, Council employees engaged in: procurement to the value of \$150K or more per annum (either cumulative or single purpose); tenders; the consideration/determination of grant applications; and the determination of Development Applications - must complete and lodge a declaration of interest form specifically stipulating that no conflict of interest exists with the applications, contracts or tenders which they are managing.
- Council will regularly undertake a program of educating to staff regarding probity and corruption prevention and promoting the need to manage conflicts of interest.

### **Conflicts of Interest – Types and considerations**

A conflict of interest may arise when employees, in the course of their public duty, are influenced or are seen to be influenced, by their private interests. For the purpose of defining a conflict of interest, a private interest can also include those of family, friends or associates.

There are three types of conflicts of interest:

- **Actual conflict of interest:** involves a direct conflict between a staff member's current duties and responsibilities and their existing private interests. In situations where the private interest actually motivates or influences the partial exercise of public duty, the conflict of interest can lead to corruption.
- **Perceived (or apparent) conflict of interest:** is where it could be perceived by others that a staff member's private interests could improperly influence the performance of their public duties – whether or not this is the case.
- **Potential conflict of interest:** arises when a staff member has private interests that could interfere with their official duties in the future.

Conflicts of interest can also be classified into two categories being pecuniary and non-pecuniary.

Section 442 of the Local Government Act 1993 defines:

**A pecuniary interest** as “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...” However it will also



extend where another person with whom the person is associated has a reasonable likelihood or expectation of financial gain or loss.

In the same way, a **non-pecuniary** interest includes private or personal interests that do not amount to a pecuniary interest as defined above. These non-pecuniary interests may commonly arise out of family or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.

The obligation to disclose a conflict of interest may arise in a range of circumstances and it is important to be mindful of such situations and in turn, the obligation to disclose any conflict of interest. Consideration of whether a conflict of interest exists may be subject to factors such as, but not limited to:

- Undertaking secondary employment
- Financial and economic interests such as debts or assets
- A family or private business
- Affiliations with for-profit and non-profit organisations, sporting bodies, clubs and associations
- Affiliations to professional, community ethnic, family or religious groups in a personal or professional capacity or relationships to people living in the same household
- Enmity towards or competition with another individual or group
- Significant family or other relationships with clients, contractors or other staff working in the same (or a related) organisation
- Future employment prospects or plans (ie post separation employment)

In day to day responsibilities at Council, this may affect staff -

- As a member of a tender selection / procurement panel
- As a member of a recruitment/interview panel
- In the determination of development applications
- Considering/deciding grant applications
- If undertaking internal review of Government Information Public Access applications
- General decision making

Council employees are reminded to refer to the Code of Conduct, Section 6 'Conflicts of Interest' 7.

Similarly, other persons who interact or have dealings with Council must disclose any conflicts of interest as they arise. In this way, a member of a Council Committee must disclose pecuniary



interests and a person giving advice to Council at a Council or Council Committee Meeting must disclose pecuniary interests.

### Designated Persons

Designated persons of Council have a higher onus to declare conflicts of interests. Section 441 of the Local Government Act stipulates that designated persons include:

- The General Manager
- Other senior staff of the Council

These designated persons must complete and lodge general disclosure of interests returns and are legally obliged to disclose in writing to the General Manager (or to the Council if applicable) the nature of any pecuniary interest in any specific council matter with which they are dealing.

### Management of conflicts of interest

The Ashfield Council Code of Conduct outlines six (6) questions which may assist in indentifying whether a conflict of interest exists. The onus is on individuals to indentify and declare conflicts of interests as soon as the conflict arises. The questions to consider are -

1. Does the person have a personal interest in the matter?
2. Is it likely that the person could be influenced by the personal interest in carrying out their public duty?
3. Would a reasonable person believe that the person could be influenced by the personal interest?
4. What would be the public perception of whether or not the person has a conflict of interest?
5. Do the personal interests conflict with the person’s official role?
6. What are the steps that a reasonable person would expect to appropriately manage any conflicts of interest?

For Council staff, a written declaration to the supervisor/line Manager or General Manager will be required on the attached form. The declaration will also be entered into the Council’s Conflict of Interest Register. A determination on the matter will be required and should also be recorded on both the form and the Conflict of Interest Register. Diagram 1 provides a decision-making logic. Hence for all declaration forms:





If a non-pecuniary conflict of interest is declared there are various options available to manage the issue. For example -

- **Register:** it may be appropriate that no action is taken however it is appropriate to record why this decision is made,
- **Restrict:** Limiting involvement by the staff member concerned, if practical, to discussion but not decision-making,
- **Recruit:** Appointing another staff member to sit-in on discussions and review decisions,
- **Relinquish:** Removing the source of the conflict by relinquishing or divesting of the personal interest,
- **Resign:** No involvement or participation in the matter at all.

After determining the course of action to follow, information should be recorded in the register.

### **S 449 Pecuniary Interest Forms**

All designated staff must complete a pecuniary interest form due to the higher potential level of risk. Designated staff are defined as being -

- General Manager
- Directors
- Chief Financial Officer
- Regulatory Services Manager
- Staff engaged in procurement activities to the value of \$150K or more pa either cumulatively or single purpose.
- Development Manager

Any manager or supervisor with a substantial budget and/or a position based with key decision making or providing recommendations to a Consent Authority (eg planners, staff engaged in procurement) should complete a s449 Pecuniary Interest Form.



Diagram 1: Decision making for Conflict of Interest determination

Source: Independent Commission Against Corruption (ICAC)

