



HUNTER'S HILL COUNCIL POLICY REGISTER

CONFLICT OF INTERESTS

CORP.S15

PURPOSE

The purpose of this policy is to ensure that Councillors, Council delegates, members of Council committees and Council staff act honestly, fairly, and free from private interest or prejudice in carrying out their duties.

SCOPE

This policy applies to situations where Councillors, Council staff or Council delegates may actually be compromised or perceived to be compromised in carrying out their duties such as making decisions, giving advice or conducting any other activity of Council because of a personal interest.

DEFINITIONS

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| Delegates of Council | a person or body to whom a function of council is delegated |
| Designated Person | defined in s441 of the Local Government Act 1993 as: <ul style="list-style-type: none">- the general manager- other senior staff of the council- a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest- a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest. |
| Council Official | includes Councillors, members of staff of council and delegates of council |
| Conflict of Interest | <p>a conflict of interests arises when the public interest runs counter to your private or personal interests.</p> <p>a conflict of interest exists for Councillors, Council delegates and Council staff where:</p> <ul style="list-style-type: none">- a personal interest could lead you to be influenced in the way that you carry out your Council duties;- a personal interest could lead a fair person to think that you could be influenced in the way that you carry out your Council duties; or |



HUNTER'S HILL COUNCIL POLICY REGISTER

- you are aware 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 duties, or could lead a fair person to think that you could be influenced.

Conflicts of interest include both pecuniary and non-pecuniary interests.

Nothing in this definition precludes obligations of Councillors and designated staff to notify conflicts of interest in pecuniary matters.

Pecuniary interest

is an interest that a person has in a matter because of the reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated. Associated persons include relatives, partners and employers (see Section 442 of the Local Government Act 1993).

A person does not have a pecuniary interest in a matter if they are not aware of the interest held by an associated person.

Nor does a person have a pecuniary interest if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might take in relation to the matter.

Non-pecuniary interest

is a private or personal interest that the council official has that does not amount to a pecuniary interest as defined above. It may include family relationships, friendships, memberships or positions in associations, and other interests that do not include financial gain or loss.

POLICY STATEMENT

1. IDENTIFYING AND NOTIFYING A REAL, PERCEIVED OR POTENTIAL CONFLICT OF INTERESTS

1.1 *Identifying a conflict of interests*

In many cases, only you are aware of the potential for a conflict of interests. Thus the onus for notifying a conflict of interests is on the individual Council official.

Perceptions of a conflict of interests are as important as actual conflicts of interests. If you do not feel that there is a conflict of interest, but suspect a fair person would perceive it as such you must make a disclosure.

If you are in doubt whether a conflict of interest exists, you should contact the General Manager. Discussions with the General Manager about potential conflicts of interests are confidential unless a conflict of interests is identified.



HUNTER'S HILL COUNCIL POLICY REGISTER

1.2 *Pecuniary Interests Returns*

Councillors and designated persons must lodge an initial and annual written disclosure of interests that could potentially be in conflict with their public or professional duties. The initial disclosure must be made within three months of becoming a Councillor or designated person.

1.3 *Disclosure of conflict of interests when dealing with council matters*

In addition to the initial and annual pecuniary interest returns, designated persons must disclose any conflict of interests they have in any council matter that they are dealing with. The disclosure must be made in writing to the general manager.

A disclosure by the general manager must be laid on the table at the next Council meeting after the disclosure is made.

1.4 *Disclosure in Meetings*

A Councillor or a member of a council committee who has a conflict of interests with any matter that is to be discussed in a Council or committee meeting, must disclose the nature of the interest to the meeting in accordance with Council's Code of Meeting Practice.

1.5 *Interests that do NOT have to be declared*

In accordance with section 448 of the Local Government Act 1993, the following interests do not have to be declared:

- (a) an interest as an elector,
- (b) an interest as a ratepayer or person liable to pay a charge,
- (c) an interest in any matter relating to the provision of a service or the supply of goods or commodities to the public generally, or to a section of the public that includes persons who are not designated persons.
- (d) an interest in any matter relating to the provision of a service or the supply of goods or commodities 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 designated persons.
- (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 the permissible uses of:



HUNTER'S HILL COUNCIL POLICY REGISTER

- (i) land in which the person or a person, company or body referred to in section 443 (1) (b) or (c) has a proprietary interest (which, for the purposes 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 subparagraph (i), if the person or the person, company or body referred to in section 443 (1) (b) or (c) 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 agreements 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) 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 councillors (including the mayor and deputy mayor),
- (l) an interest relating to the payment of expenses and the provision of facilities to councillors
- (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,



HUNTER'S HILL COUNCIL POLICY REGISTER

- (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.

2. ASSESSING AND RESOLVING CONFLICT OF INTERESTS MATTERS

2.1 *Assessing conflict of interests arising from council matters*

When a designated person has reported a conflict of interests with a council matter with which they are dealing with, the General Manager shall objectively assess the reported conflict of interests.

An initial assessment will be completed within three days of receiving the disclosure and the conflict of interests will be classified as either pecuniary or non-pecuniary.

If the matter involves the General Manager, the Mayor will be responsible for the assessment.

2.2 *Resolving conflict of interests arising from council matters*

The best option to resolve the conflict of interest will be the option that ensures impartiality, fairness and is in the public interest.

Any action required to resolve a conflict of interest will be determined by the General Manager, the Mayor or the Code of Conduct Committee within 14 days of receipt of the notification. The staff member or councillor will then be notified of the decided course of action.

If the General Manager has a conflict of interest in a council matter and tables the interest at a council meeting, the council must deal with the matter to which the disclosure relates or refer it to another person to deal with.

Action taken to resolve a conflict of interest will depend on:

- the nature and extent of the conflict
- whether the interest is of a controversial nature
- the cost of the contract or action
- the damage the conflict might cause to the process
- public perception of the situation



HUNTER'S HILL COUNCIL POLICY REGISTER

Any person who discloses a pecuniary interest shall be prevented from making decisions, voting or participating in discussions on the matter in which they have the interest.

2.3 *Resolving conflict of interests during meetings*

When a Councillor or a member of a council committee has discloses a conflict of interest during a meeting, the nature of the interest must be recorded in the minutes of that meeting.

If a Councillor or a member of a council committee discloses a pecuniary interest at a meeting, they must leave the meeting and be out of sight of the meeting while the matter is being considered or discussed and while the council or committee is voting on the matter.

The presence of a non-pecuniary conflict of interest need not mean automatic or complete exclusion from participating in discussion and decision-making. The course of action will depend on an assessment of the circumstances of the matter, the nature of your interests and the significance of the issue being dealt with. A non-pecuniary conflict of interests shall be dealt with by at least one of the following ways:

- It may be appropriate that no action is taken where the potential for conflict is minimal. However, council officials should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practicable (for example participate in discussion but not in decision making vice-versa).
- Remove the source of the conflict (for example, relinquishing or divesting the personal interest that creates the conflict or reallocating the conflicting duties to another officer).
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue
- Include an independent person in the process to provide assurance of probity for example for tendering or recruitment selection panels.

2.4 *Referring Conflict of interests matters*

If necessary, when assessing conflict of interests or deciding on action required to resolve the conflict of interests, the General Manager or Mayor may refer the matter for independent legal advice or to the Code of Conduct Committee, Department of Local Government, ICAC or Pecuniary Interest Tribunal depending upon the nature and seriousness of the matter.

3. APPEALS ON ACTIONS TAKEN TO RESOLVE CONFLICTS OF INTEREST

1. Staff shall advise the General Manager of their intention to appeal the notification of action to resolve a conflict of interest within four days or receiving the notification. Notification of intention to appeal should be in



HUNTER'S HILL COUNCIL POLICY REGISTER

writing and outline the reasons for the appeal. The General Manager's decision will be final.

2. Councillors and Council committee members shall advise the Code of Conduct Committee of their intention to appeal the resolution of the conflict of interest assessment within four days of receiving notification of the resolution. Notification of intention to appeal should be in writing and outline the reasons for the appeal.
3. The Code of Conduct Committee will refer the appeal to the next Council meeting, after an assessment of the appeal has been conducted. A full report from the Code of Conduct Committee will accompany the Councillors request to appeal. The decision by the Council on the appeal will be final.

4. REPORTING UNDISCLOSED CONFLICTS OF INTEREST / BREACHES

4.1 *Initial Complaints*

A person may make a complaint in writing, if they suspect a breach of this policy has occurred. The complaint must be in writing and must be sent to the General Manager or the Mayor.

The General Manager or the Mayor are responsible for investigating complaints concerning breaches of this policy and may refer a complaint to the Code of Conduct Committee, Department of Local Government, or the ICAC depending upon the nature and seriousness of the matter.

All complaints concerning corrupt conduct, maladministration or serious and substantial wastage must be dealt with in accordance with Council's Internal reporting policy.

4.2 *Formal Complaints*

A person may make a formal complaint in writing to the Department of Local Government. The complaint must identify the person/s against whom the complaint is made and the nature of the complaint. The complaint must then be verified by a statutory declaration and lodged to the Director – General of the Department of Local Government

5. SANCTIONS

5.1 *Council staff*

Sanctions for staff who breach this policy may include, but not be limited to:

- Withdrawal from project or issue where conflict of interest exists
- Direction to the individual to remove the source of conflict
- Counselling
- Suspension with or without pay
- Withdrawal (temporary or permanent) of access to additional work opportunities such as overtime or training
- Dismissal (if appropriate)
- Prosecuting any conflicts of interest that breach the law.



HUNTER'S HILL COUNCIL POLICY REGISTER

5.2 Councillors

Sanctions for Councillors will include, but not be limited to:

- Limited involvement in the matter (e.g., participation in discussion but not in decision making)
- No involvement in the matter
- Direction that the Councillor concerned removes the source of conflict
- Passing a censure motion at a Council meeting
- Public disclosures of inappropriate conduct (e.g. through the annual report, media, weekly news columns)
- Requesting a formal apology
- Counselling
- Prosecuting any conflicts of interest that breach the law.

5.3 Council Committee Members

Sanctions for Council committee members may include, but are not limited to:

- Public disclosure of inappropriate conduct (such as making the community aware of the breach through the media or annual report)
- Requesting a formal apology
- Counselling
- Removal from the relevant panel, committee or other representative duties.

6. RECORD KEEPING FOR CONFLICT OF INTERESTS

6.1 Council must keep a record of all identified conflict of interests. The record shall be kept on all of the following:

- All conflict of interests disclosures
- Initial and annual disclosures of interests by councillors that could give rise to conflict. These will be kept on the register of returns.
- Failures to disclose
- Disclosure by others (e.g., colleague or member of the public) about a Councillor and/or staff
- Vexatious claims

6.2 Records for each matter shall include the following:

- The person's name, position in Council (if appropriate), contact phone number/address
- The nature of the conflict of interest, real, perceived or potential
- Date of notification
- Assessment of the matter and how it was resolved
- Any action (e.g., resolutions) taken by Council
- Any appeals on process



HUNTER'S HILL COUNCIL POLICY REGISTER

7. TRAINING

The General Manager is responsible for coordinating relevant training for any councillor or designated person who requires it. Training may take the form of in-house training sessions, workshops or training courses by the Local Government and Shires Association.

AUTHORISATION AND REVIEW

The Policy Authority is the General Manager

Version Control Table

| Date | Version | Res. No. | Key Changes | Author |
|-----------------|---------|----------|---|--------|
| 26 June 2006 | 1 | 263/06 | | |
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