

Title: Conflict of Interest Policy
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24/04/2014	Reviewed as part of EMT Policy Meeting	EMT
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14 May 2014	Council Briefing Session	Council
28 May 2014	Adopted by Council	Council

1. Purpose

The Murrindindi Shire Council is constituted under the *Local Government Act 1989* ("the Act") and Council commits to acting with integrity and ensure transparency in decision making processes. The Conflict of Interest Policy outlines the types of interest and sets the disclosure requirements of Councillors, Members of Special Committees, the Chief Executive Officer ("the CEO"), Council officers and Contractors.

2. Rationale

Councillors, the CEO, Council officers and contractors hold a position of public trust and are required to undertake their duties impartially and in the best interests of the community. The Act is very specific regarding what amounts to a conflict of interest and the disclosure requirements. Open and transparent processes instil trust in the decision making process, it must be clear to the public that private interests are not affecting the functions carried out by Council.

3. Scope

A "Member of Council" for the purposes of this Policy includes:

- 3.1 Councillors;
- 3.2 Staff employed by the CEO or a person authorised by the CEO;
- 3.3 The CEO;
- 3.4 People employed to perform or assist in performing the functions of Council and / or CEO (including contractors); and
- 3.5 Members of "Special Committees of Council".

4. Policy

The primary objective of a Member of Council is to perform the functions of their role with integrity and accountability. Conflict of interest identification and declaration is essential to maintaining transparency, equity and impartiality when undertaking decision making and the functions of Council. Consistency in the approach and handling of conflicts of interest instils confidence in the public that a Member of Council will not act prejudicially or improperly.

4.1 Defining Conflicts of Interest

Section 77A of the Act defines a conflict of interest as having a direct or indirect interest in the matter. Interests can be Direct or Indirect.

4.1.1 Direct Interests

Section 77B states “A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way”. A direct interest exists where a Member of Council themselves have the interest or a member of their family or household have a direct interest. Examples of direct interests are where a proposal may impact a Member of Council’s salary, valuation of their property, permit application or the Member of Councils immediate families’ property valuation. Direct interests are not limited to financial gain or loss.

4.1.2 Indirect Interests

Section 78 outlines the classifications of indirect interests. There are 6 classes of indirect interests:

Close Association

A Member of Council has an indirect interest by close association when a member of their family, a relative or a household member has an interest. An example of a close association indirect interest is a Member of Council’s cousin or housemate is personally tendering for a Council contract.

Financial Interest

A Member of Council has an indirect financial interest where they or a family member are likely to gain or lose in a way that can be measured by money, resulting from the interests of another person, company or body. An example of an indirect financial interest is if a Member of Council or their family member owns a business which is a subcontractor for a company tendering for a Council contract. A further example is where a Member of Council’s land abuts a property proposed to be rezoned to allow change of use.

Conflicting Duty

A conflicting duty arises when a Member of Council or member of their family has a particular duty to another person or organisation that may conflict or overlap with their Council related duties. This arises where a Member of Council or their family members have any of the following positions or relationships with another person or organisation:

- A manager or a member of a board / committee of an organisation / club
- A partner, consultant , contractor, agent or employee of the person or organisation
- A trustee for the person

An example is where a Member of Council or their family member is on the committee of a club which has applied for a Council grant, or where a Member of Council or family member works part time for a person applying for a permit or a contract. A further example is where a Member of Council is on the board of an organisation applying for a permit.

A conflicting duty also arises where the Member of Council used to have a particular duty to another person or organisation. For example the Member of Council’s last job was with a company tendering for a Council contract.

However, where a Member of Council is representing Council there is not a conflicting duty.

Applicable Gift

A Member of Council or a member of their family can have an indirect interest due to being the recipient of an applicable gift. An applicable gift includes a gift or gifts received:

- In the past five years; and
- Is in the form of money, goods or services; and
- Exceeds the value of \$500 total from the one source

For example a Member of Council's friend is applying for a permit and they let the Member of Council use their holiday house each year which would equate to more than \$500 value. A further example is a Member of Council plays football for a local club and has received over \$500 in match payments over the last 5 years and the club is applying for a Council grant.

Exemptions:

- Gifts received more than 12 months before beginning role with Council
- Reasonable hospitality provided at a function or event attended as a representative of Council

The Councillor Code of Conduct and the Staff Code of Conduct provide further information regarding gifts and the disclosure of an offer of a gift.

Party to the Matter

An indirect interest arises where a Member of Council or a member of their family has been a party to civil proceedings relating to a matter. This includes being an applicant or respondent in a past or present court case or in a matter before a tribunal. There is no time limit in regards to this interest. An example of a party to a matter indirect interest is if a Member of Council is and /or was an applicant in a VCAT case against a proposed retail development near their home.

Residential Amenity

An indirect interest can arise where a Member of Council's residential amenity or that of their family is reasonably likely to be altered by a decision of Council. The distance from the residential amenity is difficult to judge and needs to be assessed on a case by case basis. An example of an indirect interest would be a change in use to a nearby property to a Member of Council's residential amenity or their child, parent or siblings residential amenity.

4.1.3 Exemptions

A Member of Council is exempt from a conflict of interest in the following situations:

- Where the interests are so remote that they would not influence decisions; or
- Where the interests are common with other ratepayers, resident, staff etc; or
- Where the Member of Council does not have knowledge of the circumstances that would create the conflict of interest.

The CEO is responsible for general staffing policies, adoption of the Code of Conduct for Staff and delegation of powers and functions to Council Staff. The CEO is exempt from Conflicts of Interest in carrying out these functions.

There are a number of specific exemptions related to Councillors. These relate to matters where Councillors would normally be expected to vote as a matter of Council business. These exemptions apply to the following decisions:

- Electing the Mayor;
- Appointing members and chairs to special committees;
- Appointing Councillors to non-remunerated positions;
- Setting Mayor and Councillor allowances;
- Adopting a policy regarding Councillor expenses;
- Adopting the Councillor Code of Conduct;
- An application to the Minister for conflict of interest exemptions;
- Eligibility for superannuation guarantee under taxation legislation;
- A submission to an electoral representation review or subdivision review; and
- Some Councillor conduct matters including internal disputes, allegations of misconduct, application for a Councillor Conduct Panel or an application to VCAT on a Councillor conduct matter

4.1.4 Clubs and Community Organisations

Simply being a member of a club or community organisation is not a conflict of interest, however a conflict of interest will be present where a Member of Council has a conflicting duty, receives applicable gifts or an indirect financial interest.

Examples of where a conflict of interest exists is when a Member of Council is a member of the committee or is a player receiving match payments and that club applies for a grant or a permit or where the Member of Council is simply a member and a decision of Council will affect the cost of their membership fees.

An important point to remember is that a conflict of interest can exist if a Member of Council's family has the conflict of interest. For example a Member of Council's wife or brother or child is a committee member or remunerated player.

4.1.5 Business Connections

A Member of Council may own or their family members run private businesses in the municipality. Conflicts of interest need to be considered not only if directly impacting on said business but if a decision, action or advice will directly impact upon a customer or supplier of that business.

If a Member of Council is employed outside of Council then they are likely to have a conflict of interest where that employer is affected by any decision, action or advice, but only where the employer has a direct interest. Further information and requirements regarding outside employment and contracts is available in the Staff Code of Conduct.

For example if a Member of Council co-owns a building business and the business is applying for a permit then there would be a conflict of interest or where a Member of Council has a part time position with a cleaning contractor that is tendering for a Council contract.

4.2 Disclosure and Declaration

Under section 80B of the Act where a Member of Council has a delegated duty, power or function of the Council or the CEO, then any conflicts of interest must be disclosed. Examples of delegated powers are permit approvals, entering into contracts, employing staff, financial delegations, etc. Section 80C of the Act requires the Member of Council to disclose a conflict of interest when providing advice to a relevant committee or to Council.

Failure to disclose a conflict of interest may result in disciplinary action; however failure to disclose is also a breach of the Local Government Act and can result in prosecution in court, a conviction, a fine and/or disqualification from the role of a Councillor for 7 years.

Disclosure of an interest that could compromise or be seen to compromise the unbiased performance of a Member of Council's work is the first step towards effectively managing the conflict

4.2.1 Councillors

In accordance with section 79 of the Act and Council's Governance Local Law 2, 2014 the following requirements must be met.

Council Meetings

In accordance with section 79 of the Act a Councillor or member of a special committee must:

1. Disclose the conflict of interest at the beginning of a Council meeting (except where the conflict of interest relates to a matter which will be considered in a Council meeting closed to the public in accordance with the Act); or
2. Immediately prior to consideration of the matter; or
3. Advising the Chief Executive Officer in writing before the meeting;
4. Classify the interest as Direct (section 77B) or specifying the type of indirect interest under section 78, 78A, 78B, 78C, 78D or 78E; and
5. Describe the nature of the interest;
6. Where a Councillor or member of a special committee has two or more conflicts of interest on matters being considered consecutively, they must disclose the interests prior to the first matter being heard;
7. Where any Councillor has made a declaration the Chair should pause after announcing any matter in relation to which a declaration has been made to allow a declaration prior to consideration of the matter;
8. A failure by the Chair to pause does not remove any obligation on an individual Councillor to make a declaration in accordance with the Act.
9. While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must:
 - 8.1 Leave the room and notify the Mayor or the Chair of the special committee that he or she is doing so; and
 - 8.2 Remain outside the room and any gallery or other area in view or hearing of the room.
 - 8.3 The Mayor or the Chair of the special committee must cause the Councillor or member of a special committee to be notified that he or she may return to the room after consideration of the matter and all votes on the matter.
10. All declarations must be recorded in the minutes.

Assemblies of Councillors

Where consideration of a matter that is likely to be the subject of a decision by Council then any conflicts of interest must be declared. A Member of Council must declare the conflict of interest but does not need to give details of the interest and then must leave the meeting while the matter is discussed.

The disclosure must be recorded on the Assembly of Councillors form and will be reported to a Council meeting and form part of the minutes.

Confidentiality

If disclosing the details of the interest would mean publicly disclosing information that is confidential or private then:

1. The Councillor must disclose the type, class and nature of the interest to the CEO in writing prior to the meeting/ assembly
2. The Councillor must then declare a conflict of interest, the type and the class as part of the meeting procedure
3. The Councillor must remove themselves while discussion and voting takes place
4. The minutes must then state the Councillor, the type of interest, the class and then state "a written disclosure was provided to the CEO".

4.2.2 Members of Special Committees

Special Council Committees includes Section 86 Committees of Management, Advisory Committees, Section 223 Committees and the Audit Committee.

Once a conflict of interest is identified the member of the Special Committee must:

1. Disclose the conflict of interest immediately before the matter is considered in the meeting, including the:
 - 1.1 Type of interest and class; and
 - 1.2 The nature of the interest.
2. Notify the Chair that they are leaving the meeting
3. Leave the room and vicinity while the matter is being considered and await the Chairs direction to return.
4. Notify the Chair prior to the meeting if they are not going to be present at the meeting

If details are private in nature then the nature of the interest can be declared to the Chair in writing prior to the meeting and the disclosure will simply be the type of interest and class.

Disclosure of Conflicts of Interest must be minuted.

4.2.3 People Employed or Delegated by the CEO

Once a Conflict of Interest is identified the Member of Council must:

1. notify the CEO in writing stating
 - 1.1 The type and class of interest
 - 1.2 Detailed nature of the interest
2. The Member of Council then must not exercise the relevant power, duty or function.

It is the responsibility of the CEO, General Manager or relevant Manager to ensure that another appropriate Member of Council is appointed to carry out the power, or function.

Briefing Notes, Sessions and Council Reports

When a Council staff member or Council contractor are providing advice to Council via a Briefing Note or Session or a Council Report then they must disclose any conflicts of interest that have arisen in relation to the matter being discussed. The CEO or General Manager will decide on a course of action.

Briefing Notes and Council reports have a conflicts of interest section for disclosure. This disclosure needs to outline any officers that may have been involved and then removed themselves from the process, any conflicts the contractors involved may have had and any conflicts of interest the person providing the advice may have. Disclosure must include the type, class and nature of the interest.

Confidentiality

If disclosing the details of the interest would mean publicly disclosing information that is confidential or private, a full disclosure must be made to the CEO in writing before the meeting/ briefing and the only the type and class of the interest then needs to be disclosed in the meeting.

4.2.4 The Chief Executive Officer

The Chief Executive Officer must declare any conflicts of interest to the Mayor. Any declarations must then be tabled as part of the next Ordinary Meeting of Council.

4.2.5 Other Disclosures

Under section 95 of the Act, a Member of Council is required to act with integrity and to generally avoid conflicts of interest. Where a Member of Council is providing advice to another Member of Council, responding to a public enquiry or performing any other duty or function of Council then there is still an obligation to notify the CEO of a potential conflict.

4.3 Pecuniary Interests

Councillors, nominated officers and non-exempt members of special committees must lodge primary and ordinary returns of interests. Two types of interest returns are required to be lodged under section 81 of the Act:

- Primary Returns – which must be lodged after taking office or commencing in a specified role.
- Ordinary Returns – which must be lodged twice yearly while holding office or occupying the role.

A 'nominated officer' includes all senior officers of the Council and other staff nominated by the Chief Executive Officer. Senior officers are:

- The CEO
- Any officer with management responsibilities who reports directly to the CEO
- Any other member of staff whose total annual remuneration exceeds the remuneration threshold

Within 12 months of an election Council can resolve to exempt certain special committee members from being required to submit primary and ordinary returns. This is at the discretion of the CEO and Council.

The Human Resources Department will compile a bi-monthly management report detailing staff movements. The CEO will review this report and nominate the relevant staff to complete primary and ordinary returns of interests. The CEO will also monitor which members of staff are senior officers and ensure that officers with significant delegations are nominated officers. The CEO will ensure that all relevant staff, Councillors and non-exempt special committee members are aware of their obligations.

4.3.1 Lodging a Pecuniary Interest Form

Primary Returns

After the election of a Councillor, either at a general election or a by-election, a person who becomes a Councillor must submit a primary return in the prescribed form to the CEO within:

- i. 30 days of election day; or
- ii. 7 days of making the oath of office of a Councillor;

Non-exempt special committee members must submit a primary return in the prescribed form to the CEO within 30 days of election to the committee.

A person who becomes a nominated officer must within 30 days of being appointed as a nominated officer submit a primary return to the CEO in the prescribed form.

Ordinary Returns

All Councillors, nominated officers and non-exempt special committee members must submit ordinary returns biannually by 9 February and 9 August.

One week prior to sending out Ordinary Returns forms the Chief Executive Officer will review the current register for any additions and/or deletions. The CEO's Executive Assistant will circulate the prescribed form to all Councillors, nominated officers and non-exempt special committee members on 30 June and 31 December.

The Act specifies that a Register of Interests must be maintained by the CEO. Once all completed pecuniary interest returns are received, the Executive Assistant will create a new register which will list the last three returns lodged by each individual. The most current register is a publicly available document and is also reported to the Audit Committee.

Where a person ceases to be a Councillor, a non-exempt special committee member or a nominated officer then the CEO and Executive Assistant will ensure that their details are removed from the register and their primary and ordinary returns are archived appropriately. Returns must be retained for a period of three years.

5. Supporting Documents

Conflict of Interest Disclosure Form
Assembly of Councillors form
Governance Local Law 2, 2014
Councillor Code of Conduct
Staff Code of Conduct
Gift Register Form
Primary Return Form
Ordinary Return Form

6. Related Policies

Councillor Code of Conduct
Employee Conduct Policy including the Staff Code of Conduct
Discipline Policy

7. Governance

It is the responsibility of all Councillors, Council Staff Members, Members of Special Committees and any person delegated by the Council or CEO to ensure that this policy is implemented and adhered to. The Policy will be monitored by the Mayor and Chief Executive Officer.

8. Portfolio and/or Riding Councillor Input

Input from Councillors, Executive Management Team and Staff will be sought.

9. Responsible Officer

Chief Executive Officer and Coordinator Governance

10. Human Rights Charter

This policy has been developed with consideration of the requirements under the Charter of Human Rights and Responsibilities.