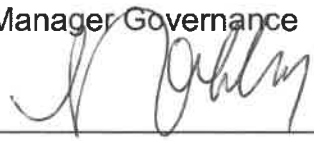




Managing Conflicts of Interest for Councillors and Council Committee Members Policy

Category: Governance
Adoption: Council Date: 28 August 2018
Review Period: Three years
Responsible Manager: Manager Governance
Signed by CEO: 
Date: 29 August 2018

1. Purpose

This policy aims to:

- Reinforce expectations within Central Goldfields Shire Council (Council) of impartial and objective decision-making not influenced by private interests;
- Define conflicts of interest in a Council context and assist councillors and committee members to be able to identify and declare them;
- Prevent corrupt conduct and reinforce Council's values and ethical culture; and,
- Protect the integrity and reputation of Council.

2. Scope

This policy applies to:

- Councillors;
- Members of committees established by Council under section 86 of the Act;
- Members of an audit committee established by Council under section 139 of the Local Government Act 1989 (the Act);
- Members of committees established by Council under section 223 of the Act;
- Advisory committees.



3. Policy

3.1 Defining conflict of interest

3.1.1. Conflicts of interest

Conflicts of interest are conflicts between public duties and private interests. These conflicts can be actual, potential or perceived.

An actual conflict of interest occurs where there is a real conflict between a person's performance of their duties and responsibilities and their private interests.

A potential conflict arises where a person has private interests that could conflict with their Council duties and responsibilities.

A perceived conflict of interest can exist where a third party could reasonably form the view that a person's private interest(s) could improperly influence the performance of their duties and responsibilities, now or in the future.

A conflict can arise in relation to avoiding personal losses as well as gaining personal advantage – whether financial or otherwise.

3.1.2 Private interests

Private interests are interests that can have an impact on an individual or group. Private interests not only include a person's own personal, professional and business interests but also the personal, professional or business interests of individuals or groups with whom they are closely associated or related to.

Whilst the Act does not define 'friends' as a category for identifying conflicts of interest, if a situation arises where the interest of someone particularly close to a councillor or staff member will be affected, it is strongly recommended that the councillor or committee member act as if they have a conflict of interest in the matter.

Private interests are essentially of two types – pecuniary and non-pecuniary. Pecuniary interests involve an actual, potential or perceived financial gain or loss. Money does not need to change hands for an interest to be pecuniary. A person may have a pecuniary interest if they (or a relative) own property, shares, have a position in a company or receive benefits or concessions, discounts, gifts or hospitality from a particular source.

Non-pecuniary interests do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity or other personal interests.

3.2 Principles

Council will apply the following principles to managing conflicts of interest:

1. Decision making will be impartial and objective and not influenced by private interests.
2. Conflicts of interest will be recorded.
3. Decision makers will not be involved in making decisions on matters where they have an actual, potential or perceived conflict of interest.
4. Councillors and members of Council committees will be made aware of their obligations and responsibilities to identify and declare actual, potential and perceived conflicts of interest.



3.3 Identifying conflicts of interest

Councillors and members of Council committees have a responsibility under the Act to identify and disclose conflicts of interest when required to do so.

Councillors and committee members are to remain vigilant to the existence of actual, potential and perceived conflicts of interest involving their private interests. As a guide the following private interests have been identified as areas that may give rise to conflicts of interest:

- Financial and economic interests (such as significant liabilities or debts, assets including shares, real estate holdings or investments);
- Family or private business interests;
- Primary or other employment;
- A role on a management board (public or private);
- Affiliations with organisation, sporting bodies, clubs and associations;
- Affiliations with political, trade union or professional organisations;
- The private interests of family members, close friends or business associates;
- Relationships with contractors and consultants;
- Future employment prospects; or
- Associations from previous employment.

Council has identified the following areas of primary risk exposure for conflicts of interest:

- Procurement and tendering;
- Town Planning;
- Recruitment;
- Allocation of resources including Council grants;

3.3.1 Council meetings

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting, the Councillor must, if he or she is attending the meeting:

- Disclose the conflict of interest immediately before the matter is considered. The disclosure must include the class of interest, i.e., direct or indirect, as well as describing the nature of the interest;
- Notify the Mayor that they are leaving the meeting;
- Leave the room and any area where you can see or hear the meeting until the matter has concluded.

Conflict of interest disclosures are recorded in the minutes of the relevant meeting. It is the responsibility of the person making the declaration to ensure that record of the declaration in the minutes is accurate.

3.3.2 Special committees

If a Councillor or committee member has a conflict of interest in a matter which is to be considered or discussed at a meeting, the Councillor or committee member must, if he or she is attending the meeting:



- Disclose the conflict of interest immediately before the matter is considered. The disclosure must include the class of interest, i.e., direct or indirect, as well as describing the nature of the interest;
- Notify the Chair that they are leaving the meeting;
- Leave the room and any area where you can see or hear the meeting until the matter has concluded.

Conflict of interest disclosures are recorded in the minutes of the relevant meeting. It is the responsibility of the person making the declaration to ensure that the record of the declaration in the minutes is accurate.

3.3.3 Audit committees

If a Councillor or member of Council's Audit committee has a conflict of interest in a matter which is to be considered or discussed at a meeting, the Councillor or member must follow the same procedure as for a Special committee meeting.

3.3.4 Public submissions committees

If a Councillor or member of a committee established by Council to hear public submissions under section 223 of the Act has a conflict of interest in a matter which is to be considered or discussed at a meeting, the Councillor or member must follow the same procedure as for a Special committee meeting.

3.3.5 Advisory committees

If a Councillor or member of a committee established to advise about a particular matter has a conflict of interest in a matter which is to be considered or discussed at a meeting, the Councillor or member must follow the same procedure as for a Special committee meeting.

3.4 Record of conflict of interest

Under section 79 of the Act, the CEO is required to keep written disclosures in a secure place for three years after the date the Councillor or member who made the disclosure ceases to be a Councillor or member of the committee.

4. Managing conflict of interest

Failure by a Councillor or a member of a special committee, audit committee or committee established to hear public submissions under section 223 of the Act, may be an offence that can be prosecuted in a court.

Members of advisory committees are not subject under the Act to the same conflict of interest rules as special committees, however Council still requires that members of advisory committees disclose all conflicts of interest.



5. Roles and Responsibilities

Person/s responsible	Accountability
Manager Governance	<ul style="list-style-type: none"> • Maintaining records of disclosed conflicts of interest • Maintaining the register of declared interests • Providing advice to Councillors or committee members wanting assistance in identifying or managing a conflict of interest • Receiving complaints about possible breaches of this policy • Ensuring that compliance is monitored and the effectiveness of this policy is reviewed on a regular basis
Chief Executive Officer	<ul style="list-style-type: none"> • Implementing policy and procedure for identifying and managing conflicts of interest • Receiving conflict of interest declarations • Oversight of investigation of complaints regarding breaches of this policy
Members of section 86, section 139 (audit), section 223 committees and advisory committees	<ul style="list-style-type: none"> • Being aware of their obligations to avoid conflicts of interest. • Disclosing any conflicts of interest to the Chair at a meeting prior to the matter being discussed • Abstaining from involvement in decisions and actions that could reasonably be seen to be compromised by their private interests or affiliations • Avoiding private action in which they could be seen to have an improper advantage from inside information gained from their position with Council • Not using their position or Council resources for private gain • Ensuring that there can be no reasonable perception that they have received an improper benefit that may influence the performance of their duties
Councillors	<ul style="list-style-type: none"> • Being aware of their obligations to avoid conflicts of interest. • Disclosing any conflicts of interest in accordance with sections 77A to 79C of the Act • Abstaining from involvement in decisions and actions that could reasonably be seen to be compromised by their private interests or affiliations • Avoiding private action in which they could be seen to have an improper advantage from inside information gained from their position with Council • Not using their position or Council resources for private gain • Ensuring that there can be no reasonable perception that they have received an improper benefit that may influence the performance of their duties • Ensuring minutes of meetings and records of Assemblies of Councillors accurately reflect the management of conflicts of interest they have declared.
Council	<ul style="list-style-type: none"> • Policy approval • Providing resources for policy implementation

6. Human Rights Statement

It is considered that this policy does not impact negatively on any rights identified in the Charter of Human Rights Act (2007). Central Goldfields Shire Council is committed to consultation and cooperation between management and staff. Council will formally involve elected staff representatives in any workplace change that may affect its staff.



7. Related Policies and Procedures

The following documents refer to Council's approach to and management of conflicts of interest:

- Councillor Code of Conduct
- Gifts, Benefits and Hospitality for Councillors and Council Committee Members policy
- Managing Conflicts of Interest procedure
- Declaration of Conflict of Interest form

8. Relevant Legislation and Guidelines

Local Government Act 1989

Conflict of Interest – A Guide for Councillors

Conflict of Interest – A Guide for members of Council committees



Appendix 1 – Definitions of Conflict of Interest (s. 79 of Local Government Act 1989)

77A Direct and indirect interests

- (1) A relevant person has a conflict of interest in respect of a matter if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person has a direct interest in a matter if the relevant person has an interest of a kind described in section 77B.
- (3) A relevant person has an indirect interest in a matter if the relevant person has—
 - (a) a close association as specified in section 78; or
 - (b) an indirect financial interest as specified in section 78A; or
 - (c) a conflicting duty as specified in section 78B; or
 - (d) received an applicable gift as specified in section 78C; or
 - (e) become an interested party as specified in section 78D; or
 - (f) a residential amenity that may be altered as specified in section 78E.
- (4) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (5) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest the relevant person holds—
 - (a) is held as a resident, ratepayer or voter and does not exceed the interests generally held by other residents, ratepayers or voters; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (6) A relevant person does not have a conflict of interest in a matter if the relevant person—
 - (a) does not know the circumstances that give rise to the conflict of interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the conflict of interest.

77B Direct interest

- (1) 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.
- (2) Without limiting subsection (1), a person has a direct interest in a matter if—
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;
 - (b) the person has, or the person together with a member or members of the person's family have a controlling interest in a company or other body that has a direct interest in the matter.
- (3) A person who has a membership in a club or organisation that has a direct interest in a matter—
 - (a) does not, by reason of that membership, have a direct interest in the matter under subsection (1); and
 - (b) does not have an indirect interest in the matter, by reason of that membership, unless the person has an indirect interest in the matter under section 78A, 78B or 78C.
- (4) In subsection (2), **controlling interest** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**.

78 Indirect interest by close association

- (1) In this section—



daughter means a biological daughter, step-daughter, adopted daughter, or female child for whom the person has custodial responsibilities;

direct relative means the spouse, domestic partner, son, daughter, mother, father, brother or sister of the person;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
 - (i) for fee or reward; or
 - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

family member means—

- (a) a spouse or domestic partner of the person;
- or
- (b) a son, daughter, mother, father, brother or sister that regularly resides with the person;

relative means—

- (a) a direct relative of the person;
- (b) a direct relative of a person who is the direct relative of the person;

son means a biological son, step son, adopted son or male child for which the person has custodial responsibilities.

(2) A person has an indirect interest by close association in a matter if—

- (a) a family member of the person has a direct interest or an indirect interest in a matter; or
- (b) a relative of the person has a direct interest in a matter; or
- (c) a member of the person's household has a direct interest in a matter.

(3) For the purposes of the definition of **domestic partner** in subsection (1)—

- (a) **registered relationship** has the same meaning as in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
- (c) a person is not a domestic partner of another person only because they are co-tenants.

78A Indirect interest that is an indirect financial interest

(1) A person has an indirect financial interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.

(2) Without limiting subsection (1), a person has an indirect financial interest that is a conflict of interest if—

- (a) the person has a beneficial interest in shares of a company or other body that has a direct interest in the matter, except in the circumstances specified in subsection (3);
- (b) the person is owed money from another person and that other person has a direct interest in the matter.

(3) If a person, and family members of the person, hold shares in a company or body that has a direct or indirect interest in a matter with a combined total value that does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million, the person's indirect financial interest is not a conflict of interest.

(4) Subsection (2)(b) does not apply if the other person is an authorised deposit-taking institution.

(5) For the purposes of determining the value of shares under this section, the share value is to be taken from—



- (a) the close of business on the most recent of 30 June or 31 December; or
- (b) if the person has lodged an ordinary return since the most recent of 30 June or 31 December, the close of business on the date the return was submitted.

78B Indirect interest because of conflicting duties

- (1) A person has an indirect interest in a matter because of a conflicting duty if the person—
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter;
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter;
 - (c) is a trustee for a person who has a direct interest in a matter.
- (2) A person has an indirect interest in a matter because of a conflicting duty if the person held a position or role specified in subsection (1) and, in that position or role, dealt with the matter.
- (3) A person does not have an indirect interest because of a conflicting duty if—
 - (a) the person is, or has been, only an employee in the service of the Crown or of a body established by or under any Act for a public purpose and the person has no current or expected responsibilities as that employee in relation to a matter;
 - (b) the person only holds a position in a not-for-profit organisation for which the person receives no remuneration and the person was appointed to the relevant special committee of the Council to be a representative of the non-for-profit organisation;
 - (ba) the person only holds a position, with the Council's approval as a representative of the Council, in an organisation for which the person receives no remuneration;
 - (c) the person is only a Councillor who holds a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;
 - (ca) the person is only a member of the Planning Application Committee established under Part 4AA of the **Planning and Environment Act 1987** or a member or co-opted member of a subcommittee of that Committee;
 - (d) the person only holds a position that has been prescribed for the purposes of this section.

78C Indirect interest because of receipt of an applicable gift

- (1) In this section, **applicable gift** means one or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person or persons specified in subsection (2) in the 5 years preceding the decision or the exercise of the power, duty or function but does not include—
 - (a) reasonable hospitality received by the person at an event or function the person attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee; or
 - (b) a gift, other than an election campaign donation, that was received by the person more than 12 months before the person became a Councillor, a member of Council staff or a member of a special committee.
- (2) A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from—
 - (a) a person who has a direct interest in the matter;or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.
- (3) For the purposes of determining when a person became a Councillor or member of a special committee under subsection (1)(b), if the person is re-elected or reappointed as a Councillor or a member of a special committee, on completion of his or her term of office, the previous term of office served by that person as a Councillor or member of a special committee must be counted as continuous service with any service completed by the person after the person's re-election or reappointment.



78D Indirect interest as a consequence of becoming an interested party

A person has an indirect interest in a matter if the person has become an interested party in the matter by initiating civil proceedings in relation to the matter or becoming a party to civil proceedings in relation to the matter.

78E Indirect interest because of impact on residential amenity

A person has an indirect interest in a matter if there is a reasonable likelihood that the residential amenity of the person will be altered if the matter is decided in a particular way.