

CONFLICTS OF INTEREST POLICY

POLICY OBJECTIVE

The objective of this policy is to:

- Protect the public interest;
- Support transparency and accountability;
- Promote individual responsibility and personal example; and
- Build a supportive organisational culture

1. POLICY STATEMENT

The community has a right to expect that Councillors and Council staff perform their duties in a fair and unbiased way and that the decisions they make are not affected by self-interest or personal gain.

It is normal that Councillors, Council staff and Council delegates may experience a conflict between their personal interests and those of Council at some time during their appointment. It is important in these circumstances to manage such conflicts appropriately and in line with Council Policy.

Conflicts of Interests can arise when Councillors or Council staff are influenced, or appear to be influenced, by personal interest(s) when carrying out their duties. The perception of a conflict can be as damaging as an actual conflict, because it undermines public confidence in the integrity of the organisation and its Councillors and staff.

This policy both compliments and should be read in conjunction with Council's Code of Conduct Policy. This policy is an enforceable part of the Code. In the event that this policy contradicts with the Code of Conduct Policy, the Code of Conduct Policy will prevail.

2. POLICY COVERAGE

This policy applies to all areas of Council's operations and covers Councillors, staff, contractors, volunteers, members of Council committees and delegates of Council.

3. STRATEGIC PLAN LINK

Objective: 4.0 Wentworth is a caring, supportive and inclusive community that is informed and engaged in its future.

Strategy: 4.1 Provide strong and effective representation, leadership, planning, decision-making and service delivery.

4. DEFINITIONS AND ABBREVIATIONS

Term/Word	Definition
Conflict of Interests	A conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
Council Representative	Includes Councillors, staff, contractors, volunteers, members of Council committees and delegates of Council.
Pecuniary Interest	This is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or

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	loss to the person or another person with whom the person is associated.
Non-pecuniary Interest	This is any private interest that does not relate to money. Non-pecuniary interests are private or personal interests the Council Representative has that do not amount to a pecuniary interest as defined in the <i>Local Government Act 1993</i> . A non-pecuniary interest may arise out of kinship, friendship, membership of an association, society, trade union or involvement/interest in sporting, social or cultural activities.
Actual Conflict of Interests	This involves direct conflict between a Council Representative's current duties and responsibilities and their existing private interests.
Perceived Conflict of Interests	This is where it could be perceived by others that a Council Representative's private interests could improperly influence the performance of their public duties – whether or not this is actually the case.
Potential Conflict of Interests	This arises when a Council Representative has private interests that could interfere with their public duties in the future.
Designated Person	Under section 440 of the <i>Local Government Act 1993</i> , designated persons include: <ul style="list-style-type: none"> • The General Manager and other senior staff of Council; • A person who, by virtue of their Council position exercises 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; and • A person (other than a member of the senior staff of Council) who is a member of a committee of Council who by virtue of their membership and associated committee 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.

5. POLICY CONTENT

Pecuniary Interests

Pecuniary interests must be disclosed.

A person will be considered to have a pecuniary interest if:

- They or a person with whom they are associated has a pecuniary interest;
- Their spouse, de facto partner, relative, partner or employer has a pecuniary interest (relative includes any of the following – parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or an adopted child of a person or the person's spouse); and
- They, a nominee, partner or employer are a member of a company or other body that has a pecuniary interest.

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A person is not taken to have a pecuniary interest if:

- They are unaware of the relevant pecuniary interest of the spouse, defector partner, relative, partner, employer or company or other body;
- Just because the person is a member of, or is employed by, a Council or statutory body or is employed by the Crown; and
- Just because the person is a member of or a delegate of Council to, a company or other body that has a pecuniary interest in that matter, so long as the person has no beneficial interest in any shares of the company or body.

A person does not have a pecuniary interest in a matter if the interest is so remote that it could not reasonably be regarded as likely to influence any decision the person makes in relation to the matter. (Section 442 of the Act).

Non-Pecuniary Interests

Non-pecuniary interests must be disclosed.

Council Representatives who are members of clubs should seriously consider whether their club membership could give rise to Conflicts of Interests in Council matters that may affect the clubs. The greater the involvement with the club, such as holding of an office, the greater the likelihood of a real or perceived Conflict of Interest.

In cases of a non-pecuniary interest, Council Representatives should not do anything which they could not justify to the public and should avoid any occasion for reasonable suspicion or the appearance of improper conduct or only partial performance of their public or professional duties.

Options for dealing with a non-pecuniary Conflict of Interest will depend on the circumstances of the matter and an objective assessment of it.

Options can include:

- Take no action because the conflict is assessed as minor in nature;
- Allow limited involvement (e.g. participate in discussions but not in decision making);
- Prohibit any involvement;
- Require that the individual concerned remove the source of conflict; or
- Include an independent process to provide assurances of probity.

Interest that need not be Disclosed

As per the Code of Conduct Policy the following interests do not have to be disclosed:

- An interest as an elector;
- An interest as a ratepayer or a person liable to pay a charge;
- An interest in any matter relating to the terms on which the provisions of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to the code;
- An interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to a relative of the person by Council in the same manner and subject to the same conditions as apply to persons who are not subject to the code;

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- 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);
- An interest as 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;
- 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 percent of the voting rights in the company;
- An interest of a person arising from the proposed making by Council of an agreement between 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;
- An interest of a person arising from the making by 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 Council in respect of similar matters with other residents of the area:
 - The performance by Council at the expense of the relative of any work or service in connection with roads or sanitation;
 - Security for damage to footpaths or roads;
 - Or any other service to be rendered, or act to be done, by Council by or under any Act conferring functions on Council or by or under any contract.
- An interest relating to the payment of fees to Councillors;
- An interest relating to the payment of expenses and the provision of facilities to Councillors in accordance with a policy under Section 252 of the *Local Government Act 1993*;
- 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;
- An interest of a person arising from the passing for payment of a regular account arising for payment of a regular account for wages or salary of an employee who is a relative of the person;
- 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; and
- An interest arising from appointment of a Councillor to a body as representative or delegate of Council, whether or not a fee or other recompense is payable to the representative or delegate.

Disclosing Interests

Councillors

Councillors who believe they have an interest in a matter, pecuniary or otherwise, must declare that interest in any meetings or discussions where that matter is to be considered.

Written notice of a Conflict of Interest must be given to the General Manager using the *Conflict of Interest Declaration Form for Councillors*.

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Councillors must complete an annual *Disclosure of Interest Return*.

General Manager

If the General Manager declares a Conflict of Interest in a matter then the Mayor should decide future participation by the General Manager at any time during which the matter is being considered or discussed or voted upon by Council or the Committee.

Written notice of a Conflict of Interest must be given to the Mayor using the *Conflict of Interest Declaration Form for Staff*.

The General Manager must complete an annual *Disclosure of Interest Return*.

Staff and other Council Representatives

Staff and other Council Representatives who believe they have an interest in a matter, pecuniary or otherwise, must declare that interest in any meetings or discussions where that matter is to be considered. The conflict must be disclosed to the relevant supervisor, the Director Finance & Policy or the General Manager in the first instance in relation to staff and the Director Finance & Policy and the General Manager in regards to all other Council representatives.

Written notice of a Conflict of Interest must be given to the Director Finance & Policy or the General Manager using the *Conflicts of Interest Declaration Form for staff*.

Disclosure of Interest Returns

A Councillor or designated person must complete and lodge with the General Manager, within three (3) months after becoming a Councillor or designated person a return in the form in Schedule 2 of the Code of Conduct.

Thereafter, the return must be lodged within three (3) months of 30 June each year. Section 440 of the Act sets out the definitions of designated persons as set out in this Policy.

Disclosure at Meetings

A Council Representative who has a pecuniary or non-pecuniary interest in any matter with which Council is concerned and who is present at a meeting of Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as possible.

If a pecuniary interest is disclosed by a Council Representative, the person must not be present at, or in sight of, the meeting of the Council or committee:

- At any time during which the matter is being considered or discussed by Council or committee; or
- At any time during which Council or committee is voting on any question in relation to the matter.

A person does not breach the Code of Conduct or the above clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a Pecuniary Interest.

The following criteria should be used to determine the extent of disclosure of the nature of the interest:

- The details should be sufficient to enable other Councillors, committee members and the public to appreciate, in general terms, the connection of the person with the matter under consideration;

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- The disclosure **must not** reveal sensitive information which is not relevant to the matter before Council or committee;
- The disclosure **must not** reveal information which may be unnecessarily damaging to the reputation of some person(s) with whom the person disclosing the interest is associated; and
- The disclosure will not necessarily prejudice a sensitive commercial or legal situation.

A person who, at the request or with the consent of Council or a committee, gives advice on any matter at any meeting of Council or a committee must disclose the nature of any Pecuniary Interest the person has in the matter to that meeting at the time the advice is given.

The Code of Conduct is not breached if the advisor did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a Pecuniary Interest.

Responsibility for Making a Disclosure

If a person is unsure as to whether or not they have a Conflict of Interest, they should give full written details to the Director Finance & Policy or the General Manager or the Mayor or seek independent legal advice. The objective of notification is to protect both the individual and Council.

Neither the Mayor, the General Manager or the Director Finance & Policy has the responsibility to provide a person with a determination on whether or not they have a Conflict of Interest in a matter.

The responsibility to determine a Conflict of Interest resets solely with the individual as only that individual is aware of the grounds upon which a potential for a Conflict of Interest arises. It is prudent to err on the side of caution by declaring an interest and by not participating in discussion or in decision making if there is any doubt as to their interest in the matter.

Managing Conflict of Interests

Apart from declaring an interest, Council Representatives must manage any identified conflict.

Strategies for managing a Conflict of Interest include:

Restrict	Restrictions are placed on the Council Representative's involvement in the matter.
Recruit	A disinterested third party is used to oversee part or all of the process that deals with the matter. In most circumstances, a subordinate would not be considered a disinterested third party.
Remove	The Council Representative removes themselves, or is removed, from the matter.
Relinquish or Resign	The Council Representative relinquishes the private interest that is creating the conflict. Where relinquishing the interest is not possible and the conflict cannot be managed in the public interest using one of the options above, the Council Representative may consider resigning.

Complaints Regarding Failure to Disclose an Interest

Staff, Councillors or persons engaged by Council may make a report under Council's internal reporting system for protected disclosures if they believe a colleague has failed to disclose or properly manage a Conflict of Interest.

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Conflict of Interest Register

Council will maintain a register of all declared interests. This register will be available for public inspection under the *Government Information (Public Access) Act 2009*.

6. RELATED DOCUMENTS & LEGISLATION

Legislation

- *Local Government Act 1993 (NSW)*
- *Local Government (General) Regulation 2021 (NSW)*
- *Public Interest Disclosure Act 1994 (NSW)*
- *Government Information (Public Access) Act 2009 (NSW)*

Council Policies

- GOV001 – Gifts and Benefits Policy
- GOV003 – Fraud Control Policy
- GOV004 – Internal Reporting Policy
- GOV005 – Procurement Policy
- GOV007 – Privacy Policy
- GOV008 – Public Access to Information Held by Council (GIPA) Policy
- GOV009 – Delegations Policy
- GOV013 – Enterprise Wide Risk Management Policy
- GOV019 – Statement of Business Ethics Policy
- GOV020 – Code of Conduct Policy
- GOV022 – Legislative Compliance Policy

Other

- Code of Meeting Practice
- Conflict of Interest Procedure
- Conflict of Interest Declaration Form
- Legislative Compliance Framework
- Compliance Framework
- Gifts and Benefits Register
- Conflict of Interest Register
- Secondary Employment Policy (Operational)

7. ATTACHMENTS

Nil.

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8. DOCUMENT APPROVAL

This document is the latest version of the official policy of the Wentworth Shire Council, as adopted by Council on 16 March 2022. All previous versions of this policy are null and void.

This policy may be amended or revoked by Council at any time.

A PDF copy of the signed document can be accessed from Council's record management system and Reliansys.

Signed:

General Manager Wentworth Shire Council

17 March 2022

Date