

Document Version	V1.0
Adoption Date	28 September 2015
Endorsed By	General Manager
Approved By	Council
Council Resolution	16.09/15
Consultation Period	N/A
Review Due Date	August 2016
Policy Custodian	Manager Governance and Information
Superseded Documents	N/A
Related Documents	Disclosure of Interests Policy
Delegations of Authority	General Manager and Manager of Governance and Information

Purpose and Scope

Uralla Shire Council is governed by the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*.

The purpose of this policy is to guide 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.

Legislation, Standards and Guidelines

- *NSW Local Government Act 1993*
- *Local Government (General) Regulation 2005*
- Uralla Shire Council Operating Policies

Definitions

Actual Conflict of Interest: (see 'Conflict of Interest')

Bias: Prejudicial treatment, favouritism or partiality.

Competing Interests: When two or more interests are in conflict with one another. This situation may occur between an individual's official duties and their private interests or duties. It may also occur when the individual has two or more official roles that come into conflict through the different duties expected from each role.

Conflict of Interest: A conflict of interest involves a conflict between a public official's duties and responsibilities in serving the public interest, and the public official's private interests. A conflict of interest can arise from avoiding personal losses as well as gaining personal advantage – whether financial or otherwise.

Declaration of Interests: A declaration of interests is a listing of a public official's relevant personal interests and possibly those interests of individuals closely related to the public official where the interests may cause a conflict of interest.

Integrity: Adhering to the highest ethical standards in decision making and the exercise of entrusted powers.

Material personal interest: This term may be defined by legislation but generally it refers to the realistic expectation that the public official or an associate directly or indirectly stand to gain a benefit or suffer a loss, depending on the outcome of an issue.

Misconduct: This term may be defined by legislation but generally it is improper conduct in carrying out official duties, such as where a conflict of interest has been improperly acted upon or mismanaged. This situation is also regarded as an 'abuse of office' or may even be an instance of corruption.

Official misconduct: Generically described as conduct that could amount to a criminal offence or disciplinary breach providing reasonable grounds for dismissal of a public employee. There are different definitions, some of which are based in legislation. Also known in some jurisdictions as 'corrupt conduct' or 'corruption'.

Probity: Probity refers to honesty, ethical conduct and propriety in dealings. It is also often used in a general sense to mean integrity of process.

Register of Interests: A register held by a public sector organisation where declarations of interest are formally held.

Transparency: Transparency involves disclosure of private interests or affiliations that could compromise, or be seen to compromise, the unbiased performance of an official's work, and maintaining proper records of all actions and decisions taken in managing a conflict of interest.

Policy Statement

This policy will assist 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 Council Committees and members of the community interacting with Council.

Uralla Shire Council supports an open, transparent and accountable public administration with a commitment to ethical decision making. Uralla Shire 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.

Several types of conflicts of interest can arise for Council employees during the course of their official duties. Knowing how to identify and manage conflicts of interest is an effective way to prevent corruption and misconduct.

It is important that Council employees understand that having conflicts of interest is not necessarily the same thing as corrupt or improper conduct. Conflicts of interest can usually be managed and resolved in favour of the public interest with appropriate systems for managing conflicts of interest in place.

This policy outlines Council's conflict of interest management of 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 Uralla Shire Council Code of Conduct;
- Compliance with the *Local Government Act 1993*, Section 440.

Implementation and access

- Uralla Shire 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 and Information will be the responsible Council Officer for the conflict of interest register;
- For all declared conflicts 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.

Pecuniary Interests

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 (i.e. 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; and
- General decision making.

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

Questions that may assist in identifying whether a conflict of interest exists include some of the following. The onus is on individuals to identify 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?

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

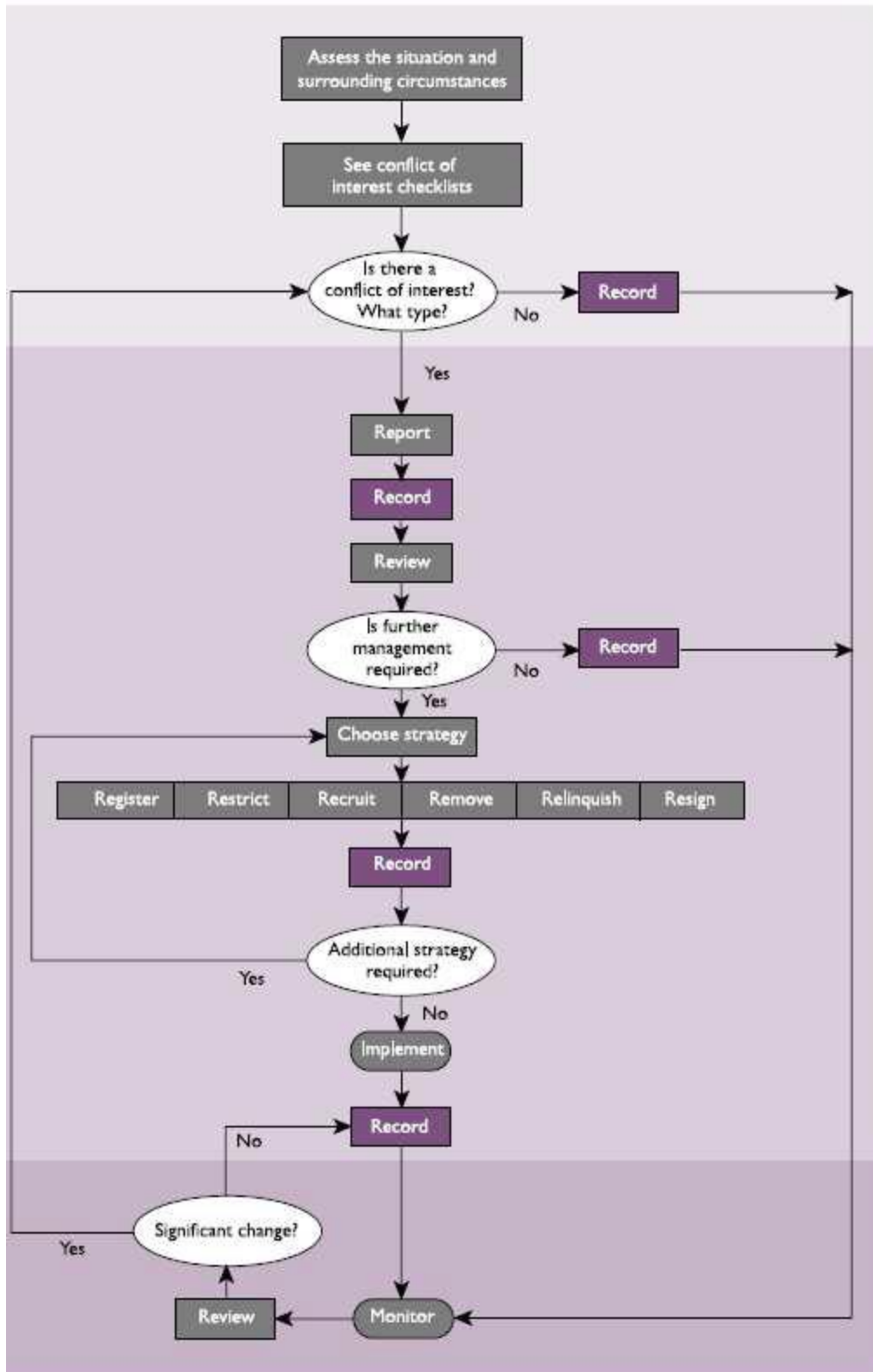
All designated staff must complete a pecuniary interest form due to the higher potential level of risk. Designated staff are defined as being:

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

Any manager or supervisor with a substantial budget and/or a position based with key decision making or providing recommendations to a Consent Authority (e.g. 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)



Responsibility

The Governance and Information area is responsible for the day to day management of Governance and Information policy and practice at Uralla Shire Council, including strategic management, continuous quality improvement, legislative compliance requirements and financial management.

Accountability, Roles and Responsibility

The Governance Framework prescribes the standards and provides guidance to support sound governance practices throughout Uralla Shire Council. It ensures performance and the delivery of goods, services and programmes as guided by each business area of the Council and conformance to ensure the Council meets relevant Act, Regulations, standards and community expectations of probity, accountability and openness in local government.

Attachments

N/A

Version	Review Date	Reviewer	Approved
1.0	August 2015		