

Yarra Ranges Council Conflict of Interest Policy

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Approved by Council:	9 February 2021
Responsible Officer:	Director Corporate Services
Department:	Financial Services
Contact Officer:	Governance Coordinator

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Version Control

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Responsible Officer:	Director Corporate Services
Contact Officer:	Governance Coordinator
Review:	This policy will be reviewed annually or more frequently if required.

Revision History

Version	Date	Summary of revisions
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1. Introduction

- 1.1 Council provides a diverse range of services and is trusted with a range of decision-making powers so that it can govern in the best interests of the local community. These powers must be exercised properly and impartially, with integrity and in accordance with the *Local Government Act 2020 (Act)*.
- 1.2 A number of functions performed by Council have the potential to lead to conflicts of interest arising. This, in itself, is not necessarily unethical or a sign of wrongdoing – conflicts are an inevitable fact of organisational life. However, conflicts create risks and should therefore be identified and managed appropriately to ensure Council's continued transparency, accountability and integrity, and to protect the public interest.

“Avoiding conflicts of interest is an important factor in public decision making. This is particularly important at local government level, where councillors and staff have interests in the local area and close connections within the local community.”

(*In the Public Interest – A conflict of interest guide for councillors, delegated committee members and council staff*, Local Government Victoria, 2020)

2. Purpose and scope of policy

- 2.1 The purpose of this policy is to assist Councillors, officers and people acting on behalf of Council to identify and manage conflicts of interest between their public role and their private interests in accordance with their obligations under the Act.
- 2.2 Specifically, this policy:
- outlines the types of conflict of interest under the Act and how these can be identified;
 - sets out Council's procedures for declaring and managing conflicts of interest;
 - promotes understanding of and compliance with the relevant provisions of the Act;
 - promotes Council's commitment to maintaining the highest standards of governance and removing public perception of bias; and
 - outlines Council's record keeping requirements in respect of any declared conflict of interest.
- 2.3 This policy applies to:
- Councillors;
 - members of delegated committees;

- members of community asset committees;
- members of Council staff (whether full time, part time, casual or fixed term) who:
 - are members of a delegated or community asset committee;
 - provide advice to Council or a delegated or community asset committee (for example, authoring or authorising a report or otherwise providing advice or information in or for a meeting);
 - exercise a power under delegation; or
 - exercise a statutory function or power (e.g. authorised officers).

2.4 Conflicts of interest requirements applying to members of Council staff to which this policy does not apply, volunteers, contractors and consultants engaged by Council, work experience students and graduate placements, are set out in the Employee Code of Conduct.

2.5 The Mayor and the Chief Executive Officer are responsible for the application of this policy.

3. Related policies and supporting materials

3.1 This policy should be read in conjunction with the following policies:

- Employee Code of Conduct;
- Councillor Code of Conduct;
- Governance Rules;
- Public Transparency Policy;
- Gifts, Benefits & Hospitality Policy; and
- Protocols for Councillors Administering Planning Applications.

3.2 Regard should also be had to the following supporting materials:

- Declaration of Conflict of Interest Form;
- Conflicts of Interest Toolkit (Guidance Notes and the Conflicts Assessment Tool);
- Councillor Guidance Note: Conflicts of Interest – What Councillors need to know;
- Personal Interest Return Forms; and
- 'In the Public Interest – A conflict of interest guide for councillors, delegated committee members and council staff', Local Government Victoria, 2020.

4. Definitions

Act means the Local Government Act 2020.

Affected person means
(a) the relevant person;

- (b) a family member of the relevant person;
- (c) a body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of the governing body;
- (d) an employer of the relevant person, unless the employer is a public body;
- (e) a business partner of the relevant person;
- (f) a person for whom the relevant person is a consultant, contractor or agent;
- (g) a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee;
- (h) a person from whom the relevant person has received a disclosable gift.

Chief Executive Officer	means the person appointed by a Council under section 44 of the Act to be its Chief Executive Officer or any person acting in that position.
Conflict of interest	means a 'general conflict of interest' and/or a 'material conflict of interest' as those terms are defined in the Act.
Conflicts of Interest Register	means the register of all disclosures of a conflict of interest by Councillors, members of delegated committees and Council staff, and other relevant persons.
Council	means Yarra Ranges Shire Council.
Councillor	means a person who holds the office of member of a Council.
Councillor Code of Conduct	means the Councillor Code of Conduct developed by Council under section 139 of the Act.
Disclosable gift	means one or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person in the 5 years preceding the decision on the matter: <ul style="list-style-type: none"> (a) if the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received; or (b) if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation, but does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a delegated committee.

Domestic partner	<p>of a person means:</p> <ul style="list-style-type: none"> (a) a person who is in a registered relationship with the relevant person; or (b) a person to whom the relevant person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender).
Family member	<p>means:</p> <ul style="list-style-type: none"> (a) a spouse or domestic partner of the relevant person; or (b) a parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the relevant person or of their spouse or domestic partner; or (c) any other relative that regularly resides with the relevant person.
Gift	<p>means any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including:</p> <ul style="list-style-type: none"> (a) the provision of a service (other than volunteer labour); and (b) the payment of an amount in respect of a guarantee; and (c) the making of a payment or contribution at a fundraising function.
Gift disclosure threshold	<p>means \$500 or a higher amount or value prescribed by the regulations.</p>
Matter	<p>means a matter with which Council, a delegated committee or a member of Council staff is concerned and that will require:</p> <ul style="list-style-type: none"> (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council or a delegated committee in respect of the matter; or (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Council staff in respect of the matter.
Member of Council staff	<p>means a natural person appointed by the Chief Executive Officer (other than an independent contractor under a contract for services or a volunteer) under section 48 of the Act to enable:</p> <ul style="list-style-type: none"> (a) the functions of the Council under the Act or any other Act to be carried out; and

(b) the Chief Executive Officer to carry out their functions.

Note:

The Chief Executive Officer is also a member of Council staff, as per section 44(5) of the Act.

Non-pecuniary means not having a financial or other material component but concerns personal or family relationships or involvement in sporting, social or cultural activities or associations.

Not-for-profit organisation means a body or organisation that:

- (a) operates exclusively for charitable, civil or other social purposes; and
- (b) does not share or allocate the funds or profits of the body or organisation with the owners, shareholders or executives of the body or organisation.

Pecuniary means where there is a reasonable likelihood or expectation of appreciable financial loss or gain to the person, or to other persons.

Money does not need to change hands. The interest exists if a relevant person or an affected person:

- (a) owns property;
- (b) holds shares, investments or other business interests;
- (c) has a position in a company bidding for work with Council;
- (d) receives benefits such as concessions, discounts, gifts or hospitality from a particular source;
- (e) holds office in a corporation (public, private or trustee), incorporated association, or other entity; or
- (f) has any other relevant financial interest, for example:
 - (i) is entitled to receive income derived from a contract;
 - (ii) is a beneficiary or trustee of a trust; or
 - (iii) is entitled to receive income from an office held for payment/reward or from a trade, vocation, or profession.

Private interests means any direct or indirect interest of a relevant person that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief.

Public duty means the responsibilities and obligations that a relevant person has to members of the public in their role as a relevant person.

Regulations	means the Local Government (Governance and Integrity) Regulations 2020.
Relevant person	means a person who is a: <ul style="list-style-type: none"> (a) Councillor; or (b) member of a delegated committee who is not a Councillor; or (c) member of Council staff.

5. Conflict management process



5.1 Councillors, officers and people acting on behalf of Council must avoid conflicts of interest wherever possible, and where this is not possible, identify, declare, manage and monitor conflicts of interest in accordance with this policy.

6. Identify: what is a conflict of interest?

- There are two types of conflict of interest defined under the Act: general conflict of interest and material conflict of interest
- What is the nature of the conflict? A general or material conflict of interest can be actual (it currently exists), potential (it may exist in future given current circumstances) or perceived (it may appear to others that there is a conflict)
- Bringing an open mind to Council's administrative decision making is an important part of maintaining Council's impartiality. If you are closed minded (i.e. 'predetermined') in relation to a matter you have a general conflict of interest
- Conflicts can arise in a number of different situations – in particular, be aware of situations that are 'high risk'

6.1 Generally, a conflict of interest is when the private interests, associations or duties of a relevant person conflict with their public duties and responsibility to act in the public interest.

6.2 Private interests, as defined under the Act, include both pecuniary and non-pecuniary interests and can also include the interests of family members and close friends or associates. Such interests can be positive or negative – for example, a tendency towards favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group.

Conflicts of interest under the Local Government Act 2020

6.3 The Act defines two categories of conflict of interest:

- general conflicts of interest; and
- material conflicts of interest.

6.4 A general conflict of interest is defined in the Act as follows:

*“...a relevant person has a **general conflict of interest** in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.”¹*

There are three components to this definition:

1. The private interest...

See the definition of ‘private duty’ at section 4.

Scope for what might constitute a private interest is very broad under the Act and could include:

- a change to personal circumstances that does not involve an identifiable gain or loss;
- a close friendship or association with someone who stands to be impacted by a council decision; or
- significant past employment with a company with an interest in a matter;
- where a Councillor intends to make a submission in a Council meeting as a community member in relation to a particular matter.

2. The public duty...

See the definition of ‘public duty’ at section 4.

For Councillors – public duty would include participating in Council decision making, representing the interests of the municipal community and contributing to the strategic direction of Council.

¹ Local Government Act 2020, s127.

	<p>For members of a delegated committee or community asset committee, public duty involves exercising any power, duty or function of Council delegated to the committee.</p> <p>For members of Council staff, public duty includes the exercise of statutory powers and delegated functions, and the provision of advice and information to Council (as applicable).</p>
3. What an impartial, fair-minded person would consider...	<p>The relevant consideration is whether the private interest <i>could</i> result in the relevant person acting in a manner contrary to their public duty.</p> <p>A relevant person must consider whether their private interest/s <i>may be seen</i> to affect the performance of their public duty.</p>

6.5 A material conflict of interest is defined in the Act as follows:

*“...A relevant person has a **material conflict of interest** in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.*

The benefit may arise or the loss incurred –

- (a) directly or indirectly; or*
- (b) in a pecuniary or non-pecuniary form.”²*

A material conflict of interest involves specific relationships or situations.

There are two components to the definition of material conflict of interest:	
1. Who is an ‘affected person’?	See definition of ‘affected person’ at section 4.
2. What is a ‘benefit’ or ‘loss’?	<p>Benefits and losses can be:</p> <ul style="list-style-type: none"> • direct or indirect – for example: <ul style="list-style-type: none"> - a decision to grant a Councillor a planning permit = a direct benefit;

² Local Government Act 2020, s128.

- decision to grant a planning permit to a Councillor's neighbour = indirect benefit (or loss) for the Councillor; and
- pecuniary or non-pecuniary in form – for example:
 - a staff member's spouse or domestic partner is an applicant for a job in Council = potential pecuniary benefit;
 - a change to parking arrangements in a person's street resulting in an increase in traffic = potential non-pecuniary loss.

Examining the nature of the conflict – actual, potential and perceived conflicts

6.6 Material conflicts of interest may be:

- (a) **actual** as they occur when a relevant person's public duties conflict with their private interests (i.e. the conflict of interest currently exists); or
- (b) **potential** when a relevant person considers their private interests and associations and can reasonably anticipate the possibility these could unduly influence their public duties. The link must be reasonably foreseeable and not remote. Steps can then be taken to mitigate any risk.

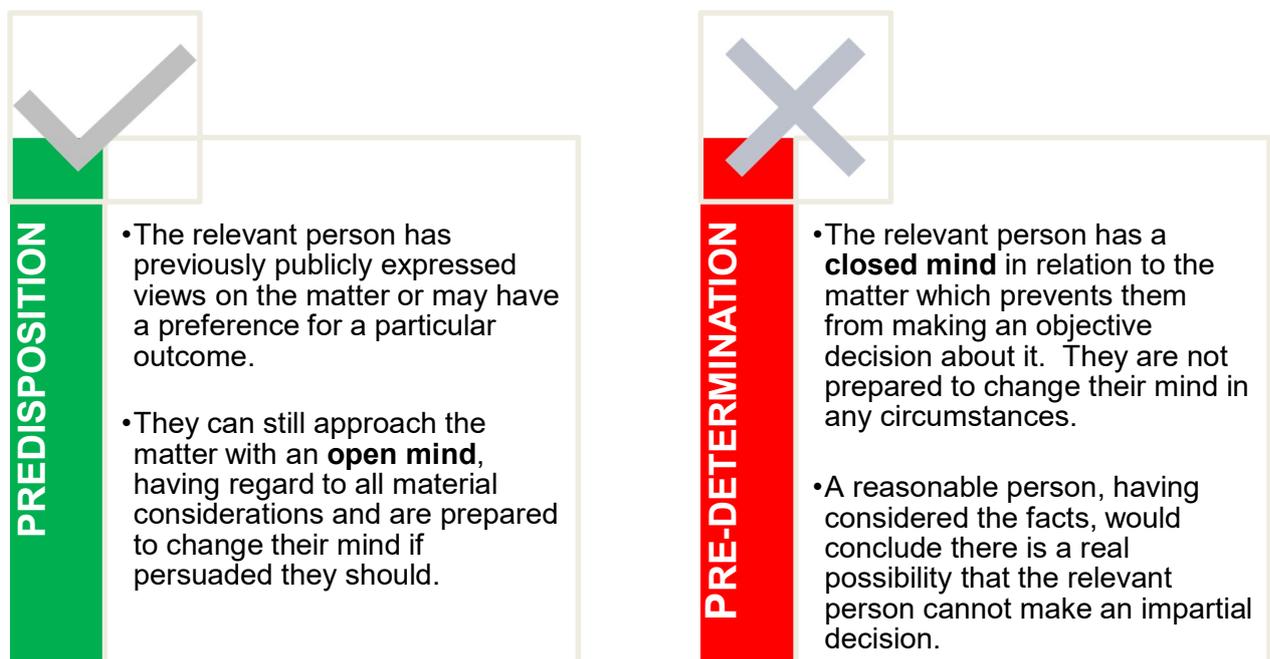
6.7 General conflicts of interest:

- (a) requires a relevant person to consider whether a conflict could be **perceived** by a fair-minded, impartial person. That is, there is a perception in the minds of others that a conflict between the relevant person's private interests is present and could improperly influence their decisions or actions, or the actions or decisions of their organisation. It is particularly important for relevant persons to address risks of perceived conflict of interest because they are the most likely to be overlooked or underestimated.
- (b) may also be **potential** (see above).

Impartiality: predisposition (open mind) and predetermination (closed mind)

6.8 It is important that relevant persons who have administrative decision-making powers exercise their discretion with an open mind and free from any "apprehension of bias" (that is, a fear or suspicion in the public's perception that the relevant person has not brought a genuinely open mind to their decision-making responsibilities).

- 6.9 A relevant person is entitled to have a predisposition one way or another in respect of a matter, as long as they have not pre-determined the outcome. A relevant person must approach any discussion or decision in respect of a matter with an open mind, prepared to take account of all the evidence and make their decision on the day.
- 6.10 When involved in a particular matter, a relevant person must identify whether they may be predisposed or predetermined in relation to that matter. If a person is predetermined they must follow the same process as though they have a general or material conflict of interest - i.e. declare that they are predetermined in relation to the matter and then remove themselves from involvement.



‘At risk’ functions

- 6.11 There are certain Council functions or areas that may be considered particularly “high risk” in terms of conflicts of interest. These include:
- Recruitment and selection
 - Procurement (tendering, purchasing and contracting)
 - Receiving gifts, benefits or hospitality
 - Managing private/public partnerships
 - Planning
 - Complaints management and disciplinary processes
 - Sale of Council land and other assets

While conflicts of interest risk must be considered in respect of all Council functions and areas, relevant persons must ensure any matter falling within these functions/areas is given considered and systematic scrutiny. This includes undertaking a conflicts of interest assessment at the beginning of the

matter in respect of each person involved and then monitoring that assessment (by the team manager) throughout the life of the matter to ensure any changing circumstances are captured and managed appropriately.

Exemptions

6.12 The Act and Regulations provide for a number of exemptions to the conflict of interest obligations. The Act in particular states that a conflict of interest does not arise if:

- it is so remote or insignificant that it could not be reasonably regarded as capable of influencing the actions or decisions of the relevant person in relation to the matter;
- it is held in common with a substantial proportion of the residents, ratepayers or electors of the municipal district and does not exceed the interest held by the other residents, ratepayers or electors;
- the relevant person does not know the circumstances that give rise to the conflict of interest, and could not be reasonably expected to know those circumstances;
- it only arises because the relevant person is the representative of the Council on a not-for-profit organisation that has an interest in the matter and the relevant person receives no personal advantage from the not-for-profit organisation;
- it only arises because a member of the relevant person's family is a member but not an office-holder of a not-for-profit sporting club or not-for-profit community organisation;
- it only arises because the relevant person is a member of an organisation that has expressed an opinion or advocated for an outcome in regard to the matter;
- it arises in relation to a decision by a Councillor on a matter that is prescribed to be exempt by the regulations.

Certain Councillor-specific exemptions appear in the Regulations.

7. Disclose and manage: reporting conflicts of interest

- If a relevant person identifies a conflict of interest, they must disclose it immediately
- The relevant person must then remove themselves from any discussion or decision in respect of that matter
- A general conflict of interest arises if a person is predetermined in relation to a matter: this must be disclosed and managed accordingly

7.1 Once a conflict of interest has been identified, the Act requires that relevant persons disclose the conflict of interest in accordance with the Governance

Rules and manage it by removing themselves from any discussion or decision making in relation to the relevant matter.

- 7.2 If a relevant person is predetermined in respect of a particular matter they will have a general conflict of interest. As such, they are required to disclose the conflict (predetermination) and remove themselves from any discussion or decision in relation to the matter.

When conflicts of interest must be disclosed

- 7.3 The disclosure of a conflict of interest applies to a matter:
- (a) to be considered at a Council meeting, meeting of a delegated committee or a meeting of a community asset committee; or
 - (b) that arises in the course of the exercise of a power of delegation by a member of Council staff; or
 - (c) that arises in the course of the exercise of a statutory function under the Act, or any other Act.

Disclosing a conflict of interest

- 7.4 A relevant person who has a conflict of interest in respect of a matter must:
- (a) disclose the conflict of interest; and
 - (b) exclude themselves from the decision-making process in relation to that matter and any action in relation to the matter.
- 7.5 Disclosure must be made in accordance with the Governance Rules, the requirements of which are summarised below.

Disclosure by Councillors, members of delegated committees and members of community asset committees

- 7.6 Immediately upon identifying a conflict of interest, a relevant person must declare the conflict of interest by completing a 'Declaration of Conflict of Interest Form' and providing it to the Chief Executive Officer.
- 7.7 When a disclosure is made in respect of an agenda item during a Council meeting, delegated committee meeting or community asset committee meeting³, the relevant person must:
- (a) declare the conflict of interest *during the standing agenda item for the disclosure of conflicts of interest* by stating the nature of the private interest and the conflict that results, or may result, from it; and
 - (b) declare the conflict of interest *immediately before the relevant item is discussed*, confirming they are conflicted; and

³ For the avoidance of doubt, this includes where a Councillor intends to make a submission in relation to a matter on the agenda as a member of the community – in these circumstances, the Councillor must declare a general conflict of interest and remove themselves from any discussion and/or decision in relation to the matter, in accordance with the Governance Rules and this policy.

- (c) exclude themselves from the decision-making process in relation to the matter, including any discussion or vote on the matter.

7.8 Any conflicts of interest declared at a Council, delegated committee or community asset meeting must be recorded in the minutes of that meeting, together with the details of:

- (a) whether the conflict declared was general or material; and
- (b) the relevant person excluding themselves from the decision-making process in relation to the matter in question, i.e. when they left and subsequently returned to the meeting.

All conflicts of interest declared at meetings must also be recorded using the 'Declaration of Conflict of Interest Form' if a form has not already been submitted prior to the meeting.

Disclosing a conflict of interest at a meeting under the auspices of Council

7.9 A Councillor who has a conflict of interest in a matter being considered by a meeting held under the auspices of Council (per section 131(1) of the Act, including a meeting referred to in Rule 1 of Chapter 8 whether such a meeting is known as a 'Councillor Briefing' or by some other name) at which they are present must:

- (a) disclose that conflict of interest by explaining its nature to those present at the meeting immediately before the matter is considered; and
- (b) absent themselves from any discussion of the matter and not communicate with any members of the meeting for the duration of the discussion; and
- (c) as soon as practicable after the meeting concludes, provide to the Chief Executive Officer a written notice recording that the disclosure was made and accurately summarising the explanation given to those present at the meeting.

Any conflicts of interest declared at a meeting must be recorded in the minutes of that meeting (if any), and recorded using the 'Declaration of Conflict of Interest Form' if a form has not already been submitted prior to the meeting.

Disclosure by Council staff

7.10 A member of Council staff must disclose any relevant conflict of interest when:

- (a) providing advice to Council or a delegated committee, which includes during the preparation and approval of any written reports to be considered at any such meeting;
- (b) exercising a delegated power (for example, when making a decision under delegation);
- (c) exercising a statutory function under applicable legislation,

by, immediately upon becoming aware of the conflict of interest, completing a 'Declaration of Conflict of Interest Form' and providing it to the Chief Executive Officer (or, in respect of the Chief Executive Officer, to the Mayor).

Disclosing a predisposition or predetermination

- 7.11 A predisposition in respect of a matter does not preclude a relevant person from discussing or voting on the matter. However, as a matter of good practice the relevant person should disclose and explain the predisposition and reasons for it, and advise that, despite having a predisposition the relevant person is nevertheless willing to hear and consider all contrary arguments and positions before making a final decision. Any such statement will be recorded in the minutes of the meeting and serves to make it clear to those concerned that the relevant person brings an open mind to the administrative decision-making process.
- 7.12 A relevant person who is of the view they may be predetermined in relation to a matter must declare it as a general conflict of interest and remove themselves from any discussion or decision making in relation to that matter as per the disclosure requirements set out in the Governance Rules and this policy. This will be recorded in the minutes of the meeting.

Conflicts of Interest Register

- 7.13 All conflicts of interest disclosures will be kept in a Conflicts of Interest Register. The Chief Executive Officer will ensure that the Conflicts of Interest Register is properly maintained.
- 7.14 The Register will be available for public inspection and may be published to Council's website.

8. Monitor: monitoring disclosed conflicts of interest

- 8.1 The identification and management of conflicts of interest are subject to regular review – both periodically and in response to any changes in circumstances (for example, changes in the circumstances relating to a particular conflict of interest or changes to Council personnel or contractors/suppliers). Monitoring is an essential component to manage risks arising from conflicts of interest.
- 8.2 Relevant persons are also personally responsible for monitoring their conflicts of interest and advising the Chief Executive Officer of any relevant changes to circumstances. Monitoring should include an assessment of:
- the original situation that has given rise to declaring the conflict of interest;
 - the strategy put in place to manage the conflict of interest;

- any changes in the situation that may have an impact on the management strategy;
- any perception that may be held by others that the conflict of interest is having an improper influence on the matter (notwithstanding that the manner in which the conflict of interest is being managed is appropriate).

9. Failure to comply

9.1 Failure to disclose a conflict of interest can result in criminal or conduct proceedings. The Chief Municipal Inspector has powers under the Act to investigate allegations of failing to disclose and to initiate court proceedings or a hearing by a Councillor Conduct Panel.

Councillors

9.2 A Councillor may be charged with a criminal offence if they fail to disclose:

- (a) a material conflict of interest; or
- (b) a general conflict of interest, where the Councillor has previously been found guilty of a conflict of interest offence under the Act or been subject to a finding of serious misconduct by a Councillor Conduct Panel for a conflict of interest breach.

If convicted, the Councillor will be dismissed from office and disqualified from being a councillor for 8 years. The councillor may also be fined.

9.3 Furthermore, a failure by a Councillor to disclose a material or general conflict of interest may result in:

- (a) the Chief Municipal Inspector making an application for serious misconduct to a Councillor Conduct Panel; and/or
- (b) a Councillor or former councillor being charged with misuse of position, the penalties for which are significant.

Chief Executive Officer

9.4 If the Chief Executive Officer fails to disclose a conflict of interest in accordance with the Act the Mayor must notify the Chief Municipal Inspector as soon as practicable after they become aware that the Chief Executive Officer has failed to comply with the Act. If the relevant conflict of interest is a material conflict of interest the Chief Executive Officer may be charged with a criminal offence and fined.

Members of delegated committees

9.5 If a member of a delegated committee fails to disclose a material conflict of interest they may be charged with a criminal offence and fined. Furthermore,

in certain circumstances a Councillor or former councillor may be charged with misuse of position the penalties for which include a significant fine and a prison term.

Member of a delegated committee who is not a Councillor

- 9.6 If a member of a delegated committee who is not a Councillor fails to disclose a conflict of interest in accordance with the Act, the Chief Executive Officer must notify the Council and make a recommendation to the Council as to the action that is to be taken.

Members of Council staff

- 9.7 If a member of Council staff fails to disclose a conflict of interest in accordance with the Act, the Chief Executive Officer must notify the Chief Municipal Inspector as soon as practicable after they become aware of the failure and deal with the matter in accordance with the Employee Code of Conduct. If the relevant conflict of interest is a material conflict of interest, the member of Council staff may be charged with a criminal offence and fined.