



Conflict of Interest – Compliance, Process and Guidance Policy 2024

1. PURPOSE

This policy provides guidance and sets out the process for managing the declaration and recording of actual or perceived conflicts of interest in Council's decision-making processes.

2. SCOPE

This policy applies to all people elected to, employed by, and working within Wyndham City Council: staff (including temporary and contracted) and volunteers (registered and student).

Members of all Council Advisory Committees must also comply with this policy.

3. POLICY STATEMENT

Council is committed to governing in the best interests of the community and delivering services in a fair, transparent and accountable manner. This Policy has been developed to support good governance practices and to comply with the requirements of the *Local Government Act 2020*.

This policy supports the standards of behaviour included in the Councillor Code of Conduct which requires that Councillors must not seek preferential treatment in their private, personal or business dealings with the Council.

4. POLICY OBJECTIVES

The objectives of this policy are to:

- ensure that Council governs in the best interests of the Wyndham community to deliver services in a fair, transparent and accountable manner
- put in place a process where actual, perceived or potential conflicts of interest of Councillors, Council officers and personnel acting on behalf of Council are properly identified, declared and managed
- promote awareness of conflict of interest policies and processes.

5. POLICY

Councillors, Council officers and personnel acting on behalf of Council:

- have a duty to place the public interest above their private interests when carrying out their official functions
- are accountable for avoiding wherever possible or identifying, declaring and managing any actual, potential or perceived conflict of interest that apply to them.

5.1 *Local Government Act 2020*

Conflict of interest laws are prescribed under the *Local Government Act 2020* (the Act) and in the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations), subject to the exemptions set out in section 129 of the Act and any further exemptions contained in the regulations. Managing conflicts of interest aims to ensure the integrity and transparency of the decision-making process.

The conflict of interest provisions in the Act apply to a 'relevant person'. A relevant person is a:

- Councillor
- member of a delegated committee who is not a Councillor
- member of Council staff (who is a member of a delegated or community asset committee; is

providing advice to the Council, or exercising a delegated function or statutory power)

As a 'relevant person' under the Act, it must be clear that a person's private interests are not affecting their public duties and that they are not using their position for personal benefit.

A relevant person with a conflict of interest must disclose the interest and not participate in the decision-making process on the matter. This means the relevant person must exclude themselves from any discussion or vote on the matter at any Council meeting, delegated committee meeting, community asset committee meeting, or any other meeting conducted under the auspices of the Council. Decisions also include those made under delegation by Council officers.

The relevant person must also exclude themselves from any action in relation to the matter, including an action taken to implement a Council decision, for example, issuing a planning permit.

The obligation to disclose a conflict of interest is a personal responsibility. Each relevant person must monitor their own circumstances and identify their conflicts of interests. If you have a conflict of interest, you must disclose it and exclude yourself from the decision-making process.

Two types of conflict of interest are defined in the Act:

- Material conflict of interest
- General conflict of interest

Material conflict of interest

A material conflict of interest involves specific relationships or situations that could result in a benefit or loss.

Benefit or loss

The Act states that a benefit or loss, for material conflicts of interest, includes benefits or losses that are:

- Direct or indirect
- In a pecuniary or non-pecuniary form

Direct or indirect

A direct benefit or loss includes where the affected person is the immediate recipient or suffers the loss themselves.

An indirect benefit or loss includes where the person is affected because of the impact on another person or body, or as an indirect effect of a process.

Pecuniary or non-pecuniary

A pecuniary benefit or loss is one that can be measured in money. However, a benefit or loss does not have to be pecuniary.

General conflict of interest

A general conflict of interest is less specific and direct than a material conflict of interest.

The Act states a relevant person will have 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*".

Therefore, there are three parts of a general conflict of interest which should all be considered:

- the private interest
- the public duty
- what an impartial, fair-minded person would consider

5.2 Declaring a Conflict of Interest

Council has processes in place for Councillors, Council officers and personnel acting on behalf of Council in relation to the declaration of conflicts of interest. These processes are contained within the Wyndham City Council Governance Rules and are summarised below under specific categories.

5.2.1 Council meetings and Informal meetings of Councillors

Category	Councillors	Officers or personnel acting on behalf of Council
<p>Council Meeting, Delegated Committee Meeting and Community Asset Committee (as applicable)</p>	<p>Councillors advise that they have a conflict of interest at the start of the Council Meeting and again immediately before the matter is considered.</p> <p>When making the disclosure the Councillor states the nature of the conflict of interest, indicating whether it is a general conflict of interest or a material conflict of interest.</p> <p>However, if this means disclosing information that is confidential or private, particularly if it involves a Councillor’s relationship with another person or a gift from another person, the Councillor can make a full disclosure to the CEO in writing before the meeting and then announce at the meeting that they have a conflict of interest and that a written notice has been given to the Chief Executive Officer.</p> <p>The Councillor must leave the Council meeting immediately after giving the explanation or making the announcement (as the case may be) and not return to the meeting until after the matter has been dealt with.</p> <p>The Councillor completes a conflict of interest declaration form, and the conflict is recorded in the Council minutes and in the conflict of interest register.</p>	<p>Each Council report specifies that the officers involved in the creation of the report have no disclosable interest in the report.</p> <p>This ensures that the Council does not act on advice from a person with a conflict of interest.</p> <p>Officers must disclose a conflict of interest if they:</p> <ul style="list-style-type: none"> • prepare a report for the Council • provide information to be included in a report • approve a report to Council. <p>A member of Council staff who has a conflict of interest in a matter in respect of which they are preparing or contributing to the preparation of a report must immediately upon becoming aware of the conflict of interest, provide a written notice to the Chief Executive Officer disclosing the conflict of interest and explaining the nature of the conflict of interest and indicating whether it is a general conflict of interest or a material conflict of interest.</p> <p>If the CEO has a conflict of interest in a matter as described above, they must provide the written notice to the Mayor.</p>
<p>Meeting conducted under the auspices of Council such as</p>	<p>Councillors advise that they have a conflict of interest at the start of the Council Meeting and again immediately</p>	

<p>briefing meetings, advisory committees, external and internal committee meetings</p>	<p>before the matter is considered.</p> <p>When making the disclosure the Councillor states the nature of the conflict of interest, indicating whether it is a general conflict of interest or a material conflict of interest.</p> <p>The Councillor must leave the meeting and remove themselves from any discussion on the matter.</p> <p>As soon as practicable after the meeting concludes provide to the CEO a written notice recording that the disclosure was made and accurately summarising the explanation given to those in attendance at the meeting.</p>	
<p>Informal Meeting of Councillors</p> <p>The Governance Rules define an Informal Meeting of Councillors as a meeting that is attended by at least one member of Council staff and the majority of Councillors. A majority of Councillors is 6 Councillors.</p> <p>It is only considered to be an Informal Meeting of Councillors if the purpose of the meeting is to discuss matters that relate to the business of Council or briefing Councillors</p>	<p>Councillors must disclose a conflict of interest if they are present at an Informal Meeting of Councillors meeting where an item is discussed in which they have a conflict.</p> <p>The Councillor will leave the room when the item is being discussed.</p> <p>Details of the conflict is recorded in the Informal Meeting of Councillors report which is considered at a Council Meeting.</p>	

5.2.2 Council officers and personnel acting on behalf of Council

Category	Officers or personnel acting on behalf of Council
Acting under delegation	<p>This includes the power to approve a permit, enter into a contract, or employ a person, and extends to all financial delegations or other duties, functions and powers delegated to a Council employee.</p> <p>If a staff member has a conflict of interest in a matter where they have a delegated responsibility, they must do the following two things:</p> <ul style="list-style-type: none"> • Not exercise the relevant power, duty or function of the delegation • Complete a conflict of interest declaration form and submit it to the Governance Unit <p>If staff members or personnel acting on behalf of Council have a delegation to deal with permits of any kind, including planning permits, they must be alert for possible conflicts of interest.</p> <ul style="list-style-type: none"> • All staff dealing with permits are required to complete a no conflict declaration at the start of each application process and are to amend this declaration, if necessary, throughout the process. If a conflict is identified and declared at any stage, the staff member must complete the declaration form and take no further part in the matter.
Procurement	<p>Staff members must be particularly alert for possible conflicts of interest if involved in Council purchasing processes in any way. This includes being on a tender evaluation panel, being authorised to make purchases for the Council or being able to approve Council contracts or contract payments.</p> <p>Members of tender evaluation panels are to make a written declaration with regard to conflicts of interest/no conflict:</p> <ul style="list-style-type: none"> • before and after tenders are opened • after the evaluation process but before the recommendation is made <p>If a staff member has a conflict of interest in relation to procurement of goods or services by the Council, they must:</p> <ul style="list-style-type: none"> • not proceed with the procurement • remove themselves from the procurement process • complete and submit a conflict of interest declaration form to the Governance Unit
Recruitment	<p>Members of recruitment panels are required to make a written declaration to confirm whether they have a conflict of interest at the start of the recruitment process. Panel members are required to withdraw from a recruitment panel where a conflict of interest exists and complete and submit a conflict of interest declaration form to the Governance Unit.</p> <p>All staff taking part in recruitment panels must undertake compulsory</p>

	conflict of interest training prior to their involvement.
Community grants	Conflicts of interest are most likely to be raised at the assessment phase of applications. Members of community grant assessment panels are required to make a written declaration to confirm whether they have a conflict of interest at the start of the grants process. Panel members are required to withdraw from a panel where a conflict of interest exists and submit a conflict of interest declaration form to the Governance Unit.
Infringement review	Staff undertaking a review of an infringement are to do so in accordance with the <i>Infringements Act 2006</i> and Council's Internal Review Policy. The reviewing officer must declare any conflicts of interest prior to undertaking the review and withdraw from the process if a conflict is identified. If a conflict is identified the staff member must complete and submit a conflict of interest declaration form to the Governance Unit.
Gifts, benefits and hospitality	<p>No gift, benefit or hospitality may be accepted that could influence, or be perceived to influence a Councillor, staff member or other personnel acting on behalf of Council.</p> <p>Token gifts of, or over the value of \$50 must be disclosed and recorded in the Gifts Register in accordance with the Gifts, Benefits and Hospitality Policy. The Gift Register is publicly available on the Council website.</p> <p>The Act has legislated a \$500 cumulative Gift Disclosure Threshold. The cumulative value of gifts and hospitality over a five-year period from the same person or organisation could result in reaching the \$500 Gift Disclosure Threshold. Reaching the Gift Disclosure Threshold could subject the Councillor or Council officer to an indirect interest because of an applicable gift.</p> <p>Particulars of any gift at or above the cumulative value of \$500 received by a Councillor or nominated Council officer (over a five-year period) must also be declared in their Personal Interests Return, which must be made available for public inspection</p>

5.3 Secondary (external) employment or volunteer work

As specified in the Corporate Code of Conduct, any additional employment outside of Council (whether paid or unpaid) may create a conflict of interest under certain circumstances. This also includes the external employer who may be affected by any decision, action or advice of the Council. A conflict of interest may also arise from self-employment.

Council expects that staff are transparent regarding any additional employment. If employees are unsure about whether additional employment or engagement with other organisations, or other trade or business (including any personally owned business/company), may involve a conflict of interest they should consult their Manager.

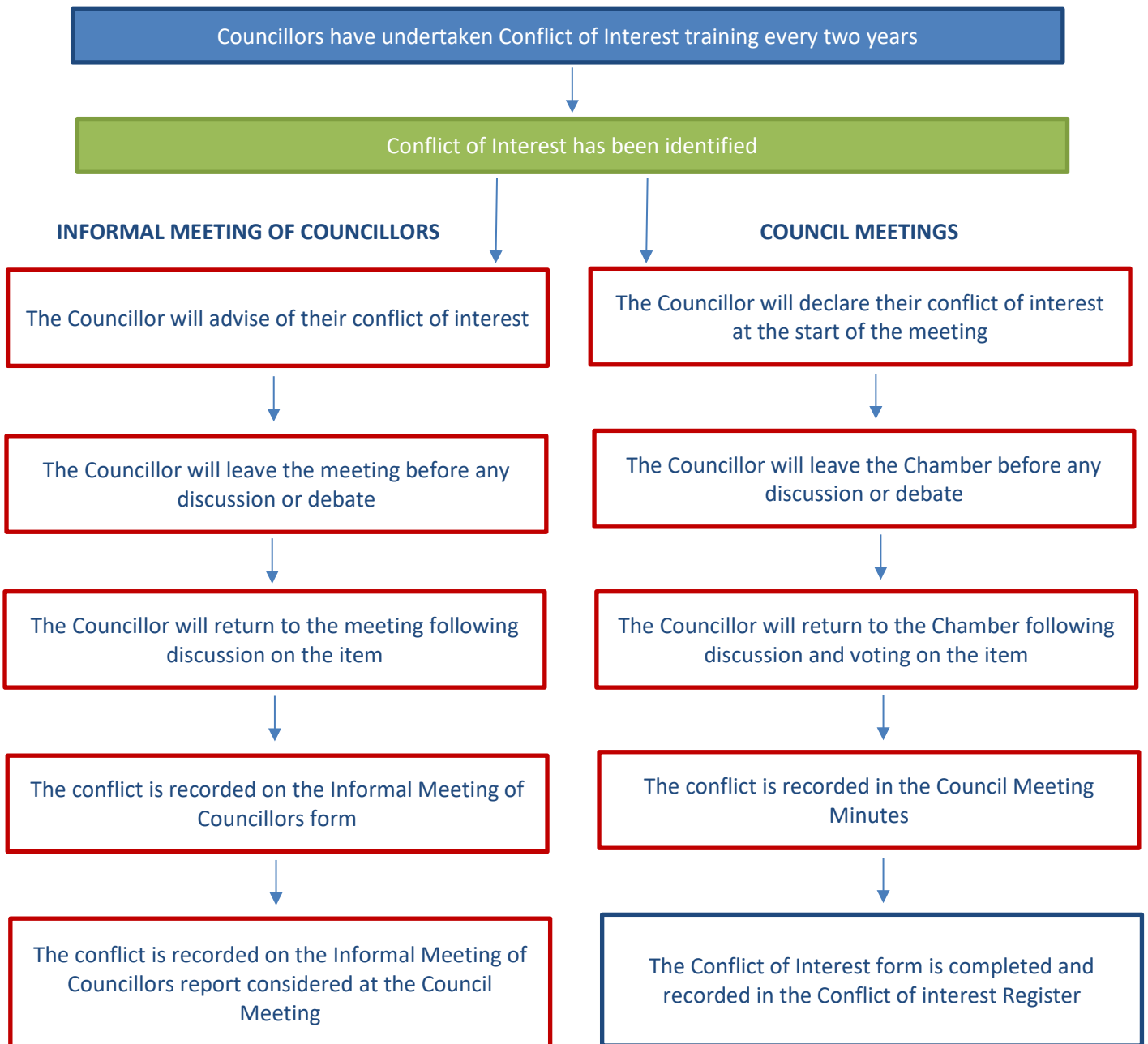
To avoid conflict of interest situations, declarations to the relevant Manager, Director or CEO are required. All declarations of secondary employment will be maintained in a Register. In the instance where a conflict of interest occurs a declaration form must be completed and submitted to the Governance Unit.

In considering secondary employment, the following policy principles will apply:

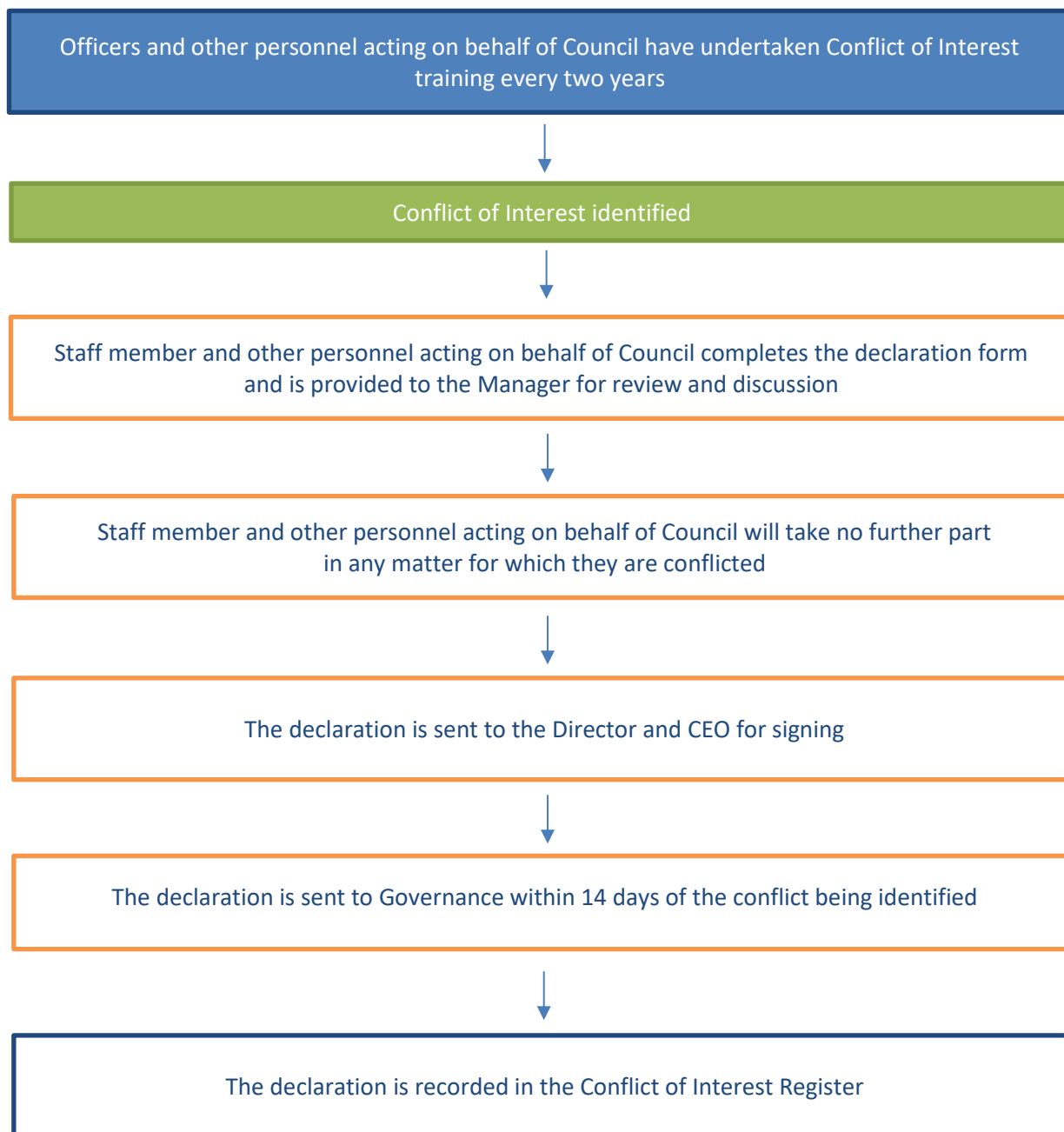
- 5.3.1 No Council staff member should participate in any external employment that may interfere with or adversely affect the interests of Council or the performance of their official Council duties. This includes any external employment that may be with an employer with an interest in proposed or current contracts, supply, client or other relationships with Council. This employment also includes setting up and operating your own business or applying for an Australian Business Number (ABN).
- 5.3.2 Staff cannot be engaged both as a staff member and as a contractor carrying out work for Council. Staff must place priority on their Council role.
- 5.3.3 Staff cannot use their job title/position at Council for external employment purposes. This means any private business website; promotional material and electronic and verbal communications cannot reference employment with Council.
- 5.3.4 Staff must not use any information, resources or contacts gained from their work at Council to obtain, directly or indirectly, an advantage for their approved external employment, or privately owned business. This means staff can not promote their secondary employment or privately owned business to Council colleagues and contacts.
- 5.3.5 If a staff member becomes aware of a conflict of interest while undertaking approved external employment this must be declared to their Manager / Director and must be managed in accordance with Council's conflict of interest declaration procedure.
- 5.3.6 External employment must be declared prior to a new staff member commencing with Wyndham City Council.
- 5.3.7 Existing staff must obtain approval from their Manager and Director prior to commencing external employment and only commence the external employment after completing the secondary employment declaration form and being granted approval for same.
- 5.3.8 If the external employment changes, at any time, then a new application will be required prior to that external employment commencing.
- 5.3.9 If a staff member's Council work circumstances change (new Department, transfer, promotion) then a new application for external employment, taking into account these new circumstances, must be submitted.

5.4 Process flowcharts

5.4.1 Councillors



5.4.2 Council officers and other personnel acting on behalf of Council



5.5 Compliance

5.5.1 Monitoring and Reporting

All declared conflicts of interests will be recorded in the Conflict of Interest Register maintained by the Governance Unit which has oversight.

5.5.1.1 Councillor Conflict of Interest Register

The Register will be maintained by Governance staff and will include:

- Date of disclosure
- Name of the councillor declaring the conflict
- Meeting type (at which the conflict was disclosed)
- Meeting date (at which the conflict was disclosed)
- Title of the matter (Council report item)
- Type of conflict
- Nature of the conflict of interest/description
- Action taken by the councillor to remove themselves from the discussion and vote
- Whether the motion was carried or lost

5.5.1.2 Staff Conflict of Interest Register

The Register will be maintained by Governance staff and will include:

- Date of disclosure
- Name of Council officer
- Directorate
- Type of conflict
- Nature of the conflict of interest
- How the conflict will be managed and when the management plan will be reviewed. For this purpose, the conflict will be managed by the relevant Manager, or the CEO in the instance of ELT members. A conflict of interest declaration by the CEO will be managed by the Mayor.

Any potential trends and patterns including possible vulnerabilities regarding individuals and the organisation that are identified will be made available to the ELT and the Audit and Risk Committee as required.

Declarations will also be monitored in conjunction with Personal Interest Returns and Related Party Disclosures.

Any matters of non-compliance which are identified by the Governance Unit will be raised with the CEO or delegate. The CEO or delegate will put in place the appropriate mechanism for investigation and further action if required.

Failure to declare a conflict of interest is a breach of the *Local Government Act 2020 and the Councillor Code of Conduct*. Any proven failures to declare a conflict of interest could be subject to the penalties contained in the Act. Refer to part 8 of this policy which outlines the applicable penalties.

Where a Councillor fails to comply with this Policy, the issue shall be dealt with in the same manner as disputes arising under the Councillor Code of Conduct.

Where an Officer fails to comply with this Policy, the issue shall be dealt with in the same manner as disputes arising under the Corporate Code of Conduct and formal discipline procedures where applicable.

5.6 Training and Development

This Policy will be included in induction and ongoing governance training programs.

The Governance Unit will develop and manage the annual education and training program. The program will include a range of communication tools and mechanisms including face-to-face training, articles in staff and Councillor newsletters, and information provided at regular intervals such as when Personal Interests Returns are due.

Training and development will be put into place for Councillors annually. It is expected that staff will undertake Conflict of Interest training provided by an external Legal firm every two years, which is part of the existing program.

A report may be provided to ELT on attendance at external training sessions with a recommendation that all officers review their development every two years.

5.7 Privacy

In accordance with the Victorian *Privacy and Data Protection Act 2014* any personal or confidential information collected will be for the purpose of documenting any real or apparent conflicts of interest and to record the obligations of Council personnel under Council Policy, the Councillor Code of Conduct and Corporate Code of Conduct. This assists Council in preventing fraud or corruption within its activities and dealings.

Declaring a conflict of interest is a requirement of this Policy and the respective Codes of Conduct. If the Declaration of Conflict of Interest form is not completed in full, then this may be regarded as a breach of this policy and Code.

Information relevant to Conflicts of Interest will be disclosed to the CEO, relevant Director or Manager. If a resolution or agreement cannot be achieved, this will be reported to the CEO. Information will be used for the purpose of recording and evaluating conflicts of interest and may be disclosed as permitted by law.

Please refer to Council's Privacy Policy for further information.

5.8 Gift, Benefits and Hospitality Policy

The Gifts, Benefits and Hospitality Policy aims to ensure that:

- Councillors and Council officers do not accept gifts that are likely to create a conflict of interest with their public duty
- Council activities are not influenced, or perceived to be influenced by the receipt of gifts, benefits or hospitality
- gifts that are accepted or declined are disclosed, recorded and reported

Please refer to the policy for further information regarding:

- Gifts, benefits and hospitality that must not be accepted
- Anonymous gifts (not to be accepted)
- Monetary gifts prohibited
- Receipt of official gifts
- Token gifts
- Declaration of offers of gifts, benefits or hospitality

6. PROCEDURAL GUIDELINES

ROLE ACCOUNTABILITIES AND RESPONSIBILITIES

Chief Executive Officer	<ul style="list-style-type: none"> • Implement policy and procedure for identifying and managing conflicts of interest • Oversight of investigations of complaints regarding breaches of this document • Manage conflicts of interests of the Directors
Directors	<ul style="list-style-type: none"> • Assist in building an organisational culture that supports compliance with this policy • Support and assist Managers with managing conflicts of interest
Managers, coordinators, supervisors	<ul style="list-style-type: none"> • Ensuring that all officers and personnel acting on behalf of Council are aware of conflict of interest provisions and that a culture is fostered where any conflicts are routinely declared and managed appropriately • Being aware of the risks of conflicts inherent in the duties of the officers they manage • Ensuring that all officers are aware of policies and procedures • Ensuring that all officers attend conflict of interest training • Advising officers about appropriate ways to manage conflicts of interest • Managing real, potential or perceived conflicts of interests of their staff • Ensuring all tender evaluation panel and staff selection panel members in their team have declared any conflicts of interest and that these have been appropriately managed • Ensuring that conflicts of interest that have been reported to them are forwarded to the Governance Unit for recording
Advisory Committee Members	<ul style="list-style-type: none"> • Be aware of their obligations to avoid conflicts of interest • Disclose any conflicts of interest in accordance with sections 127 to 131 of the Act • Remove themselves from any involvement in decisions and actions that could reasonably be seen to be compromised by their private interests or affiliations • Avoid private action in which they could be seen to have an improper advantage from inside information obtained from their position within Council • Not use their position or Council resources for private gain • Ensure that there can be no reasonable perception that they have received an improper benefit that may influence the performance of their duties

<p>Manager Corporate Affairs</p>	<ul style="list-style-type: none"> • Maintain a register of disclosed conflicts of interest • Support, endorse, enforce and review the conflict of interest policy, procedures and any guidance • Educate train and induct persons they supervise or manage about the meaning and effect of the policy, procedures or guidance and how to apply them, in a practical sense • Lead by example, understand and support the conflicts of interest policy, procedures and any guidance • Meet their obligation to disclose and report relevant personal interests and conflicts of interest • Report upon how conflicts of interest that they have disclosed have been avoided or managed • Negotiate and agree the steps or processes to avoid or manage conflicts of interest where such conflicts are identified and reported to them • Monitor, analyse and report upon relevant personal interests and conflicts of interest that have been disclosed, avoided or managed • Monitor the effectiveness of this policy and review on a regular basis • Where conflicts of interest are reported or disclosed to them, concern the CEO or Executive, record and act upon advice from IBAC or another appropriate independent advisor about recommended steps or processes they should take
<p>All Council staff, including volunteers, contractors, consultants</p>	<ul style="list-style-type: none"> • Be aware of their obligations to avoid conflicts of interest • Assess whether their private and personal interests (including secondary employment or volunteer work) conflict, or have the potential to conflict with their Council duties • Disclose any conflicts of interest they may have in accordance with this policy • Abstain from any involvement in decisions and actions that could reasonably be seen to be compromised by their private interests or affiliations • Avoid private action in which they could be seen to have an improper advantage from inside information gained from their position within Council • Not use their position or Council resources for private gain • Ensure that there can be no reasonable perception that they have received an improper benefit that may influence the performance of their duties • Notify their Manager or Protected Disclosure Officer where they have reasonable grounds to believe that another employee, contractor or consultant has a conflict of interest in a matter and that conflict has not been disclosed • Comply with this document and other associated policies

7. DEFINITIONS

Act	Means the <i>Local Government Act 2020</i>
Affected person	For the purposes of a material conflict of interest, any of the following is an ‘affected person’: <ul style="list-style-type: none"> • the Councillor • a family member of the Councillor • a body corporate of which the Councillor or their spouse or domestic partner is a Director or a member of the governing body • an employer of the Councillor, unless the employer is a public body • a business partner of the Councillor • a person for whom the Councillor is a consultant, contractor or agent • a beneficiary under a trust or an object of a discretionary trust of which the Councillor is a trustee • a person from whom the Councillor has received a disclosable gift (i.e. exceeding \$500 in value)
Conflict of interest	A conflict of interest occurs when there is a conflict between the public duty and the private interests of a public official.
General conflict of interest	A Councillor has a ‘general’ conflict of interest in a matter if an impartial, fair-minded person would consider that the Councillor’s private interests could result in the Councillor acting in a manner that is contrary to their public duty.
Material conflict of interest	A Councillor 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: <ul style="list-style-type: none"> • directly or indirectly; or • in a pecuniary or non-pecuniary form.
Private interest	means any direct or indirect interest of a Councillor 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 Councillor has to members of the public in their role as a relevant person.
Relevant person	means a person who is a Councillor, a member of a delegated committee who is not a Councillor, or a member of Council staff.
Secondary/external employment	Working for an employer other than Council including self-employment; or unpaid work e.g holding a voluntary position on a committee or not for profit club or organisation
Staff	All employees of Wyndham City Council and contingent employees, including volunteers, work experience students agency labour hire and contractors.

8. BREACH OF POLICY

Our people are bound to act in line with our Code of Conduct and in compliance with the law. As public sector employees, we are required to perform our duties in accordance with our values and meet the obligations of our roles, as communicated in our organisations policies. Contravention of policy may constitute misconduct and result in disciplinary outcomes, including termination of employment.

Penalties

If a relevant person fails to comply with the conflict of interest disclosure requirements of the Act, they will be liable for a fine not exceeding 120 penalty units, currently equating to \$22,190.40.

If a Councillor fails to declare a conflict of interest in accordance with Council’s Governance Rules and does not exclude themselves from the decision-making process at a Council meeting or meeting of a delegated committee, including any discussion or vote on the matter, an application may be made under section 154 of the Act to a Councillor Conduct Panel alleging serious misconduct.

REFERENCES

External reference material:

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

Wyndham City Council reference material:

- Model Councillor Code of Conduct
- Corporate Code of Conduct
- Wyndham City Council Governance Rules
- Gifts, Benefits and Hospitality Policy
- Fraud and Corruption Control Policy
- Selection and Recruitment Policy
- Privacy Policy

VERSION HISTORY

ID	DATE	AUTHOR	REVISION REASON / KEY CHANGES	REVIEW DATE
1.0	06/08/2019	Coordinator Governance	New policy	2023
2.0	26/11/2024	Coordinator Governance	Revision	2027

DOCUMENT CONTROL

DOCUMENT NAME	WCC – Conflict of Interest – Compliance, Process and Guidance Policy – 2024
OBJECTIVE ID	A4605162
OWNER	Manager Corporate Affairs
REVIEW	2027
APPROVER	Council