



## Conflict of Interest Policy 2023

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<b>Department</b>	Council-wide
<b>Date of Council Endorsement</b>	TBC
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<b>Responsible Officer</b>	Manager People and Governance
<b>Authorising Officer</b>	Director Corporate and Leisure
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### 1. Statement and Purpose

1.1. The Rural City of Wangaratta ('Council') is committed to the transparent exercising of its powers and has established this Conflict of Interest Policy to reflect this commitment.

1.2. This policy addresses how Council will properly identify and manage conflicts of interest and the record keeping requirements related to disclosures of these conflicts of interest. This policy is supported by Council's Governance Rules, Staff and Councillor Codes of Conduct and the Council Staff Gift Policy.

## 2. Scope

2.1 This policy applies to all Council representatives, including Councillors, Council employees who have decision making powers and/or who hold a formal delegation, delegated power or statutory function and members of any Council Delegated Committee, Audit and Risk Committee or Community Reference Group as appointed. It also includes contractors or volunteers undertaking work on behalf of Council.

## 3. Policy

3.1 This policy follows the conflict of interest legislative framework in Victoria and categorises conflicts of interest into two groups; material and general.

3.2 To achieve a transparent and ethical exercise of power, Council representatives must disclose any applicable conflicts of interest to demonstrate that they are not using their public office for their own private benefit.

3.3 There are several exemptions from completing conflict of interest requirements under this policy as outlined in Appendix One. In these circumstances, although no conflict of interest exists, a written record of the relevant exemption must be kept by the governance team.

3.4 To disclose a conflict of interest, a Council representative must Complete the relevant Staff or Councillor Conflict of Interest Disclosure Form and lodge with the governance department for formal record-keeping.

3.5 Council has determined the functions outlined in Appendix Two as high risk. Irrespective of the nature of the conflict, all representatives considering high risk matters must formally note their conflict to their manager and withdraw from all formal decision-making processes on that subject matter, unless consent is provided in writing by their Manager and the Governance and Reporting Advisor.

#### **4. Material Conflict of Interest**

- 4.1 A material conflict of interest exists if a person, a family member or business associate of that person, the employer of that person or a person who has provided that person with a gift valued at \$500 or more in the immediate five years preceding the matter would gain a benefit or suffer a loss depending on the outcome of a matter in which that person is making a decision.
- 4.2 A 'matter' refers to any decision to be made at a Council meeting or Delegated Committee Meeting or which requires a power to be exercised, a duty or function to be performed, by a Council representative. Examples of a matter can include Councillors deciding on a planning application at a Council meeting, Council staff shortlisting organisations for the purposes of grant funding or the awarding of a tender or contract by Council staff.

#### **5. General Conflict of Interest**

- 5.1 A general conflict of interest exists if an impartial, fair-minded person would consider that a person's private interests could result in that person acting in a manner that is contrary to their public duty.
- 5.2 Having a general conflict of interest does not necessarily preclude a Council representative from participating in a decision-making process. In accordance with 30(3) of Council's Governance Rules, a range of factors will be considered in determining that representative's involvement in the decision-making process.
- 5.3 Notwithstanding 5.2, a Councillor, member of a Delegated Committee, Audit and Risk Committee or Community Reference Group must not participate in any discussion or

decision-making process on any matter in which they have declared a conflict of interest.

5.4 A conflict of interest does *not* exist if:

- (a) the interest is so remote or insignificant that it could not be reasonably regarded as capable of influencing that person's actions or decisions when determining the matter;
- (b) the interest is held in common with a substantial proportion of the residents, ratepayers or electors of Council and does not unreasonably exceed this interest;
- (c) the person does not know the circumstances that would create the conflict of interest and could not be reasonably expected to know those circumstances;
- (d) the interest only arises because that person represents Council on a not-for-profit organisation that has an interest in the matter and that person receives no personal advantage from them;
- (e) the interest only arises because a family member is a member but not an office-holder of a not-for-profit organisation. Council representatives are strongly encouraged seek the guidance of their supervisor or the governance department before commencing discussions on a matter if any of the points in clause 5.4 apply.

## 6. Roles and Responsibilities

- 6.1 **Councillors** are responsible for complying with the conflict of interest disclosure process outlined in Council's Governance Rules
- 6.2 **All Council representatives** are responsible for being aware of the conflict of interest declaring their conflicts of interest with the Manager People and Governance and for flagging any potential conflicts of interest.
- 6.3 **Manager People and Governance** is responsible for ensuring this policy is accurate and reflects sector best practice and responsible for ensuring an accurate register of interests is maintained and audited at least once every 24 months.
- 6.4 **Executive Services Coordinator** is responsible for ensuring the register of Councillor and Chief Executive Officer conflicts of interest is maintained and audited at least once every 18 months and for ensuring the register is securely located on Council's internal information management database and on Council's website in accordance with Council's Governance Rules.
- 6.5 **Governance and Reporting Advisor** is responsible for providing refresher training as necessary to all Council representatives to reiterate their obligations in identifying, recording and managing their conflicts of interest and for providing policy guidance as necessary to Council representatives.
- 6.6 **People and Governance Department** is responsible for ensuring the onboarding process of all nominated employees includes the disclosure and formal recording of conflicts of interests.

## 7. Breaches

- 7.1 If a Council staff member (other than the Chief Executive Officer) fails to declare a conflict of interest in the manner prescribed in Council's Governance Rules, the Chief Executive Officer must notify the Chief Municipal Inspector as soon as practicable and manage the breach in accordance with the Staff Code of Conduct.
- 7.2 If the Chief Executive Officer fails to declare a conflict of interest, the Mayor must notify the Chief Municipal Officer as soon as practicable after becoming aware of the failure to disclose.
- 7.3 If a Councillor fails to comply with the conflict of interest provisions prescribed in Council's Governance Rules, irrespective of whether the conflict of interest is a material or general conflict, an application may be made by the Chief Municipal Inspector to a Councillor Conduct Panel alleging serious misconduct.
- 7.4 Any person may elect to make a public interest disclosure in accordance with the provisions of Council's Public Interest Disclosure Policy and the requirements of the Act in the event of a breach of this policy.

## **8. Human Rights**

- 9.1 This policy has considered and complies with the Human Rights and Responsibilities contained in the Victorian Charter of Human Rights and Responsibilities Act 2006.

## **9. Gender Impact Assessment**

- 10.1 This policy has considered and applied Council's Gender Impact Assessment Template and satisfies the provisions established in the *Gender Equality Act 2020* (Vic).

## **10. Monitoring and evaluation**

- 10.1. This policy will be monitored by the Corporate Management Team regularly and by the Audit and Risk Committee every three years. A periodic review will be conducted

by the Manager People and Governance at least every three years and reviewed whenever legislative change requires amendment.

11.2 Any changes to any Appendix to this policy do not require formal CMT or Council endorsement.

## 11. References and Related Policies

### Legislation

- *Local Government Act 2020* (Vic)
- *Local Government (Governance and Integrity) Regulations 2020* (Vic)
- *Public Interests Disclosure Act 2012* (Vic)

### Council Policy

- Governance Rules
- Councillor Code of Conduct
- Staff Code of Conduct
- Staff Gift Policy

Version History		
Version Number	Date of change	Reasons for change
1.0	28 February 2023	Establishment of policy

## Appendix One

The exemptions from conflict of interest requirements include:

- (a) the nomination or appointment by the Council of a Councillor to a position for which the Councillor will not be remunerated;
- (b) the nomination or appointment by the Council of a Councillor to a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;
- (c) a submission by the Council to an electoral structure review under section 16 of the Act or a ward boundary review under section 17 of the Act;
- (d) the nomination of a Councillor for election to the office of Mayor or Deputy Mayor;
- (e) the election of a Councillor to the office of Mayor or Deputy Mayor under section 25 or 27 of the Act;
- (f) the appointment of a Councillor to the office of Acting Mayor under section 20B of the Act;
- (g) the payment of allowances to the Mayor, Deputy Mayor or Councillors as provided for under section 39(6) of the Act;



- (h) the adoption of an expenses policy by the Council under section 41 of the Act;
- (i) a decision by the Council to deal with a matter in an alternative manner under section 67 of the Act;
- (j) the establishment of a delegated committee under section 67 of the Act;
- (k) the appointment of a Councillor as a member or chairperson of a delegated committee;
- (l) the adoption, review or amendment of a Councillor Code of Conduct under section 139 or 140 of the Act;
- (m) an application for an internal arbitration process under section 143 of the Act;
- (n) an application to a Councillor Conduct Panel under section 154 of the Act;
- (o) an application to VCAT for a review of a Councillor Conduct Panel decision under section 170 of the Act;
- (p) a resolution by the Council related to a declaration under section 158(1) of the *Local Government Act 1989* (Vic);
- (q) a resolution by the Council that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under any taxation legislation;
- (r) a matter related to preparing or adopting a budget or a revised budget under Part 4 of the Act if—
  - (i) the budget or revised budget includes funding for that matter; and
  - (ii) the Council previously approved that matter and the proposed funding for that matter; and

- (iii) a Councillor who had a conflict of interest in respect of that matter disclosed the conflict when the Council previously considered and made the decision in respect of that matter and approved the proposed funding for that matter;
- (s) a matter related to preparing or adopting a Community Vision, Council Plan, Financial Plan, Asset Plan or Revenue and Rating Plan (a relevant document ) under Part 4 of the Act if—
  - (i) the relevant document includes that matter; and
  - (ii) the Council previously approved that matter for inclusion in a relevant document; and
  - (iii) a Councillor who had a conflict of interest in respect of that matter disclosed the conflict when the Council previously considered and made any decisions in respect of the matter;
- (t) a matter for which—
  - (i) a decision by the Council has been made under section 67 of the Act; and
  - (ii) any component part of the matter in which a Councillor had a conflict of interest has been resolved; and
  - (iii) the Councillor disclosed the conflict of interest when the Council previously considered that component part of the matter.

## Appendix Two

- Decision making by Council representatives in property and planning matters, including the acceptance/refusal of amendments or applications;
- Electoral donations to Councillors;
- Recruitment and selection of staff by Council staff;
- Procurement including tendering, purchasing and contracting;
- External employment or other commercial interests (e.g., directorships and shareholdings);
- Funding allocation such as through grants; and
- Complaint management.