

## 5.11. CONFLICTS OF INTEREST FOR EMPLOYEES POLICY

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### RECOMMENDATION

**That Council adopt the Conflicts of Interest Policy as presented.**

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### EXECUTIVE SUMMARY

Under the *Public Sector Ethics Act 1994*, conflicts of interest are required to be resolved in the public interest. Currently there is no overarching policy that provides a clear statement about managing employee conflicts of interest or the impact on their roles and responsibilities.

### BACKGROUND

The Queensland Audit Office (QAO) Final Management Report 2019/20 identified an internal control deficiency, that Council does not currently have a Conflicts of Interest Policy in place.

In the absence of a policy that governs conflicts of interest registers, there is an increased risk that:

- Employees do not have a shared understanding of what classifies as a conflict of interest
- Conflict of Interest registers may be incomplete
- Related Part transactions may go undetected and may result in incomplete disclosures in the financials.

### COMMENT

The principles that underpin the development of a framework for employee conflicts of interest are included in the *Public Sector Ethics Act 1994* and the *Local Government Act 2009*, including:

- Integrity and impartiality
- Promoting the public good
- Commitment to the system of government
- Accountability and transparency
- Ensuring transparent and effective processes and decision making in the public interest
- Good governance of and by local government
- Ethical and legal behaviour of local government employees

The overall framework for managing conflicts of interests for employees includes:

- A Conflicts of Interest for Employees Policy
  - A clear direction for employees with regard to conflicts of interest
  - A clear direction on how the Council will manage conflicts of interest for employees
  - Roles and responsibilities
- A Conflicts of Interest for Employee procedure
  - A clear procedure on how to:
    - identify a conflict of interest
    - report a conflict of interest
    - register a conflict of interest
    - Manage conflicts of interest
    - Breaches of Policy
- A Conflicts of Interest for Employees Declaration Form
- A Register for Conflicts of Interest for Employees

## PROPOSAL

That council adopt the Conflicts of Interest for Employees Policy as presented.

## FINANCIAL/RESOURCE IMPLICATIONS

Nil

## RISK MANAGEMENT IMPLICATIONS

Undeveloped governance practices may pose a potential reputation and corruption risk to council.

## SUSTAINABILITY IMPLICATIONS

**Economic:** Nil

**Environmental:** Nil

**Social:** Nil

## CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

### Corporate Plan 2019-2024 Initiatives:

#### **Theme 5 - Robust Governance and Efficient Service Delivery**

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

**Goal 1** - *We will conduct Council business in an open and transparent manner with strong oversight and open reporting.*

## COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

**Information Provider** Council provides the community with important information on services, events, policies, rules, strategies, and any other relevant data that helps the community to stay informed. In performing this role, Council seeks to be open and transparent.

## CONSULTATION

**Internal:** Management Team

**External:** Queensland Audit Office  
Crime and Corruption Commission

## COMMUNITY ENGAGEMENT

Nil

## ATTACHMENTS

1. Draft Conflicts of Interest for Employees Policy [MLY6] [5.11.1 - 8 pages]

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### Purpose

The purpose of this policy is to ensure conflicts of interests are identified, reported and managed in a way that allows Council to conduct its business with integrity, honesty and fairness. This policy promotes transparency in Council business and ensures workers operate in a way that aligns with the fundamental ethics principles detailed in the Douglas Shire Council Code of Conduct.

### Scope

This policy applies to Douglas Shire Council employees. This policy does not apply to Councillors as they are captured under the *Local Government Act 2009* and Code of Conduct for Councillors in Queensland.

### Policy Content

Council is committed to conducting its business in a way that aligns with the fundamental ethics principles as detailed in the Code of Conduct. This is, being guided by behaviours that ensure integrity and impartiality; the promotion of public good; a commitment to the system of government; and accountability and transparency.

Conflicts of Interest; whether actual, perceived or potential; may diminish the public's trust in the way Council does business. This policy provides guidance to ensure all employees undertake their duties and responsibilities in a manner which places the public interest above their personal interests.

### Conflicts of Interest

A conflict of interest occurs when there is a conflict, there appears to be a conflict, or a conflict may arise in the future between official duties and responsibilities in serving the public interest and personal interests.

Conflicts may arise in a variety of situations including, but not limited to:

- (a) Family and close personal relationships
- (b) Previous, secondary and future employment
- (c) Financial interests
- (d) Memberships in clubs, associations or parties
- (e) Asset ownership including property ownership

The existence of a conflict is not an issue in itself and is often inevitable. It is a requirement that any conflict, whether actual, perceived or potential; be appropriately identified, reported and managed to ensure Council is able to undertake business in a transparent and impartial manner.

Deliberate non-disclosure of a conflict of interest or lack of adequate management of a conflict of interest may amount to a reasonable suspicion of corrupt conduct. Council has a zero tolerance approach and is committed to eliminating and/or minimising the potential of any corrupt conduct within Council.

### **Actual Conflict of Interest**

An actual conflict of interest occurs when there is a direct conflict between current official duties and responsibilities with Council and existing personal interests.

### **Perceived Conflict of Interest**

A perceived conflict of interest occurs when there is a potential for a personal interest to reasonably be perceived as being in conflict with official duties and responsibilities of Council. This perception can occur irrespective of whether the conflict is real or not.

### **Potential Conflict of Interest**

A potential conflict of interest occurs when it is reasonable to believe a conflict may arise in the future between official duties and responsibilities with Council and personal interests.

### **Pecuniary and non-Pecuniary Interests**

Conflicts may arise from pecuniary and non-pecuniary interests. A pecuniary interest occurs when there is a financial gain or loss; or potential for a financial gain or loss; in relation to a conflict. A non-pecuniary interest occurs when there is a personal benefit or detriment caused; or the potential for a personal benefit or detriment to be caused; which is not financial in relation to an interest.

## **Dealing with Conflict of Interest**

Conflicts of Interest may arise from time to time and in some instances are unavoidable. All employees are responsible for ensuring conflicts are appropriately identified, reported and managed in accordance with the Conflict of Interest Procedure.

### **Identifying Conflict of Interest**

It is the responsibility of each individual to identify when a conflict; whether actual, perceived or potential; has or may arise between their personal interests and their official duties and responsibilities.

### **Reporting Conflicts of Interest**

All conflicts; whether actual, perceived or potential; must be declared on a Conflict of Interest Declaration Form by the affected employee to be given to their supervisor. This declaration must be made as soon as the conflict is identified or when any change to a conflict occurs. If it is unclear if a conflict exists, the matter must be declared to allow a determination to be made.

It is acknowledged by declaring a conflict of interest an employee may be required to disclose personal information. Such information will be captured and stored in accordance with Council's Privacy Policy. All employees have an additional responsibility to report any suspicion of conflicts of interest; whether actual, perceived or potential; about others to their supervisor.

### **Managing Conflicts of Interest**

Once a conflict has been declared and determined as a conflict of interest, the affected employee must remove themselves from any and all decision-making processes relating to the conflict until such time as the conflict has been resolved.

It may be necessary for additional processes to be put in place either as an interim measure or permanent measure to ensure Council can continue to conduct business in a transparent and impartial manner. Ultimately, the determination as to whether a conflict exists or not; and how the conflict is to be managed;

rests with the Chief Executive Officer or delegated Manager. Confirmed conflicts of interest will be recorded and maintained in Council's Conflicts of Interest Register.

## Transparency

Transparency involves the disclosure of personal interest that could compromise, the unbiased performance of an employee's official duties and maintaining appropriate records of all actions and decisions taken in managing conflicts of interest.

## Risk

Areas within Council that pose a higher risk regarding conflicts of interest include:

- Recruitment and selection process;
- Procurement, entering into contracts and contract management;
- Allocating donations, grants, sponsorships and financial incentives;
- Entering into partnerships;
- Regulatory roles including:
  - inspecting, testing, regulating or monitoring standards, business, equipment or premises;
  - issuing, or reviewing the issue of, fines or other sanctions;
  - issuing permits, qualifications or licences;
- Where concurrent or other employment occurs (for example board positions, part-time, casual employment and voluntary positions);
- Complaints management; and
- The exercise of discretionary power in decision making, such as planning decisions.

## Roles and Responsibilities

### Mayor and Councillors

Responsible for demonstrating leadership for good governance of the Council and decision-making that is made in the public interest.

### Chief Executive Officer and Management Team

The Chief Executive Officer and the Management Team are required to provide leadership with regard to disclosing, managing and monitoring conflicts of interest; and ensure policies, procedures and other work instructions requiring reference to this policy and any supporting procedure or processes are in place, in particular, for higher risk areas of Council.

### Supervisors

All employees who also have supervisory responsibilities must:

- ensure employees who they manage, disclose, manage any conflicts of interest and take appropriate action, where an employee has not done so; and
- monitor any management approach that is required to be taken by their direct reports for any conflicts of interest that may exist.

## All Employees

Responsible for:

- regularly considering the relationship between their personal interests and official duties in order to proactively identify any actual, perceived or potential conflicts of interest that may influence any actions or decisions made while carrying out official Council duties;
- being honest, open and transparent in their disclosure of conflict of interest; and
- following internal procedures relating to the identification, disclosure, self-management and monitoring of their conflicts of interest.

## Governance Department

Responsible for:

- ensuring clear policy and procedures are in place for Council employees to follow, to identify, disclose and manage conflicts of interest;
- maintaining a confidential centralised system for the disclosure, management and monitoring of conflicts of interest for Council employees;
- proactively educating all staff on their responsibilities with regard to conflicts of interest, and focussing on areas within Council that pose a higher risk with regard to conflicts of interest;
- the confidential management of employee conflicts of interest. Conflicts of interest records may be the subject of applications under the Right to Information Act 2009 and/or the Information Privacy Act 2009, where a decision may be made on whether it is in the public interest to release information relating to employee conflicts of interest; and
- confidential case by case basis, for the management of employees who may have conflicts of interest, due to their personal interests.

## People and Community Services Department

Responsible for training and awareness initiatives.

## Audit Committee

Responsible for ongoing monitoring of processes to ensure accountability of employees and Council.

## Monitoring and Evaluation

- Conflicts of interest systems, procedures and processes are established and maintained;
- Conflicts of interest are being disclosed by employees and management plans are in place; and
- Participation rates at conflicts of interest training and awareness initiatives.

## Review Process

The following will be consulted during the review process:

- Management Team;
- Governance Department;
- People and Community Services Department; and
- Audit Committee.

## Internal Register of Interest

Identified senior employees have an additional responsibility to fully disclose their and their associated persons interests to be included in an Internal Register of Interests. This is to ensure the Code of Conduct ethics principles and the *Local Government Act 2009* principles are upheld.

Identified senior employees must provide or update; as required; an Internal Register of Interests with information as outlined in Schedule 5 of the Regulation and in accordance with the Internal Register of Interest Procedure.

## Employment Outside of Council

Employees must seek approval for any employment undertaken outside of their official duties with Council. Council does not intend to limit employees from holding secondary employment, provided the other employment or business does not:

- (a) Create or develop a conflict of interest;
- (b) Effect the performance of official Council duties, including safety related matters;
- (c) Bring Council’s reputation into disrepute; or
- (d) Involve Council resources.

## Breaches of Policy

Breaches of this policy, including requirements detailed in the Code of Conduct, may result in disciplinary action being taken in accordance with the Performance, Misconduct and Disciplinary Procedures.

## Definitions

To assist in interpretation, the following definitions apply:

TERM	DEFINITION
<b>Associated Person</b>	Persons associated with an identified senior employee: <ul style="list-style-type: none"> <li>(a) Spouses</li> <li>(b) Dependent children</li> <li>(c) Any person that is totally or substantially dependent</li> <li>(d) Any person whose affairs are so closely connected with the affairs of an identified senior that a benefit derived by the person, or a substantial part of it, could pass to the identified senior employee.</li> </ul>
<b>CEO</b>	Chief Executive Officer A person who holds an appointment under section 194 of the Local Government Act 2009. This includes a person acting in this position.
<b>Conflict of Interest</b>	A conflict – whether actual, perceived or potential between official duties in serving the public interest and personal interests.
<b>Corrupt Conduct</b>	As defined in the Crime and Corruption Act 2001, (1) <b>Corrupt conduct</b> means conduct of a person regardless of whether the person holds or held an appointment, that <ul style="list-style-type: none"> <li>(a) Adversely affects, or could adversely affect, directly or indirectly, the performance of functions, or the exercise of powers of –               <ul style="list-style-type: none"> <li>(i) A unit of public administration; or</li> <li>(ii) A person holding an appointment; and</li> </ul> </li> </ul>

TERM	DEFINITION
	<p>(b) Results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that –</p> <ul style="list-style-type: none"> <li>(i) Is not honest or is not impartial; or</li> <li>(ii) Involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or</li> <li>(iii) Involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and</li> </ul> <p>(c) Is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and</p> <p>(d) Would, if proved, be</p> <ul style="list-style-type: none"> <li>(i) A criminal offence; or</li> <li>(ii) A disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.</li> </ul> <p>(2) Without limiting subsection (1), conduct that involves any of the following could be corrupt conduct under subsection (1)—</p> <ul style="list-style-type: none"> <li>(a) abuse of public office;</li> <li>(b) bribery, including bribery relating to an election;</li> <li>(c) extortion;</li> <li>(d) obtaining or offering a secret commission;</li> <li>(e) fraud;</li> <li>(f) stealing;</li> <li>(g) forgery;</li> <li>(h) perverting the course of justice;</li> <li>(i) an offence relating to an electoral donation;</li> <li>(j) loss of revenue of the State;</li> <li>(k) sedition</li> <li>(l) homicide, serious assault or assault occasioning bodily harm or grievous bodily harm;</li> <li>(m) obtaining a financial benefit from procuring prostitution or from unlawful prostitution engaged in by another person;</li> <li>(n) illegal drug trafficking;</li> <li>(o) illegal gambling.</li> </ul>
<b>Council</b>	Douglas Shire Council
<b>Councillor/s</b>	The Mayor and Councillors of Council, within the meaning of the <i>Local Government Act 2009</i> .
<b>Employee</b>	Means any person employed directly by Douglas Shire Council, regardless of their employment status (full time, part time, casual, volunteer) and contractors, undertaking duties on behalf of Council.
<b>Interest</b>	Means anything that can have an impact on an individual or group. It includes anything that can bring a benefit or disadvantage to an employee, or others an individual may wish to benefit or disadvantage.
<b>Private or Personal Interests</b>	Private, Professional or Business Interests that can benefit or disadvantage employees, or others an individual may wish to benefit or disadvantage. They also include the personal, professional and business interests of individuals or groups with whom employee’s associate. Private interests include a wide range

TERM	DEFINITION
	of external activities including financial and economic interests, family or private businesses and interest groups and involvement in other employment.
<b>Public Interest</b>	The collective interest of the entire community, not the sum of individual interests nor the interest of a particular group.

## Related Legislation

*Crime and Corruption Act 2001*  
*Information Privacy Act 2009*  
*Human Rights Act 2019*  
*Local Government Act 2009*  
*Local Government Regulation 2012*  
*Public Interest Disclosure Act 2010*  
*Public Sector Ethics Act 1994*  
*Right to Information Act 2009*

## Related Documents (Local Laws, Policies, Forms)

Benefits, Gifts and Prizes Guidelines  
 Code of Conduct  
 Conflict of Interest Procedure  
 Conflict of Interest Register  
 Conflict of Interest Declaration Form  
 Delegations Register  
 Performance, Misconduct and Disciplinary Procedures  
 Privacy Policy  
 Recruitment Selection Procedure  
 Related Party General Policy

## Policy Review

This policy is to be reviewed every two years, or when there is a legislative change and/or at the direction of the Chief Executive Officer.

## Policy Details

<b>Policy Name</b>	Conflicts of Interest for Employees Policy
<b>Policy Number</b>	82
<b>Policy Version</b>	1
<b>Document Number</b>	1011168
<b>Endorsed by</b>	Chief Executive Officer
<b>Policy Type</b>	Council
<b>Approval Authority</b>	Council
<b>Date Adopted</b>	25/05/2021

<b>Time Period</b>	2 Years
<b>Review Date</b>	01/04/2023
<b>Policy Department</b>	Governance
<b>Link to Corporate Plan</b>	Robust Governance and Efficient Service Delivery
<b>Revoked/Superseded</b>	N/A

**This policy is to remain in force until otherwise determined by Council.**