



Name	EM06 Conflict of Interest
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1 Purpose

Litchfield Council is committed to placing public interests before private interests and avoiding private gain at public expense. This policy details the issue of conflicts of interest and how it is managed.

2 Principles

The community has the right to expect that Elected Members perform their duties in a fair and unbiased way and that the decisions they make are not affected by self-interest or personal gain. Conflicts of interest arise when Elected Members are influenced, or appear to be influenced, by personal interests when doing their jobs. The perception of a conflict of interest can be as damaging as an actual conflict, because it undermines public confidence in the integrity of the organisation involved and its staff.

3 Definitions

For the purposes of this Policy, the following definitions apply:

<i>Conflict of Interest</i>	A conflict of interest occurs when there is a clash between a person's private interest and their public duty. It involves a lack of impartiality, however arising, and whether or not financial gain or loss is involved.
<i>Pecuniary Interest</i>	This is an interest that a person has in a matter because of the reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated. Associated persons include relatives, partners and employers.
<i>Non-Pecuniary Interest</i>	This is any private interest that does not relate to money e.g. arising out of kinship, friendship, membership of an association, society or trade union, or involvement or interest in an activity.
<i>Personal Benefit</i>	Use of confidential Council information to gain improper advantage.
<i>Improper Use of Undue Influence</i>	The use of a Council position to improperly influence others.

4 Policy Statement**4.1 Provisions in the Local Government Act**

Sections 73 and 74 of the Local Government Act outline the responsibilities and authorities related to Conflict of Interest (footnotes drawn from the Annotated Version of the Local Government Act):

*73 Conflict of interest*²³⁸

- (1) *A member*²³⁹ *has a conflict of interest in a question arising for decision by the council, local board or council local authority, committee if the member or an associate*²⁴⁰ *of the member has a personal or financial interest*²⁴¹ *in how the question is decided*²⁴².
- (2) *This section does not apply if the interest is:*
- (a) *an interest in a question about the level of allowances or expenses to be set for members; or*
 - (b) *an interest that the member or associate shares in common with the general public or a substantial section of the public; or*
 - (c) *an interest as an elector or ratepayer that the member or associate shares in common with other electors or ratepayers; or*
 - (d) *an interest that the member or an associate has in a non-profit body or association; or*
 - (e) *an interest of the member or an associate:*
 - (i) *in appointment or nomination for appointment to a body with predominantly charitable objects; or*
 - (ii) *in payment or reimbursement of membership fees, or expenses related to membership, in such a body; or*
 - (f) *an interest so remote or insignificant that it could not reasonably be regarded as likely to influence a decision*²⁴³.

74 Disclosure of interest

- (1) *As soon as practicable after a member becomes aware of a conflict of interest in a question that has arisen or is about to arise before the council, local authority, local board or council committee, the member must disclose*²⁴⁴ *the personal or financial interest that gives rise to the conflict (the relevant interest):*
- (a) *at a meeting of the council, local authority, local board or council committee; and*
 - (b) *to the CEO.*
- (2) *The CEO must record the disclosure in a register of interests kept for the purpose*²⁴⁵.
- (3) *A member must not*²⁴⁶ *, without the Minister's approval:*
- (a) *be present at a meeting of the council, local authority, local board or council committee while a question in which the member has a conflict of interest is under consideration; or*
 - (b) *participate in any decision on the question.*
- (4) *The Minister may approve a member's participation in the consideration of, or a decision on, a question in which the member has a conflict of interest on conditions the Minister thinks appropriate.*

²³⁸ The determination whether a member is in a conflict of interest situation is relevant to the prompt disclosure requirements and non- participation requirements of the next section. See also item 6 of the Code of Conduct. It may also be relevant in determining whether a member has acted in breach of trust or in breach of fiduciary duty. *The responsibility is on each member to avoid a conflict of interest.*

²³⁹ This includes a member of a local board or committee – see definition in section 3 of the Act.

²⁴⁰ 'Associate' is defined at section 4 of the Act. The definition includes (but is not limited to) a person in a close family relationship. 'Close family relationship' is defined in section 3 of the Act.

²⁴¹ A 'personal interest' includes an interest from which a member may gain an advantage, or avoid a loss.

²⁴² Conflicts of interest can arise in a variety of ways and need to be determined on a case by case basis, having regard to the Act and the decided cases.

²⁴³ Paragraphs (a) and (f) are alternatives. Any one will provide an exception to a conflict of interest.

²⁴⁴ *This is a mandatory requirement, to be exercised "as soon as is practicable", with a criminal penalty for any breach as well as potential civil liability.*

²⁴⁵ It follows that the CEO must have a register of interests and must enter in that register every disclosure under this section. As to the contents of the register, see regulation 12 of the Local Government (Administration) Regulations.

²⁴⁶ This is a mandatory prohibition, with a criminal penalty for any breach. The member in a conflict of interest must not be present at a meeting when any consideration or discussion of the relevant issues takes place.

- (5) *A member is guilty of an offence if the member:*
- (a) *fails to disclose an interest as required under subsection (1); or*
 - (b) *contravenes subsection (3) or a condition of an approval under subsection (4).*

Fault element: Intention.

Maximum penalty: 100 penalty units²⁴⁷ or imprisonment for 6 months.

- (6) *If the Tribunal finds that a member has participated in the decision of the council, a local authority, a local board or a council committee contrary to this section, the Tribunal may, on application by an elector or ratepayer, declare the decision void²⁴⁸.*

4.2 Elected Members and Conflict of Interest

- 4.2.1 Elected Members must act in the public interest and must not take into account personal interests or any other irrelevant considerations. Conflict of interest means a lack of impartiality, however arising and whether or not financial gain or loss is involved.
- 4.2.2 A conflict of interest arises where an individual has a private or personal interest, perceived or real, which could affect their capacity as an Elected Member to perform their public or professional duties in an impartial manner.
- 4.2.3 Having a public/professional duty and a private/personal interest does not mean there is automatically a conflict of interest. However, if there is a conflict of interest, how it is dealt with is very important and in doing so, the person concerned must not do anything which they could not justify to the public or which suggests reasonable suspicion of improper conduct or preferential treatment.
- 4.2.4 Conflicts of interest can be pecuniary or non-pecuniary.

4.3 Pecuniary Interest

- 4.3.1 A “pecuniary interest” means a person has a “reasonable expectation of appreciable financial gain or loss for themselves or for another with whom they are associated (see section 73 of the Act).
- 4.3.2 Pecuniary interests must be disclosed.
- 4.3.3 A person will be considered to have a pecuniary interest if:
- a) They, or a person with whom they are associated has a pecuniary interest.
 - b) Their spouse, defacto partner, relative, partner or employer has a pecuniary interest (relative includes any of the following – parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or an adopted child of the person or the person’s spouse).
 - c) They, a nominee, partner or employer are a member of a company or other body that has a pecuniary interest.
 - d) A person is not taken to have a pecuniary interest if:
 - i. They are unaware of the relevant pecuniary interest of the spouse, defacto partner, relative, partner, employer or company or other body;
 - ii. They are a member of, or employed by, a statutory body or by the Crown; or

²⁴⁷ “Penalty unit” means a unit of the prescribed value under the Penalty Units Act (NT). Hence if an offence carries a penalty of a specified number of units, the maximum penalty is that number multiplied by the prescribed value as indexed.

²⁴⁸ The phrase ‘the Tribunal may’ means that the Tribunal has judicial discretion about whether to declare the decision void and the Tribunal would take into account all the relevant circumstances in making such a decision.

- iii. They are a member of or a delegate of Council, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.
- e) A person does not have a pecuniary interest in a matter if the interest is so remote that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter.

4.4 Non-Pecuniary Interest

- 4.4.1 A "non-pecuniary interest" is any private or personal interest which does not relate to money (e.g. kinship, friendship, executive membership of an association, society or trade union or involvement or interest in an activity).
- 4.4.2 Elected Members who are members of clubs should seriously consider whether their club memberships could give rise to conflicts of interest in Council matters that may affect the clubs. The greater the involvement with the club, the greater the likelihood of a real or perceived conflict of interest.
- 4.4.3 In cases of a non-pecuniary interest, employees should not do anything which they could not justify to the public and should avoid any occasion for reasonable suspicion or the appearance of improper conduct or only partial performance of their public or professional duties.
- 4.4.4 Options for dealing with a non-pecuniary conflict of interest will depend on the circumstances of the matter and an objective assessment of it. Options can include:
 - a) Take no action because the conflict is assessed as minor in nature;
 - b) Remove themselves as the source of conflict;

4.5 Potential Areas of Conflict

Potential conflicts of interest can arise in the following circumstances:

- 4.5.1 Tendering and Purchasing
Example: Council has tendered for the provision of professional services. An Elected Member is employed by a company which has tendered for the provision of these services. This may affect, or it may reasonably be suspected that it could affect, their ability to make an unbiased decision when the tender is considered by Council.
- 4.5.2 CEO Recruitment
Example: A member of the selection panel has a close relationship with one of the applicants for the job. This conflict of interest could bias, or could reasonably be expected to bias, the decision of the panel.
- 4.5.3 Gifts and Benefits
Example: A developer seeking a decision by Council in their favour regarding stormwater approvals offers an Elected Member free tickets to a major sporting event. The Elected Member's impartiality when dealing with the supplier could be compromised if the offer was accepted.
- 4.5.4 Information and Opportunities
Elected Members may have business and professional interests in the local government area they represent. Conflicts can arise if their public positions allow them access to information and opportunities that could be used to advance their personal and business interests.

4.6 Disclosing Conflicts of Interest

- 4.6.1 Elected Members who believe they have an interest in a matter, pecuniary or otherwise, must declare that interest in any meetings or discussions where that matter is considered.

4.7 Disclosures at Meetings

- 4.7.1 An Elected Member who has a conflict of interest in any matter with which the Council is concerned and who is present at a meeting of the Council at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- 4.7.2 The Elected Member who discloses a conflict of interest must not be present at, or in sight of, the meeting of the Council:
- a) at any time during which the matter is being considered or discussed by the Council, or
 - b) at any time during which the Council is voting on any question in relation to the matter.
- 4.7.3 The attention of Elected Members is drawn to the following criteria to determine the extent of disclosure of the nature of the interest to the meeting necessary to observe statutory requirements of Section 73 of the Act and that some detail of the interest be disclosed and satisfy the requirements of the Act for greater transparency and accountability in the management and operation of the Council:
- a) The details are sufficient to enable other Elected Members and the public to appreciate in general terms the connection of the person with the matter under consideration.
 - b) The disclosure does not reveal sensitive information which is not relevant to the matter before the Council.
 - c) The disclosure does not reveal information which may be unnecessarily damaging to the reputation of some person(s) with whom the person disclosing the interest is associated.
 - d) The disclosure will not unnecessarily prejudice a sensitive commercial or legal situation.
- 4.7.4 Disclosures of interest made at meetings and subsequent actions will be recorded in the minutes of that Council.

4.8 Deciding If You Have a Conflict of Interest

The following questions may help in deciding whether an Elected Member has a conflict of interest or whether their conduct could create the impression that a conflict of interest exists:

- a) *Do I, a relative, friend or associate stand to gain or lose financially from Council's decision or action on this matter?*
- b) *Do I, a relative, friend or associate stand to gain or lose my/our reputation because of Council's decision or action on this matter?*
- c) *Have I contributed in a private capacity in any way to the matter before Council?*
- d) *Have I made any promises or commitments in relation to the matter?*
- e) *Have I received a benefit or hospitality from someone who stands to gain or lose from Council's decision or action?*
- f) *Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with organisations or individuals, who stand to gain or lose from Council's consideration of the matter?*
- g) *Could there be benefits for me in the future that could cast doubt on my objectivity?*
- h) *If I participate in assessment or decision making, would I be happy if my colleagues and the public became aware of my association or connection?*
- i) *Would a fair and reasonable person perceive that I was influenced by personal interest in performing my public duty?*
- j) *Do I need to seek advice or discuss the matter with an objective party?*
- k) *Am I confident of my ability to act impartially and in the public interest?*
- l) *Do I understand the possible penalties if I go on with the action?*

Note: The references to "before Council", "Council's consideration", etc. also refer to issues to be dealt with under delegated authority by Council officers.

4.9 Responsibility for Making a Disclosure

4.9.1 If an Elected Member is unsure as to whether or not they have a conflict of interest, they should give full written details to the Chief Executive Officer or seek independent legal advice. The objective of notification is to protect both Elected Members and Council.

4.9.2 The Chief Executive Officer does not have a responsibility to provide a determination on whether or not you have a conflict of interest in a matter.

4.9.3 The responsibility for determining whether an Elected Member has a conflict of interest rests with the individual Elected Member, as per Section 74 of the Local Government Act. In many cases, only the Elected Member will be aware of the potential for a conflict of interest. Elected Members are encouraged to err on the side of caution by declaring their interest and by not participating in discussion or in decision making if there is any doubt as to their interest in the matter.

4.10 Complaints Regarding Failure to Disclose an Interest

Any person may make a complaint that a person has or may have failed to disclose a pecuniary interest. All complaints should be directed to the Chief Executive of the Department of Local Government.

5 Associated Documents

Nil

6 References and Related Legislation

Local Government Act, Sections 73 and 74
Litchfield Council Policies