

# HOW TO IDENTIFY A CONFLICT OF INTEREST

## What is a conflict of interest?

A conflict of interest is either a **direct interest** or one of the five **indirect interests**.

## What is a direct interest?

A direct interest is a reasonable likelihood that the circumstances of the person (including a company) would be directly altered if a matter is decided in a particular way, including a reasonable likelihood that –

- the person will receive a direct financial benefit or loss;
- the residential amenity of the person will be directly affected.

## What are the five types of indirect interest?

1. Close association
2. Indirect financial interest
3. Conflicting duty
4. Receipt of an applicable gift
5. Becoming an interested party

## Main exemptions

Despite having a direct or indirect interest in a matter, a Councillor does **not** have a conflict of interest if –

- the interest is **so remote or insignificant** as to not reasonably be regarded as capable of influencing the Councillor; or
- the Councillor's interest is held **equally in common** with other residents, ratepayers or voters.

### **What is an indirect interest by close association?**

A Councillor has an indirect interest by close association if –

- a **family member** of the Councillor has a **direct or an indirect interest** in a matter;
- a **relative** of the Councillor has a direct interest in a matter; or
- a **member of the Councillor's household** has a direct interest in a matter.

### **What is a family member?**

A family member means –

- a spouse or domestic partner of the person; or
- a son/daughter (including a biological son/daughter, stepson/daughter, adopted son/daughter or male/female child for which the person has custodial responsibilities), mother, father, brother or sister that regularly resides with the person.

### **What is a relative?**

A relative means –

- a **direct relative** of the person; and
- a direct relative of a person who is the direct relative of the person (a niece, nephew, grandchild, grandparent, in-law or direct relative of the person's spouse or domestic partner).

### **What is a direct relative?**

A direct relative means the spouse, domestic partner, son/daughter (including a biological son/daughter, stepson/daughter, adopted son/daughter or male/female child for which the person has custodial responsibilities), mother, father, brother or sister of the person.

### **What is a member of the Councillor's household?**

A member of the Councillor's household is **not defined** but would include a border, housemate or co-tenant or anyone else who resides with the Councillor and not being a relative.

### **What is an indirect interest that is an indirect financial interest?**

A Councillor has an indirect financial interest in a matter if there is a likelihood of receiving/incurred a financial benefit/loss as a consequence of a benefit/loss received/incurred by another person who has a direct or indirect interest in the matter including –

- a beneficial interest in shares of a company that has a direct interest in the matter (except where the shares held by the Councillor and any family member have a combined total value that does not exceed \$10,000 **and** the value of issued shares in the company exceeds \$10,000,000); and
- the Councillor is owed money from another person (not being an authorised deposit-taking institution) who/which has a direct interest in the matter.

### **What is an indirect interest because of a conflicting duty?**

A Councillor has an indirect interest because of a conflicting duty if the Councillor –

- is a manager or a member of a governing body of a company of body that has a direct interest in a matter;
  - is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter;
  - is a trustee for a person who has a direct interest in a matter; or
  - held one of the above positions or roles and in that position or role, dealt with the matter,
- but excluding –

- employment with the Crown/a statutory body, provided the Councillor has no current or expected responsibilities in relation to the matter;
- a Council appointment to a non-remunerated not for profit organisation;  
and
- an MAV or similar body appointment.

#### **What is an indirect interest because of receipt of an applicable gift?**

A Councillor has an indirect interest in a matter if there is a direct or indirect receipt of an **applicable gift** from a person, company or body (including a person who gives the applicable gift to the Councillor on behalf of a person, company or body that has a direct interest in a matter) or from a director, contractor, consultant, agent or employee of a person, company or body that the Councillor knows has a direct interest in a matter.

#### **What is an applicable gift?**

An applicable gift means one or more gifts with a total value of \$200 or more, received from a person or persons specified above in the five years preceding the decision.

#### **What is a gift?**

A gift is something that is bestowed voluntarily and without adequate or any consideration.

#### **What is an indirect interest as a consequence of becoming an interested party?**

A Councillor who is or becomes a party to civil proceedings in relation to a matter has an indirect interest.

#### **What are the disclosure requirements for a conflict of interest?**

A Councillor who has a conflict of interest that is not exempt must disclose the interest at a Council (and a special committee) meeting prior to any discussion of the matter by specifying –

- whether the interest is direct or indirect;

- if it is an indirect interest, the particular kind of indirect interest (one of the five kinds); and
- the nature of the interest.

The Councillor must then leave the chamber prior to discussion of the matter and remain outside the chamber until the vote is taken on the matter.

If the Councillor will not be attending the meeting, the Councillor must make written disclosure to either the CEO or Chairperson detailing the same requirements as if the Councillor was to attend the meeting.

If the Councillor is attending an **Assembly of Councillors**, the disclosure of a conflict of interest must be made prior to discussion of the matter (or if consideration of the matter has begun, as soon as the Councillor becomes aware that there is a conflict of interest) and immediately leave the Assembly of Councillors while the matter is being considered.

#### **What is a conflicting personal interest?**

A conflicting personal interest is a personal interest that is in conflict with the Councillor's public duty in relation to the matter.

It is **not** a conflict of interest and therefore there is no mandatory disclosure, however the Councillor **may** immediately before the matter is considered at the relevant meeting, apply to the Council (or special committee) to be exempted from voting on the matter and give reasons in support of the application.

The meeting must not unreasonably withhold consent.

If the meeting does consent, the Councillor must vacate (and remain outside) the chamber during discussion and taking of the vote on the matter.