

POLICY



Hindmarsh Shire Council Conflict of Interest Policy

1 Purpose

Council is committed to governing in the best interests of the Community and delivering services in a fair, transparent and accountable manner.

The purpose of this Policy is to:

- give the community confidence in the decisions that Council is making;
- guide Councillors, members of Committees and employees on what a conflict of interest is;
- ensure Council's organisational and decision making processes are transparent and free from prejudice; and
- ensure that Council is compliant with the *Local Government Act 2020*.

2 Scope

This policy applies to all Councillors, members of Committees and Council employees.

3 Definitions

CEO	means Chief Executive Officer of Hindmarsh Shire Council
Committees	include Delegated Committees established by the <i>Local Government Act 2020</i> , Community Asset Management Committees established under delegation by the CEO, and advisory committees.
Council	means Hindmarsh Shire Council
Act	means the <i>Local Government Act 2020</i>
Relevant person	means a person who is a Councillor; or member of a delegated committee who is not a Councillor; or a member of Council staff.
Family member	means <ol style="list-style-type: none">a spouse or domestic partner of the relevant person;a parent, grandparent, sibling, child, grandchild, step parent, step sibling or step child of the relevant person or of their spouse or domestic partner orany other relative that regularly resides with the relevant person.
Affected person	means <ol style="list-style-type: none">the relevant person;a family member of the relevant person

- c) a body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of a governing body
- d) an employer of the relevant person unless the employer is a public body
- e) a business partner of the relevant person
- f) a person for whom the relevant person is a consultant, contractor or agent;
- g) a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee;
- h) a person from whom the relevant person has received a disclosable gift.

4 Legislative context

(a) Overarching governance principles

This policy is to be read in conjunction with the overarching governance principles outlined in s9 of the Act, with particular reference to the following principles:

*Council decisions are to be made and actions taken in accordance with the relevant law;
The transparency of Council decisions and information is to be ensured.*

(b) Conflict of interest provisions of the Act

The Act describes two classes of interests:

- S127 of the Act– General conflict of interest; and
- S128 of the Act – Material conflict of interest.
- S129 of the Act - Exemptions

(c) General conflict of interest

A general conflict of interest is defined by s127 of the Act as in the following way:

*“a relevant person has 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.**”*

(d) Material conflict of interest

A material conflict of interest is defined by s128 of the Act as in the following way:

*“a relevant person 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.**”*

(e) Exemptions

S129 of the Act contains exemptions to the conflict of interest provisions:

A conflict of interest does not arise if any of the following arises:

- the conflict of interest is so remote or insignificant that it could not be reasonably regarded as capable of influencing the actions or decisions of the relevant person in relation to the matter;
- the interest that would give rise to a conflict of interest is held in common with a substantial proportion of the residents, ratepayers or electors of the municipal district and does not exceed the interests held by the other residents, ratepayers or electors.
- the relevant person does not know the circumstances that give rise to the conflict of interest, and could not be reasonably expected to know those circumstances;
- the interest only arises because the relevant person is the representative of the Council on a not-for-profit organisation that has an interest in the matter and the relevant person receives no personal advantage from the not-for-profit organisation;
- the interest only arises because a family member of the relevant person is a member but not an office-holder of a not-for-profit organisation;
- the interest only arises because the relevant person is a member of a not-for-profit organisation that has expressed an opinion or advocated for an outcome in regard to the matter;
- the interest arises in relation to a decision by a Councillor on a matter or in a circumstance that is prescribed to be exempt by the regulations.

5 Declaring a conflict of interest

Conflicts of interest are to be declared in accordance with the Governance Rules and the Employee Code of Conduct.

6 Declaring other relationships / associations

There may be some instances where a person has a relationship or association with a person or company or other entity which does not fall within the scope of *general conflict of interest* or *material conflict of interest*.

In these instances, employees and councilors are encouraged to declare the relationship or association with their manager or supervisor or with the CEO.

An example of this might be where someone is on an interview panel where they went to school with someone who is an applicant but with whom they no longer have a relationship with. In this instance it may simply be noted on the Recruitment Interest Declaration form that is completed prior to completing the interview.

7 Roles and responsibilities

Person/s responsible	Accountabilities
Councillors	<ul style="list-style-type: none"> • Being aware of their obligations to avoid conflicts of interest; • Disclosing any conflicts of interest in accordance with the Governance Rules; • Not being involved in decisions and actions that could reasonably be seen to be compromised by their private interests or affiliations; • Avoiding private action in which they could be seen to have an improper advantage from inside information from their position within Council;

	<ul style="list-style-type: none"> • Not using their position or Council resources for private gain; • Ensuring that there can be no reasonable perception that they have received an improper benefit that may influence the performance of their duties.
Employees	<ul style="list-style-type: none"> • Being aware of their obligations to avoid conflicts of interest; • Disclosing any conflicts of interest in accordance with the Governance Rules; • Not being involved in decisions and actions that could reasonably be seen to be compromised by their private interests or affiliations; • Avoiding private action in which they could be seen to have an improper advantage from inside information from their position within Council; • Not using their position or Council resources for private gain; • Ensuring that there can be no reasonable perception that they have received an improper benefit that may influence the performance of their duties.
CEO	<ul style="list-style-type: none"> • Implementing policy and procedure for identifying and managing conflicts of interest.

8 Compliance

(a) Audit and reporting

All declared conflicts of interest will be recorded in the Conflict of Interest Register by the Governance Unit and monitored as per Council Policy.

(b) Training and development

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

Training and development will be put in place for Councillors annually.

(c) Privacy

In accordance with the *Victorian Privacy and Data Protection Act 2014* any personal information or confidential information collected will be for the purpose of documenting any conflicts of interest.

Information relevant to conflict of interest will be disclosed to the CEO. Information will be used to 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.

9 Communication

This policy will be communicated via Council's website, Council's intranet, via email, at the Councillor induction.

10 Responsibility

Policy Owner: CEO

11 Supporting documents

Document
Hindmarsh Shire Council Councillor Code of Conduct Hindmarsh Shire Council Hospitality and Gifts Policy (Councillors) Hindmarsh Shire Council Privacy Policy
Local Government Act 2020 Local Government Victoria: Conflict of Interest – A Guide for Councillors

12 Document control

Hindmarsh Shire Council Conflict of Interest Policy		Policy Category	GOVERNANCE
Version Number	02	Policy Status	ADOPTED
Approved/Adopted By	COUNCIL	Approved/Adopted on:	19 AUGUST 2020
Responsible Officer	Manager Governance and Human Services	Review Date:	3 years from date of approval
Version History	Date	Version	Description
	04 March 2020	01	New policy
	19 August 2020	03	Updated after introduction of Local Government Act 2020

