

<b>TITLE:</b>	Conflict of Interest Policy		
<b>DIVISION:</b>	Corporate		
<b>ADOPTED BY:</b>	Council		
<b>DATE OF ADOPTION:</b>	30 August 2018	<b>DATE OF REVIEW:</b>	August 2022
<b>MOTION NUMBER:</b>	OC 213/18		
<b>POLICY NUMBER:</b>	CP000006		
<b>AUTHORISED:</b>	Barkly Regional Council		

### THIS POLICY APPLIES TO:

This policy applies to Elected Members, Council staff, members of Council committees including the Audit Committee, members of Local Authorities and contractors and persons employed through a labour hire agency and Council delegates.

### PREAMBLE

The aim of all policy is for Councillors to provide strategic input into the effective operational framework of the organisation under S.11 of the Local Government Act

### SUMMARY

The Policy sets forth Council's expectations and requirements in relation to disclosure and management of conflicts of interest – real and perceived, financial and personal.

### OBJECTIVES

- To protect the public interest,
- To support transparency and accountability,
- To ensure compliance with Part 7.2 and Part 9.4 of the NT Local Government Act

### BACKGROUND

The community has a right to expect that Elected Members and Council staff will perform their duties in a fair and unbiased way and that the decisions they make are not affected by self-interest or personal gain.

It is normal that Elected Members, Council staff and Council delegates may experience a conflict between their personal interests and those of Council at some time during their appointment. This is particularly evident in regional councils, given their population size when compared with their metropolitan counterparts, as relationships often exist in a social, family, business or other professional context in a smaller environment. It is important in these circumstances to manage such conflict.

Conflict of interests can arise when Elected Members or Council staff are influenced, or appear to be influenced, by personal interest(s) when carrying out their duties. The perception of a conflict can be as damaging as an actual conflict, because it undermines public confidence in the integrity of the organisation involved and the Elected Members and staff.

## POLICY STATEMENT

### ***Specific Provisions***

The Barkly Regional Council intends to operate in a way that is efficient, transparent and accountable and those provisions of this Policy which are additional to the statutory requirements are intended to support this goal.

#### ***Financial or Pecuniary Interests***

Financial or pecuniary interests must be disclosed.

A person will be considered to have a pecuniary interest if:

- They or a person with whom they are associated has a pecuniary interest
- Their spouse, de-facto 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).
- They, a nominee, partner or employer are a member of a company or other body that has a pecuniary interest.

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.

#### ***Personal or Non Pecuniary Interests***

Personal or non-pecuniary interests must be disclosed.

Elected Members and employees who are members of clubs or other organisations should seriously consider whether that involvement could give rise to a conflict of interests in Council matters that may affect the club/organisation.

Elected Members, staff and Council representatives 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.

#### ***Interests that need not be Disclosed***

Conflict of Interest provisions do not apply to **Elected Members and members of Council Committee's or Local Authorities** if the interest is:

- An interest in a question about the level of allowances or expenses to be set for members; or
- An interest that the member or associate shares in common with the general public or a substantial section of the public; or
- An interest as an elector or ratepayer that the member or associate shares in common with other electors or ratepayers; or
- An interest that the member or an associate has in a non-profit body or association; or
- An interest of the member or an associate:
  - In appointment or nomination for appointment to a body with predominantly charitable objects; or
  - In payment or reimbursement of membership fees, or expenses related to membership, in such a body; or
- 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.

## POLICY IMPLEMENTATION GUIDELINES

### ***Disclosing Interests***

The Local Government Act requires that 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, Committee, the member must disclose the personal or financial interest that gives rise to the conflict at the meeting and to the CEO.

The CEO must record the disclosure in a register of interests kept for the purpose.

A member must not, without the Minister's approval:

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 Participate in any decision on the question

If the CEO declares a conflict of interests in a matter being considered at a meeting then the Mayor should decide future participation by the CEO at any time during which the matter is being considered or discussed or voted upon by Council or the Committee.

An employee or Council representative who has a personal or financial interest in a matter in regard to which the member is required or authorised to act or give advice must disclose the interest to the CEO and must not act in the matter except as authorised by the CEO.

Employees and Council Representatives who believe they have an interest in a matter must declare that interest in any meetings or discussions where that matter is to be considered. The conflict must be disclosed to the relevant supervisor or the CEO in the first instance in relation to staff and to the relevant Director or the CEO in regards to all other Council representatives. Where it is the CEO who has an interest disclosure must be made to the Council and the CEO must not act other than as authorised by the Council.

Written notice of a conflict of interest must be given to the CEO (or Mayor respectively) by completion of a *Conflict of Interests Declaration Form*.

### ***Responsibility for Making a Disclosure***

If a person is unsure as to whether or not they have a conflict of interests, they should give full written details to the CEO or Mayor or seek independent legal advice. The objective of notification is to protect both the individual and the Council.

Neither the Mayor nor the CEO has a responsibility to provide a person with a determination on whether or not they have a conflict of interests in a matter. The responsibility to determine a conflict of interests rests solely with the individual as only that individual is aware of the grounds upon which a potential for a conflict of interests arises. It is prudent to err on the side of caution by declaring an interest and by not participating in discussion or in decision making if there is any doubt as to their interest in the matter.

### ***Provision of Legal Advice to Elected Members***

That on receipt of a written enquiry from an Elected Member which is received in good time before the relevant meeting seeking an interpretation of the Conflict of Interest provisions the

CEO is authorised to seek a legal opinion as to the nature and extent of interest and the application of the legislative provisions subject to the:

- Advice being made available to other members; and
- The Member initiating the enquiry agreeing to be bound by the contents thereof.

## ***Complaints Regarding Failure to Disclose an Interest***

Elected Members who believe that a person has or may have failed to disclose an interest will report this to the CEO. Staff or Council representatives who believe that a person has or may have failed to disclose an interest will report this to their supervisor or the CEO. A complaint must be in writing and must:

- Identify the complainant and the person against whom the complaint is made; and
- Give particulars of the grounds of the complaint; and
- Be verified by statutory declaration.

No employee or Elected Member or other person acting on behalf of the Council will discipline or suspend or threaten to discipline or suspend an employee; or impose, or threaten to impose, any penalty upon an employee; or intimidate or otherwise coerce an employee because the employee has reported suspected fraud. Any violation of this section may result in disciplinary action up to and including termination of employment.

False allegations with the intent to disrupt or cause harm to another will result in disciplinary action up to and including termination of employment.

## ***Failure to Disclose an Interest***

### ***Members:***

*As per Sec 74 (5) of the NT Local Government Act:*

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 units or imprisonment for 6 months.

### ***Staff:***

*As per Sec 107 (1) of the NT Local Government Act:*

A staff member or the CEO who fails to declare a conflict of interest, or who acts in a matter in which they have a personal or financial interest, without relevant authorisation, commits an offence which carries a maximum penalty of 100 penalty units

## ***Deciding if a Conflict of Interests Exists***

The following questions may help in deciding whether a conflict of interests exists or could create the impression that a conflict of interests exists:

- Do I, a relative, friend or associate stand to gain or lose financially from the Council's decision or action on this matter?
- 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?
- Have I contributed in a private capacity in any way to the matter before Council?
- Have I made any promises or commitments in relation to the matter?
- Have I received a benefit or hospitality from someone who stands to gain or lose from Council's decision or action?
- 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 this matter?
- Is the person an election campaign donor or someone who helped during my election campaign?

- Could there be benefits for me in the future that could cast doubt on my objectivity?
- 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?
- Would a fair and reasonable person perceive that I was influenced by personal interest in performing my public duty?
- Do I need to seek advice or discuss the matter with an objective party?
- Am I confident of my ability to act impartially and in the public interest?
- 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.

### ***Managing Conflict of Interest***

Apart from declaring an interest, Council Representatives must manage any identified conflict.

Strategies for managing a conflict of interests include:

- Taking no action except to register the details in the case where the potential for a conflict is minimal.
- Placing restrictions on an employee’s involvement in the matter in cases where they can be effectively separated from parts of the process.
- Use of a disinterested third party to oversee part or all of the process where it is not feasible or desirable for an employee to remove themselves for the decision-making process.
- The employee or Elected Member can choose to remove themselves completely from the matter.
- The employee or Elected Member may elect to relinquish the private interest that is the source of the conflict.

### ***Conflict of Interests Register***

Council will maintain a register of all declared interests. This register will be available for public inspection.

## **LEGISLATION, TERMINOLOGY AND REFERENCES**

Part 7.2 of the NT Local Government Act sets forth the legislative requirement in relation to conflict of interest on behalf of Elected Members whilst Section 107 sets out requirements in relation to Council’s staff.

The Council's Code of Conduct also applies.

Associate	<p>A person is an associate of another if:</p> <ul style="list-style-type: none"> <li>• they are in a close family relationship; or</li> <li>• they are in partnership; or</li> <li>• one is a company and the other is a director or manager of the company; or</li> <li>• they are related companies; or</li> <li>• one is a private company and the other is a shareholder in the company; or</li> <li>• a chain of relationships can be traced between them under one or more of the above paragraphs.</li> </ul>
Conflict of interests	<p>A conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.</p>
Council Representative	<p>Includes Elected Members, Council staff, members of Council committees including the Audit Committee, members of Local Authorities, contractors, persons employed through a labour hire agency and Council delegates.</p>
Financial or Pecuniary interest	<p>This is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.</p>
Personal or Non-pecuniary interest	<p>This is any private interest that does not relate to money. Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest. A non-pecuniary interest may arise out of kinship, friendship, membership of an association, society or trade union, or involvement or interest in sporting, social or cultural activities.</p>
Actual Conflict of Interests	<p>This involves direct conflict between a Council Representative's current duties and responsibilities and their existing private interests.</p>
Perceived Conflict of Interests	<p>This is where it could be perceived by others that a Council Representative's private interests could improperly influence the performance of their public duties – whether or not this is actually the case.</p>
Potential Conflict of Interests	<p>This arises when a Council Representative has private interests that could interfere with their public duties in the future.</p>

## IMPLEMENTATION AND DELEGATION

The CEO has delegated authority to undertake any of the actions required or implied by this Policy and is authorised to seek legal advice where this is considered appropriate.

The responsibility for the investigation of potential conflicts of interest on the part of staff or other Council representatives rests with the CEO. If the matter involves the CEO the investigation will be managed by the Mayor who may seek advice from Council's solicitors and/or the Department of Housing and Community Development.

The responsibility for the investigation of potential conflicts of interest on the part of Elected Members rests with the Mayor who may seek advice from the CEO and/or the Department of Housing and Community Development.

Where the potential conflict involves the Mayor then the Deputy Mayor and CEO will jointly determine whether the matter should be reported to the Council and or the Department of Housing and Community Development for formal investigation. Advice may be sought from Council's solicitors and/or the Department of Housing and Community Development. In the event that the Deputy Mayor and CEO are unable to agree upon a course of action the matter will be referred by the CEO to the Department for consideration.

## LINKS

<https://legislation.nt.gov.au/Legislation/LOCAL-GOVERNMENT-ACCOUNTING-REGULATIONS>

<https://legislation.nt.gov.au/Legislation/LOCAL-GOVERNMENT-ACT>

## EVALUATION AND REVIEW

This Policy should be evaluated on the basis that that it is operating effectively and achieving its objectives.

This Policy is to be reviewed every four (4) years, and may be reviewed at other times at the discretion of Chief Executive Officer.