

CONFLICT OF INTEREST GUIDELINES

1. Purpose

These Guidelines provide a practical framework for Council Members of the District Council of Peterborough (Council) to identify, disclose and appropriately manage conflicts of interest in matters considered at Council and committee meetings. They are intended to support accountable, transparent and effective decision-making and to assist Members to comply with the Local Government Act 1999 (SA) (the Act).

A conflict of interest is not, of itself, improper. The key requirement is that a conflict is recognised, disclosed and managed in accordance with the Act.

2. Scope

These Guidelines apply to the Mayor and all Council Members. The statutory conflict of interest provisions also apply to members of Council committees and to board members of Council subsidiaries in the circumstances prescribed by the Act.

These Guidelines are guidance only and do not replace the Act, regulations or independent legal advice. If there is any inconsistency, the legislation prevails.

3. Responsibility of Council Members

Each Council Member is personally responsible for identifying whether they have a conflict of interest and for taking the action required by the Act. Members should review meeting agendas before each meeting and remain alert to conflicts that may only become apparent during discussion.

The Chief Executive Officer or an authorised officer may assist a Member to understand the statutory framework and administrative process. That assistance does not transfer responsibility for the Member's declaration or decision about how the conflict is managed.

4. Types of Conflict of Interest

4.1 Material conflict of interest

Under section 75 of the Act, a Council Member has a material conflict of interest in a matter if the Member, or a person or body specified by section 75, would gain a benefit or suffer a detriment, directly or indirectly and whether personal or pecuniary, depending on the outcome of Council's consideration of the matter.

Specified persons and bodies include, subject to the precise terms of the Act:

- a relative of the Member;
- a body corporate of which the Member is a director or member of the governing body;
- a proprietary company in which the Member is a shareholder;
- a family company or family trust of the Member;
- certain trust beneficiaries or objects where the Member is trustee;
- a partner of the Member;
- the Member's employer or employee;
- a person involved with the Member in specified professional/service negotiations or agreements;
- a person or body from whom the Member has received a designated gift; and
- any prescribed class of person.

4.2 General conflict of interest

Under section 74 of the Act, a Council Member has a general conflict of interest if an impartial, fair-minded person might consider that the Member's private interests might result in the Member acting in a manner contrary to their public duty.

For this purpose, a private interest is a direct or indirect interest that does not derive from the Member's public duty and does not include an interest that is only a matter of personal opinion or belief. Public duty means the responsibilities and obligations a Member has to members of the public in their role as a Council Member.

5. Initial Assessment

Before a matter is considered, a Member should work through the following questions:

1. Would the Member, or any person or body specified in section 75, gain a benefit or suffer a detriment depending on the outcome? If yes, consider whether a material conflict exists.
2. If not, might an impartial, fair-minded person consider that the Member's private interests might result in the Member acting contrary to their public duty? If yes, consider whether a general conflict exists.
3. Does a statutory exemption apply?
4. If a conflict exists, make the required verbal disclosure to the meeting and take the action required by the Act.
5. Ensure the declaration is sufficiently clear to enable the minute taker to accurately record the disclosure and the action taken.

6. Statutory Exemptions

The Act contains exemptions from the material and/or general conflict of interest provisions. A Member relying on an exemption should turn their mind to the exact statutory requirements and, where appropriate, keep a record of the basis on which the exemption was considered to apply.

6.1 Exemptions applying to material and general conflicts

- an interest held in common with a substantial proportion of the ratepayers, electors or residents of the Council area, where the Member's interest does not materially exceed that common interest;
- certain interests of an employer or employee of which the Member does not know and could not reasonably be expected to know;
- an interest arising in relation to a prescribed matter or prescribed circumstances, provided any regulatory requirements are met; and
- certain interests of a relative, other than a spouse or domestic partner, of which the Member does not know and could not reasonably be expected to know.

Regulation 8AAA of the Local Government (General) Regulations 2013 prescribes a number of matters, including specified matters concerning section 12 reviews, allowances and benefits policies applying equally to Members, training and development policies, strategic management plans, annual business plans, budgets, the declaration of rates other than a separate rate, and certain committee/subsidiary matters.

6.2 Exemptions relevant to general conflicts

The Act also contains exemptions that apply to general conflicts in specified circumstances, including, subject to the exact statutory requirements:

- engagement with a community group, sporting club or similar organisation undertaken in the Member's capacity as a Council Member;
- membership of a political party;
- membership of a community group, sporting club or similar organisation where the Member is not an office holder;
- having been a student of a particular school or being involved with a school as the parent of a student; and
- nomination or appointment by a council to a board of a corporation or other association.

An exemption from a general conflict does not necessarily prevent a material conflict from arising. Members must consider each category separately.

7. Managing a Material Conflict of Interest

Where a Member has a material conflict of interest, section 75C requires the Member to:

- verbally inform the meeting of the material conflict and explain the nature of the interest; and
- leave the meeting room, including any area set aside for the public, so that the Member cannot view or hear the discussion or voting, and remain absent while the matter is discussed and voted on.

Where Council meetings are broadcast, the Member must not watch or listen to the relevant discussion or voting while excluded.

The Act provides a mechanism for written Ministerial approval in limited circumstances where the number of Members affected would otherwise obstruct the conduct of the meeting and the approval is considered to be in the interests of the Council's community and area.

8. Managing a General Conflict of Interest

Where a Member has a general conflict of interest, section 75B requires the Member to deal with the conflict in a transparent and accountable way and inform the meeting:

- of the Member's interest in the matter;
- whether the Member proposes to participate in the meeting in relation to the matter;
- if participating, how the Member intends to deal with the conflict, including whether the Member intends to vote; and
- the Member's reasons for participating and, if relevant, voting.

A Member may determine that non-participation is the appropriate way to manage a general conflict, but non-participation is not the only method permitted by the Act. If a Member participates in debate but decides not to vote, the Member must leave the chamber before the vote is taken; a Member who remains present cannot simply abstain from voting.

The Act also contains a quorum-related provision that may permit participation where a quorum cannot otherwise be formed because Members propose to exclude themselves to comply with section 75B. The precise statutory requirements must be considered before relying on this provision.

9. Meeting Minutes and Records

The minutes must accurately reflect declarations made to the meeting.

9.1 Material conflict

For a material conflict, the minutes are to record:

- the Member's name;
- the nature of the interest as described by the Member; and
- where applicable, the fact that the Member participated under a Ministerial approval.

9.2 General conflict

For a general conflict, the minutes are to record:

- the Member's name;
- the nature of the interest as described by the Member;
- the manner in which the Member dealt with the conflict;
- if the Member voted, the manner in which the Member voted; and
- the manner in which the majority of persons entitled to vote voted on the matter.

Council may provide a declaration form to assist Members and the minute taker. Completion of a form does not replace the Member's obligation to make the required verbal disclosure at the meeting.

10. Committees and Subsidiaries

The conflict of interest provisions apply to Council committee meetings as if the committee were a council and the committee member were a Council Member. The Act also applies the provisions to board meetings of Council subsidiaries, subject to the statutory qualifications and exemptions.

Conflict of Interest Guidelines



A committee member who is also a Council Member or Council employee is not regarded as having a conflict merely because of that status. Members must nevertheless consider whether some other private, material or specified interest gives rise to a conflict.

11. Practical Procedure Before and During Meetings

1. Review the agenda and attachments before the meeting.
2. Identify any personal, family, employment, business, organisational, gift, trust or other interests relevant to an agenda item.
3. Determine whether the circumstances may amount to a material conflict or general conflict.
4. Check whether a statutory exemption applies.
5. If uncertain about the legislative framework, seek procedural assistance from the Chief Executive Officer or obtain independent advice as appropriate.
6. At the meeting, make the required verbal declaration before participating in the relevant item.
7. For a material conflict, leave so the discussion and vote cannot be seen or heard.
8. For a general conflict, clearly state whether you will participate, how you will manage the conflict, whether you will vote, and why you are participating.
9. Ensure the minute taker has accurately understood the declaration.
10. Remain alert to conflicts arising unexpectedly during debate and declare them as soon as they become apparent.

12. Conflict of Interest Declaration Form

Council Members may use the following form as an administrative aid. The form does not replace the verbal declaration required by the Act.

Member name	
Meeting	☐ Council ☐ Special Council ☐ Committee: _____
Meeting date	
Agenda item / report	
Conflict type	☐ Material conflict – section 75 ☐ General conflict – section 74
Nature of interest	
If material	I will declare the material conflict and leave the meeting so I cannot view or hear the discussion or voting.
If general	☐ I will not participate and will leave the meeting. ☐ I will participate. I will manage the conflict transparently and accountably as described below.
How general conflict will be managed	
Voting intention	☐ Vote ☐ Not vote and leave before the vote
Reason for participating / voting	
Signature / date	

13. Quick Checklist

- ☐ Have I considered my own interests and, for a possible material conflict, the interests of persons and bodies specified in section 75?

Conflict of Interest Guidelines



- ☐ Could the outcome produce a benefit or detriment for a specified person or body?
- ☐ Might an impartial, fair-minded person consider my private interests could affect my public duty?
- ☐ Does an exemption apply?
- ☐ Have I made a clear verbal declaration to the meeting?
- ☐ Have I taken the correct action for a material or general conflict?
- ☐ Has the minute taker received enough information to accurately record the declaration and action?

Document administration and control

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Applicable legislation/documents:	• Local Government Act 1999 (SA), • Local Government (General) regulations 2013 • Council's Code/Behavioural Standards
Public consultation required / undertaken:	Yes
Availability	This Policy is available for inspection at the Council office, and any person may obtain a copy of this Policy upon payment of the fee fixed by Council in accordance with Council's Fees and Charges adopted each financial year. It is also available on Council's website www.Peterborough.sa.gov.au. Any grievance in relation to this policy or its application should be forwarded in writing to the Chief Executive Officer of the Council.
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