

Title	Conflict of Interest Policy
Description	A policy to set out the conflict of interest obligations of Council staff, contractors and suppliers.
Category	Governance
Type	Policy
Approval authority	Executive Team
Responsible officer	Senior Governance Advisor
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Human Rights compatibility	This policy has been assessed and is compatible with the Victorian Charter of Human Rights and Responsibilities

1. Purpose

This policy sets out the conflict of interest obligations as follows:

- Obligations for City of Yarra staff that arise from the Staff Code of Conduct; individual contracts of employment; and the Local Government Act 2020;
- Obligations for City of Yarra contractors that arise from the City of Yarra Procurement Policy; and the Local Government Act 2020.
- Obligations for Council suppliers that arise from the City of Yarra Procurement Policy; purchase orders, contracts or other terms of engagement; and the Local Government Act 2020.

The purpose of this policy is to assist the City of Yarra in effectively identifying, disclosing and managing any actual, potential or perceived conflicts of interest in order to protect its integrity, manage risk and comply with its legislative obligations.

2. Policy

All staff and contractors to the City of Yarra have a duty to put the public interest above their private interests when carrying out their official functions. They are expected to:

- identify, declare and manage conflicts of interest effectively;
- apply good practice principles and incorporate the effective management of any conflicts of interest into their business as usual practices;
- abstain from any decision-making process in which they could be compromised, or appear to be compromised;
- report any conflicts of interest as soon as they are identified;
- record conflicts of interest on the approved standard conflict of interest declaration form.

Suppliers to the City of Yarra have an obligation to support Council in fostering an environment free from conflicts of interests through their own behaviour and reporting to Council any instances contrary to the Staff Code of Conduct.

3. Guidance

3.1. Conflicts of interest

There are two classes of conflict of interest.

General Conflict of Interest

A *general conflict of interest* is any matter that an impartial, fair-minded person would consider that private interests of a member of staff or contractor could result in them acting in a manner that is contrary to their public duty.

Material Conflict of Interest

A *material conflict of interest* is any matter where an affected person would gain a benefit or suffer a loss depending on the outcome of the matter. The benefit may arise or the loss may be incurred directly or indirectly and in a pecuniary or non-pecuniary form.

An affected person, for the purposes of a material conflict of interest, includes:

- the member of staff or contractor involved in the matter (the relevant person);
- a family member of the relevant person;
- a body corporate of which the relevant person or their spouse or domestic partner is a director or a member of the governing body;
- an employer of the relevant person, unless the employer is a public body;
- a business partner of the relevant person;
- a person for whom the relevant person is a consultant, contractor or agent;
- a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee;
- a person from whom the relevant person has received a disclosable gift (as defined in the Act – currently most gifts with a value over \$500).

There are some exemptions from these provisions, which mean that a conflict of interest does not exist if:

- 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 interest 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; or
- 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.

3.2. Identifying conflicts of interest

Self identification

Council officers are best placed to identify if and when a conflict or potential conflict exists. They are at the coalface of relationships and practices that can influence the delivery of programs and services.

It is imperative that any general or material conflicts of interest are managed transparently and effectively. Having competing interests is not a problem in itself as long as it is identified and managed effectively.

Whilst conflicts of interests may occur in any part of Council, some functions and activities pose higher risks than others and may require increased vigilance. These high risk areas include recruitment, procurement, infringements and prosecutions, permits and approvals and grants.

Examples of conflicts of interest that may arise in these high risk areas are:

Risk	Example
Procurement	Where a staff member has access to detailed pricing and contractual information about a supplier and is friends with a person operating a similar business.
Recruitment	Where a staff member is on a selection panel and interviews a family member, friend or someone they know.
Infringements and prosecutions	Where a Council contractor responsible for enforcement of Council's local laws is a part owner of a building company operating at a site that has been subject to public complaints.
Permits and approvals	Where a staff member is responsible for assessing planning permit applications is allocated an application nearby to their parents' home.
Grants	Where the domestic partner of a staff member involved in developing grant guidelines is an artist who is likely to apply for a future grant.

Independent identification

Council shall undertake a range of measures to identify conflicts of interests and ensure the obligations of the Staff Code of Conduct are well communicated and understood. These include:

- Staff in high risk areas shall be required to make proactive attestations in relation to conflicts of interest, such as declarations by panellists at the commencement of tender processes;
- Periodic eLearning training (or other mechanisms) shall be conducted to ensure the Staff Code of Conduct is communicated and understood; and
- Conflict of interest detection measures shall feature as part of the internal audit program.

3.3. Declaring conflicts of interest

All persons with a conflict of interest have a positive obligation to declare it in writing.

Singular conflict of interest

A conflict of interest may occur on a one-off occasion, such as during a recruitment process or a procurement process. In these instances, it is sufficient to make a written declaration of the conflict of

interest as part of that process. That declaration may take the form of a file note stored in the appropriate file.

Ongoing conflict of interest

A conflict of interest that is either ongoing or has the potential to recur, or any voluntary matters that an officer may choose to declare (out of an abundance of caution) shall be declared using a conflict of interest form and lodged with Council's Governance Support Unit. These declarations and the conflict of interest register shall be available to direct line management but shall otherwise be confidential unless required to be disclosed by law.

3.4. Managing conflicts of interest

Management of conflicts of interest occurs according to a six-part management process known as "register, restrict, recruit, remove, relinquish or resign".

Strategy	Action
Register	Details of the existence of a possible or potential conflict of interest are formally advised and recorded.
Restrict	Restrictions are placed on the employee's involvement in the matter.
Recruit	A disinterested third party is appointed to oversee part or all of the process that deals with the matter.
Remove	The employee does not participate at all in the matter.
Relinquish	The private interest concerned is relinquished.
Resign	The interest is such that it is incompatible with the person's employment with the Council and the person resigns.

The applicable risk management strategy to be applied depends on the particular circumstances of the conflict of interest. In most cases, one of these strategies shall be sufficient, but it may also be appropriate to implement two or more measures.

By way of illustration, the following examples are provided:

- The domestic partner of a member of staff is a planning consultant who regularly makes applications to Council on behalf of their clients. The member or staff has an administrative role in the planning team, but is not involved with assessing applications. The member of staff **registers** this conflict of interest on the conflict of interest register.
- A member of staff has authority to assign projects to contractors who have been appointed to a panel following a tender process. The staff member's father is an employee of one of the appointed contractors. The interest is managed by **restricting** the staff member so that they are not permitted to be involved in the development of the applicable program and cannot participate in project management or payments in relation to projects assigned to any of the companies on that panel. Other staff may continue to do so, but reporting lines are altered to ensure the conflicted staff member is not indirectly involved.
- A town planner has been assessing a permit application for many months, when an objection to the application is received from a friend. As it is not practicable to remove the planner at that point, another planner is **recruited** to assess the objection and to review the planner's assessment of the application to ensure that the objection has not been treated inappropriately.

- A staff member from Council's HR team is assigned to an interview panel, only to discover that a friend has submitted an application. The staff member is **removed** from the panel before the interview process and an alternative member of the team takes their place.
- A staff member is about to embark on a procurement process for a new computer system, and realises that they have a significant shareholding in one of the likely tenderers. Before the process begins, the staff member **relinquishes** their interest by selling their shares in the company at market value.
- The domestic partner of a member of staff is offered a senior management position with the City of Yarra which would put them as the direct line manager of their partner. After exploring alternative roles in the Council, the staff member determines that there are no suitable positions in other parts of the organisation and that the conflict of interest will be difficult to manage and **resigns**.

4. Responsibilities

Staff and Contractors

Above all else, staff and contractors shall ensure that they do not allow their private interests to interfere with the discharge of their public duty. In addition, staff and contractors shall disclose any conflict of interest in accordance with this policy as soon as practicable after it arises. Such disclosures will be truthful and complete, and submitted to Council's Governance Support Unit.

Managers and supervisors

Managers and supervisors who become aware that one of their staff have a conflict of interest shall ensure that the conflict of interest has been declared in accordance with this policy and shall establish appropriate conflict of interest management strategies. It is also important to document any measures put in place to manage the conflict of interest as well as ensure any necessary system controls have been implemented.

Suppliers

Suppliers to Council have an obligation to report any instances of conflict of interest that it becomes aware of, either by contacting Council's Governance Support Unit, the Council's Public Interest Disclosure Coordinator or, in the case of corrupt activity, to the Independent Broad-based Anti-corruption Commission.

Suppliers who are found to have engaged in practices that knowingly create inappropriate and undeclared conflicts of interest (such as offering future employment to a staff member in the expectation of preferential treatment) will be in breach of their contractual obligations to Council and are subject to a review of the relationship and possible termination of the contract.

Governance Support Unit

The Governance Support Unit shall be responsible for the administration of Council's conflict of interest regime. This includes:

- maintaining a register of conflicts of interest declared in accordance with this policy;
- notifying line management of every conflict of interest declaration made and included on the register;
- ensuring the conflict of interest register is available only to line management and to others where required by law (such as the Local Government Inspectorate);
- issuing a reminder to all staff at least twice each year of their obligation to declare conflicts of interest in accordance with this policy; and
- reviewing this policy in accordance with the policy review cycle.

Whistleblowers

Any person who considers that a conflict of interests may not have been declared or managed appropriately should speak up and notify their manager or Council's Public Interest Disclosure Coordinator.

Council will take decisive action against employees who discriminate against or victimise those who speak up in good faith.

Policy breaches

A failure to avoid or identify, declare and manage a conflict of interest in accordance with this policy will result in an internal investigation and could lead to disciplinary action up to and including termination of employment. All employees will be provided with procedural fairness through any such formal process. Contractors may be subject to contract renegotiation, including termination. Additionally, actions inconsistent with this policy may be unlawful.

Where the Chief Executive Officer forms the view that a breach of the law has taken place, Council will report the matter to the appropriate authority and fully cooperate with any subsequent investigation.

5. Related Documents

- City of Yarra Staff Code of Conduct
- City of Yarra Fraud and Corruption Control Policy
- Local Government Act 2020
- Public Administration Act 2004
- Independent Broad-based Anti-corruption Commission Act 2011