

Conflict of interest – An Overview

This guidance note is for use by Community Asset Committees managing council facilities.

Introduction

Your committee performs a valuable community service by managing a facility for the public benefit.

To protect the reputation of the committee and ensure that the reserve is managed in the **public interest** (the best interests of the community):

- conflicts of interest should be avoided where possible
- if a conflict of interest exists, it must be declared and managed in the public interest.

Conflict of interest policy

Your committee is expected to have a *Conflict of Interest* policy. Council can assist in the development of the policy or alternatively you can visit <https://www.communitydirectors.com.au/icda/> which provides information for community committees.

Definitions

What is a conflict of interest?

A conflict of interest is a conflict between:

- your public duty to manage the reserve in the best interests of the community; and
- your **private interests**.

What is a conflict of duty?

A conflict of duty (also known as a conflict of role) is a type of conflict of interest that can occur even if you do not have any private interest at stake. It is a conflict between:

- your public duty to manage the asset in the best interests of the community; and
- your **duty to another organisation** (private or public).
It exists due to your role with the other organisation (e.g. as a committee member, employee, volunteer, or member).

How broad is the definition?

A conflict of interest:

- exists whether it is real, potential, or perceived
- can be an interest that is direct (held by you) or indirect (held by a relative or close associate)
- can be pecuniary (financial) or non-pecuniary (non-financial), or a mixture of both.

For details see [Appendix 1](#).

.Register of interests

Your committee should have a *Register of Interests* in which the interests of committee members that **may give rise to a conflict of interest** are recorded.

You are responsible for ensuring that your interests as recorded in the register are correct and complete.

The chair will ensure that the register is stored in a manner that maintains the confidentiality of members.

At the meeting

Confirm your interests in the register

The chair will bring the *Register of Interests* to all committee meetings. At the start of each meeting, he/she will ask you and the other members present to confirm that your interests as recorded in the register are complete and correct.

If there are no changes, the minutes will note that 'all committee members present confirmed that their entries in the *Register of Interests* are complete and correct'.

If you have new interests that may give rise to a conflict but are not yet included in the register you must declare them, so that they can be recorded in the minutes. The chair will then arrange for them to be entered into the register.

Declare any conflict with an agenda item

Conflicts of interest should be avoided where possible.

If a conflict exists, it must be declared and managed in the **public interest** (the best interests of managing the reserve for the benefit of the community).

At the start of each committee meeting the chair will also ask you and the other members present to declare any interest (private interest or duty to another organisation) in relation to any item on the agenda. You must declare any interest you have that relates to any item on the agenda, *even if it is already recorded in the register*.

During the meeting, if you realise that you have an undeclared interest, declare it immediately. Similarly, if you believe that another member may have an undeclared interest, raise a query to enable him/her to declare the interest, if it exists.

Managing a conflict of interest

The committee determines how a conflict of interest will be managed in the public interest. In doing so, it starts by deciding whether the conflict is 'material' (serious).

- **Material conflicts:** the standard procedure for managing a material conflict of interest is **remove** – i.e. the member with the conflict leaves the room and does not take part in any discussion or decision-making on the 'conflicted' issue. A lesser option will not usually be in the public interest. However, a stronger option may be required if the conflict is of unacceptable frequency or duration.
- **Non-material conflicts:** if a conflict of interest is not material, there is more likelihood that a lesser option will be in the public interest – e.g. recording the conflict in the minutes and then allowing the member to participate in the committee's discussion and decision, or to participate in discussion but not decision-making.

For details of what options are available to the committee for managing a conflict of interest, see [Appendix 2](#).

For details of how the committee should decide whether a conflict is material and how the conflict should be managed, see [Appendix 3](#).

Recording in the minutes

The minutes of the committee meeting should record:

- a description of the interest and the conflict (the dollar value of a financial interests does not need to be included)
- whether the conflict is material

- how it will be managed (and for an option other than 'remove', why it is in the public interest)
- where applicable, the times and item, or part thereof, for which the member is absent from the room.

Breach of committee's policy

If you may have breached your committee's policy, notify the chair immediately. If you believe another member may have breached the policy but not notified the chair, advise the chair or approach the other member, who should then notify the chair. For details of the process the committee should follow if a breach may have occurred, see Council's model policy.

Appendix 1: How broad is the definition of a conflict of interest?

For all conflicts of interest, including conflicts of duty:

Real, potential or perceived

A conflict of interest exists whether it is:

- **real** – it currently exists;
- **potential** – it may arise, given the circumstances;
- **perceived** – members of the public could reasonably form the view that a conflict exists or could arise that may improperly influence the performance of your duty as a committee member, now or in the future.

Direct or indirect

A private interest can be direct or indirect. A direct interest is held by you. An indirect interest is held by your relative or close associate, for example:

- an immediate family member (e.g. spouse, partner, child, parent, sibling);
- a regular household member; or
- another close associate (e.g. friend, relative, business associate, rival, enemy).

Pecuniary or non-pecuniary

A private interest can be pecuniary (financial) or non-pecuniary (non-financial), or a mixture of both. It can arise from a wide range of personal or professional/business-related sources.

Pecuniary interests - include actual, potential, or perceived financial gain or loss. Money does not need to change hands. The interest exists if you (or a relative or close associate):

- own property;
- hold shares, investments or other business interests;
- have a position in a company bidding for government work;
- receive benefits such as concessions, discounts, gifts or hospitality from a particular source;
- hold office in a corporation (public, private or trustee), an incorporated association, or other entity;
- have any other relevant financial interest, for example, are:
 - entitled to receive income from a contract;
 - a beneficiary or trustee of a trust; or
 - entitled to receive income from an office held for payment/reward or from a trade, vocation, or profession.

Non-pecuniary interests - may arise from personal or family relationships or from your involvement in sporting, social, or cultural activities, etc. They include a tendency towards favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group. If your personal values are likely to impact on the proper performance of your public duty, this can also lead to a conflict of interest. Enmity as well as friendship can give rise to a conflict of interest.

Appendix 2: Options for managing a conflict of interest

The committee must manage all conflicts of interest in the **public interest** (the best interests of the community). Depending on the conflict, the options are:

1. **Remove** – the member with the conflict leaves the room and does not participate in any discussion or decision-making on the ‘conflicted’ matter.
2. **Record** – details of the conflict of interest are recorded in the minutes. Monitoring occurs to check whether this remains the appropriate option.
3. **Restrict** – the member’s involvement in discussion and/or decision-making on the matter is restricted to the extent that matches the public interest. Monitoring occurs to check whether this remains the appropriate option.
4. **Recruit** – an impartial third party is engaged to provide advice (e.g. probity adviser, lawyer, or governance expert from DELWP or the Victorian Public Sector Commission).
5. **Relinquish or resign** – the member relinquishes their private interest or steps down from their role with the other organisation on a temporary or permanent basis. Alternatively, he or she resigns from the committee itself.

For which option to choose, see [Appendix 3](#).

Appendix 3: Process for deciding

The process for deciding how to manage a particular conflict of interest is as follows:

a) Is the conflict material?

The committee starts by deciding whether the conflict is material (serious). To do so, it takes into account all relevant factors and circumstances, including:

- the objectives and functions of the committee;
- the matter to be discussed and determined;
- the nature of the conflict (real, potential or perceived?);
- the severity of the conflict, including:
 - the amount, scope, and likelihood of any expected benefit (e.g. is it a large benefit primarily to the committee member or a small benefit that thousands of people including the member will receive?); and
 - any other relevant circumstances (e.g. if the conflict relates to a member’s partner working at an organisation about which the committee is to make a decision: is the partner currently working there as the CEO? Or did they leave a few years ago from a large organisation in which their work was not connected to the decision being made by the committee?);
- the potential effect of the conflict, including:
 - the extent to which the member’s ability to make an impartial decision in the public interest could be compromised (or could reasonably be seen to be compromised); and

- the overall likelihood that the conflict of interest may affect public confidence in the integrity of the committee and its decisions.

b) Managing material conflicts of interest

The **standard procedure** for managing a material conflict of interest is to **remove** the member with the conflict from all participation in the matter. The committee member:

- leaves the room at the start of the relevant agenda item and not return until the start of the next item;
- does not discuss the matter at all with any other member (either in the meeting or elsewhere); and
- does not participate in any committee decision on the matter.

The standard procedure is followed unless the committee determines and records in the minutes clear reasons why it is not in the public interest.

Stronger option for managing a material conflict

If the public could reasonably form the view that a conflict of interest is of unacceptable frequency or duration then to maintain public confidence and protect the reputation of the committee it may be necessary, in the public interest, for the member to:

- relinquish their private interest;
- resign or stand down on a temporary basis from the other organisation to which he/she has a duty;
or
- resign from the committee.

If the committee is unsure whether a stronger option is in the public interest Council will be contacted for advice.

Lesser options for managing a material conflict

A lesser option (record, restrict or recruit) will not usually be in the public interest for managing a material conflict of interest. If the committee is unsure whether a lesser option is in the public interest it will err on the side of caution.

If the committee decides on a lesser option then, in addition to clearly minuting why it is in the public interest, careful monitoring will occur to ensure that the lesser option remains appropriate.

Examples of when a lesser option may be in the public interest include:

- **Discussion:** If the 'conflicted' member was appointed on the basis of their knowledge of the matter then it may be in the public interest for them to be present for part of the committee's discussions. (However, if an 'unconflicted' member is absent who also has this expertise then it will usually be in the public interest for discussion to occur at the next meeting instead.)
- **Decision:** If the recommended procedure of 'remove' would mean that there is no quorum for the decision even if all 'unconflicted' members are present then a lesser option will be in the public interest. (However, if 'unconflicted' committee member/s are absent then it will usually be in the public interest for the decision to be held over to the next committee meeting instead).
If this is a common occurrence Council should be notified.

c) Managing non-material conflicts of interest

For a non-material conflict of interest, there is more likelihood that a lesser option (record, restrict or recruit) will be in the public interest. In making its decision, the committee takes into account all relevant factors

- e.g. the lower the severity of the conflict, the more likely that a lesser option will be in the public interest.

If the committee decides on a lesser option then, in addition to minuting why it is in the public interest, careful monitoring will occur to ensure that it remains appropriate – e.g. the committee may initially decide to only ‘record’ the conflict but after monitoring may decide instead to ‘restrict’ the member by allowing them to participate in some aspects of the discussion but removing them from others and from all decision-making on the issue.

If the committee is unsure whether a lesser option is in the public interest it will err on the side of caution and decide on the standard procedure of **remove** (i.e. the member leaves the room and does not participate in any discussion or decision-making on the matter).

Further information

Information on this topic (e.g. model policy and this guidance note) is available from Council’s Website <http://www.colacotway.vic.gov.au/Recreation-tourism/Facilities-venues> .