

Conflict of Interest



Council Policy

A4067151

Lifestyle Capital of Victoria

1. Purpose and Intent

This Policy provides guidance on the specific circumstances that give rise to a conflict of interest and clarifies the types of interests that constitute a conflict of interest, the process that must be followed and the consequences or actions that may be taken for failing to comply with the requirements of the *Local Government Act 2020*. Recognising and declaring interests, whether they are actual, potential or perceived, mitigates risk and reputational damage to Council.

2. Scope

This Policy applies to Councillors, the CEO, all Employees of Council, including contractors and agency and/or labour hire staff engaged by Council, Audit and Risk Committee members, Delegated Committee Members, Community Asset Committees and all other committee members of Council.

3. Definitions

Affected person means a 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 or a person from whom the relevant person has received a disclosable gift.

Audit and Risk Committee means a Committee established under the *Local Government Act 1989* for the purpose of reviewing, discussing and assessing external reporting, external auditing, internal auditing, internal control and risk management, compliance and ethics, fraud preventions and related party transaction oversights.

CEO means the Chief Executive Officer of Council.

Community Asset Committee means a committee established under Section 65 of the *Local Government Act 2020*.

Council means Frankston City Council.

Councillor means a person elected by eligible residents and ratepayers in a Local Government election or by-election.

Delegated Committee means a committee established under Section 63 of the *Local Government Act 2020*, including joint delegated committees.

Disclosable gift means one or more gifts with a total value of more than \$500, or if an amount is prescribed, the prescribed amount received from a person in the 5 years preceding the decision on the matter. This does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a Delegated Committee.

Employee means people who are employed by the Chief Executive Officer or by a person authorised by the Chief Executive Officer to employ Council staff and employed to perform, or assist in performing, the functions of the Council and or the Chief Executive Officer. It also includes agency staff, temporary contract staff and contractors engaged by Council.

Family member means your spouse or domestic partner of the relevant person, a parent, grandparent, sibling, your child, step-sibling or step-child of the relevant person or of their spouse or domestic partner, step parent and any other person that regularly resides with the relevant person.

Matter means a matter which a Council, Delegated Committee, Community Asset Committee or a member of Council staff is concerned and that will require a power to be exercised, or a duty or function to be performed or a decision to be made by the Council, Delegated Committee or Community Asset Committee in respect of that matter; or a power to be exercised, or a duty or function to be performed or a decision to be made by a member of Council staff in respect of a matter.

Not for profit organisation means a body that operates exclusively for charitable, civil, sporting or other social purposes and does not share or allocate the funds or profits of the body or organisation with the owners, shareholders or executives of the body or organisation.

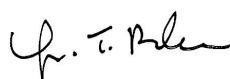
Private interests means any direct or indirect interest of a relevant person that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief.

Public duty means the responsibilities and obligations that a relevant person has to members of the public in their role as a relevant person.

Relevant person means a person who is a Councillor, a member of a Delegated Committee or Community Asset Committee or a member of Council staff.

4. Authorisation

This Policy is managed by the Governance and Information Department, and is approved by Frankston City's Mayor and Council's Chief Executive Officer (CEO):



Mayor, Frankston City



CEO, Frankston City Council

in accordance with Frankston City Council resolution at its Council meeting of 14 December 2020.

5. Policy

6.1 Types of Interests

Division 2 of of the Act describes the two (2) types of interests, being general conflict of interest and material conflict of interest.

General conflict of interest means an interest that 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.

Material conflict of interest means an interest where an affected person would gain benefit or suffer a loss depending on the outcome of the matter. The benefit may arise or the loss incurred directly or indirectly or in a pecuniary or non-pecuniary form.

6.2 What are the general exemptions?

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

- a. 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.
- b. The 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;
- c. 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;
- d. 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;
- e. The interest only arises because a family member of the relevant person is a member but not an officer holder of a not-for-profit organisation;
- f. 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; and
- g. 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, as outlined below:
 - i) relates to the nomination or appointment by the Council of a Councillor to a position for which the Councillor will not be remunerated;
 - ii) a submission by the Council to an electoral structure review;
 - iii) the nomination or election of a Councillor to the position of Mayor or Deputy Mayor;
 - iv) a decision in relation to the payment of allowances to the Mayor or Councillors (this exemption will only apply until such time a decision is made by the Victorian Independent Remuneration Tribunal);
 - v) the adoption of an expenses policy by Council;
 - vi) a decision by the Council to deal with a matter in an alternative manner, as defined in section 67 of the Act
 - vii) the appointment of a delegated committee when a quorum could not be maintained by the Council;
 - viii) the appointment of a councillor as a member or Chairperson of a delegated committee;
 - ix) a referral of a councillor conduct matter to an arbiter under the Councillor Code of Conduct;
 - x) an application to a Councillor Conduct Panel;
 - xi) an application to VCAT for a review of a Councillor Conduct panel decision;
 - xii) a resolution by Council to declare a uniform rate or differential rates;
 - xiii) a resolution that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under taxation legislation;

- xiv) in relation to a decision by a Councillor where a decision by Council on a matter has been made, including in relation to a budget, revised budget or Council plan, and any component part of the matter in which the Councillor had a conflict of interest has been separately resolved and the Councillor correctly disclosed a conflict of interest when the component part was considered
- xv) the Councillor is a representative of the Council to a Local Government Waste Forum established under the *Environment Protection Act 1970*;
- xvi) the Councillor is a director of a Waste and Resource Recovery Group established under the *Environment Protection Act 1970*;
- xvii) the Councillor is a member of the Country Fire Authority appointed under section 7 of the *Country Fire Authority Act 1958*; or
- xviii) in the case of a matter that relates to an application made under the *Planning and Environment Act 1987*, the Councillor is a member of the governing body of a referral authority that has considered the application under section 56 of that Act.

6.3 Conflict of Interest Requirements

Conflict of interest requirements apply to Council meetings, Delegated Committees, Community Asset Committees, Councillor Briefings, Audit and Risk Committees, Advisory Committees or Committee Members of Council and all Employees of Council, including contractors and agency and/or labour hire staff engaged by Council, who may prepare reports or documents, or who consider and make recommendations or decisions either alone or as part of a team.

6.4 Disclosure of a Conflict of Interest at a Council Meeting

A Councillor who has a conflict of interest in a matter being considered at a Council meeting at which he or she:

- 6.4.1 is present must disclose that conflict of interest by explaining the nature of the conflict of interest to those present at the Council meeting immediately before the matter is considered; or
- 6.4.2 intends to be present, must disclose that conflict of interest by providing to the Chief Executive Officer before the Council meeting commences a written notice:
 - 6.4.2.1 advising of the conflict of interest;
 - 6.4.2.2 explaining the nature of the conflict of interest; and
 - 6.4.2.3 detailing, if the nature of the conflict of interest involves a Councillor's relationship with or a gift from another person, the:
 - (a) name of the other person;
 - (b) nature of the relationship with that other person or the date of receipt, value and type of gift received from the other person; and
 - (c) nature of that other person's interest in the matter
- 6.4.3 immediately before the matter is considered at the meeting announcing to those present that he or she has a conflict of interest and that a written notice has been given to the Chief Executive Officer as detailed in the Governance Rules; and

- 6.4.4 the Councillor must, in either event, leave the Council meeting immediately after giving the explanation or making the announcement (as the case may be) and not return to the meeting until after the matter has been disposed of.

6.5 Disclosure of Conflict of Interest at a Delegated Committee Meeting

A member of a Delegated Committee who has a conflict of interest in a matter being considered at a Delegated Committee meeting at which he or she:

- 6.5.1 is present must disclose that conflict of interest by explaining the nature of the conflict of interest to those present at the Delegated Committee meeting immediately before the matter is considered; or
- 6.5.2 intends to present must disclose that conflict of interest by providing to the Chief Executive Officer before the Delegated Committee meeting commences a written notice:
- 6.5.2.1 advising of the conflict of interest;
- 6.5.2.2 explaining the nature of the conflict of interest; and
- 6.5.2.3 detailing, if the nature of the conflict of interest involves a member of a Delegated Committee's relationship with or a gift from another person the:
- (a) name of the other person;
- (b) nature of the relationship with that other person or the date of receipt, value and type of gift received from the other person; and
- (c) nature of that other person's interest in the matter.
- 6.5.3 immediately before the matter is considered at the meeting announcing to those present that he or she has a conflict of interest and that a written notice has been given to the Chief Executive Officer as detailed in the Governance Rules; and
- 6.5.4 the member of a Delegated Committee must, in either event, leave the Delegated Committee meeting immediately after giving the explanation or making the announcement (as the case may be) and not return to the meeting until after the matter has been disposed of.

6.6 Disclosure of a Conflict of Interest at a Community Asset Committee Meeting

A Councillor who has a conflict of interest in a matter being considered at a Community Asset Committee meeting at which he or she:

- 6.6.1 is present must disclose that conflict of interest by explaining the nature of the conflict of interest to those present at the Community Asset Committee meeting immediately before the matter is considered; or
- 6.6.2 intends to present must disclose that conflict of interest by providing to the Chief Executive Officer before the Community Asset Committee meeting commences a written notice:
- 6.6.2.1 advising of the conflict of interest;
- 6.6.2.2 explaining the nature of the conflict of interest; and

6.6.2.3 detailing, if the nature of the conflict of interest involves a member of a Councillor's relationship with or a gift from another person the:

- (a) name of the other person;
- (b) nature of the relationship with that other person or the date of receipt, value and type of gift received from the other person; and
- (c) nature of that other person's interest in the matter,

6.6.3 immediately before the matter is considered at the meeting announcing to those present that he or she has a conflict of interest and that a written notice has been given to the Chief Executive Officer as detailed in the Governance Rules.

6.6.4 the Councillor must, in either event, leave the Committee Asset Committee meeting immediately after giving the explanation or making the announcement (as the case may be) and not return to the meeting until after the matter has been disposed of.

6.7 Disclosure at a Meeting Conducted Under the Auspices of Council

A Councillor who has a conflict of interest in a matter being considered by a meeting held under the auspices of Council at which he or she is present must:

- 6.7.1 disclose that conflict of interest by explaining the nature of the conflict of interest to those present at the meeting immediately before the matter is considered;
- 6.7.2 absent himself or herself from any discussion of the matter; and
- 6.7.3 as soon as practicable after the meeting concludes provide to the Chief Executive Officer a written notice recording that the disclosure was made and accurately summarising the explanation given to those present at the meeting.

6.8 Disclosure by Members of Council Staff Preparing Reports for Meetings

A member of Council staff who, in his or her capacity as a member of Council staff, has a conflict of interest in a matter in respect of which he or she is preparing or contributing to the preparation of a Report for the consideration of a Council meeting, Delegated Committee meeting or Community Asset Committee meeting must:

- 6.8.1 immediately upon becoming aware of the conflict of interest, provide a written notice to the Chief Executive Officer disclosing the conflict of interest and explaining the nature of the conflict of interest.
- 6.8.2 the Chief Executive Officer must ensure that the Report records the fact that a member of Council staff disclosed a conflict of interest in the subject-matter of the Report.
- 6.8.3 if the member of Council staff is the Chief Executive Officer, the written notice must be given to the Mayor and the obligation may be discharged by any other member of Council staff responsible for the preparation of the Report.

6.9 Disclosure of Conflict of Interest by Members of Council Staff in the Exercise of Delegated Power

6.9.1 A member of Council staff who has a conflict of interest in a matter requiring a decision to be made by the member of Council staff as delegate must, immediately upon

becoming aware of the conflict of interest, provide a written notice to the Chief Executive Officer explaining the nature of the conflict of interest.

6.9.2 If the member of Council staff is the Chief Executive Officer, the written notice must be given to the Mayor.

6.10 Disclosure by a Member of Council Staff in the Exercise of a Statutory Function

6.10.1 A member of Council staff who has a conflict of interest in a matter requiring a statutory function to be performed under an Act by the member of Council staff must, upon becoming aware of the conflict of interest, immediately provide a written notice to the Chief Executive Officer explaining the nature of the conflict of interest.

6.10.2 If the member of Council staff is the Chief Executive Officer the written notice must be given to the Mayor.

6.11 Recording requirements

All disclosures of Conflicts of Interests made at a Council Meeting, Delegated Committee Meeting or Community Asset Committee Meeting will be recorded in the minutes of that meeting.

Written disclosures will be kept in a secure place for a period of three (3) years.

The Coordinator Governance will be responsible for registering all written disclosures into Council's Electronic Document Management System and maintaining a register.

6. Roles and responsibilities

The Manager Governance and Information is responsible for enforcement of and compliance with this Policy and will provide interpretation in the event of the need for clarification or when there is a dispute.

7. Policy non-compliance

Section 130 of the Local Government Act 2020 outlines the offences, in the event a person fails to disclose a general or material conflict of interest.

8. Related documents

The requirements set out in this Policy should be read in conjunction with the following:

- *Local Government Act 2020*
- *Local Government (Governance and Integrity) Regulations 2020*
- Councillors' Code of Conduct
- Staff Code of Conduct
- *Public Records Act 1973*
- Gifts and Hospitality Policy
- Risk Management Policy
- Procurement Policy

9. Implementation of the Policy

This Policy will be published on Council's website and intranet so that it can be used by employees of Council, including contractors and agency and/or labour hire staff engaged by Council, Audit and Risk Committee Members, Delegated Committee Members, Community Asset Committee Members and Councillors to understand the requirements on declaring a conflict of interest.

10. Document History

Date Approved	Change Type	Version	Next Review Date
TBD	New version	V2	December 2024