

# CONFLICT OF INTEREST POLICY



**TITLE: CONFLICT OF INTEREST POLICY**

**ADOPTED BY: COUNCIL**

**RESPONSIBILITY: CHIEF EXECUTIVE OFFICER**

**NEXT REVIEW DATE: 29/07/2015**

| Version | Decision Number | Adoption Date | History |
|---------|-----------------|---------------|---------|
| 1       |                 |               | DRAFT   |
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# CONFLICT OF INTEREST POLICY

## 1. PURPOSE

The purpose of this policy is to set out how conflicts of interest should be dealt with by council.

## 2. COMMENCEMENT OF POLICY

- 2.1 This Policy will commence from 29/7/2014. It replaces all other policies, if any, relating to conflict of interest (whether written or not).

## 3. SCOPE

- 3.1 The Policy relates to all full-time, part-time and casual employees of Katherine Town Council ('Katherine Town Council Employees'), as well as Elected Members, contractors, temporaries and subcontractors working for or on behalf of either a company or any associated companies in the Katherine Town Council workplace ('Katherine Town Council Contractors').
- 3.2 The Policy also applies to Katherine Town Council Employees, Elected Members and Katherine Town Council Contractors' inside or outside of any Katherine Town Council workplace and includes use of a Elected Member's, Contractor's or an Employee's own device.
- 3.3 The Policy does not form part of any contract of employment with Katherine Town Council. Nor does it form part of any contract for service with Katherine Town Council.

## 4. RESPONSIBILITIES

- i. All elected and staff members are responsible for declaring any conflict of interest that may arise, pursuant with provisions of section 74(1) of the Local Government Act.
- ii. The Chief Executive Officer is responsible for maintaining a register of interests pursuant with section 74 (2) of the Local Government Act.

## 5. LEGISLATIVE FRAMEWORK

Issues of conflict of interest fall under Sections 73 and 74 of the *Local Government Act* (the Act). These sections will be referred to in greater detail below.

## 6. DEFINITIONS

- **Associate** (as defined in Section 4 of the Act)- a person is an associate of another if:
  - they are in a close family relationship; or
  - they are in partnership; or
  - one is a company and the other is a director or manager of the company; or
  - they are related companies; or
  - one is a private company and the other is a shareholder in the company; or
  - a chain of relationships can be traced to them under one or more of the above paragraphs.
- **Member** - means (according to context) a member of council, a local authority, a local board, or a council committee.
- **Relative** - includes grandparent, parent, sibling, child, past or present partner, uncle or aunt.

## 7. POLICY STATEMENT

### 7.1 What is a conflict of interest?

- The term "conflict of interest" refers to situations where a conflict arises between public duty and private interest. Such conflicts generally involve opposing principles or incompatible wishes or needs. The term refers to circumstances where a member of council or staff member could be influenced by a private interest when performing an official function.
- Conflicts of interest can involve financial interests (also referred to as pecuniary interests) or personal interests. They can involve the interests of a member or his or her immediate family or relatives (where these interests are known), business partners, associates or friends. ill will, as well as friendship, can give rise to a conflict of interest.
- Where a member makes a decision that could affect the rights or interests of any person, that member must apply the principles of procedural fairness.
- A key element of procedural fairness is the so-called "rule against bias". This rule provides that a person must not act as a judge in their own cause. The basis of this rule is that even if a person was able to make an impartial judgement on a matter affecting his or her interest, the perceived bias would cast doubt on the impartiality of the decision.

### 7.2 Avoidance of conflict of interest

- Members must avoid situations in which their private interests conflict with the impartial fulfilment of their official duties in the public interest. In other words, members should not allow the pursuit of private interests to interfere with the proper discharge of their public duties.

### 7.3 Disclosure of conflicts of interest

- The council is entitled to know if there is even a remote possibility of a conflict arising. A member may often be the only person aware of the potential conflict. It is therefore the responsibility of the member to disclose any conflict of interests to the council and CEO at the first available opportunity.

### 7.4 Examples of circumstances where an elected or staff member may have an interest

- **Consideration and awarding of tenders** - Where a member may be involved in the assessment and/or approval of a tender or contract the member must make a disclosure, immediately on becoming aware, if any person who has an interest in or may benefit from the contract is a relative, personal friend, or business partner.
- **Human resource management** - where a member may have an interest due to the employment of a family member or friend.
- Any decision by council that may have a beneficial or detrimental effect on a business venture that a member may be involved with.

## 8. PROCEDURES

### 8.1 Declaring a conflict of interest

- Where a member becomes aware of a conflict of interest the member must, at the first available opportunity, make a full and frank disclosure to the council and to the CEO, as prescribed in section 74(1) of the Act.
- An agenda item titled "Disclosures of Conflict of Interest" should be included as a regular item at the commencement of every council meeting to allow members a clear opportunity to declare an interest in any item to be considered.
- Once a disclosure is made the CEO must record the disclosure in a register of interests kept for the purpose (as prescribed in section 74(2)).
- A member who has disclosed a conflict of interest must absent themselves from the applicable agenda item and all discussion related to the item, pursuant to Section 74(3) of Act which states that "a member must not, without the approval of the Minister for Local Government:  
  
(a) be present at a meeting of the council, local authority or council committee while a question where the member has a conflict of interest is under consideration; or  
(b) participate in any decision on the question."
- If an elected or staff member is unsure as to whether a conflict of interest exists, the member should either seek advice prior to being involved in any discussion or should move a motion to defer any discussion and obtain appropriate advice from a legal practitioner.

- An elected or staff member may also wish to consult the Local Government Association of the Northern Territory for more information.

## **8.2 Actions to be taken by council on discovery of a potential failure to declare an interest**

- Where council receives a complaint about a potential conflict of interest or where council becomes aware that a member may have failed to declare a conflict of interest in relation to a decision, council will:
  - (a) in the first instance, allow the elected or staff member the opportunity to explain their decision to participate in the discussion; and
  - (b) where council feels a conflict of interest was present, rescind the decision of council (where practicable) and reconsider the matter.
- The council may also resolve to refer the matter to the Department of Local Government and Regions.
- Where council is uncertain if a conflict exists, or about what action it should take, discussion on the matter will be deferred and the issue referred to a legal practitioner for advice.
- Council may also consult the Local Government Association of the Northern Territory for more information.

## **9. ACTIONS BY OTHER PARTIES**

The council acknowledges that the following actions are available to parties who become aware of a potential failure by an elected or staff member to declare a conflict of interest:

- Any person who wishes to make a complaint regarding an elected or staff member's conduct in failing to declare an interest, may make a complaint to the Local Government Disciplinary Committee, pursuant to Section 79 of the Act.
- Any elector or ratepayer who believes that a member may have failed to declare a conflict of interest in relation to a decision, may make an application to the Local Government Tribunal, to seek to declare the decision void, pursuant to Section 74(6) of the Act.
- The Department of Local Government and Regions, on becoming aware of the matter, may determine if the matter should be referred to the Local Government Disciplinary Committee.
- The Department of Local Government and Regions may also undertake a formal investigation, pursuant to Section 208 of the Act.

## **10. CONSEQUENCES OF BREACHING THE CONFLICT OF INTEREST POLICY**

- 10.1 Any breach of the Policy may result in disciplinary action, including, but not limited to, issue of a warning, demotion, suspension or termination of employment (or, for Katherine Town Council Contractors, the termination or non-renewal of their contract for service and Elected and Staff Members disciplinary action in accordance with the Local Government Act).

## **11. KATHERINE TOWN COUNCIL CONTACT**

- 11.1 Any questions about this Policy should be directed to Chief Executive Officer on 8972 5500.

## **VARIATIONS**

*Katherine Town Council reserves the right to vary, replace or terminate this Policy from time to time.*

### **Policy Version and Revision Information**

|   |                            |
|---|----------------------------|
| Policy Authorised by: Neroli Dickens        | Original issue: 30/07/2014 |
| Title: Chief Executive Officer              |                            |
| Policy Maintained by: Sophie Henderson      | Current version: 1         |
| Title: Community Services Executive Manager |                            |
| Review date: 29/07/2015                     |                            |

## Acknowledgement

*I acknowledge:*

- *receiving the Policy;*
- *that I will comply with the Policy; and*
- *that there may be disciplinary consequences if I fail to comply, which may result in the termination of my employment.*

Employee Name:

Signed:

Date:

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