What is a conflict of interest & what is required of you in assessing possible interests?
A conflict of interest can be of two (2) types – pecuniary and non-pecuniary.

A conflict of interest exists when you could be influenced, or a reasonable person would perceive that you could be influenced, by a personal interest when carrying out your public duty.

You must appropriately resolve any conflict or incompatibility between your private or personal interests and the impartial performance of your public or professional duties.

Any conflict between your interests and those of Council must be resolved to the satisfaction of the Council. When considering whether or not you have a conflict of interest, it is always important to think about how others would view your situation.

It is essential that you properly address conflict of interest issues that may arise. You must:

- Try to understand the concept and practical implications of conflict of interest issues;
- Accept that failure to resolve an actual or reasonably perceived conflict of interest is unacceptable in local government;
- Take timely and appropriate action to avoid, or if not, to disclose any actual, potential or reasonably perceived conflict of interest.

Perceptions of conflict of interest are as important as actual conflict of interest. The onus is on you to identify a conflict of interest, whether perceived or real, and take the appropriate action to resolve the conflict in favour of your public duty.

Where necessary, you must disclose an interest promptly, fully and in writing. If a disclosure is made at a Council or Committee Meeting, both the disclosure and nature of an interest must be recorded in the minutes.

Pecuniary

What is a “pecuniary interest”?
A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided in Section 443 of the Local Government Act.

A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter or if the interest is a kind specified in Section 448 of the Local Government Act.
**Non-pecuniary**

A non-pecuniary interest is a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the *Local Government Act* (e.g. a friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

A Councillor should note that matters before Council involving campaign donors may give rise to a non-pecuniary conflict of interest.

**Remoteness**

A person does not have an interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision that person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the *Local Government Act*.

**Who has a pecuniary interest?**

(1) A person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

   a. The person; or
   b. Another person with whom the person is associated as provided below.

(2) A person is taken to have a pecuniary interest in a matter if:

   a. The person’s spouse or de facto partner or a relative of the person has a pecuniary interest in the matter; or
   b. the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

(Note: relative, in relation to a person, means any of the following:

   (i) The parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the persons’ spouse;
   (ii) The spouse, de facto partners of the person or of a person referred to in (i) above).

(3) However, a person is not taken to have a pecuniary interest in a matter as referred to in (2) above:

   a. if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body;
   b. just because the person is a member of, or employed by, a Council or a statutory body or is employed by the Crown; or
   c. just because the person is a member of, or a delegate of a Council, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

**What disclosures must be made by a Councillor?**

A Councillor:

- must prepare and submit written returns of interests in accordance with Section 449 of the Local Government Act; and
- must disclose pecuniary interests in accordance with Section 451 (see below).

**Disclosure and participation in meetings (Section 451)**

A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:

- at any time during which the matter is being considered or discussed by the Council or Committee, or
- at any time during which the Council or Committee is voting on any question in relation to the matter.

**No knowledge** – A person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

**What interests do not have to be disclosed (Section 448)?**
The following interests do not have to be disclosed for the purposes of the *Local Government Act*:

- an interest as an elector;
- an interest as a ratepayer or person liable to pay a charge;
- an interest in any matter relating to the terms of which the provision of a service or the supply of goods or commodities is offered to the public or a section of the public that includes persons who are not subject to this Part;
- an interest in any matter relating to the terms on which the provisions of a service or the supply of goods or commodities is offered to a relative of the person by the Council in the same manner and subject to the same conditions as apply to persons who are not subject to this Part;
- an interest as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not) [*for further information in relation to club membership and options for managing conflicts, see the case studies under the heading “Disclosure and management of non-pecuniary interest”*];
- an interest of a member of a Council Committee as a person chosen to represent the community or as a member of a non-profit organisation or other community or special interest group if the committee member has been appointed to represent the organisation or group on the committee;
- an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument, other than an instrument that effects a change of the permissible uses of:
  
  (a) land in which the person or another person with whom the person is associated as provided in Section 443 has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise); or
  
  (b) land adjoining, or adjacent to, or in proximity to land referred to in paragraph (a) if the person or the other person with whom the person is associated would by reason of the proprietary interest have a pecuniary interest in the proposal;
- an interest relating to a contract, proposed contract or other matter if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company;
an interest of a person arising from the proposed making by the Council of an agreement between the Council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because a relative of the person is a shareholder (but not a director) or the corporation or is a member (but not a member of the committee) of the association or is a partner of the partnership;

an interest of a person arising from the making by the Council of a contract or agreement with a relative of the person for or in relation to any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreement as have been made, or as are proposed to be made, by the Council in respect of similar matters with other residents of the area:

(a) the performance by the Council at the expense of the relative of any work or service in connection with roads or sanitation;
(b) security for damage to footpaths or roads;
(c) any other service to be rendered, or act to be done, by the Council or under any Act conferring functions on the Council or by or under any contract;

an interest relating to the payment of fees to Councillors (including the Mayor and Deputy Mayor);

an interest relating to the payment of expenses and the provision of facilities to Councillors (including the Mayor and Deputy Mayor) in accordance with a policy under Section 252;

an interest relating to an election to the office of Mayor arising from the fact that a fee for the following 12 months has been determined for the office of Mayor;

an interest of a person arising from the passing for payment of a regular account for wages or salary of an employee who is a relative of the person;

an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a Councillor or member of a Council Committee;

an interest arising from appointment of a Councillor to a body as representative or delegate of the Council, whether or not a fee or other recompense is payable to the representative or delegate.

Disclosure and management of non-pecuniary interest
Non-pecuniary interests must be disclosed in meetings.

There are a broad range of options available for managing conflicts and the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with.

Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- it may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.

- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
Randwick City Council
Conflict of Interest Guidelines

- Remove the source of the conflict (eg. Relinquish or divesting the personal interest that creates the conflict)

- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in Section 451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest).

**Case Study...**
A Councillor is a member of a large metropolitan club. However, he/she is not active in the club or involved with the management of the club. In this situation, the Councillor merely enjoys the facilities of the club as a privilege of membership.

Should a matter relating to the club arise at Council, it is appropriate that the Councillor informs the Council of his/her membership. However, it is unlikely that his/her interest as a club member would overshadow his/her role as a Councillor representing the view of residents and ratepayers generally. Therefore, he/she could participate in the decision making process.

**Case Study....**
A Councillor is a member of a club in a small community. The Councillor is very active in the running of the club and while not an office holder, he/she is well known to all club members. The Councillor often discusses Council business with other members, represents their personal interests as residents and ratepayers to the Council and facilitates communication between them and Council.

The club has recently submitted a development application to the Council for a major extension of its facilities.

In this situation, the Councillor has two distinctly different interests in the matter. The first is his interest as a Councillor representing residents and ratepayers generally; the second is as a club member who is keen to see the club prosper and provide better facilities for its members.

There may be a public perception that the Councillor’s activities with the club would make it difficult for the Councillor to view the matter as representative of residents and ratepayers generally. Therefore, the Councillor should disclose his/her conflict of interest in the matter when it comes up for consideration. The Councillor should then consider whether he/she will refrain from participating in Council’s discussion and voting on the matter. If the Councillor decides not to vote then he/she should leave the room during the discussion and vote on the matter.
If the mayor or a councillor is the patron of a local club/organisation they should declare a non pecuniary interest in any relevant matter as there is likely to be a community perception that a personal interest exists. Even though the Mayor often automatically becomes the patron of a club/organisation (because of his position), possibly even without his/her knowledge, he/she should declare a non pecuniary interest in the matter when/if a related matter comes before the Council and/or a Council Committee. It will be up to each individual Councillor to determine whether he or she should vote on any matter they have declared a non pecuniary interest in.

**Disclosure to be recorded (Section 453)**
A disclosure (and the reason(s) for the disclosure) made at a meeting of the Council or Council Committee or sub-Committee must be recorded in the minutes of the meeting.

**Some examples of conflict of interests**

The following information is taken from the ICAC “Under Careful Consideration: Key Issues for Local Government” publication¹ and provides some examples of where conflict of interests may occur within Councils.

**“Tendering and purchasing**

A Council has advertised for a firm to supply and fit office equipment. A Councillor who is representative on the Council’s panel assessing the tender bids, has a close friend who is a senior executive in a firm submitting a bid. The may affect, or may be suspected to affect, the Council’s ability to make an unbiased decision.”

---

“Elected officials – business interests

Many Councillors have business and professional interests in the local government area that they represent. Conflicts can arise if their public positions allow them access to information and opportunities that could be used to advance their personal and business interests.

For example, a Councillor may be tempted to influence an application to set up a new business in the town (area) if his (her) own business could lose custom as a result.”

“Election support

A conflict can arise for a Councillor when a campaign donor who contributed financially to the Councillor’s election campaign, or a campaign supporter who worked on the election of the Councillors by handing out how-to-vote cards or erecting election posters, has a matter before the Council for determination. This could have potential to place the Councillor in a position of having a conflict of interest.

Extreme care should be taken if the nature of the relationship may constitute a pecuniary interest (for example, where it could be perceived that an election donation has been given on the understanding that the Councillor will provide support on a particular matter should he or she be elected).”

Conflict of interest checklist

The following checklist should be considered by any person who considers that they may have an interest in a matter with which Council is concerned. This checklist should be used as a guide only.

If after considering the checklist you are still unsure of your obligation, please immediately contact the General Manager who may, if appropriate, seek advice to clarify whether an interest exists.

Note that this checklist does not affect your obligation to disclose all interests in accordance with sections 444 and 445 of the Local Government Act.

1. Do I, a relative, friend or associate stand to gain or lose financially from Council’s decision or action on this matter?
   - Yes: a pecuniary interest exists – you must declare the interest and leave the meeting when the matter is being discussed and voted on.
   - No: no statutory pecuniary interest exists, continue consideration of non-pecuniary (conflict of) interest.

2. Non-pecuniary (conflict of) interest considerations:
   - Do I, a relative, friend or associate stand to gain or lose my/our reputation because of Council’s decision or action?
   - Have I made any promises or commitments in relation to the matter?
   - Have I received a benefit or hospitality from someone who stands to gain or lose from Council’s decision or action?
   - Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with organisations or individuals, who stand to gain or lose from Council’s consideration of the matter?
   - Is the person an election campaign donor or someone who helped during my election campaign?
   - If I do participate in assessment or decision making, would I be unhappy if my colleagues and the public became aware of my association or connection?
   - Would a fair and reasonable person perceive that I was influenced by a personal interest in performing my public duty?

   - Yes: If the answer to any of the above questions is yes, then the Councillor should declare a non-pecuniary interest in the matter in question and consider how
to manage the interest based on the considerations listed under the heading “Disclosure and management of non-pecuniary interest”

3. Is the matter so remote or insignificant that it could not reasonably or objectively be regarded as likely to influence any decision which you might make in relation to the matter?

**Yes:** no conflict of interest exists

4. Will the Relevant Matter affect you or an associate more than any other member of the community?

**Yes:** disclose the interest and decide how to manage the interest based on the considerations listed under the heading “Disclosure and management of non-pecuniary interest”.

5. Am I confident of my ability to act impartially and in the public interest?

**No:** disclose the interest – you need to exclude yourself from consideration and voting on the Relevant Matter.