

## Local Land Services Conflict of Interest Policy

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VERSION 2.0

AUTHORISED BY Board of Chairs

AUTHORISED DATE 27.04.2016

ISSUED BY Chair, Audit Risk and Governance Committee

EFFECTIVE DATE 27.04.2016

### Policy Statement

This policy contributes to creating a workplace culture that encourages and supports staff to identify and declare conflicts of interest so that they can be managed in an open and transparent way. It expands on the concepts outlined in the Department of Industry's Code of Conduct and the Code of Conduct for externals and should be read in conjunction with those documents.

### Scope

This policy applies to everyone engaged by Local Land Services whether as chair of the Board of Chairs, chair or board member of a local board, member of a committee of the Board of Chairs or a local board, or an officer or staff member under ongoing employment arrangements, an employment contract, term appointment (including secondment), or temporary arrangement.

Staff are subject to all laws applying to employees in public sector agencies, in particular, the *Government Sector Employment Act 2013* (GSE Act), as well as other general laws affecting a staff member's employment relationship, including those listed under related legislation.

In the remainder of this policy a reference to staff includes all appointed and elected persons referred to above. This policy does not prevent staff from having all the normal rights of an employee under common and statute law.

## 1. Policy

### Conflict of Interest

A conflict of interest exists when it is likely that staff could be influenced, **or could be perceived to be influenced**, by a private interest in carrying out their public duty. Conflicts of interest that lead to partial or biased decision-making may constitute corrupt conduct.

Having a conflict of interest is not necessarily a problem; it is how it is managed that is important. The community has a right to expect that staff at all levels of Local Land Services will perform their duties in a fair and unbiased way and that the decisions they make are not affected by self-interest, private affiliations, or the likelihood of private gain or loss.

Private activities or interests that are particularly sensitive to the work of Local Land Services need to be avoided or managed well to ensure conflicts of interest do not arise.

Circumstances where conflicts of interest can arise in the course of engaging with Local Land Services include applications or expression of interest processes for grant funding, products and

services, applying for a Property Vegetation Plan (PVP), and accessing Travelling Stock Reserves (TSRs) either through walking permits or grazing permits. This list is not exhaustive.

### **Conflict of duties**

There is a distinction between a conflict of interest which involves actual, potential or reasonably perceived conflicts between public duty and private interests, and a conflict of duties which involves a conflict between competing or incompatible public duties.

A conflict of duties or competing interests arises where staff have multiple roles and could be said to 'wear two hats'. In addition to their principal job, staff may find that part of that job involves taking on another public sector or community-based role as well. A common example is when a position in a major government department includes being a member of the board of a statutory authority that the department has some responsibility for.

Circumstances can arise in Local Land Services where a staff or board member provides services or advice to Local Land Services or organisations funded by Local Land Services.

Where individuals have more than one official role it may be difficult to keep the roles separate. The result may be poor performance in one of the roles at best, and unlawful or improper decision-making at worst. The risk of the duties of these positions conflicting is more likely where a public sector employee has two roles in organisations with a competitive relationship, or where one has a regulatory or review role in relation to another.

As with conflicts of interest, the principle that all public decisions must be impartial and based on the merits of the situation, without regards to improper considerations, still applies. The underlying principles for managing a conflict of duties or competing interests should be treated in the same way as the procedures for managing conflicts of interest.

### **Declaring the interest**

Some conflicts will be known to staff on joining Local Land Services, while others will emerge over time. Staff must ensure that they continue to keep their notification of conflict updated via the *Conflict of Interest Declaration Form*.

Declarations allow a degree of transparency so that staff cannot be accused of having ulterior motives for their decisions or secret reasons for making particular decisions.

If staff determine they have a conflict of interest or a potential conflict, they must make a declaration to their Manager/Supervisor or the manager of the affected activity (such as the convenor of a recruitment panel, or chair of a committee or tender evaluation panel) immediately, following the steps outlined in the Local Land Services Conflict of Interest Procedure.

The *Conflict of Interest Declaration Form* must be used by staff to formally disclose conflicts of interests to their Manager/Supervisor who will document and formally record the decision made with regard to each staff declaration and forward the approved form for registering to:

- the regional General Manager in the case of regional staff and board members; or
- the Executive Manager in the case of Executive Support Unit staff and the Chair of Chairs.

There may be times when staff are in a situation that does not allow them to disclose their conflict of interest in writing before taking action. For example, staff may be in a meeting where, without prior warning, a matter is introduced in which they may recognise that they have a conflict of interest. In such instances staff should follow the process stated in the Local Land Services Conflict of Interest Procedure.

The declaration should cover any interests or shares that staff have in incorporated associations, proprietary companies, companies limited by guarantee, business partnerships, and in industry and manufacturing associations currently active in NSW that could compromise or be perceived to compromise the impartial performance of their duties. It should also cover any interests or shares that their immediate family (i.e. spouse, partner, or dependent children) have that staff are aware of that could compromise or be perceived to compromise the impartial performance of their duties.

Staff may become aware of conflicts of interest, potential or perceived, arising in the course of their business which need to be declared. For example, an application for a competitive grant, a TSR licence or a purchase of goods or services by themselves or someone who could be perceived to compromise the impartial performance of their duties.

### **Managing conflicts of interest**

Managers/Supervisors are responsible for taking action on a conflict of interest reported to them within two working days of receiving the declaration form. Conflicts of interest need to be resolved in favour of the public interest.

All conflict of interest declarations must be registered regardless of what additional management strategies are adopted (see section on record keeping below). However, the registration or declaration of a conflict of interest does not in itself necessarily resolve the conflict. Additional measures to positively resolve or manage the conflict of interest should also be considered.

Options for managing a conflict of interest may be to restrict a staff member's involvement in the departmental matter, recruit an independent third party to oversee part or all of the process that deals with the matter, remove a staff member completely from the matter, or ask the staff member to relinquish membership of a professional body, tender their resignation or otherwise divest themselves of the private interest. Further information on managing conflicts of interest is provided in the Conflict of Interest Procedure document.

Once the Manager/Supervisor and staff member have agreed on an appropriate course of action the declaration form is to be forwarded to and approved or otherwise determined by a General Manager of a Region, the Executive Manager, or by the Local Land Services Board Conflict of Interest Sub-committee.

### **Record-keeping**

The process of making and maintaining a formal record of all assessments, decisions and actions undertaken in identifying, managing and monitoring conflicts of interest is essential.

The approved conflict of interest declaration forms are held in the Conflict of Interest Register; maintained by the region and the Executive Support Unit. These are the official Local Land Services records that detail the nature of the conflict of interest declared by staff and how the conflict will be managed by Local Land Services.

Information in the Conflict of Interest Register is kept for seven years after a staff member leaves Local Land Services or leaves the position they held when they made the declaration.

### **Access to the conflict of interest register**

Access to the register is restricted to staff authorised by the Chair of Chairs.

### **Review of conflict of interest register**

The Board Conflict of Interest Sub-committee will undertake an annual review of the register to identify and manage any emerging risks.

### **Investigating a conflict of interest complaint**

When a complaint is received alleging a conflict of interest, it must be referred to the relevant regional General Manager or the Executive Manager for assessment and investigation within three days.

An investigation requires access to relevant documentation and files as well as written or verbal reports from the staff members and managers involved. It is important to place the situation giving rise to the complaint in context by reviewing the relevant operational, administrative and legal processes and implications.

### **Staff appointments to boards of external entities**

As a result of a staff member's position within Local Land Services they may be invited to be a member of a board of an external entity.

It is Local Land Services' general policy that staff members should not accept positions as directors on boards, committees or similar positions with incorporated associations, proprietary companies or companies limited by guarantee, if these entities have current, recent or prospective (within the last or next 12 months) business or professional dealings with Local Land Services.

Where exceptional circumstances exist, staff must formally apply for approval in writing. A staff member does not need to apply for approval if they are representing in a role stated in their position description, or in the normal course of duties with the NSW Government, or as the Chair of Chair's approved representative on a Commonwealth-State committee.

This policy does not apply to staff who sit in a voluntary and private capacity on community organisation committees.

### **Members of boards and committees**

Members of boards and committees who are non- Local Land Services staff are appointed or elected for their expertise and skill in particular areas. As a consequence of their expertise in these areas there may be the potential for conflicts of interest to arise between a member's duties to the board or committee and their private interest (or the duties or interests of others).

The NSW Government Conduct Guidelines for Members of NSW Government Boards and Committees (December 2011) states that members must disclose interests "which include positions and pecuniary interests in corporations, partnerships or other businesses that may be relevant to the activities of the board or committee". A member must complete the conflict of Interest board and committee members pecuniary interest declaration and undertaking form.

When an issue arises, the board or committee member must as soon as practicable disclose full and accurate details of the interest or issue to the board or committee chairperson. All declarations are to be recorded within a register maintained by the chairperson and noted within the minutes of the meeting.

### **Breaches of the policy**

Local Land Services may take disciplinary action for breaches of the Conflict of Interest Policy in accordance with the relevant sections of the GSE Act.

Action may include counselling, official notification of unsatisfactory performance, formal cautions, demotion or dismissal. In serious cases the matter may be referred to the Police or other appropriate authorities.

### **Confidentiality and privacy**

Reporting potential or actual conflicts may involve disclosing personal information. This information

will be handled according to the requirements of the NSW *Privacy and Personal Information Protection Act 1998*. This Act provides for the protection of personal information and for the protection of the privacy of individuals, and covers the collection, storage, use and disclosure of personal information.

Additionally, unauthorised disclosure of confidential information is prohibited under the Department of Industry's code of conduct.

## 2. Procedures

See Local Land Services Conflict of Interest Procedure document.

## 3. Roles and responsibilities

In many cases the respective staff member may be the only person aware of the potential for actual or perceived conflict. It is therefore every staff member's responsibility to avoid any situation that could compromise their ability to perform their job impartially. Specifically, staff should:

- be aware of their obligation to avoid, where possible, conflicts of interest
- assess their private and personal interests and whether they conflict, or have the potential to conflict, with their official departmental duties and responsibilities
- discuss potential, actual or perceived conflicts of interest with their General Manager or line Manager
- disclose all conflicts of interest and complete the *Conflict of Interest Declaration Form*.

## 4. Delegations

- Administrative

<i>Activity or Function</i>	<i>Delegated Officer</i>
Determine the appropriate course of action for managing a conflict of interest declared by staff	Regional General Managers and above
Review conflict of interest register	Each Local Land Services region and the Executive Support Unit
Maintain conflict of interest register	Each Local Land Services region and the Executive Support Unit

## 5. Legislation

- *Anti Discrimination Act 1977*
- *Government Information (Public Access) Act 2009*
- *Independent Commission Against Corruption (ICAC) Act 1988*
- *Industrial Relations Act 1996*
- *The NSW Government Conduct Guidelines for Members of NSW Government Boards and Committees (December 2011)*
- *NSW Government Sector Employment Act 2013*
- *NSW Government Sector Employment Regulation 2014*
- *Privacy and Personal Information Protection Act 1998*
- *Public Finance and Audit Act 1983*

- *Public Interest Disclosures Act 1994*

## 6. Related policies

- Code of conduct
- Code of conduct for externals
- Complaints handling
- Fraud and corruption prevention
- Gifts and benefits
- Public interest disclosures – internal reporting policy
- Secondary employment

## 7. Other related documents

- Conduct Guidelines for Members of NSW Government Boards and Committees, Department of Premier & Cabinet, December 2011
- Conflict of Interest, NSW Ombudsman, Fact sheet no.3, July 2003
- Good Conduct and Administrative Practice (2nd edition), NSW Ombudsman, August 2003
- Identifying and Managing Conflict of interest in the Public Sector, Independent Commission Against Corruption, November 2009
- NSW Government Tender Guidelines
- NSW Government Code of Practice for Procurement

## 8. Definitions

- Associated entity: Any of
  - (i) the partner or family member of an staff member or contractor;
  - (ii) any partnership of which an staff member or contractor (or a partner of or family member) is a member;
  - (iii) any corporation in which an staff member or contractor (or a partner or family member) is a director or owns or controls twenty-five percent or more of the issued shares.
- Contractor: Person undertaking services for Local Land Services subject to a written contract, who is not an employee of Local Land Services, and not an employee of a labour hire agency contracted by Local Land Services.
- Employee: Person employed by Local Land Services under the *NSW Government Sector Employment Act 2013*.
- Non-pecuniary: Non-pecuniary interests do not have a financial component but may arise from personal or family relationships or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity or other personal involvement that could bias their judgement or decisions, even though there is no financial benefit to staff.
- Pecuniary: A pecuniary interest involves a situation where there is the potential to gain or lose financially from their public position, for example, from owning property, having unpaid debts to others, receiving hospitality or travel or gaining or losing other material benefits and costs. Staff do not need to directly experience the financial gain or loss to give rise to a pecuniary conflict of interest in their role as a public official. It will remain a conflict of interest if a family member, close associate or someone with some proximity to staff has the pecuniary interest.
- Official duties: The work done by an employee as defined by governing legislation (and regulations), the employee's position description or lawful directions given by a Manager or Supervisor.

## 9. Superseded documents

This policy replaces:

- DOC16/895 POLICY\_Conflict of Interest\_2014\_V1.2 2015.12.09

## 10. Revision history

Version	Date issued	Notes	By
1.0	12/5/2014	Draft approved	Board of Chairs
1.1	26/6/2014	Minor amendments	Board of Chairs
1.2	23/7/2015	Annual policy review – minor amendments	Board of Chairs
2	27/04/2016	Revised Policy	Chair, Audit Risk & Governance Committee

## 11. Review date

This Policy is to be reviewed initially after one year and then every two years and reissued or withdrawn as required.

The next revision is due one year after this Policy is approved by the Board of Chairs.

## 12. Contact

Senior Policy Officer, Executive Support Unit – 6391 3580