



ATTACHMENTS TO MINUTES ORDINARY COUNCIL MEETING

8 FEBRUARY 2023

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Our ref: OUT23/155

18 January 2023



Department of
**State Development, Infrastructure,
Local Government and Planning**

Mr Dave Burges
Chief Executive Officer
Southern Downs Regional Council
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Dear Mr Burges

Thank you for Southern Down Regional Council's (the council) participation in the Department of State Development, Infrastructure, Local Government and Planning's (the department) delivered training session for councillors held on 30 November 2022 aimed at improving their conflict of interest management.

In response to some of the issues causing a repeated level of confusion or difference of interpretative opinion, the department is offering assistance with the following clarifying advice.

I understand that one of the most common issues raised by councillors was in relation to managing conflicts of interest associated with meeting agenda items involving "receiving and noting" committee or operational portfolio reports. It is the department's view that when these reports are on the agenda to "receive and note" there should not be an automatic default by councillors to declare conflicts of interest. As emphasised at the training, any conflict needs to relate to the councillor's interest in a matter being discussed or decided. Therefore, if there is no discussion, decision making or influencing regarding the content of the report, which may be linked to a councillor's personal or related party's interest, then it is difficult to see how any conflict could be present.

However, it is advisable that councillors are fully aware of their responsibility to manage their conflict of interest, if one exists, if the report becomes a subject of discussion during the meeting.

It was also apparent that councillors are often declaring a "declarable conflict of interest" because they are involved in the sale and/or purchase of livestock at the saleyards. This customer interest in the buying or selling of livestock at the saleyards does not automatically result in a declarable conflict of interest arising in expenditure or operational decisions considered by the council. As addressed at the training, it is the matter being considered that potentially gives rise to a conflict of interest and each circumstance needs to be considered separately on its merits. It should not be the case that councillors automatically declare a conflict of interest in relation to all matters involving the Saleyards.

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Depending on the exact nature of the matter before council, councillors may also be able to rely on section 150EF(2A) of the *Local Government Act 2009*. The application of that provision can be complex and the department is able to assist councillors as matters arise.

Another contentious issue discussed was in relation to a councillor's past role as an executive member of a committee, board, project steering group or similar. The department's view is that the past role does not by itself, automatically lead to a conflict of interest that endures beyond their active executive role. It is important in this scenario to consider what interest of a personal nature or related party exists. The fact that a councillor once held an executive position in an organisation or group does not automatically default to the councillor having a conflict of interest.

Additionally, councillors who represent a particular community-based policy position or who are technical or subject matter experts because of past executive roles, do not have a conflict of interest simply by that circumstance. For example, if during the election campaign a councillor publicly voiced a policy position focused on supporting environmental protection, they do not need to declare a conflict of interest when the council is considering planning policy or development approvals merely because of that fact. This would also be true of the council's discussion and actions regarding Stanthorpe water supply security and councillors' previous roles on the Emu Swamp Dam project.

As also highlighted in the training session, when a councillor identifies what they believe to be a declarable conflict of interest, they can still seek permission to participate in the decision, with their participation and the level of participation decided by their fellow non-conflicted councillors.

It was emphasised that it is expected that non-conflicted councillors would make a decision about a declaring councillor's participation, based on reasons outlined in the department's Quick Reference Guide (the guide). The guide prompts consideration which includes questions such as "does the councillor have knowledge that might help make the best decision in the public interest?" and "is your decision consistent with other similar matters considered previously for other councillors?" when considering a councillor's request to be allowed to participate.

I understand that many of the concerns raised at the department's training workshop stem from a cautious approach to declaring conflicts of interests and individual councillors' concern about the possible stance of the Office of the Independent Assessor in the face of a complaint. Therefore, the department expects that this advice forms part of providing the council with a level of surety to assist with more appropriately managing conflict of interest circumstances where there has been ambiguity. I also encourage all councillors to reflect on their roles and the responsibility they have in demonstrating effective decision making for their entire community.

If you require any further information or wish to discuss any potential specific conflicts of interest as they arise, please contact Mr John Martinkovic, Regional Director Local Government Division, in the department, by telephone on (07) 3452 6872 or by email at john.martinkovic@dsdilgp.qld.gov.au, who will be pleased to assist.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Blagoev', with a stylized flourish at the end.

Bronwyn Blagoev
Acting Deputy Director General
Local Government Division