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INTRODUCTION

1. The Local Government Act 1993 (the ‘Act’) places specific obligations on Councillors, Council delegates, Council staff and other people involved in making decisions or giving advice on Council matters to act honestly and responsibly in carrying out their functions. Generally, those obligations include the lodgement of disclosure of interest returns, the lodgement of written declarations and the disclosure of pecuniary interests at Council and Council committee meetings.

2. These Pecuniary Interest Guidelines (the ‘Guidelines’) are based on Chapter 14 of the Act. These Guidelines are an advisory guide issued for information purposes to assist Councillors, Council delegates, Council staff and other persons to become aware of their respective roles and the requirements of the pecuniary interest provisions. The Guidelines do not give legal advice. You should seek legal advice on issues of concern.

3. These Guidelines are in a question/answer format. Where appropriate it identifies the relevant Section of the Act and important decisions made by the Local Government Pecuniary Interest and Disciplinary Tribunal (the ‘Tribunal’). Further details about Tribunal cases that are referenced throughout these Guidelines, can be obtained from the Office of Local Government’s website www.olg.nsw.gov.au by searching on Pecuniary Interest and Disciplinary Tribunal or directly by using this link: www.olg.nsw.gov.au/commissions-and-tribunals/nsw-civil-and-administrative-tribunal/pecuniary-interest-and-disciplinary-tribunal. Details of particular sections of the Act can be found at the websites NSW Legislation and austlii.

4. These Guidelines should be read in conjunction with the relevant provisions of the Act. The onus is on Councillors, Council delegates, Council staff and other persons to determine whether they are affected by the pecuniary interest provisions in relation to a matter under consideration by the Council. These Guidelines have been designed to assist people to comply with their pecuniary interest obligations. It should be kept in mind that these Guidelines have no legal status.

5. Given the importance of probity, accountability and transparency, persons affected by the pecuniary interest provisions of the Act are advised to err on the side of caution and declare an interest in any matter before the Council or a Council committee where they may, or may appear to have, an interest. When in doubt about a pecuniary interest, persons affected should consider obtaining their own legal advice on the matter.

6. The Tribunal emphasises that Councillors have a positive obligation to fully acquaint themselves with the relevant provisions of the Act and that ignorance of those provisions is no excuse for failing to comply with the statutory obligations.

7. Councillors, Council delegates, Council staff and other people must also be mindful of the obligation to deal with personal interests not regulated under the pecuniary interests provisions of the Act. Such interests may give rise to a conflict of interest that must be managed according to the Murray River Council (the ‘Council’) Code of Conduct.

8. These Guidelines are not designed to be an exhaustive document. Where a matter raises complex questions of law, where there is a real possibility of a pecuniary interest or if a matter is otherwise highly contentious, further legal or professional advice should be sought before taking action or making a decision at a Council or Council committee meeting.
PART 1 – PECUNIARY INTERESTS

1.1 What is a pecuniary interest?

1.1.1 If you think that you may have a pecuniary interest in a matter, you should consider Section 442(1) of the Act. This Section sets out the statutory definition of a pecuniary interest as:

"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."

1.1.2 The statutory definition of pecuniary interest is very broad and will need to be applied to the facts of each particular case. To help in determining whether you have a pecuniary interest in a matter, you should consider whether you have a direct or indirect financial gain or loss.

1.1.3 This calls for an “objective judgement” in each case as to whether a pecuniary interest exists. The Tribunal has held that pecuniary interest extends to whether there are chances or possibilities, and probabilities of a financial gain or loss in the matter (page 19, Councillor Graeme Roberts, Hastings Council, Case No. 1/1995; and page 23- 24, Councillor William Peter Smits, Snowy River Council, Case No 4/1998).

1.1.4 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your civic functions under the Act or any other Act. Even if you do not have a pecuniary interest in a matter before the Council or a Council committee, it is possible that you have a conflict of interest. If you think that you may have a conflict of interest you should consult the Council’s Code of Conduct (POL100) to determine the most appropriate action to take.

1.2 What is a “matter” before the Council?

1.2.1 The pecuniary interest of a person must relate to the matter with which the Council is concerned at the Council or Council committee meeting in question before the obligations of a Councillor under Section 451 of the Act can arise (page 5, Councillor Richard Niven, Orange City Council, Case No. 2/1995).

1.2.2 The word “matter” is of wide import. The word should not be treated as a technical word but it should be construed liberally to cover whatever a Council takes to be its business and on which it seeks a decision by its members (dot point 1, page 48, Councillor Donald John Fern, Bega Valley Shire Council, Case No. 4/1997).

1.3 What is an “appreciable financial gain or loss”?

1.3.1 If you think that you may have a pecuniary interest in a matter, you should also determine whether that interest is one that would give rise to an appreciable financial gain or loss (Section 442(1) of the Act).

1.3.2 In the Tribunal case (Page 45, Former Councillor John Fisk, Burwood Council, Case No. 1/1996), it was considered that the word “appreciable” would exclude the insignificant but would not require a calculation or valuation to be made of the monetary worth of a material benefit so long as it was a benefit of a financial character.
and one which a reasonable person would prefer to retain than to lose. However, if a valuation was obtained, the question is not whether the valuer got the amount right but whether, under Section 442(1) of the Act, the amount of the gain or loss was appreciable (page 28, Councillor William Peter Smits, Snowy River Council, Case No 4/1998).

1.3.3 In order to constitute a pecuniary interest, the financial benefit does not have to be derived directly from a decision by a Council on a matter. The benefit may be one that would be derived indirectly and in the future and there may be contingencies upon which the derivation of the benefit depends (page 11, Councillor John Frederick Miller, Orange City Council, Case No. 2/1997). Such situations will likely give rise to a pecuniary interest unless the contingencies are such that the gain is remote or insignificant (Section 442(2) of the Act).

1.4 What if the pecuniary interest is remote or insignificant?

1.4.1 The Tribunal has stated that, if the strength of the possibility or chance of your interest is such that it could reasonably be regarded as likely to influence a decision, then the interest in question will not be too remote to constitute a pecuniary interest in the matter (page 32-33, Councillor David John Redmond and Thomas White, Sutherland Shire Council, Case No. 5 & 6/1996).

1.4.2 Another factor when considering if a pecuniary interest is exempt from disclosure under Section 442(2) of the Act is the element of time. If the prospects of realisation of financial gain or loss is distant in time, that of itself would not preclude a finding that there was a pecuniary interest. Where the time element increases the exposure of the chance or possibility of adverse events and contingencies to the extent that it makes the prospects of realisation too tenuous to be reasonably regarded as likely to influence a person’s decision on a matter, there may not be a pecuniary interest (page 33, Councillor David John Redmond and Thomas White, Sutherland Shire Council, Case No. 5 & 6/1996).

1.5 Who makes the decision on whether a pecuniary interest exists?

1.5.1 It is a matter for you, in the first instance, to decide if you have a pecuniary interest. While you may ask the General Manager for advice, it is not their role to provide you with advice or direct you on a matter. If you are unsure about whether or not you have a pecuniary interest, it is best to err on the side of caution and declare an interest. You could also seek your own legal advice.

1.5.2 Council’s Councillor Expenses and Facilities Policy (POL103) may address the provision of the payment of legal expenses incurred in relation to proceedings arising out of the performance by a Councillor of his or her functions under the Act. This Policy has been developed in accordance with provisions in the Office of Local Government (OLG) Circular to Councils 05/08 ‘Legal assistance for Councillors and Council employees’.

1.5.3 The OLG gives general advice about the pecuniary interest requirements. It is not the role of the OLG to give specific advice on whether or not you have a pecuniary interest in a given matter.
1.6  **Who do the pecuniary interest rules apply to?**

1.6.1  You may have a pecuniary interest in a matter, either directly, or indirectly, because of the pecuniary interest of certain persons who are associated with you. You may have a pecuniary interest in a matter because of the interest of your spouse or de facto, your relative, or because a business partner or employer has a pecuniary interest (Section 443(1)(a) and 443(1)(b) of the Act).

1.6.2  You may also have a pecuniary interest in a matter because you, a nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest (Section 443(1)(c) of the Act).

1.7  **Who is a relative?**

1.7.1  The Act prescribes a definition of a relative. A relative is your or your spouse's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of those persons (see the definition of “relative” in the Act dictionary).

1.7.2  An example of a relative is in the Tribunal case where it was considered the Councillor's brother-in-law was a “relative” (Councillor Alan Friend, Walgett Shire Council, Case No. 4/2000 (page 13)).

1.8  **Are there any exemptions if I have a pecuniary interest because of an associate’s interest in a matter?**

1.8.1  You are not taken to have a pecuniary interest if you were unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, business partner, employer or company or other body (Section 443(3)(a) of the Act).

1.8.2  You are also not taken to have a pecuniary interest in a matter just because the person referred to in Section 443(1) of the Act is a member of, or is employed by, the Council or a statutory body or is employed by the Crown (Section 443(3)(b) of the Act).

1.8.3  Section 443(3)(c) of the Act also says that a person is not taken to have a pecuniary interest in a matter as referred to in Section 443(1) of the Act just because the person is a member of, or a delegate of a Council to, 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.

1.9  **Who is a designated person?**

1.9.1  Designated persons required to make disclosure of interests under Section 441 of the Act are:

(a)  The General Manager;
(b)  Senior Staff of the Council;
(c)  Other members of Council staff and delegates of the Council who are designated by the Council to make such disclosures because of the type of Council functions they exercise; and
(d) Members of certain Council committees who are designated by the Council because of the type of Council functions exercised by the committee.

1.9.2 Examples of those staff members that may be considered to be designated persons would include staff who determine Development Applications, staff who are involved in compliance activities and staff who exercise significant financial delegation.

1.9.3 Designated persons have special requirements that they must follow.

### 1.10 What disclosures must a designated person make?

1.10.1 If you are a designated person, there are a number of things that Section 445 of the Act requires you to do. You must prepare and submit written returns of interest (Section 449 of the Act). You must also disclose pecuniary interests in a matter before the Council or a Council committee in accordance with Section 459 of the Act.

### 1.11 How do designated persons make disclosures of pecuniary interests?

1.11.1 If you are a designated person you must disclose in writing to the General Manager (or if you are the General Manager, to the Council) the nature of any pecuniary interest you have in any Council matter with which you are dealing (Section 459 of the Act).

1.11.2 You do not need to disclose a pecuniary interest if it relates only to your salary as a member of the Council's staff or to other conditions of employment or the like (Section 459(1A) of the Act).

### 1.12 What must a General Manager of the Council do when they receive a disclosure from a designated person?

1.12.1 The General Manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with (Section 459(2) of the Act).

1.12.2 If the General Manager has made the pecuniary interest disclosure, the matter must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the Council. The Council must deal with the matter to which the disclosure relates or refer it to another person to deal with, other than the General Manager (Section 459(3) of the Act).

### 1.13 What disclosures must a Councillor make?

1.13.1 If you are a Councillor, there are a number of things that Section 444 of the Act requires you to do. You must prepare and lodge written returns of interest (Section 449 of the Act). You must also disclose the nature of your pecuniary interest in a matter in which you have a pecuniary interest during the Council or Council committee meetings and not be present at or in sight of the meeting when the matter is being considered, discussed or voted on (Section 451 of the Act).
1.14 What disclosures must be made if a Councillor or member of a Council committee has a pecuniary interest in a matter?

1.14.1 If you are a Councillor or a member of a Council committee and you have a pecuniary interest in any matter with which the Council is concerned and you are present at a meeting of the Council or Council committee at which the matter is being considered, you must disclose the nature of the interest to the meeting as soon as practicable (Section 451(1) of the Act). However, proceedings will not be invalid just because a Councillor or committee member does not disclose a pecuniary interest at the meeting in accordance with Section 451 of the Act.

1.14.2 It is important that minutes be kept for all Council committee meetings in order that Section 453 of the Act is complied with.

1.15 Can a Councillor or member of a Council committee with a pecuniary interest stay in the meeting where the relevant matter is being considered?

1.15.1 If you are a Councillor or member of a Council committee and have a pecuniary interest in any matter with which the Council or Council committee is concerned, you 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 (Section 451(2) of the Act). The wording is wide and can apply to a variety of circumstances because of the disjunctive nature of the Section.

1.15.2 A Councillor or a member of a Council committee who has a pecuniary interest in a matter with which the Council or Council committee is concerned must also disclose the nature of the pecuniary interest at the meeting (Section 451(1) of the Act). Merely leaving the room and failing to disclose the nature of the pecuniary interest is not acceptable.

1.15.3 Councillors prohibited from taking part in a discussion because of a pecuniary interest cannot escape this by addressing the meeting in some other capacity, such as a “resident” or “ratepayer”. This exclusion is from all discussions on the matter, not just discussions on a formulated motion or a resolution on the matter – see the OLG Circular to Councils 05-17 “Codes of Meeting Practice – Councillors Invited To Speak After Declaring A Pecuniary Interest In A Matter”.

1.15.4 The Tribunal has found that there is no warrant or justification for constructing Section 451 of the Act to limit the discussion of the “matter” to discussion and consideration that takes place in the context of a formulated motion or resolution. However, in any particular case the absence of a formulated motion may mean it is more difficult to answer the question of whether a Councillor had a pecuniary interest in the matter. Each case will depend on its own facts (paragraph 61, page 20, Councillor Peter Kemper, Uralla Shire Council, Case No 4/2001).
1.16  Do I have a pecuniary interest in a rescission motion?

1.16.1 If you have declared a pecuniary interest in a matter that is later subject to a rescission motion, and the circumstances for declaring the pecuniary interest have not changed, then you would also have a pecuniary interest in the rescission motion and would need to comply with the relevant pecuniary interest disclosure provisions.

1.17  Do I have a pecuniary interest in a matter that I have requested to be brought before the Council for determination?

1.17.1 Sometimes Councillors request matters that are usually determined under delegation to be brought before the Council for determination. An example of this is where a Councillor requests a particular Development Application to come before the Council for determination. If you have a pecuniary interest in such a matter and it is not exempt, you would need to comply with the usual pecuniary interest disclosure provisions at the Council meeting or Council committee meeting.

1.17.2 Councillors who have a pecuniary interest in a matter that they request be brought before the Council should avoid any impropriety and should avoid any appearance of improper conduct. The request for a matter to be brought before the Council in which a Councillor has a pecuniary interest may give rise to a conflict of interest. You should consult Council’s Code of Conduct for information on how to deal with such matters.

1.18  What disclosures must a person who has an obligation under Chapter 14 of the Act and who is also a member of a Council committee make?

1.18.1 Section 446 of the Act provides that members of Council committees which are not wholly advisory, must disclose any pecuniary interests at committee meetings, in accordance with Section 451 of the Act.

1.18.2 However, the Tribunal determined that a Councillor who is also a member of a wholly advisory Council committee is required to disclose any pecuniary interest they have in accordance with Section 451 of the Act.

1.18.3 In particular, the Tribunal noted that Councillors are “not excused by Section 446 of the Act from compliance with Section 451 of the Act whether that committee was “wholly advisory” within the meaning of the Section or not” (page 26, Councillors Allan Leslie Bennett, Guiseppe Staltare and Bernadino Zappacosta, Griffith City Council, Case No. 2/1998).

1.19  Do pecuniary interests disclosures need to be recorded in the minutes?

1.19.1 A pecuniary interest disclosure made at a meeting of the Council or Council committee must be recorded in the minutes of the meeting (Section 453 of the Act).

1.19.2 Having disclosed the nature of your interest, you should ensure that your disclosure, departure from and re-entry to the meeting has been recorded in the minutes, before the minutes of the meeting are confirmed at the following meeting.
1.20 What is a general pecuniary interests disclosure?

1.20.1 A Councillor or member of a Council committee can make a general disclosure to the General Manager in writing to the effect that the Councillor or member, or the Councillor’s or member’s spouse, de facto partner or relative:
(a) is a member, or
(b) in the employment of a specified company or other body, or
(c) a business partner, or
(d) in the employment of a specified person.

1.20.2 Unless and until the notice is withdrawn, this is sufficient disclosure of the Councillor’s or member’s interest in a matter relating to the specified company, body or person that may be the subject of consideration by the Council or Council committee after the date of the notice (Section 454 of the Act).

1.20.3 Section 454 of the Act does not appear to remove the obligation not to be present at or in sight of the meeting while the matter is under consideration. Councillors who make pecuniary interest disclosures under Section 454 are also required to follow the procedures outlined in Section 451 of the Act.

1.21 Do Council advisers need to disclose pecuniary interests they may have?

1.21.1 Persons giving advice to the Council at a Council or Council committee meeting must disclose pecuniary interests in accordance with Section 456 of the Act (Section 447 of the Act).

1.21.2 If you are a person who, at the request or with the consent of the Council or a Council committee, gives advice on any matter at any meeting of the Council or committee you must disclose the nature of any pecuniary interest you have in the matter to the meeting at the time the advice is given (Section 456(1) of the Act).

1.21.3 However, you do not have to disclose your interest as an adviser at the meeting (Section 456(2) of the Act).

1.22 Are there any circumstances where a person does not breach the pecuniary interest provisions because of lack of knowledge?

1.22.1 You are not considered to have breached the pecuniary interest provisions of Section 451 or Section 456 of the Act if you 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 you had a pecuniary interest (Section 457 of the Act). The onus is on you to prove that you can rely on Section 457 if it is found that you had a pecuniary interest in a matter.

1.22.2 The Tribunal has considered the defence under Section 457 of the Act. It considered that the Section should be construed as relating to knowledge of the facts which would, within the meaning of the Act, constitute a pecuniary interest in a matter.

1.22.3 If a person knew all the relevant facts, it is no defence to say, “But I did not know that those facts gave me a pecuniary interest in the matter”, or, “But I believed (or held the opinion) that those facts did not or would not amount to a pecuniary interest in the matter.”
1.22.4 The defence of honest and reasonable mistake of fact available in answer to some statutory criminal and penal matters is not applicable in relation to a breach of the pecuniary interest requirements of the Act (point 5, page 54, Councillor Graeme Roberts, Hastings Council, Case No. 1/1995).

1.23 What does a Council do if it does not have a quorum because of pecuniary interests?

1.23.1 Sometimes, so many Councillors have a pecuniary interest in a matter that the Council meeting will need to be adjourned for want of a quorum. In such circumstances, the Minister may, conditionally or unconditionally, allow a Councillor or a member of a Council committee who has a pecuniary interest in a matter with which the Council is concerned to be present at a meeting of the Council or committee, to take part in the consideration or discussion of the matter and to vote on the matter.

1.23.2 Before approval can be given, the Minister must be of the opinion that the number of Councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or that it is in the interests of the electors for the area to do so (Section 458 of the Act).

1.23.3 To assist the Minister in the exercise of his/her discretion, each Councillor affected should make an application under Section 458 of the Act and provide a signed schedule of all pecuniary interests that they are declaring together with other essential information. The Council may submit applications on behalf of the affected Councillors.

1.23.4 Each Councillor should state how the interest is considered to arise and what effect the proposal before the Council will have on that interest. By way of illustration, an interest in developing a new planning instrument might arise through ownership of land by the Councillor or associated person, and the affect of the proposed instrument might be to increase or decrease property value through a change in permissible uses.

1.24 Are there any other interests that are exempted from disclosure?

1.24.1 The following pecuniary interests do not have to be disclosed (Section 448(a)-(p) of the Act):

(a) **Elector**
An interest as an elector (s.448(a)).

(b) **Ratepayer or person liable to pay a charge**
An interest as a ratepayer or person liable to pay a charge. This means Councillors can vote on matters related to setting and varying rates (s.448(b)).

(c) **Provision of a service or the supply of goods or commodities also made to the general public**
An interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a Section of the public that includes persons who are not subject to the pecuniary interest provisions of the Act (s.448(c)).
(d) **Provision of a service or the supply of goods or commodities to a relative but also made to the general public**

An interest in any matter relating to the terms on which the provision 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 the pecuniary interest provisions of the Act (s.448(d)).

This means that a Council decision on the provision of goods and services to the public generally does not give rise to a pecuniary interest just because a Councillor, delegate or associated person would receive the benefit.

(e) **Member of a club or other organisation or association**

An interest as a member of a club or other organisation or association, except where the person is a holder of an office in the club or organisation (whether remunerated or not).

A “holder of an office” would include a board member or the Secretary of the club, association or other organisation. It may not include a purely symbolic position such as a patron. However, a person who holds such a position would need to consider that position may give rise to a conflict of interest when matters involving that club, association or other organisation come before the Council or a Council committee meeting.

The Tribunal has considered the meaning of the word “club”. It considered that the word “club” in Section 448(e) should be construed in accordance with the common understanding in the community that a club may be recognised by its objects and activities irrespective of whether it is incorporated or unincorporated (point 6, page 12-13, Councillor Graeme Wilton, Wollongong City Council, Case No.3/1994). Further, the “holder of a position” included the position of a director (point 6, page 13, Councillor Graeme Wilton, Wollongong City Council, Case No. 3/1994).

(f) **Representative or member of a non-profit organisation or other community or special interest group**

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 (s.448(f)).

(g) **Environmental Planning Instruments**

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:

(i) land in which the person or another person with whom the person is associated as provided in Section 443 of the Act 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

(ii) land adjoining, adjacent to or in proximity to land referred to in subparagraph (i), 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 (s.448(g)).

This means that when the Council is considering the making, amending, altering or repeal of an environmental planning instrument, you do not have to disclose a pecuniary interest in the matter. However, you cannot claim the exemption if the
environmental planning instrument that the Council is considering affects the permissible use for land you or an associated person (as provided in Section 443) have an ownership interest in or land adjoining, adjacent or in close proximity to such land.

The Tribunal has considered the phrase “a change of permissible use” and ruled that this refers to “variants on the liberty to use land”. It considered that a change of the permissible uses of land is not confined to the mere use of land itself, such as by holding it for a purpose, using the land physically, such as for quarrying, or carrying out works or erecting a building on it. The concept would extend to the use of works or a building already erected on the land. It would extend to alterations or additions to such works or buildings. It would certainly extend to subdivision of the land for a purpose such as the purpose of selling individual lots or retaining part and selling or carrying out works or erecting a building on the remainder (page 47-48 Councillor Pamela Emma Virgona, North Sydney Council, Case No. 3/1998).

The Tribunal has considered the word “proximity” and ruled that if land is adjoining or adjacent to other land it must be in proximity to it (page 26, Councillor James Morrison Treloar, Tamworth City Council, Case No. 1/1999).

The Tribunal considered that the Council’s consideration of a development control plan (DCP) could not give rise to a pecuniary interest because of the physical constraints of the particular site meant that the changes to the DCP in question could not benefit the site. However, the Tribunal stated its decision ought not to be read as being any support for the proposition that a consideration of a DCP could not, in other circumstances, give rise to a pecuniary interest within the meaning of the Act (paragraph 13, page 4, Councillor Bala Balendra, Auburn Council, Case No. 3/2000).

(h) Less than 10% voting rights in a company
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 (s.448(h)).

(i) Proposal by the Council of an agreement with another body where a relative is a shareholder
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) of the corporation or is a member (but not a member of the committee) of the association or is a partner of the partnership (s.448(i)).

(j) Proposal to make a contract or agreement with a relative in certain circumstances
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 agreements 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:

(i) the performance by the Council at the expense of the relative of any work or service in connection with roads or sanitation
(ii) security for damage to footpaths or roads
(iii) any other service to be rendered, or act to be done, by the Council by or under any Act conferring functions on the Council or by or under any contract (s.448(j)).
(k) **Payment of Council fees**
An interest relating to the payment of fees to Councillors (including the Mayor and Deputy Mayor) (s.448(k)).
It is considered that s.448(k) provides an exemption that would enable a Councillor to remain in the chamber during consideration of a matter before the Council relating to a request for the suspension of that Councillor from civic office.

(l) **Payment of expenses and provisions of facilities in accordance with a Section 252 policy**
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 of the Act (s.448(l)).

(m) **Mayor’s fee**
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 (s.448(m)).

(n) **Wage or salary payments of a Council employee who is a relative**
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 (s.448(n)).

(o) **Indemnity insurance**
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 (s.448(o)).

(p) **Representative or delegate of the Council**
An interest arising from the 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 (s.448(p)).
PART 2 – DISCLOSURE OF INTERESTS IN WRITTEN RETURNS

2.1 Who needs to complete and lodge a Section 449 disclosure of interests return?

2.1.1 Councillors or designated persons need to complete and lodge a written disclosure of interest return. The form of the return is prescribed in Schedule 3 of the Local Government (General) Regulation 2005 (the 'Regulation'). The interests and other matters to be disclosed in the return are prescribed by Part 8 of the Regulation.

2.1.2 The obligation upon Councillors and others to lodge returns is as much a protection for them as it is for the community.

2.2 Who may view the disclosure of interests returns?

2.2.1 The disclosure of interests returns can be inspected by any person and assist in ensuring transparency and accountability in local government decision making.

2.3 What are the deadlines for disclosure of interests returns?

2.3.1 Section 449 of the Act requires a Councillor or designated person to complete a written disclosure of interests return and lodge it with the General Manager within three (3) months of becoming a Councillor or designated person. However, a person need not lodge a return within the three-month period if they lodged a return in the previous year or if they cease to be a Councillor within the three-month period.

2.3.2 In the case of the newly elected Councillors, their return must be completed and lodged with the General Manager within three (3) months after being declared elected (ie. three (3) months after declaration of the poll).

2.3.3 A Councillor or designated person holding that position on 30 June in any year must complete and lodge a return by 30 September in that year.

2.4 What are the General Manager’s obligations regarding the disclosure of interests return form and appropriate advice?

2.4.1 The General Manager should be available to give written advice to Councillors and designated persons alerting them to their obligations to lodge disclosure of interests returns. It is good practice for the General Manager to provide each Councillor and designated person with an appropriate return form for completion and lodgement. The advice should state the final date for lodgement, how it should be lodged, with whom and where to seek advice on the contents of the return.

2.4.2 The General Manager should stress the importance of lodging returns correctly, completely and legibly by the due date. Reminders could be sent close to the due date to those persons whose returns have not yet been lodged.

2.4.3 It is acceptable procedure for councils to assist Councillors and designated persons in the lodgement process by typing information on the return form, based on the information provided in the person’s previous return and any other additional and relevant information provided by the person. However, if information has not been
provided in a section of the return or the date of signing has not been added, a lodgement officer must not complete the section or add the date but must bring the omission to the attention of the Councillor or designated person for personal ratification.

2.5 How do I complete my disclosure of interests return?

2.5.1 The Tribunal has pointed out the need for Councillors to give due care and attention to the accuracy, details and content of the disclosures required in disclosure of interests returns. The same requirement would apply to designated persons.

2.5.2 Before completing their returns, Councillors and designated persons should take the time and effort to carefully read the provisions of the Regulation and the notes to the return form. It would also be prudent to have a copy of any previous return available so that the contents of the new return can be crosschecked for accuracy. It is particularly important that returns are legible.

2.5.3 The OLG has from time to time provided councils with guidelines on pecuniary interest and has issued a number of Circulars to Council on the question of returns (Circular numbers 94/30, 97/41, 99/31, 99/64 and 04/16).

2.5.4 Persons lodging returns should consult the OLG Circulars to Council. It may also be prudent to obtain legal advice or other appropriate expert advice in cases of doubt.

2.6 How do I lodge my disclosure of interests return?

2.6.1 The completed disclosure of interests return should be physically lodged with either the General Manager or the nominated officer. To merely send such a return to the General Manager or the nominated officer by post, or to place the return among other documents at the Council’s office, does not in itself constitute evidence that the return was lodged with the General Manager or the nominated officer (paragraph 48, page 15, Councillor Carmel Del Duca, City of Canada Bay Council, Case No. 1/2001).

2.7 What should the General Manager do with a completed disclosure of interests return?

2.7.1 On receipt of a completed disclosure of interests return, the General Manager or the nominated lodgement officer must check that the return has been completed, ie. that it contains the relevant return period and the name of the Councillor or designated person, it is signed and dated by the Councillor or designated person, and the word ‘NIL’ is inserted in any blank sections.

2.7.2 The General Manager of the nominated lodgement officer must then insert the date or receipt on the return and immediately file it in the register of returns. A receipt for the return is to be given to the Councillor or designated person on lodgement and a copy of the receipt is placed on file.
2.8 What are the General Manager’s tabling obligations of the disclosure of interests returns?

2.8.1 The General Manager must table the register of disclosure of interests returns at the first Council meeting after the lodgement date. For returns for the 1 July to 30 June year, the tabling date will be the first Council meeting after 30 September. Returns for newly elected Councillors must be tabled at the first Council meeting after three (3) months following their being declared elected.

2.9 Register of disclosure of interests returns

2.9.1 The register is an important public record. Councils must make it available for inspection to any member of the public upon request during ordinary office hours. Copies of the returns may also be provided to members of the public, either free of charge or with the payment of a reasonable copying charge (s.12B). The return is also relied upon in complaints concerning pecuniary interest breaches and issues relating to probity.

2.10 SUMMARY – disclosure of interests

<table>
<thead>
<tr>
<th>Disclosure of Interest</th>
<th>Councillor</th>
<th>Member of Council Committee</th>
<th>Council Adviser</th>
<th>General Manager</th>
<th>Senior Staff Member</th>
<th>Staff Member, Delegate or Committee Member holding “designated person” position (s.441)</th>
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<tbody>
<tr>
<td>How and when disclosed</td>
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<tr>
<td>and nature of interests disclosed</td>
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<td>✓</td>
<td>✓</td>
<td>×</td>
<td>×</td>
<td>×</td>
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<tr>
<td>Pecuniary Interests</td>
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<td>(s.451, s.456)</td>
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<tr>
<td>In dealing with Council</td>
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<tr>
<td>Pecuniary Interests</td>
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<tr>
<td>(s.459)</td>
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</table>
PART 3 – PECUNIARY INTEREST COMPLAINTS

3.1 What is a pecuniary interest complaint?

3.1.1 A pecuniary interest complaint is an allegation that a person has or may have contravened Part 2, Chapter 14 of the Act (s.460). A complaint can be validly made in three (3) ways.

3.2 What is the correct way to make a pecuniary interest complaint?

3.2.1 There are three (3) ways in which a complaint can be validly made so that the Director-General of the OLG can act upon it.

1. The complaint can take the form specified in Section 462(2). If a complaint is made in terms of Section 462(2) it must:
   (a) be in writing;
   (b) identify the complainant and the person against who the complaint is made;
   (c) give particulars of the grounds of the complaint;
   (d) be verified by a statutory declaration; and
   (e) be lodged with the Director-General.

2. The Director-General may also make a pecuniary interest complaint. Typically, this occurs where the Director-General determines to investigate an informal allegation.

3. A complaint may also be referred to the Director-General from another authority (s.464(1)). Such an authority includes, but are not limited to, the Ombudsman, the Independent Commission Against Corruption (ICAC), the Commissioner of Police or the Director of Public Prosecutions (DPP).

3.2.2 Section 466 requires the Director-General to give the person against whom the complaint is made notice of the nature of the complaint and whether any action has been, or is intended to be, taken concerning the complaint within three (3) months of receiving a complaint, making a complaint or having a matter referred to him/her by an investigating agency.

3.2.3 In reality, most of the matters dealt with by the OLG do not meet the formal requirements of the Act. However, the Director-General nevertheless examines these informal allegations and, if necessary, undertakes preliminary enquiries into the issues raised.

3.2.4 Where an apparent or possible breach of the pecuniary interest provisions by a Councillor, Council committee member, adviser or designated person comes to the General Manager’s attention, the General Manager should review all the relevant information. If, having done so, the General Manager considers the information shows evidence consistent with a breach, he or she should notify the OLG and forward relevant material and a short statement of relevant circumstances.

3.2.5 There are important jurisdictional requirements to be observed when dealing with complaints. These are discussed in the following sections.
3.3 Preliminary enquiries into pecuniary interest complaints and allegations

3.3.1 After a pecuniary interest complaint or informal allegation has been made to the Director-General, the Director-General may decide to conduct preliminary enquiries. Preliminary enquiries may be conducted with any person to obtain additional information. Such additional information allows for proper assessment and evaluation of the complaint.

3.3.2 Preliminary enquiries may include the issuing of a “notice to show cause” to the person against whom the complaint is made. The notice allows the person to give their side of the story and argue, if appropriate, why a formal investigation should not be conducted.

3.3.3 Preliminary enquiries are not an investigation. Accordingly, the Tribunal is not informed of such enquiries. They are designed to assist the Director-General to determine whether to make the matter the subject of an investigation.

3.4 Who investigates pecuniary interest complaints?

3.4.1 By Section 462 of the Act, the Director-General may decide to investigate a pecuniary interest complaint. Alternatively, the Director-General may refer the complaint to the Ombudsman, the ICAC, the Commissioner of Police or the DPP for investigation, or decide to take no action.

3.4.2 The Director-General may decide not to investigate a complaint if he/she considers that it falls into any of the categories specified in Section 463(1)(a)-(g) of the Act. The Section relates to exemptions from the pecuniary interest provisions of the Act.

3.4.3 Not every alleged breach of the pecuniary interest provisions is investigated. The decision to proceed is discretionary having regard to Section 463 of the Act. The Director-General also has regard to Section 463 in considering whether to make an informal allegation the subject of a complaint and investigation.

3.5 Who is notified when a complaint is received?

3.5.1 The Director-General must, within three (3) months after receiving a complaint, making a complaint or having a matter referred to him/her under Section 464, give the person against whom the complaint is made notice of the nature of the complaint and whether any action has been, or is intended to be taken (s.466(1)). These provisions do not apply where the Director-General is considering an informal allegation.

3.5.2 At the same time as notice is given to the person against whom the complaint is made, the Director-General must notify the complainant whether any action has been, or is intended to be taken concerning the complaint. However, at the time the notice is given to the person against whom the complaint is made, the Director-General is not obliged to notify the complainant of the decision not to investigate a complaint if notice of that decision has already been given under Section 463(2) (s.466(2)).
3.6 **What happens if the Director-General decides not to investigate a complaint?**

3.6.1 If the Director-General decides to take no action concerning a complaint made under Section 460 or Section 464, the Director-General must notify the complainant and give the reasons for the decision (s.463(2)). In practice, the Director-General will also give notice of a decision not to pursue an informal allegation. Such notice will be given to the complainant and, if the matter has been subject of a show cause letter, to the person the subject of the allegations.

3.7 **What happens if the Director-General decides to investigate a pecuniary interest complaint?**

3.7.1 In addition to Section 466, if the Director-General decides to investigate a pecuniary interest complaint or to refer a complaint for investigation to another authority, the Director-General must notify the Tribunal of the decision. In practice, the Director-General also notifies the complainant and the subject.

3.7.2 An authority that has investigated an allegation that a person has or may have contravened the pecuniary interest provisions of the Act, is authorised to send any report prepared by the authority concerning the investigation to the Director-General (s.467).

3.7.3 The Director-General must present an investigation report to the Tribunal (s.468).

3.8 **What does the Local Government Pecuniary Interest and Disciplinary Tribunal do?**

3.8.1 After a report is presented to the Tribunal in relation to a complaint investigated by the Director-General, the Tribunal decides on whether or not to conduct proceedings into the complaint (s.469).

3.8.2 The details of proceeding before the Tribunal are contained in Chapter 14, Division 2 of the Act. The booklet entitled “Local Government Pecuniary Interest Tribunal Procedure” also provides details of those procedures. The booklet can be obtained free of charge from the OLG web page.

3.9 **What sanctions can the Local Government Pecuniary Interest and Disciplinary Tribunal impose?**

3.9.1 The Tribunal can impose sanctions if it finds a complaint against a Councillor, member of a Council committee or Council adviser proved. The sanctions are listed in Section 482 and include:

(a) counsel the person, or
(b) reprimand the person, or
(c) suspend the person from office for a period not exceeding six (6) months, or
(d) disqualify the person from holding office for a period not exceeding five (5) years.
3.9.2 In the case of a Council employee, the Tribunal may, if it finds a complaint against the person:

(a) counsel the person, or
(b) reprimand the person, or
(c) recommend that the Council take specified disciplinary action against the employee (including counselsing or reprimanding the employee), or
(d) recommend dismissal of the employee.

3.10 SUMMARY – penalties for breach of disclosure requirements

<table>
<thead>
<tr>
<th>Penalties for Breach of Disclosure Requirements (s.482)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Councillor</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Counselling</td>
</tr>
<tr>
<td>Reprimand</td>
</tr>
<tr>
<td>Suspension from civic office for up to 5 years</td>
</tr>
<tr>
<td>Disqualification from civic office for up to 5 years</td>
</tr>
</tbody>
</table>
3.11 Pecuniary interest disclosures for Councillors in Council meetings

Do you or a person who you are associated with have a possible pecuniary interest? (s442&s443)

Yes

Is your pecuniary interest exempt? (s448)

No

Is there a reasonable likelihood or expectation of appreciable financial gain or loss to you or another person with whom you are associated? (s442(1))

Yes

Is the interest so remote or insignificant that it could not be regarded as likely to influence your decision in the matter? (s442(2))

No

Disclose the nature of your interest. (s451(1))

You must not be present at, or in sight of the meeting at any time during which the matter is being considered or discussed or voted on. (s451(2))

Ensure the disclosure is recorded in the minutes (s453&s451(1))

No

You are not required to make a pecuniary interest disclosure (s451)

No

Do you or a person who you are associated with have a possible pecuniary interest? (s442&s443)

Yes

Is your pecuniary interest exempt? (s448)

No

Is there a reasonable likelihood or expectation of appreciable financial gain or loss to you or another person with whom you are associated? (s442(1))

Yes

Is the interest so remote or insignificant that it could not be regarded as likely to influence your decision in the matter? (s442(2))

No

Disclose the nature of your interest. (s451(1))

You must not be present at, or in sight of the meeting at any time during which the matter is being considered or discussed or voted on. (s451(2))

Ensure the disclosure is recorded in the minutes (s453&s451(1))

No

You should consider if you have a conflict of interest under the council's code of conduct
3.12 Pecuniary interest disclosures for DesignatedPersons and Advisers

Do you or a person who you are associated with have a possible pecuniary interest? (s442 & s443)

- Yes
  - Is your pecuniary interest exempt? (s448)
    - Yes
      - Is there a reasonable likelihood or expectation of appreciable financial gain or loss to you or another person with whom you are associated? (s442(1))
        - Yes
          - Is the interest so remote or insignificant that it could not be regarded as likely to influence your decision in the matter? (s442(2))
            - Yes
              - Adviser
                - Disclose nature of interest if requested to give advice at council meeting (s456)
              - General Manager
                - Present matter at council meeting and council must deal with the matter (s459(3)) (There are exemptions — s459)
            - No
              - Other Designated Person
                - General manager to deal with matter or refer it to another person to deal with. (s459(2)) (There are exemptions — s459)
        - No
          - You are not required to make a pecuniary interest disclosure (s451)
    - No
      - You should consider if you have a conflict of interest under the council's code of conduct

- No
  - You are not required to make a pecuniary interest disclosure (s451)
3.13 Management of pecuniary interest complaints

[Diagram showing the flow of processes involved in managing pecuniary interest complaints, including ordinary complaints, complaints referred by authorities, and the role of the Director-General, Pecuniary Interest and Disciplinary Tribunal, and Supreme Court.]
### PART 4 – MISCELLANEOUS

#### 4.1 Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
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<tbody>
<tr>
<td>Act</td>
<td>Local Government Act 1993</td>
</tr>
<tr>
<td>Councillor</td>
<td>A person elected or appointed to civic office and includes the Mayor</td>
</tr>
<tr>
<td>Council Official</td>
<td>Includes Councillors, Council employees, Administrator, Council Committee Members, Conduct Reviewers and Delegates of Council</td>
</tr>
<tr>
<td>OLG</td>
<td>Office of Local Government</td>
</tr>
<tr>
<td>Regulation</td>
<td>Local Government (General) Regulation 2005</td>
</tr>
<tr>
<td>Tribunal</td>
<td>Local Government Pecuniary Interest and Disciplinary Tribunal</td>
</tr>
</tbody>
</table>

#### 4.2 Legislation, terminology and references

- Local Government Act 1993
- Local Government (General) Regulation 2005
- Government Information (Public Access) Act 2009
- Privacy and Personal Information Protection Act 1998

#### 4.3 Evaluation and review

4.3.1 It is the responsibility of the General Manager to monitor the adequacy of this Policy and recommend appropriate changes.

4.3.2 This Policy will be formally reviewed every four (4) years (term of the current Council) or as needed, whichever comes first.

#### 4.4 Associated documents

- Murray River Council Model Code of Conduct for Local Councils in NSW (POL100)
- Office of Local Government Circular to Councils 94/30, 97/41, 99/31, 99/64 and 04/16 – “Pecuniary Interests”
- Office of Local Government Circular to Councils 05/08 – “Legal Assistance for Councillors and Council Employees”
- Office of Local Government Circular to Councils 05/17 – “Codes of Meeting Practice – Councillors Invited to Speak after Declaring a Pecuniary Interest in a Matter”
- Office of Local Government Circular to Councils 05/17 – “Codes of Meeting Practice – Councillors Invited to Speak after Declaring a Pecuniary Interest in a Matter”
On 12 May 2016, the Premier of NSW, The Hon Mike Baird MP, made the Local Government (Council Amalgamations) Proclamation 2016 under the Local Government Act 1993, whereby Murray Shire Council and Wakool Shire Council were amalgamated to constitute the new area to be known as Murray River Council, effective immediately.

Council reserves the right to review, vary or revoke this policy at any time

This Policy is scheduled for review in September 2020