



Our Vision

Nambucca Valley ~ Living at its best

Our Mission Statement

'The Nambucca Valley will value and protect its natural environment, maintain its assets and infrastructure and develop opportunities for its people.'

Preamble

Section 353(2) of the Local Government Act provides that a member of staff must not engage, for remuneration, in private employment or contract work outside the service of the Council that relates to the business of the Council or that might conflict with the member's Council duties unless he or she has notified the General Manager in writing of the employment or work.

The General Manager, once notified, will either provide an approval for the outside work to commence or continue, or will prohibit the employee from engaging in this activity. If prohibited by the General Manager, the Act requires the employee not to engage in this work.

This section of the Act is based on the principle that people in public positions must avoid situations in which private interests impact upon the discharge of public duties. It is also based on the reality that situations can arise that appear to indicate conflict of interest, whether or not a conflict actually exists.

"The issue of public perception is important. When conflict of interest matters are left to the individual to decide, members of the public are likely to suspect the worst. If mechanisms are put in place to identify conflicts of interests before they arise along with strategies to manage any conflicts if they arise, then it can be seen that these matters are being handled openly, consistently, and honestly. While the onus is still on the individuals to behave honestly and impartially, systems must be in place to promote this behaviour. However, this does not release individuals from their own responsibility for recognising when they have a conflict and to act appropriately."

Extracted from: *Under Careful Consideration: Key Issues for Local Government. Guidelines to Reduce Conflicts of Interest in Councils.*
ICAC, March 1997.

The aim of this policy is to provide the framework for identifying conflicts of interest that may arise from employees engaging in employment outside Council. The procedures that accompany this policy will provide the mechanisms for notifying, approving, prohibiting and reviewing these matters. They will also provide the appeals process to be used if an employee wishes a prohibition to be reviewed.

The terms "work outside of Council" and "outside work" refer to secondary employment for the purpose of this policy and procedure.

Policy

1 Applicability

This policy applies to all employees of Nambucca Valley Council.

2 Definition

All references to “paid work outside Council” or “paid outside work” in this policy are to be understood to mean private employment or contract work, for remuneration, outside Council, within the meaning set out in Section 353 (2) of the Local Government Act, 1993.

3 Responsibility of Employees

Employees must not engage in paid work outside Council which relates to the business of Council or which might conflict with their Council duties unless they have notified the General Manager and he/she has given approval. [s.353 of Local Government Act] An existing or prospective employee who is already participating in paid outside work which may represent a conflict of interest, is required to notify the General Manager in writing.

It is the employee’s responsibility to inform the General Manager of any paid work outside Council which relates to the business of Council or which may conflict with Council duties.

When notification is to be made, then it is to be made in the form as attached to this policy.

4 General Manager’s Responsibility

The General Manager may prohibit an employee from engaging in paid outside work where it presents a conflict with their Council duties.

The General Manager may make the termination of paid outside work a condition of commencement or continuation of employment with Council. An employee who engages or continues to engage in paid outside work after being prohibited from doing so by the General Manager may be subject to a range of actions as detailed in the Procedures section of this Policy.

On receipt of a notification in the required form, the General Manager will advise the employee that the notification has been received and set a date by which his/her determination of the matter will be provided. A determination will be made within a reasonable time. If the General Manager prohibits the secondary employment, the reason(s) for this decision will be advised in writing.

The General Manager may delegate his/her authority to deal with all or any part of this policy and procedure to an appropriate alternate officer.

5 Factors to be Considered

The General Manager may prohibit employees from engaging in paid outside work if, in his/her opinion, the hours of work, work arrangements or nature of duties jeopardise the health, safety and efficiency of the employee, co-workers or members of the public.

The General Manager may also prohibit employees from engaging in paid outside work if that work directly or indirectly conflicts or potentially conflicts with the business of Council or with the employee’s function, duties or responsibilities at Council.

Outside work is not to be carried out on Council premises, using Council assets or facilities of any kind, using Council information or resources, unless such use is lawfully authorised and proper payment is made where appropriate. Outside work is not to be carried out within the hours of work for the employee’s Council position.

Employees who are considering entering into outside work should think about the following:

- Is the outside organisation, person or entity in, or entering into a contractual relationship with Council?
- Is Council in a regulatory relationship with the outside organisation, person or entity?
- Will the hours of work conflict in any way with his/her Council duties, or his/her health and safety?
- Will there be sufficient rest time away from both forms of work to enable the employee to present for work fit and alert and be able to work efficiently and to the standard required?
- Will the outside work involve him/her in litigation against another Council or directly in written or oral submission before another Council?
- Will performance of the outside work impact negatively on Council's image and credibility?
- Will performance of the outside work require release of confidential information which is known to the employee, but not available to the general public?
- Is there any other conflict of interest, or potential conflict of interest, between the employee's Council duties and those involved in the outside work?

Answering "yes" to any of the above questions is likely to result in the General Manager prohibiting performance of the outside work.

6 Approval and Review of Notifications

The General Manager will not unreasonably prohibit outside work.

The General Manager may review, and subsequently withdraw, an approval if:

- an employee is transferred to another position or location within Council and the paid work being undertaken conflicts with the employee's Council duties in the new position or location; or
- circumstances change which, in the General Manager's opinion, create a conflict of interest or a potential conflict of interest; or
- issues arise from the performance of outside work which affect the employee's health, safety or attendance for duty.

7 Sanctions

Breaches of the policy and procedures may result in counselling or disciplinary action which may ultimately result in dismissal, depending on the severity, scale and importance of the matter. More severe sanctions will ordinarily only apply when there is repeated and deliberate concealment of pertinent information, failure to disclose, or continuation of prohibited outside work.

8 Case Studies

The following case studies from the ICAC publication "Practical Guide to Corruption Prevention" give some examples of the types of problems that may occur with secondary employment in public sector organisations.

- A local government building trades overseer directed council plumbing work to a company owned by himself and his wife. Although the work was done at a very competitive price, there was a conflict of interest because the overseer responsible for awarding contracts was also competing to secure the work and did not disclose that personal interest.
- Similarly, conflict of interest may occur when a health inspector gives a favourable report on a take-away food shop where he or she works at the weekend but issues a notice to another shop with similar conditions.
- A person with responsibility for a regulatory or inspectorial role, such as a noxious weeds inspector, should not undertake secondary working in the noxious weeds spraying industry. This employment could create difficulties in ensuring that the inspectorial role is impartial.

Procedures

1 Notification

Notification of secondary employment is to be made in the form as attached in Annexure A. For existing employees, approval by the General Manager must be granted prior to engaging in the outside work. Prospective employees will be advised of their obligation to notify the General Manager of existing or potential outside work in letters of offer and will be advised of full details of the policy in staff inductions.

Where outside work has previously been approved, any change to the conditions of the outside work which could result in a conflict of interest arising, must be advised by completion of a new Application Form as soon as the changed conditions become known.

The General Manager will keep a Register of Notifications of Secondary Employment. Each notification will be endorsed as being either approved or prohibited and a copy forwarded to the employee.

2 Approvals

Employees will be advised that their notification has been approved by return of a copy of the appropriately endorsed notification.

3 Prohibitions

Section 353 of the Local Government Act states:

“(3) [Conflict of Duties] The general manager may prohibit a member of staff from engaging, for remuneration, in private employment or contract work outside the service of the council that relates to the business of the council or that might conflict with the member’s council duties.”

If it is believed that the work outlined in the notification will conflict with the employee’s Council duties, he/she will be advised that the General Manager has prohibited him/her from engaging in the outside work. The advice will be made by the return of a copy of the appropriately endorsed notification containing the reasons for the prohibition.

Section 353 of the Local Government Act states:

“(4) [Prohibition of staff to engage in private work] A member of staff must not engage, for remuneration, in private employment or contract work outside the service of council if prohibited from doing so under subsection (3).”

Therefore, employees who have been advised that the General Manager prohibits them from engaging in outside work, must cease this work within fourteen days, or at a later date as approved in writing by the General Manager. The General Manager will base his/her decision to approve delayed termination of prohibited outside work on the circumstances of the particular case.

Delayed termination of outside work will not be approved if a clear conflict of interest situation is currently evident. To apply for delayed termination, the employee should apply in writing to the General Manager within fourteen days of receiving the Prohibition, stating the circumstances, and any matter he/she wishes the General Manager to take into account when considering the matter.

4 Appeals

Any appeal against a decision by the General Manager or his/her delegate to prohibit outside work, should be dealt with by of Council’s Grievance Procedure.

Annexure A



**NAMBUCCA VALLEY COUNCIL
APPLICATION FOR APPROVAL OF SECONDARY EMPLOYMENT**

Applicant's Name:

Position with Council:

Details of Proposed Secondary Employment

Name of Employer:

Main business of Employer:

Relationship to Council if any:

Duties:

Hours of Work:

Statement by Applicant

I acknowledge that, should approval be granted for my Secondary Employment, any such approval is subject to the following conditions, and may be revoked by the General Manager at any time should these conditions not be met:

The secondary employment:

- Will not affect the actual or perceived integrity of Council, or involve an actual or perceived conflict of interest.
- Shall not be related in any way to any regulatory or inspectorial role I undertake for Council
- Shall not affect the efficient performance of my normal duties nor jeopardise the health and safety of myself, my co-workers or members of the public.
- Shall not entail the use of any Council resources or information either in the conduct of that secondary employment or to help gain private employment.
- Shall not entail the use of Council vehicles, materials and equipment to do part time work in off-duty hours.
- Shall not entail the release or misuse confidential information which is accessible to Council staff but not to the general public.

Signed Date

To be completed by the General Manager

Approval Granted/Denied

Signed Date

5. History

Department:	Corporate Services	Last Reviewed	Resolution Number
Policy Category	Organisation	23/2/21	By AGMCS
Endorsed By:	General Manager		
Approval Authority:	General Manager		
Policy Owner:	MHR		
Contact Officer:	MHR		
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