



Legislation

Local Government Association
of South Australia

Conflict of Interest Guidelines

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www.lga.sa.gov.au

The voice of local government.

The *Conflict of Interest Guidelines* have been prepared by Wallmans Lawyers for the Local Government Association of SA (LGA) for use by member Councils. The LGA is the statutory peak body for Local Government in South Australia, representing all 68 Councils in the State.

Enquiries regarding this publication should be directed to the LGA on 08 8224 2000.

Awareness and responsibility

Consider the matters coming before Council

Identify any interests or perceived interests which you may have in a matter

Identifying a conflict of interest

Determine whether or not the interest will be:

- a material conflict of interest
- an actual conflict of interest
- a perceived conflict of interest

Required conduct

Act according to the requirements of the LG Act

Resources

Glossary

Case studies

Minute taking templates

Awareness and responsibility

Local Government in South Australia is provided by autonomous Councils established in accordance with the provisions of the *Local Government Act 1999 (LG Act)*.

Each Council is established to provide for the government and management of its area at the local level and, in particular, to:

- act as a representative, informed and responsible decision-maker in the interests of its community;
- provide and co-ordinate various public services and facilities and to develop its community and resources in a socially just and ecologically sustainable manner;
- encourage and develop initiatives within its community for improving the quality of life of the community;
- represent the interests of its community to the wider community; and
- exercise, perform and discharge the powers, functions and duties of local government under this and other Acts in relation to the area for which it is constituted.

Maintaining public confidence is pivotal for Councils to deliver on these roles. Public confidence can be maintained where a Council is viewed as accountable, transparent and effective.

Managing conflicts of interest and perceived conflicts of interest is integral to the accountability, transparency and effectiveness of local government. The *Local Government (Accountability and Governance) Amendment Act 2015* amends the LG Act with respect to conflicts and perceived conflicts of interest arising in respect of matters to be discussed at a meeting of a Council, a Council Committee or Subsidiary.

The conflict of interest provisions under the LG Act apply in the same way to a Council Committee Member in respect of matters to be discussed by a Council Committee as they apply to Elected Members with respect to matters to be discussed by a Council. Similarly, the conflict of interest provisions apply to the Board Members of a Subsidiary in respect of matters to be discussed by the relevant Board.

These guidelines use the terms:

- 'Member' to refer respectively to Elected Members, Council Committee Members and Board Members; and

- 'Meeting' to refer to the type of meeting relevant to the particular Member (ie for an Elected Member a meeting of the Council, for a Council Committee Member a meeting of the relevant committee and for a Board Member a meeting of the Board of the relevant Subsidiary).

This document provides guidance to Members in applying the statutory conflict of interest provisions. Ultimately, however, it is each Member's responsibility under the LG Act to identify where he or she has a conflict or perceived conflict of interest and then to act as required by the LG Act.

To discharge this responsibility, a Member needs to be aware of the matters which are to come before a Meeting and consider whether he or she has an interest which may give rise to a conflict in respect of any matter. Members should consider not only their own interests, but also (for the purposes of a material conflict of interest) the interests of nominated persons, including relatives.

Guidance is provided in this document as to identifying and categorising a conflict of interest.

There are three categories of conflict of interest under the LG Act:

- material conflict of interest;
- actual conflict of interest; and
- perceived conflict of interest.

Process charts setting out the key issues to be considered to determine whether or not a conflict or perceived conflict of interest exists are provided.

Information is also provided on the potential legal consequences of failing to comply with the conflict of interest requirements and the appropriate action to be taken in the event a conflict of interest exists.

Further resources for Members are included in the last section of this guide. Along with a glossary of key terms, case studies dealing with the application of the conflict of interest provisions are provided.

Material conflict of interest - Identification

Section 73 of the LG Act specifies when a Member has a material conflict of interest in a matter to be discussed at a Meeting. The process set out in the LG Act for determining whether or not a material conflict of interest exists is shown in Diagrams 1, 2 and 3.

Benefit or loss to nominated person

The key concept in respect of a material conflict of interest is whether or not the Member (Diagram 1) or a nominated person (Diagrams 2 and 3) will gain a benefit or suffer a loss depending on the outcome of the consideration of the matter at the meeting. In this context, a benefit or loss can be direct or indirect and can be of a personal or pecuniary nature.

For the purpose of determining whether a particular benefit or loss will constitute a material conflict of interest, the LG Act requires that a benefit or loss to the following types of people is identified:

- (a) the Member;
- (b) a relative of the Member;
- (c) a body corporate of which the Member is a director or a member of the governing body;
- (d) a proprietary company in which the Member is a shareholder;
- (e) a beneficiary under a trust or an object of a discretionary trust of which the Member is a trustee;
- (f) a partner or the Member;
- (g) the employer or an employee of the Member;
- (h) a person from whom the Member has received or might reasonably be expected to receive a fee, commission or other reward for providing professional or other services; and
- (i) a person of a prescribed class.¹

Interest of a relative (other than a spouse or domestic partner)

In relation to an interest of a relative of the Member (other than the Member's spouse or domestic partner), there will be no material conflict of interest in a matter to be discussed at a Meeting if the Member does not know, and could not reasonably be expected to know, of the interest. A Member seeking to rely on this provision would need to be confident that he or she could demonstrate that he or she had no actual knowledge of the relative's interest and could not reasonably be expected to know of the interest.

¹ No regulations have been promulgated under the LG Act for this purpose.

Member, officer or employee of an agency or instrumentality of the Crown

Where a Member is a member, officer or employee of an agency or instrumentality of the Crown, the Member will be regarded as having a material conflict of interest in a matter before the Meeting if the matter directly concerns that agency or instrumentality, but otherwise will not be regarded as having an interest in a matter by virtue of being a member, officer or employee of the agency or instrumentality (Diagram 3).

This means that if a matter is before a Meeting which directly concerns an agency or instrumentality of which a Member is a member, officer or employee, a material conflict of interest will exist for that Member. Conversely, where a matter before a Meeting concerns another agency or instrumentality of the Crown to which the Member is not a member, officer or employee, there will be no material conflict of interest.

Interest in common with all or a substantial proportion of persons in the Council area

The LG Act also provides that if a benefit or loss would be enjoyed or suffered in common with all or a substantial proportion of the ratepayers, electors or residents of the Council area then an Elected Member will not be taken to have a material conflict of interest in the matter. For example, an Elected Member who lives within the Council area has an interest in common with all ratepayers in respect of the proposed general rates for the next financial year. In contrast, an Elected Member could not rely upon this exception to a material conflict of interest in respect of a separate rate which was to be levied on a discrete part of the Council area in which the Elected Member lived.

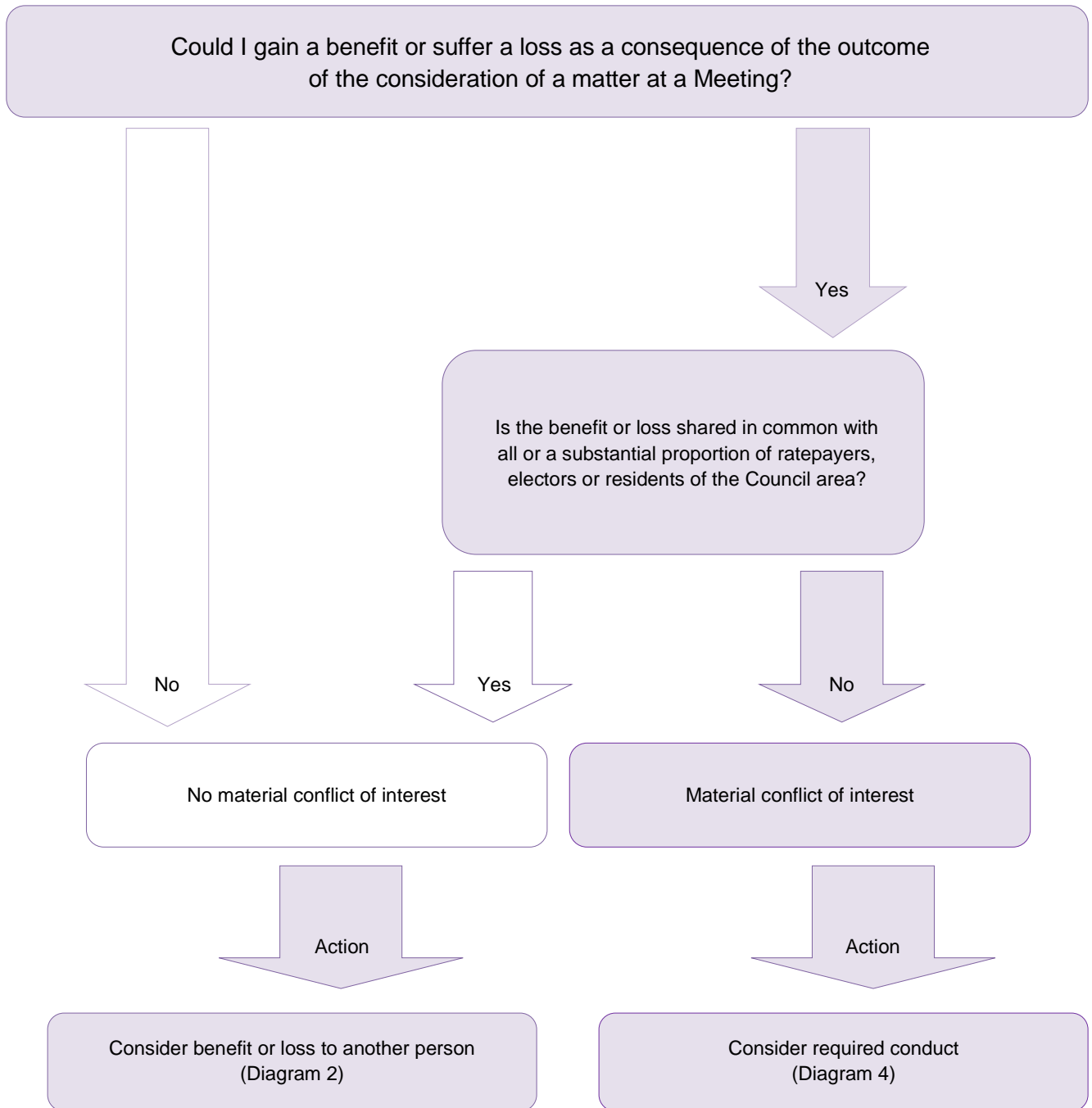
A Committee Member or Board Member of a Subsidiary who may receive a benefit or suffer a loss which would be enjoyed or suffered in common with all or a substantial proportion of the ratepayers, electors or residents of the relevant Council area will also not be taken to have a material conflict of interest in the matter.

Different interpretations of what will constitute a 'substantial proportion of ratepayers, electors or residents' will exist. Given this uncertainty, an Elected Member, Committee Member or Board Member of a Subsidiary should be cautious in relying on the exception where the benefit or loss is not shared in common with *all* ratepayers, electors or residents in the council area. The greater the proportion of ratepayers, electors or residents in the council area sharing the benefit or loss the more certainty there will be that the exception from the material conflict of interest provisions will apply.

Given the multiple constituent council areas, there is some ambiguity regarding the application of the exemption to Board Members of Regional Subsidiaries. It would be prudent for Board Members of Regional Subsidiaries not to rely on the exemption.

Material conflict of interest - Benefit or loss to self

Diagram 1



Material conflict of interest - Interest of another person (other than the Crown in right of South Australia)

Diagram 2

Could another person gain a benefit or suffer a loss as a consequence of the outcome of the consideration of a matter at a Meeting?

Yes

What is your relationship to the other person?

- relative
- member of governing body of a body corporate
- shareholder of a proprietary company
- trustee of a trust under which the person is the beneficiary
- trustee of a discretionary trust under which the person is the object
- partner
- employer
- employee
- professional service provider for fee, commission or other reward

Note: If the relationship is as a member, officer or employee of an agency or instrumentality of the Crown in right of South Australia – see Diagram 3

Yes

Is the benefit or loss shared in common with all or a substantial proportion of ratepayers, electors or residents of the Council area?

No

No

Yes

No

No material conflict of interest

Material conflict of interest

Action

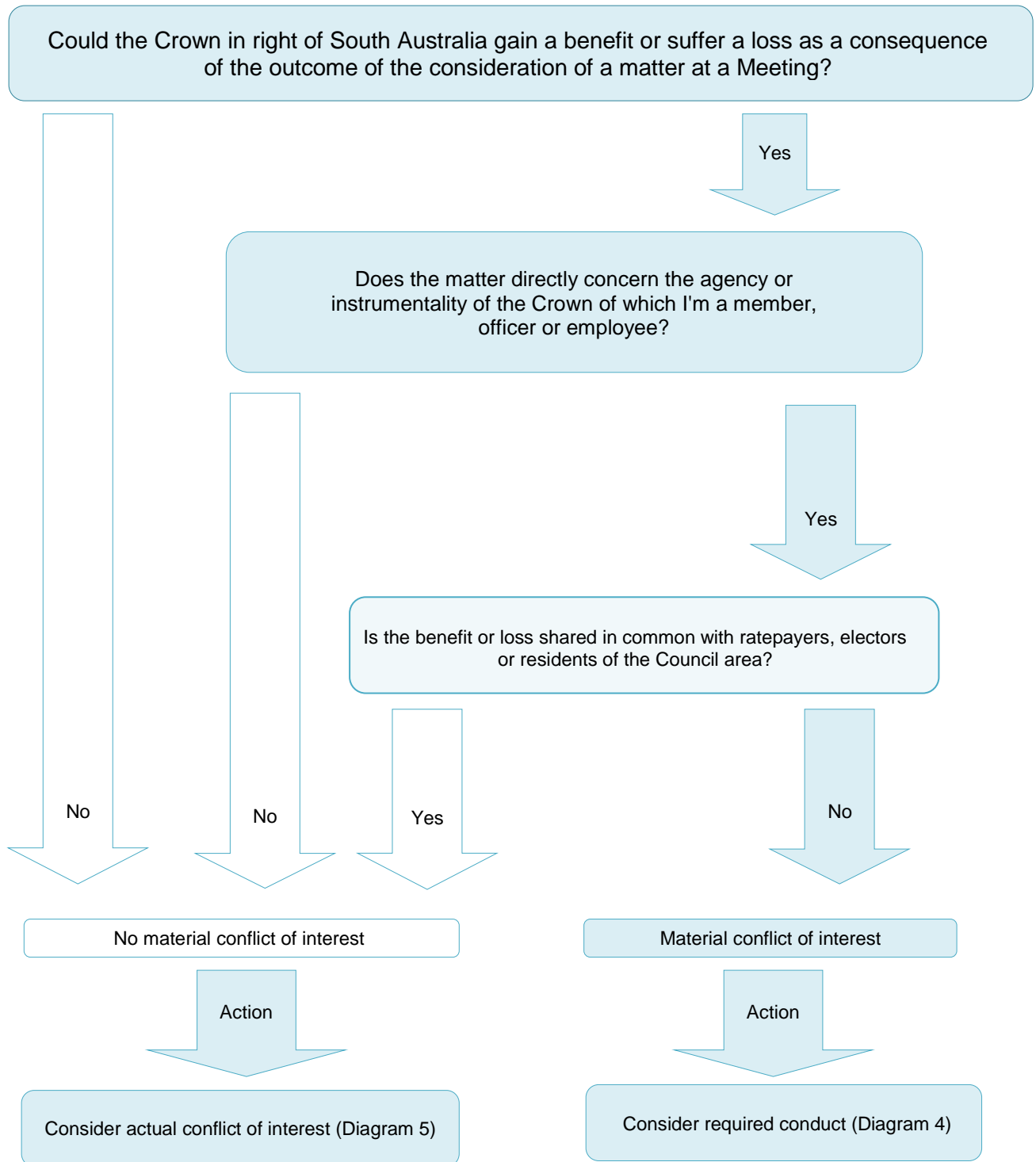
Action

Consider actual conflict of interest (Diagram 5)

Consider required conduct (Diagram 4)

Material conflict of interest Interest of the Crown in right of South Australia

Diagram 3



Material conflict of interest - Required conduct

Section 74 of the LG Act sets out the actions which must be taken if a Member has a material conflict of interest in a matter to be discussed at a Meeting (Diagram 4).

Prescribed ordinary business of the Council

The requirements set out in section 74 of the LG Act do not apply to a matter of ordinary business of a Council of a kind prescribed by regulation for the purposes of that section. Where a matter has been prescribed for the purposes of section 74, an Elected Member will be relieved from complying with the process set out in section 74 in respect of a material conflict of interest in respect of that matter.

The prescription of a matter of ordinary business of a Council, however, does not extinguish a material conflict of interest in respect of that matter.

Regulation 8AAA of the *Local Government (General) Regulations* 2013 (**LG Regulations**) prescribes the following as the matters of ordinary business of a Council:

- (a) the preparation, discussion, conduct, consideration or determination of a representation review under section 12 of the Act;
- (b) the preparation, discussion, adoption or revision of a policy relating to allowances and benefits payable to members if the policy relates to allowances and benefits payable equally to each member (rather than allowances and benefits payable to particular members or particular office holders);
- (c) the preparation, discussion, adoption or alteration of a training and development policy under section 80A of the Act;
- (d) the preparation, discussion, adoption or amendment of a strategic management plan under section 122 of the Act;
- (e) the adoption or revision of an annual business plan;
- (f) the adoption or revision of a budget;
- (g) the declaration of rates (other than a separate rate) or a charge with the character of a rate, and any preparation or discussion in relation to such a declaration;
- (h) a discussion or decision of a matter at a meeting of a Council if the matter:
 - (i) relates to a matter that was discussed before a meeting of a subsidiary or committee of the Council; and
 - (ii) the relevant interest in the matter is the interest of the Council that established the committee or which appointed, or nominated for appointment, a member of the board of management of the Council subsidiary or regional subsidiary.

Prescribed ordinary business matters of a subsidiary or committee

The requirements set out in section 74 of the LG Act do not apply to a matter of ordinary business of a subsidiary or committee of a kind prescribed by regulation for the purposes of that section. Where a matter has been prescribed for the purposes of section 74, a Member

of a Council Committee or Subsidiary (either a wholly-owned subsidiaries or regional subsidiaries) will be relieved from complying with the process set out in section 74 in respect of a material conflict of interest in respect of that matter.

The prescription of a matter of ordinary business of a Committee or Subsidiary, however, does not extinguish a material conflict of interest in respect of that matter.

Regulation 8AAB of the LG Regulations prescribes the following as the matters of ordinary business of a Council Committee or Subsidiary for the purposes of section 74:

- (a) a matter to be discussed, or in relation to which a recommendation or decision is to be made, at a meeting of a Subsidiary if:
 - (i) the discussion, recommendation or decision relates to the purpose for which the Subsidiary is established; and
 - (ii) the relevant interest in the matter is the interest of the council which appointed, or nominated for appointment, a member of the board of management of the Subsidiary;
- (b) a matter to be discussed, or in relation to which a recommendation or decision is to be made, at a meeting of a Regional Subsidiary if:
 - (i) the discussion, recommendation or decision relates to the purpose for which the Subsidiary is established; and
 - (ii) the relevant interest in the matter is the interest of a Council which appointed, or nominated for appointment, a member of the board of management of the Subsidiary; and
 - (iii) the relevant benefit or loss would be enjoyed or suffered in common with all or a substantial proportion of the constituent Councils of the Subsidiary;
- (c) a matter to be discussed, or in relation to which a recommendation is to be made, at a meeting of a Council Committee established under section 41 of the Act if:
 - (i) the discussion or recommendation relates to the purpose for which the Committee is established; and
 - (ii) the relevant interest in the matter is the interest of the Council that established the Committee.

Required conduct

Where a Member has a material conflict of interest, the Member must inform the Meeting. In order for a Member to provide this information, the Member must have reviewed the agenda and supporting papers and reports prior to attending the Meeting and have considered his or her potential interest in the matters to be discussed at the Meeting.

After informing the meeting of the Member's material conflict of interest, the Member must leave the meeting room (including any area set aside for the public) so that the Member

cannot view or hear any discussion or voting at the Meeting. The Member must stay out of the meeting room while the matter is being discussed and voted on.

Ministerial approval to remain

The only exception to the requirement to vacate the meeting room is where the Minister for Local Government (**Minister**) has granted an approval in writing to the Member to take part in the Meeting or to remain in the room where the Meeting is being conducted. The Minister may only give this approval on the basis that the number of Members subject to the obligation to vacate the room would obstruct the conduct of the Meeting if the approval was not given or it otherwise appears to the Minister to be in the interests of the Council's community and area. An approval given by the Minister may be subject to any conditions determined by the Minister.

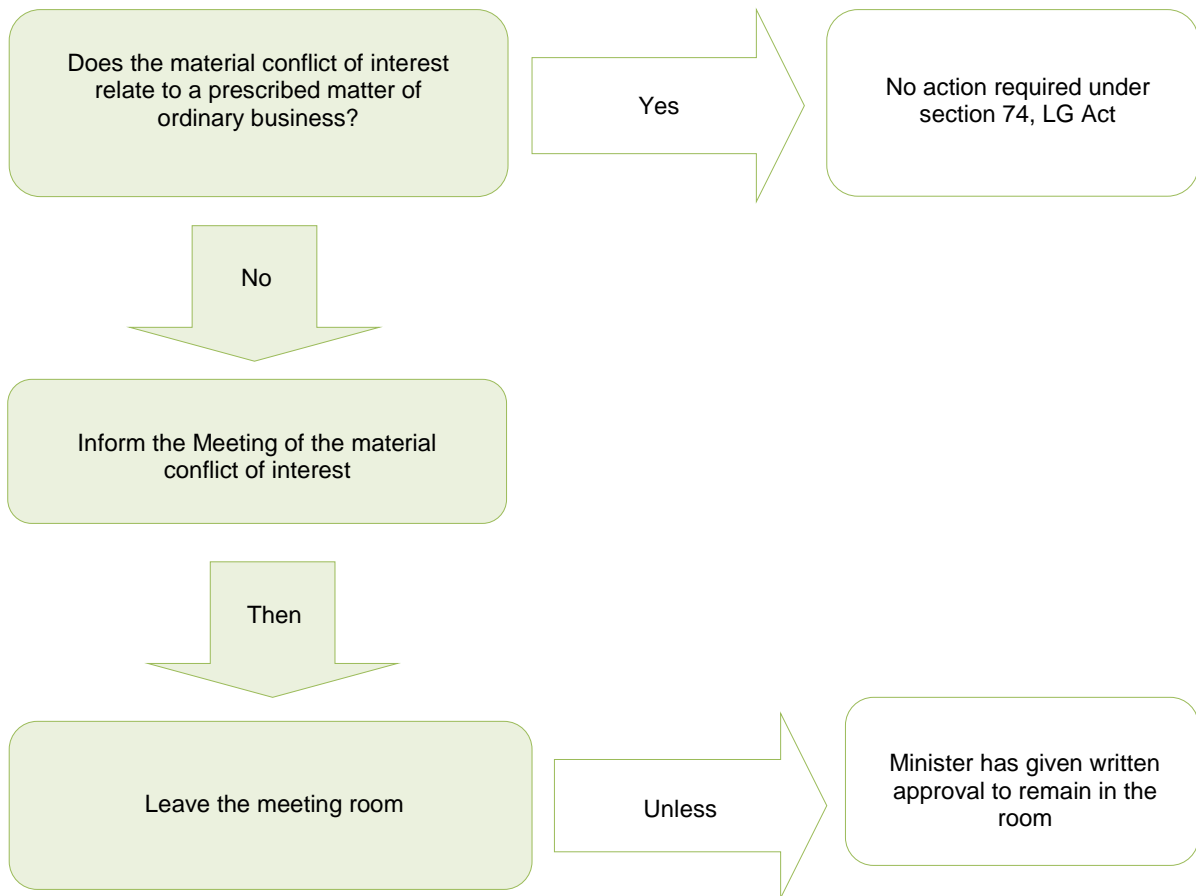
Minutes

Under section 74(5) of the LG Act, where a Member discloses a material conflict of interest in a matter to be discussed at a Meeting, the following details must be recorded in the minutes of the Meeting and on a website determined by the Chief Executive Officer for the Council or Subsidiary:

- (a) the Member's name;
- (b) the nature of the interest as described by the Member; and
- (c) if the Member took part in the meeting or was in the chamber during the Meeting, under an approval given by the Minister, the fact that the Member took part in the Meeting or was present during the Meeting (as the case requires).

Material conflict of interest - Required conduct

Diagram 4



Minutes must record

- ☞ Member's name
- ☞ Nature of the interest as described by the Member
- ☞ Member's presence or participation under an approval of the Minister

Consequences of breach

- ☞ Voting on a matter with intention to gain a benefit or avoid a loss for the member or other person: maximum penalty of \$15,000 or 4 years imprisonment
- ☞ All other breaches: maximum penalty of \$5,000
- ☞ Investigation for corruption for the purposes of the ICAC Act

Defence

- ☞ In case of a benefit or loss to a relative (other than spouse or domestic partner) the Member does not know and could not reasonably be expected to know of the interest

Actual conflict of interest - Identification

Where a member has an interest in a matter to be discussed at a Meeting which does not constitute a material conflict of interest, the Member should consider whether the interest gives rise to an actual conflict of interest (Diagram 5).

Conflict of interest

Section 75 of the LG Act indicates that a conflict of interest is a conflict between:

- (a) a Member's interests (whether direct or indirect, personal or pecuniary); and
- (b) the public interest,

that might lead to a decision that is contrary to the public interest.

Public interest

The 'public interest' is a broad term which encompasses the interests of the public rather than the interests of individuals. Measures or actions which are for the good order and functioning of society will be in the public interest.

Elected Members are elected to represent the public interest. This does not necessarily mean, however, that the interests of Elected Members will always align with the public interest. Elected members need to be aware of their personal and pecuniary interests and the potential for these to conflict with the broader interests of the community. Similarly, Committee Members and Board Members need to consider whether their personal interests could be in conflict with the interests of the public.

Actual conflict of interest

An actual conflict of interest will exist where a Member has a conflict of interest in the matter.

Exclusions from conflict of interest

There are various exclusions which apply when determining whether or not a Member has a conflict of interest. A Member will not be regarded as having a conflict of interest in a matter to be discussed at a Meeting by reason only of:

- (a) an engagement with a community group, sporting club or similar organisation undertaken by the member in his or her capacity as a Member;
- (b) membership of a political party;
- (c) membership of a community group, sporting club or similar organisation (if the member is not an officeholder for the group, club or organisation);
- (d) the Member having been a student of a particular school or his or her involvement with a school as a parent of a student at the school; or
- (e) a nomination or appointment as a member of a board of a corporation or other association, if the Member was nominated for appointment by the Council or Subsidiary (as relevant).

A Member will also not be regarded as having a conflict of interest in a matter to be discussed at a Meeting in prescribed circumstances.²

Interest in common with all or a substantial proportion of persons in the Council area

An Elected Member will not be taken to have a conflict of interest in a matter to be discussed at a meeting of the Council if the relevant Elected Member's interest in the matter is held in common with all or a substantial proportion of the ratepayers, electors or residents of the Council area.

Where a Committee Member or Board Member of a Subsidiary shares an interest in common with all or a substantial proportion of the ratepayers, electors or residents of the relevant Council area, that Member will also not be taken to have a conflict of interest in the matter.

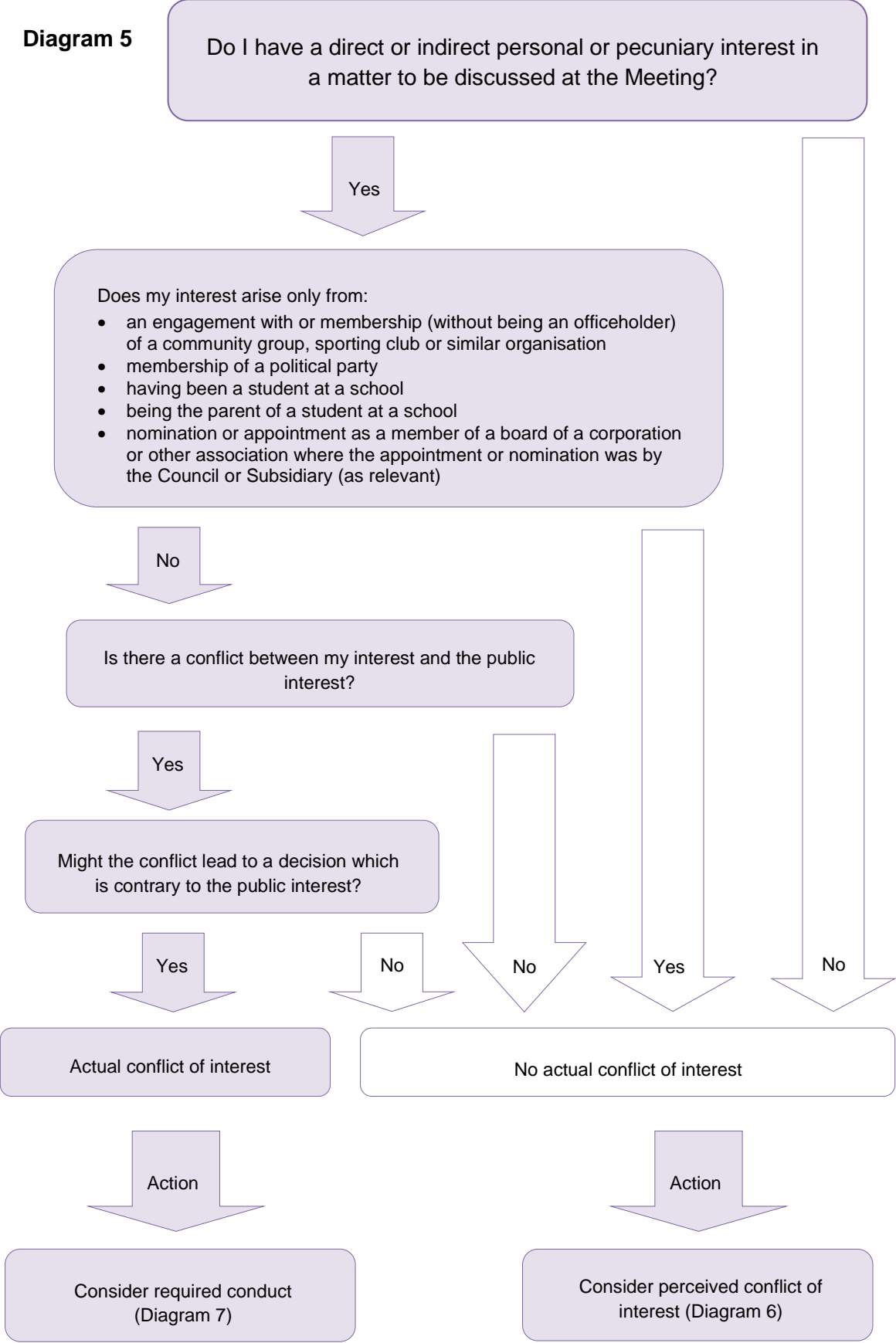
Different interpretations of what will constitute a 'substantial proportion of ratepayers, electors or residents' will exist. Given this uncertainty, an Elected Member, Committee Member or Board Member of a Subsidiary should be cautious in relying on the exception where the interest is not shared in common with *all* ratepayers, electors or residents in the council area. The greater the proportion of ratepayers, electors or residents in the council area sharing the interest, the more certainty there will be that the exception from the actual conflict of interest provisions will apply.

Given the multiple constituent council areas, there is some ambiguity regarding the application of the exemption to Board Members of Regional Subsidiaries. It would be prudent for Board Members of Regional Subsidiaries not to rely on the exemption.

² No regulations have been promulgated under the LG Act for this purpose.

Actual conflict of interest - Identification

Diagram 5



Perceived conflict of interest - Identification

Perceived conflict of interest

A Member will have a perceived conflict of interest in relation to a matter to be discussed at a Meeting where the Member could reasonably be taken, from the perspective of an impartial, fair-minded person, to have a conflict of interest in the matter. Determining whether a perceived conflict of interest exists requires a Member to consider the way in which the Member's interests appear in relation to a matter to be discussed at a Meeting.

The same definition of the term 'conflict of interest' is used for perceived conflicts of interest and actual conflicts of interest. Section 75 of the LG Act indicates that a conflict of interest is a conflict between:

- (a) a Member's interests (whether direct or indirect, personal or pecuniary); and
- (b) the public interest,

that might lead to a decision that is contrary to the public interest.

A Member must, therefore, consider whether there could be a reasonable perception by an impartial, fair-minded person that there is a conflict between the Member's interest and the public interest that might lead to a decision that is contrary to the public interest.

Exclusions from conflict of interest

Perceived conflict of interest has the same exclusions as apply to actual conflict of interest. A Member will not be regarded as having a conflict of interest in a matter to be discussed at a Meeting by reason only of:

- (a) an engagement with a community group, sporting club or similar organisation undertaken by the member in his or her capacity as a Member;
- (b) membership of a political party;
- (c) membership of a community group, sporting club or similar organisation (if the member is not an officeholder for the group, club or organisation);
- (d) the Member having been a student of a particular school or his or her involvement with a school as a parent of a student at the school; or
- (e) a nomination or appointment as a member of a board of a corporation or other association, if the Member was nominated for appointment by a Council or Subsidiary (as relevant).

A Member will also not be regarded as having a conflict of interest in a matter to be discussed at a Meeting in prescribed circumstances.³

³ No regulations have been promulgated under the LG Act for this purpose.

Interest in common with all or a substantial proportion of persons in the Council area

An Elected Member will also not be taken to have a conflict of interest in a matter to be discussed at a meeting of the Council if the relevant Elected Member's interest in the matter is held in common with all or a substantial proportion of the ratepayers, electors or residents of the Council area.

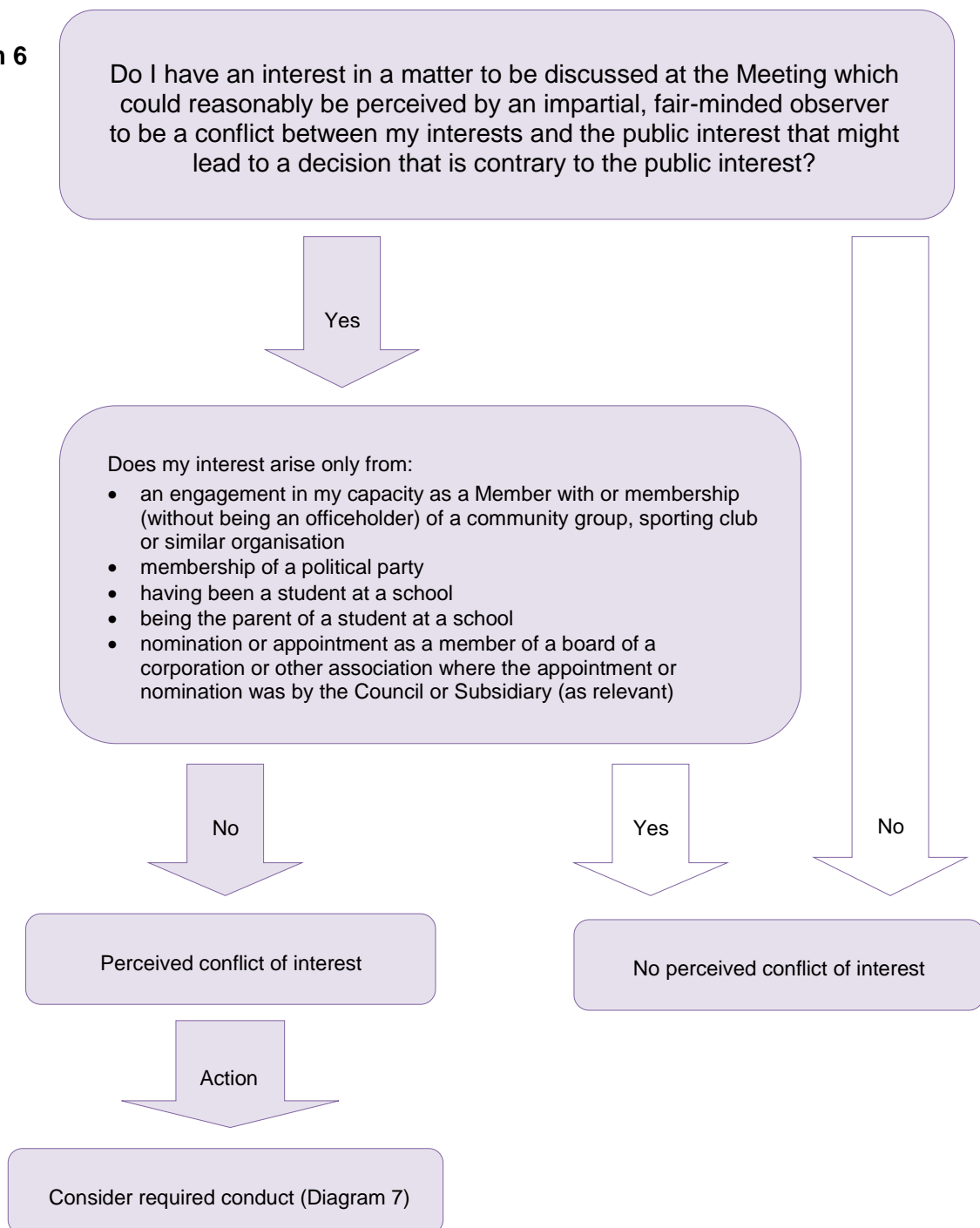
Where a Committee Member or Board Member of a Subsidiary shares an interest in common with all or a substantial proportion of the ratepayers, electors or residents of the relevant Council area will also not be taken to have a conflict of interest in the matter.

Different interpretations of what will constitute a 'substantial proportion of ratepayers, electors or residents' will exist. Given this uncertainty, an Elected Member, Committee Member or Board Member of a Subsidiary should be cautious in relying on the exception where the interest is not shared in common with *all* ratepayers, electors or residents in the council area. The greater the proportion of ratepayers, electors or residents in the council area sharing the interest, the more certainty there will be that the exception from the perceived conflict of interest provisions will apply.

Given the multiple constituent council areas, there is some ambiguity regarding the application of the exemption to Board Members of Regional Subsidiaries. It would be prudent for Board Members of Regional Subsidiaries not to rely on the exemption.

Perceived conflict of interest - Identification

Diagram 6



Actual or perceived conflict of interest - Required conduct

Section 75A of the LG Act indicates the actions which must be taken where a Member has an actual conflict of interest or a perceived conflict of interest (Diagram 7).

Prescribed ordinary business of the Council

The requirements in respect of dealing with actual or perceived conflicts of interest under section 75A of the LG Act do not apply to matters of ordinary business of the Council, Council Committee or Subsidiary which are prescribed by regulation.

Regulation 8AAA of the LG Regulations prescribes the following as the matters of ordinary business of a Council for the purposes of section 75A(6) of the LG Act:

- (a) the preparation, discussion, conduct, consideration or determination of a representation review under section 12 of the Act;
- (b) the preparation, discussion, adoption or revision of a policy relating to allowances and benefits payable to members if the policy relates to allowances and benefits payable equally to each member (rather than allowances and benefits payable to particular members or particular office holders);
- (c) the preparation, discussion, adoption or alteration of a training and development policy under section 80A of the Act;
- (d) the preparation, discussion, adoption or amendment of a strategic management plan under section 122 of the Act;
- (e) the adoption or revision of an annual business plan;
- (f) the adoption or revision of a budget;
- (g) the declaration of rates (other than a separate rate) or a charge with the character of a rate, and any preparation or discussion in relation to such a declaration;
- (h) a discussion or decision of a matter at a meeting of a Council if the matter:
 - (i) relates to a matter that was discussed before a meeting of a subsidiary or committee of the Council; and
 - (ii) the relevant interest in the matter is the interest of the Council that established the committee or which appointed, or nominated for appointment, a member of the board of management of the Council subsidiary or regional subsidiary.

Where a matter has been prescribed for the purposes of section 75A(6), a Member will be relieved from complying with the process set out in section 75A in respect of an actual or perceived conflict of interest in respect of that matter. The prescribing of a matter of ordinary business of a Council does not extinguish the actual or perceived conflict of interest.

Prescribed ordinary business matters of a subsidiary or committee

The requirements set out in section 75A of the LG Act do not apply to a matter of ordinary business of a Subsidiary or Committee of a kind prescribed by regulation for the purposes of

that section. Where a matter has been prescribed for the purposes of section 75A, a Member of a Council Committee or Subsidiary (either a wholly-owned subsidiaries or regional subsidiaries) will be relieved from complying with the process set out in section 75A in respect of an actual or perceived conflict of interest in respect of that matter.

The prescription of a matter of ordinary business of a Committee or Subsidiary, however, does not extinguish an actual or perceived conflict of interest in respect of that matter.

Regulation 8AAB of the LG Regulations prescribes the following as the matters of ordinary business of a Council Committee or Subsidiary for the purposes of section 75A:

- (a) a matter to be discussed, or in relation to which a recommendation or decision is to be made, at a meeting of a Subsidiary if:
 - (i) the discussion, recommendation or decision relates to the purpose for which the Subsidiary is established; and
 - (ii) the relevant interest in the matter is the interest of the Council which appointed, or nominated for appointment, a member of the board of management of the Subsidiary;
- (b) a matter to be discussed, or in relation to which a recommendation or decision is to be made, at a meeting of a Regional Subsidiary if:
 - (i) the discussion, recommendation or decision relates to the purpose for which the Subsidiary is established; and
 - (ii) the relevant interest in the matter is the interest of a Council which appointed, or nominated for appointment, a member of the board of management of the Subsidiary; and
 - (iii) the relevant benefit or loss would be enjoyed or suffered in common with all or a substantial proportion of the constituent Councils of the Subsidiary;
- (c) a matter to be discussed, or in relation to which a recommendation is to be made, at a meeting of a Council Committee established under section 41 of the Act if:
 - (i) the discussion or recommendation relates to the purpose for which the Committee is established; and
 - (ii) the relevant interest in the matter is the interest of the council that established the Committee.

Transparent and accountable

The LG Act provides that a Member must deal with an actual or perceived conflict of interest in a transparent and accountable way. To satisfy this obligation, the LG Act requires that the Member must inform the Meeting of the Member's interest in the matter and if the Member proposes to participate in the Meeting in relation to the matter, how the Member intends to deal with the actual or perceived conflict of interest.

Satisfying these specific requirements does not, however, completely discharge the obligation to deal with the actual or perceived conflict of interest in a transparent and

accountable way. A Member with an actual or perceived conflict of interest must consider whether there are additional steps that he or she must take in order to ensure transparency and accountability.

Participation to maintain a quorum

Non-participation of a Member in a Meeting is not the only way in which a Member may deal in a transparent and accountable way with an actual or perceived conflict of interest. The LG Act specifically enables a Member with an actual or perceived conflict of interest to remain in a Meeting to maintain a quorum at the Meeting, if a quorum would not be able to be formed if the Member excused him or herself from the Meeting because of the actual or perceived conflict of interest.

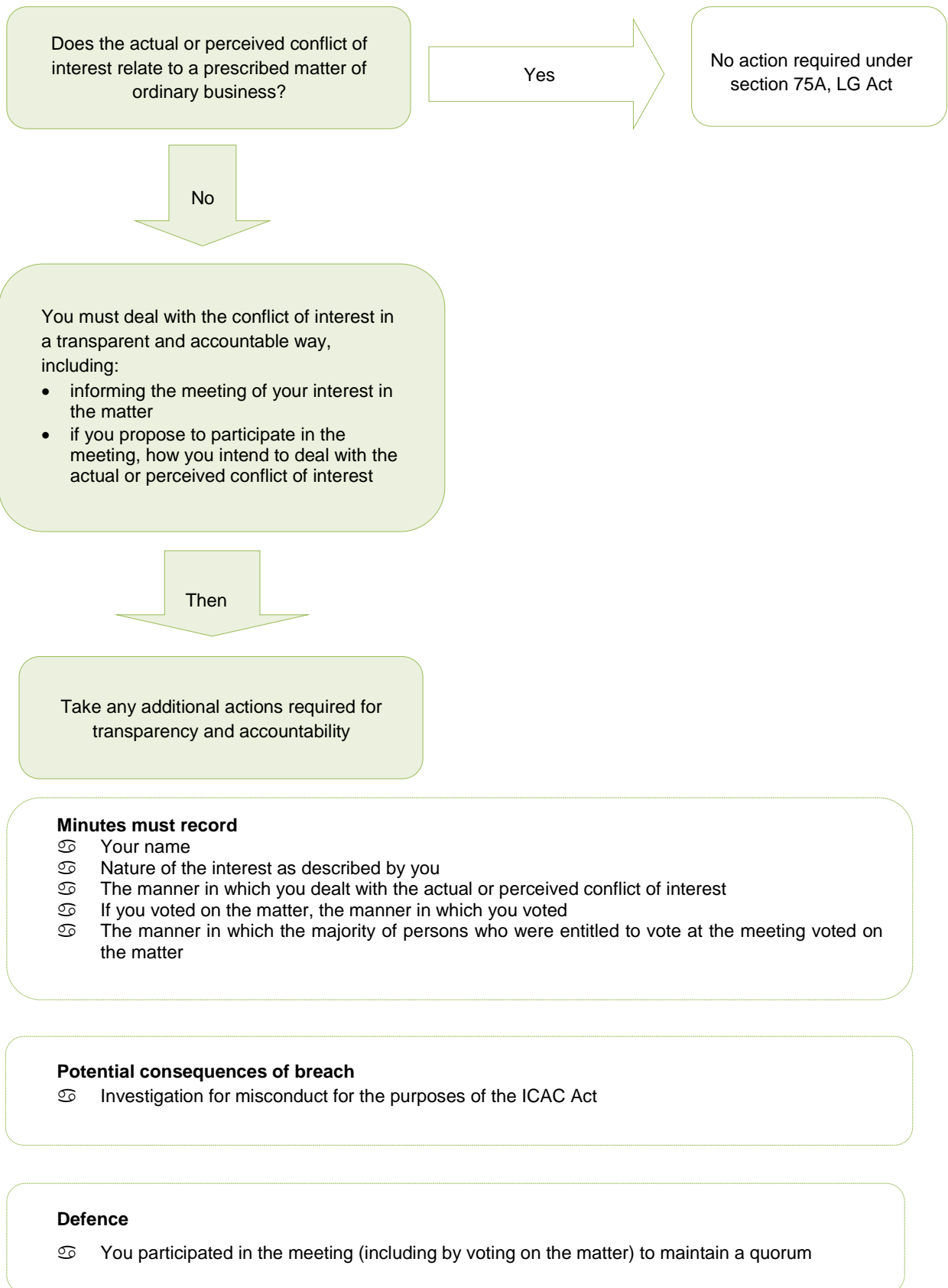
Minutes

If a Member discloses an actual or perceived conflict of interest in a matter to be discussed at a Meeting, the following details must be recorded in the minutes of the Meeting and on a website determined by the Chief Executive Officer of the Council or Subsidiary (as relevant):

- (a) the Member's name;
- (b) the nature of the interest as described by the Member;
- (c) the manner in which the Member dealt with the actual or perceived conflict of interest;
- (d) if the Member voted on the matter, the manner in which he or she voted; and
- (e) the manner in which the majority of persons who are entitled to vote at the Meeting voted on the matter.

Actual or perceived conflict of interest - Required conduct

Diagram 7



Glossary

The definitions set out in italics are provided in LG Act or LG Regulations. The other definitions are based on the usual usage of the term and are provided for guidance.

Term	Definition
actual conflict of interest	a Member has a conflict of interest in the matter (section 75A(1)(a), LG Act)
agency or instrumentality of the Crown	<p><i>agency or instrumentality of the Crown includes –</i></p> <ul style="list-style-type: none"> (a) <i>an administrative unit of the Public Service;</i> (b) <i>a body corporate comprised of, or including or having a governing body comprised of or including, a Minister or Ministers of the Crown or a person or persons appointed by the Governor or a Minister or other agency or instrumentality of the Crown.</i> <p>(section 73(4), LG Act)</p>
all or a substantial proportion of the ratepayers, electors or residents of the Council area	all or a significant majority of ratepayers, electors or residents of the Council area.
conflict of interest (for the purposes of actual or perceived conflicts of interest only)	<p>a conflict of interest is a conflict between:</p> <ul style="list-style-type: none"> (a) a Member's interests (whether direct or indirect, personal or pecuniary); and (b) the public interest, <p>that might lead to a decision that is contrary to the public interest.</p> <p>(section 75(2), LG Act)</p>
impartial, fair-minded person	an unbiased person
material conflict of interest	<p>a Member <i>'has a material conflict of interest in a matter to be discussed at a meeting of the Council if any of the following persons would gain a benefit, or suffer a loss, (whether directly or indirectly and whether of a personal or pecuniary nature) depending on the outcome of the consideration of the matter at the meeting:</i></p> <ul style="list-style-type: none"> (a) <i>the member;</i> (b) <i>a relative of the member;</i> (c) <i>a body corporate of which the member is a director or a member of the governing body;</i> (d) <i>a proprietary company in which the member is a shareholder;</i> (e) <i>a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee;</i> (f) <i>a partner of the member;</i> (g) <i>the employer or an employee of the member;</i> (h) <i>a person from whom the member has received or might reasonably be expected to receive a fee, commission or other reward for providing professional or other services;</i> (i) <i>a person of a prescribed class'.</i> <p>(section 73(1), LG Act)</p>

ordinary business of a Council	<p>For the purposes of sections 74(6) and 75A(6) of the Act, the following matters are prescribed:</p> <p>(a) <i>the conduct and consideration of a review under section 12 of the Act;</i></p> <p>(b) <i>the adoption or alteration of a training and development policy under section 80A of the Act;</i></p> <p>(c) <i>the adoption or amendment of a strategic management plan under section 122 of the Act;</i></p> <p>(d) <i>the adoption or revision of an annual business plan or budget under section 123 of the Act;</i></p> <p>(e) <i>the declaration of rates (other than a separate rate) or a charge with the character of a rate.</i></p> <p>In addition, for the purposes of section 75A(6) of the Act: <i>a matter before a council—</i></p> <p>(a) <i>that is of interest to a member of the council because the member is a member, officer or employee of an agency or instrumentality of the Crown (within the meaning of section 73(4) of the Act); and</i></p> <p>(b) <i>that does not directly concern that agency or instrumentality, is prescribed.</i></p>
pecuniary (benefit or loss)	of or relating to money (eg receiving/paying money (direct pecuniary benefit/loss) or the increase/decrease in the value of property (indirect pecuniary benefit/loss).
perceived conflict of interest	<p>a Member <i>'could reasonably be taken, from the perspective of an impartial, fair-minded person, to have a conflict of interest in the matter'</i>. (section 75A(1)(b), LG Act)</p>
personal (benefit or loss)	personal means relating to the private aspects of a person's life (eg a positive or negative impact on reputation)
relative	<p><i>relative of a person means –</i></p> <p>(a) <i>the spouse or domestic partner; or</i></p> <p>(b) <i>a parent or remoter lineal ancestor; or</i></p> <p>(c) <i>a son, daughter or remoter descendant; or</i></p> <p>(d) <i>a brother or sister; or</i></p> <p>(e) <i>a stepfather, stepmother, stepson or stepdaughter; or</i></p> <p>(f) <i>any member of the person's family who resides in the member's household</i></p> <p>(section 4, LG Act)</p>

Case studies

Case study 1

An Elected Member's sister owns a property adjacent to land containing derelict, vacant apartments. The Council will consider at its next meeting purchasing the land to remediate and create a new community park.

Is there a material conflict of interest?

Case study 2

An Elected Member is an employee of the Department of Environment, Water and Natural Resources. The Council is lobbying the Department of Education and Children's Services to reverse a decision to close a school in the Council area. The Elected Member has been a member of the State government inter-departmental working party which recommended the closure of the school due to persistent low enrolments.

Case study 3

A Council Member is a member of the local tennis club. There have been a number of complaints by resident retail businesses to the Council about parking for their customers when tennis competitions are held. The Council Member does not park at the tennis courts for tennis competitions – her teenage daughter drops her there. The parking issue will be considered by the Council at its next meeting.

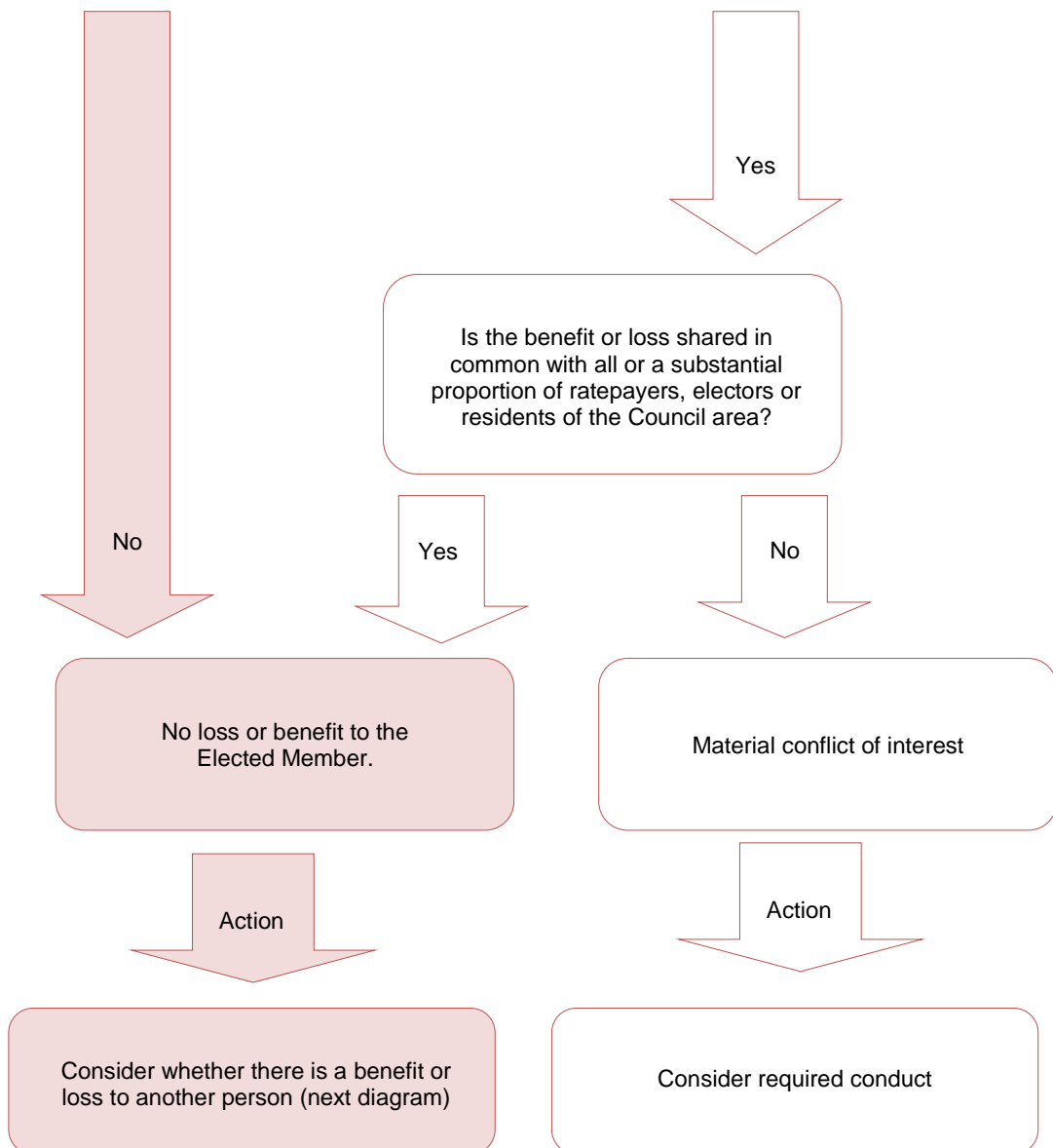
Case study 1: Conflict identification

A Council Member's sister owns a property adjacent to land containing derelict, vacant apartments. The Council will consider at its next meeting purchasing the land to remediate and create a new community park.

Is there a material conflict of interest?

Material conflict of interest?

Could the Elected Member gain a benefit or suffer a loss as a consequence of the outcome of consideration of the matter at the Council meeting?



Case study 1: Conflict identification continued

An Elected Member's sister owns a property adjacent to land containing derelict, vacant apartments. The Council will consider at its next meeting purchasing the land to remediate and create a new community park.

Is there a material conflict of interest?

Material conflict of interest?

Would another person suffer a benefit or loss as a consequence of the outcome of consideration of the matter at the Council meeting?

Yes,
sister could
gain a benefit
(increased
property value)

Is the Elected Member's relationship to the other person as a:

- relative
- member of governing body of a body corporate
- shareholder of a proprietary company
- trustee of a trust under which the person is the beneficiary
- trustee of a discretionary trust under which the person is the object
- partner
- employer
- employee
- professional service provider for fee, commission or other reward

Yes, a
relative

Is the benefit or loss to the Elected Member's sister shared in common with ratepayers, electors or residents of the council area?

No, the
benefit is
due to
property
ownership

No

No

Yes

No material conflict of interest

Material conflict of interest exists

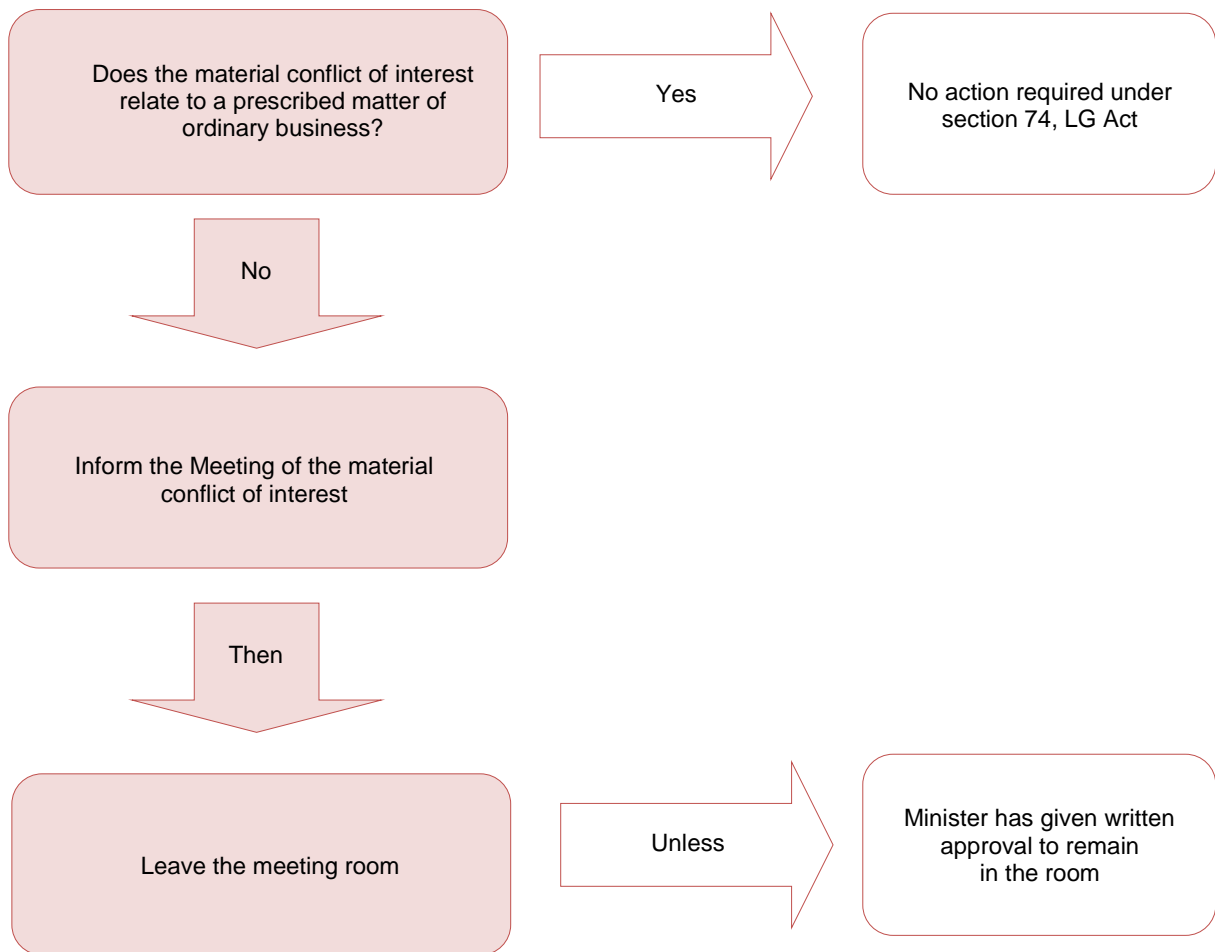
Action

ActionA

Consider actual conflict of interest

Consider required conduct (next diagram)

Case study 1: Required conduct

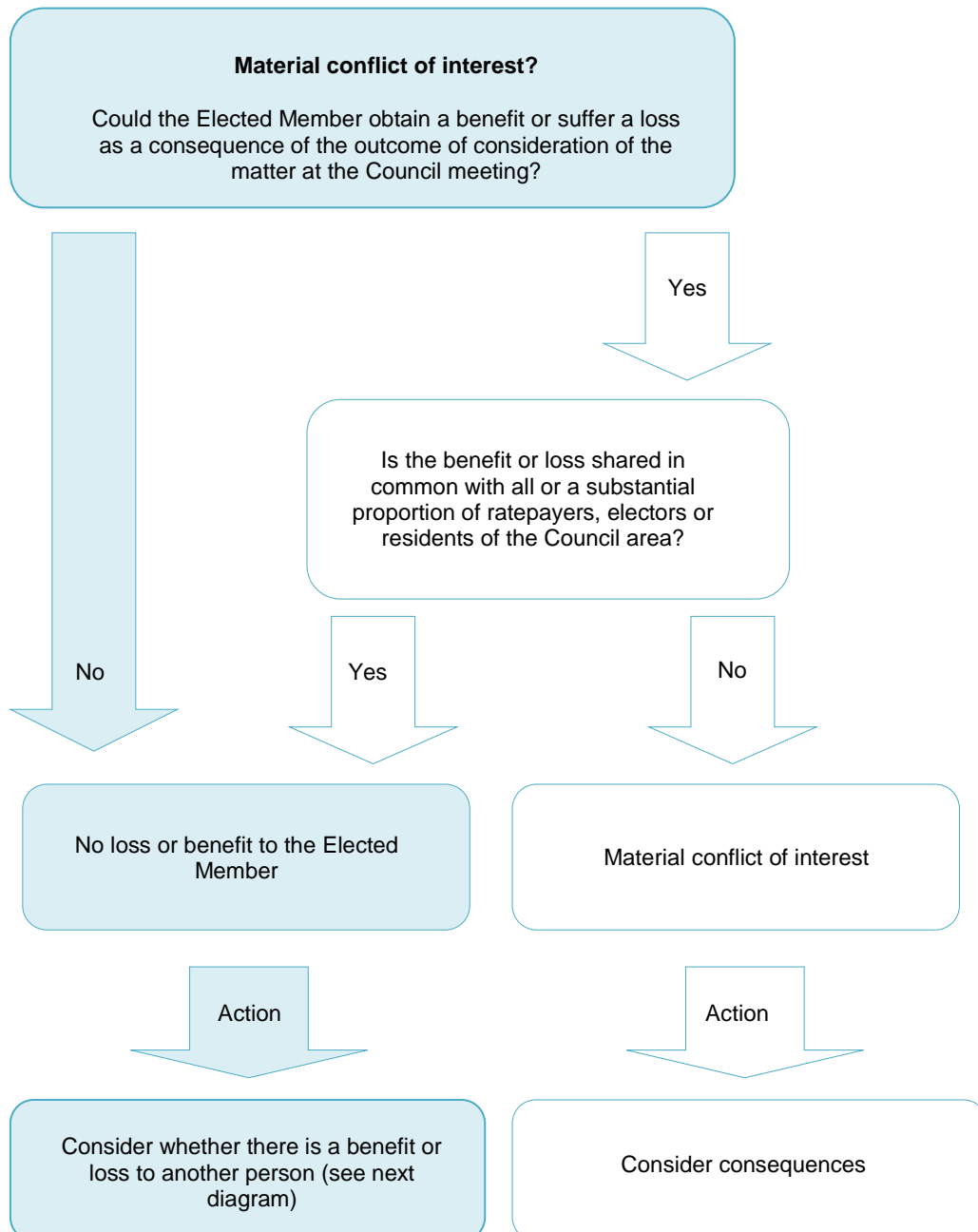


Minutes must record

- ⑨ Member's name
- ⑨ Nature of the interest as described by the Member
- ⑨ Member's presence or participation under an approval of the Minister

Case study 2: Conflict identification

An Elected Member is an employee of the Department of Environment, Water and Natural Resources (DEWNR). The Council is lobbying the Department of Education and Children's Services (DECS) to reverse a decision to close a school in the Council area. The Elected Member has been a member of the working party (comprised of representatives of various State government departments) which recommended the closure of the school due to persistent low enrolments.



Case study 2: Conflict identification continued

Material conflict of interest?

Could the Crown in right of South Australia gain a benefit or suffer a loss as a consequence of the outcome of consideration of the matter at the Council meeting?

Yes,
closure of
the school

Is the Elected Member a member, officer or employee of an agency or instrumentality of the Crown which is directly concerned with the matter before the Council meeting?

Yes

Is the benefit or loss shared in
common with ratepayers, electors or
residents of the council area?

Yes

No

The agency directly involved in the matter
is DECS. The Elected Member is an
employee of DEWNR. Therefore, no
material conflict of interest

Material conflict of interest

No

Action

Action

Consider whether the Council Member has an actual conflict of
interest (see next diagram)

Consider consequences

Case study 2: Conflict identification continued

Actual conflict of interest?

Does the Elected Member have a direct or indirect personal or pecuniary interest in a matter to be discussed by the Council?

Yes, an indirect personal interest due to involvement in working group

Does the Elected Member's interest arise only from:

- an engagement with or membership (without being an officeholder) of a community group, sporting club or similar organisation
- membership of a political party
- having been a student at a school
- being the parent of a student at a school
- nomination or appointment as a member of a board of a corporation or other association where the appointment or nomination was by the Council

No, interest arises from participation in working group

Is there a conflict between the Elected Member's interest and the public interest?

Yes

Might the conflict lead to a decision which is contrary to the public interest?

Yes

Actual conflict of interest

Action

Consider consequences

No, closure is consistent with public interest

Yes

No

No actual conflict of interest

Action

Consider perceived conflict of interest (next diagram)

Case study 2: Conflict identification continued

Perceived conflict of interest?

Does the Elected Member have an association or interest which could reasonably be perceived by an impartial, fair-minded observer to be a conflict between the Elected Member's interests and the public interest that might lead to a decision that is contrary to the public interest?

Yes, Elected Member role on working group on school closure

Does the Elected Member's interest arise only from:

- an engagement with or membership (without being an officeholder) of a community group, sporting club or similar organisation
- membership of a political party
- having been a student at a school
- being the parent of a student at a school
- nomination or appointment as a member of a board of a corporation or other association where the appointment or nomination was by the Council

No

Interest arises from role on working group. Therefore, there is a perceived conflict of interest

Action

Consider required conduct (next diagram)

Yes

No perceived conflict of interest

No

Case study 2: Required conduct

Does the perceived conflict of interest relate to a prescribed matter of ordinary business of the Council?

Yes

No action required under section 75A, LG Act

No

Elected Member must deal with the perceived conflict of interest in a transparent and accountable way, including:

- informing the Meeting of the basis for the perceived interest in the matter
- if he or she proposes to participate in the meeting, how he or she intends to deal with the actual or perceived conflict of interest

Then

Take any additional actions required for transparency and accountability

Minutes must record

- ⑥ Elected Member's name
- ⑥ Nature of the interest as described by the Elected Member
- ⑥ The manner in which the Elected Member dealt with the actual or perceived conflict of interest
- ⑥ If you voted on the matter, the manner in which the Elected Member voted
- ⑥ The manner in which the majority of persons who were entitled to vote at the meeting voted on the matter

Potential consequences of breach

- ⑥ Investigation for misconduct for the purposes of the ICAC Act
- ⑥ Decision of Council invalidated

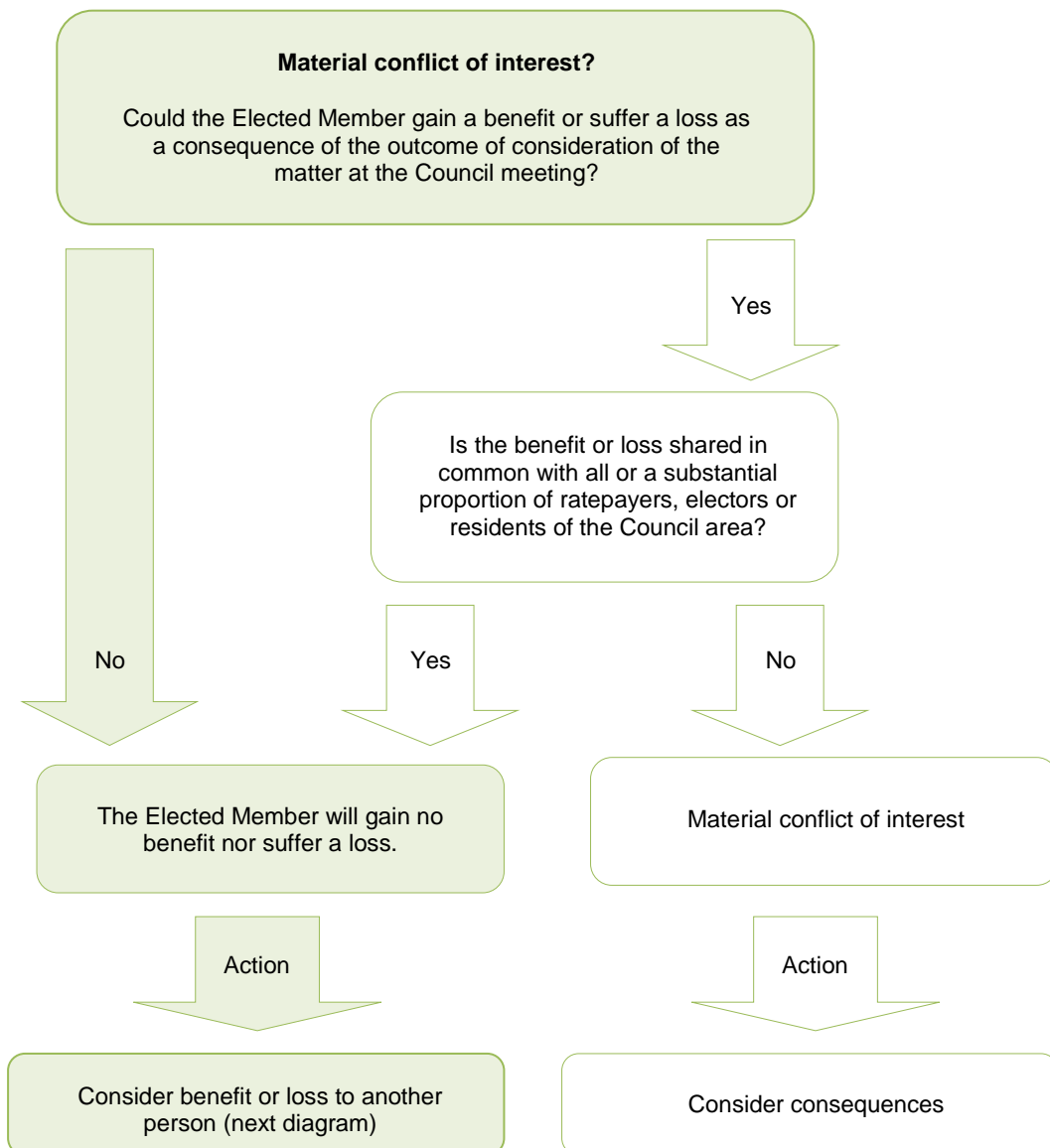
Defence

- ⑥ The Elected Member participated in the meeting (including by voting on the matter) to maintain a quorum

Case study 3: Conflict identification

An Elected Member is a member of the local tennis club. There have been a number of complaints by resident retail businesses to the Council about parking for their customers when tennis competitions are held. The Elected Member does not park at the tennis courts for tennis competitions – her teenage daughter drops her there. The parking issue will be considered by the Council at its next meeting.

Does the Elected member have a conflict of interest?



Case study 3: Conflict identification continued

Material conflict of interest?
Could another person obtain a benefit or suffer a loss as a consequence of a Council decision?

Yes, tennis club

- Is the Elected Member's relationship to the other person as a:
- relative
 - member of governing body of a body corporate
 - shareholder of a proprietary company
 - trustee of a trust under which the person is the beneficiary
 - trustee of a discretionary trust under which the person is the object
 - partner
 - employer
 - employee
 - professional service provider for fee, commission or other reward?

Yes

Is the benefit or loss shared in common with ratepayers, electors or residents of the council area?

No

No

Yes

No

No gain or loss to listed person. No material conflict of interest

Material conflict of interest

Action

Action

Consider actual conflict of interest (next diagram)

Consider consequences

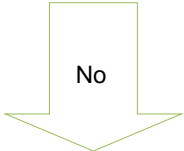
Case study 3: Conflict identification continued

Actual conflict of interest?
Does the Elected Member have a direct or indirect personal or pecuniary interest in a matter before the Council?

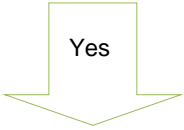


Does the Elected Member's interest arise only from:

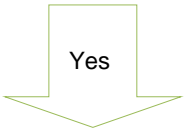
- an engagement with or membership (without being an officeholder) of a community group, sporting club or similar organisation
- membership of a political party
- having been a student at a school
- being the parent of a student at a school
- nomination or appointment as a member of a board of a corporation or other association where the appointment or nomination was by the Council?



Is there a conflict between my interest and the public interest?



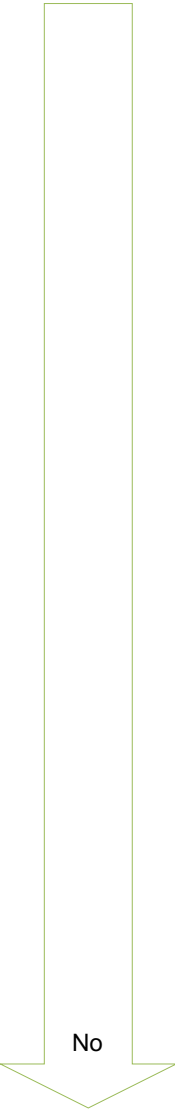
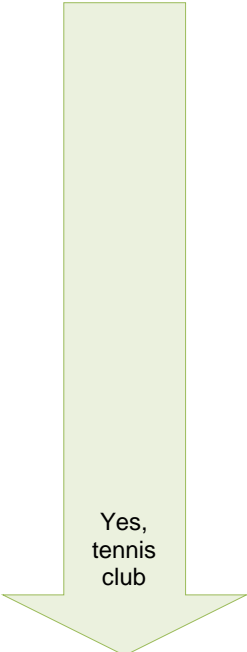
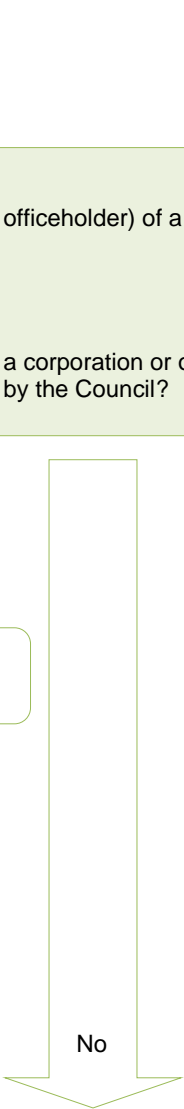
Might the conflict lead to a decision which is contrary to the public interest?



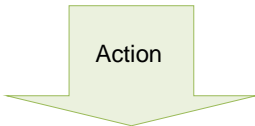
Actual conflict of interest



Consider consequences



No actual conflict of interest as club membership cannot give rise to a conflict of interest



Consider perceived conflict of interest (see next diagram)

Case study 3: Conflict identification continued

Perceived conflict of interest?

Does the Elected Member have an association or interest which could reasonably be perceived by an impartial, fair-minded observer to be a conflict between the Elected Member's interests and the public interest that might lead to a decision that is contrary to the public interest?

Yes,
tennis club
membership

Does the Elected Member's interest arise only from:

- an engagement with or membership (without being an officeholder) of a community group, sporting club or similar organisation
- membership of a political party
- having been a student at a school
- being the parent of a student at a school
- nomination or appointment as a member of a board of a corporation or other association where the appointment or nomination was by the Council?

No

Yes

No

Perceived conflict of interest

No perceived conflict of interest as club membership cannot give rise to a conflict of interest

Action

Consider consequences

Material conflict of interest

Minute-taking template

Member's name: _____

Meeting details: _____

Matter to be discussed at meeting / agenda item:

Nature of the interest (as described by the member):

(eg describe the nature of the interest, including whether the interest is direct or indirect and personal or pecuniary)

Was the member granted approval by the Minister to participate in the meeting, pursuant to section 74(3) of the Act?

Yes / No

• Was the member in the chamber / meeting room during the meeting?

Yes / No

• Did the member take part in the meeting?

Yes / No

• Did the member leave the meeting while the matter was being considered?

Yes / No

Record the time the member left: _____

Actual/perceived conflict of interest

Minute-taking template

Member's name: _____

Meeting details: _____

Matter to be discussed at meeting / agenda item:

Nature of the interest (as described by the member):

eg describe the nature of the interest, including whether the interest is direct or indirect and personal or pecuniary)

How did the member deal with the actual or perceived conflict of interest?

Did the member participate in the meeting in relation to the matter?

If so, was this to maintain a quorum?

If the member participated in the meeting, did they vote on the matter?

If so, record the manner in which he or she voted:

Record the manner in which the majority of persons entitled to vote at the meeting voted on the manner:



Legislation

Local Government Association
of South Australia

**148 Frome St
Adelaide SA 5000**

GPO Box 2693
Adelaide SA 5001

T (08) 8224 2000

F (08) 8232 6336

E lgasa@lga.sa.gov.au

The voice of local government.

www.lga.sa.gov.au