



OmbudsmanSA

STATEMENT ON FORMAL RESOLUTION

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Failure by an elected member to declare a material conflict of interest



Essential Insights

Local government elected members are required to declare and manage **material conflicts of interest** in matters to be discussed at meetings of the council in accordance with the *Local Government Act 1999*.

Circumstances in which material conflicts of interest arise **include** where **a body corporate of which the elected member is a director or a member of the governing body** would gain a benefit or suffer a loss depending on the outcome of the matter under consideration at the council meeting.

THE COMPLAINT

The Ombudsman received a complaint concerning the conduct of an elected member at a District Council of Peterborough meeting.

The complaint alleged that the elected member had failed to declare a material conflict of interest in relation to a motion where the council decided to grant a license over community land to an incorporated association, in circumstances where the elected member is on the committee of the incorporated association.

The elected member declared a general conflict of interest in relation to the item at the meeting, and refrained from the discussions and voting.

The Ombudsman formed the view that the elected member may have had a material conflict of interest in relation to the motion before the council, by virtue of section 75(1)(c) of the Local Government Act, which states:

75—Material conflicts of interest

- (1) Subject to section 75A, for the purposes of this Subdivision, a member of a council 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:
...
 - (c) a body corporate of which the member is a director or a member of the governing body...

The Ombudsman considered that the elected member was a member of the association's governing body, and that the incorporated association would have gained a benefit or suffered a loss depending on the outcome of the council's decision regarding the license.

KEY OUTCOMES FOLLOWING THE OMBUDSMAN'S ASSESSMENT

The Ombudsman determined that, in light of the elected member's actions in declaring a general conflict of interest in the matter, and refraining from the discussions and voting on the matter, the circumstances of this matter made it suitable for a formal resolution.

The elected member agreed to apologise at a public meeting of the council for failing to declare and manage a material conflict of interest in accordance with the provisions of the Local Government Act.