

POLICY	STATUS	AT	DATE	DOC ID
<i>Conflict of Interest Policy</i>	<i>Adopted</i>	<i>Ordinary Council</i>	<i>23 April 2019</i>	<i>A167114</i>



OPOTIKI DISTRICT COUNCIL

CONFLICT OF INTEREST POLICY

1. BACKGROUND

Elected Members, appointed representatives and all staff working for a Local Authority are obliged under the Local Authorities (Members' Interests) Act 1968 (the Act) to meet defined standards in regards to transparency and integrity in the performance of their roles.

The Act helps protect the integrity of local authority decision-making by ensuring that people are not influenced by personal motives when they participate in local authority decision-making and that they cannot use their position to obtain preferential or inappropriate access to contracts.

For the local government sector, specific rules are set out in the Act that govern requirements for disclosing and managing conflicts of interest at the governance level.

Complying with any relevant statutory requirements will not necessarily be enough to ensure that decision-making processes meet the more general public law requirements of fairness and transparency. Council must also take steps to ensure that no other aspect of the process could be tainted by a conflict of interest arising outside of those processes regulated by statute.

The responsibility for identifying and acknowledging any conflict of interest sits with the elected or appointed member, tender evaluation team member or individual staff member.

While the statutory requirements are primarily confined to the declaration and management of conflicts of interest by members of a governing board or council, conflict problems might also arise as a result of the interests or associations of staff members or other participants in any procurement process.

Council staff should be aware that the potential for conflicts of interest exists for every staff member and adviser who is directly or indirectly involved in any aspect of a procurement process. This includes governance, management, operational staff and Council as the approving authority itself.

This expectation of integrity extends beyond the Code of Conduct for Elected Members, and the detailed procurement process involving the Tender Evaluation Team. It includes the general staff of a local authority in the conduct of all day to day activities and functions.

Conflicts of Interest are common in New Zealand. Having one is not an issue in itself, once declared it will be determined whether it is material or not and how it will then be addressed. Not declaring a conflict or perceived conflict can be an issue and could jeopardise the integrity of any process.

2. PURPOSE

The purpose of this policy is to clearly explain how a conflict of interest should be dealt with by elected and appointed members, tender evaluation teams and all other staff working for Ōpōtiki District Council.

3. INTRODUCTION

For the purposes of this policy, there are three basic groups, each of which has a variation of associated risk which requires declaration of any potential conflict of interest.

- Elected or appointed members (both Council and Community Board Members)

- Tender evaluation teams
- General staff

3.1. Elected or appointed members:

Members must ensure that they maintain a clear separation between their personal interests and their role as a Member. This is to ensure that those who fill positions of authority carry on their duties free from bias (whether real or perceived). Members therefore need to familiarise themselves with the provisions of the Act which concerns financial interests, and with other legal requirements concerning non-financial conflicts of interest.

For Elected and Appointed Members the risk would be classified as high and therefore declaration of any and all conflicts of interest should be considered a high priority before any decision-making process commences.

3.2. Tender evaluation teams and tender sub-committee:

As part of a robust and transparent procurement strategy all members of any Tender Evaluation Team or Tender Sub-Committee are required to proactively declare any actual or potential conflicts of interest or risk of bias as they arise.

As with Elected and Appointed Members, the risk for Tender Evaluation Teams and the Tender Sub-Committee would be classified as high and therefore declaration of any and all conflicts of interest should be considered a high priority before any decision-making process commences.

3.3. General staff:

It is expected that all staff shall perform their duties honestly and impartially, and avoid situations which might compromise their integrity or otherwise lead to a conflict of interest. All staff are required to avoid financial or other undertakings that could directly or indirectly compromise the performance of their duties, or the standing of the Council in relationships with the public, clients or Councillors/Community Board members.

Conflict of interests are commonly lower risk, however any and all risks, regardless of severity, need to be acknowledged and therefore any potential conflict of interest should be registered. This is, in part, to reflect the fact that all general staff members are potentially involved in procurement for the Council as part of their day to day activities. This particularly applies to all staff who hold a purchase order book and/or have a delegated authority. The higher the delegated authority the higher the potential risk.

The following section set out the procedures and guidelines for managing conflict and interest in relation to each of the three groups outlined above.

4. PROCEDURES AND GUIDELINES

4.1. Elected and Appointed Members

Elected Members must ensure that they maintain a clear separation between their personal interests and their duties as an elected member. This is to ensure that those who fill positions of authority carry on their duties free from bias (whether real or perceived). Members therefore need to familiarise themselves with the provisions of the Act which concerns financial interests, and with other legal requirements concerning non-financial conflicts of interest.

The Act provides that an elected member, without the consent of the Office of the Auditor General (OAG), is disqualified from office, or from election to office, if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 (GST inclusive) in any financial year.

Additionally, elected members are prohibited from participating in any council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest. Members must declare their interests at council meetings when matters in which they have a pecuniary interest arise.

Members shall annually make a general declaration of interest as soon as practicable after becoming aware of any such interests. These declarations are recorded in a register of interests maintained by council. The declaration must notify the council of the nature and extent of any interest, including:

- Any employment, trade or profession carried on by the member or the member's spouse for profit or gain
- Any company, trust, partnership etc. for which the member or their spouse is a director, partner, trustee or beneficiary
- The address of any land in which the member has a beneficial interest greater than the public at large and which is in the Ōpōtiki District
- The address of any land where the landlord is Ōpōtiki District Council and:
 - The member or their spouse is a tenant, or
 - The land is tenanted by a firm in which the member or spouse is a partner, or a company of which the member or spouse is a director, or a trust of which the member or spouse is a trustee or beneficiary
- Any other matters which the public might reasonably regard as likely to influence the member's actions during the course of their duties as a member.

If the member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the Chief Executive immediately.

Members may also contact the Audit Office for guidance as to whether that member has a pecuniary interest. If there is a pecuniary interest, the member may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote. The Chief Executive must also seek approval from the Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 (GST inclusive) annual limit.

Failure to observe the requirements of the Act could potentially invalidate the particular decision made, or the action taken, by Council. Failure to observe these requirements could also leave the

elected member open to prosecution under the Act. In the event of a conviction elected members can be ousted from office.

From an agenda item:

Any Member with a conflict of interest (real or perceived) arising from an agenda item must:

- Declare the conflict verbally prior to commencement of any Council discussions and/or deliberation associated with the agenda item. The Mayor and Chief Executive will evaluate the associated risks and determine the appropriate measures required to mitigate those risks. In the event that conflict is declared by the Mayor, the Deputy Mayor and Chief Executive will evaluate the risks and mitigation measures.
- Should the item require further council discussions and/or deliberation at subsequent meetings, complete a formal written declaration (Appendix 1) prior to any future meetings.

Standing/ongoing:

Any Member with a conflict of interest (real or perceived) which will be an ongoing conflict throughout their time in office must:

- Declare the conflict verbally to the Mayor and Chief Executive
- Complete a formal written declaration (Appendix 1), at which time the Mayor and Chief Executive will evaluate the associated risks and determine the appropriate measures required to mitigate those risks.
- Keep the Mayor and Chief Executive updated should the circumstances of the conflict cease/alter/increase.
- In the event that conflict is declared by the Mayor, the Deputy Mayor and Chief Executive will evaluate the risks and mitigation measures.

4.2. Tender Evaluation Teams and Tender Sub-Committee

As part of a robust and transparent procurement strategy all members of any Tender Evaluation Team and the Tender Sub-Committee are required to proactively declare any actual or potential conflicts of interest or risk of bias as they arise.

With any procurement process, (including Registrations of Interest and Requests for Proposals) there may be stages of the process when the respondents are unknown. However, members of the Tender Evaluation Team or Tender Sub-Committee may have a reasonable idea of who the potential respondents will be. Rather than a reactive response, a proactive approach of identifying potential conflicts is recommended.

Using public scrutiny and perception as the guideline the recommended approach would be to err on the side of caution. A declared non-conflict is always preferred over a non-declared conflict.

As part of the general obligation to act fairly, councils must take care that their decision-making processes cannot be challenged on the basis of actual or potential bias and/or conflicts of interest.

Council staff should be aware of the potential for conflicts of interest for every staff member and/or adviser who is directly or indirectly involved in any aspect of the procurement process. This includes governance, management, operational staff and Council as the approving authority itself.

Prior to commencement of procurement process all members of a Tender Evaluation Team (TET) must either:

1. Complete the Tender Evaluation Team Declaration – Part 1 (Appendix 2) confirming whether there is any conflict of interest to be declared.
2. If required, declare any potential conflict of interest by completing the Tender Evaluation Team Declaration - Part 2 (Appendix 3), at which time the Tender Evaluation Team Leader will make a determination as follows:
 - a. The TET member may be permitted to remain on the team – this would occur only when the declaration is confirmed as a perceived conflict with a zero risk factor, or
 - b. The TET member may be permitted to be present for the evaluations but will not take any part in the decision making, or
 - c. The TET member may be required to withdraw from the procurement process

Please Note: Declaration of a conflict of interest and withdrawal from any procurement process does not automatically preclude that person from inclusion in another TET. Each evaluation is a stand-alone process, including the declaration of any conflict of interest.

Prior to the commencement of a Tender Sub Committee meeting, all Tender Sub Committee Members (TSCM) must either:

1. Complete the Tender Sub Committee Declaration – Part 1 (Appendix 4) confirming whether there is any conflict of interest to be declared.
2. If required, declare any potential conflict of interest by completing the Sub Committee Declaration - Part 2 (Appendix 5), at which time the Chair of the Sub Committee will make a determination as follows:
 - a. The TSCM member may be permitted to remain on the committee – this would occur only when the declaration is confirmed as a perceived conflict with a zero risk factor, or
 - b. The TSCM member may be permitted to be present for some agenda items, but not

others,

- c. The TSCM member may be permitted to be present for the evaluations but will not take any part in the decision making, or
- d. The TSCM member may be required to withdraw from the Tender Sub Committee meeting.

4.3. General Staff

It is expected that all staff shall perform their duties honestly and impartially, and avoid situations which might compromise their integrity or otherwise lead to a conflict of interest. All staff are required to avoid financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties, or the standing of the Council in relationships with the public, clients or Councillors/Community Board members.

This may include any situations where actions taken in an official capacity may be seen to influence or be influenced by a staff member's private interest such as outside employment.

If any actual or potential conflict of interest arises during the full, effective, and impartial discharge of their official duties, staff should inform their Manager or the Chief Executive. It will then be the responsibility of the Manager or Chief Executive to determine the nature and degree of the conflict (if any) as it may relate to the official duties of the staff member making the declaration and decide upon the appropriate course of action.

Identified Conflict:

Any staff member who identifies a Conflict of Interest (real or perceived) arising from, or pertaining to the fulfilment of their role within Council must:

1. Declare the conflict verbally to their Manager and/or Chief Executive
2. Complete a formal written declaration (refer appendix 6), at which time their Manager and the Chief Executive will evaluate the associated risks and determine the appropriate measures required to mitigate those risks.
3. Keep their Manager and/or Chief Executive updated should the circumstances of the conflict cease/alter/increase.

Building Control Authority exemption:

The Building Control Authority function of the Council is bound by the requirements of the Building (Accreditation of Building Consent Authorities) Regulations 2006. These Regulations set out specific requirements for assuring quality (Regulation 17). Regulation 17 (2) requires a Quality Assurance system to be in place and one of the specified components of that system is a procedure for identifying and managing conflicts of interest (Regulation 17 (2)(i)).

The Ōpōtiki District Council Building Control Authority meets the requirements of this Regulation through the production and review of the Quality Manual.

Staff working for the Councils Building Control Authority are bound by the requirements of the Building Regulations and subject to the Conflict of Interest process set out in the Quality Manual, which follows a similar process to the process set out above for general staff. For that reason, and to avoid a duplication of effort, staff working for the Council's Building Control Authority, making decisions governed by the Building Regulations, are exempt from the requirements of this policy.

5. BREACHES OF THE POLICY

Should a breach of the policy be identified, the process set out below must be followed to mitigate the associated risk.

Elected and Appointed Members:

Any undeclared conflict identified during or following any Council decision making will be managed by the Mayor.

The Mayor will first discuss the conflict and its implications with the Council. Then, working in conjunction with the Chief Executive this conflict will be presented to the Office of the Auditor General for a formal decision.

The process for such a circumstance is clearly outlined in the Act, and will be adhered to.

Outcomes range from seeking consent from the Office of the Auditor General through to dismissal of the member.

Tender Evaluation Team (TET) and Tender Sub Committee (TSC) Members:

Any undeclared conflict identified during or following any procurement process will be managed by the Chief Executive and the TET Leader. The Mayor is to be informed throughout this process.

The process for such a circumstance is set out in the flowchart attached (appendix 7), and will be adhered to.

Outcomes range from exclusion from the singular tender evaluation process to dismissal of the employee.

General Staff Members:

Any undeclared conflict identified during or following any operational process will be managed by the Chief Executive and the Manager of the department concerned.

The process for such a circumstance will be dependent on the severity of the conflict and will be determined by the Chief Executive based on the requirements of the Act.

Outcomes range from risk mitigation through to dismissal of the employee. Decisions will be made in accordance with the details set out in the employees Employment Contract and the Employee Code of Conduct.

6. RELEVANT LEGISLATION AND GUIDANCE

- Local Authorities (Members' Interests) Act 1968
- Building (Accreditation of Building Consent Authorities) Regulations 2006 (Regulation 17 (2)(i))

The Office of the Auditor General has produced two guides on conflict of interest issues to assist public entities:

- Managing conflicts of interest: Guidance for public entities applies to all public entities and sets out an approach for dealing with conflict of interest issues when they arise. www.oag.govt.nz/2007/conflicts-public-entities
- Guidance for members of local authorities about the law on conflicts of interest has been developed specifically for local authorities and other entities that are subject to the Local Authorities (Members' Interests) Act 1968. www.oag.govt.nz/2010/lamia

7. REVIEW

Due 2021 (Every third year).



ELECTED AND APPOINTED MEMBER DECLARATIONS

Any elected or appointed member wishing to declare an interest should complete this form and submit to Chief Executive or Mayor

Name:	
Date raised:	
Description of actual/potential interest (to be completed by member):	
Decision/action require to mitigate conflict (to be completed by Mayor or Chief Executive):	
Review completed by:	
Signed:	
Dated:	
Date member advised of decision/action:	



TENDER EVALUATION TEAM DECLARATIONS – PART 1

All Tender Evaluation Team members to complete this form

Date:	
Contract name:	
Contract number:	
Tender Evaluation Team Member:	

Conflict of Interest Declaration – please circle which applies – (either A or B)	
A.	I declare that to the best of my knowledge, I do not have: <ul style="list-style-type: none"> Any financial interest in the supply of goods, and or services for this project Any relatives, or friends with any financial interest in the supply of goods, and or services for this project Any personal bias, inclination, personal obligations, allegiance or loyalty which would in any way affect my decisions in relation to the evaluation of the tenders/proposals.
B.	I have declared a potential conflict of interest as follows: <ul style="list-style-type: none"> I have completed a Tender Evaluation Team Declaration – Part 2, see attached. This declaration has been addressed by the Leader of the TET team and I agree to the approved method of mitigation.

Confidentiality Declaration	
During the tender evaluation period and prior to the formal announcement of the successful supplier, I will not: <ul style="list-style-type: none"> Pass any information on the project to any potential suppliers for the project. 	

Declaration				
Tender Evaluation Team Member	Title	A or B	Date	Signature

Approval				
Tender Evaluation Team Leader	Title		Date	Signature

TENDER EVALUATION TEAM DECLARATIONS – PART 2

This form needs to be completed when an interest is declared in Part 1 (Option B). If your answer is 'Yes' to any of the questions below, then you have a potential conflict that may require mitigation.

Date:				
Contract name:				
Contract number:				
Tender Evaluation Team Member:				
Potential conflict		Yes	No	Details (required when answer is yes)
1.	Have you carried out works for any tenderer (or member of its group) in the last two years?			
2.	Do you have a family and/or personal relationship with any tenderer (or member of its group)?			
3.	Are you employed by, or do you have a professional relationship with, or hold any office with any tenderer, including executive relationships such as Director or Board Member?			
4.	Are you currently involved, or about to be involved, with any tenderer in submitting another tender to Opōtiki District Council or any other party?			
5.	Are you advising any party that is in a dispute with any tenderer?			
6.	Have you been a witness for or against any tenderer, or an expert witness in proceedings involving any tenderer in the past two years?			
7.	Do you have a financial or other relevant interest in any tenderer (or member of its group)?			
8.	Are you a creditor or do you hold any security over any tenderer (or member of its group)?			
9.	Does any company, trust, or other organisation in which you hold office, or over which you have any material influence, have an interest?			
10.	Without making specific enquiry, to the best of your knowledge does any member of your immediate family have an interest?			
11.	Any other conflict?			

Signature:	Date:
Agreed mitigation/method to remove potential conflict of interest:	
Approval for member to remain on team – TET Leader to sign	
Team Leader Name:	
Signature:	Date:



TENDER SUB COMMITTEE DECLARATIONS – PART 1

All Tender Sub Committee Members to complete this form prior to the commencement of the Tender Sub Committee meeting.

Tender Sub Committee Meeting Date:	
Tender Sub Committee Member:	

Conflict of Interest Declaration – please circle which applies – (either A or B)	
A.	I declare that to the best of my knowledge, I do not have: <ul style="list-style-type: none"> Any financial interest in the supply of goods, and or services for any project on the agenda of this meeting Any relatives, or friends with any financial interest in the supply of goods, and or services for any project on the agenda of this meeting Any personal bias, inclination, personal obligations, allegiance or loyalty which would in any way affect my decisions in relation to the evaluation of the tenders/proposals.
B.	I have declared a potential conflict of interest as follows: <ul style="list-style-type: none"> I have completed a Tender Sub Committee Declaration – Part 2, see attached. This declaration has been addressed by the Chair of the Tender Sub Committee and I agree to the approved method of mitigation.

Declaration				
Tender Sub Committee Member	Title	A or B	Date	Signature

Approval				
Chair of Tender Sub Committee	Title		Date	Signature

TENDER SUB COMMITTEE DECLARATIONS – PART 2

This form needs to be completed when an interest is declared in Part 1 (Option B). If your answer is 'Yes' to any of the questions below, then you have a potential conflict that may require mitigation.

Tender Sub Committee Meeting Date:				
Tender Sub Committee Member:				
Agenda Item:				
Potential conflict		Yes	No	Details (required when answer is yes)
1.	Have you carried out works for any tenderer (or member of its group) in the last two years?			
2.	Do you have a family and/or personal relationship with any tenderer (or member of its group)?			
3.	Are you employed by, or do you have a professional relationship with, or hold any office with any tenderer, including executive relationships such as Director or Board Member?			
4.	Are you currently involved, or about to be involved, with any tenderer in submitting another tender to Opōtiki District Council or any other party?			
5.	Are you advising any party that is in a dispute with any tenderer?			
6.	Have you been a witness for or against any tenderer, or an expert witness in proceedings involving any tenderer in the past two years?			
7.	Do you have a financial or other relevant interest in any tenderer (or member of its group)?			
8.	Are you a creditor or do you hold any security over any tenderer (or member of its group)?			
9.	Does any company, trust, or other organisation in which you hold office, or over which you have any material influence, have an interest?			
10.	Without making specific enquiry, to the best of your knowledge does any member of your immediate family have an interest?			
11.	Any other conflict?			

Signature:	Date:
Agreed mitigation/method to remove potential conflict of interest:	
Approval for member to remain on team – Chair of Tender Sub Committee to sign	
Chair of Tender Sub Committee:	
Signature:	Date:

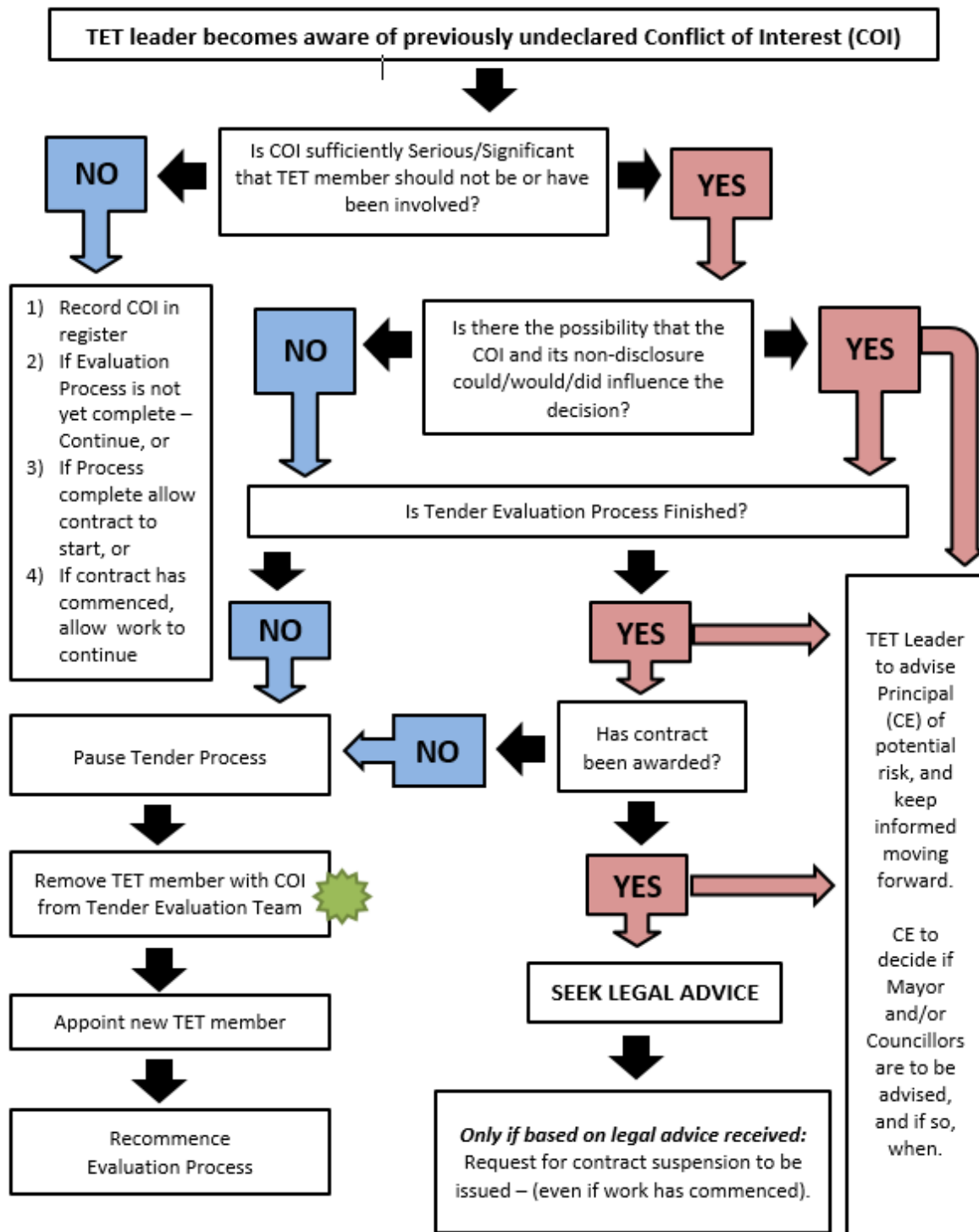


GENERAL STAFF DECLARATIONS

Any staff member wishing to declare an interest should complete this form and submit to manager or Chief Executive

Name:	
Date raised:	
Description of actual/potential interest (to be completed by staff member):	
Decision/action require to mitigate conflict (to be completed by manager/CEO):	
Review completed by:	
Signed:	
Dated:	
Date staff member advised of decision/action:	

Appendix 7



At this point it would be for the TET Leader and CE to decide if the member can remain available as an expert or observer for the remainder of the evaluation process.