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MANAGING INTERESTS FRAMEWORK

The Break O'Day Council appreciates the opportunity to provide this submission in relation to Managing conflicts of interest of councillors Discussion Paper.

In summary, while the framework exhibits positive elements, its success depends on clear and fair processes, practical support materials, and continuous improvement mechanisms. Effective communication about the framework and its resources is essential for successful implementation across councils.

Objectives

- The Discussion Paper is based on the need to bring Tasmanian local government into line with the requirements which apply to Federal and State parliamentarians as well as other interstate local government jurisdictions. The proposed approach appears to have a fundamental difference in that it includes an obligation on Council officers to proactively restrict access to information. It also provides for Councillors or the Mayor to overturn a Councillor's decision to participate. This does not occur at Federal and State levels, invariably at these levels it is reactive in relation to when a decision has been made or an action taken and assessment is made against the interests which have been declared.
- The objectives reflect a proactive approach to addressing conflicts of interest within local government. By outlining the objectives of the framework, this provides transparency about the goals it aims to achieve. The emphasis on aligning with established guidelines, such as the *Good Governance Guide for Local Government*, adds credibility.
- By explicitly stating the two key objectives, the passage sets a clear standard for what the framework aims to achieve – decision-making that serves the community's best interests and is perceived as unbiased.

- This section appears to advocate for a robust framework that not only addresses conflicts of interest but also prioritises transparency, ethical conduct, and the preservation of public trust in the decision-making processes of local governments.
- Overall, the framework seems a logical approach and should provide much needed clarity and improved processes though there are some elements that need further consideration.
- Council is supportive of transparency but is very concerned about overreach. Councillors are only elected to represent the Council area and make decisions which relate to the good governance of the Council area. The parameters relating to disclosure of interests should reflect this situation.
- Concern has been expressed that we seem to be reacting to the actions of a very small number of Councillors, if the existing penalties had been more significant and more decisive action had been taken this would have addressed behavioural issues.
- The application of the *Privacy Act 1988* and the Australian Privacy Principles needs to be considered. The relevance of some of the information being 'solicited' in this Framework may not comply with APP3 which in part states 'an agency may only solicit and collect personal information that is reasonably necessary for, or directly related to, one or more of its functions or activities (APP 3.1). How does the Office of Local Government reconcile requiring a Councillor to disclose information which relates to their activities outside the Council area and with no connection to the Council area to the requirements of APP 3.1 which requires it to be directly relationship?

Guiding Principles

- Councillors felt that the six guiding principles already apply in the way that Councils operate.
- This section effectively articulates a comprehensive set of guiding principles for councillors in managing personal interests. The emphasis on integrity, impartiality, accountability, transparency, proactivity, and consistency reflects a commitment to high ethical standards and good governance. The alignment with broader frameworks and best practices indicates a desire for uniformity and adherence to established norms.
- The principles-based framework outlined appears robust, emphasising not only the ethical conduct of Councillors but also the importance of public trust and confidence. By defining clear expectations and responsibilities, the framework seeks to foster a culture of transparency and accountability. Crucial elements for maintaining the integrity of decision-making processes within local government.
- Concern has been expressed that Councillors do not have parliamentary privilege but are expected to disclose the same level of information. This may discourage people from standing for Council as they have to declare too much. This could change the way community members decide whether to put their hand up to become a Councillor.

Classifying Interests

- The proposal to unify the management of conflicts of interest under the Local Government Act, coupled with aligning with the Integrity Commission's classifications, appears to be a strategic move to address current challenges.
- The definitions of actual, perceived, and potential conflicts of interest are clear and cover a broad spectrum of scenarios. The examples provided enhance understanding and practical application, ensuring that councillors can readily identify and manage conflicts.
- An example refers to 'close personal friendship', this will give rise to a matter of judgement around how this is defined potentially leading to confusion and inconsistencies in application.
- The introduction of exemptions based on the Victorian framework assists in providing clarity as to when a Councillor doesn't have an interest and demonstrates a recognition of the need for flexibility in certain situations. The emphasis on legislative support for exemptions and the reminder that they do not exempt Councillors from the obligation to disclose interests adds an extra layer of accountability.
- Overall, the proposed framework aims to bring clarity, consistency, and transparency to the management of conflicts of interest within local government in Tasmania.

Disclosure and Management of conflicts of interest

- This section demonstrates a comprehensive and proactive approach to the disclosure and management of conflicts of interest among councillors in Tasmania. It aligns with practices in other jurisdictions, particularly Victoria, and seeks to address existing gaps in the legislative framework.
- Concerns are held that despite all the best intentions with declarations, a Councillor might not know that they have a conflict of interest until they have received and started reading the Agenda.
- The proposal to restrict councillors with an interest from accessing certain information is a solid approach to prevent potential conflicts of interest.
- However, this poses a significant challenge in implementing this restriction and places a significant obligation on Council officers to manage and assess a Council agenda against the interests that have been declared by Councillors. This restriction highlights the need for a clear and practical mechanism. The framework should outline specific steps for Council officers and the General Manager to manage this restriction effectively.
- The framework should also outline the specific steps for the General Manager to follow when Council officers are aware that a Councillor may have an interest in an item, yet no declaration of interest has been made.

- The issue of councillors accessing information on the council's website, even if provided with redacted versions, raises concerns about the effectiveness of information control. The framework needs to develop a logical and workable approach by detailing additional measures to ensure that councillors cannot access restricted information through alternative channels, maintaining the intended restrictions. Despite the best intentions of this restriction, invariably a Councillor will be able to access the information through a third party.

Personal Interest Returns

- The introduction of Personal Interest Returns (PIRs) is a very significant change in disclosure of information and significant care needs to be taken in the framing of what information needs to be collected. Disclosure of personal information should be about disclosing information on their personal circumstances which could connect to the decision-making processes of the Council.
- The two key objectives of good governance in local government are fully supported. However, the limited decision-making influence of Councillors needs to be recognised and this lens applied to the information gathered through Personal Interest Returns. Councillors have no influence on decision making outside the Council area they represent so what is the relevance of a Councillor disclosing they have shares in Qantas or have a property on the Gold Coast?
- The focus on clear disclosure requirements, robust management plans, and the publication of PIRs brings Tasmanian councillors into line with most other States and Territories, the application of management plans promotes transparency and accountability. The collaborative approach involving the Principal Officer and the Mayor in developing management plans adds a layer of oversight and ensures a balanced and reasonable approach to conflict management.
- The proposed legislative changes, penalties for non-compliance, and the consideration of exemptions indicate a commitment to creating an enforceable and effective system. By drawing on practices from other jurisdictions, the policy attempts to benefit from established frameworks, promoting consistency and best practices in the management of conflicts of interest.
- The proposal to make PIRs and Proactive Management Plans public is a positive step towards transparency and accountability. The exemptions outlined show a nuanced approach, recognising the need to protect sensitive information. The success of this initiative hinges on the **clarity** of legislative provisions, **the balance between transparency and privacy**, and ongoing adaptability based on experience and feedback. If implemented thoughtfully, it has the potential to enhance public trust in the integrity of the governance process.

- A Proactive Management Plan relating to interests which have been notified in the PIR is required to be developed. Guidance around the nature of these Plans and how interests are managed need to be developed by the Office of Local government in consultation with the sector to ensure a reasonably uniform approach is taken.
- Whilst the Addendum provides some additional clarity on the exemption in relation to declaration of Liabilities and Debt, there is still a lack of clarity. The Addendum refers to 'an authorised lending institution', this does not reflect the terminology used to classify the main types of financial institutions in Australia. If a Councillor has a motor vehicle through a finance company this does not fall into the exemption provided in the Addendum. Consideration should be given to aligning terminology with that used by the Reserve Bank of Australia which include Authorised Deposit-taking Institutions (ADIs); Non-ADI Financial Institutions; Insurers and Fund Managers.
- 'Debt arising from the supply of goods and services that were supplied in the ordinary course of any occupation of the Member or their spouse' does this exemption apply to the ordinary course of business? For example, a Councillor operates a business which could include accounts with suppliers to their business. For the avoidance of doubt, occupation should be changed to business or profession.
- The definition of 'Other Earnings' is still not clear, if a Councillor receives a benefit of some form from the Federal Government, does this need to be declared?

Complaints, penalties and deterrents

- The proposed framework addresses the need for a structured complaints handling process and emphasises the importance of penalties and deterrents. However, to strengthen its effectiveness, the framework should provide clear criteria, definitions, and considerations for penalties, ensuring that they are proportionate, consistent, and aligned with the unique characteristics of the Tasmanian governance context. Additionally, communication and educational initiatives should be integrated to promote understanding and compliance among councillors, this is a very important element.

Impact of undeclared conflict of interest on a council decision

- The framework's approach of not automatically invalidating a Council decision due to an undeclared conflict of interest is pragmatic. However, the effectiveness of the proposed appeal process depends on the clarity of criteria for when the conflicted Councillor's vote or conduct is considered material to the decision. Without well-defined parameters, the appeal process may lack objectivity and consistency.

- The proposal for an administrative appeal process is reasonable and provides a mechanism for addressing decisions influenced by potential conflicts of interest. However, the success of this process hinges on its accessibility, transparency, and fairness. Clear guidelines for initiating an appeal, the criteria for considering the appeal, and the decision-making process should be established to prevent misuse or ambiguity. More work is needed to enable this is robust.
- The framework displays positive elements, such as the pragmatic approach to the impact of undeclared conflicts and the commitment to support materials. However, its success depends on the clarity and fairness of the appeal process, the practicality of support materials, and the integration of continuous improvement mechanisms. Ensuring effective communication about the framework and its resources is crucial for its successful implementation across councils.

We would welcome the opportunity to discuss any aspect of this submission with you should you require clarification.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Brown', with a stylized, cursive script.

John Brown

GENERAL MANAGER