

12 January 2024

CEO Office
REQ-2023-085892

Mr Michael Mogridge
Acting Director of Local Government
Office of Local Government
Department of Premier and Cabinet
Via email: lgconsultation@dpac.tas.gov.au

Dear Michael

I refer to the *Managing Conflicts of Interest of Councillors – framework proposal* released for discussion by the Office of Local Government.

At its meeting of 11 December 2023, Council considered its response to the discussion paper and approved the submission attached to this letter as its feedback on the discussion paper.

If you have any queries in relation to this matter, please contact council's Head of Governance, Ms Clare Shea on 62 179 526 or cshea@ccc.tas.gov.au.

Yours sincerely



Ian Nelson
CHIEF EXECUTIVE OFFICER



Clarence... a brighter place

Managing Conflicts of interest from councillors – framework proposal

Submission from Clarence City Council

Clarence City Council appreciates the opportunity to provide a submission on the Managing Conflicts of interest from councillors – framework proposal. Council has reviewed the Framework proposal/discussion paper and provides comment on its contents as below:

Objectives

Council agrees with the proposed objectives. It is critical that decision makers are both free from bias and perceived by the public to be free from bias.

Guiding Principles

Council agrees with the proposed Guiding Principles. Council is supportive of the introduction of guidance around how councillors can uphold the Guiding Principles when managing their interests.

Council particularly supports the Guiding Principle of “consistency” and is encouraged that the proposed framework will introduce consistency and clarify for all councils and elected members through the adoption of a classification system for conflicts of interest (“COI”).

Classifying interests

The current system which splits pecuniary and non-pecuniary COI is confusing particularly as COI are dealt with under different regulatory frameworks which results in different processes and sanctions.

It is logical to have any COI dealt with under the one framework which in turn will promote clarity and consistency.

Actual COI, perceived COI, potential COI

Council supports the splitting of COI into three distinct categories – actual, perceived and potential.

The classification of COI will assist councillors in determining whether a situation is an actual, perceived or potential COI and deal with accordingly. It also encourages councillors to be aware that COI are not only restricted to actual COI but includes perceived and potential COI.

Exemptions

Council broadly agrees the exemptions currently provided for under Victoria legislation. The exemptions aid in educating councillors and the public that not every situation will necessarily give rise to a COI.

Disclosure

Council is supportive of the proposed framework establishing a Principal Officer role (either General Manager or his/her delegate) so that there is one point of contact for councillors to discuss and disclose COI. This will assist in consistency and enable council to properly record keep COI.

In creating a Principal Officer role, the proposed framework should clearly state what the roles and obligations of the Principal Officer is, for example, if a Principal Officer becomes aware of an undisclosed COI, are they obliged to report it?

Management – Actual COI

Council notes that legislative amendments will be required to Local Government Act 1993 (Tas.) section 28D to allow the General Manager to exclude a councillor from accessing information or documents where a COI has been disclosed. The proposed framework and any amendment to the LGA will need to specify how information or documents can and will be classified and restricted from a particular councillor.

There is also the question as to whose responsibility it is to restrict access to materials related to a matter on which a councillor has a conflict. There should be an onus on the particular councillor not to access those materials and sanctions provided if this is breached.

Councils will need to consider, in a practical sense, how a particular councillor can be restricted from accessing certain documents, noting that agendas and minutes are shared to all councillors through platforms such as Teams.

Management – Perceived/Potential COI

The proposed framework will need to provide clear direction on when a Mayor can overturn a councillor's decision to participate in a workshop, agenda briefing or council meeting.

It appears that the Mayor will be empowered to exclude a councillor from attending a workshop, agenda briefing or council meeting if the councillor has already disclosed a perceived or potential COI and has still determined to participate. It is not clear if the Mayor will be empowered, if of the reasonable belief that a councillor has failed to disclose a perceived or potential COI, to exclude that councillor from participating.

Personal Interest Returns

Council is supportive of the establishment of a Personal Interest Returns (“PIR”) scheme particularly noting that Tasmania is the only jurisdiction to not currently require a form of PIR.

The PIR should be submitted to the Principal Officer – the same person who is responsible for managing COI so that there is consistency and encourages proper record keeping.

Councillor should also be required to update their PIR as soon as practicable after becoming aware of a COI. The proposed 28 days period is too long as such a period would potentially include at least one workshop, an agenda briefing and a council meeting.

It may also be appropriate to establish two separate PIRs to differentiate between actual conflicts and perceived and potential conflicts. For example, actual conflicts could be registered on a publicly available PIR and potential and perceived conflicts registered on a General Manager / CEO register.

Appendix A – Information in PIR

Council has several comments on the proposed information to be contained in PIR:

- Point (f) – liabilities should be limited to liabilities other than debts to relatives and loans with deposit taking institutions
- Point (j) – should expressly include paid and unpaid employment
- Point (m) – broaden to include membership of any unincorporated or incorporated association, trade union or professional or business association
- Point (k) and (l) – it is not clear if this will replace sections 56A and 56B of the LGA

Proactive Management Plan

Council agrees with the implementation of Proactive Management Plans which will provide councillors with clear guidance on how to manage COI.

Publication of PIR and PMP

Council agrees with the publication of PIR and PMP on the basis that personal addresses are deidentified.

There should be capacity for a councillor to apply for restriction where they are of the reasonable belief that publication would result in risk to the councillor or a family member.

Complaints, penalties and deterrents

Council agrees that a complaint should be first raised with the General Manager for assessment before the complaint is referred to the Director of Local Government.

Impact of undeclared conflict of interest on a council decision

Further guidance is needed on how this proposal will impact on council decisions and give rise to an appeal. For example, council may make a decision made as a planning authority, a COI is later declared after the 14 day appeal period has expired and the permit has already been acted upon. Similarly, a council may award a tender, a COI is declared after a contract with the successful tenderer has already been entered into.

It is not clear what is meant by “appeal” – where a decision has already been made and implemented, there may be no basis for an appeal of the decision. Instead, it may be a judicial review of the decision.

Other comments

It is noted that the proposed framework is only for elected members, however, council staff may be delegated to exercise powers on behalf of council. For example, planning staff may be delegated to grant or refuse to grant planning permits on behalf of council as the planning authority and should similarly be required to register COIs.