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Hon. Nic Street MP  
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Dear Nic,

## **COMMENTS ON THE MANAGING CONFLICTS OF INTEREST OF COUNCILLORS – FRAMEWORK PROPOSAL**

Thank you for the early opportunity to provide comments on the Managing Conflicts of interest from councillors report.

In general terms the Council is supportive of the proposed changes. While the changes require more administrative action on the part of Elected Members and officers, we acknowledge that there are public benefits to be gained from Tasmania coming into line with other jurisdictions on these matters. The Council accepts the need to follow best practice in its governance arrangement.

We thank you for the advance notice and look forward to further opportunities to comment as the new legislation is ready to be enacted.

Many of the changes are similar to existing processes. In terms of internal administration, they are unlikely to result in a significantly increased burden on Council officers. Other positive aspects of the proposals include removing the artificial and confusing distinction between pecuniary and non-pecuniary interests.

### Definitions

The definition of an actual non-pecuniary conflict of interest could be further refined, "impact on a person's social or community standing" is too vague. The use of the word "actual" can also be confusing where it is linked to a 'reasonable person' test. An "actual" state of affairs is normally taken to be a proven fact, not a matter of judgement.

### Guidance Materials

It would be very helpful to have high quality guidance material, especially where it gives examples that illustrate common dilemmas faced by Elected Members in recognising and managing conflicts. Perceived conflicts are common issues that councillors have to resolve. They are sometimes founded on as little as when a councillor lives in the same suburb as a proposed development, but not adjacent to it. We would like to see this material as soon as possible. It would also be useful to see examples of a model Proactive Management Plan.

### Meetings

We would concur with comments already raised by other councils in relation to the Mayor's power to exclude a councillor's from a workshop, agenda briefing or council meeting. The framework would need to provide clear guidance on when a Mayor can overturn a councillor's decision to participate in a meeting.

This could include the power to exclude where there is evidence on the balance of probabilities of the existence of a conflict of interest, disclosed or otherwise. We recognise that in many circumstances this will be difficult to establish, and some form of guidance around the use of this power (such as the level of evidence required) is needed to avoid potential misuse.

### Proactive Management Plan

We would disagree that it would be preferable to have the Mayor assisting with the development of Proactive Management Plans. This would conflict with the requirement that the Mayor does not direct a councillor in their duties. This function should be coordinated by the General Manager.

### Information sharing

We also share some reservations about the practical difficulty in restricting access to information. It is normal for councillors to talk with each other openly about issues, including issues about to come before Council and councillors only become aware late in the cycle that there is a conflict affecting one of the parties to the conversation. There may also need to be a power to recover materials from a member who has declared an interest.

### Personal Interest Returns

We would also suggest that there is clear guidance on when these declaration records can be destroyed and that they do not need to be available for public viewing (apart from RTI requests) when the councillor is no longer in office. These could be retained for 6 years only in case of potential future legal challenges.

There was a strong consensus that candidates who have nominated for election to Council should also make the same public disclosure of their interests as well as current elected councillors. This would create a level playing field for all candidates at each election.

There was commentary from elected members about the details of the personal interest return. The declaration of gifts and benefits appears to duplicate an interest that would have already been declared under existing requirements (Appendix a, sub para (f)).

Once again, we would like to thank you for the opportunity to comment and we look forward to viewing the draft legislation.

With kindness



Bec Thomas  
**Mayor of Glenorchy**