

# KENTISH & LATROBE COUNCILS

Our Ref:  
Your Ref:

2 February 2024

Department of Premier and Cabinet  
Office of Local Government  
GPO Box 123  
HOBART TAS 7001

Attention: Managing Interests Framework

By email: [lgconsultation@dpac.tas.gov.au](mailto:lgconsultation@dpac.tas.gov.au)

Dear Sir/Madam,

## MANAGING CONFLICTS OF INTEREST FRAMEWORK PROPOSAL

I write to provide a submission in response to the Managing Conflicts of Interest Framework Proposal ("proposed framework") on behalf of the Kentish and Latrobe Councils.

The Councils have discussed the proposed changes and are generally in support of the proposed framework to manage conflicts of interest under the premise that Council decisions are made in the best interests of ratepayers. However, the following feedback was provided for consideration:

### 1. Referencing page 7 of the proposed framework document:

- a) No 4 states, "Councillors with an **actual conflict of interest** will have restricted or no access to deliberative material and information on those matters".

This only applies to workshops and closed meetings as the open council meetings are published on the council website and are publicly available. Meetings are also live streamed and available on the website after the meeting. If a Councillor chooses to access material via that method, it cannot be prevented.

- b) No 5 states, "In certain circumstances, it may be appropriate for the Council to overturn a councillor's decision to participate".

There is some concern around this statement and further scenarios are required to demonstrate when this decision might be appropriate.

2. **Actual Conflict of Interest** (page 11).

The proposed framework refers to “non-pecuniary benefits or losses” that may have an impact on “a person’s residential amenity”. On page 13 of the proposed framework, it states that an exemption could apply if, “the interest that would give rise to a conflict of interest is held in common with a substantial proportion of the residents, ratepayers or electors of the **municipal district** and does not exceed the interest held by the other residents, ratepayers or electors”.

Should this refer to locality and not just the municipal district?

3. **Potential conflicts of interest** (page 12).

In one of the examples provided, it states that “Councillor D has an intimate relationship with the owner of a local construction company. The Councillor’s private interests are currently not relevant to their official duties, but they could be in the future if their spouse submits a tender for works. This is a potential conflict”.

A councillor could innocently be unaware of the intentions of a close associate. The Legislation regarding potential conflicts of interest needs to be carefully thought through or good candidates will be deterred from standing for Council election and a level of knowledge and expertise could be lost by provisions that are too restrictive.

It is noted that the discussion paper states that, “The management of perceived and potential conflicts of interests needs to be flexible to reflect the variety and broadscale of conflicts that could be included in this category”. The Council supports the suggestion that the Minister introduce guidance around how assessments and judgements are made and the types of management options available if a perceived or potential conflict of interest is disclosed.

4. **Disclosure** (page 12).

Clarity is sought around the suggestion that business owners, who are also councillors, should not sit in on Planning Applications where in the future their business may tender for the works.

For example, a councillor who is also a builder, sits in on a Planning Application for a subdivision with no intention to be involved in the subdivision at the time but down the track ends up constructing a house on one of the allotments. The implications in this situation would appear to be that the councillor must either recuse themselves of all Planning Authority matters that they could potentially participate in or exclude their services to any subdivision where they have been included in the decision-making process as the Planning Authority. How does this apply to sub-contractors?

5. **Management – Perceived and potential conflicts of interest** (Page 14) states, “In a workshop setting, agenda briefing or other forum, the Mayor would be empowered to exercise an interim decision to overturn a Councillor’s decision to participate. The matter will then be brought to the next Council meeting for a decision”.

Conflicts of interest are not always clear cut and are sometimes uncertain until all the detailed facts are known, often in a Court situation. This suggested power could place the Mayor and Councillors in a difficult situation where they are deciding on a

Councillor's perceived or potential conflict of interest and not the individual Councillor who has chosen to participate.

6. **Personal Interest Returns** (page 15).

Is 28 days enough time for Councillors to submit a Personal Interest Return after their election?

7. **Proactive Management Plan** (page 15).

Is 28 days enough time for Councillors to submit a Proactive Management Plan after they submit their Personal Interest Return? A Councillor that owns several properties, has business interests, and a share portfolio will require time to complete their plan.

8. **Publication of Personal Interest Return and Proactive Management Plan** (page 16). The states of New South Wales and Western Australia do not publicise these returns. The publication of the Personal Interest Return could deter candidates from standing for Council elections, particularly in rural areas. The information contained in the Return could also be seen as an invasion of privacy. The Federal and State Governments have protections through Parliamentary Privilege that local government does not have. If these changes are made, there will need to be an education program for potential candidates, prior to the next Council elections.

The Councils do not support these plans being made public. Do the returns include information relating to partners and close associates?

To ensure a consistent approach across all Tasmanian Councils, it is suggested that the framework incorporate some guidelines or flowcharts to assist councils to identify the conflict of interest (pecuniary, duties or relationship), determine whether it is actual, perceived or potential, and provide examples of how it might be in conflict with public duty. Further to this, guidance on identifying and assessing the risks (ie financial, legal, propriety) to council, examples of the available management strategies to mitigate the risks, and the importance of adequately documenting the process.

Consideration will also need to be given to the development of a suitable education program incorporating the changes, for potential candidates prior to the next council elections.

The Latrobe Council also is of the opinion that the allowances paid for elected members should be reviewed given the increasing responsibilities and public scrutiny on these roles.

Please contact me if you would like to discuss any of these comments further.

Yours faithfully,



Gerald Monson  
**GENERAL MANAGER**