

MANAGING CONFLICTS OF INTEREST OF COUNCILLORS

COMMENT ON DISCUSSION PAPER BY

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Please note that the comments included in this paper are solely mine and may not reflect the views of other elected members of Glamorgan Spring Bay Council

Thank you for the opportunity to comment on the framework proposal/discussion paper titled Managing conflicts of interest of Councillors.

GUIDING PRINCIPLES

I find it difficult to comprehend that the perception of local government is that we have not been subjected to the guiding principles of

- ✓ Integrity
- ✓ Impartiality
- ✓ Accountability
- ✓ Transparency
- ✓ Proactivity and Responsiveness
- ✓ Consistency

I have been a councillor for 25 years and have always respected the values and guiding principles noted above. Perhaps the best advice given to me in 1997 by the then General Manager was '*if in doubt, bail out*'. I have lived by that advice ever since in my dealings with Council and the community.

There has always been some doubt about '*how*' conflicts of interest are dealt with in the general meeting. The fact that we are in a public meeting with no parliamentary privilege has been an issue and my understanding has been that we declare the conflict and leave.

The process I have always undertaken is that I declare that I have a conflict and

- a) I will leave the room if it is likely to be seen as an actual conflict or perceived conflict that could influence how I vote, or
- b) I state that the conflict is not of such materiality that it will affect my decision making and stay in the room.

The '*nature*' of the conflict is then specified in the Register of Interests that has be completed within 7 days of the meeting. That information is subject to Right to Information challenges.

There needs to be some clarity put in place as to how a conflict is announced in open meeting.

DOES DECLARING THE 'NATURE' ONLY INVOLVE WHETHER IT IS ACTUAL, PERCEIVED OR POTENTIAL OR THE SPECIFIC NATURE.

There is a school of thought amongst some newer elected members across the local government sector that the conflict-of-interest provisions should be similar to those that apply in statutory authorities and non-government boards and that the councillors have a say in whether a member stays in the meeting or not. I have an issue with that!

The statutory authorities and other non-government board meetings are generally held in closed session. Council meetings are held in open session so should I have to announce to the world what my conflict is, particularly if it is of a highly personal nature. I am comfortable with a process where I would declare that the '*nature*' of the conflict is either actual, perceived or potential but not exactly what it is! If the community is of a mind to find out let them put in an RTI. In this scenario, it is highly unlikely that Council could be given the power to overturn a councillor's decision to participate.

PERCEIVED CONFLICT OF INTEREST

This is difficult to manage particularly in a small rural council where the Councillors are well known. It is made even more so when a '*reasonable person familiar with the facts*', gets the '*facts*' wrong!

It is worse when the complainant is a lawyer, and the process allows them to have another 'go' at the elected member's defence. There is no procedural fairness in the process at any level for elected members.

POTENTIAL CONFLICT OF INTEREST

In this scenario, my crystal ball is very cloudy!

There needs to be some serious consideration given to exemptions. Councillors can only make conflict of interest declarations in good faith based on their circumstances at the time.

The examples given on page 13 of the framework discussion paper provide a good basis for considering exemptions. The fourth dot point should be expanded to cover a councillor being a 'member' of a community group. A conflict should only arise in this circumstance if, as a councillor, you are asked to vote on a community grant or if you are an office bearer.

DISCLOSURE

I do not agree that a Councillor should state what the nature of the conflict is in the meeting. Sometimes the conflict is too personal to announce it to the world! It should be sufficient that a councillor declares a conflict of potential, perceived or actual and complete the register of interest with the nature clearly defined. In most cases, that will be sufficient for the public.

MANAGEMENT

Councillors must be allowed to exercise their own reasonable judgement. There should be no capacity for the Council to overturn a councillor's decision to participate. The Mayor should not have any right to overturn a councillor's decision in any forum. What happens if it is the Mayor with the conflict? Who is going to eject them from the Chamber in whatever forum?

PERSONAL INTEREST RETURNS

This is with little doubt the worst suggestion that has ever been put forward. There is no protection for councillors in small rural Councils in this matter.

The point that seems to be missed in this matter is that one size does not fit all. What will work with city councillors will not work in smaller councils.

The suggested information to be included in a PIR is beyond ridiculous for an elected member who receives an allowance of less than \$12,000 per annum.

COMPLAINTS, PENALTIES AND DETERRENTS

This section should be expanded to allow the General Manager to determine whether the complaint is of such materiality that it should be referred.

To have your 'defence' sent to the complainant and they then get another chance to respond is wrong.

There is no natural justice for the elected member when a complainant can lodge further numerous pages of so-called evidence that defames, intimidates and bullies the Councillor concerned.

The Code of Conduct process does not afford me the opportunity to have a lawyer represent me in any hearing, despite a complainant being a lawyer and the panel having a lawyer as part of the panel members.

GENERAL COMMENT

There is little procedural fairness or natural justice in the current process. Councillors need to have robust protection from frivolous and vexatious complaints.

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