



**NORTHERN
MIDLANDS
COUNCIL**

Our Ref:
Your Ref:

12 December 2023

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

Attention: Managing Interests Framework

Via email only: lgconsultation@dpac.tas.gov.au

Dear Sir/Madam,

RE: Managing Conflicts of Interest Framework Proposal

I refer to the above matter and provide this written submission in response to the Managing Conflicts of Interests of Councillors Framework proposal/discussion paper ("Proposed Framework") on behalf of the Northern Midlands Council ("NMC").

The Proposed Framework suggests consideration of the following questions:

1. *Do the provisions of the proposed framework reflect the guiding principles?*

The six guiding principles of the Proposed Framework are integrity, impartiality, accountability, transparency, proactivity and responsiveness, and consistency ("Guiding Principles").

The change from pecuniary (regulated by the Act) and non-pecuniary (regulated by the Code of Conduct) to a more prescriptive *actual, perceived, or potential conflicts* is likely to assist Councillors in determining whether a conflict exists and the management thereof. By increasing the scope of the definition of a conflict to include *perceived and potential* conflicts, direct and indirect, the core principles underlying the Guiding Principles of trustworthiness, ethical conduct, good governance, transparency, accountability and fairness would be captured and will require councillors to consider their personal interests more broadly. This ought to encourage councillors being proactive about their interests, including disclosing any conflict of interest which arises.

2. *Does the proposed framework support public confidence and trust in local government?*

By enshrining the new 'actual, perceived or potential' conflicts which would apply to any councillor who has an interest in any matter which the Council is concerned which may impact

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the councillor's ability to make an impartial decision in legislation is thought to result in increased public confidence and trust in local government.

By making all conflicts regulated by the Act, including the proposed increase in penalties for breaches, is demonstrative of the importance the Government places on the management of conflicts of interests, particularly with respect to the six Guiding Principles.

Further, the Framework Proposal will require councillors to declare the fact they have an interest in a matter and the nature of the interest before official events which the matter is discussed (e.g. Council meetings, workshops etc.). It is proposed this information is publicly available. As a result, ratepayers would be aware of Councillors personal interests in matters, in addition to the actual reason for the conflict. This may increase public confidence and trust in local government. However, it could also pose greater risks and issues for Councillors, for example becoming the target of action taken as a result of the nature of the interest being disclosed.

The benefit of disclosing the nature of a conflict which would increase transparency and accountability of elected members, who one may reasonably conclude consent to this by nature of being an elected public representative, will need to be balanced with protections afforded to elected members resulting from the disclosure of the nature of their interests. In short, would it be sufficient to publicly make available that a conflict exists, with the nature of the conflict being information for the General Manager and elected members only?

The Framework Proposal includes that where an actual interest exists, the Councillor is to exclude themselves from attending meetings, workshops, agenda briefings or other forums while the matter is being discussed. This is something which NMC Councillors already do and therefore would not be problematic.

In relation to the Framework Proposal that where a perceived or potential conflict of interest exists, the Councillor may exercise their discretion and reasonably judgment as to whether to participate or not, this would allow flexibility due to the nature of perceived, and particularly potential, conflicts of interest. Most importantly, should this approach be enshrined in legislation reform, the ability of Council (as a whole) to overturn a councillor's decision to participate as proposed would be of great benefit.

On the other hand, this approach to perceived or potential conflicts could be seen as a weakening of the seriousness of a conflict of interest. It is suggested that where any conflict of interest arises, including perceived and potential, the Councillor ought to exclude themselves from attending meetings, workshops, agenda briefings and other forums. An application of the same principles (ie exclusion from discussions) between actual and perceived or potential interests would result in a consistent approach.

3. *Are the proposed exemptions to conflicts of interest comprehensive, practical and suitable for adoption in Tasmania?*

There are seven (7) proposed exemptions contained in pages 12 and 13 of the Framework Proposal.

Given the seriousness and wide-ranging implications of conflicts of interest, including the very real potential to undermine the communities trust and confidence in Local Government, NMC considers that exemptions ought to be kept to a minimum and be reasonable in the circumstances.

Upon review of the proposed exemptions, they are all reasonable in the circumstances. They further define situations in which a conflict of interest may arise which may assist councillors when determining if a conflict of interest exists.

Importantly, it is noted that exemptions do not discharge a councillor's obligation to disclose an interest required under the proposed Personal Interest Return. Therefore, while the exemptions may apply, Councillors will still be required to declare their interests.

Some of the proposed exemptions are very practical in their approach and application, for example if a conflict of interest is "so remote or insignificant that it's not be reasonably regarded as capable of influencing the actions or decision of a councillor" and "the interest is held in common with a substantial proportion (currently defined by the Act as *at least 1% or 1,000 electors, whichever is the lesser*) of the residents, ratepayers or electors and does not exceed an interest held by the other residents, ratepayers or electors". These exemptions should avoid any unnecessary, frivolous or vexatious complaints being lodged.

4. *When determining what information contained in the Personal Interest Return should be exempt from publication, are the examples provided appropriate for adoption in Tasmania?*

Given Tasmania is the only State without this requirement, the introduction of Personal Interest Returns ("PIR") is supported by NMC. The implementation of PIR's would also promote a consistent approach State-wide to declarations and management of interests, in addition to Australian wide consistency.

The implementation of PIR's, the ongoing requirements surrounding PIR's including annual reporting, updates and the development of Proactive Management Plans ("PMP"), are another mechanism which will enable and encourage elected members to proactively consider their interests, ensuring prompt and appropriate action by Councillors.

Publication of the PIRs and PMPs is endorsed by NMC, noting this is a current arrangement in most other Australian jurisdictions.

With respect to the proposed exempt information, the examples are appropriate and provide a level of confidence/surety to Councillors that their personal safety, private commercial information and financial information will be protected.

Complaints, penalties and deterrents

NMC considers that the Framework Proposal mechanism for lodging of complaints is appropriate and akin to the current Code of Conduct process.

Investigation and enforcement by one entity, being the Director of Local Government, will ensure consistency as between pecuniary and non-pecuniary interests, and any breaches arising therefrom.

The proposals to strengthen the penalties is supported by NMC, and NMC agrees the penalty needs to be proportionate to other States, noting Tasmania's penalties are currently significantly lower. This will promote nation-wide confidence and trust at a local government level.

Anticipated Difficulties with the Framework Proposal

It is anticipated situations may arise where a councillor may not be aware of a matter the Council is concerned with until after the publication of an agenda. In that circumstance, the Councillor would be unable to declare an interests prior to receipt of the agenda and documents, therefore having access to the initial information for debate.

NMC agrees that restricting, or not providing access at all, to information/deliberative material in which a councillor has an interest would be beneficial and supportive of the Framework Proposal goals. However, practically speaking, automatically classifying this information as confidential in respect of an actual conflict of interest and excluding access by any councillors who hold an interest to deliberative documents or information about a matter in which they hold an interest, this cannot be completely managed by Council. For example, while edited versions of meeting minutes can be provided so that the subject of the conflict is excluded, NMC's agenda and minutes are published on the NMC website and are publicly available. If a Councillor chose to access the material via that method, it cannot be prevented. Furthermore, NMC has recordings of Council meetings available on its website, which councillors can freely access and thereby listen/see any presentation made.

Implementation of Framework Proposal

Should the Framework Proposal proceed and legislative reforms occur, NMC is strongly in support of the Office of Local Government providing the further support and guidance as contained on page 18 of the Framework Proposal. NMC considers this will provide a smoother implementation process of the new legislative requirements.

NMC suggests that in addition to the guides, templates and information offered, the Office of Local Government also implement (and facilitate/fund) mandatory training sessions to each Council on the

new laws, if implemented, in due course so all Council's statewide receive consistent information and Councillors.

Definitions

NMC does not propose any amendments to the draft definitions.

NMC thanks you for the opportunity to provide comments and feedback on the Framework Proposal and looks forward to receipt of your further advice regarding this matter.

Yours sincerely,

A handwritten signature in cursive script that reads "M Knowles".

Mary Knowles OAM
MAYOR