

26 August 2020

Ms Melva Hobson  
President  
Organisation of Sunshine Coast Association of Residents Incorporated  
PO Box 105  
COOLUM BEACH QLD 4573

Dear Ms Hobson

Thank you for your letter of 24 August 2020 seeking information relating to the declaration of a perceived conflict of interest made by Mayor Mark Jamieson in relation to Agenda Item 8.1 during the Ordinary Meeting of 23 July 2020.

Firstly I would like to clarify a matter in the opening paragraph of your letter. Mayor Jamieson did not make a sudden declaration of a conflict of interest to Councillors immediately prior to the Ordinary Meeting. The Mayor made his declaration during the Ordinary Meeting prior to the consideration of Agenda Item 8.1, in line with the obligations established under section 175E (2) of the *Local Government Act 2009* ("the Act"). I believe the Mayor provided a thorough declaration, the full elements of which have been recorded in the minutes of the Meeting (refer copy attached).

In order to enable other Councillors to have sufficient time to consider whether they may also have had a personal interest in this matter that required declaration at the meeting, Council resolved to defer consideration of the agenda item (ie. the Twin Waters West Development Application) to the end of the Ordinary Meeting. Council officers also provided Councillors with a full copy of the submissions list for this development application and assisted with any advice that Councillors may have required (where appropriate) in order for them to determine whether a declaration needed to be made – noting that at all time, it remains the personal responsibility of every Councillor to identify and appropriately manage any personal interests under the Act.

In relation to your questions, I have recently responded to the majority of these matters in emails with Mr Greg Smith (whom I understand is a member of OSCAR) on 12 and 17 August 2020 respectively. For consistency, I have therefore, set out below the substance of my responses to Mr Smith, which I consider address the questions which you have posed:

In relation to the matters you have raised -

- I am advised the Mayor obtained his own advice – at no cost to Council - and as indicated in his statement to the Chamber, that advice was verbal in nature, given the short lead time from when the potential for a perceived conflict of interest was first raised with him, his seeking of advice and the commencement of the Ordinary Meeting;

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- Council subsequently sought written legal advice from King and Company - for provision to all Councillors - on the matter raised by the Mayor in his declaration (ie. the implications of gift donors to a Councillor also being a submitter on an impact assessable development application). King and Company was also requested to advise on the provision of gifts (generally) to Councillors by persons or organisations that may be a submitter to a development application (ie. gifts other than electoral donations). This additional matter was included in the request for advice due to a specific question asked by one of the Councillors during the course of the Ordinary Meeting.

It is not Council's practice to publicly release legal advice as to do so, compromises legal privilege (*please see my further comments in this regard below*). I can advise however, that the legal advice obtained by Council does not impose or suggest a restraint on any organisation or member of the community in their ability to lawfully make a submission on a development application. The advice obtained from King and Company affirms that should an organisation or member of the community make a submission on an impact assessable development application and they have provided a gift to a Councillor or contributed to a Councillor's election campaign (either financially and/or in a voluntary capacity), then this could give rise to a perceived conflict of interest for the Councillor if the development application comes before the Council for determination.

As indicated above, this does not however, fetter any member of the community in their ability to make a lawful submission in response to an impact assessable development application. Likewise it does not automatically mean that the Councillor in question is excluded from participating in a vote on the development application. All that it does is give rise to an obligation on the Councillor to inform his or her Councillor colleagues that they may have a perceived conflict of interest in the matter. It is a decision for the Councillor's colleagues as to whether the perceived conflict of interest exists - and if it does, whether the Councillor can remain in the Chamber and vote on the matter.

As we saw at the Ordinary Meeting on 23 July 2020, two other Councillors (not including the Mayor) informed the Council of a perceived conflict of interest of this nature, then sought to remain in the Chamber and were permitted to do so by their fellow Councillors. The requirements and obligations established in section 175E of the *Local Government Act 2009* were thus fulfilled and the Councillors who made the declarations proceeded to participate in the deliberations and vote on the development application.

In response to a further request to clarify certain matters in my response above, I subsequently advised Mr Smith on 17 August 2020 as follows:

As I am sure you fully appreciate, both Council and many elements of the community are continuing to work with, and understand, the legislation governing these matters – and that legislation is itself continuing to evolve and change, with further changes relating to management of Councillor interests due to commence on 12 October 2020. I think it is also fair to say that our Council has actively sought to understand how best to operate within this legislation and will continue to do its utmost to encourage our Councillors to apply the highest standards - whilst recognising that at the end of the day, it is the responsibility of individual Councillors to actively manage



the identification of material personal interests and conflicts of interests (real or perceived) and comply with their obligations under the *Local Government Act 2009*.

That said, what we are also conscious of is the fact that no legislation can comprehensively predict or cater for, every circumstance that may arise or the nuance of every relationship a Councillor may have and whether that may have implications for how they participate in the decision-making process. I think we saw a good example of that on 23 July 2020, when the Mayor and Cr Suarez both declared perceived conflicts of interest relating to submitters who had donated to their respective electoral campaigns; Cr Law declared a perceived conflict of interest based on a submitter that was involved in an electoral arrangement with him; and Cr Landsberg declared a perceived conflict of interest based on a member of a club that he is President of who was also a consultant to the applicant. These are all vastly different scenarios and circumstances and it helps to demonstrate that every situation and potential relationship cannot be predicted with any certainty. What the Act does do however, is provide a strong obligation on Councillors to identify where a personal interest (material, conflict or perceived) might exist and to manage accordingly, taking into account all of the relevant circumstances. I tend to think that is the best approach to take, given the Act cannot prescribe precisely, every circumstance that might arise for every councillor in Queensland. In taking this approach, what the Act also does is place the obligation on the councillor – not the community. Therefore, members of the community are not fettered in how they go about lawfully contributing to the business of local government.

What is important is that Councillors do not shy away from or seek to avoid their obligations – and I think that in the main, our Councillors have been very alive to, and aware of, their obligations in this regard. By complying with their obligations and declaring a personal interest, they are not excluding themselves from participation in the debate and decisions on a matter (other than where it is a material personal interest). Councillors with a conflict of interest or perceived conflict of interest can seek to remain in the room and whilst ever they can demonstrate a compelling case on the nature of the interest and how they will manage that interest so that it does not impair the objectivity of their decision-making, then I think those arguments will largely be assessed on their merits.

I have outlined my thoughts in this regard because I wanted you to have a context for why I believe the community is not fettered in contributing lawfully to engagement, consultation and submission processes; Councillors have an obligation that they must manage; and that inevitably, new and different circumstances will arise that had not been contemplated previously, but provided the Councillor fulfils their obligations, it should not impact on the decision-making processes of Council.

With my comments above in mind, I offer the following response to your two additional questions:

1. A Councillor and/or Council may need to rely on the legal advice which Council obtained, in the context of defending any future legal or other proceedings. As indicated in my previous response however, the advice does not fetter the ability of any member of the community in relation to the making of a lawful submission on a development application; and
2. You are correct - Council sought advice specifically in relation to impact assessable development applications. Council has not sought advice on

submissions on other matters such as those to which you refer and I have not received any request from Councillors to seek such advice. As indicated above, we cannot predict what relationships and circumstances might exist for every Councillor for every matter that comes before Council. The main point is that the community is not fettered in making submissions on such matters – they can continue to do so as they have done in the past. Nothing has changed in that regard. As indicated above, Councillors have an obligation to manage any interests that might arise and to do so transparently – and every relationship and circumstance can have specific nuances and considerations attached to it that could impact on whether a personal interest might arise and what form that interest might take. To this end, I believe Council will continue to work with all parties so their interests are managed appropriately – with specialist advice being sought as and when required.

Thank you again for making contact with me on these matters.

Yours sincerely

  
**Warren Bunker**  
**Acting Chief Executive Officer**

Encl.