



18 September 2017

Lindsay McKenzie  
Chief Executive  
Tasman District Council

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Dear Lindsay

### **Mayor Kempthorne and the Waimea Dam Project**

We received a ratepayer complaint about the Mayor casting a deciding vote on a Council decision about the proposed Waimea dam.

As I explained to you in my earlier letter, when considering complaints such as this one we are interested in whether the participation rule in section 6 of the Local Authorities (Members' Interests) Act 1968 has been breached. That rule is that members of an authority are not allowed to participate in discussion or voting on any matter before the authority in which they have a direct or indirect pecuniary interest, other than an interest in common with the public.

#### *The complaint*

The ratepayer is concerned that the Mayor has an undeclared conflict of interest because of his involvement in horticulture, and should not have participated in the Council's consideration of the proposed dam. The ratepayer's view is that the main purpose of the proposed dam is to supply water for irrigation, primarily horticulture.

The ratepayer claims that Mayor Kempthorne:

- Has previously been the head of Horticulture NZ, and has also held other positions in it or its various entities.
- Has not declared his Horticulture NZ position on the Council's register of interest.
- Has a link to Horticulture NZ on his web page [Kempthorne.co.nz](http://Kempthorne.co.nz).
- Has declared an interest in a family inheritance, presumed to be an apple orchard because his family owns horticulture blocks.

I sought information from you about the complaints in order to assess whether Mayor Kempthorne has a financial conflict of interest in the Waimea Dam. Thank you for providing this Office with information you obtained from Mayor Kempthorne in response to the complaints.

You explained that:

- The Mayor and his wife owned an orchard in Appleby from 1980 until 2001.

- During that time he became:
  - a. a Director of the NZ Fruitgrowers Federation,
  - b. a member and eventually the Chair of the NZ Agrichemical Education Trust (NZAET)
- The Mayor was an interim director of Horticulture NZ (HortNZ) when the NZ Fruitgrowers Federation and Veg Fed (representing vegetable growers) were combined.

The positions Mayor Kempthorne held in the NZ Fruitgrowers Federation and his interim directorship in Horticulture NZ ended around 14 years ago. In our view these historic roles do not create issues of conflict for the Mayor in his present role.

*The role of the Auditor-General*

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The Act does not define a pecuniary interest. The test we use is:

*Whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned.*

You advised me that the Mayor recently reviewed all of his interests on the Council Interests Register. The Register shows that he has ownership interests in two properties in the Tasman District. I consider below whether those ownership interests create a financial interest for the Mayor in the proposed Waimea dam.

*(a) Estate Property, Eves Valley, Brightwater*

The Council's Interests Register records the Mayor's 50% interest in a family estate property in Eves Valley.

You provided me with the following information from the Mayor:

- The land in which the RG & JE Kempthorne Family Trust has an interest is approximately 27 hectares;
- Approximately 4 hectares of the land is planted in apples;
- The balance of the land is in pasture for farming sheep;
- The Mayor has a 50% interest in the 27 hectare property;
- The orchard uses water from storage dams in Eves Valley. The land has no connection to the Waimea Plains, and the Trust will not be purchasing water from the Waimea Community Dam.

On the basis of what we have been told, if this land cannot use water from the proposed dam it creates no financial interest for the Mayor in the dam proposal.

*(b) Primary residence at Richmond.*

The Mayor has recorded on the Interests Register his primary residence at Richmond. The residence is located in the Richmond urban area. Water from the proposed dam will be used for supplies to the urban area.

You explained that:

- As an urban water user the Mayor will benefit from the dam along with all households connected to the urban supply network that is sourced from the Waimea catchment.
- Some other councillors and the chief executive of the Council also live within the Richmond urban area and will benefit from the dam.

Under the Act, if a member's pecuniary interest can be said to be "in common with the public", they will not be prohibited from discussing and voting on the matter.

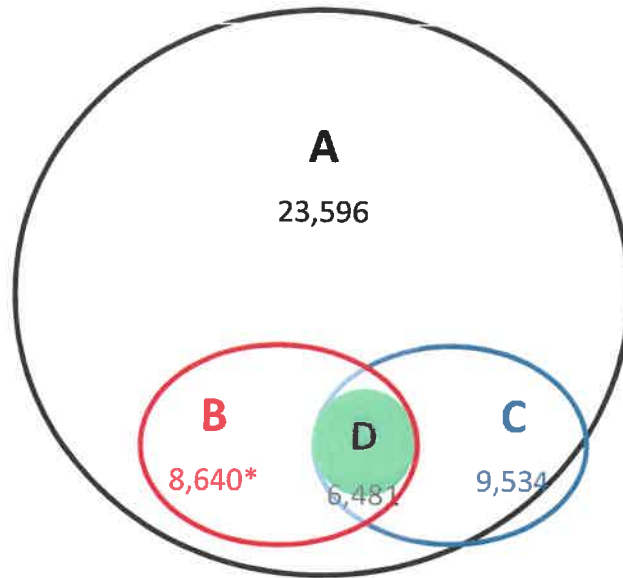
Whether the member's interest is in common with the public will depend on the circumstances of the case. For the exception to apply, not only must the public also be affected but there must be some similarity between the way the member is affected and the way the public are affected.

Thank you for the helpful information you sent to me on 6 September 2017 in response to my queries.

You advised that the Mayor's property interest in Richmond puts him in a group, along with four other councillors and approximately 6,481 ratepayers, that is within the "Zone of Benefit" and part of the urban "water club".

You provided a very useful table and diagram which I have copied below:

	Group	Approximate numbers of ratepayers in each group	% of all ratepayers in district
A	All ratepayers in the district	23,596 The Mayor and all Councillors are in this group	100%
B	<b>Zone of Benefit</b> The Zone of Benefit captures ratepayers in the proximity of the Waimea Plains whose properties will receive a benefit from the proposed dam that is greater than the community at large. The Zone of Benefit includes ratepayers in Richmond, Brightwater, Mapua and Hope.	8,640* The Mayor and five Councillors reside in this area.	36.6%*
C	<b>Water club</b> The "water club" represents ratepayers connected to the urban supply network. The urban water supplies in various areas (detailed below) are all 'clubbed' together which means they all pay the same rates and meter charges for their water.	9,534 The Mayor and five Councillors are in this group.	40.4%
D	<b>Water Club members in the Zone of Benefit</b> Some members of the water club are also in the Zone of Benefit.	6,481 The Mayor and four Councillors are in this group.	27.5%



*\*Note: Indicative/provisional figure only - subject to change as a result of public consultation and a final decision (yet to be made) on the Revenue and Financing Policy for funding of the proposed dam.*

*Other figures are approximate as at 30 June 2017.*

You explained that the Council is yet to finalise its proposed approach to the Revenue and Financing Policy in relation to the funding of the proposed dam. You advised that Council staff are working through various options and are due to report to Councillors later this month on refined options, before going out to public consultation later in the year. Therefore, it is not currently possible for you to determine the rates impact on any particular group of ratepayers because the Council has not finalised its approach to the funding of the proposed dam.

From the information you provided it seems that more than a quarter of all ratepayers (approximately 6,481) in the Tasman District are likely to be "water club" members in the "Zone of Benefit" who will be affected in the same way as the Mayor is affected by the proposed dam. But until the funding decision is made we do not know the size of the Mayor's pecuniary interest.

In these circumstances it seems likely that the Mayor's interest in the Waimea Dam proposal will be the same as all the other ratepayers similarly affected. Therefore his interest is in common with the public, and he is not prohibited from participating in Council discussions or voting on matters relating to the Waimea Dam proposal.

Yours sincerely

Melanie Webb  
Assistant Auditor-General, Legal

Cc Appointed Auditor, Bede Kearney  
Sector Manager, Tony Appleyard