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PRIVATE AND CONFIDENTIAL

 **E-MAILED**
27/10/2014

Mr Ray Stevens MP
Assistant Minister to the Premier on e-Government
Leader of the House/Manager of Government Business
State Member for Mermaid Beach
PO Box 1056
BROADBEACH QLD 4218

Via email: Mermaid.Beach@parliament.qld.gov.au

Dear Mr Stevens

I refer to my letter of 22 October 2014 and to our subsequent telephone conversations concerning the ethical issues arising from your involvement with a cable-car tourism proposal to Springbrook on the Gold Coast.

My 22 October 2014 advice was provided to you in your capacities as Leader of the House/Manager of Government Relations, and State Member for Mermaid Beach. These were the offices you held when my predecessor provided his 2012 advice to you, of which you sought my endorsement.

However, you have since been appointed to the position of Assistant Minister to the Premier on e-Government.

For ease of reference I will consolidate in this letter my views about the obligations applying to all three offices which you now hold, namely:

- Assistant Minister to the Premier on e-Government
- Leader of the House/Manager of Government Business
- State Member for Mermaid Beach.

As you are a designated person under s.12 of the *Integrity Act 2009*, I am required to provide the advice you seek.

You say:

I wish to advise that the cable-car project has become a reality with the purchase of land for the take-off site on 20th October 2014. The consortium of business people have formed a company for the application process and I have become an investor in that company through a related entity and also advisor to the consortium.

It is proposed that I will announce in Parliament on Thursday 30th October my involvement in the project in personal explanations time via my speech which you perused at our meeting in my office of today's date. I hope that all matters stated in that speech are to your approval.

I seek your further endorsement of your predecessor's direction on this matter and also clarification of my position on the entity that will be seeking approval for the project from the Government as an investor. Currently, I am a shareholder of one sixth (or one seventh, yet to be determined) of the company shares which entitles me to one position on the board of directors of six (or seven if determined). I have currently elected to assume that board position and seek your advice as to whether I should continue that board position before the public announcement of the project.

The position on the board would only relate to board decision-making resolutions and would in no way involve me in any of the processes, applications, public or government meetings which would impact the final decision by the Government on the project. I will be guided by your considered advice.

In two telephone conversations with me on 24 October 2014 you confirmed that the company which has been established is a private company ('**the company**'); and that it will not be approaching government to seek any financial contribution to the project. However, it will be seeking a lease or leases to permit construction of associated infrastructure, and passage of the cable-car route, on and over government-owned land. It will also be seeking necessary operating licences and approvals from government.

You have also advised me – and I accept - that you have willingly complied with my predecessor's suggestions to date about your involvement in the project. I note in particular that you complied with his suggestion made on 6 September 2012 that you should formally write to the Premier informing him of your involvement in the project, and of your plans in relation to it.

Assistant Minister to the Premier on e-Government

In response to your earlier request for advice in relation to this matter, my predecessor advised you on 9 August 2012 that:

The position you hold, as Leader of the House and Manager of Government Business does not technically make you a Member of the Government – that is confined to Ministers and Assistant Ministers (and perhaps not even Assistant Ministers as they are not Members of the Executive Council). You are not bound by the provisions of the Ministerial Code of Ethics – a code soon to be replaced by a new Code of Ministerial Conduct.

That statement is correct, but it does not take account of your subsequent appointment as Assistant Minister to the Premier on e-Government. As a consequence of your position as an Assistant Minister, you are bound by the Ministerial Code of Conduct.

The Ministerial Code requires Ministers and Assistant Ministers to 'divest themselves of any shareholding in any company of which a conflict of interest exists or could reasonably be perceived to exist. Such shareholdings cannot be divested to the Minister's related persons or to close associates'.¹

I note firstly that there is no comparable obligation under the Code of Ethical Standards applying to members of the Legislative Assembly.²

I note also that the Ministerial Code reflects the results of a review conducted by my predecessor in May 2012, at the request of the Premier. I have considered the papers associated with that review.

It is clear that the Ministerial Code as it currently exists is intended to support the regime established under the Code of Ethical Standards applying to members of the Legislative Assembly. That regime relies on full disclosure of potential conflicts of interest, with subsequent avoidance or treatment of them if and when they arise, rather than on divestment of personal interests. I believe that to this extent the current version of the Ministerial Code is largely consistent with the original version as it existed up to 2007.³

However, the current regime can be contrasted with the Ministerial Code of Ethics as it existed following amendments made by then Premier Beattie in 2007, which reflected a different policy approach to this issue. In a Ministerial Statement explaining the change, Premier Beattie said:

The government will change the code to require all Ministers and Parliamentary Secretaries to 'divest themselves and otherwise relinquish control of all shares and similar interests in any company that operates to make a profit. They will not be able to transfer their interest to their spouse. However, they will be permitted to transfer control to an outside professional nominee or blind trust or other trust, such as managed funds, providing they or their immediate family exercise no control on the operation of the nominee or trust'.⁴

Under the 2007 amendment, a Minister's obligation to divest and otherwise relinquish control of all shares and similar interests in any for-profit company applied regardless of whether the shares or interests were within the Minister's area of portfolio responsibility or not.

¹ Ministerial Handbook published by the Department of Premier and Cabinet, p.63, Appendix 1, *Ministerial Code of Conduct*, available at <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/assets/ministerial-handbook.pdf>, viewed at 22 October 2014. See paragraph 1; and 'Conflicts of Interest', paragraph 3. It appears that the words 'in respect' should be included after the word 'company' in this extract.

² See <http://www.parliament.qld.gov.au/documents/assembly/procedures/CodeOfEthicalStandards.pdf>, viewed at 22 October 2014.

³ Since its inception, the code has required Ministers to resign or decline membership of boards of public companies and declare membership of, and the nature of, any private companies in which they are involved.

⁴ See Hansard, 22 May 2007, p1494.

The papers which I have viewed suggest that the 2012 amendment reflects a number of perceived problems with the 2007 approach:

- divestment was required simply based on the class of asset (such as shares) rather than by a more acceptable touchstone, such as divestment of potentially conflicting interests
- divestment may not be a simple matter, especially where long standing trusts and private companies have been in place for many years
- divestment may give rise to significant costs such as stamp duty and capital gains tax
- divestment is a significant disincentive to qualified and skilled persons becoming a Member or a Minister
- as a pre-condition of accepting office, divestment is potentially discriminatory of eligible members who come from a background in business, or a family where complex financial structures have long been in place
- vehicles such as blind trusts have a poor record as an accountability mechanism, and have not proven to be effective. They are, by their nature, not consistent with full public disclosure of interests.

I have taken this background into account in forming a view on the matters which you have raised with me.

Conflict of interest is defined in the *Integrity Act 2009* as 'an issue about a conflict or possible conflict between a personal interest of the person and the person's official responsibilities' – s. 10(1).

Whether such a conflict exists is to be judged objectively – that is, what would be the view of the reasonable member of the public, properly informed.

In reaching my assessment of this view, I have considered a number of factors. Most significantly, as Assistant Minister to the Premier on e-Government you have no direct portfolio responsibility or interest in matters such as the cable-car proposal. Hence it is difficult to discern a specific public duty with which your private interest may conflict. Any conflict can only arise in relation to the broad public trust which you assumed when you took office as an Assistant Minister.

I have also considered the following factors:

- you have taken and are proposing to take significant steps to disclose the nature of your interests, not simply by fulfilling your obligations with respect to the Register of Members' Interests, but also by making a personal explanation to the Parliament. Based on your comments to me, I would expect that you would make further personal explanations if and when further disclosure becomes desirable
- as an Assistant Minister it is arguable that you are not a member of the government (see my predecessor's view outlined above). You have not been appointed as a member of the Executive Council, and you do not sit as a member of Cabinet. Thus it is arguable that you should not be held to a standard which applies to members of the government, but rather to that which applies to

Members of Parliament. However, I believe that most members of the public would perceive you as a member of the government, given that you also hold the office of Leader of the House/Manager of Government Business

- the Ministerial Code is drafted in such a way as to apply plainly to Ministers, but its application to Assistant Ministers is much less clear. For example, it acknowledges that one way in which a conflict of interest may be managed is by withdrawing from the Cabinet Room.⁵ Clearly this is not relevant to the situation of Assistant Ministers.

On the other hand:

- you have foreshadowed that the company will be seeking leases, licences and approvals from the government for the project. Although you have no direct responsibilities relevant to the granting of leases and the licensing or approval processes as you have explained them to me, you hold two important roles in government
- in my view it would not be unreasonable for an informed member of the public to believe that your roles may influence the ultimate decision-maker, particularly if that decision-maker is the Cabinet rather than an agency of government such as a statutory officer. Of course, that is not to say that the decision-maker would be so influenced; rather, it would not be unreasonable for an informed member of the public to harbour such a suspicion
- Attachment 2 to the Ministerial Code of Conduct outlines relevant examples of conflicts of interest, and one such example is 'directorship or management of a company which is affected by a Cabinet or other government decision'.⁶ The wording of this example is ambiguous, in that it is not clearly limited to the portfolio for which the relevant Minister or Assistant Minister has responsibility, although it could be implied that that is its intention
- the project is a significant new development, which you have advised me is likely to be controversial. This can be contrasted with a shareholding in a company which has more routine dealings with government - such as a regular, small supplier. In my view such a shareholding would be less likely to create a perceived conflict of interest than a shareholding such as yours, yet Parliament has seen fit to preclude a member having an interest in any such supply contract⁷
- the focus on ethical behaviour is very much magnified on leaders in government, and consequently it is wise to act with extreme caution in this field; and if there is any doubt, to err on the side of conservatism.

Considering all these factors, I have concluded that your shareholding in the company could not be reasonably perceived by a properly informed member of the public to amount to a conflict with your official responsibilities as Assistant Minister to the Premier on e-Government.

⁵ Ministerial Code of Conduct, 'Conflicts of Interest', paragraph 4.

⁶ Ministerial Code of Conduct, Attachment 2, Example 1.

⁷ S.71 of the *Parliament of Queensland Act 2001* prevents a member of Parliament from 'transacting business' (i.e. having an interest in a contract for the supply of goods) directly or indirectly, with an entity of the State.

However, in view of the factors which I have outlined above, it is likely that some, if not many, members of the public will perceive that a conflict exists. I consider that you have an obligation to maintain the public trust which was reposed in you when you assumed office.

I therefore consider that it is important that this issue is managed appropriately by full and ongoing disclosure through the Register of Members' Interests, and personal explanation(s) to the Parliament as necessary; and by you ensuring that you take no part in any government consideration of the company's proposals to government or applications for leases, licences or approvals.

*Leader of the House/Manager of Government Business
State Member for Mermaid Beach*

In relation to these offices, my predecessor advised you on 9 August 2012 that:

- the Parliamentary Code of Ethical Standards, which applies to you in your capacities as Leader of the House/Manager of Government Business and State Member for Mermaid Beach, 'does not preclude you from involving yourself in the cable-car tourism proposal'
- that Code requires you to declare your interest in the proposal in the Register of Members' Interests
- if the project subsequently requires legislative approval several sections of the Standing Orders would apply to your conduct in the House, such as declaring an interest in the House; and that on the effect of these provisions you should consult the Clerk of the Parliament for advice when the occasion arises.

I agree with my predecessor's views on the above matters.

As noted above, there is no obligation under the Code of Ethical Standards which is comparable to that under the Ministerial Code requiring you as an Assistant Minister to divest yourself of any shareholding in any company in respect of which a conflict of interest exists or could reasonably be perceived to exist.

Your role as a director

You have also sought advice on whether your role as a director of the consortium involves any further ethical issue; and in particular whether it gives rise to any conflict of interest.

The Ministerial Code requires Ministers to resign or decline membership of boards of public companies and declare membership of, and the nature of, any private companies in which they are involved.⁸ On its face, given that the company is a private company, I consider that this obligation will be met by your disclosures under the Register of Members' Interests.

⁸ Ministerial Code of Conduct, 'Interests', paragraph 4.

In addition to these disclosure obligations, under the Ministerial Code a Minister or Assistant Minister must advise the Premier in writing within one month of taking office that 'all directorships in private companies have been declared (including how any potential conflicts of interest for these directorships will be managed)'.⁹

Whilst a strict interpretation of this obligation does not extend to a directorship assumed after the expiration of the one month period, I consider that you should advise the Premier in writing about the matter, and how you intend to manage it.

The extent to which your directorship confers control of the project is a relevant consideration in determining whether a conflict of interest may arise i.e. beyond that which could arise simply from a shareholding. In this case, you are one of six or seven directors, and thus I do not consider that your directorship in itself confers any such *additional* control of the company, or consequent obligation.

In the event that a public company is formed to progress the project, the Ministerial Code obligation which I have outlined above prevents you from holding office as a director of the company; and you should not do so.

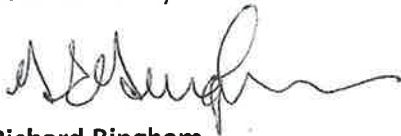
Conclusion

I reiterate the advice provided by my predecessor, namely that it is a matter for you to ensure that you make the necessary disclosures on the Register of Members' Interests; and that if the project requires legislative approval, several sections of the Standing Orders would apply to your conduct in the House. It may be prudent for you to seek advice from the Clerk about these matters.

Under s.27 of the *Integrity Act 2009*, you may disclose this letter as you see fit.

Please don't hesitate to contact me should you require any further assistance.

Yours sincerely



Richard Bingham
QUEENSLAND INTEGRITY COMMISSIONER

27 October 2014

The Right to Information Act does not apply to this document and the enquiry to which it responds – Right to Information Act, schedule 1, s. 6.

⁹ Ministerial Code of Conduct, 'Interests', paragraph 5.

