

# Development Watch Inc

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26 October 2017

Acting Committee Secretary  
Legal Affairs and Community Safety Committee  
**BY EMAIL:** [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Sir/Madam,

**Re: Local Government Electoral (Implementing Belcarra) and Other Legislation  
Amendment Bill 2017**

Development Watch Inc is an Incorporated Association originally formed in 2004, to oppose an inappropriate development at Mt Coolum.

We are a non-profit, non-partisan volunteer organisation. We are united in our concern for the future of Coolum and its surrounding areas and in holding our Council and the State Government to account on important development issues. As part of this process, we monitor developments in our area and attempt to convince our Local Government and in some cases the State Government, to uphold the primacy of our Planning Scheme thereby allowing it to provide the certainty it was meant to.

Thankyou for allowing us to make a submission on this Amendment Bill. This submission will be presented from a Community Group perspective.

## Objective of the Bill

We note the policy objective of the Bill is to implement certain recommendations of the Crime and Corruption Commission's (CCC) report *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (the Belcarra report) to:

1. Reinforce integrity and minimise corruption risk that political donations from property developers has potential to cause at both a state and local government level
2. Improve transparency and accountability in state and local government
3. Strengthen the legislative requirements that regulate how a councillor must deal with a real or perceived conflict of interest or a material personal interest.

With these objectives in mind, we comment as follows:

## 1. **Subdivision 4 – Political donations from property developers**

We agree to the banning of donations from property developers for *candidates, groups of candidates, third parties, political parties, associated entities and councillors* including the State Government.

### **273 Meaning of *prohibited donor***

We note the Belcarra Report identified there is a risk of corruption when donations are made with the expectation that the recipient will, in return, make decisions that deliver a benefit to the donor. The risk is heightened when donors have business interests that are affected by government decisions.

After having read **273**, from a community's point of view, it will still not be easy to know who falls into the category of "prohibited donor". For this reason, it would be good to have an independent committee made up of two or more persons from whom a ruling could be obtained.

### **S277 Making of determination that entity is not a prohibited donor**

This section provides that a person may apply to the electoral commissioner for a determination that the person, or another entity, is not an entity mentioned in section 273(1)(a)(i) or (ii).

Similarly, could a community group or member of the community also apply to the electoral commissioner for a determination that a person, or another entity, is an entity mentioned in section 273(1)(a)(i) or (ii)?

We respectfully suggest again that an independent committee made up of two or more persons from whom a ruling could be obtained in a timely manner, would be our recommendation.

## 2. **DIVISION 5A Dealing with councillors' personal interests in local government matters**

Given the role of our Association and our involvement with Council over the past 13 years, conflicts of interest at meetings where developments in the Coolum and North Shore area have been decided, is something we have been attempting to monitor. It has been very difficult at times determining whether there is a conflict or not.

From our Association's point of view, there needs to be a very clear and succinct set of guidelines setting out what constitutes a conflict of interest, what constitutes a material personal interest and how Councillors must deal with them.

### **175B Meaning of material personal interest**

- (1) A councillor has a *material person interest* in a matter if any of the following stand to gain a benefit, or suffer a loss ...
- (a) the councillor;
  - (b) a spouse of the councillor;
  - (c) a parent, child or sibling of the councillor,
  - (d) a person who is in a partnership with the councillor;
  - (e) an employer, other than a government entity, of the councillor;
  - (f) an entity other than a government entity, of which the councillor is a member;
  - (g) another entity prescribed by regulation.

### **175C Councillor's material personal interest at a meeting**

We agree with how Councillors are to deal with MPIs as set out in the amendment.

We submit also the councillor with the interest should also not be permitted to discuss the development with other councillors in the lead up to the meeting.

### **175D Meaning of conflict of interest**

- (1) *A conflict of interest* is a conflict that –
- (a) is between –
    - (i) a councillor's personal interests; and
    - (j) the public interest; and
  - (b) might lead to a decision that is contrary to the public interest...

We have read this section and still believe, in some cases it will be difficult for community groups to determine whether a Councillor has a COI or an MPI. We have had many instances in the past where we have had suspicions of undeclared COIs or MPIs but have had nowhere to go to get a ruling within a reasonable period of time or if at all.

### **175E Councillor's conflict of interest at a meeting**

We do not agree with the proposal to have councillors in the room decide whether a councillor has a conflict or perceived conflict and whether that conflict warrants the leaving of the meeting or not.

Apart from this being extremely complicated, this will not deal with the issues. There have been instances within our council where it has appeared some councillors have a theory "you scratch my back, I'll scratch yours" and this needs to stop.

We submit that there should be clear guidelines on the definition of conflicts of interest, perceived or otherwise.

If there is any suspicion at all on the part of a councillor that he or she may have a conflict, then that councillor should declare and leave the room, as is the case with MPIs. That councillor should also not be permitted to discuss the development with other councillors in the lead up to the meeting.

Keeping the procedure the same for both MPIs and COIs will save much confusion both on the part of the councillors and the community.

We agree with Sections 175I and 175J.

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## **GENERAL COMMENTS**

### **Perceived Corruption**

Whilst we totally agree with the banning of developer donations, there will still be perceived corruption at times, particularly when a councillor votes in favour of a development that is substantially outside a Planning Scheme and one that the majority of the local community oppose. The effect of this perceived corruption not only erodes the trust of the community in their governments but it also adversely affects the individual/authority to whom the perceived corruption is directed.

In relation to donations to the State Government, this is not something we monitor closely. We do agree similar laws should apply to State Governments, although Local Governments are obviously easier targets when it comes to developer influence. Having said this, we are aware of a certain development company who has made a donation to the State Government and the State Government subsequently granted approval for a controversial development in that donor's favour. There is now a perception of corruption amongst the community as a result of this and it is currently filtering through social media into our area.

### **LGAQ Role**

We note the President of the LGAQ has stated words to the effect that "donations will just go under the table".

As a result of the lack of trust the community has for Local Government, we believe there is already a perception amongst the community that this is occurring. This perception is created when a controversial development, outside the Planning

Scheme and against the wishes of the local community, is approved (even when no donations have been declared by the councillors voting in favour).

### **Disappointed with increase in disclosure threshold**

We set out below an extract from our submission on a previous amendment to this Act in relation to the increase in the disclosure threshold –

*“We do not agree to an increase in the disclosure threshold for gifts to be declared by individual candidates and third parties from \$200.00 to \$500.00.*

*Reasons:*

*We note the LGAQ has supported an increase to \$500.00.*

*The current Mayor of the Sunshine Coast Regional Council in his election campaign in 2012 received donations totalling approx. \$161,388. Of this amount, approx. \$6,805.00 consisted of donations ranging from \$200.00 to \$499.00.*

*In his election campaign for 2016 the Mayor received donations totalling approx. \$172,675.00. Of this amount approx. \$11,500.00 consisted of donations ranging from \$200.00 to \$499.00.*

*These sums of money are substantial and should be declared.*

*With all due respect, the purpose of this amendment is to improve transparency and accountability, not to lower the disclosure burden for candidates. If candidates are nominating for a position in Local Government they should, at the very least, have the ability to keep track of their donations no matter what amount. In addition, the CCC Report of December 2015, which very much informed the contents of this Bill, made explicit reference (at page 18) to “how easy it is to submit and register many types of documents electronically...”*

Our Organisation still believes the disclosure threshold for Local Government should have remained at \$200.

### **Should Council's be Operating Businesses that require them to facilitate development?**

We note that Ipswich City Council set up a company in order to attract development to rejuvenate their town centre. Our Council is doing the same. We consider this to be a mistake. Development should occur as and when Planning Schemes allow and when the economic climate is right – it should not be driven or facilitated by a company set up by a council. It is very difficult for a Council to treat the community and the development industry in a balanced way if their primary aim is to facilitate development. It will only listen to one set of voices and democracy will not prevail.

## **Respecting the Primacy of Planning Schemes and State Planning Policies – beneficial for both Local and State Governments**

Developers are often seeking approvals outside Planning Schemes and/or amendments to Planning Schemes, whether it be for a change of use, increase in density, heights etc. Approvals outside Planning Schemes or amendments to Planning Schemes should only occur in extraordinary circumstances. If approvals are granted outside Planning Schemes and the affected local community primarily oppose the development but Council approves it, this is when the trouble starts. The primacy of Planning Schemes need to be respected for the majority of the life of the Scheme and major amendments and/or approvals substantially outside the scheme only made when the Scheme is coming up for review and/or land is required for infrastructure and/or the majority of the local community support the change (the reason for community consultation). Similarly, State Planning Policies should also be adhered to.

### **Conclusion**

As a result of this submission, we respectfully request/recommend as follows:

1. Dealing with conflicts of interests at a meeting should be dealt with in the same manner as material personal interests.
2. An independent committee of two or more persons be set up to:
  - make rulings on conflicts of interest/material personal interests/prohibited donors, in a timely manner both for councillors and the community;
  - be a contact point for the community to report unethical conduct on the part of councillors and/or CEOs in order to determine whether such conduct is unethical or warrants CCC investigation –
    - if appropriate, refer the matter to the CCC; or
    - ask the councillor/CEO to explain their position;
  - keep a record of these issues which would give a picture of what is occurring with various Local Governments;
  - set up a website similar to [www.goodgovernance.org.au](http://www.goodgovernance.org.au);
  - set one Code of Conduct for all Local Governments?
3. If the primacy of Planning Schemes were more respected by Councils and they provided the “certainty and security” for communities and developers that they

were meant to, then a lot of these problems would go away. We therefore ask that the State Government impress upon Local Governments the importance of respecting the primacy of their Planning Schemes and that the State Government itself also respects the Schemes and their own State Planning Policies.

4. Prohibit Local Governments from operating companies that facilitate development.
5. Review the provisions of the *Public Sector Ethics Act*.
6. If this Bill is not passed and developer donations are not banned, then we would ask that the disclosure threshold be reduced back to \$200.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lynette Saxton', is placed on a light blue rectangular background.

Lynette Saxton,  
President