

# Development Watch Inc

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23 March 2018

Committee Secretary  
Economics and Governance Committee

Dear Sir/Madam,

**Re: Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018**

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 submit 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.

**S273 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 **S273**, from a community's point of view, it will still not be clear as to who falls into the category of "prohibited donor". For this reason, we would recommend that a clear and succinct definition be provided of "prohibited donors", not only for the benefit of the declarant but also for the community.

It would be advantageous to have an independent committee made up of two or more persons from whom a ruling could be obtained in a timely manner, in the event of uncertainty.

**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)?

Will the determination from the electoral commissioner be provided in a timely manner? Eg. a declarant and/or community group may need a ruling prior to a meeting to vote on a particular development.

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 declared at council 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 and times when we considered there was a conflict and no declaration was made.

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.

It is our view that councillors, if they declare a conflict of interest or material personal interest, should leave the room. This will ensure once and for all that the conflicted councillor will not in any way be influenced by the donation and will save much confusion both for the declarant and for the community. We submit also the councillor who has made the declaration should also not be permitted to discuss the development with other councillors in the lead up to the meeting.

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

- (1) *A councillor has a material personal 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.*

We note and agree with this meaning, however, there will still be instances of uncertainty and an independent determination will be required. For this reason we would recommend a Committee that could make a determination in a timely manner.

### **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**

We note and agree with this meaning –

- (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 note and agree with this meaning, however, there will still be instances of uncertainty and an independent determination will be required. For this reason we would recommend a Committee that could make a determination in a timely manner.

**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. As a result, there is now a perception of corruption amongst the community as a result of this.

### **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).

For this reason, we reiterate the need for Local Governments to respect the primacy of their Planning Schemes.

### **Should Councils 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.

### **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/or amendments and the affected local community primarily oppose the development but Council approves it, this is when the trouble starts. The primacy of Planning Schemes needs to be respected for the majority of the life of the Scheme and major amendments and/or approvals substantially outside the scheme only be granted 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.

### **More Transparency within Council and the use of Confidential Sessions**

The Sunshine Coast Council has a fairly high percentage of confidential sessions. We fully understand the need for confidential sessions in certain circumstances. However, we would recommend that Local Governments minimise the use of confidential sessions where possible. If a confidential session is warranted the council should state the reason for the confidential session and provide as much detail as possible. If this does not occur, a perception of corruption is again aroused within the community and the community lose trust.

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

We set out below an extract from our submission on a previous amendment to the Local Government Electoral 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 [REDACTED] 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 [REDACTED] 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...”*

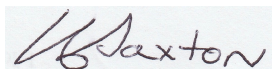
Our Association still believes the disclosure threshold for Local Government should have remained at \$200.

## CONCLUSION

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

1. Dealing with conflicts of interests at a meeting be dealt with in the same manner as material personal interests ie. the conflict is declared and the councillor should always leave the room.
2. Provide a clear and succinct set of definitions of “prohibited donors” not only for the understanding of the councillors but also for the community.
3. Local and State Governments to respect the primacy of Planning Schemes and the State Government to also respect its own State Planning Policies.
4. Prohibit Local Governments from operating companies that facilitate development (current projects to be completed).
5. The State Government to set up an independent committee of two or more persons to:
  - make rulings on conflicts of interest/material personal interests/prohibited donors etc. in a timely manner both for councillors and the community;
  - be a contact point for Community Groups to report unethical or potentially corrupt conduct on the part of councillors and/or CEOs and for the Committee to –
    - determine whether such conduct is unethical and/or corrupt; and
    - determine whether the conduct warrants CCC investigation;
  - keep a record of these issues which could indicate a picture of a potentially escalating problem within a particular Local Government;
  - set one Code of Conduct for all Local Governments.;
  - set up a website similar to [www.goodgovernance.org.au](http://www.goodgovernance.org.au);
  - review the provisions of the *Public Sector Ethics Act*.
6. Set clear guidelines in relation to confidential sessions.
7. Reduce the disclosure threshold back to \$200.

Yours sincerely



Lynette Saxton,  
President