



Southern Downs
REGIONAL COUNCIL

25 October 2017

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Legal Affairs and Community Safety Committee
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**Local Government Electoral (Implementing Belcarra) and Other Legislation
Amendment Bill 2017**

Southern Downs Regional Council has reviewed the proposed Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017 and wishes to submit the following observations for consideration by the Committee.

There are real concerns held by Southern Downs Regional Council in regard to the changes proposed in regard to conflicts of interest and material personal interests, but by the same token Council believes that it is an area that requires further improvement and guidance.

There are many times and instances where Councillors struggle in determining whether they have a conflict of interest or a material personal interest. It is often the case that Councillors will seek advice from the Mayor, other Councillors, the Chief Executive Officer or the Department to further investigate if a conflict of interest or a material personal interest should be declared. In some cases the remoteness of the linkages that lead to the declaration of a conflict of interest or a material personal interest will be very tenuous, whilst in other circumstances they will be most apparent.

In other circumstances, Councillors have seen the declaration of a conflict of interest or a material personal interest used as a means by which they can be excused from voting on a controversial issue or a contentious planning matter. This type of behaviour does not "add value" to the decision making process and places a higher level of responsibility and accountability on those who are prepared to remain in the Council chamber and deal with complex or controversial issues. A conflict of interest or a material personal interest should not be used to escape hard and sometimes unpopular decisions.

It is noted that in the past, the declaration and recording of a conflict of interest or a material personal interest has been reserved for or acted upon only in regard to decisions made in the Council chamber during formal Council meetings. Briefings or workshops have not been subject to the same level of scrutiny or accountability, with many Councillors often choosing to remain in the briefing or workshop to hear and contribute to discussions, then declaring a conflict of interest or a material personal interest at the Council meeting and subsequently excusing themselves.

Clearly, this is of concern that the Councillor that remains in the briefing or workshop and then declares a conflict of interest or a material personal interest at the Council meeting, may have already influenced the decision making process or individual Councillors, which does not appear to be a practice that is consistent with responsible decision making processes or the appropriate management of a conflict of interest or a material personal interest.

Southern Downs Regional Council notes the details of the draft Bill managing Councillor conflicts of interest or material personal interests, namely the following:

To implement recommendation 23, the Bill provides that if a councillor has informed a meeting about the councillor's personal interests in a matter and the councillor does not decide to leave the meeting, other councillors who are entitled to vote at the meeting must decide:

- *whether the councillor has a real conflict of interest or perceived conflict of interest in the matter; and*
- *if they decide the councillor has a real conflict of interest or perceived conflict of interest in the matter whether the councillor:*
 - *must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on; or*
 - *may participate in the meeting in relation to the matter, including by voting on the matter.*

The councillor must comply with the decision to leave and stay away from the place where the meeting is being held and the maximum penalty that may be imposed for non-compliance is 100 penalty units or 1 year's imprisonment.

Southern Downs Regional Council believes that this component of the Bill has the potential to create serious issues within the Chamber and may be used for purposes other than what is the original intent of the draft legislation. It is possible that the Councillors in a local government authority may falsely accuse other Councillors of not declaring a real conflict of interest or perceived conflict of interest in a matter for political, personal or factional reasons.

This opportunity for the putting of false accusations and for that matter valid accusations, has the potential to impact upon the orderly decision making processes of a local government authority, thereby delaying the business of Council. This is especially the case in relation to development approvals, financial reporting and other planning related matters.

Additionally, Southern Downs Regional Council has concerns in relation to the role of the Mayor in accepting assertions from Councillors that other Councillors may or may not have real or perceived conflict of interest. This accepting or refusing of an assertion of a real or perceived conflict of interest has the potential to divide the Chamber and again create an environment where responsible decision making is put at risk. The process has the potential to divide the Chamber and place the Mayor in an unenviable situation.

The way the Bill reads a Councillor can raise the assertion (S.175G) and then the majority of Councillors will need to vote on it if the Councillor with the alleged 'interest' does not leave the Chamber (S.175E). The Mayor does not make the call on his/her own but it will mean there needs to be a detailed and prescriptive process to follow which will need to be noted in the minutes as well as the notes required when the Council decides on the matter on the agenda.(S.175J).

It is submitted that the Bill does not outline how the actual process of the majority of Councillors deciding on the 'interest' is recorded in the minutes but it would appear that the draft Bill does use the word 'decide' and 'decision' under S.175E(4) and (5) so a formal resolution of Council would be necessary.

Southern Downs Regional Council notes that it has been the failure or reluctance of Councillors to declare a real or perceived conflict of interest that has resulted in the need for these reforms. Southern Downs Regional Council would submit that a higher level of training is required for Councillors and those considering becoming Councillors to better understand issues associated with managing real or perceived conflict of interest.

Managing a conflict of interest is especially more challenging in local governments that have smaller population bases, although it is noted that many of the examples cited involve local government areas with larger population bases than the Southern Downs region. Should the proposed reforms be implemented, the opportunity for a Councillors to "call out" another Councillor for a real or perceived conflict of interest citing links to community organisation, local businesses or relatives would be significant. Most Councillors have been involved with local business or community groups, prior to or in an ongoing manner, as well as having relatives involved in activities that may be discussed at a Council meeting.

Once again, Southern Downs Regional Council submits that managing these real or perceived conflicts of interest can only be undertaken through comprehensive training. Recently, Southern Downs Regional Council provided the opportunity to Councillors, Council staff, staff from other Councils and the business sector to undertake the Australian Institute of Company Directors Course. Perhaps, should the reforms associated with real or perceived conflicts of interest be implemented, participation in this course should become mandatory for those nominating for Council and those elected to Council.

Furthermore the following part of the draft Bill is noted:

The Bill also provides that if a councillor has a material personal interest in a matter to be discussed at a local government meeting, the councillor must inform the meeting of the councillor's material personal interest, including the following particulars about the interest:

- *the name of the person or other entity who stands to gain a benefit or suffer a loss depending on the outcome of the consideration of the matter at the meeting*
- *how the person or other entity stands to gain a benefit or suffer the loss*
- *if the person or entity who stands to gain the benefit or suffer the loss is not the councillor, the nature of the councillor's relationship to the person or entity.*

Southern Downs Regional Council notes again that this level of reporting of a real or perceived conflict of interest creates a higher level of responsibility on Councillors and potentially, it is noted that should these reforms be implemented, the Southern Downs Regional Council's *Councillors Code of Conduct Policy* would need to be updated to incorporate a far higher standard of reporting and declarations. The existing Southern Downs Regional Council's *Councillors Code of Conduct Policy* is as follows:

5.7 Material personal interest

5.7.1 You are required to disclose personal interests which may influence your voting at council and committee meetings for a particular matter, unless the matter is an ordinary business matter. This includes interests that may result in a direct or indirect benefit or loss to you or related person or close associate or prescribed entity.

5.7.2 *Related or associate persons are:*

- a) *your spouse*
- b) *your parents, children or siblings – this applies only if you know, or ought reasonably to know, that these people, individually or as a group, stand to gain a benefit or a loss*
- c) *your partner*
- d) *your employer (other than council)*
- e) *an entity (other than council) of which you are a member*
- f) *another person prescribed under a regulation.*

5.7.3 *However, you do not have a material personal interest in the matter if you have no greater personal interest in the matter than that of other persons in the local government area.*

5.7.4 *The onus is on you to identify a material personal interest. You will need to assess whether you have a material personal interest and, if so, how it compares to the interests of other persons in the local government area. As always, you must remain mindful of the importance of adhering to the local government principles.*

5.7.5 *In a council meeting, you must inform the meeting of your material personal interest in the matter. A form is available for this purpose and should be return to the meeting organiser prior to the meeting starting.*

5.7.6 *When a material personal interest has been declared, you must leave the meeting room and not take part in the meeting while the matter is being debated and determined. Moreover, you must not be present in the chamber where the meeting is being convened—including any public gallery or other area set aside for the public.*

5.7.7 *Failure to disclose a material personal interest or leave the meeting is an offence carrying significant penalties, such as imprisonment and disqualification of holding office.*

5.8 *Conflict of interests*

5.8.1 *A conflict of interest occurs when a matter, other than an ordinary business matter, before council could reasonably be seen as a conflict between your personal interests and the public interest that might lead to a decision on your part that is contrary to the public interest. You should declare a conflict of interest, whether it is real or only perceived, if you have an interest in a matter before council due to a personal or family relationship or because you are a recipient of an election gift.*

5.8.2 *However, you do not have a conflict of interest in a matter if you have no greater personal interest in the matter than that of other persons in the local government area or because of:*

- a) *an engagement with a community group, sporting club or similar organisation undertaken by the councillor in his or her capacity as a councillor or*
- b) *membership of a political party or*
- c) *membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation or*

- d) *your religious beliefs or*
- e) *the councillor having been a student of a particular school or the councillor's involvement with a school as a parent of a student at the school.*

5.8.3 The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.

5.8.4 When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation. In the area of a perceived conflict of interest, you must be objective and ask yourself whether a reasonable member of the public, properly informed, would feel that the conflict is unacceptable. Essentially it means that such a reasonable member of the public would conclude that inappropriate factors could influence an official action or decision. Because the test is an objective one, it matters not whether you might as an individual be convinced that with your undoubted integrity you can manage what would otherwise be an unacceptable conflict of interest.

Key elements of the existing Southern Downs Regional Council's *Code of Conduct Policy* would be required to be amended to meet the higher standards and onus that is proposed in the draft Bill. It is suggested that this new standard needs to be consistent across the sector.

It is noted that the practice of Councillors is more often than not, to declare a real or perceived conflict of interest in circumstances where the perception is that a Councillor will derive a benefit, rather than declaring in circumstances where another party has the potential to experience a loss.

Furthermore, Southern Downs Regional Council would expect that the Councillor Code of Conduct would be replaced with the relevant elements of the draft Bill and that this would become consistent across the State. It is noted that LGAQ developed the 'model' Code of Conduct for Councillors, and not all Councils have a Code relying instead on the local government principles under Section 4 of the Act.

Council also notes the increased penalties for Councillors that fail to declare under the draft Bill. It is noted that these penalties are severe in comparison to the other two levels of government.

Additionally, Southern Downs Regional Council would ask the Committee to determine if there is a scope to consider a different policy setting during the caretaker mode prior to an election to remove at least some of the opportunity for political point scoring? Council acknowledges that this would be difficult, but also recognises that given the vitriol of the last local government election campaign, the potential for the poor behaviour in the Chamber should not be underestimated.

As has been noted the Bill requires disclosure of the person to be impacted by the Perceived or Real Conflict of Interest. Whether the benefit or loss is significant or minor, there is a risk that in small regional or rural communities across Queensland that a third party that is required to be identified might be caught up in adverse publicity. It is envisaged that the third party may have the potential to take action against Council should incorrect assertions be made. This is a risk that Council would need to discuss with its insurers.

Council also submits that the Bill suggests a penalty in the circumstances of a Councillor failing to challenge another Councillor where a Perceived or Real Conflict of Interest existed, i.e. all but encouraging an adversarial approach and potentially penalising Councillors who do not participate in a potentially adversarial system.

With regard to issues relating to donations and interactions with developers, Council supports the objectives of the draft Bill, in relation to appropriate reporting and the identification of donations.

As indicated throughout this submission, Southern Downs Regional Council supports the intent of the draft Bill, but believes that without a comprehensive approach to training Councillors and where necessary senior staff, there may be an impact on the orderly management of Council meetings which then impacts on the quality of the decision making process.

Southern Downs Regional Council welcomes the reforms that have been made under the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017 and would be happy to present to the Committee if requested.

Should you require further information or clarification please contact David Keenan, Chief Executive Officer on [REDACTED].

Yours faithfully



Tracy Dobie
Mayor