



Officer Name: [REDACTED]  
Officer Email: [mail@noosa.qld.gov.au](mailto:mail@noosa.qld.gov.au)  
Phone No: [REDACTED]  
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26 October 2017

Acting Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

via email - [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Sir,

**RE: Submission on the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017**

In response to the Committee's invitation for submissions on the *Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017*, Noosa Council provides the following submission.

**1 Legislative Intent**

Noosa Council supports the underlying intent of the Bill to improve transparency and accountability in local government. Specifically, we support the intent of the legislation to:

- i) Introduce a ban on developer electoral donations for local government; and
- ii) Strengthen legislative requirements in relation to conflicts of interest and material personal interests.

Our Council strongly supports reforms which improve transparency and accountability in the local government sector. However, in this submission we highlight a number of suggestions to improve how the reforms can be implemented and also identify that there are some practical difficulties with some of the proposed amendments that will have unintended consequences.

**2 Developer Electoral Donations**

As outlined above, we support the proposal to introduce a ban on developers making electoral donations in local government elections. We believe that the definition of "developer" should be expanded as follows:

- i) The current definition only refers to the development of "land". This should be broader as there is the capacity to subdivide and develop buildings as well (via strata). We suggest consideration of the term "development" as part of the definition in section 113 (2)(a)(ii).
- ii) The current definition only refers to "corporations". This should be broadened to include other types of developers (trusts, major individual developers who do not operate under a corporate structure etc.). We acknowledge and support that the definition should not be aimed at small "mum and dad" type applicants.

### 3 Conflicts of Interest

While we understand the intent of the legislative amendments are to improve accountability in the process for declaring and dealing with conflicts of interest, we are concerned that some of the proposed changes will not work in practice.

We highlight the following issues:

- i) *Proposed Section 175E (3) and (4) - Other Councillors determine whether it is a real or perceived conflict of interest and whether the Councillor who declares the conflict can remain in the meeting.*

This proposed provision will not work in practice and will create significant problems. The draft section proposes that if a Councillor declares a conflict of interest and chooses to remain in the meeting, then the remaining Councillors are to decide if the Councillor has a real or perceived conflict of interest and whether that Councillor can remain in the meeting or must leave. The relevant Councillor must comply with that decision by the other Councillors.

This provision will be open to abuse by those Councils where there are voting blocs or groups of Councillors. The remaining Councillors can make a decision to require a Councillor to leave the meeting even if such an action is not required for something that is clearly a lower order perceived conflict of interest. There is no recourse for that Councillor and the proposed amendment will allow other Councillors to remove that Councillor from the vote as they see fit. There is no appeal right for the Councillor excluded even if the reasons behind the decision to remove that Councillor is based on a "numbers game", not the basis of the conflict of interest.

Further, the draft legislation refers to the "Councillors decide". The draft legislation does not indicate whether this needs to be undertaken via formal resolution or how it would be done in a Committee meeting type scenario. Further, many Councils operate a Committee system and it may be possible to have two entirely different results on the same declaration of a conflict of interest. The Councillors at a Committee meeting (with only some of the Councillors as members) may determine that Councillor X only has a perceived conflict of interest and can remain in the meeting but there may be a different result at a full Council meeting where all of the Councillors are members and it could be determined on voting blocs, not an independent assessment of the conflict of interest.

In deciding whether the other Councillor has a real or perceived conflict of interest, the remaining Councillors need to make that decision without necessarily having all of the relevant information. Only the Councillor who has the conflict knows all of the circumstances that gave rise to that conflict and there is a risk that Council meetings could degenerate into inquiries into fellow Councillors and their conflicts of interest.

Councillors who currently chose to declare that they are an ordinary member of a community group in the interests of transparency may no longer do so in the knowledge that other Councillors could then require them to leave the meeting. This would have the very opposite effect of what is being sought by the Bill i.e. reducing the incentive for Councillors to declare a perceived conflict of interest for a very low level conflict as they would not have the final decision on whether they stay in the meeting.

If the intent of the proposed amendment is to stop some of the scenarios that were identified in the Belcarra Report where Councillors chose to stay in the meeting despite receiving an electoral donation from an applicant, then the better option would be to tighten the definition of a real conflict of interest to identify the circumstances that require the Councillor to declare the real conflict and leave the meeting.

*ii) Proposed Section 175G – Duty to report conflict of interest*

The Bill proposes that if a Councillor believes or suspects that another Councillor has a conflict of interest, then they must advise the Chairperson of the meeting. It is an offence that constitutes misconduct for a Councillor to fail to report that belief or suspicion.

This proposal will prove to be extremely divisive in Councils. It is open to abuse and potentially will set back the development of cohesive and productive Councillor working relationships.

We suggest that it is up to the individual Councillor to know their own circumstances and to take personal responsibility for identifying their own potential conflicts of interest. It is not up to each Councillor to remember what might be on another Councillor's register of interests if they have viewed it. A Councillor could potentially be referred for misconduct because they forgot that one of their colleagues is on the committee of a community group or received an election donation from a person with a matter before the Council. The offence should be focused on the relevant Councillor who has failed to declare, not on the other Councillors.

Like the provisions in section 175E, we can see circumstances where the provisions of section 175G are open to abuse where there are voting blocs and indeed, the proposed amendment will be conducive to creating divisions and blocs in Councils.

The proposed requirements also place the Chairperson of a meeting (whether a Council meeting or a Committee meeting) in a difficult position if such a declaration is made. The meeting could easily degenerate into a "star chamber" type scenario. A Chairperson might see the need to interrogate another Councillor about the allegation that they have a conflict of interest bearing in mind that in a Committee meeting scenario, the Chairperson may not be the Mayor.

We do not support this section in its current format as the "dob in a colleague" provision will not work in practice, will divide Councils and places an onerous burden on other Councillors to identify their colleague's conflicts. The onus should remain with the Councillor who has the conflict of interest.

*iii) Other issues*

The Bill strengthens provisions in relation to conflicts of interests. One of the shortfalls in the current legislation relates to the fact that it is primarily focused on formal Council meetings. We encourage consideration of enshrining similar requirements for workshops, briefings etc. At Noosa Council, our Councillors take this approach already to ensure that high ethical standards are maintained. That is not the case at all Councils and we would encourage consideration of broadening the requirements to enshrine the same obligations in the less formal discussion forums, workshops etc that occur at most Councils.

*iv) Definitions of Conflict of Interest*

The question of what is or is not a conflict of interest is always the subject of much debate. That is the starting point for determining whether or not a declaration of a conflict of interest needs to be made and if so, what type of conflict exists.

We suggest that the opportunity exists for the State while undertaking these other amendments to make some of the aspects of conflicts of interest clearer in the definitions. We do not propose to set out detailed suggested amendments other than to note that the more certainty and clarity that can be created, the better.

Indeed, it is suggested that the current legislative framework could be enhanced through a series of detailed scenarios in a regulation that give definitive guidance. These scenarios could cover issues such as electoral donations, membership of community organisations (both general membership and Committee membership), Council appointment to a board etc. In short, the more legislative certainty that can be provided in relation to what is a conflict of interest the better.

In closing, we commend the State for taking immediate action following the Belcarra Report. We support the intent to make local government more transparent and accountable. However, we note that there are some proposed changes to the legislation (notably sections 175E and 175G) which will simply not work well in practice for the reasons we have outlined above.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Brett de Chastel', written in a cursive style.

Brett de Chastel  
**Chief Executive Officer**