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26 October 2017

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

Email: lacsc@parliament.qld.gov.au

Dear Acting Secretary

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

Established in 1980, the Sunshine Coast Environment Council (SCEC) is the peak environmental advocacy organisation for the Sunshine Coast region. SCEC currently represents 60 member groups predominantly working in the areas of natural resource management, conservation, environmental restoration and protection and sustainability. This membership represents a collective of almost 10,000 individuals with a further 4000 people as SCEC supporters.

It is on behalf of our members, supporters and wider community with whom we engage that we submit the following comment for due consideration.

SCEC welcomes the Crime and Corruption Commission's Belcarra Inquiry report and commends the Palaszczuk government's support for its compelling findings and recommendations.

We also highlight the significance of the following recommendations and urge they pass into legislation;

- banning donations from property developers for candidates, third parties, political parties and councillors and proposed to be extended to Members of State Parliament.
- strengthening the process associated with the declaration of councillor conflicts of interest, the management of conflicts of interest and material personal interests within council meetings and penalties for non-compliance.

SCEC considers it to be of great concern and highly questionable that the LGAQ has not taken the opportunity as the peak body for local government to fully acknowledge the seriousness of the findings of the inquiry and the obvious need to address the substance of the recommendations.

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Indeed, the [REDACTED],
himself a recipient of considerable election campaign donations from developers and related
development industry parties¹, rejected the key two proposals²;
1. a ban on campaign donations from property developers and;
2. return to empowering councils to exclude councillors with a conflict of interest from council
meetings

SCEC provides the following comment for consideration on the draft Bill;

1. To implement Recommendation 23 of the CCC Report, the Bill proposes
(*Section 175E (3) (4)*) that if a councillor has informed a meeting about their 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.

In SCEC's view the decision as to whether a councillor can remain in the room cannot be made
by his/her fellow councillors. Once a conflict of Interest is declared (or reported by a third
party), amendments to the LGA and COBA must **mandate** that a councillor can take no part in
debate or voting on the matter under consideration and must leave the room.

Requiring fellow councillors to decide whether a councillor has a real conflict of interest or
perceived conflict of interest in the matter and then determine, in the cases where they do in
fact decide the councillor has a real conflict of interest or perceived conflict of interest in the
matter, as to whether they remain in the room appears to be introducing a level of unnecessary
administrative complexity to the conduct of council meetings given the requirements of
Section 175J and an undesirable 'tension' between Councillors.

It can also lead and/or perpetuate some council's practise of "voting blocs" and/or
registered/unregistered "teams" of councillors, often associated with support for or against the
Mayor. In such instances the community does not have faith that councillors/members of the
"team" would vote against other team members had they indicated that they intended to stay
in room and participate in the debate and subsequent voting.

The proposed process unacceptably removes the **personal accountability** of a councillor who
under the legislation being proposed can claim it was his/her colleagues who determined

[REDACTED]
[REDACTED]

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whether she/he/they stayed in the room to take part in debate, and vote, on the matter in question. This makes the proposed section of the bill even less likely to result in ethical and consistent behaviour than is the case under the existing legislation. SCEC suggests this is not what the CCC intended despite the recommendation made on this issue.

The events that led to the establishment of Operation Belcarra, and its subsequent findings, strongly suggest that in the councils investigated, and clearly in other councils in Queensland (such as the Sunshine Coast Council where there is little consistency in how certain councillors act after declaring a conflict of interest), there has been a historical failure by councillors to observe the spirit of previous legislation governing conflict of interest and their **discretionary power in this area must be removed**.

SCEC believes the intent and recommendations of the Operation Belcarra Report are best served by legislation that treats **conflict of interest in the same way as material personal interest**. Accordingly, conflict of interest should be dealt with in the same way as determined by *Section 175C (2) (b)* which requires that in the case of material personal interest [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 being discussed and voted on”*.

SCEC recommends;

- 1. that Conflicts of Interest be dealt with in the same way as Material Personal Interest**
- 2. that all Conflicts of Interest or Material Personal Interest declarations be made and resolved in “Open session” of the meeting and recorded in the minutes of the meeting.**
- 3. that making such declarations in a confidential session is unlawful.**
- 4. That the exclusion rules apply during “adjournment periods” and to councillor and/or staff only councillor spaces.**

2. SCEC supports the application of penalties and the Penalty Regime outlined in the proposed Bill.

SCEC urges the Government to ensure penalties are applied consistently across the state. We support inclusion of the ‘dismissal’ provision so a clear message is sent that the community no longer will tolerate some of the shady practices and dishonest actions of some councillors and councils in the past.

Councillors must understand that “ignorance of the law” is no defence. The Belcarra report identifies a number of such instances and some concerning large donation amounts. There are examples of where a complaint has been made in relation to non-declaration of donations and the Councillor has been excused arguing he/she was not aware of the details of the donation and the donor. There is strong support from the community for penalties to be applied and consider dismissal as appropriate.

The previous *Local Government Electoral Act* was quite clear about the recording of donations, over a certain threshold from any source. It was arrogant or councillors to ignore these provisions. Despite the evidence arising from the thorough nature of the CCC inquiry, SCEC is

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frustrated that the Crime and Corruption Commission and some Regional Disciplinary Panels ultimately excused councillors who were found to have infringed the law but have not and will not be charged with an offence.

Finally, following the passing of the Bill and subsequent changes to the LGEA, SCEC makes the following recommendations.

SCEC Recommendations

- 1. That mandatory training be undertaken by ALL Councillors regardless of their period of incumbency in relation to the amended ACT**
- 2. That mandatory training is undertaken by all Regional Disciplinary Panel Members both in relation to the changes to the Act and the Act in its entirety.**

SCEC urges the members of the Legal Affairs and Community Safety Committee to consider favourably our request for the changes we have proposed. We believe this would better ensure that the *“stated policy objective of the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017 ... 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.”*

is achieved, resulting in legislation that truly reflects the desire of the broader community for more open and transparent local government which is at the crux of this component of the proposed legislative reform.

The opportunity to provide a submission on this landmark legislation is appreciated.

Yours sincerely

A handwritten signature in black ink, appearing to read 'N. McCarthy', is written over a light blue rectangular background.

Narelle McCarthy
Liaison and Advocacy
Sunshine Coast Environment Council Inc.