



15 December 2021

Committee Secretary
State Development and Regional Industries Committee
Parliament House
George Street
Brisbane QLD 4000

Via: sdric@parliament.qld.gov.au

Inquiry into the functions of the Independent Assessor and the performance of those Functions

Thank you for the opportunity to provide feedback into the Committee's inquiry into the functions and performance of the Independent Assessor.

As the leading advocate for Australia's biggest industry, the Property Council is firmly focused on improving the integrity and quality of local government in Queensland so the industry can continue to contribute to the wages of more than one in four Queenslanders and generate over \$41 billion annually for the state's economy.

Since the *Belcarra* reforms were introduced in 2017, the Property Council has vocally opposed the resultant legislation, which unfairly labels Queensland's largest employing sector a corruption risk. As the creation of the Office of the Independent Assessor (OIA) was a key measure of the *Belcarra* reforms it has been a priority for the Property Council to work with the Government to ensure that the OIA is effective in providing an additional safeguard against councillor misconduct, while also providing councillors with the confidence to do their jobs and engage appropriately with the development industry.

Unfortunately, the industry's experience has been that the OIA actively dissuades councillors from engaging with the property industry and feel that the powers and resources of the Independent Assessor are no longer being applied in the public interest.

As such, we welcome this inquiry as an essential step to remedy many of the concerns that the Property Council and our members have previously flagged with Government and to enable councillors to best serve their communities in future.

Due to the nature of our membership, this submission will focus on how the functions of the Independent Assessor impact the property industry.

Misuse of the OIA process for political purposes

The experience of industry and local government representatives is that the OIA is being bogged down in dealing with frivolous and vexatious complaints. The annual report of the OIA demonstrates that since 2015, there has been over a five-fold increase in the number of local government complaints lodged, the vast majority of which did not require any OIA action.

It is clear that the system is being misused as a political tool by local councillors and members of the public, lodging complaints to cause political harm. Concern over the consequences of

vexatious complaints has resulted in a culture of over-caution and risk-aversion from local government representatives which is having a detrimental impact on engagement with the property sector.

The influence and performance of the Independent Assessor should not only be judged on the quantity of misconduct complaints that the OIA has assessed, how many are referred to the Councillor Conduct Tribunal (CCT), or the outcomes of these complaints. Instead, it is crucial to acknowledge the impact that the Independent Assessor's guidance has and the precedents that specific OIA investigations set for local government representatives – particularly new or inexperienced councillors.

Changing approach from local government

In recent years both councillors and industry members have become increasingly confused about what constitutes a breach of legislation under the *Local Government Act 2009* and subsequently if this may result in an investigation from the OIA. This has resulted in a risk averse approach from councillors who instead opt to remove themselves from any matter where there may be a risk of a perceived conflict of interest or misconduct – even if this is to the detriment of the communities which they represent.

In a functional local government system, it is the role of a councillor to act as conduit for communities' views and opinions of development and to ensure their constituents remain informed throughout the Development Assessment process. Engagement with property developers should be a core component of a councillor's duties. However, as involvement and communication with submitters or potential submitters in any stage of the development assessment process is often perceived to constitute misconduct (and has been deemed so by the OIA previously) councillors will opt to avoid these engagements. In doing so they also fail to perform a key part of the role that they were elected to do.

The risk of being subject to an OIA assessment due to engaging with the industry is extremely high for councillors, but there are no consequences for not engaging with the industry. As such, the current arrangements and lack of clarity have created a circumstance where councillors are adopting an ultra-cautious approach by severing all engagement with the development sector.

This system is currently becoming entrenched by a range of local governments who have taken it upon themselves to publish their own guidelines outlining how councillors should engage with the development industry as a way of mitigating risk. It is worth noting that the approach of different local governments varies significantly. This is largely due to a lack of understanding around what constitutes misconduct along with caution taken due to specific instances where actions may have been investigated overzealously.

This inconsistency can be highlighted through the various approaches that councils have adopted when engaging with the Property Council and our members over the last two years:

- Sunshine Coast Regional Council: Mayor has declined to meet with local members of the development industry in favour of meeting only with Property Council staff. Council is currently developing its own guideline for engagement between the development industry and councillors.

- City of Gold Coast: Mayor is happy to meet with Property Council members and staff.
- Bundaberg Regional Council: Council has declined to meet with members and industry bodies outside “Consultation Day” at full council. Council practice now involves electronically recording conversations with the development industry regardless of whether there is a development application before Council.
- Moreton Bay Regional Council: Mayor is happy to meet with Property Council members and staff. Council has developed a policy to outline procedures for meetings between development industry members and councillors.
- Ipswich City Council: Mayor has invited Property Council staff and members to join the Ipswich Leaders’ Alliance
- Rockhampton Regional Council: Councillors declining to meet with development industry members.
- Toowoomba Regional Council: Mayor and portfolio councillors happy to meet with Property Council members and staff.

As many of our members operate across the state, the varied approaches adopted by each local government and individuals creates widespread confusion. Many policies go well above and beyond the intent of the legislation, with most developed without central guidance or training from the department.

The Property Council has worked with OIA on guidance for industry/council engagement, but the eventual outcome of this process was a guidance document which overstepped acceptable boundaries. For example, the guidance asked for electronic recording of conversations between the industry and local government representatives. This guidance document has since been removed from the OIA website.

It is also worth considering how this system affects not only the views of councillors toward the development industry, but the perceptions of the community towards an industry that every Queenslanders relies on to develop infrastructure, build homes and create places to work and play.

Examples of the OIA not working in the public interest

As previously outlined, investigations by the OIA and matters referred to the Councillor Conduct Tribunal (CCT) set precedents for how local governments across the state engage with the development industry. Due to this, the Property Council wishes to highlight several recent examples where the OIA has referred complaints to the CCT that could dissuade councillors from fully performing their functions as a representative of their constituents.

It is worth noting that these are complaints that have been referred to the CCT. The vast majority of complaints directed at councillors do not warrant being passed on to the CCT. Regardless of whether a complaint is escalated to the CCT, the OIA’s own investigations of the complaint draw upon Council’s internal resources and can cause reputational damage for all parties named in the complaint.

Livingstone Shire Council

In October this year, the CCT (following a referral from the OIA) found that three councillors had engaged in misconduct by attending the property of a development applicant with only the three other councillors present, to discuss the application prior to it being voted on by the full council. This was despite councillors being unaware that their actions could constitute misconduct, and the Tribunal finding that the councillors had acted in good faith. The Tribunal found any meeting between the developers of a property and selected councillors in the absence of any unelected representatives is not behaviour which encourages transparent or accountable decision-making which is in the public interest. Due to this, the councillors were required to make a public admission that they engaged in misconduct and to attend training (not at their expense) to provide further education on the proper application of local government principles to meetings with ratepayers and applicants.

It is the Property Council's position that it is in the public interest for councillors to engage openly with the property industry to ensure that the councillor, the submitter, and their constituents remain informed about projects that will impact their area. As such, the Property Council believes that it is vital to have a system in place that permits this engagement.

Furthermore, in the Livingstone Shire Council all councillors involved were found to have acted in good faith and with the view that they were carrying out their role as elected officials. Despite this, the public admission of misconduct will undoubtedly harm their professional reputations. This sets a precedent for all councillors in Queensland who will be less likely to engage with the development industry if there is any risk it may result in a misconduct investigation.

Scenic Rim Regional Council

In May 2021, the CCT found that a Scenic Rim Councillor engaged in misconduct by forwarding confidential information provided by a council officer onto a constituent. The councillor had been communicating with the constituent for two years and believed that he was acting in the best interests of the constituent. The Tribunal found that the councillor had a misguided view and the councillor maintained that he did not commit misconduct and was just responding to a resident.

Since being elected the same councillor has had 55 complaints levied at him – the vast majority of which were dismissed as frivolous. With the CCT recognising that the councillor was misguided and uninformed of his responsibilities there is clearly significant uncertainty among councillors (and complainants) regarding what constitutes misconduct. To reiterate, this uncertainty has and will continue to result in councillors not performing the most basic parts of the role because of a perceived risk of being investigated for misconduct.

Recommendations

In the instances outlined above the councillors were all unaware that their actions could be deemed misconduct. In fact, they believed that their actions allowed them to perform the role they were elected to do and represent the interests of their local communities.

The development sector and local government representatives cannot keep up with the changing policy landscape, particularly as new local government guidelines proliferate across

the state. Greater clarity is needed to ensure that all stakeholders have a clear understanding of probity requirements.

For an independent body that is intended to refer complaints rather than adjudicate on them, the potential for the OIA to overreach and cause reputational damage must be managed. Furthermore, the Property Council believes that the Independent Assessor should focus more on the educational component around what constitutes misconduct and less on punitive “lessons” that could result in councillors being unable to conduct activities that are in the interests of their communities.

The Property Council would welcome the establishment of a clear position from the OIA that engagement, discussions, and meetings with the development industry is a legitimate and necessary component of the duties of an elected local government representative. Consistent guidance and education of this point by the OIA would be extremely helpful in achieving better outcomes for all stakeholders.

The Property Council would welcome the opportunity to discuss this submission in further detail. Please do not hesitate to contact me on 0448 432 936 or jwilliams@propertycouncil.com.au if you have any further questions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jen Williams', written in a cursive style.

Jen Williams
Queensland Executive Director