

Councillor roles in development matters

Guidance by the Office of the Independent Assessor

Background

Councils are central to the provision of services, economic development, and prosperity of local government areas.

Property developers¹ and others who submit their views on development issues and applications (submitters) often seek access to councillors to discuss potential and existing projects and/or development applications. These developments often attract strong community interest.

If, when, and how councillors engage with property developers and submitters can raise corruption and misconduct risks. These risks were explored during the Crime and Corruption Commission's (CCC) Operation Belcarra hearings and detailed in the subsequent report, *A blueprint for integrity and addressing corruption risk in local government*².

In response to the Operation Belcarra report the *Local Government Electoral Act 2011* was amended to prohibit political donations by property developers and their close associates as well as industry bodies which have property developers as the majority of members. The ban came into effect on 2 October 2018 and applied retrospectively to 12 October 2017.³

Feedback indicated that some councillors may be confusing/conflating this ban on receiving donations from developers with other types of engagement with the industry.

Feedback also indicated that some councillors are uncomfortable dealing with some development stakeholders in circumstances where undue pressure is applied.

To address these issues, the following guidance may be used in conjunction with the Office of the Independent Assessor's (OIA) example policy on councillor roles in development matters.

The example policy is not mandatory and has no regulatory effect. It is provided to facilitate a clearer understanding of whether and how councillors can interact with property developers and submitters.

It provides a good starting point should councils wish to put a policy in place or update an existing one but will require adaptation to the specific circumstances and needs of each council.

¹ For the purpose of this guidance, the terms property developer and submitters are taken to include a reference to any consultants or lobbyists acting on behalf of a property developer or submitter

² <https://www.ccc.qld.gov.au/sites/default/files/2019-08/Operation-Belcarra-Report-2017.pdf>

³ *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018*

Such a policy may not be necessary for councils that deal with few/limited development matters, and Brisbane City Council where, unlike other councils, development applications are predominantly decided by council officers.

Objective

This guidance creates a framework for councillors to lawfully and transparently engage with developers and submitters for the benefit of their communities, while helping councillors to avoid misconduct and corruption risks.

It will assist councillors to balance their statutory responsibilities to serve the overall public interest (both current and future) of the whole local government area⁴ with their ethical and legal obligations to ensure that decision-making, in relation to development applications and related matters, is transparent and free from inappropriate influence.

What is the public interest in councillors' engagement with property developers and submitters?

Responsible property development supports the economic growth and prosperity of local government areas. This guidance recognises there is a public interest in councillors' engagement with developers and submitters, particularly as development matters can attract strong community interest.

Some of the benefits of appropriate engagement include:

- Opportunities to seek investment in the local government area creating jobs, supporting local businesses and a stronger local economy
- Opportunities to attract improved infrastructure, amenities and/or services for residents
- Opportunities to explore and to communicate early resident feedback, concerns, and priorities to developers
- Ensuring councillors are fully informed when making decisions about development applications.

What ethical and legal obligations apply to councillors' interactions with property developers?

To ensure the system of local government is accountable, effective, efficient, and sustainable councillors must perform their responsibilities in a way that complies with the following local government principles:

- transparent and effective processes and decision-making in the public interest
- sustainable development and management of assets and infrastructure and the delivery of effective services
- democratic representation, social inclusion, and meaningful community engagement
- good governance of and by local government, and
- ethical and legal behaviour.

⁴ Section 12 *Local Government Act 2009*/Section 14 *City of Brisbane Act 2010*.

Taking into account these principles and relevant provisions of the *Local Government Act 2009* and the *Local Government Electoral Act 2011*, the following points should be observed:

1. Once you become a councillor it is recommended that, wherever possible⁵, you resist the sorts of close personal relationships with property developers or submitters that are not at arm's length and may, or will, give rise to a conflict of interest in the future.
2. Councillors are prohibited from receiving gifts, benefits, or loans from property developers, including through third parties.⁶
3. A councillor **must** ensure that any relevant interest which is required to be captured on their register of interest is recorded within 30 days⁷.
4. If a councillor has a prescribed or declarable conflict of interest in a matter before council, the conflict of interest must be declared to the council's chief executive officer (CEO) as soon as practicable and at the next meeting at which the matter is considered. Remember that conflicts of interest apply both inside and outside formal council meetings.
5. When a prescribed conflict of interest exists, the councillor must leave the meeting or discussion, and must not participate in any discussion or voting in relation to the matter.
6. When a declarable conflict of interest exists, the councillor must either voluntarily leave the meeting before the matter is discussed and voted on **OR** ask the non-conflicted councillors to decide how the conflict must be managed and comply with this decision⁸.
7. If a councillor has a prescribed or declarable conflict of interest in a matter being decided by council, they **must not** influence any other person who is participating in a decision on the matter.⁹

Important things to note:

- The influence provision applies only where there is a matter before council i.e. an application has been lodged.
- Influencing includes directing, attempting to influence, or discussing the matter with a person who is participating in a decision.
- A person who is participating in the decision may be:
 - another councillor if the matter is to be decided by councillors; or
 - a council officer if the matter is to be decided under delegation.
- A councillor or council officer is participating in a decision if they are wholly or partly responsible for making the decision.

⁵ It is recognised that there will be circumstances where this is not possible, for example when a related party of a councillor such as a spouse, parent or sibling is a property developer or submitter.

⁶ Local Government Electoral Act 2011, sections 113A and 113B (in effect from October 2017)

⁷ Refer sections 201A, 201B and 201C of the *Local Government Act 2009*

⁸ Chapter 5B *Local Government Act 2009*

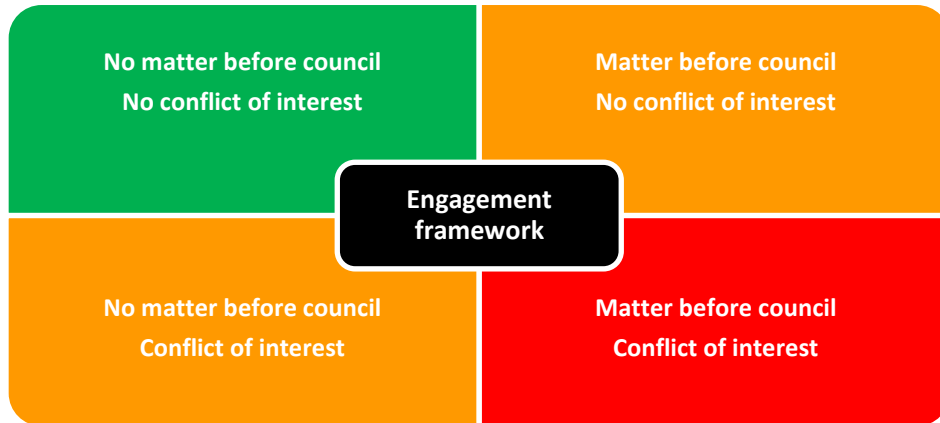
⁹ Section 150EZ *Local government Act 2009*

A framework for engagement

The following conceptual framework is designed to help councillors understand if, when and how they may engage with a property developer or submitter.

Key questions need to be asked when applying this framework:

1. Is there a matter before council (including a matter being prepared for lodgment)?
2. Do you have, or are you likely to have a conflict of interest in relation to the matter?



No matter before council - no conflict of interest

Where there is no matter before council or being prepared for lodgment, and a councillor has no conflict of interest, the councillor:

- may engage with all stakeholders to promote the benefits of investing in the local government area and encourage responsible and appropriate development
- may feel free to discuss what is publicly known about a potential development with the public
- should resist the sorts of connections or interactions with developers and submitters that could give rise to a conflict of interest in the future.

No matter before council - conflict of interest

If there is no matter before council, but it is likely that a councillor would have a conflict of interest if an application was to be made, it is recommended that the councillor avoid any interactions with the property developer in relation to the prospective matter.

If a councillor is approached by a property developer in these circumstances, it is recommended that the property developer be redirected to the mayor, council CEO, chair of the planning committee or relevant contact officer within council in relation to that matter.

Matter before council – no conflict of interest

Where there is a matter before council and no conflict of interest exists the OIA, in consultation with Moreton Bay Regional Council and other stakeholders, has developed an example policy to guide councillors' roles in development matters (**Attachment A**). It provides a structured approach to engagement through each stage of the development application process.

Matter before council – conflict of interest

Where councillors have a conflict of interest and there is a matter before council, they **must** transparently declare and properly manage their conflict of interest and take care not to influence another person who is participating in the decision. (Please see above: *What ethical and legal obligations apply to councillors' interactions with property developers?*).

It is also recommended that a councillor refrains from engaging in any discussion with a developer or submitter in relation to a matter for which they have or will declare a conflict of interest, particularly if it is a declarable conflict of interest.

Frequently asked questions (FAQs)

The answers to the following frequently asked questions (FAQs) are available in **Attachment B**:

- How does a councillor deal with a developer/submitter who has a number of projects moving through different stages of the council approval process at the same time?
- What happens if a property developer or submitter holds another role in the community which requires them to interact with a councillor?
- What happens if a councillor has an unanticipated interaction with a property developer or submitter?
- How long do a councillor's conflicts of interest last when they arise from previous donations?
- Can a councillor meet with officials from development industry associations?