



The Cairns Regional Council councillor conflicts of interest report



An investigation into the way in which councillors
at Cairns Regional Council deal with conflicts of
interest

October 2017

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Dictionary

Term	Meaning
ASIC	Australian Securities and Investments Commission
Belcarra report	the report released by the Crime and Corruption Commission Queensland titled 'Operation Belcarra – A blueprint for integrity and addressing corruption risk in local government' dated October 2017
CCC	Crime and Corruption Commission Queensland
CEO	the current Chief Executive Officer of Cairns Regional Council
COBA	<i>City of Brisbane Act 2010</i>
council	Cairns Regional Council
department	Department of Infrastructure, Local Government and Planning
ECQ	Electoral Commission Queensland
ECQ return	the return required to be submitted to the Electoral Commission Queensland under sections 117 and 118 of the <i>Local Government Electoral Act 2011</i>
Executive Manager	Executive Manager, Office of the Mayor, Cairns Regional Council
former CEO	the Chief Executive Officer of Cairns Regional Council immediately preceding the current Chief Executive Officer of Cairns Regional Council
HR Manager	the General Manager Human Resources and Organisational Change, Cairns Regional Council
LGA	<i>Local Government Act 2009</i>
LGAQ	Local Government Association of Queensland
LGE Act	<i>Local Government Electoral Act 2011</i>
LGR	Local Government Regulation 2012
Ombudsman Act	<i>Ombudsman Act 2001</i>
P&E Committee	the Cairns Regional Council Planning and Environment Committee
pre-meeting meeting	the meeting held on the Monday before each council and committee meeting attended by all councillors and the Executive Manager
the Bill	Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017
this Office	the Office of the Queensland Ombudsman

Term	Meaning
Unity Team	the name of a 'group of candidates' (for the purposes of the <i>Local Government Electoral Act 2011</i>) operating within Cairns Regional Council

Executive summary

This report outlines the findings of an investigation into whether Cairns Regional Council (council) and its councillors comply with relevant legislative and policy requirements and act reasonably in relation to the disclosure and management of councillors' conflicts of interest.

Some of the issues considered are unique to councils which have a group of councillors operating within it, as Cairns does with respect to the Unity Team.¹ The other issues discussed are relevant to all councils and councillors throughout Queensland.

This report includes discussion regarding the following:

- the background to the investigation (Chapter 1)
- how conflicts of interest are dealt with in council generally (Chapter 2)
- relevant issues when dealing with conflicts of interest as a group (Chapter 3)
- issues regarding transparency and accountability generally and with regard to the management of conflicts of interest (Chapter 4)
- the Register of Interests of councillors (Chapter 5)
- overall conclusions and observations arising from the investigation (Chapter 6).

The investigation did not identify wilful non-compliance with any legislative requirements by council or councillors, and observed that councillors went to some effort to comply. It did identify, however, a lack of understanding of a number of requirements and a sense of complacency by some councillors in respect of matters which were their own personal responsibility.

The investigation found that:

- the current practice of councillors declaring conflicts of interest as a group does not comply with the requirements of s.173(5) of the *Local Government Act 2009* (LGA)
- the practice of all Unity Team members using s.173(7) of the LGA to stay in a meeting to maintain a quorum, in circumstances where it is not necessary for all members to stay to maintain a quorum, does not comply with s.173(7) of the LGA
- it is not always possible to determine from the minutes of a meeting how a councillor who has declared a conflict of interest voted and, in this respect, council does not always comply with s.173(8)(d) of the LGA
- a number of councillors did not comply with s.171B of the LGA in that their Register of Interests did not contain all gifts required to be included.

Other matters identified for consideration and/or monitoring by council/councillors included:

- the correct quorum for the Planning and Environment Committee and the correct process to effectively delegate council's powers to a committee of council
- whether the pre-meeting meeting² attended by councillors and the Executive Manager³ complies with the local government principle of 'transparent and effective processes, and decision-making in the public interest'.

In considering the legislative requirements around conflict of interest declarations, I noted that s.173(4) and s.173(8) of the LGA do not complement each other in fulfilling the local government principles as they relate to transparent decision-making. The investigation found that s.173(4) and s.173(8) create uncertainty in terms of what is expected of

¹ The Unity Team in Cairns is a 'group of candidates' for the purposes of the *Local Government Electoral Act 2011*.

² The meeting held on the Monday before each council and committee meeting attended by all councillors and the Executive Manager.

³ Executive Manager, Office of the Mayor, Cairns Regional Council.

councillors when making conflict of interest declarations during meetings.

I referred this issue to the Department of Infrastructure, Local Government and Planning (the department) for its consideration. The department considered the findings and recommendations contained in my proposed report as part of its analysis feeding into the preparation of the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017.

Opinions and recommendations

Opinions

I have formed the following opinions:⁴

Opinion 1

The current practice of councillors declaring conflicts of interest as a group does not comply with the requirements of s.173(5) of the LGA and is therefore administrative action which is contrary to law under s.49(2)(a) of the *Ombudsman Act 2001* (the Ombudsman Act).

Opinion 2

The practice of all Unity Team members using s.173(7) of the LGA to stay in a meeting to maintain a quorum, in circumstances where it is not necessary for all members to stay to maintain a quorum, does not comply with s.173(7) and is therefore administrative action which is contrary to law under s.49(2)(a) of the Ombudsman Act.

Opinion 3

Section 173(4) and s.173(8) of the LGA create uncertainty in terms of what is expected of councillors when making conflict of interest declarations during meetings.

Opinion 4

It is not always possible to determine from the minutes of a meeting how a councillor who has declared a conflict of interest voted and, in this respect, council does not always comply with s.173(8)(d) of the LGA and this is administrative action taken contrary to law under s.49(2)(a) of the Ombudsman Act.

Opinion 5

A number of councillors did not comply with s.171B of the LGA in that their Register of Interests did not contain all gifts required to be included and this is administrative action taken contrary to law under s.49(2)(a) of the Ombudsman Act.

Recommendations

I make the following recommendations:⁵

Recommendation 1

Council's CEO advise councillors to:

- declare a real or perceived conflict of interest; and
- state how they will deal with it;

as individuals, rather than as a group.

Recommendation 2

Council's CEO advise Unity Team members to cease using s.173(7) of the LGA as a group to stay in a meeting to maintain a quorum, in circumstances where it is not necessary for all members to stay to maintain a quorum.

⁴ For the purposes of Part 6, Division 1 of the *Ombudsman Act 2001*.

⁵ Under s.50 of the *Ombudsman Act 2001*.

Recommendation 3

The Director-General of the Department of Infrastructure, Local Government and Planning consider and advise the government on necessary amendment to s.173(4) and s.173(8) of the LGA to clearly set out what is required to be disclosed by councillors to achieve transparency and accountability in relation to the declaration of conflicts of interest, including consideration of the amount and timing of an electoral donation.

Recommendation 4

Council review its procedures in relation to the taking of minutes for council meetings to ensure the minutes make it clear how councillors with a conflict of interest vote on a matter.

Recommendation 5

Council take appropriate action to ensure that councillors understand the need to personally make sure that their Register of Interests is kept correct and complete.

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Chapter 1: Background

Chapter 1 sets out the basis for this investigation, the issue for investigation and outlines the investigative process adopted.

1.1 Basis for investigation

The functions of the Ombudsman include investigating administrative actions of agencies on the Ombudsman's own initiative.⁶

The Office of the Queensland Ombudsman (this Office) monitors a variety of information to identify appropriate topics for own initiative investigations. This includes:

- complaint data
- material enclosed with complaints received by this Office
- information shared with this Office by other integrity agencies in accordance with liaison arrangements
- information on agency websites
- other material in the public domain, including media articles and documents tabled in Queensland Parliament.

Based on this Office's monitoring activities, the topic of how councillors of Cairns Regional Council (council) deal with conflicts of interest was identified for investigation.

1.2 Investigation and issue

The topic of councillor conflicts of interest is one which is raised regularly in the media. The situation at Cairns Regional Council raises particular challenges in terms of the management of conflicts of interest, due to the majority of councillors being members of the Unity Team.⁷ Other challenges faced by councillors in Cairns are the same as the challenges faced by all councillors throughout Queensland.

The principal object of the investigation is to determine whether council and councillors comply with relevant legislative and policy requirements and act reasonably in relation to the disclosure and management of councillors' conflicts of interest.

I advised council in a letter dated 10 March 2017 of my decision to commence this investigation⁸ and requested information to assist in the investigation.

This Office conducted research into the legislative provisions relevant to the topic and considered the agenda and minutes of various council meetings.

A discussion was held with representatives of the Department of Infrastructure, Local Government and Planning (department) concerning the disclosure and management of councillors' conflicts of interest.

Recorded interviews were also conducted in or around the week of 1 May 2017 with the following:

- all 10 councillors, including the Mayor
- the current Chief Executive Officer (CEO)
- the General Manager Human Resources and Organisational Change (HR Manager)
- the Executive Manager, Office of the Mayor (Executive Manager).

⁶ Section 12(a)(iii) of the *Ombudsman Act 2001*.

⁷ The Unity Team and how it operates will be discussed further in Chapter 2 of this report.

⁸ Pursuant to s.18(1)(b) of the *Ombudsman Act 2001*.

Throughout this report, evidence provided by councillors during interview will be referred to collectively. If a particular councillor or councillors expressed a specific contrary view, this contrary view will also be set out.

Following interview, further information was obtained from some interviewees.

A proposed report was prepared and provided to council and the department on 25 August 2017 for their consideration and response. Councillors were also provided the opportunity to make submissions regarding the proposed report. A submission was received from council on 29 September 2017 and from the department on 19 October 2017. No submissions were received from individual councillors.

In the period of time between when the proposed report was provided and the department's response received, the following events took place:

- the Crime and Corruption Commission (CCC) released its report titled 'Operation Belcarra – A blueprint for integrity and addressing corruption risk in local government' dated October 2017 (Belcarra report)
- the government released its response to the Belcarra report
- the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017 (the Bill) to amend legislation including the *Local Government Act 2009* (LGA) and the *City of Brisbane Act 2010* (COBA) was released.

The department confirmed that the findings and recommendations contained in the proposed report were relevant to the department's analysis feeding into the preparation of the Bill.

Appendix A contains information regarding this Office's jurisdiction and procedural fairness requirements.

Appendix B contains excerpts of legislation referred to in this report.

Chapter 2: How conflicts of interest are dealt with in council

Chapter 2 outlines briefly how councillors' conflicts of interest are dealt with by council and councillors. To put this into context, it first describes the composition of council.

2.1 Composition of council

The Unity Team in Cairns is a 'group of candidates' for the purposes of the *Local Government Electoral Act 2011* (LGE Act). This is defined in the LGE Act as being a group of individuals, each of whom is a candidate for the election, if the group was formed to promote the election of the candidates or to share in the benefits of fundraising to promote the election of the candidates.⁹

Seven of the 10 councillors elected at the local government election in 2016, including the Mayor, are members of the Unity Team. The remaining three councillors could be described as independent councillors.

During interview, councillors from the Unity Team provided information about the origins of the Unity Team and the practical effect of being in the Unity Team, both during and after the election. Following is a summary of the information provided:

- the predecessor of the Unity Team was the Civic Team, which was formed in the 1980's
- it became known as the Unity Team in the late 1990's or early 2000's and, more recently, the group ran in the 2012 local government election and again in 2016
- the Unity Team is not a political party and has members from both sides of politics
- during the election campaign, donations are made to the group and these are used for the benefit of the group
- there are a group of supporters who collect the donations and account for them in the return listing gifts received (ECQ return), which is required to be submitted to the Electoral Commission Queensland (ECQ),¹⁰ and councillors are not directly involved in this process
- one member of the Unity Team receives electoral donations in their own right in addition to as a member of the Unity Team and therefore also submits an individual ECQ return
- while a number of Unity Team councillors described members of the Unity Team as generally being like-minded, once elected, this does not mean that they, on all occasions, vote together and no member feels compelled to vote with the group
- they advised that, during the electoral term, they did not meet as the Unity Team but rather saw the 'team' as including all councillors, including the three independent councillors
- the only practical effect of being part of the Unity Team during the electoral term is that conflicts of interest are declared as a group.

During interview, the independent councillors all advised that they did not feel excluded in any way by Unity Team members and were included in all meetings relevant to their position on council. They also did not consider the fact that seven councillors were members of the Unity Team to be of practical relevance during the electoral term except for the purposes of declaring conflicts of interest.

In summary, all councillors described an environment within council where they felt comfortable and supported to express their individual views. They advised that while there is sometimes robust discussion on various issues and a division in terms of the

⁹ See the definition of 'group of candidates' in the Schedule to the LGE Act.

¹⁰ See s.118 of the LGE Act.

vote, this does not result in negative feelings among councillors and they continue to work well together for the benefit of the community. Councillors expressed the need for co-operation, referring to previous councils in which division among councillors resulted in council business not progressing.

2.2 Dealing with conflicts of interest

During interview, councillors and council officers provided information regarding the way in which conflicts of interest are dealt with in council. The following is a summary of the information provided.

Council and committee meetings are held on a Wednesday. Councillors receive the agenda on a Friday afternoon and read it over the weekend, turning their minds to whether any of the items raise conflicts of interest.

The Monday before each meeting, all councillors attend, along with the Executive Manager, what they call a 'pre-meeting meeting' (pre-meeting meeting) during which all agenda items are discussed. The Executive Manager's role before and during the pre-meeting meeting is to assist in identifying conflicts of interest of members of the Unity Team. Independent councillors identify their own conflicts of interest.

Conflicts of interest are dealt with at the start of each council meeting, including committee meetings, and are a standing agenda item. At this time, a representative of the Unity Team will declare any conflicts of interest on behalf of the Unity Team.

Regularly, the Unity Team will declare a conflict of interest due to electoral donations and will elect to all remain in the meeting, pursuant to s.173(7) of the LGA to maintain a quorum, with members then sometimes moving and/or seconding the motion.

Councillors all have a Register of Interests¹¹ and receive reminders from time to time about updating them.

Councillors who have any queries or concerns regarding issues relating to conflicts of interest generally refer them to the CEO. The CEO will answer straightforward questions and will refer more complex questions to the Local Government Association of Queensland (LGAQ) for advice.

Councillors described a recent issue whereby during a meeting, a councillor declared a conflict of interest, on the basis that a consultant to a developer applicant had been an electoral donor, and left the meeting. Other councillors were surprised by this as they had understood, from advice provided by the former Chief Executive Officer (former CEO) of council, that it was not necessary to declare a conflict of interest in such circumstances. Council's CEO sought advice from the LGAQ. The LGAQ advised that, in such circumstances, a perceived conflict of interest should be declared.

Councillors have accordingly since changed their practices regarding the declaring of conflicts of interest in similar cases. Council has also changed its procedures in terms of the information it collects when a development application is received, so that it has details of the consultants associated with a project thus assisting councillors with the identification of potential conflicts of interest.

Evidence was provided of other conflict of interest issues which had been referred by the CEO to the LGAQ for advice. The CEO and some councillors specifically noted the complexities of the topic and the efforts to which they go to comply. Some councillors commented as to the amount of time it takes to deal with conflicts of interest at the start of each meeting, although stated that it was not a matter of concern to them.

¹¹ As required by Part 5, Chapter 8 of the Local Government Regulation 2012.

Apart from these issues, councillors and the council officers interviewed did not express any specific concerns with the way council dealt with conflicts of interest. They stated that, to their knowledge, council and councillors complied with all legislative and policy requirements. Several commented that, if they had any concerns, they would have raised them.

Chapter 3: Dealing with conflicts of interest as a group

Chapter 3 considers how conflicts of interest are dealt with by the Unity Team. It looks firstly at the role of the Executive Manager and goes on to consider the declarations that are made as a group and the practice of the group in staying in meetings to maintain a quorum where there is a conflict of interest.

3.1 Role of Executive Manager

3.1.1 Evidence

The Executive Manager's primary role is to provide Mayoral support. One of their key duties and responsibilities is to 'lead and manage the Mayoral Support Unit in the delivery of professional support and executive assistance to the Mayor in the fulfilment of his obligations, responsibilities and accountabilities.'¹² The Executive Manager is a council employee and reports organisationally to the CEO and, for performance, to the Mayor. As previously noted, part of the role is to assist in identifying any conflicts of interest members of the Unity Team have in relation to agenda items prior to council meetings so that conflict of interest declarations can be made where appropriate.

This sometimes involves conducting company searches to identify parties related to those listed on the agenda or those who are donors. During interview, the Executive Manager provided a list of over 50 company searches that he has conducted since the 2012 local government election.

The Executive Manager advised during interview that this service is provided only for the Unity Team on the basis that there are seven of them and therefore it does not make practical sense for them to each do the task individually. Councillors who have other conflicts of interest not associated with the Unity Team, such as the three independent councillors, are responsible for identifying their own conflicts of interest.

The Executive Manager described his role as being limited to managing the information associated with conflicts of interest and bringing it to the Unity Team's attention when matters arise. During interview, several members of the Unity Team specifically noted their personal responsibility in terms of the identification of conflicts of interest, although it was clear that a certain level of reliance is placed on the tasks performed by the Executive Manager. Another member of the group advised that they do not always do a thorough check themselves regarding conflicts of interest as they rely on senior members of the Unity Team to declare relevant conflicts of interest.

During interview, members of the Unity Team were questioned as to their knowledge of some of the group's donors. One donor company discussed had donated a significant sum, and companies associated with the donor company had previously had business before council, including in the month immediately preceding the interviews. Six of the seven Unity Team members stated that they had no knowledge of the donor company,¹³ nor who was associated with the company, and could not recall the company having any business with council. Minutes of various council meetings showed that, where parties associated with the company had previously had business with council, a conflict of interest declaration was made on behalf of the Unity Team on each identified occasion.

Section 173(4) of the LGA says that a councillor must deal with a real or perceived conflict of interest in a transparent and accountable way and s.176(3)(d) defines 'misconduct' as including conduct by a councillor that contravenes s.173(4).

¹² Position description for the Executive Manager to the Mayor's Office; Position No. EX061; Last Update Nov 2012.

¹³ One Unity Team member provided further information about the donor company following interview.

3.1.2 Analysis

While the practicality of having one person looking at the issue of conflicts of interest on behalf of the Unity Team, rather than all seven Unity Team members, is noted, it does raise a question of fairness, in that it is a service being offered by a council employee to some councillors and not others. The Executive Manager's task of identifying conflict of interest issues in respect of the Unity Team does, however, fall within the scope of the position description for the role as it is undertaken to support the Mayor, who is a member of the Unity Team, in the fulfilment of his accountabilities. Other group members benefit only incidentally, as the information applies similarly to them. All councillors, other than perhaps the Mayor, have to manage, without assistance, the conflicts of interest that apply only to them.

In the example discussed above, six of the seven Unity Team members stated they were not familiar with a donor company, despite companies associated with the donor having business before council on a number of occasions, including in the month immediately preceding the interviews, and a conflict of interest declaration being made. The councillors' lack of knowledge is concerning. Part of this concern is that their lack of knowledge indicates that they have failed to take personal responsibility, relying instead on the Executive Manager. This is symptomatic of the outsourcing which has occurred in terms of the Executive Manager's role in relation to identifying information relevant to conflicts of interest.

It is noted that failure to declare a conflict of interest will be considered misconduct and dealt with accordingly.¹⁴ Failure to take personal responsibility therefore places councillors at risk that they will not comply with the requirements around conflicts of interest and will face the consequences of misconduct.

3.2 Declarations and real/perceived conflicts of interest

3.2.1 Evidence

Conflicts of interest are dealt with at the start of each council meeting, including committee meetings, and are a standing agenda item. Laminated sheets, listing the different declarations that can be used, are available in the council chamber for use by councillors. The sheets contain a declaration for use by Unity Team members.

A common declaration is as follows:

Cr James declared that the Unity Team, comprising Cr Manning, Cr Schilling, Cr Bates, Cr O'Halloran, Cr Richardson, Cr Moller and himself had a perceived conflict of interest in relation to Clause X, Y Session (...topic...) due to the Unity Team receiving an electoral donation from the applicant. In accordance with Section 173(7) of the Local Government Act, he proposed that the Unity Team Councillors remain so that a quorum could be retained.

Since around April 2017, a common declaration being used is as follows:

Cr James declared that the Unity Team, comprising Cr Manning, Cr Schilling, Cr Bates, Cr O'Halloran, Cr Richardson, Cr Moller and himself have a perceived conflict of interest in relation to Clause X, Y Session (...topic...) due to the Unity Team receiving an electoral donation from the applicant. We have determined that these personal interests are not of sufficient significance that it will lead to making a decision on these matters that is contrary to the public interest. We will best perform our responsibility of serving the overall public interest of the whole of the Cairns Regional Council area by participating in the discussion and voting on these matters. Notwithstanding this assessment, in accordance with Section 173(7) of the Local Government Act, the relevant Councillors are required to remain so a quorum can be maintained.

¹⁴ Complaints of misconduct are dealt with in accordance with Chapter 6, Part 2, Division 6 of the LGA relating to the conduct and performance of councillors.

Section 173(1)(c) of the LGA makes a distinction between a real conflict of interest and a perceived conflict of interest. Both are to be dealt with pursuant to s.173. During interview, a number of councillors were questioned as to their understanding of the difference between the two and into which category a conflict of interest arising from an electoral donation would most appropriately fit. Each councillor interviewed gave a different answer regarding their understanding of the distinction and there were mixed views expressed as to whether an electoral donation would be a real or perceived conflict of interest. There were more councillors who thought it would be a real conflict of interest than councillors who thought it would be a perceived conflict of interest. Several councillors commented that it was a grey area.

Councillors who expressed the view that an electoral donation would give rise to a perceived conflict of interest noted that a donation does not influence the outcome in any way, as donors are told when they make the donation that it will not result in any favourable treatment.

One councillor advised that if there was an emotional tug between their personal interests and the public interest, it was a real conflict of interest, whereby it would only be a perceived conflict of interest if there is no internal struggle but others perceive it could be a conflict of interest. That councillor believed a donation could be either depending on the councillor's relationship with the donor and whether they know them.

For members of the Unity Team, it was clear during interview that each of them knew some donors and not others and that different councillors knew different donors.

3.2.2 Analysis

The practice of the Unity Team appears to be that a conflict of interest on the basis of an electoral donation will generally be declared to be a perceived conflict of interest rather than a real conflict of interest, despite several Unity Team members individually indicating that it would be a real conflict of interest. It is arguable how relevant the distinction is, given that both are dealt with pursuant to s.173 of the LGA. As a general observation, however, a real conflict of interest is more likely to be seen as one which would result in the councillor leaving the meeting and not participating in voting.

I do not consider that there is a set rule as to whether a conflict of interest arising from an electoral donation will be a perceived conflict of interest or a real conflict of interest, nor is there a set rule as to how the conflict should be dealt with. It will depend on a number of factors, including the relationship, if any, between the councillor and the donor, and the amount and timing of the donation.¹⁵

It was clear during interview that different councillors within the Unity Team had differing degrees of knowledge of, and involvement with, different donors. This would likely be the situation in respect of any group of councillors. Having regard to this, I consider that a declaration on behalf of a group of councillors, may not adequately disclose the full extent of each individual councillor's conflict of interest.

Furthermore, it is not possible to have a conflict of interest as a group. A conflict of interest is defined as 'a conflict between a councillor's personal interests and the public interest that might lead to a decision that is contrary to the public interest'.¹⁶ This definition refers to 'a councillor' (singular) and their 'personal interests'. Section 173(5) of the LGA says 'the councillor must inform the meeting of the councillor's personal interests in the matter'. It again refers to 'the councillor' (singular) and 'the councillor's personal interests'. Only an individual can have personal interests and therefore conflicts of interest are a matter for individual councillors.

For these reasons, I do not consider it appropriate, or in compliance with s.173(5), for

¹⁵ This will be discussed further in Chapter 4 of this report.

¹⁶ Section 173(2) of the LGA.

councillors in the Unity Team to declare and deal with a conflict of interest as a group. Declarations of conflicts of interest and the decision as to how they should be dealt with should be made by each individual councillor having regard to their own set of circumstances as it relates to the matter under consideration.

I form the following opinion and make the following recommendation:

Opinion 1

The current practice of councillors declaring conflicts of interest as a group does not comply with the requirements of s.173(5) of the LGA and is therefore administrative action which is contrary to law under s.49(2)(a) of the Ombudsman Act.

Recommendation 1

Council's CEO advise councillors to:

- declare a real or perceived conflict of interest; and
- state how they will deal with it;

as individuals, rather than as a group.

Council's response to the proposed report

Council advised:

It is not agreed that the current practice does not comply with s.173(5) of the LGA. The current process is an effective declaration to the meeting and the public and provides for openness and transparency. The interest of each Councillor is effectively declared. If a Councillor did not agree with what is declared they would say so.

That said, advice has been sought and a recommendation will be made to Councillors that the process for declarations be altered such that each Councillor makes a positive assertion in each declaration in the future.

Ombudsman's comment on the response

I do not agree with council's submission that the current practice complies with s.173(5) of the LGA and maintain my position that it does not comply.

I note that a recommendation will be made to councillors to change the practice so that in the future each councillor will make a declaration.

Department's response to the proposed report

The department advised:

The department agrees that councillors must declare their conflicts of interest individually, rather than as a group, to appropriately comply with both the requirements and intent of section 173(5)(a) of the LGA. In the department's view, councillors declaring conflicts of interest as a group is not compliant with this section of the LGA. Section 173(5) of the LGA is clearly drafted in the singular and reflects the well-recognised proposition that a personal interest relates to the individual and may vary from one individual to another, depending on the circumstances that give rise to that interest.

The Bill introduces provisions that strengthen the legislative

requirements that regulate how a councillor must deal with a real or perceived conflict of interest or a material personal interest.

Should the legislation be passed in its current form, if a councillor has a real or perceived conflict of interest in a matter the councillor must inform the meeting in greater detail of the interest, and how the councillor will deal with that interest; and these specific details will be noted in the minutes of the meeting.

The department notes the draft report regarding certain councillors relying on another person to identify potential conflicts of interest on their behalf and providing them with advice on how to deal with such conflicts.

As the LGA is presently drafted, a conflict of interest is a personal matter and it is the individual councillor who must satisfy themselves whether a conflict (real or perceived) may or does exist in a particular matter, and the extent to which it represents a conflict, and then take the appropriate course of action to deal with the conflict of interest.

At the same time, the department has no objection to a councillor being able to seek advice from another person on how to manage a conflict of interest or potential conflict of interest. Ultimately, however, the councillor should determine for themselves whether the conflict of interest (real or perceived) may exist and how they propose to deal with it.

To this end, Recommendation 28 of the Belcarra Report suggests that the advisory and public awareness functions of the Queensland Integrity Commissioner be extended to local government councillors; or a separate statutory body be established to undertake this function.

The government has accepted this recommendation to extend the role of the Integrity Commissioner, noting that the local government operating environment will need to be considered. The implementation issues of this recommendation will be worked through in the coming months with key stakeholders. Your input in this process would be welcomed.

The department supports Proposed Recommendation 1 in that the council's Chief Executive Officer advises councillors to individually declare conflicts of interest rather than as a group. Ultimately, however, it is the responsibility of individual councillors to identify, declare and deal with their conflicts of interest in accordance with the LGA.

**Ombudsman's
comment on the
response**

I note the department's response and its agreement with my position.

I also note the proposed legislative changes relevant to this topic. Should the proposed legislative changes be enacted in their current form, the need for councillors to declare conflicts of interest as individuals, rather than as a group, will continue.

It is noted that the complexity associated with conflicts of interest increases with the number of donors a councillor has. As members of the Unity Team have over 60 donors arising from the 2016 local government election alone, this makes the task of complying with legislative requirements more complex.

While each councillor declaring a conflict of interest separately and making a separate decision as to how it should be dealt with, will take more time during council meetings, this will support transparency and accountability in public administration.

3.3 Staying in a meeting to maintain a quorum

3.3.1 Evidence

Section 259 of the Local Government Regulation 2012 (LGR) states that a quorum of a local government is a majority of its councillors, however, if the number of councillors is an even number, one-half of the number is a quorum. Pursuant to s.269 of the LGR, the same rule applies in respect of the members of a committee.

As council has 10 councillors, including the Mayor, council has confirmed that the quorum for an ordinary meeting of council is five.

Council has advised that in respect of the Planning and Environment Committee (P&E Committee), the Terms of Reference state that the quorum is six and, in circumstances where the vote is equal, the Chair has a casting vote. When asked whether council considered the Terms of Reference for the P&E Committee to be consistent with the LGR, council advised:

Council is delegating power to make decisions to the Planning and Environment Committee and that as such, the delegation can be quite reasonably made conditional on there being at least 6 members of council present when any decision under a delegated power is made.

When asked for a copy of the delegation referred to, council provided information referring to a resolution of the P&E Committee in its meeting of 8 June 2016 in which it adopted the Terms of Reference.

Section 173(4) of the LGA says that a councillor must deal with a real or perceived conflict of interest in a transparent and accountable way.

Section 173(7), which applies if a quorum at the meeting cannot be formed because the councillor proposes to exclude himself or herself from the meeting to comply with subsection (4), states:

The councillor does not contravene subsection (4) by participating (including by voting, for example) in the meeting in relation to the matter if the attendance of the councillor, together with any other required number of councillors, forms a quorum for the meeting.

The Unity Team has a regular practice of declaring a perceived conflict of interest due to an electoral donation and deciding that all members will stay pursuant to s.173(7) of the LGA so that a quorum can be maintained.

This practice was discussed with councillors during interview and, in particular, the basis upon which all seven Unity Team councillors stay where, in most situations, it would only be necessary for two Unity Team councillors to stay to maintain a quorum of five, when their votes are added to that of the three independent councillors.

Most commented that they had never thought of the possibility that some group members could stay and some could go. They questioned how they would choose who went and who stayed on the basis that they all have the same interest. Some noted that it would be disruptive having people leaving the room and then being called back in and questioned the point of it given their practice of always upholding the council officer's recommendations in cases where there is a conflict of interest. One councillor commented that perhaps the practice is sometimes more a matter of convenience.

The independent councillors did not express any concern about the practice changing the balance of power, given that, if only two Unity Team members stayed, independent councillors would then have the majority of the vote. They all expressed the view that it would make little difference as they generally agree.

A number of councillors advised that they understood the practice was in accordance with advice provided to councillors by the former CEO and noted that the practice had been in

place since the 2012 local government election.

The CEO and all councillors advised that they were not aware of the issue ever having been raised before.

During interview, the HR Manager advised that she recalled the issue of who would stay and who would go being discussed prior to the 2016 local government election, during an LGAQ update. She did not, however, recall council reaching any particular conclusions about the issue.

There is further evidence that this issue had previously been raised with council by a member of the public. In a memorandum from the HR Manager to the former CEO dated 19 February 2016, which summarised a number of issues raised by the complainant with council over a period of time, it stated:

While Councillors may choose to remain in the room under Section 173(7) of the Local Government Act it is important that advice from LGAQ is that only the number of Councillors required for a vote need to remain, (sic) the others can leave a room and are not required to stay.

An example is during Councils' Planning & Economic Meeting the Terms of Reference only require six (6) members to form a quorum, therefore if Unity Team Councillors (6 Councillors + Mayor) declare a Conflict, it leaves three (3) Councillors left to vote. As the Terms of Reference state a quorum will be determined to be six (6) of the members of the committee under s.173(7) only three (3) of the Unity Team Councillors is required to remain for the vote, (sic) the others can leave the room and are not required to remain. The option of who remains and who chooses (sic) is at the discretion of the Councillors or the Chair, or the advice from LGAQ is whoever stands up the slowest.

At the conclusion of the memorandum, a recommendation was made that:

While Councillors may choose to remain in the room under Section 173(7) of the Local Government Act it is important that advice from LGAQ is that only the number of Councillors required for a vote need to remain, (sic) the others can leave a room and are not required to stay.

3.3.2 Analysis

In considering the issue of what number constitutes a quorum, I note council's advice that the quorum for an ordinary meeting of council is five but that the quorum for a P&E Committee meeting is six based on council's delegation to the committee. Council advised that the delegation was done via the Terms of Reference which were adopted by the P&E Committee in its meeting of 8 June 2016.

I note that the P&E Committee comprises all ten councillors. Putting aside the peculiarity of the P&E Committee being required to have a greater quorum than is required for an ordinary meeting of council, I note that delegation by council to the P&E Committee should generally be made by council, not by the P&E Committee itself. For this reason, I question whether delegation is the basis upon which a quorum of six is required for the P&E Committee. It therefore appears the basis for the quorum is purely the Terms of Reference.

Section 269 of the LGR states that, if the number of councillors is an even number, one-half of the number is a quorum. As the P&E Committee comprises 10 councillors, having regard to the LGR, the quorum is properly five councillors. This raises the issue as to whether the Terms of Reference are inconsistent with s.269 of the LGR.

It is suggested that council obtain advice as to the correct quorum for the P&E Committee and the correct process to effectively delegate council's powers to a committee of council.

It is then relevant to consider the use of s.173(7) of the LGA by Unity Team members to all stay in a meeting in order to maintain a quorum.

As previously discussed, I do not accept that in all instances, the interests of all members of the Unity Team are the same. For this reason, I do not accept the argument of some councillors that it would not be appropriate for some members of the group to stay in the meeting and some to leave because they all have the same interest.

Having regard to the drafting of s.173(7), including the reference to 'the councillor' (singular) and the 'required number of councillors' (a reference to the quorum), I consider it clear that the section should only be used to allow a sufficient number of councillors to remain to make a quorum. This is not to say that other councillors with a conflict of interest may not be able to stay in the meeting on the basis that they believe they can participate and vote in the public interest, but in this circumstance, this should be the stated basis upon which they stay, not s.173(7).

In practice, each councillor should, individually, state any conflict of interest and how it will be dealt with. If, as this process proceeds, it appears as though a quorum may not be reached, the last councillors may need to rely on s.173(7) to stay, if they are not otherwise able to state that they believe they can participate and vote in the public interest. In this regard, s.173(7) should be used as a last resort. Section 173(7) should not be used as the first option, out of what appears to be expediency, so that councillors do not have to turn their minds to whether they believe they can participate and vote in the public interest.

I note the current practice of Unity Team members to state the reason for them remaining in the meeting as being that they believe they can participate in the public interest but, notwithstanding this, they need to stay to maintain a quorum. I do not consider it appropriate that s.173(7) be used as a 'catch all'. If a councillor believes that they can participate in the meeting and vote in the public interest, this is the only reason they require for staying in the meeting. If this is not the case, and without their presence, there would not be a quorum, s.173(7) can be used as a reason for staying.

It should be noted that the reason a councillor with a conflict of interest stays in a meeting may be relevant to how that councillor conducts themselves during the discussion and during the voting process, in terms of moving or seconding a motion. If a councillor is staying because they believe they can participate in the public interest, it would be appropriate for them to participate more fully than might be the case if they were merely staying in the meeting to maintain a quorum. While there are no legislative limitations, councillors should consider public perception. It may not always be wise for a councillor with a conflict of interest, who is staying merely to maintain a quorum, to champion a particular position during a debate or to move or second a motion.

I form the following opinion and make the following recommendation:

Opinion 2

The practice of all Unity Team members using s.173(7) of the LGA to stay in a meeting to maintain a quorum, in circumstances where it is not necessary for all members to stay to maintain a quorum, does not comply with s.173(7) and is therefore administrative action which is contrary to law under s.49(2)(a) of the Ombudsman Act.

Recommendation 2

Council's CEO advise Unity Team members to cease using s.173(7) of the LGA as a group to stay in a meeting to maintain a quorum, in circumstances where it is not necessary for all members to stay to maintain a quorum.

Council's response to the proposed report

Council advised:

Advice has been sought on this matter. A recommendation was made to Councillors that the last sentence of the existing standard declaration be removed and this has been implemented effective 13 September 2017.

Ombudsman's comment on the response

Council's advice is noted.

Department's response to the proposed report

The department advised:

Recommendation 23 of the Belcarra Report recommends that the LGA and COBA be amended to provide that when a councillor declares a conflict of interest, or when another councillor has reported the councillor's conflict of interest, the other councillors in the meeting vote to decide whether the councillor should leave the meeting while the matter is discussed and voted upon.

The government has accepted this recommendation and the Bill proposes to amend the LGA and the COBA to implement this process.

As it would not be practical for a vote to occur where the majority of councillors have declared conflicts of interest in the matter, the Bill will provide that the matter must be delegated or if unable to be delegated, the affected councillors must seek the approval of the Minister to take part in the meeting.

Individual councillors will still be permitted to remove themselves from the meeting if they are of the opinion their conflicts of interest are such that they would be unable to act in the public interest by remaining in the meeting and voting.

Ombudsman's comment on the response

I note the department's advice as to the proposed changes to relevant legislation. Should the changes proceed, s.173(7) of the LGA will be repealed and the issue raised in this report will not be of specific relevance going forward, as there will no longer be provision for councillors with a conflict of interest to stay in a meeting for the sole purpose of maintaining a quorum.

I acknowledge that, given the current composition of council and relationship enjoyed between councillors, the practice of councillors all remaining to maintain a quorum is not presently an issue of concern to them. Should the circumstances within council change, however, it has the potential to become a very big issue given that the practice in many instances changes the balance of power as between Unity Team members and independent councillors.

Although there is evidence that the issue had been raised by a member of the public, and was considered to some extent by council's administrative arm, there is no evidence of what was done to resolve the issue. An agency's complaints management system is an excellent tool for identifying and dealing with issues as they arise. Failure by council to appropriately deal with this issue when it was first raised could be seen as a lost opportunity.

Chapter 4: Transparency and accountability

Chapter 4 looks at the level of transparency and accountability that is being achieved in council in relation to councillors' conflicts of interest. It firstly considers the pre-meeting meeting. Secondly, it examines the extent to which the true nature of councillors' conflicts of interest is disclosed. Lastly, it looks at whether council complies with the requirement for the minutes to state how a councillor with a conflict of interest who stays in a meeting votes.

4.1 Pre-meeting meeting

4.1.1 Evidence

As previously noted, council and committee meetings take place on a Wednesday. The Monday before each of these meetings, all councillors, along with the Executive Manager, attend a pre-meeting meeting. During the pre-meeting meeting, all agenda items are discussed, any questions raised and an understanding reached as to how councillors will vote at the Wednesday meeting. Minutes are not taken at the pre-meeting meeting.

The legislative requirements in relation to a material personal interest, and real and perceived conflicts of interest are contained in s.172 and s.173 of the LGA. These sections apply only in respect of a meeting of a local government (that is, council's ordinary meeting), or any of its committees.

Evidence from councillors is that conflicts of interest are dealt with in the pre-meeting meeting the same way they would be dealt with in an ordinary meeting of council or a committee meeting, that is, the conflict would be declared and, where appropriate, the councillor would leave the room prior to any discussion of the matter. They would be called back into the room when discussion of the matter was completed.

Some councillors referred during their interview to the fact that they are primarily concerned with ensuring their own conflicts of interest are declared and do not specifically monitor what other councillors are doing. They advised that it is a matter for the other councillors themselves to ensure they are doing the right thing. They advised that they have trust in the integrity of all councillors.

In relation to decision-making within council, councillors described robust discussions occurring from time to time where councillors had differing points of view regarding various issues and felt comfortable in putting their arguments forward.

One councillor noted that in five years (since the 2012 election) they had never read in the newspaper about a dispute in council chambers and that is because there is never a dispute in council chambers. They advised that most matters go to the meeting with all councillors knowing how it is going to turn out and referred to the business being run with discipline, saying that councillors do not aim to embarrass each other. Another councillor commented that councillors have a policy of not having fights or disagreements in public because the press 'play it up for more than it is'. Another talked about the importance of not looking like 'rabble' in the house.

4.1.2 Analysis

While councillors believe that conflicts of interest are dealt with in the pre-meeting meeting the same way they would be dealt with in an ordinary meeting of council or a committee meeting, as no minutes are taken in the pre-meeting meeting, it is not possible to confirm retrospectively whether conflicts of interest are being dealt with appropriately in that forum.

The evidence is that robust discussions occur from time to time regarding various issues, however, there are never what could be described as disputes in the council chamber. It would appear that this is because the real discussion regarding each item of council

business takes place behind closed doors during the pre-meeting meeting. What happens in the council chamber, for the benefit of the public, could therefore be described as a presentation of the conclusion reached following that discussion.

In my view, this practice places council at significant risk of failing to comply with the local government principle of 'transparent and effective processes, and decision-making in the public interest'.¹⁷ It is an issue that may in the future be the subject of a separate investigation either in respect of council or more broadly.

Council's response to the proposed report

In respect of paragraph 1 above, council advised:

It is believed that this paragraph is inappropriate, particularly the statement "... as no minutes are taken in the pre-meeting, it is not possible to confirm retrospectively whether conflicts of interest are being dealt with appropriately in that forum."

This paragraph and particularly this statement contradict the LGA and paragraph 2 of Section 4.1.1 which states:

"The legislative requirements in relation to a material personal interest, and real and perceived conflicts of interest are contained in s.172 and s.173 of the LGA. These sections apply only in respect of a meeting of a local government (that is Council's Ordinary Meeting), or any of its Committees."

The fact that the Councillors choose to recognise and respect COI's in this meeting and in fact Council workshops with officers is an example of the Councillors and the organisation applying "better than good governance" as it has always been recognised that they need not do this under the LGA.

To make a statement about no minutes being kept and looking to confirm something which does not in fact need to occur is not appropriate and should be removed from the report.

In respect of paragraph 2 above, council advised:

The content and the insinuation contained in this paragraph are not accepted.

Just because there are never "disputes" in the Council Chambers does not mean that decision making is not consistent with the local government principle of 'transparent and effective processes and decision making in the public interest'.

Robust discussion on contentious matters in the Council Chambers is a feature of this Council. To make this insinuation without attending a Council meeting is inappropriate. It is not clear from the report whether questions were asked as to whether robust debate occurs in the Council Chambers. If this question was asked, the answer has clearly been omitted.

On a personal note, I have been attending Council meetings now for four years and have regularly witnessed robust debate. To suggest to the contrary, whether specifically or by omission of the facts is completely inappropriate.

A simple review of newspaper articles on split votes, or in many instances, unanimous votes, would support this position. They generally report on robust discussion fairly well.

¹⁷ See s.4(2)(a) of the LGA.

**Ombudsman's
comment on the
response**

It is correct that the statutory requirement for conflicts of interest to be declared does not apply in meetings other than ordinary council meetings or committee meetings. As a general rule, it is not considered to be necessary for conflicts of interest to be declared in other meetings, as decisions are not made in these meetings. If, however, there is a situation where important aspects of a decision-making process are occurring in a meeting other than an ordinary council meeting or committee meeting, it becomes very relevant how conflicts of interest are dealt with in that meeting, if transparency and accountability are to be maintained.

The comment regarding minutes not being taken, is not to suggest that they are specifically required for a meeting of this nature, but to observe that their absence means that it is not possible to verify the evidence of councillors concerning the way in which conflicts of interest are dealt with in such meetings.

I note the submission of the CEO regarding his perception of council meetings and the robustness of the discussions in those meetings. I also, however, note the evidence of councillors interviewed, which included evidence that most matters go to the council meeting with all councillors knowing how it is going to turn out and that there is a policy of not having disagreements in public. That evidence is set out in the report. My comments are based on the evidence provided by councillors during interview and I maintain that those comments are appropriate having regard to that evidence.

To be clear, I have not made a finding that council has failed to comply with the local government principle of 'transparent and effective processes, and decision-making in the public interest'. I have just made the observation that the practices described by councillors place council at significant risk of failing to comply with the principle. A finding would only be made following a specific investigation of the issue.

4.2 Extent of disclosure of conflicts of interest and their nature

4.2.1 Evidence

The investigation considered whether the declarations made by councillors were sufficient to achieve transparency and accountability, particularly as they relate to electoral donations.

Section 173(8)(b) of the LGA requires the minutes to state 'the nature of the personal interest, as described by the councillor'.

Section 173(4) states 'The councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way.'

A review of the minutes of council meetings showed that the reason for a conflict of interest is often stated to be 'due to campaign donations' or 'due to ... receiving an electoral donation from the applicant'.

The CEO advised during interview that it is possible to determine, from publicly available information, the timing and amount of an electoral donation because the agenda will state who the applicant is. The councillor's Register of Interests and ECQ return list all donors along with the amount and timing of donations. The applicant's name can therefore be matched against these documents to check for any donations.

During interview, two councillors commented that the amount of a donation is irrelevant on the basis that no favours are given in return for a donation so the only matter of relevance was whether a donation was made, so that a declaration could be made when required. They did note, however, that the amount of a donation may influence people's perception of the matter in that, if a large donation is made, people may think the donor wanted something.

A review of council agendas and minutes revealed that:

- the item description rarely contains the applicant's name
- for items considered during open sessions, both the landowner and applicant are generally listed in the agenda papers
- for items considered during closed sessions, the applicant's name is not generally listed.

Some declarations of conflict of interest were examined in more detail. The following is a case study in relation to those declarations.

Case Study

The following was noted:

- a company was listed in the ECQ return relating to several councillors as having made an electoral donation to the councillors and this company will be referred to as Company A
- the ECQ returns showed when the donation was made and the amount of the donation
- this Office was advised that Company B and Company C were related to Company A
- the naming conventions of the companies are such that Company B and Company C could not be easily connected to Company A, although they could be connected to each other
- a search conducted with the Australian Securities and Investments Commission (ASIC) showed that the sole director of Company A is Director 1
- further ASIC searches showed the sole director of Company B and Company C is also Director 1.

Example 1

- Conflicts of interest were declared in respect of an item in the Closed Session of an ordinary meeting of council on the basis of the applicant being a donor.
- As it was a closed session item, there were no papers included with the agenda and the name of the agenda item did not specify who the applicant was.
- The minutes did, however, set out the resolutions arising from the discussion and one resolution mentioned Company C in such a way that it would appear Company C may be the applicant.

It is noted that the donation was stated to be from the applicant. It appears that the applicant may have been Company C. Company C was not a donor. It therefore appears that the declaration was not technically correct. The associated Company A was the donor, however, there was no way to connect the two on the face of the matter having regard to the names of Company A and Company C.

Example 2

- Conflicts of interest were declared in respect of an item in the Open Session of a P&E Committee meeting 'due to campaign donations'.
- The agenda papers for the meeting showed that Company B was the applicant.

It is noted that Company B was the applicant, however, Company A was the donor. There was no way to connect the two on the face of the matter having regard to the names of Company A and Company B.

Example 3

- Conflicts of interest were declared in respect of an item in the Open Session of a P&E Committee meeting due to receipt of an 'electoral donation from a director of the applicant'.
- The agenda papers for the meeting showed that Company B was the landowner and applicant.

It is noted that the donation was stated to be from a director of the applicant. The applicant was Company B and its director is Director 1. Director 1 is not a donor and therefore it appears the declaration is not technically correct. Company A is the donor, however, there was no way to connect the two on the face of the matter having regard to the names of Company A and Company B.

Example 4

- Conflicts of interest were declared in respect of an item in the Open Session of an ordinary meeting of council due to receipt of an 'electoral donation from a Director of the applicant company and other companies associated with that Director'.
- The agenda papers for the meeting showed that Company B was the landowner and applicant.

It is noted that the donation was stated to be from 'a Director of the applicant company and other companies associated with that Director'. The applicant was Company B and its director is Director 1. Director 1 is not a donor, and in this respect the declaration is not technically correct. It is correct, however, in its reference to 'other companies associated with that director', as the donor is Company A which is a company associated with Director 1. Again, on its face, there is no way to connect the applicant (Company B) with the donor (Company A) having regard to the names of the two companies.

4.2.2 Analysis

Section 173(4) requires a councillor to deal with a real conflict of interest or perceived conflict of interest 'in a transparent and accountable way.'

The terms 'transparent' and 'accountable' are not defined in the LGA. In considering the dictionary definition, 'transparent' can be defined as 'open, frank, or candid; open to public scrutiny, as government or business dealings; easily seen through or understood; manifest or obvious'.¹⁸ Accountable can be defined as 'liable to be called to account; responsible to a person for an act; that can be explained'.¹⁹

As the obligation in s.173(4) is stated in very general terms, it is useful to then consider what dealing with a conflict of interest in a transparent and accountable way may look like in a practical sense in different scenarios. In the context of this investigation, it is relevant how a councillor would, during a council meeting, deal with a conflict of interest arising from an electoral donation in a transparent and accountable way.

I consider that, in such circumstances, for a conflict of interest to be dealt with in a way that is 'open to public scrutiny' and 'easily seen through or understood' an interested observer would need to know how much the donation was, when it was received and, to a lesser extent, who it was from. This would help them to understand the extent of the conflict of interest and inform their view as to how it should appropriately be dealt with

¹⁸ Macquarie Concise Dictionary, Fifth Edition, page 1344.

¹⁹ Macquarie Concise Dictionary, Fifth Edition, page 8.

and whether the councillor has achieved this. In this way, the councillor would be 'liable to be called to account'. I therefore consider that information as to the amount and timing of an electoral donation would be the minimum information required to be disclosed to achieve transparency and accountability.

Some may argue that, so long as a declaration is made, information as to the amount and timing of electoral donations is irrelevant because donations are not received on the understanding that favours will be given in return. I consider, however, that it is highly relevant to the way in which the community perceives an electoral donation and the effect it may have on a councillor's decision-making. It is fanciful to suggest that the conflict of interest arising from a recent donation of \$50,000 will be perceived the same way as that arising from a \$200 donation five years earlier. In this regard, I consider that the amount and timing of donations is information critical to a meaningful assessment of a conflict of interest and how it should be dealt with.

Registers of Interests, ECQ returns and meeting minutes are all part of a framework of accountability. Working correctly, this framework should make it possible for members of the community to link the information contained in all three to determine the real nature and extent of a councillor's conflicts of interest which, as previously stated should include the amount and timing of an electoral donation.

Despite the CEO's evidence that it is possible to determine the amount and timing of electoral donations from the meeting minutes, registers of interests and ECQ returns, an examination of the case study does not support this assertion. Without specific advice as to the connection between Company A and Company B and C, it would not be likely that an interested observer would discover that they were associated. Without conducting ASIC searches, it would not be possible for an interested observer to determine that the three companies had the same director. Even if a connection was readily apparent on the face of the matter, perhaps through the naming of the companies, it would be necessary for an interested observer to conduct company searches to confirm the links. The critical point is that, without knowledge of the link between the applicant and the electoral donor, the electoral donor relevant to a conflict of interest declaration cannot be identified. In these circumstances, it is not possible to determine the amount and timing of the donation from the Register of Interests or ECQ return. It should not be necessary for an interested observer to conduct company searches to obtain information about an electoral donation.

While it is acknowledged that there will be cases where it is possible to determine the amount and timing of an electoral donation from the information in the agenda/minutes by reference to the ECQ return, in practice, as demonstrated by the case study, it is not always possible. The task of matching the information is made more difficult due to declarations not always being technically correct. Also, the matching of information will be more difficult where a matter is considered in closed session as often in this circumstance the applicant's name may not be available.

This then raises the question as to whether councillors have complied with s.173(4) of the LGA, that is, whether conflicts of interest are being dealt with in a transparent and accountable way. I find it difficult to conclude that, in circumstances where it is not possible to discern from information readily available to the public, the amount and timing of a donation received by a councillor, the conflict of interest has been dealt with in a transparent and accountable way. In this regard, having regard solely to s.173(4), I do not consider that s.173(4) is complied with in all matters.

I note, however, that other sub-sections are also relevant, most particularly s.173(8) of the LGA, which lists what must be recorded in the minutes of the meeting where a councillor has a real or perceived conflict of interest.

Section 173(8)(b) of the LGA requires the minutes to state 'the nature of the personal interest, as described by the councillor'. Declarations made by councillors generally contain wording such as 'due to campaign donations' or 'due to ... receiving an electoral

donation from the applicant'. I consider that this wording is sufficient to meet the requirements of s.173(8)(b). Section 173(8) does not contain any other requirements that may be relevant to uncovering the amount and timing of an electoral donation.

While a comprehensive audit of the conflict of interest declarations made by councils within Queensland has not been undertaken, a brief review of the conflict of interest declarations of several other Queensland councils revealed that their conflict of interest declarations are similar to those made by this council.

As a result of the way in which s.173 is being applied by this council and at least some other Queensland councils, the conflict of interest declarations being made appear to comply with the specific requirements of s.173(8). However, questions remain as to whether the general requirement in s.173(4), for a conflict of interest to be dealt with in a transparent and accountable way, is being met.

Whether councillors could be considered to have complied with s.173(4) then becomes a matter of statutory interpretation. Exactly how to interpret the operation of the general subsection (ss.(4)) in light of the specific subsection (ss.(8)) is not clear.

It is noted that one purpose of the LGA is to provide for 'a system of local government in Queensland that is accountable, effective, efficient and sustainable'.²⁰ One of the local government principles is 'transparent and effective processes, and decision-making in the public interest'.²¹ Focusing in particular on the principle of transparent decision-making, I question the extent that decision-making could be considered transparent in circumstances where councillors do not need to disclose information about conflicts of interest that is highly relevant to how the conflict of interest should be dealt with and the judgement of the public as to whether it has been dealt with appropriately.

Having regard to my comments above, I do not consider that s.173(4) and s.173(8) complement each other in fulfilling the local government principles as they relate to transparent decision-making. Ultimately, it should not be necessary for anyone to undertake an extensive exercise in statutory interpretation to determine the obligations of councillors. What is expected of councillors should be clear and indisputable. I consider that s.173 of the LGA should be reviewed in order to achieve this.

I note that a recent review into councillor complaints²² considered the definition of 'misconduct' and recommended that it include 'failure to declare and resolve conflict of interest at a meeting in a transparent and accountable way'. The government's response²³ was that it would 'further investigate ways of ensuring conflicts of interest at a meeting are dealt with in a transparent and accountable way'. Having regard to this, it would seem that the issue is on the government's agenda for review. The comments in this report may assist the government in its review.

I form the following opinion and make the following recommendation to the department:

Opinion 3

Section 173(4) and s.173(8) of the LGA create uncertainty in terms of what is expected of councillors when making conflict of interest declarations during meetings.

²⁰ Section 3(b) of the LGA.

²¹ Section 4(2)(a) of the LGA.

²² Councillor Complaints Review – A fair, effective and efficient framework – Report by the Independent Councillor Complaints Review Panel – Dr David Solomon AM, Noel Playford OAM, Gary Kellar PSM – January 2017.

²³ Queensland Government response to the report by the independent councillor complaints review panel, 'Councillor Complaints Review: A fair, effective and efficient framework', July 2017 – tabled in Queensland Parliament on 20 July 2017.

Recommendation 3

The Director-General of the Department of Infrastructure, Local Government and Planning consider and advise the government on necessary amendment to s.173(4) and s.173(8) of the LGA to clearly set out what is required to be disclosed by councillors to achieve transparency and accountability in relation to the declaration of conflicts of interest, including consideration of the amount and timing of an electoral donation.

Council's response to the proposed report

Council advised:

Section 4.2 contains general musings on the application and operation of the LGA. This is clear from Proposed Opinion 3 and Proposed Recommendation 3 which involve referral to the DG of DILGP.

Given the content and nature of this section, it is not believed that it needs to be included in a report specifically about Cairns Regional Council. This is a matter that the Ombudsman can take up separately and directly with the DG of the DILGP and it need not be referred to in any published report specific to the review of Cairns Regional Council.

It is therefore asked that this section be removed and the Ombudsman deal directly with the DG of DILGP.

Ombudsman's comment on the response

I consider the application and operation of s.173 of the LGA is very relevant to Cairns Regional Council because, in the absence of a view that the section creates uncertainty, the likely view would be that councillors have failed to comply with s.173(4).

The Ombudsman's role includes making recommendations considered appropriate to address systemic issues²⁴ and commentary regarding such issues adds to the public debate.

Department's response to the proposed report

The department advised:

The department notes Proposed Opinion 3 that there is uncertainty created by sections 173(4) and 173(8) of the LGA. Section 173(5) of the LGA is also relevant to this matter.

To address concerns about the lack of transparency with councillor declarations of material personal interests and conflicts of interest, the Bill proposes amendments to the LGA and to COBA that prescribes the level of detail councillors must provide in their declarations at council meetings.

Under the amendments proposed in the Bill, a councillor will be required to inform the meeting about their interest, including the following particulars of the interest:

- the nature of the interest
- if the councillor's personal interest arises because of the councillor's relationship with another person or the councillor received a gift from another person:

²⁴ See s.50(1)(d) of the Ombudsman Act which applies if the ombudsman considers any law under which, or on the basis of which, administrative action was taken should be reconsidered.

- the name of the other person
- the nature of the relationship
- the nature of the other person's interest in the matter
- for a gift received the day the gift was received.
- If the personal interest in the matter involves a monetary value
 - the value.

The Bill will also require the minutes and council's website to publish the particulars of the conflict of interest as described by the councillor in their declaration at the meeting.

Ombudsman's comment on the response	I note the department's response and consider that the amendments proposed in the Bill, most particularly the additional requirements with respect to the information to be disclosed in respect of gifts, would address the matters raised in Recommendation 3.
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4.3 Disclosure of how a councillor with a conflict of interest voted

4.3.1 Evidence

Pursuant to s.173(8)(d) of the LGA, where a councillor with a conflict of interest votes on a matter, it must be recorded in the minutes of the meeting how the councillor voted on the matter.

There are many examples within council minutes of instances where a councillor with a conflict of interest voted on a matter and the minutes, at the conclusion of the item, only state 'carried'.

During interview, the CEO and the HR Manager gave evidence that it is the practice of council to record a unanimous vote as 'carried' and, if any councillor votes against a matter, their name would be recorded as having voted against the motion, whether they specifically request their vote to be recorded or not.

The HR Manager advised that the ordinary meeting and each committee meeting has a set minute taker but the minute taker is different for each committee. The same pro forma documents are, however, used by all minute takers and they include, for each vote, a tick box for each councillor so that it is recorded how each councillor votes. The information about the vote is then abridged for the purposes of the minutes.

The understanding of councillors in terms of council's practices relating to recording the vote varied. While some councillors shared the understanding of the CEO and HR Manager, the majority of councillors understood 'carried' to mean the majority voted for the motion and that some councillors may have voted against the motion. Those councillors understood that, if a councillor votes against a motion and wants it to be noted in the minutes, they need to specifically ask.

4.3.2 Analysis

While I note the evidence of the CEO, HR Manager and some councillors regarding council's practices in terms of recording a unanimous vote as 'carried', the practice could be considered to be unusual, in that the ordinary meaning of the term 'carried' is that the majority voted for the motion and some councillors may have voted against it. The purpose of the minutes is to provide a record of the meeting for the reference of any person interested, not just council officers and councillors who may be aware of council's practices. Having regard to the ordinary meaning of the word 'carried', I do not consider that it could reasonably be said that a person looking at council's minutes would, on all occasions, be aware of how a councillor with a conflict of interest voted on a matter. In this respect, I do not consider that council always complies with s.173(8)(d) of the LGA.

I form the following opinion and make the following recommendation to council:

Opinion 4

It is not always possible to determine from the minutes of a meeting how a councillor who has declared a conflict of interest voted and, in this respect, council does not always comply with s.173(8)(d) of the LGA and this is administrative action taken contrary to law under s.49(2)(a) of the Ombudsman Act.

Recommendation 4

Council review its procedures in relation to the taking of minutes for council meetings to ensure the minutes make it clear how councillors with a conflict of interest vote on a matter.

Council's response to the proposed report

Council advised that recommendation 4 was implemented with effect from the Planning and Environment Committee meeting on 10 May 2017.

Ombudsman's comment on the response

Council's response is noted.

Department's response to the proposed report

The department advised that it notes Proposed opinion 4 and supports Proposed recommendation 4.

Ombudsman's comment on the response

The department's response is noted.

While s.173(8)(d) of the LGA makes it a requirement to state how councillors with a conflict of interest voted, it is not currently a requirement to state how each councillor voted in situations where there are conflicts of interest at play.

Despite the reality of the composition of council in Cairns,²⁵ to an outside observer, it would appear that council is split between the seven Unity Team members and three independent councillors. Where the seven Unity Team members all declare a conflict of interest, the minutes may state that the motion is carried and specify that the Unity Team members voted in favour of the motion, and this would comply with s.173(8)(d). In this scenario, the three independent councillors may have all voted for the motion or they may have all voted against the motion or some for and some against. In assessing the appropriateness of the actions of the seven Unity Team members, it would be highly relevant how the three independent councillors, who do not declare a conflict of interest, voted. There is currently no requirement in the LGA for this information to be included.

A requirement in the LGA for the minutes to state, in circumstances where one or more councillors has a conflict of interest and participated in the vote, how all councillors voted, may improve transparency. This is particularly the case where councils may be split along group or party lines, however, may be also relevant in any situation in which the majority of councillors have a conflict of interest.

²⁵ See Chapter 2.1 in this regard.

Chapter 5: Register of Interests

Chapter 5 considers how well councillors complied with legislative requirements regarding their Register of Interests.

5.1 Evidence

Requirements generally

The LGR²⁶ sets out the requirements in relation to a councillor's Register of Interests. Schedule 5 outlines the financial and non-financial particulars that must be included in a Register of Interests. The Register of Interests must include the particulars for 'each gift, or all gifts totalling, more than \$500 in amount or value'.²⁷

The LGE Act requires the submission of an ECQ return if, during the disclosure period for an election, 'a gift of a value equal to or more than \$500' is received by the candidate or group.²⁸

Councillors receive reminders from time to time about updating their Register of Interests although, at interview, most were uncertain as to how often these reminders are provided. Councillors reported reviewing their Register of Interests occasionally and advised that they definitely review it when there is any change.

Section 171B of the LGA states that a councillor has 30 days to update their Register of Interests after the interest arises or the change happens. While some councillors were aware of this requirement, some were uncertain and one believed they may have 14 weeks for any update to be undertaken.

There was a range of views expressed by councillors as to how long a donation should stay on their Register of Interests. Most believed they should stay on the Register of Interests indefinitely and some believed they should stay on for the electoral term.

Councillors' Register of Interests

During investigation, the Register of Interests for each councillor was considered as was their ECQ returns.

Each councillor had a Register of Interests. An ECQ return was lodged in respect of the 2016 local government election for the following:

- each of the independent councillors
- the Unity Team
- an additional separate return for one member of the Unity Team.

During interviews with councillors, the following matters were noted with regard to the section of their Register of Interests titled 'Gifts over \$500 or all gifts totalling more than \$500':

- several Unity Team members had the words:

The Unity Team 2012 received gifts from various individuals and organisations for the election. A return listing these gifts has been lodged with the Electoral Commission of Queensland in accordance with the Local Government Electoral Act 2011.

²⁶ Chapter 8, Part 5.

²⁷ Section 12, Schedule 5, LGR.

²⁸ See s.117 and s.118 of the LGE Act. These sections were amended on 14 July 2017. Previously, an ECQ return was required to be submitted if the total value of all gifts made by the person to the (candidate/group) during the (candidate's/group's) disclosure period was \$200 or more.

No reference was made to the ECQ return lodged in respect of the 2016 local government elections which included gifts totalling more than \$500.

- one or more independent councillors did not have any gifts listed despite donations being listed in their ECQ return totalling more than \$500.
- the Unity Team member who also had an additional separate ECQ return listed the gifts set out in their individual ECQ return but did not list or refer to the gifts listed in the Unity Team ECQ return totalling more than \$500.

There was some confusion among councillors as to the interplay between the ECQ return and the Register of Interests and whether, if a donation is referred to in the ECQ return, it needs to also be referred to in the Register of Interests.

The notes at the back of the Register of Interests form²⁹ in relation to the section titled 'Gifts over \$500 or all gifts totalling more than \$500' state 'Includes election donations made to an individual councillor and election donations made to a group of candidates of which the councillor is associated with.'

Following interviews, councillors considered their positions regarding their Register of Interests and most have now been updated to address the issues raised.

Process for updating Register of Interests

Council provided evidence as to the usual process for the updating of a councillor's Register of Interests. A council officer provides support to councillors in updating their Register of Interests. In the past, the process has involved:

- the council officer printing a hard copy of the councillor's existing register
- the councillor making hand written changes and returning it to the council officer
- the council officer typing the changes, inserting an electronic signature, and referring it to the councillor for approval
- once approved, the council officer ensuring it is filed correctly in council's recordkeeping system and is provided to the CEO's office for filing and subsequent publishing.

There was some evidence of delays being experienced in this process, resulting in updates to councillors' Register of Interests not being progressed in a timely manner. There was also inconsistent evidence as to whether the updated Register of Interests, with the electronic signature, was provided to councillors for approval prior to the document being published on council's website. Some, which were dated incorrectly, were published on council's website.

The CEO has recently issued the following email direction to councillors:

Further to recent discussions, please be advised that ... will continue to assist by typing any changes you may have to your register of interests. These will be completed as a priority and provided to you in hard copy for your review. Once you are happy, you will be required to sign and date the documents and return them to ... who will arrange for filing and publication on the internet. I have instructed ... to cease using electronic signatures on these documents and you will be required to manually sign and date them in each instance.

²⁹ Version No: January 2014 and Version No: January 2017.

5.2 Analysis

Some councillors did not in all respects demonstrate a good understanding of the requirements in relation to their obligations regarding the Register of Interests. The LGA requires them to make any corrections within 30 days of an interest arising or a change happening, although most were not aware of the timeframe allowed.

While the legislation does not appear to specify how long a donation must remain on a Register of Interests, I consider the better view would be that it would remain on the councillor's Register of Interests while they remain a councillor.

A number of councillors misunderstood and/or failed to meet the requirements concerning the disclosure of gifts on their Register of Interests. Any confusion as to what gifts should be included could have been addressed by reading the notes attached to the Register of Interests, which specify that electoral donations should be included.

When making reference to an ECQ return in their Register of Interests, councillors should be careful to refer to all relevant returns. Also, the ECQ website currently contains the returns from the 2012 and 2016 local government elections only. Councillors referring to ECQ returns must ensure that all returns referred to are available.

While some councillors did not meet the requirements concerning the disclosure of gifts on their Register of Interests, there is no evidence of an intention by any councillor to hide donations, noting that donations were in the public domain in that they were listed in relevant ECQ returns.

Given the penalties which apply if a councillor does not keep their Register of Interests updated,³⁰ it is imperative that councillors take personal responsibility for the completion of their Register of Interests. While councillors may accept assistance in the form of administrative support for this task, the process should be such that they personally review the document before it is formally submitted to the CEO. It would not be at all prudent for a councillor to rely on another person to make changes to their Register of Interests and submit it to the CEO without their personal attention to it. Where the process involves the use of electronic signatures, there is a risk that this will not occur in all instances. It is noted that council's processes have recently changed in order to address this issue.

I form the following opinion and make the following recommendation:

Opinion 5

A number of councillors did not comply with s.171B of the LGA in that their Register of Interests did not contain all gifts required to be included and this is administrative action taken contrary to law under s.49(2)(a) of the Ombudsman Act.

Recommendation 5

Council take appropriate action to ensure that councillors understand the need to personally make sure that their Register of Interests is kept correct and complete.

³⁰ For intentional noncompliance, the maximum penalty is 100 penalty units and, for unintentional noncompliance, the maximum penalty is 85 penalty units – see s.171B(2) of the LGA.

Council's response to the proposed report

Council advised:

Councillors have been reminded of the need to keep their Register of Interest up to date. This reminder is sent on a quarterly basis.

There have been changes to internal administrative processes also to streamline the publication of amended Registers as they are received.

Ombudsman's comment on the response

Council's response is noted.

Department's response to the proposed report

The department advised that it notes Proposed opinion 5 and supports Proposed recommendation 5.

Ombudsman's comment on the response

The department's response is noted.

Chapter 6: Conclusion

The purpose of commencing this investigation was to determine whether council and councillors comply with relevant legislative and policy requirements and act reasonably in relation to the disclosure and management of councillors' conflicts of interest.

Some of the issues considered are unique to councils which have a group of councillors operating within it. The other issues discussed are relevant to all councils and councillors throughout Queensland.

The investigation did not identify wilful non-compliance with any legislative requirements by council or councillors, and observed that councillors went to some effort to comply. It did identify, however, a lack of understanding of a number of requirements and a sense of complacency by some councillors in respect of matters which were their own personal responsibility.

The collegiality enjoyed among councillors is likely the reason some of these issues have not otherwise been explored before this time, noting that in councils with a different level of co-operation, the issues are such that they would likely have been ventilated in the short term.

The investigation found that:

- the current practice of councillors declaring conflicts of interest as a group does not comply with the requirements of s.173(5) of the LGA
- the practice of all Unity Team members using s.173(7) of the LGA to stay in a meeting to maintain a quorum, in circumstances where it is not necessary for all members to stay to maintain a quorum, does not comply with s.173(7) of the LGA
- it is not always possible to determine from the minutes of a meeting how a councillor who has declared a conflict of interest voted and, in this respect, council does not always comply with s.173(8)(d) of the LGA
- a number of councillors did not comply with s.171B of the LGA in that their Register of Interests did not contain all gifts required to be included.

This report outlines what actions can be taken by council to achieve compliance with legislative requirements.

Other matters identified for consideration and/or monitoring by council/councillors included:

- the correct quorum for the P&E Committee and the correct process to effectively delegate council's powers to a committee of council
- whether the pre-meeting meeting attended by councillors and the Executive Manager complies with the local government principle of 'transparent and effective processes, and decision-making in the public interest'.

Section 173(4) of the LGA requires councillors to deal with conflicts of interest in a 'transparent and accountable way'. It appears that the focus of disciplinary bodies, and consequently councillors, is on ensuring conflicts of interest are declared where appropriate. The basis for this appears to be that, once a conflict of interest is declared, it is generally considered to be transparent. In terms of accountability, it is then left largely to the court of public opinion as to whether the councillor in question has dealt appropriately with that conflict of interest, the day of judgement being the day upon which the next local government election is held.

Fundamental to this reasoning is that there is true transparency, in that the information readily available in the public arena, is sufficient to allow the public to properly judge whether the conflict of interest has been appropriately dealt with. Based on the observations in this report, this is not always the case, in that it is not always possible to

determine from conflict of interest declarations, the amount and timing of relevant electoral donations.

In considering the legislative requirements around conflict of interest declarations, I noted that s.173(4) and s.173(8) of the LGA do not complement each other in fulfilling the local government principles as they relate to transparent decision-making. The investigation found that s.173(4) and s.173(8) create uncertainty in terms of what is expected of councillors when making conflict of interest declarations during meetings. I referred this issue to the department for its consideration. The department considered the findings and recommendations contained in my proposed report as part of its analysis feeding into the preparation of the Bill.

Members of the public should not be required to expend significant time or effort to determine the true nature and extent of a councillor's conflict of interest. This is information that should be readily available so that an informed judgement concerning how they have dealt with the conflict of interest can be made, for it is these judgements which underpin our system of popular government.

Appendix A: Jurisdiction and procedural fairness

Ombudsman jurisdiction

The Ombudsman is an officer of the Queensland Parliament empowered to deal with complaints about the administrative actions of Queensland government departments, public authorities and local governments. As council is an 'agency' for the purposes of the *Ombudsman Act 2001* (the Ombudsman Act), it follows that I may investigate its administrative actions.

Under the Ombudsman Act, I have authority to:

- investigate the administrative actions of agencies on complaint or on my own initiative (without a specific complaint)
- make recommendations to an agency being investigated about appropriate ways of addressing the effects of inappropriate administrative actions and improving its practices and procedures
- consider the administrative practices of agencies generally and make recommendations, or provide advice, training, information or other help to improve practices and procedures.

The Ombudsman Act outlines the matters about which the Ombudsman may form an opinion before making a recommendation to the principal officer of an agency. These include whether the administrative actions investigated are contrary to law, unreasonable, unjust or otherwise wrong.

Although the Ombudsman is not bound by the rules of evidence, the question of the sufficiency of information to support an opinion of the Ombudsman requires some assessment of weight and reliability. The standard of proof applicable in civil proceedings is proof on the balance of probabilities. This essentially means that, to prove an allegation, the evidence must establish that it is more probable than not that the allegation is true. Although the civil standard of proof does not strictly apply in administrative decision-making (including the forming of opinions by the Ombudsman), it provides useful guidance.

'Unreasonableness' in the context of an Ombudsman investigation

In expressing an opinion under the Ombudsman Act that an agency's administrative actions or decisions are 'unreasonable', I am applying its popular, or dictionary, meaning. I am not applying the doctrine of legal unreasonableness applied by the Courts when judicially reviewing administrative action.

Procedural fairness

The terms 'procedural fairness' and 'natural justice' are often used interchangeably within the context of administrative decision-making. The rules of procedural fairness have been developed to ensure that decision-making is both fair and reasonable.

The Ombudsman must also comply with these rules when conducting an investigation. Further, the Ombudsman Act provides that, if at any time during the course of an investigation it appears to the Ombudsman that there may be grounds for making a report that may affect or concern an agency, the principal officer of that agency must be given an opportunity to comment on the subject matter of the investigation before the final report is made.

A proposed report was provided to council to satisfy this requirement and council was invited to make a submission in response. The department was also provided the opportunity to make submissions regarding the proposed report. In reaching a final view in relation to this matter, I have taken into account submissions received from council and from the department.

Section 55(2) of the Ombudsman Act provides that I must not make adverse comment about a person in a report unless I give that person an opportunity to make submissions about the proposed adverse comment. The person's defence must be fairly stated in the report if the Ombudsman still proposes to make the comment.

Councillors were provided the opportunity to make submissions regarding the proposed report, however, no submissions were received from individual councillors.

Appendix B: Legislation

Ombudsman Act 2001

Section 12 of the *Ombudsman Act 2001* (Ombudsman Act) states:

The functions of the ombudsman are—

- (a) to investigate administrative actions of agencies—
 - (i) on reference from the Assembly or a statutory committee of the Assembly; or
 - (ii) on complaint; or
 - (iii) on the ombudsman's own initiative; and
- (b) to consider the administrative practices and procedures of an agency whose actions are being investigated and to make recommendations to the agency—
 - (i) about appropriate ways of addressing the effects of inappropriate administrative actions; or
 - (ii) for the improvement of the practices and procedures; and
- (c) to consider the administrative practices and procedures of agencies generally, and to make recommendations or provide advice, training, information or other help to the agencies about ways of improving the quality of administrative practices and procedures; and
- (d) to provide advice, training, information or other help to agencies, in particular cases, about ways of improving the quality of administrative practices and procedures; and
- (e) the other functions conferred on the ombudsman under this or any other Act.

Section 18(1) of the Ombudsman Act states:

The ombudsman may investigate administrative action of an agency if—

- (a) a complaint is made about the administrative action; or
- (b) the ombudsman otherwise considers the administrative action should be investigated.

Local Government Act 2009

Section 4 of the *Local Government Act 2009* (LGA) outlines the local government principles which underpin the LGA. Section 4(2) states:

The **local government principles** are –

- (a) transparent and effective processes, and decision-making in the public interest; and
- (b)-(e) ...

Section 171B of the LGA deals with the obligation of a councillor to correct their register of interests and states:

- (1) This section applies if—
 - (a) a councillor has an interest that must be recorded in a register of interests under a regulation in relation to the councillor or a person who is related to the councillor; or
 - (b) there is a change to an interest recorded in a register of interests under a regulation in relation to a councillor or a person who is related to a councillor.

Note—

See the *Local Government Regulation 2012*, chapter 8, part 5 (Register of interests).

- (2) The councillor must, in the approved form, inform the chief executive officer of the particulars of the interest or the change to the interest within 30 days after the interest arises or the change happens.
Maximum penalty—
 - (a) if the councillor fails to comply with subsection (2) intentionally—100 penalty units; or
 - (b) otherwise—85 penalty units.

Note—

Under section 153(5), an offence against subsection (2) is an integrity offence if a person is convicted of an offence to which a penalty under maximum penalty, paragraph (a) applies.

- (3)...

Section 173 of the LGA, which deals with councillor's conflict of interest at a meeting, states:

- (1) This section applies if—
 - (a) a matter is to be discussed at a meeting of a local government or any of its committees; and
 - (b) the matter is not an ordinary business matter; and
 - (c) a councillor at the meeting—
 - (i) has a conflict of interest in the matter (the **real conflict of interest**); or
 - (ii) could reasonably be taken to have a conflict of interest in the matter (the **perceived conflict of interest**).
- (2) A **conflict of interest** is a conflict between—
 - (a) a councillor's personal interests; and
 - (b) the public interest;that might lead to a decision that is contrary to the public interest.
- (3) However, a councillor does not have a conflict of interest in a matter—
 - (a) merely because of—
 - (i) an engagement with a community group, sporting club or similar organisation undertaken by the councillor in his or her capacity as a councillor; or
 - (ii) membership of a political party; or
 - (iii) 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
 - (iv) the councillor's religious beliefs; or
 - (v) the councillor having been a student of a particular school or the councillor's involvement with a school as parent of a student at the school; or
 - (b) if the councillor has no greater personal interest in the matter than that of other persons in the local government area.
- (4) The councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way.
- (5) Without limiting subsection (4), the councillor must inform the meeting of—
 - (a) the councillor's personal interests in the matter; and
 - (b) if the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest.
- (6) Subsection (7) applies if a quorum at the meeting can not be formed because the councillor proposes to exclude himself or herself from the meeting to comply with subsection (4).
- (7) The councillor does not contravene subsection (4) by participating (including by voting, for example) in the meeting in relation to the matter if the attendance of the councillor, together with any other required number of councillors, forms a quorum for the meeting.
- (8) The following must be recorded in the minutes of the meeting, and on the local government's website—
 - (a) the name of the councillor who has the real or perceived conflict of interest;
 - (b) the nature of the personal interest, as described by the councillor;
 - (c) how the councillor dealt with the real or perceived conflict of interest;
 - (d) if the councillor voted on the matter—how the councillor voted on the matter;
 - (e) how the majority of persons who were entitled to vote at the meeting voted on the matter.
- (9) For subsection (2), a councillor who is nominated by a local government to be a member of a board of a corporation or other association does not have a personal interest merely because of the nomination or subsequent appointment as the member.
- (10) To remove any doubt, it is declared that nonparticipation in the meeting is not the only way the councillor may appropriately deal with the real or perceived conflict of interest in a transparent and accountable way.

Division 6 of part 2 of chapter 6 of the LGA deals with the conduct and performance of councillors. In this context, s.176(3) defines misconduct as follows:

Misconduct is conduct, or a conspiracy or attempt to engage in conduct, of or by a councillor—

- (a) ... or
- (b) ... or
- (c) ... or
- (d) that contravenes section 171(3) or 173(4).

Local Government Regulation 2012

In respect of the quorum at meetings, s.259 of the Local Government Regulation 2012 (LGR) states:

- (1) A quorum of a local government is a majority of its councillors.
- (2) However, if the number of councillors is an even number, one-half of the number is a quorum.

Section 269 of the LGR states:

- (1) A quorum of a committee is a majority of its members.
- (2) However, if the number of members is an even number, one-half of the number is a quorum.

Section 291(1) of the LGR states:

The register of interests of each of the following persons must contain the financial and non-financial particulars mentioned in schedule 5 for an interest held by the person—

- (a) a councillor;
- (b) (c) (d) ...

In respect of gifts totalling more than \$500, paragraph 12 of schedule 5 of the LGR states:

- (1) The particulars required for each gift, or all gifts totalling, more than \$500 in amount or value given to a relevant person by another person (a **donor**) are—
 - (a) the donor's name; and
 - (b) a description of the gift.
- (2) (3) (4) ...

Local Government Electoral Act 2011

Section 117 of the *Local Government Electoral Act 2011* (LGE Act), which relates to gifts to candidates, states:

- (1) Subsection (2) applies if, during a candidate's disclosure period for an election, the candidate receives a gift of a value equal to or more than \$500.
- (2) The candidate must give the electoral commission a return about the gift on or before the disclosure date for the return.
- (3) Each return must—
 - (a) be in the approved form; and
 - (b) state the relevant details for the gift.
- (4) Also, the candidate must, within the required period for the election, give the electoral commission a return in the approved form, stating—
 - (a) if the candidate received gifts during the disclosure period—
 - (i) the total value of all gifts received during the disclosure period; and
 - (ii) the number of entities that gave the gifts; or
 - (b) otherwise—that no gifts were received during the disclosure period.
- (5) For subsection (1), the value of a gift is taken to include the value of all other gifts previously given to the candidate by the same entity during the candidate's disclosure period.
- (6) A candidate need not comply with this section if the candidate—

- (a) gives a return, in the approved form, to the electoral commission before making the declaration of office under the *Local Government Act 2009*, section 169 and the return states the candidate—
 - (i) does not expect to receive gifts in the candidate's disclosure period for the election after giving the return; and
 - (ii) will give returns under this section if gifts are received during the candidate's disclosure period for the election after giving the return; and
 - (b) does not receive gifts during the candidate's disclosure period for the election after giving the return.
- (7) If the electoral commission receives a return under subsection (2) from a candidate who is successful in an election, the electoral commission must give a copy of the return to the chief executive officer of the local government for which the election was held.
- (8) This section does not apply to a candidate who is a member of a group of candidates.

Section 118 of the LGE Act, which relates to gifts to groups of candidates, states:

- (1) Subsection (2) applies if, during the disclosure period for an election for a group of candidates, a member of the group, or a person acting on behalf of the group, receives a gift of a value equal to or more than \$500.
- (2) The group's agent must give the electoral commission a return about the gift on or before the disclosure date for the return.
- (3) Each return must—
 - (a) be in the approved form; and
 - (b) state—
 - (i) the names of the candidates forming the group; and
 - (ii) the name, if any, of the group; and
 - (iii) the relevant details for the gift.
- (4) Also, the agent must, within the required period for the election, give the electoral commission a return in the approved form, stating—
 - (a) if any members of the group, or a person acting on behalf of the group, received gifts during the disclosure period—
 - (i) the total value of all gifts received during the disclosure period; and
 - (ii) the number of entities that gave the gifts; or
 - (b) otherwise—that no gifts were received by any member of the group, or a person acting on behalf of the group, during the disclosure period.
- (5) For subsection (1), the value of a gift is taken to include the value of all other gifts previously given to any member of the group, or a person acting on behalf of the group, by the same entity during the group's disclosure period.
- (6) The agent need not comply with this section if—
 - (a) each candidate who is a member of the group gives a return, in the approved form, to the electoral commission before making the declaration of office under the *Local Government Act 2009*, section 169 and the return states—
 - (i) the candidate does not expect the group to receive further gifts during the group's disclosure period for the election after giving the return; and
 - (ii) the group's agent will give a return under this section if further gifts are received during the group's disclosure period for the election after giving the return; and
 - (b) the group does not receive further gifts during the group's disclosure period for the election after giving the return.
- (7) If the electoral commission receives a return under subsection (2) from the agent of a group of candidates, any of whom are successful in an election, the electoral commission must give a copy of the return to the chief executive officer of the local government for which the election was held.

The Schedule to the LGE Act defines 'group of candidates' as:

- 1 A *group of candidates*, for an election, means a group of individuals, each of whom is a candidate for the election, if the group was formed—

- (a) to promote the election of the candidates; or
 - (b) to share in the benefits of fundraising to promote the election of the candidates.
- 2 However, a *group of candidates*, for an election, does not include a political party or an associated entity.