

CITY OF BELMONT

Quasi – Judicial Role Of Councillors

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Are you seeking the support of a Councillor(s) in support of or in opposition to a development application?

Are you wanting to involve Councillors in a review of a Council decision on an application?

Are you requesting Councillors assistance in your application for a licence or permit?

If you are seeking any of the above the following information is provided to assist you to understand the 'Quasi-Judicial' role of Councillors and the associated obligations, which significantly affect the extent to which they can provide assistance.

What is a Quasi-Judicial Function?

'Quasi-Judicial' functions are those which involve the making of a decision by the Council in the exercise of a discretionary power. The whole and all parts of the decision making process must be conducted by Councillors in a judge like manner. This means that an application involving a Quasi Judicial function must be assessed against statutory requirements and is subject to the principles of natural justice and the controls available through administrative law.

What Does 'to act judicially' Mean?

A Councillor must show no bias or conflict of interest.

A Councillor must have no overriding obligation or loyalty to any Ward, organisation or person. A Councillor may be an advocate for a Ward, organisation or person, but this must be set aside when finally making a decision in good faith for the benefit of the entire community of the City.

A Councillor has an obligation to act and appear to act with complete judicial fairness.

A Councillor must make a decision on the merits of the case, based on the facts and the law applying at the time.

Councillors must make decisions by applying the law and Council policies as they exist, not on what they would like them to be or on their personal moral viewpoints.

What is the Role of a Councillor?

Councillors are required to have a clear understanding of their function and duty.

Councillors must perform their functions to the best of their ability and always act in 'good faith'. 'Good faith' is the making of decisions impartially and based on reasonable grounds.

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Lobbying or Contact with Councillors

Councillors when lobbied cannot commit, indicate or state their vote on a proposal. To do so would amount to 'bias' because Councillors, before making a decision, must consider all relevant facts, including the debate at the meeting. 'Bias' arises when a decision is not based on the merits of the case, or if it appears that way.

If contact is made with a Councillor on a matter that is before the Council, or likely to come before the Council, then discussion by the Councillor must be limited to the following:

- A request for the reason(s) for making contact, so this can be explained to Councillors and Officers;
- An explanation briefly by the Councillor of the Quasi-Judicial role of a Councillor;
- Advice that the Council will consider the application and an Officer report at a future Council meeting;
- Advice of the methods to inform Councillors, being to give a verbal submission through the Council's Agenda Briefing Forum, making a written submission, or requiring a site visit so that all Councillors can receive the same information;
- Information on the processes for making a verbal submission at the relevant Agenda Briefing Forum or for making a written submission; and
- Advice on the process for site visits.

A Councillor who becomes aware of additional relevant information when a quasi-judicial decision is required to be made must bring that information to the attention of all other Councillors at a briefing session or through a written notice to the Chief Executive Officer, who will bring the additional information to the attention of the Council.

Where a Councillor provides additional information, the Chief Executive Officer or other authorised Officer may provide advice on the additional information.

Site Visits

To avoid the perception of a Councillor(s) gaining special information, Councillors must not conduct site visits whilst acting in their Quasi-Judicial role. Councillors wishing to arrange site visits shall request this at the relevant Council's Agenda Briefing Forum. The Chief Executive Officer will then arrange a site visit as required.

The Chief Executive Officer or his nominee will advise the property owner or occupier of a site visit and invite the owner or occupier to be part of the onsite visit. The Chief Executive Officer must ensure that the relevant Director or other appropriate officers are present and that a written record is kept of the site visit.

A Councillor need not attend a site visit if the Councillor is familiar with the site or considers they have adequate information in order to make a decision.

External Viewings

Councillors when acting in a Quasi-Judicial role may pass by a site for the purpose of conducting an external viewing of a relevant site or location. A Councillor who conducts such a viewing must not enter the premises or discuss the matter with the applicant or another interested party whilst conducting the viewing.

Should a Councillor Attend Meetings with Officers?

Councillors should refuse an invitation to attend meetings with an applicant and the professional staff when dealing with a Quasi-Judicial matter. The presence of a Councillor at such meetings puts implied pressure on staff and inhibits free and frank discussion. If a Councillor attends such a meeting the applicant may construe the attendance of the Councillor who has heard the discussion, as being supportive of the applicant's case.

Can Councillors Accept Gifts?

The City of Belmont Code of Conduct prohibits Councillors accepting any gift when involved with a Quasi-Judicial matter.

Can Councillors Sign Petitions?

Councillors should not make public comment on a Quasi-Judicial matter that could be construed as support or opposition to it. This includes signing petitions, which could be seen as the Councillor trying to influence public opinion.

When Would Council Decisions be Invalid?

A decision of the Council might be invalid if it is made where any of the following could be demonstrated:

- Ultra vires. This means 'beyond powers' and refers to a decision being made outside the powers or authority granted by law;
- Bias;
- Improper purpose;
- Unreasonableness – Wednesbury Test (see below);
- Bad faith;
- Failure to consider relevant matters;
- Consideration of irrelevant matters;
- Error of law on the face of the record;
- Denial of natural justice;
- The perception of impropriety.

Note: The Wednesbury Test is as follows:

Where a decision is made, it can only be reviewed on appeal under this test if the decision was so unreasonable that no decision maker with all the facts before them could have reasonably made that decision.

For example, a condition of planning approval must:

- Be imposed for a planning purpose and not for any ulterior purpose;*
- Fairly and reasonably relate to the development permitted;*
- Not be so unreasonable that no reasonable planning authority could have imposed it.*

What is the Significance of 'Specialist' Advice?

Councillors have an obligation to give careful and balanced consideration to the Officer's advice as the City appoints Officers as experts to advise the Council.

Councillors have an obligation to give careful and balanced consideration to consultant advice. Councillors have an obligation to give fair and balanced consideration to all submissions.

Councillors should not make a decision unless they believe they have sufficient information. They should not try and negotiate with a person giving specialist advice to reach a compromise.

If Councillors believe they do not have sufficient information or are not clear on the issues, then they should seek to have the determination of the matter deferred, but it is essential in these circumstances that they act in good faith, and consider the interests that might be affected by a deferral.

Additional Information Sought by a Councillor

A Councillor wishing to receive additional information whilst acting in the Quasi-Judicial role must request the additional information through the Chief Executive Officer, either at the relevant Council's Agenda Briefing Forum or by written request.

The Chief Executive Officer will consider any requests for additional information in light of the relevance of the additional information requested and the organisation's resources and capacity to provide the required information.

Enquiries and Information

Please contact Council's Information Officers by phone on (08) 9477 7222 or by email at Belmont@belmont.wa.gov.au if you would like some assistance.