

Information Sheet – Quasi-Judicial Role of Elected Members

As an Elected Member, have you been contacted by a member of the public seeking your support of or opposition to a development application?

Have you been asked to be involved with the review of a Council decision on an application?

Have you been asked for help with an application for a licence or permit?

We hope the following information assists you to understand the 'Quasi-Judicial' role of Elected Members and the associated obligations which significantly impact whether you can.

What is a Quasi-Judicial function?

'Quasi-Judicial' functions are those which involve the making of a decision by the Council (the exercise of a discretionary power). The whole and all parts of the decision making process must be conducted by Elected Members 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.

this must be set aside when finally making a quasi-judicial decision in good faith for the benefit of the entire community of the City.

- Decide on the merits of the case, based on the facts and the law applying at the time.
- Make decisions by applying the law and Council policies as they exist, not on what they would like them to be or on your personal moral viewpoints.

An Elected Member has an obligation to act and appear to act with complete judicial fairness.

What is the role of an Elected Member and 'to act judicially' mean?

As an Elected Member you must:

- Have a clear understanding of your function and duty.
 - Perform your functions to the best of your ability and always in 'good faith'.
 - Show no bias or conflict of interest.
 - Have no overriding obligation or loyalty to any Ward, organisation or person.
- An Elected Member may be an advocate for a Ward, organisation or person, but

Lobbying or contact with Elected Members

Elected Members when lobbied cannot commit, indicate or state their vote on a proposal. To do so would amount to 'bias' because Elected Members, 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 you on a matter that is before the Council, or likely to come before the Council, then you must limit the discussion to the following:

- A request for the reason(s) for making contact, so this can be explained to Elected Members and Officers.
- Your brief explanation of the Quasi-Judicial role of an Elected Member.
- Advise that the Council will consider the application and an Officer report at a future Council meeting.
- Advise the methods to inform Elected Members, 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 Elected Members 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.
- Advice on the process for site visits.

An Elected Member who becomes aware of additional relevant information when a quasi-judicial decision is to be made must bring that information to the attention of all other Elected Members. This can be done via a briefing session or through a written notice to the Chief Executive Officer, who will bring the information to the attention of the Council.

Where an Elected Member provides additional information, the Chief Executive Officer may provide advice on this information.

Site Visits

Elected Members must not conduct site visits whilst acting in their Quasi-Judicial role. This is to avoid the perception of an Elected Member gaining special information, Elected Members wishing to arrange site visits must request this at the relevant Council Agenda Briefing Forum. The Chief Executive Officer will then arrange a site visit as required, advise the property owner/occupier of a site visit and invite them 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.

An Elected Member need not attend a site visit if the Elected Member is familiar with the site or considers they have adequate information to make a decision.

External Viewings

Elected Members 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. An Elected Member 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 an Elected Member attend meetings with Officers?

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

Can Elected Members accept gifts?

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

Can Elected Members sign petitions?

Elected Members should not sign petitions. They should not make public comment on a Quasi-Judicial matter, even via a petition, as this could be construed as support or opposition to it.

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:

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

What is the significance of 'Specialist' advice?

Elected Members have an obligation to give careful and balanced consideration to:

- City Officer's advice as the City appoints Officers as **experts** to advise the Council.
- consultant advice.
- all submissions.
- Elected Members should not make a decision unless they believe they have sufficient information. They should not

negotiate with a person giving specialist advice to reach a compromise.

If Elected Members 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. However, 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 an Elected Member

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

The Chief Executive Officer will consider any requests for additional information weigh up the relevance of the additional information requested and the organisation's resources and capacity to provide the required information against the value of that information to the Elected Member.

Enquiries and Information

Please contact Wilmot Loh, Director Development and Communities on (08) 9477 7279 or by email at wilmot.loh@belmont.wa.gov.au