

## QUASI-JUDICIAL ROLE

<b>Policy Type: Council Policy</b> <b>Policy Owner: Executive Manager Legal Services</b>	<b>Policy No. CP- 052</b> <b>Last Review Date: 18 October 2016</b>
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### POLICY OBJECTIVES

#### Policy Objectives:

- 1 To assist Elected Members and employees of the City of Melville (City) to recognise when they are performing quasi-judicial functions.
- 2 To explain why special principles apply to the performance of quasi-judicial functions.
- 3 To provide guidance as to the conduct appropriate to the performance of quasi-judicial functions.
- 4 To explain some of the consequences to the City and to Elected Members and employees of the failure to act appropriately when performing quasi-judicial functions.

#### **Explanation of the Principles of the Quasi-Judicial Role**

Because the quasi-judicial role is not explained in the local government written laws, and for clarification to Elected Members and employees, the following explanation of the role is provided:

- 1 The community expects that persons sitting in judgment will:
  - (a) be totally free of bias or conflict of interest;
  - (b) make their decisions only on the basis of the relevant facts and principles; and
  - (c) give all interested parties the benefit of the principles of natural justice, which is often equated with acting with judicial fairness.
- 2 The community expects that where a decision-making body is made up of more than one person:
  - (d) all of those persons will act in accordance with the standards in (a), (b) and (c) above;
  - (e) all will take the same facts and principles into consideration; and
  - (f) the whole body will apply the principles of natural justice.



- 3 Those are the expectations of the community of persons performing judicial functions (e.g. Judges and Tribunal members). The community expectations are reflected in the requirements of the law.
- 4 The community is increasingly in this era, coming to expect that bodies required to make decisions affecting the property and interests of other persons will act in a manner similar to Judges or Tribunals. A local government Council when deciding applications for planning approval, and for other approvals, licences, consents and permits is such a body, and the granting of approvals, licences, consents and permits is a quasi-judicial function.
- 5 The community expectation is that in performing quasi-judicial functions, the Council as a body, and members of the Council individually, will act in a quasi-judicial manner.
- 6 The best and simplest explanation of a quasi-judicial manner is that it be judge-like. The simple question to be asked by a person performing the role is, how would one expect a judge performing his/her official role, to act in those circumstances?
- 7 Elected Members will constantly be made aware when performing their quasi-judicial functions that they hold the position of Elected Member because they have been elected by their constituency. The constituency, , in many instances being unaware of the effects of due process, will tend to expect Elected Members to protect the interests of the constituency, even when performing quasi-judicial functions.
- 8 Elected Members, while being sensitive to that expectation, if they are to perform their quasi-judicial functions properly, must not put the constituency expectation any higher than one of the issues to be considered. Even that level of consideration assumes that the constituency expectations have been demonstrated, and are relevant in the circumstances of the case. There will be some cases where the community expectations are not relevant, e.g. where a community objection is based on religious, moral or racial grounds, or perceived impact on property values.
- 9 Applicants for approval will also frequently expect to be able to communicate with and persuade individual Elected Members or employees in favour of their proposals in a way that they would never contemplate doing with a Judge or Tribunal member. Elected Members and employees must constantly endeavour to deal with the overtures of applicants in the way they would expect a Judge to act.

The above is a description of the general principles that underlie and explain the quasi-judicial role of Elected Members and employees. The balance of this Policy will apply those principles to the quasi-judicial functions of Elected Members and employees in practice.

### **Consequences of Breakdown in the Quasi-Judicial Role**

The following are some of the consequences of a breakdown in the quasi-judicial role.

- 1 A breakdown in the quasi-judicial role will most frequently be perceived or interpreted as bias.

- 2 A perception of bias can lead to the following consequences:
  - (a) An allegation of improper conduct, which falls within the definition of 'corruption' under the *Corruption and Crime Commission Act 2003*.
  - (b) Bias by the Council, or even one member of the Council, could result in Council decisions being invalidated.
  - (c) An Elected Member acting when biased and without disclosing an interest affecting impartiality, may be in breach of reg.11 of the *Local Government (Rules of Conduct) Regulations 2007*, and therefore committing a minor breach leading to public censure, the requirement of a public apology, and/or re-education, and to more severe penalties including disqualification for a third or subsequent breach.
- 3 In some cases, failure of an Elected Member to act appropriately in the quasi-judicial role, if it can be shown to have caused damage, may result in a claim against the Elected Member personally for damages.
- 4 Acting with bias, or more generally failure to act with judicial fairness, will damage the reputation of the Elected Member concerned, the Council, and the institution of local government.

## **RULES OF CONDUCT**

### **Recognition of Proper Role**

- 1 Elected Members and employees need to recognise their respective decision-making responsibilities. These responsibilities extend to, when determining Planning Applications, exercising a decision based on delegated authority of the Western Australian Planning Commission and therefore must be based on sound Planning criteria. Determination of an application based on specific public perception or objection in relation to a Planning Application must be backed up with sound Planning rationale.
- 2 Issues which arise should be referred to the appropriate reporting or decision-making person or body (e.g. Development Advisory Unit or Council).
- 3 Elected Members and employees should not attempt to meddle in, or allow themselves to be drawn into procedures which are more properly the function of others.

### **City Employee Responsibilities**

- 4 Employees are to identify in Council reports the role the City will be acting in when considering the matter that is the subject of the report.
- 5 The report should specifically identify when Elected Members or employees are acting in the quasi-judicial role.
- 6 Any employee who is required to gather information or evidence from an applicant or other interested party if possible should not attend on site or meet with any interested party other than in the presence of another employee of the City. A file note should be kept of any such site visit or meeting.



## **Elected Member Responsibilities**

- 7 Elected Members should not actively gather information when acting in a quasi-judicial role. The Elected Member's role is not to investigate, but to consider and determine.
- 8 Elected Members may be approached by an applicant or other interested party wishing to discuss an application which is before Council. The following rules provide Elected Members with guidelines for handling such enquiries.

### Contact by the Applicant or Other Interested Parties

- 9 Should an applicant or other interested party contact an Elected Member to discuss a matter that is before Council, or likely to come before Council, then the Elected Member should;
  - (a) Listen and understand the reason for the applicant or other interested party making contact.
  - (b) Ensure that the applicant or other interested party is aware of the Elected Member's role as a decision-maker.
  - (c) If relevant, inform the applicant or other interested party that the Council may consider the application and an officer report at a Development Advisory Unit (DAU) or Council meeting as provided by Council Policy.
  - (d) Direct the party to contact the relevant employee with the view of making a request or inquiry on the matter.
- 10 Should the applicant or other interested party wish to continue discussing the matter and provide the Elected Member with additional information or opinions then in cases where it is relevant the Elected Member should:
  - (a) Advise the person that the most appropriate method for them to make a submission is through a representation to Council, a written submission, or a site visit, so that all Elected Members can receive the same information;
  - (b) Inform the person of the processes for making an oral submission or representation at the relevant meeting or a written submission or for arranging a site visit if the person requests the Elected Member to attend the site;
  - (c) Direct the party to contact the relevant employee with the view of making a submission or representation or arranging a site visit.
- 11 If an Elected Member becomes aware of additional information through contact with an applicant or other interested party through any of the above processes, then the following should occur:



- (a) An Elected Member who becomes aware of additional relevant information when acting in the quasi-judicial role should if possible bring that information to the attention of all other Elected Members and the Chief Executive Officer:
  - (i) at a briefing session; or
  - (ii) through a written notice to the CEO who will bring this additional information to the attention of the Council.
- (b) Where an Elected Member provides additional information, the Chief Executive Officer (CEO) may provide advice or commentary on the additional information or request a relevant officer to provide such advice or commentary.
- (c) In appropriate circumstances the Elected Member should pass on the information to the Development Advisory Unit.

### **Additional Information**

- 12 An Elected Member wishing to receive additional information whilst acting in the quasi-judicial role must request the additional information through the CEO, either at the relevant Agenda Briefing Forum or by written request.
- 13 The CEO 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.
- 14 When an employee is to meet with an applicant, for the purpose of obtaining further information on a quasi-judicial item, consideration should be given as to whether the Mayor or any other employee should be present.

### **Site Visits**

- 15 Elected Members must not conduct site visits on their own or with other Elected Members whilst acting in their quasi-judicial role unless a meeting for such has been organised by a City of Melville employee. Elected Members wishing to arrange site visits shall request such a visit through the CEO. The CEO will then arrange a site visit as required.
- 16 The CEO is to advise the applicant of such a site visit when the site meeting is to discuss concerns on behalf of the applicant. The CEO must ensure that the relevant Director, manager or other appropriate employee is present at the site visit and that a file note record is made of the site visit. The CEO shall also arrange for a similar site visit for all Elected Members to consider the views of those parties objecting to the proposal in order to allow the objector equal rights for Elected Member consideration of the issues at stake.
- 17 While it is preferable that a site visit attended by some Elected Members is attended by all, an Elected Member need not attend a site visit if the Elected Member:
  - (a) is familiar with the site; or
  - (b) is unable to attend due to leave or work commitments; or
  - (c) considers they have adequate information with which to make a decision without conducting a site visit.



- 18 The attending employee of the City is to take minutes of the site meeting/s and distribute those minutes to all Elected Members as soon as practically possible and in any circumstance, before a formal decision of the Council is made in respect of the application.
- 19 In instances where an Elected Member is unable to attend the site meeting/s, they shall avail themselves of the record of the minutes of the site meeting/s.

### **Determining the Application**

- 20 Elected Members when determining an application must act with judicial fairness and without bias and should:
  - (a) Consider only the relevant facts and principles which have been presented to the meeting including any site meeting/s;
  - (b) Consider any other relevant facts and principles;
  - (c) Not consider any matter that is irrelevant;
  - (d) Act reasonably, and
  - (e) In the case of a Planning decision, act in accordance with the delegation to local government for the delivery of Planning decisions on behalf of the Western Australian Planning Commission based on sound planning principles.
- 21 Where Elected Members act contrary to an Officer recommendation, the reasons for doing so should be based on sound planning grounds and are to be recorded in the Minutes of the meeting.
- 22 Any respondents should be given a fair and courteous hearing.

### **Other References Applicable to this Policy**

Delegated Authority No:

Procedure No:

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<b>ORIGIN/AUTHORITY</b>		<b>ITEM NO.</b>
<b>REVIEWS</b>		
Ordinary Meeting of Council	17/08/2010	P10/3152
Policy Review Team Reviewed - no changes required (date for presentation to Council TBA)		05/09/2013
Ordinary Meeting of Council	18/10/2016	M16/5505

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