attachment to item 255

Corruption Resistance in the Development Assessment Process

date of meeting: 24 October 2006
location: council chambers
time: 5:00 p.m.

Hawkesbury City Council

TAKING THE DEVIL OUT OF DEVELOPMENT:

recommendations for statutory reform

position paper

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ISBN 1 920726 18 7

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Foreword

This report contains recommendations for legislative change relating to council involvement in development application assessment.

These recommendations are a part of our response to the Rockdale Council inquiry but also flow from the work we have been doing with the local government sector under the *Taking the Devil out of Development* program.

We are very pleased that, in light of our Rockdale inquiry, the Parliament was quick to pass legislation aimed at strengthening the capacity of ICAC, PlanningNSW and the Department of Local Government to deal with corruption in the development assessment process.

What we seek now is greater objectivity, clarity and transparency in the development assessment process. This will give all users greater confidence in the system, in their councils and the councillors they elect to represent them. That is our aim in proposing the reforms outlined in this report. We believe our recommendations are a logical extension of the changes already made.

Because of concerns with the operation of SEPP 1, and a current review of this important planning instrument by PlanningNSW, I have also taken the opportunity of recommending a significant tightening of its operation.

I will be progressively releasing other recommendations for reform aimed at strengthening the corruption resistance of the development assessment process between now and June 2003.

Irene Moss AO

Commissioner

Background

The background to this report is probably well understood by those who are involved or interested in the development assessment process.

Needless to say the experience of Rockdale Council was very sobering for many people. We are getting this message from the responses received to our *Taking the Devil out of Development* discussion papers and when we talk to councillors, council staff and the public in the course of our work.

But to quickly recap, during 2000-2001 we undertook extensive research into the corruption risks in local government. In June 2001, when we released our research report *Corruption resistance strategies - researching risks in local government,* we identified corruption in development applications as one of the four major corruption risks facing local councils.

This research was the genesis of our Local Government Strategy aimed at helping councils build greater capacity to deal with corruption risks. A part of our strategy is to listen to what people have to say about key risk areas before making recommendations for legislative or procedural changes.

We released the first *Taking the Devil out of Development* discussion paper in November 2001. This document identified the main corruption risks for councils in the development assessment process and discussed a number of measures to manage them.

We were very pleased with the response, with 70 submissions received. Responses were generally positive with support for many of our suggestions.

In light of the many new ideas raised in the submissions we received and the issues raised in our Rockdale inquiry we decided to release an interim report and call for further submissions by 2 August 2002. We received 61 submissions in response to the interim report.

In July 2002 we released our investigation report into the Rockdale inquiry. We made findings of corruption against four individuals and two councillors. We also foreshadowed that we would be making further suggestions for statutory and other reforms. This report deals with the issues requiring statutory reforms.

The package of proposed reforms

The reforms are briefly presented in the following four distinct themes:

· The role and functions of councils as development consent authorities.

· Personal conduct requirements for members of consent authorities.

· Disclosure of interests on the part of members of consent authorities.

· Planning policy.

Details on the suggested objectives and proposed legislative amendments are contained in Appendix 1 of this report.

In brief the changes proposed are:

· non-pecuniary interest in respect of a councillor exercising a responsibility pursuant to the *Environmental Planning and Assessment Act 1979* (EP&A Act), is defined (currently there is no definition).

· receipt of a gift in the form of a political donation will be defined as constituting a non-pecuniary interest in respect of EP&A Act matters (currently the receipt of a political donation is neither a pecuniary nor non-pecuniary interest).

· a non-pecuniary interest will need to be disclosed.

· the role of the Local Government Pecuniary Interest Tribunal (PIT) will be broadened to encompass substantial non-pecuniary interest breaches (including those related to receipt of political donations) in respect of EP&A Act matters.

· the PIT be renamed to reflect its broader role and be empowered to impose the same penalties on councillors for non-pecuniary interest breaches as it can now impose for pecuniary interest breaches.
· when EP&A Act matters arise councils will be obliged to convene meetings specifically and exclusively to consider those matters.
· the role of a general manager, as outlined in the *Local Government Act 1993* (LG Act), will be extended to include the obligation to ensure that all advice and recommendation from the administration in respect of development applications (DAs) is objective and impartial.
· the current prohibition on a council directing staff as to the nature of advice or recommendation will be extended to include the Mayor and individual councillors.
· where a council approves a DA contrary to a recommendation from its administration, the council will be obliged to give reasons for its decision.
· a legislatively based discrete code of conduct related to EP&A Act matters is prepared (covering matters such as caucusing, lobbying and relationships between councillors and staff).

These proposed reforms aim to achieve a greater accord between the two pieces of legislation that govern the assessment and determination of DAs by local councils.

The LG Act establishes councils and specifies council functions. While the LG Act has detailed provisions about pecuniary interests it does not deal with non-pecuniary conflicts. Additionally, the LG Act contains very little detailed guidance about the standards of conduct expected of councillors and staff. The EP&A Act establishes councils as consent authorities and prescribes the criteria for assessing development applications. But, it is silent on the standards of conduct expected of councillors and staff when determining DAs.

The gaps in both Acts in terms of providing guidance about standards of conduct and in failing to define non-pecuniary interests, is problematic given the monetary value, impact and volume of DAs dealt with every year. This regulatory vacuum causes decision making processes to be at greater risk of corrupt conduct occurring than would be the case if there were more detailed guidance and a greater level of control.

Good outcomes in the development assessment process depend on everybody involved properly playing their assigned role. To ensure this occurs, all roles and responsibilities need to be clearly spelled out, which is not presently the case.

Additionally, achievement of a greater level of accord between the LG Act and the EP&A Act will lessen ambiguity, uncertainty, loopholes and opportunities to inappropriately exert influence.

Clarifying the development consent authority role of councils by creating a distinction in law and process

At a glance

We are concerned that the various functions conferred on local government can create some conflicting roles. In particular, there is a need for clarity in the legislation in respect of the local council's role as a development consent authority. This can be done by amending the LG Act to highlight the development consent authority role of council as distinct from its other roles.

Submissions made by several senior council staff members discussed the unique nature of the roles that councillors play in local government. Three roles played by councillors are:

· the making of planning laws and development controls.

· being an advocate for constituents.

· making judgments on individual DAs.

These senior council staff members considered the combination of these three roles to be a fundamental flaw in the local government system. This is because the lack of separation of these powers can lead to confusion, reduce transparency and as a result, encourage corruption.

However, one submission made by a councillor argued that decision making should remain a political process in order to guarantee transparency, accountability and public confidence.

A number of other submissions called for the need to provide clear definitions of councillor roles and better guidance and training to councillors when participating in the development assessment system. These suggestions received considerable support from a number of councils, community members and professional bodies.

It is clear from the submissions received that confusion surrounds the multiple roles of councillors; that there are problems that arise when these roles conflict; and that there is a need to better manage these roles.

What is required?

The combination of the three, often conflicting, roles of councillors is unique to local government. Neither state nor federal parliamentarians exercise all three roles.

The role of councillors in granting consent to individual DAs is fundamentally different from all other council functions. As such, there should be special recognition of this role and appropriate provisions should be introduced to manage the problems associated with the interaction of this role with the other functions of local councils.

We recommend that:

· To clearly demarcate the consent authority role of council from its other functions and business, council decision making on DAs should occur only at council and committee meetings convened specifically and exclusively for that purpose. These meetings do not require a separate date or time, just that they be separate from council's other business.

· The exercise of responsibilities by a council pursuant to the EP&A Act should be explicitly recognised as a discrete function within the LG Act.

· To reinforce a council's unique function as a development consent authority, the council charter within the LG Act should be amended to require objective and transparent decision making in respect of EP&A Act matters.

Strengthening the independence of council staff and reinforcing the obligation of staff to provide objective advice

At a glance

It is the responsibility of a council to ensure that, as a development consent authority, it makes decisions based on impartial advice of high quality. It is clear from our experience, and submissions received on both our discussion papers, that some councillors and others do attempt to influence staff as to the nature of recommendations in respect of DAs. To make informed decisions, councillors need the benefit of accurate information and impartial advice from staff.

Currently, legislative provisions in the LG Act only protect staff independence from such influence when exerted by the council as a whole not by individual councillors. This loophole in the legislation creates an opportunity for inappropriate influence to be applied.

Further, several submissions suggested that there was a need to strengthen the role and accountability of the general manager, not just to the council but also to the community. We believe the legislation needs strengthening, particularly to ensure that a council receives objective development assessment advice from staff or consultants.

What is required?

We recognise the need for interaction between councillors and staff. However, the role and responsibility of council staff, especially the general manager, in respect of the development assessment process should be to provide independent, impartial and objective advice. The general manager should be accountable for ensuring that this is the case.

We recommend that:

· The role of the general manager, as defined in the LG Act, be extended to include responsibility for ensuring that all advice and recommendations on development assessment matters are objective and impartial.

· The LG Act be amended to make it clear that, just as the council as a corporate body cannot direct staff as to the nature of advice or recommendation, the mayor and individual councillors cannot direct staff as to the nature of advice or recommendation.

Increasing confidence in decision making

At a glance

Councils can make decisions contrary to the recommendations of staff to approve or refuse DAs. At present, councils are obliged to give reasons for a decision to refuse a DA. However, if a council decides to approve a DA contrary to a recommendation made by staff, there is no obligation on council to give reasons for its decision.

We believe that this inconsistency can assist in concealing conflicts of interest and does not assist in the promotion of accountable and transparent decision making. This situation has the potential to promote perceptions of wrongdoing.

One submission from a key professional body echoed this concern and called for further guidance on situations where a council decides to overturn an officer's recommendation, so that clear reasons for the council's decision are available as a matter of public record.

What is required?

To make councils more accountable for their decision making on DAs we propose that the *Environmental Planning and Assessment Regulation 2000* be amended. We recommend that the amendment provides:

· That where a council approves a DA contrary to the recommendation of its administration, the council should be obliged to provide and record reasons for its decision in council records and notices of determination.

Code of conduct

At a glance

While the LG Act requires councils to prepare and adopt a code of conduct, the Act does not identify all the practices and behaviours that need to be regulated. Further, in our experience, few codes of conduct contain sanctions that are sufficiently serious to be a true deterrent to objectionable or inappropriate behaviour. Unless a breach of a code by a councillor is a criminal offence, or a breach of the pecuniary interest provisions of the LG Act, the only sanction available to council is a reprimand by a way of a resolution. Contrast this with the situation for staff who might be dismissed for the very same breach.

Our work to date suggests there are significant weaknesses in codes of conduct for councillors especially in relation to their dealings with council staff, lobbying, caucusing and some other types of inappropriate behaviour. To increase public confidence that decision making in respect of DAs is properly informed, impartial and consistent, these practices need to be regulated.

For example, binding caucus votes on DAs is inconsistent with the obligation of each councillor to consider the merits of a DA. Caucusing can be seen to have benefits for groups of councillors in terms of managing time and information. But, it can create a high-risk situation where a councillor acting corruptly need only win the caucus debate to deliver a number of votes in favour of a developer's application. Further, binding caucus votes could mean that development decisions are made on the vote of a majority of the larger faction within a council.

Interestingly, in the United Kingdom, binding caucus votes on DAs by elected officials is considered by the UK Ombudsman to constitute maladministration.

The practice of caucusing was also raised in submissions, including one from an individual councillor. Caucusing was considered to make a mockery of the concept of "open Council" and transparent decision making.

There was overwhelming support in submissions for the need for a standard code of conduct to be developed. This support was shared by submissions from councils, individual councillors, senior council staff, community and professional bodies. No submissions received by the Commission opposed the need for a standard code of conduct.

A number of submissions, from individuals and councils, went further by saying that such a code must be subject to a legislative regime. A code backed by legislative power would ensure that an external body investigated substantial breaches of the code and that appropriate penalties would be clearly established and applied.

Interestingly, to reinforce the ethical framework in the UK *Local Government Act 2000*, the British Government established a standards board to develop a legislatively based model code for all local councils and authorities. Provisions cover registration of financial and other interests, the ability to investigate alleged breaches and apply sanctions to breaches.

What is required?

We have previously committed ourselves to developing a model code of conduct for councillors. Given the strength of submissions to both our discussion papers, our investigation work, and based on the reasoning outlined above, our focus now is on recommending that minimum requirements are established in a model code that is legislatively based. This legislative change is required to create consistency across all councils with provisions for councils to impose sanctions and the Department of Local Government to investigate substantial breaches of the code.

We recommend that:

· A specific code of conduct be established by the LG Act for councillors and staff exercising responsibilities under the EP&A Act. This code should, among other things, address lobbying, caucusing, and dealings between councillors and staff.

Defining non-pecuniary interests

At a glance

In addition to the many and varied roles councillors perform which we discussed earlier, councillors invariably have a wide variety of business, political and personal interests. This diversity is a strength for local government. However, in our experience these very interests, which often qualify people to represent the community, can also give rise to conflicts of interest in exercising statutory functions. Managing the conflicts that may arise from these interests is difficult and is not aided by gaps in legislation and varying practices associated with codes of conduct.

To manage conflicts of interest councils have regard to the provision of the LG Act. However, the LG Act only provides guidance on dealing with pecuniary interests. This means that other conflicts of interest not involving direct financial gain can go unchecked and not be properly managed. In his 2001-02 Annual Report (p.45) the Ombudsman also discusses this lack of regulation in the LG Act.

The silence in respect of non-pecuniary interests in the LG Act is a concern, particularly in light of the fact that a non-pecuniary interest, like a pecuniary interest, can also lead to outcomes that are influenced, or perceived to be influenced, by private rather than public interests. In our view all types of conflicts of interest need to be dealt with in a consistent and accountable fashion if councillors, staff and delegates are to meet their obligations to carry out their functions honestly and impartially.

Several submissions acknowledged the problems associated with non-pecuniary interests, and the need to better manage this type of interest in the future.

What is required?

The existence of pecuniary interest provisions in the LG Act ensures that, across all councils, clear rules and strong sanctions apply. In our view, there should be a similar regime for non-pecuniary interests. However, we believe non-pecuniary interests should be treated slightly differently due to the absence of personal financial gain. We suggest that councillors only be required to disclose their non-pecuniary interests prior to their involvement in the decision making process and that there not be automatic exclusion of the councillor.

Similar to the management of pecuniary interests, the PIT could develop guidelines and rulings over time about breaches of the disclosure obligation with respect to non-pecuniary interests.

We recommend that:

· Non-pecuniary interests be defined in the LG Act.

· The jurisdiction of the PIT be broadened to include serious and substantial breaches of the proposed non-pecuniary interest provisions. The PIT should also be renamed to reflect its broadened role.

Political donations as a non-pecuniary interest

At a glance

Political donations sometimes can be used to attempt to influence public officials in their decision making. They can also create or reinforce perceptions that influence can be bought. In our Rockdale report we supported a review of the rules governing political donations. The purpose of such a review would be to enhance openness, transparency and accountability through better disclosure requirements and improving the management of conflicts of interest that can arise from accepting political donations.

We agree that the regulation of political donations should be debated and decided at a national level to ensure a consistent approach across all tiers of government. The disparate approach to election funding and political donations throughout Australia, and the experience overseas, suggests that reforms at any one level of government or in just one jurisdiction may cause donations to be funneled through to other levels or jurisdictions.

While there is some similarity in election funding and controls related to political donations in some States and in Federal Parliament, there are also important differences. Some governments have public funding for election campaigns (Federal, ACT, NSW and Qld). Public funding is held up by some as the answer to the corrupting influence of political donations. These voices would advocate a move to total public funding. Others argue that, given the cost of political campaigning in the modern era of high technology and global communication, it would be a huge drain on public funds to cover all campaign costs. These opponents of public funding also argue that if all costs were not met then this would be an impediment to democracy as campaigning activity would be restricted and this limits citizens' rights and involvement. The same arguments apply to financial limits on election expenses, such as apply in New Zealand.

Further, in NSW disclosures of election funding and political donations are only required to be made every four years. Yet, in other Australian jurisdictions, where disclosure laws exist, disclosures must be made annually.

Banning specific categories of donors in a particular jurisdiction may cause donations to be channeled to another jurisdiction or through another loophole where no such constraints exist. A ban in NSW could see donations made to affiliated associations at the national level, or even to another state branch.

International experience and the disparate approach to election funding and political donations throughout Australia, suggest that comprehensive reform to eliminate the risks of undue influence will only be achieved by a national approach through uniform legislation.

There have been many reviews of election funding and political donations in Australia and other comparable countries. While the detail of those reviews may differ, fundamentally they agree that increased transparency is the key to avoiding undue bias or perceptions of it. Key to achieving this is increased disclosure requirements and scrutiny of those requirements.

Disclosure would allow the community to assess the decisions of their local council with the knowledge of what, if any, political donations have been made to individual councillors or their parties.

As already mentioned, disclosure of political donations within NSW is only required inside a set period after each state election, in effect meaning it is generally only required every four years. These disclosures only have to be made to the Election Funding Authority. Consequently, when sitting as a development consent authority, councillors do not currently have to make disclosures about political donations they have received. This means councillors can make determinations on matters involving parties from whom they, either directly or indirectly, have received political donations. Clearly political donations have some value to councillors and the potential to influence their decision making.

Juxtapose this situation with the pecuniary interest provisions of the LG Act that require councillors to declare a pecuniary interest in a matter being considered where there is a probability of appreciable financial gain or loss to them or an associated person. These measures effectively deal with future or prospective financial inducements. On the other hand inducements, such as political donations, do not have to be disclosed. Yet both types of inducements can influence the decision making of a councillor. From a public interest perspective, it does not make sense to permit this inconsistency to continue.

There was consensus among the submissions received regarding political donations, that they have the potential to corrupt the democratic process and reduce public confidence in the system of local government.

What is required?

To minimise the potential for political donations to inappropriately influence decision making on DAs we recommend that the LG Act be amended to provide that:

· Receipt or the promise of, or the soliciting of a political donation, in the form of a gift, money, services or other appreciable benefit, from a party associated with a DA be a non-pecuniary interest which mandates the disclosure of the interest by the councillor receiving or due to receive the donation.

· Failure to disclose a non-pecuniary interest related to a political donation be a matter falling within the jurisdiction of the PIT. The Tribunal should be empowered to impose sanctions on an offender in the nature of the sanctions currently applicable to a party who has failed to declare a pecuniary interest.

At a glance

Submissions received to our second *Devil* discussion paper raised concerns over the excessive degree of `flexibility' created by State Environmental Planning Policy No.1 - Development Standards (SEPP 1).

The original intent of SEPP 1 was to enable minor departures from development standards in cases where the proposed development failed to meet that standard by a minor amount due to exceptional circumstances. But SEPP 1 is now being used to allow for more substantial departures from development standards. The resulting developments are often quite different (higher, wider, longer and bulkier) from what would be achieved if the development standard were complied with.

Development standards that are most often subject to SEPP 1 include building height, floor space ratio, building density, car parking provisions and subdivision size. The variation of these standards provides an easy opportunity for developers to maximize returns, by developing to a greater level of intensity than would otherwise be permitted.

The use of SEPP 1 does not in itself constitute corrupt conduct. It does, however, present a sizeable loophole in the planning system that enables the inappropriate circumvention of established planning laws.

PlanningNSW is currently reviewing SEPP 1 with the view to significantly limiting the degree of flexibility allowed under the policy. It also intends to introduce measures to make the use of SEPP 1 more transparent and open to public scrutiny.

Several submissions made by councils, individual councillors and community members raised the issue of the loopholes that SEPP 1 creates in the planning system. These submissions were unanimous in their view that SEPP 1 represents a mechanism for the facilitation and encouragement of corruption in planning matters. It was also presented in submissions as a quick and simple means of avoiding scrutiny by third parties. Consequently, it presents a significant opportunity for abuse.

What is required?

To close the loopholes associated with SEPP 1, we recommend that it be immediately and significantly tightened in its application. A minimum criterion could be a 10 percent limitation on any departure from a development standard.

Where to next

In coming months, we will develop and release further recommendations for dealing with the remaining issues identified in our ongoing project for addressing corruption risks in development control systems. One of the recommendations, for instance will deal with how to better inform and involve the community in the development assessment process.

We will soon be writing to PlanningNSW to recommend they undertake an assessment of independent hearing and assessment panels (IHAPs), in conjunction with various councils across NSW. This study should also explore the option of panels being voluntarily made available to all councils, including providing shared regional options for councils in more remote or rural areas of NSW. After the Rockdale inquiry we noted the possible value of panels in diffusing the level of influence an individual councillor would have over the development assessment process.

We see that the fundamental purpose of IHAPs would be to assist councillors in finding the right balance between two, sometimes incompatible roles - that of development assessor and community advocate as an elected representative. The study undertaken by PlanningNSW should also explore issues of cost and funding IHAPs and their potential use throughout the State and at regional levels.

Another key feature of our next stage will be the development of a model statement of business ethics for councils. There was overwhelming support for its development in submissions received as part of our *Devil* consultative process and our *Taking the con out of contracting*. The value of such a code is that it clearly states an organisation's ethical position and promotes public service values when doing business. We are also considering recommending the provision of a legislative base for such a code.

Appendix 1: Suggested amendments to legislation

1. Clarifying the council's role as a development consent authority by creating a distinction in law and process

1.1 **Objective** - To highlight and reinforce the distinct statutory responsibilities of a council in undertaking its development assessment authority role pursuant to the *Environmental Planning and Assessment Act 1979* ("EP&A Act").

Proposals

1.2 Expand the charter of a council under section 8(1) of the *Local Government Act 1993* ("LG Act") by

- amending the second last dot point to include the functions of a council under the EP&A Act and to require a consent authority to act consistently and without bias.
- adding a new second last dot point to require that, when exercising its functions under the EP&A Act, a council acts objectively and transparently.

1.3 Add a new section, s22A to LG Act **Chapter 5 - What are a council's functions?** This section would refer to the consent authority functions, pursuant to the EP&A Act, inclusive of assessment of development applications and related applications and in the granting of development consents and certificates.

2. Clarifying the council's role as a development consent authority by creating separate meetings for a council under the EP&A Act

2.1 **Objective** - To emphasise the distinct role and responsibility of a council in development assessment under the EP&A Act. To require councils to convene separate meetings with a discrete agenda including specific requirements relating to conflicts of interest, content of staff reports and recording of reasons for certain decisions.

Proposal

2.2 Add a new division to the LG Act **Chapter 12 Part 2 - How are decisions made?** This would be *Division 3 - Meetings of council under EP&A Act.* Then create a new section s376A that requires councils, when meeting as consent authorities, to conduct separate meetings for this purpose.

3. Strengthening the independence of council staff and reinforcing the obligation of staff to provide objective advice

3.1 **Objective** - To strengthen the role of the general manager and staff in providing objective and impartial advice to council in the exercise of its functions as a consent authority.

Proposals

3.2 An amendment to s335 of the LG Act would be required to provide for a specific responsibility for the general manager to ensure that advice and recommendations to council from the general manager and staff, in respect of EP&A Act matters, are objective and impartial.

3.3 An amendment to s352 (1) would expressly provide protection to council staff from individual councillors directing the content of their advice and recommendations. Currently s352(1) only protects staff from the council as a whole.

4. Increasing confidence in decision making: accountability of council for decisions contrary to staff advice

4.1 Objective - To make a council more accountable for determinations to grant development consents and related approvals in the development assessment process where the council decides to do so contrary to the advice and recommendations of its staff.

Proposals

4.2 Suggested amendments to the EP&A Regulation 2000 would require councils to give reasons for those decisions above, as follows:

- For the mandatory content of development application notices of determination required by Clause 100.
- For the mandatory content of notices of determination of applications to modify development consent required by Clause 122.
- For the mandatory notification of the reasons for that determination to be recorded in Council minutes by a new section in Clause 100A.

4.3 The notices of determination to grant consent or modify consent should be kept in the council's register of consents, maintained pursuant to section 100 of the EP&A Act, for public inspection.

5. Personal conduct requirements for members of a council development consent authority: code of conduct

5.1 Objective - To provide guidance, conduct requirements, and sanctions for councillors, staff, delegates and advisors in the management of appropriate behaviours associated with council decision making pursuant to the EP&A Act.

Proposals

5.2 A code of conduct be developed to guide councillors, staff, delegates and advisors on appropriate process and conduct. The code would cover inappropriate caucusing, lobbying and dealings with staff. The code of conduct would be introduced by an amendment to the *Local Government (General) Regulation 1999* to include a new

Part 5B - Code of conduct for councillors, staff, delegates and advisors pursuant to the EP&A Act.

The regulation would be made pursuant to s748(2) of the LG Act and items 19 and 19A of schedule 6.

Note that s440 of the LG Act for a council adopted code does not apply when the regulations prescribe a code of conduct to be observed.

6. Disclosure of interests on the part of members of a council development consent authority: non-pecuniary interests

6.1 Objective - To define non-pecuniary interests associated with council decision making pursuant to the EP&A Act. To include political donations as a sub-section of this definition as well as provide a renamed PIT the ability to investigate and provide sanctions for breaches of non-pecuniary interests.

Proposals

6.2 A mandatory requirement be developed in the LG Act to provide for disclosure of non-pecuniary interests in relation to a council exercising its functions as a development consent authority under the EP&A Act. These amendments would be parallel to the existing provisions for disclosure of pecuniary interests.

6.3 In terms of a councillor exercising a function pursuant to the EP&A Act, a non-pecuniary interest would be defined (in a new s442A of the LG Act) as:

· whether there would be a reasonable likelihood or expectation of an appreciable personal benefit or detriment to the person, or another person with whom the person is associated (as defined in a new s443A), in respect of a matter.

A similar qualification to that applying to a pecuniary interest would apply, that is, whether the interest in the matter is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision that the person might make in relation to that matter.

6.4 These provisions would provide an objective standard as to the nature and extent of a non-pecuniary interest that would require disclosure by a councillor or committee member prior to a meeting.

6.5 Amendments would include a new s442A - *What is a "non-pecuniary interest"?* relating to councillors exercising their functions as members of a development consent authority pursuant to the EP&A Act.

6.6 To address the specific issue of political donations a new section 442B(1) would define political donations received in the past four years as "gifts" (as defined in the *Election Funding Act 1981*), as well as the promise of, or the soliciting of a political donation, in the form of a gift (as defined), money, services or other appreciable benefit. Receiving political donations would constitute a non-pecuniary interest for a member of the development consent authority considering a DA.

6.7 A person would have a non-pecuniary interest if the interest is their own or that of an associated person under a new s443A. Section 443A would be in the same terms as the existing s443 with the substitution of the words "non-pecuniary interest" for "pecuniary interest" throughout the section.

6.8 A new s451A and consequential amendments of sections 444(b), 445(b), 446, 447, 456, 457 and 458 would require the disclosure of the non-pecuniary interest at meetings of a council or committee of council.

6.9 Amendments to s459 would also require senior staff and delegates, as designated persons, to disclose in writing a non-pecuniary interest the person has in any matter with which the person is dealing.

6.10 Suggested amendments would include parallel and consequential amendments to the LG Act, Chapter 14, Part 3 - Complaints concerning non-disclosure - to provide for complaints to the Director-General, investigation of complaints, and reporting of investigations to a renamed PIT.

