

## S-G19 Quasi-Judicial Policy

|                             |                                                                                                                                                                                                                  |                         |  |
|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|--|
| <b>Purpose</b>              | The purpose of this Policy is to provide clarity and consistency to community, staff and elected members - when acting as the Planning Authority - and to uphold a non-biased approach to development decisions. |                         |  |
| <b>Department</b>           | Governance                                                                                                                                                                                                       |                         |  |
| <b>File No.</b>             | PLN/0105                                                                                                                                                                                                         |                         |  |
| <b>Council Meeting Date</b> | 22 July 2026                                                                                                                                                                                                     |                         |  |
| <b>Minute Number</b>        | 152.07.2026                                                                                                                                                                                                      |                         |  |
| <b>Next Review Date</b>     | Four (4) years from the date of Council decision                                                                                                                                                                 |                         |  |
|                             | 229.07.2012                                                                                                                                                                                                      | 26 July 2012            |  |
|                             | 109.05.2018                                                                                                                                                                                                      | 17 May 2018 (Rescinded) |  |

### 1 Definitions

|                         |                                                                                                                                                                                                                  |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Applicant               | The person or company who has lodged an Application                                                                                                                                                              |
| Application             | A development application (DA) before Council that may be at varying stages i.e.: lodged, in advertising or for consideration of outcome                                                                         |
| Council                 | Flinders Council                                                                                                                                                                                                 |
| Elected Member          | An elected member of Council who is known as a Councillor, Mayor or Deputy Mayor or who otherwise meets the definition of a "councillor" as defined in section 3 of the <i>Local Government Act 1993</i> . (TAS) |
| Employee                | A person who carries out paid work for Council as an employee of Council.                                                                                                                                        |
| Planning Authority      | A Council as per <i>Land Use Planning and Approvals Act 1993</i> .                                                                                                                                               |
| Proponent               | A person or entity planning to provide for activity or development which is subject to Council review.                                                                                                           |
| Quasi-Judicial Function | Functions which involve the making of a decision by Council (the exercise of a discretionary power).                                                                                                             |

## PART 1 – GENERAL CONSIDERATIONS

### 2 Objective

- 2.1 To assist Elected Members and employees of Council to recognise when the Planning Authority is exercising a 'quasi-judicial' function;
- 2.2 To explain why special principles apply to the exercising of quasi-judicial functions;
- 2.3 To provide guidance as to appropriate conduct regarding the exercising of quasi-judicial functions; and
- 2.4 To identify some of the consequences of failing to act appropriately when exercising quasi-judicial functions.

### 3 Scope

This policy applies to Elected Members when acting in their role as a Planning Authority member and Council Employees.

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

Because the quasi-judicial role of Elected Members is not detailed fully in the local government legislation (i.e. the *Local Government Act 1993*), the following explanation of the role is provided for the benefit of Elected Members:

- 4.1 The community deserves and expects that persons sitting in judgment will:
  - a. be free of bias and conflicts of interest;
  - b. make their decision with reference to all relevant factual matters and having regard to all applicable laws; and
  - c. act in accordance with the principles of natural justice, which are often equated with affording fairness to all persons involved.
- 4.2 The community deserves and expects that where a decision-making body is made up of more than one person, all of those persons will act in accordance with the standards set out in paragraphs 4.1.a, 4.1.b and 4.1.c above of this Policy.
- 4.3 The community deserves and expects that those required to make decisions affecting the property and interests of other persons will conduct themselves in a manner similar to that of a Judge or a Magistrate sitting in a Court, or a member of a Statutory Tribunal.
- 4.4 Elected Members, when determining applications for planning approval, are acting as a Planning Authority in a 'quasi-judicial' manner as the granting of permits is a quasi-judicial function granted by the Tasmanian Parliament through the passing of legislation.
- 4.5 Elected Members hold their positions by virtue of being elected by the residents of the Municipality. Unless fully informed about the Planning Authority role, residents may tend to expect Elected Members to protect the residents' particular interests, even when performing quasi-judicial functions.
- 4.6 Elected Members, while being sensitive to the demands of residents of the Municipality, are expected to perform their quasi-judicial functions, in accordance with law.
- 4.7 Persons who make application to Council for various approvals will frequently expect to be able to communicate with and present their perspective directly with individual Elected Members in a way that they would never contemplate doing with a Judge, a Magistrate or a member of a Statutory Tribunal. Elected members must endeavour to deal with the approaches of such persons in a 'quasi-judicial' manner.
- 4.8 The above is a description of the general principles that underlie and explain the quasi-judicial role of Elected Members. The balance of this Policy will apply those principles to the quasi-judicial functions of Elected Members in general practice.

#### **5. Consequences of failure in the Quasi-Judicial Role**

The following are some of the consequences of a Council failing to act in a quasi-judicial manner when exercising quasi-judicial functions:

- 5.1 An allegation of actual or perceived bias which can have the following consequences:

- a. An allegation of improper conduct that could amount to a breach under the *Local Government Act 1993*;
  - b. An Elected Member being accused of breaching the Council's Code of Conduct Policy;
  - c. Appeal proceedings finding that a planning decision did not uphold the relevant Planning Scheme in force at the time; and/or
  - d. Exposing the Council to the risk of legal proceedings being initiated against Council under the *Judicial Review Act 2000* which may cause Council to incur significant costs and could ultimately lead to Council's decision being invalidated.
- 5.2 In some cases, if failure of an Elected Member to act appropriately in the quasi-judicial role can be shown to have caused damage, i.e. if malice, dishonesty or defamation is proven, this may result in a claim against the Elected Member personally for damages. Councillors should be acutely aware that they have personal legal and financial exposure in relation to these matters.
- 5.3 Acting with bias, or more generally failure to act with judicial fairness, could damage the reputation of the Elected Member concerned, the Council and the institution of local government.
- 5.4 Any requests for discussions, or site visits with proponents, regarding a planning matter that has been lodged for Council (internal) assessment, should be referred to the Development Services Manager or General Manager.

## **6. Roles and Responsibilities of Elected Members and Council Employees**

- 6.1 Elected Members and Council employees (under delegation) have differing functions.

### **Council employees roles**

- a. Council employees are acting under the bounds of the delegations provided to them;
- b. They are professional staff, suitably qualified in their field of expertise or ensure that expertise is provided;
- c. Their professional acumen, training and internal processes demand that delegations are assessed and recommendations are reviewed; and
- d. Pre-lodgement planning meetings, with staff, are an accepted process available to proponents for them to discuss proposals prior to submission.
- e. Staff may advise proponents of the option to discuss proposals with Council in a workshop forum *before* an application is lodged.

### **Elected Members roles**

- i. Collectively form the Planning Authority of Council;
- ii. Have varied expertise, knowledge and understanding of Planning matters;
- iii. May request any matter relevant to a planning decision; be provided to them by Council staff;
- iv. Shall not engage with proponents regarding a development proposal once it has been lodged for assessment; and
- v. Pre-lodgement presentations at a Council workshop are available to proponents upon request for large or complex proposed developments. Elected members are to consider that such pre-lodgement presentations may vary from that which is submitted to Council for assessment.

- 6.2 Any issues of uncertainty regarding this Policy should be immediately directed to the General Manager.
- 6.3 Elected Members and employees shall respect each other's roles regarding matters of decision making.

#### **Council Employee Responsibilities**

- 6.4 Any Council employee who is required to gather information or evidence from a proponent or other interested party must ensure that detailed meeting notes are recorded.
- 6.5 The General Manager is to ensure that suitably qualified staff are responsible for the preparation of all reports provided to Councillors for use in decision making.

#### **Elected Member Responsibilities**

- 6.6 Elected Members may familiarise themselves with a matter before them, though they shall not actively gather information which may be additional to that which is presented to them as per the lodged documentation. Questions and queries may be directed to staff to ensure greater understanding of any relevant planning matters.
- 6.7 Elected Members may be approached by applicants or other interested parties who wish to discuss a matter which is currently before Council. The following points provide Elected Members with guidelines for handling such enquiries:
- a. Should an applicant or other interested party contact an Elected Member to discuss a matter that is before Council, (or will soon come before Council), then the Elected Member should;
    - politely listen to the reasons for the person making contact with the Elected Member;
    - ensure that the person is made aware of the Elected Member's role as a statutory decision-maker and the obligations that apply to that role which prevent further discussion;
    - if relevant, inform the person that the Elected Member is not in a position to comment or provide any opinion (interim or final) regarding the matter and that the final determination will be made by full Council (whilst acting as the Planning Authority) in due course; and
  - b. direct the person to contact the relevant Council employee, e.g. the Development Services Manager or General Manager, if they wish to note matters officially.
  - c. Should the applicant or other interested party wish to continue discussing the matter and/or provide the Elected Member with additional information, the Elected Member must:
    - advise the person that the appropriate method for doing so is to write to the General Manager;
    - inform the person of the processes for making a written submission or representation to the General Manager; and

- advise the General Manager and other Elected Members of the conversation and any subsequent information that has been provided.

## **7. Site Visits**

- 7.1 Elected Members shall not undertake visits to sites, that are subject to current development assessment by Council, on their own.
- 7.2 Elected Members may attend site visits as a group, and a Development Services staff member or General Manager must always be present.
- 7.3 The General Manager must ensure that a detailed record is made of the site visit.
- 7.4 In instances where an Elected Member is unable to attend a site meeting, the Elected Member must familiarise themselves with the recorded notes of the site meeting.
- 7.5 If a site visit is attended by Councillors, per this section, it should not be conducted in the presence of the proponent or their representative.

## **8. Determining a matter acting in a quasi-judicial capacity**

- 8.1 When determining a matter in which the Council (when acting as the Planning Authority) is required to act in a quasi-judicial capacity, Elected Members must act with judicial fairness, in accordance with the principles of natural justice, without bias and are required to:
- a. consider only those facts and legal principles that are relevant and apply to the decision in question;
  - b. consider all relevant factors required by law as may be specified in the legislation pursuant to which the Planning Authority is making the decision; and
  - c. not take into account any matters that are not relevant to the decision-making process.

## **9. Legislation**

*Judicial Review Act 2000*

*Land Use Planning and Approvals Act 1993*

*Local Government Act 1993*

Local Government (Code of Conduct) Order 2024

Tasmanian Planning Scheme - Flinders

## **10. Related Policies and Procedures**

Employee Code of Conduct Policy

Local Government Code of Conduct Framework

Code of Conduct Dispute Resolution Policy

Local Government Code of Conduct Complaint Form - July 2025

## **11. Responsibility**

Elected Members, General Manager and Development Services staff.