

Councillor interference in planning matters

585. The evidence reveals that there was a widely held view within the community and by some Councillors, that some of the Councillors were inappropriately involved in planning matters, including by (but not limited to) becoming too closely aligned with applicants or objectors<sup>710</sup>.

586. Clr Andrews gave considered and measured evidence on this issue, which is worthy of setting out in this report as it identifies at least one reason why that perception arose (emphasis added)<sup>711</sup>:

“A. ...on occasion and possibly on many occasions over the three years **it was quite obvious that some councillors were arguing the case and gave the feeling - once again, the feeling or the impression to me, that they had or would have had some involvement with the applicant over and above the normal debate on an application before us on any given council meeting.**

So, my opinion, there was **definitely an impression that some councillors may have been favouring an applicant, but almost definitely would have had conversations with that applicant.**

THE COMMISSIONER: Q. **What about the flipside? What about favouring objectors or having had involvement with objectors; did you get that impression from time to time?**

A. **Exactly the same, absolutely.**

Q. *And was this from a variety of councillors or was it from a particular person in particular or?*

A. *Contrary to my view, I think most councillors would have spoken against any given DA on any given occasion even though that the staff had deemed it for approval, but there's a difference and you can tell the difference in the discussion where it's just not general debate, it appears to be that a councillor or councillors at any given time have had, I believe, conversations with the applicant.*

Q. **Was this an observation you make about a variety of members of the governing body or do you limit it to one, for example, or was it more than one individual at different times depending on the application that was being considered?**

A. **Yes, more than one, more than one.”**

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<sup>710</sup> See, e.g., T674.30-675.35, 676.15-19 (former Clr Markwart); T734.17-27, 746.45-748.46 (Ryan); T771.11-772.7, 775.6-776.10 (Samulski); T1032.45-1035.21 (Clr Andrews); T1283.22-27 (former Clr Turland); Ex B, p 248, 427-428, 435-436, 438, 443. Ex B, p 472

<sup>711</sup> T1033.42-1034.37 (Clr Andrews).

587. Similarly, former Clr Markwart gave evidence that he was aware of instances where Councillors would speak towards something very strongly on issues in circumstances where there was a known relationship<sup>712</sup>, and that<sup>713</sup>:

“Q. Do you have a view as to whether, even if it did not strictly fit within the notion of non-pecuniary interest in the code of conduct, whether it was appropriate for a councillor to sit and vote on a DA that they have taken up the cause for from a ratepayer?

A. I personally believe it's inappropriate. I'm not quite sure what the Code of Conduct states on that, but I personally believe a councillor has to be squeaky clean and should manage that perception very carefully.

Q. Do you agree that, if that perception does leak into the community, that someone is able to find a councillor and lobby them, that that can create a perception in the community that that's favourable treatment?

A. I believe that is true and I believe that did happen.”

588. Additionally, there was some evidence that indicates that there were Councillor interactions with planning staff (including below the level of senior staff) which that transgressed into operational matters<sup>714</sup>. For example, Mr Burgess gave evidence that<sup>715</sup>:

“I saw some councillors from their point of view seeking information, but I think the role of seeking information on occasions transgressed into trying to influence staff in potentially recommendations and reports to council, and that seemed to be common in the planning area.”

589. Again, however, the evidence before the Inquiry does leave me in a position to make conclusive findings in relation to specific examples of conduct that amounted to “*inappropriate interference*”.

590. During his evidence, Clr Andrews referred to Clr McLaughlin having been involved in a particular development application and had “*prejudiced*” it, which was the subject of a code of conduct complaint<sup>716</sup>. By way of brief summary, the evidence reveals that Clr McLaughlin was the subject of a code of conduct complaint in which he was alleged to have inappropriately provided assistance and information to an objector to a development and having done so, voted on the relevant application when it came before council. Those matters were the subject of two code of conduct review reports which were delivered during the 2016 Council Term<sup>717</sup>.

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<sup>712</sup> T675.4-6 (former Clr Markwart).

<sup>713</sup> T676.5-19 (former Clr Markwart). See also, Markwart 23 May 2022 Final Submission, p 10.

<sup>714</sup> T747.19-30 (Ryan); T1045.41-1046.4 (Clr Andrews).

<sup>715</sup> T425.5-10 (Burgess).

<sup>716</sup> T1045.15-39 (Andrews).

<sup>717</sup> Ex C, pp 37-233.

591. Much of the conduct that was considered in those reports pre-dated the commencement of the 2016 Term. That which occurred during the early stages of the 2016 Term is inextricably linked to, and cannot be divorced from, the conduct that pre-dates the commencement of the 2016 Term. The issues raised by that conduct are not matters of background, and nor do they provide context for the events but relate to particular examples of conduct by a councillor. In those circumstances, I have concluded that (on balance) it would not be appropriate for me to engage in a consideration of them, or to take them into account, in an assessment of Term of Reference 2. Doing so would require me to engage in a consideration and analysis of particular instances of conduct (as opposed to matters of background) which pre-date the period identified by Term of Reference 2. Accordingly, I have placed no reliance on those matters.

592. A particular benefit of the Local Planning Panel is that the occasion for conduct of that kind cannot. As Mr Ryan explained, it permits councillors to become advocates for or against a development, without being constrained by the fact that they will ultimately be the decision makers<sup>718</sup>.

#### **Findings in relation to Term of Reference 2**

593. Having regard to the whole of the evidence, and for the reasons set out above, I make the following findings in relation to Term of Reference 2:

- i. The evidence establishes that there were instances of “*improper interference*” by individual councillors in operational matters during the 2016 Council Term.
- ii. The evidence does not permit me to make findings as to the extent and frequency of that “*improper interference*”, however a limited number of individual examples have been identified.
- iii. The evidence does not support a conclusion that the Governing Body as a collective group engaged in “*improper interference*” in operational matters during the 2016 Council Term.

594. Counsel Assisting urged me to make the following findings in relation to Term of Reference 2<sup>719</sup>:

*“There was a culture within the Governing Body that led to Councillors micromanaging aspects of the Council that amounted to improper interference, probably caused by a lack of trust between Councillors and Staff”*

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<sup>718</sup> T739.46-740.8 (Ryan).

<sup>719</sup> CA Final Submission, [399(f) and (g)].

and

*“When presented with grey areas, Councillors lacked the capacity and judgment to ascertain what conduct was within the purview of the obligation to direct and control and what conduct constituted improper interference.”*

595. Although there is some force in that submission, I do not consider it necessary to make those findings. I am satisfied that issues of that kind are adequately dealt with in the broader context of Term of Reference 1. Secondly, the examples of *“improper interference”* in operational matters identified above do not, in my view, fall into the category of *“grey areas”*. They were clear transgressions into operational matters. The purported justification for them offered by those Councillors fortifies my view that they did not fully understand their roles and responsibilities as Councillors, nor perform them adequately, reasonably, or appropriately at all times for the purposes of Term of Reference 1.