



## ORDINARY MEETING OF COUNCIL 4 MARCH 2020

### 14.2 REGISTER TO DISCLOSE COUNCILLOR CONTACT WITH DEVELOPERS, DONORS & LOBBYISTS

**EXECUTIVE MEMBER:** KYLIE BENNETTS, DIRECTOR, OFFICE OF THE CEO

**PREPARED BY:** KYLIE BENNETTS, DIRECTOR, OFFICE OF THE CEO

#### 1. PURPOSE

- 1.1 To provide Councillors with a report, which provides information and examples from other Councils who have established or intend to establish a register disclosing Councillor contact with developers, donors and lobbyists.

#### 2. EXECUTIVE SUMMARY

- 2.1 On 4 December 2019, Council passed the following motion: -
  - 2.2.1 *Supports regular disclosure of Councillor contact with developers, disclosed donors and lobbyists.*
  - 2.2.2 *Requests officers to provide a report to Council with information and examples from other Councils who have established or intend to establish a register disclosing all Councillor contact with developers, disclosed donors and lobbyists who are listed on the Victorian Public Sector Commissioner Register of Lobbyists, to enable this matter to be further considered by Council.*
- 2.2 Currently there is no requirement under the Victorian Local Government Act or the draft Local Government Bill to establish a register of this nature. Officers have contacted a sample of Councils in Victoria who have indicated they do not have nor are currently exploring the creation of this type of register.
- 2.3 Examples have been considered from Western Australia and Queensland. While a Council in South Australia explored the possibility of establishing such a register, ultimately it decided not to proceed, details of these examples is provided later in the report. No examples were found of registers that cover developers, lobbyists and donors.
- 2.4 If Council wishes to develop a register the following would need to be determined: -
  - 2.4.1 The *policy* objectives of a register as this will ultimately drive the design, definitions, expectations and resources required to administer it.
  - 2.4.2 How to strike a balance between the rights of ratepayers to continue to have access to elected representatives and the Council while meeting transparency requirements. This may result in prescribed (reportable) and exempt communication (non-reportable) and this would need to be clearly defined so it is well understood;
  - 2.4.3 *Definitions* of a developer, donor and lobbyist so this is clear and unambiguous and consideration of whether any other groups should also be considered e.g. submitters on matters;



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- 2.4.4 The type of communication covered by such a register e.g. meetings, telephone calls, written communication, electronic communication;
  - 2.4.5 Clear guidance on the expected level of information to be provided in the register with *this* balanced with privacy requirements;
  - 2.4.6 *Frequency* that Councillors would be expected to update the register and the timeliness by which this would need to occur;
  - 2.4.7 Whether a policy will be established to administer the register, as without a Council policy, Councillor compliance with the register could not be managed. If a Council policy was established, enforcement could be managed through the Councillor Code of Conduct process;
  - 2.4.8 *Whether* the Council wished to provide guidance to Councillors on the types of contact that can be undertaken at particular points prior to and throughout Council or Planning Committee decision making on a matter;
  - 2.4.9 Officer support required to ensure the register is properly administered.
- 2.5 In terms of current practice, Planning Officers minimise face to face meetings with developers and predominantly require information in writing, which is stored against the development application in Council's records management system. Where Planning Officers meet with applicants, a record of this meeting is also maintained in Council systems. In the event Councillors indicate they intend to meet with a developer, Planning Officers encourage Councillors to consider the purpose of the meeting, whether it is required and or could be misconstrued. In the event Councillors choose to meet with developers, Planning Officers encourage attendance by an officer at these meetings.

### 3. RECOMMENDATION

That Council:

- 3.1 Notes this report.
- 3.2 Indicates whether any further action is required by officers as a result.

### 4. KEY POINTS/ISSUES

#### Victorian Legislative Context

- 4.1 There is currently no provision in the Local Government Act of Victoria nor is one proposed through the Local Government Bill before Parliament with respect to the creation and update of a register of Councillor communications for certain groups. However, there is nothing in either the current legislation or bill that would preclude the Council from establishing a register if they chose to do so.
- 4.2 Current legislative provisions used to manage interactions between developers, donors and lobbyists is the Local Government Act conflict of interest provisions which require a Councillor to declare whether they have a direct or indirect conflict on matters that come before them. These requirements are outlined in **Attachment 1**.



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- 4.3 In the case of donors, there is an additional requirement with all candidates including those elected as Councillors required by the Local Government Act to declare any campaign donations made over \$500.
- 4.4 Councillors are also required to complete a primary return following their election and ordinary returns every six months.

### **Considerations for Council**

- 4.5 In the sections that follow information is provided on examples used in Western Australia and Queensland and considerations made in South Australia.
- 4.6 Some of the key considerations that arise for Council following review of practice in other jurisdictions, is the need to establish clear policy objectives for what Council is seeking to achieve as this will greatly impact on the design and administration of such a register. Of importance will be the balance that Council seeks to strike between transparency and enabling groups within the community to access their elected officials.
- 4.7 Successful implementation will be dependent on ensuring there are clear definitions for the groups to be included on the register and communicating this requirement to these groups. Also required will be clear definitions on when Councillors are required to report (and any exclusions, if applicable), the level of detail required, the timeframes by when communication would need to be recorded, what types of communication would be covered and where the register would be published or made available and ensuring that this meets Privacy Act requirements. Officers would then need to establish the resources required to administer the register, which will vary dependent upon what Council agrees.
- 4.8 It will also be important for Council to consider whether they wish for this requirement to be binding on Councillors. In the event they do, a policy would need to be developed and adopted by Council, where failure to abide by Council Policy could then be enforced through the Councillors Code of Conduct process.

### **Western Australian Context**

- 4.9 In 2016, the City of Vincent in Western Australia issued a discussion paper 'Raising the Bar – New Transparency Reforms for WA local government'. This discussion paper was written following the defeat of a City of Vincent motion at the Western Australian Local Government Association meeting seeking broad ranging transparency reforms in local government.
- 4.10 Amongst, other recommendations this paper recommended the establishment of a register to record Councillor communications with developers. The City of Vincent has subsequently created a policy and a register to record this type of communication, as outlined in **Attachment 2**. Some other Councils in Western Australia have also created a similar policy and register.
- 4.11 Under the City of Vincent policy, Councillors are required to report "prescribed contact" with a 'developer' that is not 'exempt contact'. To that end, 'prescribed contact' means contact (via any method of communication) relating to a planning or development proposal for which the developer is a proponent, other than an exempt contact. A 'planning or development proposal' includes variations to the relevant local planning policy or a particular development proposal.



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- 4.12 'Exempt contact' excludes contact in the form of public statements made at Council forums, briefings or Council meetings. The definition also captures any discussion or communication which is unrelated to a planning or development proposal.
- 4.13 The City of Vincent Policy defines a 'developer' as:  
an individual, body corporate or company engaged in a business that:
- (a) regularly involves the making of relevant planning applications in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit; and
  - (b) includes any consultant, lobbyist, advisor, agent, representative or person closely associated with a Developer and who is appointed to promote or advocate for the Developer's interests or proposal, except when they are representing someone who is not regularly involved in the making of relevant planning applications or the development of land.
- 4.14 It is understood that the above definition is adapted from the now repealed Election Funding, Expenditure and Disclosures Act 1981 (NSW). Officers are of the view that there are several challenges with practically interpreting the above definition including how the term 'regularly involves' is defined. The definition does not require Councillors to report contact by persons who do not 'regularly' make planning applications for residential or commercial land and by those who do not ultimately wish to sell or lease the land to be developed. However, despite not needing to record these instances, communication with these parties could still impact an elected official. With respect to a developer who is regularly involved in these types of activities, often a developer might establish separate corporate vehicles for land sales, purchases or developments. While the developer may be the same as long as the corporate entity is different, there is scope to argue that under this definition this contact would not need to be recorded.
- 4.15 The City of Vincent register is available easily online, however it does include a substantial amount of information, and could be perceived by some as a summary of the meeting rather than a register of communications.
- 4.16 In a City of Port Phillip context, consideration would need to be given as to whether the above definition of developer would be relevant, the administration required to support the register and any privacy issues associated with the level of disclosure in the online register.

### **Queensland**

- 4.17 The policy documents for a selection of Councils in Queensland were reviewed. While there was some inconsistency, the general intent of most was to cover Councillor Contact with a Lobbyist, Developer & Submitter. The policy documents in general were intended to provide ethical guidance and were established in addition to the requirements and processes for contact with lobbyists outlined in the Integrity Act 2009 (for example lobbyists must be registered prior to undertaking lobbying activities).
- 4.18 In general, the policies, defined a developer in terms of an applicant for development approval (regardless of the size or regularity), a lobbyist being an entity carrying out lobbying activity for a third party as identified by the Integrity Act 2009 and a submitter meaning a person who makes a submission about an application or plan process.
- 4.19 All examples viewed, to lesser or greater extents tried to strike a balance between transparency and access to elected officials and all outlined what was expected from



Councillors when meeting with a developer, lobbyist or submitter at various stages of planning considerations e.g. where no proposal exists, where a submission has been made and where an application is subject to legal proceedings.

- 4.20 All indicated a requirement for Councillors to maintain a record of these communications and the requirement for the CEO to maintain a register. No examples of such a register could be found publicly online, however an example of the policy and form that is required to be completed by Councillors (and staff) at the City of Mackay is outlined in **Attachment 3**.
- 4.21 In a City of Port Phillip context, what is required of Councillors may be clearer in this example than the City of Vincent, however the Queensland approach may involve significant resources to administer. It also relies, to the best of their knowledge, a Councillor being aware that a particular planning matter may be coming or is currently before them.

### **South Australia**

- 4.22 A Council in South Australia requested that its administration investigate draft guidelines for the disclosure of Council Members contact with Developers (with particular consideration given to City of Vincent Policy 4.2.15 - Council Member Contact with Developers) and improvements in the register of interest process to be presented to Council by December 2019.
- 4.23 Following consideration of the City of Vincent Policy, the Council did not proceed to establish guidelines.
- 4.24 There were various reasons for this, however a key consideration was that in South Australia, Councillors are not involved in planning decisions in the same way that occurs in Western Australia. While the Council has input into the development of planning policy (its Development Plan), under the Development Act 1993, it is the Minister for Planning who ultimately approves any amendment to local planning policy. The legislation also dictates that all planning decisions must be delegated to a member of council staff or the Council Assessment Panel (where there is only one elected representative). As such, the Council (as an elected body) is not only not able to make planning decisions, but the statute prohibits it from doing so. Council Assessment Panel members conduct is regulated by a Code of Conduct and is a statutory instrument adopted under the Planning, Infrastructure and Development Act 2016, the purpose of which is to establish common standards of behaviour for CAP members across the State.
- 4.25 In a City of Port Phillip context, the planning legislation is different and as such these considerations are not relevant to what the City of Port Phillip may wish to pursue.

## **5. CONSULTATION AND STAKEHOLDERS**

- 5.1 N/A

## **6. LEGAL AND RISK IMPLICATIONS**

- 6.1 Any register needs to be considered in the Victorian legislative context. If a register is developed, Council will need to ensure that it meets the requirements of the Privacy Act.



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### 7. FINANCIAL IMPACT

- 7.1 Dependent upon the scope of the register, officers will need to consider the resources required to properly administer it.

### 8. COMMUNITY IMPACT

- 8.1 Implementation of a such a register could demonstrate increased transparency and accountability by the Council however this would need to be balanced with the requirement to ensure that ratepayers retain access to their elected officials.

### 9. PROPOSED NEXT STEPS

- 9.1 Council to outline interest in progressing further policy work – February / March.
- 9.2 In the event the Council wishes to explore the matter further: -
- 9.2.1 Policy objectives developed – March / April;
  - 9.2.2 Policy options developed – April / May;
  - 9.2.3 Policy and register adopted – June;
  - 9.2.4 Policy and register implemented – July.

### 10. OFFICER DIRECT OR INDIRECT INTEREST

- 10.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

**TRIM FILE NO:** F20/1

**ATTACHMENTS**

1. Conflict of Interest Provisions - Attachment 1
2. Vincent Policy & Register - Attachment 2
3. City of Mackay Policy - Attachment 3