

# Financial Dealings

ITEM 15.1 11/05/2021

Council

**Council Member**  
Councillor Moran

2018/04053  
Public

**Contact Officer:**  
Justin Lynch, Chief Operating  
Officer, Corporate Services

## QUESTION ON NOTICE

**Councillor Moran will ask the following Question on Notice:**

'What is the current policy regarding financial dealings between Council members?'

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## REPLY

1. Rather than there being policy position(s) regarding financial dealings between Council Members various legislation applies depending on the circumstances as it relates to their role as a Council Member (rather than private business).
2. There are various provisions of the *Local Government Act 1999 (SA)* (the LG Act) which Council Members are required to consider and would apply to their financial dealings:
  - 2.1. Section 8 – Principles to be observed by a Council – specifically section 8(j) provides that one of the principles that a Council must observe is to achieve and maintain standards of good public administration.
  - 2.2. Chapter 5, Part 3 – Role of Members – requires the principles of section 8 to be observed.
  - 2.3. Chapter 5, Part 4 – Division 1 – talks to General Duties and Code of Conduct which includes Council Members acting at all times with honesty, reasonable care and diligence. In addition, a Council Member must not make improper use of information acquired by virtue of their position as a Council Member to gain an advantage for themselves or for another person or to cause detriment to the Council. Significant penalties apply.
  - 2.4. Chapter 5, Part 4 – Division 2 and Schedule 3 – Primary/Ordinary returns and Register of Interests – Council Members are required to disclose information on their primary returns and ordinary returns thereby covering financial dealings as they are relevant to their role as a Council Member which is comprehensively explained in Schedule 3. Council Members are required to advise of any changes/variations in the information provided on the return within 1 month of the change or variation.
  - 2.5. Chapter 5, Part 4 – Division 3 talks to Conflicts of Interest and provides definitions on material, actual and perceived conflict of interests which could apply based on Council Member's financial dealings and the matters being presented for consideration and decision by Council.
3. The above legislative provisions are included in the City of Adelaide Standing Orders as verbatim extracts from the legislation. Chapter 3 talks to General Duties and Code of Conduct for Council Members and Chapter 4 talks to Disclosure of Interests.

4. From a complaint perspective, which may arise from allegations arising from Council Member financial dealings and depending on the specific circumstances, the following applies:
  - 4.1. Section 263 of the LG Act states there are grounds for a complaint to be made against a Council Member if there has been a contravention or non-compliance with Chapter 5, Part 4 (Members of Council – Conduct and disclosure of interests).
  - 4.2. Section 263A of the LG Act talks to the investigation of a complaint by the Ombudsman and then the process of a complaint lodged with SACAT (SA Civil and Administrative Tribunal).
  - 4.3. The Code of Conduct for Council Members (as required by section 63 of the LG Act) has a 'Complaints' section and is supported by Chapter 3, Part 3 of the Standing Orders which details the Complaint Handling Procedure.
5. In addition to the LG Act section 5 of the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) defines misconduct and maladministration. Depending on the specifics of the financial dealings of Council Members and if there are breaches of the Code of Conduct (misconduct) or an irregular/unauthorised use of public money/resources or mismanagement in relation to the performance of official functions (maladministration), then provisions of the ICAC Act would apply.
6. There is clear information on the ICAC website relating to how complaints and reports can be made and are managed. Standing Order 31 draws attention to this.

Staff time in receiving and preparing this reply	To prepare this reply in response to the question on notice took approximately 4.5 hours.
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- END OF REPORT -

# 88 O'Connell Demonstration Apartment

**ITEM 5.2** 11/05/2021  
**Council**

**Council Member**  
Councillor Martin

2018/02324  
Public

**Contact Officer:**  
Tom McCready, Acting Director  
City Shaping

## QUESTION ON NOTICE

### Councillor Martin will ask the following Question on Notice:

'Noting that work begins this month on the construction of a demonstration apartment to drive pre sales of residences in the proposed development at 88 O'Connell Street, could the Administration advise:

1. What will be dimensions of the entire site, including associated parking and fenced areas, to be occupied by the demonstration apartment?
2. Who will pay for the cost of the construction and the supply of services for the demonstration apartment?
3. Will Commercial and General pay Council rates for the land to be occupied by the demonstration apartment and, if so, what is the anticipated amount?
4. For how long will the demonstration apartment occupy the site and is there an agreed end date in the event of a delay to the commencement of construction of the proposed development at 88 O'Connell St?
5. Will the City of Adelaide or Commercial and General be responsible for the removal or demolition of demonstration apartment and are there any guarantees in respect of this if Commercial and General decides to not proceed with the proposed development at 88 O'Connell Street?'

## REPLY

1. The matters regarding construction, occupancy costs, time periods and decommissioning are dealt with under the Land Facilitation Agreement, the terms of which are confidential.
2. The sales centre and associated car park will utilise approximately 1000m<sup>2</sup> of the site with access to the carpark via Archer Street.
3. The demonstration apartment and sales centre proposal has been progressed in accordance with the development application process.

Staff time in receiving and preparing this reply	To prepare this reply in response to the question on notice took approximately 4 hours.
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- END OF REPORT -

## 88 O'Connell Pty Ltd

ITEM 15.3 11/05/2021

Council

**Council Member**  
Councillor Martin

2018/02324  
Public

**Contact Officer:**  
Tom McCready, Acting Director  
City Shaping

## QUESTION ON NOTICE

**Councillor Martin will ask the following Question on Notice:**

'The Prudential Report into the arrangements to develop 88 O'Connell Street noted that Commercial and General Pty Ltd, with whom Council said it had "entered into an agreement", would establish an entity called "88 O'Connell Street Pty Ltd " for the specific purpose of development of the scheme. Could the Administration advise the names of the Directors of 88 O'Connell Street Pty Ltd and the amount of its paid-up capital as advised to the Australian Securities and Investments Commission at close of business on May 4<sup>th</sup>, 2021?'

## REPLY

1. The project is the conditional sale of 88 O'Connell Street North Adelaide to 88 O'Connell Pty Ltd which is an entity established by Commercial & General Pty Ltd for the specific purpose of developing the scheme.
2. The entity is a Special Purpose Vehicle (SPV) and the use of a SPV is a common approach by businesses when carrying out a development.
3. As noted in the Prudential Report, Commercial & General Pty Ltd established 88 O'Connell Pty Ltd for the specific purpose of the development. The director is Jamieson James McClurg. As at the date of entering into the Land facilitation Agreement, it had a paid-up capital of \$1 according to the Australian Security Investment Commission (ASIC) records.

Staff time in receiving and preparing this reply	To prepare this reply in response to the question on notice took approximately 4.5 hours.
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- END OF REPORT -

# Legal Advice and Representation

ITEM 15.4 11/05/2021

Council

**Council Member**  
Councillor Martin

2018/04053  
Public

**Contact Officer:**  
Justin Lynch, Chief Operating  
Officer

## QUESTION ON NOTICE

**Councillor Martin will ask the following Question on Notice:**

'Could the Administration advise what is the policy of the Council regarding the provision of legal advice and/or legal representation to any elected member or any staff who are required to answer questions to appear before any integrity agency?'

## REPLY

1. Pursuant to section 78A of the *Local Government Act 1999 (SA)*, the City of Adelaide Standing Orders 90 – 93 provide the policy position relating to the provision of independent legal advice for Council Members.
2. The relevant Standing Orders are:
  90. *In liaison with the Chief Executive Officer (or delegate), Council Members will have access to independent and confidential legal advice at the cost of Council regarding any question or matter arising in relation to the Council Member's role or legal responsibilities, or rights in relation to, or arising out of, his or her capacity as a Council Member.*
  91. *The right to legal advice under Standing Order 90 does not extend to the provision of ongoing legal representation in relation to any legal issue or matter without a resolution of Council to that effect.*
  92. *The right to legal advice under Standing Order 90 does not extend to actions arising out of the private business, or a private matter, of a Council Member.*
  93. *Council Members shall select a legal provider from the legal panel appointed by the Corporation of the City of Adelaide, unless another legal provider is approved by the Chief Executive Officer, on a reasonable basis, taking into account the circumstances of the matter.*
3. With respect to legal advice and/or legal representation for City of Adelaide staff, this is at the discretion of the Chief Executive Officer (or their delegate).
4. A key distinction that must be made in the seeking and obtaining of legal advice in this context relates to the proper identification of who the client is in any given circumstance. In particular, ensuring the distinction between a solicitor acting for the Council as a legal entity as distinct from a solicitor acting for any individual employee. Legal advice is sought and provided in circumstances where the advice is necessary for and pertains to the proper exercise of an employee of a particular statutory role, function, duty or obligation that the employee has by virtue of them being an employee of the Council. This is separate and distinct from the advice that an employee may require in a personal capacity as a result of a matter that has arisen at work.

5. An example where legal advice could be appropriately sought by City of Adelaide staff is in determining whether an employee has specific reporting or management obligations under the *Public Interest Disclosure Act 2018* or the *Independent Commissioner Against Corruption Act 2012* in respect of conduct which they have become aware of in the course of their duties (whether because of their own observations or because of a complaint made to them). Advice in this context would (for example) cover the existence (or not) of the duty to report, the action to be taken in respect of the report and the provision of information in whatever form to a relevant external agency (including in writing or verbally at an interview). In this context, the client is the Council and the advice is sought and provided to ensure the Council (through its employees) complies with all relevant legal duties and obligations and the relevant employee is able to lawfully discharge their obligations.
6. An example of circumstances where it would be less usual for the Council to fund the provision of legal advice for an employee would be if particular allegations of misconduct were made against a particular employee regarding their behaviour at work. For example, where an external agency was investigating the appropriateness or lawfulness of the behaviour of an individual employee. In the case of an investigation into behaviour, it would often be the case that (absent some particular decision of the Council, the Chief Executive Officer or some other duly authorised delegate to the contrary) any legal advice would be provided to the employee by a solicitor engaged and funded by the employee themselves rather than a solicitor acting for the Council. In such a case Council's solicitors would separately provide advice to the Council (through other employees) regarding that behaviour.
7. Importantly, seeking advice regarding the proper discharge of powers, functions or duties does not give rise to any conflict of interest considerations. It is not a conflict for an employee to seek advice regarding the proper or lawful exercise of powers, functions or duties in the course of their official duties; it is a routine purpose for which advice from the Council's solicitors is sought and a fundamental requirement for ensuring standards of good administrative practice and governance are maintained.

Staff time in receiving and preparing this reply	To prepare this reply in response to the question on notice took approximately 5.5 hours.
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# East West Bikeway Expenditure

ITEM 15.5 11/05/2021

Council

**Council Member**  
Councillor Martin

2018/04053  
Public

**Contact Officer:**  
Klinton Devenish, Director,  
Services, Infrastructure &  
Operations

## QUESTION ON NOTICE

**Councillor Martin will ask the following Question on Notice:**

'Could the Administration advise the total costs associated with the various plans since 2017 for an East West Bikeway, the last proposal for which was voted down on March 23<sup>rd</sup>, 2021, including:

1. All detailed sets of plans prepared.
2. All international, interstate and local consultant fees.
3. All public consultations.
4. Staff salaries directly attributable to the project.
5. Any other relevant costs?'

## REPLY

1. The total costs incurred for the East-West Bikeway project for the years 2016-17 to 2020-21 inclusive are as follows:

	<b>Expenditure Ex GST</b>
Engagement	\$31,745
Engineering & design	\$241,753
Prudential Report & Economics Analysis	\$35,451
Internal staff costs and overheads	\$113,083
<b>Total</b>	<b>\$422,032</b>

2. This total includes expenditure on consultant fees of approximately \$304,000.
3. All costs incurred in developing options for consideration by Council have been developed under the conditions of the Adelaide Bikeways Infrastructure Project Deed and with the intent of determining an East West Separated Bikeway route and design that satisfies Councils resolution/s.

Staff time in receiving and preparing this reply	To prepare this reply in response to the question on notice took approximately 5.5 hours.
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# Portrait of Dame Roma Mitchell

ITEM 15.6 11/05/2021

Council

**Council Member**  
Councillor Moran

2020/01167  
Public

**Contact Officer:**  
Tom McCready, Acting Director  
City Shaping

## QUESTION ON NOTICE

**Councillor Moran will ask the following Question on Notice:**

1. 'Why is the City of Adelaide commissioning a portrait of Dame Roma Mitchell to be hung in the main chamber of the Council?
2. Why isn't one of the very few women (only 17) that have been on Council such as Dame Esther Jacobs 1946 to 1978 or the wonderful Rosemary Boucaut 1980 to 1995 being recognised?'

## REPLY

1. At its meeting on 28 January 2020, Council discussed and approved:
 

*Item 12.5 - Honouring Female Leaders in the City of Adelaide [2009/00789] Presented to Committee 3/3/2020 [C]*

*That Council:*

  1. *Approves the development of an ongoing Civic Collection curation program in the Council Chamber, that facilitates the recognition and celebration of female leaders with historical significance to the State and City of Adelaide.*
  2. *Approves the commissioning of a female local artist to produce a framed portrait painting of Adelaide's first female Lord Mayor, Wendy Chapman AM.*
  3. *Approves the commissioning of a female local artist to produce framed portrait paintings of the following five female leaders (or for Administration to enter into long-term loan agreements for suitable existing portrait paintings)*
    - 3.1 *Dame Roma Mitchell AC, DBE, CVO, QC*
    - 3.2 *Aunty Shirley Peisley AM*
    - 3.3 *Mary Lee*
    - 3.4 *Catherine Helen Spence*
    - 3.5 *Ivarrityi*
  4. *Notes that the commissioning costs will be funded from the Public Art capital budget and that re-curation costs of up to \$15,000 over two years will be considered in the FY2020/21 and FY2021/22 budgets.*
2. The six portraits approved represent our founding females, women of historical significance to the City and the State including Aboriginal and Kaurna Elders past and present, widely acknowledged for the long-term impact of their leadership, influence and social reform.



3. Any additional female leaders nominated would need to meet the selection criteria and budget would need to be allocated.
4. In 2014 the Lady Esther Lipman Jacobs Room in the Town Hall was so named to honour the first female Councillor elected to the City of Adelaide Council – a first for the state of South Australia – and Council's first female Deputy Lord Mayor.

Staff time in receiving and preparing this reply	To prepare this reply in response to the question on notice took approximately 4.5 hours.
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