

# Councillor Martin - MoN - Elected Member Developer Contact Register

Tuesday, 13 August 2024  
Council

**Council Member**  
Councillor Phillip Martin

Public

**Contact Officer:**  
Anthony Spartalis, Acting Chief  
Operating Officer

## MOTION ON NOTICE

**Councillor Phillip Martin will move a motion and seek a seconder for the matter shown below to facilitate consideration by the Council:**

'That Council;

Asks the Administration to deliver by the first Council meeting in November, 2024 a report identifying a draft policy framework for the creation and maintenance of an elected member/developer contact register, including;

- i) The intent of the policy
- ii) The definition of communication with a developer/s that would be required to be recorded
- iii) The manner and time frames for notification of such communication
- iv) The means by which and the frequency this information would be published
- v) Any other related considerations or recommendations.'

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## ADMINISTRATION COMMENT

1. At its meeting on 30 July 2019, Council resolved:
  1. *Requests that 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.*
  2. *CEO Undertaking - Contact with Developers Online Register*  
*In response to queries from Councillor Martin, an undertaking was given to provide members with the number of developers in the City of Adelaide.*
2. In response to the decision of Council on 30 July 2019, an e-news was distributed to Council Members on 3 October 2019. The e-news contained the following information:  
*Legal advice has been sought that clarifies how a developer contact register could be applied within the South Australian legal context and planning framework. The legal advice identifies that the City of Vincent model within the Western Australia context is quite different to South Australia. Council Members are not involved within the decision making of development applications and contact with developers is already dealt with by the comprehensive statutory conflict of interest regime (Code of Conduct) that applies to Council*

*Members. Additionally, Council Assessment Panel (CAP) members are also required to adhere to a Code of Conduct which prohibits contact with developers that will be the subject of a decision by the CAP.*

*The legal advice suggests that whilst there may be some advantages relating to increasing public confidence, these advantages would be outweighed by the administrative burden of administering such a register and the lack of enforceability.*

*On the basis of the legal advice, and coupled with the administrative burden, Administration will raise this matter through the State Government's current Local Government Act 1999 reform currently underway highlighting the desire for Council to pursue its desire for greater transparency procedures and/or process improvements.*

*It should be noted that in 2018, Council received development applications from 1,299 developers (companies and individuals).*

3. At the Council meeting on 14 July 2020, the following Motion on Notice was put to the meeting and was lost:
  1. *Notes that in response to Council's resolution of 30 July 2019 administration have raised the potential to mandate disclosure of Councillor contact with developers with the State Government as part of their Local Government reforms.*
  2. *Requests that administration publish the official diaries of the Lord Mayor, Deputy Lord Mayor and Councillors on the City of Adelaide website in the form of a table/list of daily official commitments (similar to the format adopted in the ACT).*
4. At the Council Meeting on 14 June 2022, the following Motion on Notice was put to the meeting and was lost:
  1. *Supports the regular disclosure of elected member contact with developers on an online register to improve transparency and community trust in decision making.*
  2. *Request that administration provide a report on how this might occur, considering in particular, the City of Vincent's on 'Council Members Contact With Developers.*
5. The Conflict of Interest provisions contained in the *Local Government Act (SA) 1999* (the Act) provide a framework to ensure appropriate governance controls relating to Council Member activity.
6. Unlike other States, councils within South Australia operate under a Council Assessment Panel (and State Commission Assessment Panel) structure, thereby limiting conflict of interest situations for Councillors regarding development activities.
7. Council Members in South Australia have little influence over development decisions. Further, it is noted that as developers are part of the ratepaying community which Council Members are elected to serve, communications with them should not be subject to differential treatment, compared to communications with other classes of ratepayer.

#### Argument for a Developer Register

8. A register may dispel perceptions by the community of Council having a bias toward developers, therefore increasing public confidence.
9. A register may serve as a form of protection for Council Members against being wrongfully accused of trying to influence decisions about development if they are seen meeting with developers.

#### Arguments against a Developer Register

10. Whilst the Council has input into planning policy, it is the Minister for Planning who approves any amendments.
11. Whilst the CAP has one Council Member on the panel, there are existing structures in place to ensure independence and transparency of all CAP members. All CAP members must accord with the CAP Code of Conduct which expressly prohibits CAP members from engaging with developers or entering the site of a development that will be assessed by the CAP. A breach of this Code of Conduct provides the State Planning Commission with powers including removing that person from their role on CAP (*Planning, Development and Infrastructure (General) Regulations 2017, section 11 (14)*).
12. Council Members are subject to a comprehensive statutory conflict of interest regime which regulates material, and general conflicts of interest in so far as they impact upon matters to be discussed for decision at meetings of the Council. These matters are regulated under the Act and *Behavioural Standards for Council Members*.
  - 12.1. Conflicts of interest may well include dealings between Council Members and developers.
  - 12.2. Election campaign donations may also be the subject of disclosure if gifted to the candidate during the disclosure period.

12.3. Council Members are required to disclose any gift or benefit received over the value of \$50.00 during the council term.

Other considerations

13. Creating a register will have resource implications, namely maintaining the register, and investigating and taking action in relation to any complaints or alleged breaches of a relevant policy.
14. The community may question why all communication with persons or groups who are trying to influence decision-making should be recorded. For example, should the register be broadened to include all individuals or interest groups who have an interest and are trying to influence the planning system in other ways such as heritage controls, protecting the environment, or the evolution of planning in the city?
15. Administration has not been able to find a development register or contact list for State Government Ministers.
16. Administration has previously sought legal advice to assist with a review of the City of Vincent policy and to provide a comparison and analysis within the South Australian legal framework. The legal advice summarises some potential advantages but recommends that there would be limited benefit of adopting a Developer Register.
17. Whilst the legal advice does not recommend that Council creates a Developer Register, it does suggest that Council pursues its desire for greater transparency and/or process improvements for local government within the State's review of the Act.

Should the motion be carried, the following implications of this motion should be considered. Note any costs provided are estimates only – no quotes or prices have been obtained:	
Public consultation	Not Applicable
External consultant advice	Not Applicable
Legal advice / litigation (eg contract breach)	May need to consider requesting further legal advice on this matter in relation to considerations of inclusions within a draft policy.
Impacts on existing projects	Not Applicable
Budget reallocation	Not Applicable
Capital investment	Not Applicable
Staff time in preparing the workshop / report requested in the motion	Not Applicable
Other	Not Applicable
Staff time in receiving and preparing this administration comment	To prepare this administration comment in response to the motion on notice took approximately 5.5 hours.

- END OF REPORT -