

**M23/5960 – UPDATE REPORT – PROPERTY DEVELOPER POLICY AND REGISTER  
(REC)**

Ward : All  
 Category : Policy  
 Subject Index : Policy Development.  
 Customer Index : City of Melville  
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.  
 Previous Items : Item 15.3 Property Developer Policy and Register – Ordinary Meeting of Council held 18 October 2022.  
 Works Programme : Not Applicable  
 Funding : Not Applicable  
 Responsible Officer : Gavin Ponton  
 A/Director Urban Planning

**AUTHORITY / DISCRETION**

**DEFINITION**

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input checked="" type="checkbox"/>	<b>Information</b>	<b><i>For the Council/Committee to note.</i></b>

## M23/5960 – UPDATE REPORT – PROPERTY DEVELOPER POLICY AND REGISTER (REC)

### KEY ISSUES / SUMMARY

- At the 18 October 2022 Ordinary Meeting of Council, it was resolved that draft Council policies be prepared that provide guidelines for elected Members and Staff for the management and registration of contacts with Property Developers.
- The October 2022 resolution required that the draft policies be discussed at an Elected Member Engagement Session (EMES) before being considered and adopted at the March 2023 Ordinary Meeting of Council.
- The merits of adopting draft Policies to guide elected member and/or staff contact with developers was discussed by Elected Members at the EMES held 7 March 2023. For discussion purposes, the EMES included reference to examples of draft policies which could apply to the City of Melville.
- This report outlines progress in investigating potential policy responses relating to contact with developers as requested by the October 2022 resolution.
- Investigations have established a need for further consideration of potential policy responses, including referral to a further EMES.
- Accordingly, this report recommends a deferral of the matter until the June 2023 Ordinary Meeting of Council.

### BACKGROUND

At the 18 October 2022 Ordinary Meeting of Council it was resolved:

***That the Council directs the Chief Executive Officer to prepare draft Council policies for Council's discussion at an EMES / workshop followed by consideration & adoption at or before the March 2023 Ordinary Meeting of Council, that provides policy guidelines for Elected Members and all staff (and Planning Staff in particular) for the management and registration of all Elected Member and staff contacts with Property Developers involved in or likely to be involved in property developments within the City of Melville. The policy shall define EM / staff duties, responsibilities and recording of such contacts.***

The reasons provided in support of the resolution were:

1. Applicants, objectors, and members of the community must have trust in Council Members' ability to make decisions free of influence or the perception of influence, particularly in respect of town planning and development decisions.
2. Contact with developers is a normal and necessary function of the role of a Council Member and duties of planning staff. However, the nature and frequency of that contact can sometimes lead to allegations or perceptions of bias, influence or even corruption being made towards Council Members / staff. Implementing transparent decision-making processes and registration of such contacts can reduce opportunities for such allegations or perceptions to be raised.
3. Refer to Town of Cambridge Council Policy 033 and Council Policy 039 as examples of such policies.

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### **DETAIL**

As referenced, consideration was given to the Town of Cambridge Policies that related to Developer Contact with Staff and Elected Member Relationship with Developers.

Further research indicates that the City of Vincent, at its Council Meeting of 2 June 2015, also adopted a policy to provide guidance on contact between Council Members and Developers operating in the City of Vincent. Under that Policy, Council Members only are required, the same as the Cambridge policy, to record the nature and type of any 'prescribed contact' which they have with a developer and provide a copy of that record to the CEO within 10 days of the contact occurring.

The City of South Perth has a policy to guide Elected Members in disclosing and recording contact with developers and lobbyists.

In addition to the above the Department of Local Government, Sport and Cultural Industries has published operational guidelines on Elected Members' relationships with developers and more recently (December 2022) the City of Joondalup resolved not to prepare a developer contact policy.

At the Elected Members Engagement Session held 7 March 2023, the above documents along with the Town of Cambridge and City of Vincent published registers were presented and discussed.

Discussion noted that a policy and register approach to contact with developers may offer benefit in terms of transparency in decision making. It was recognised however, that existing governance controls and guidelines suitably addressed these issues. A register approach to developer contact also introduces additional complexity around privacy and potential resource implications.

In discussing the draft policies that were presented Elected Members indicated that they would like more time to consider the information presented and would consider referring the matter to a future EMES.

Consideration of the Council Policy CP-052 Quasi-Judicial Role is also required in relation to this matter. This Policy:

- 1 assists Elected Members and employees of the City of Melville (City) to recognise when they are performing quasi-judicial functions.
- 2 explains why special principles apply to the performance of quasi-judicial functions.
- 3 provides guidance as to the conduct appropriate to the performance of quasi-judicial functions, and
- 4 explains some of the consequences to the City and to Elected Members and employees of the failure to act appropriately when performing quasi-judicial functions.

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### **STAKEHOLDER ENGAGEMENT**

#### **I. COMMUNITY**

No community engagement has been undertaken with regards to this item.

#### **II. OTHER AGENCIES / CONSULTANTS**

No engagement with other agencies or consultants has been undertaken with regards to this item.

### **STATUTORY AND LEGAL IMPLICATIONS**

The Council is not required to prepare specific policies providing guidance on contact with developers and/or the recording of such contact. Existing governance controls such as the Code of Conducts, Quasi-Judicial Policy and record keeping requirements currently address appropriate contact with developers and recording of such contact.

### **FINANCIAL IMPLICATIONS**

There are no financial implications with regard to this item at this point in time.

### **STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS**

As this report provides an update on research to date and the presentation made at the EMES, no risk assessment on adopting policies relating to having Contact with Developers registers has been undertaken, at this point in time.

### **POLICY IMPLICATIONS**

Council Policy CP-052 Quasi-Judicial Role needs to also be considered in relation to Elected Member contact with developers. This policy is due for review and will be presented to a future meeting of Council.

### **ALTERNATE OPTIONS AND THEIR IMPLICATIONS**

No alternative option is proposed at this point in time.

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### **CONCLUSION**

Investigation of the opportunities and issues associated with introduction of a Council policy to guide Elected Member and staff contact with developers has progressed in accordance with the October 2022 resolution of Council. Discussions to date has identified the need for further investigation, including discussion at a further EMES, prior to consideration of adopting any new policies on this matter. Accordingly, it is recommended that Council note the progress to date on investigating options to guide contact with developers and to refer further consideration of the matter to an EMES ahead of the matter being reconsidered at the June 2023 Council Meeting.

### **OFFICER RECOMMENDATION (5960)**

### **NOTING**

#### **That the Council:**

- 1. note the Update Report - Property Developer Policy and Register; and**
- 2. that the matter be referred to a future Elected Member Engagement Session and be considered further at the June 2023 Ordinary Meeting of Council.**