

Management report to Council**Agenda item 6.2****Developer Contact Policy****Council****Presenter:** David Thompson, Director Governance**28 May 2024****Purpose and background**

1. To consider adopting the Developer Contact Policy.
2. Councillors are often required to make decisions about planning and developments in the City of Melbourne and as part of seeking information, may interact with developers on upcoming developments.
3. The Councillor Code of Conduct at Clause 2.3.10 set out below requires:

“When proposing to meet with a known or proposed planning permit applicant (or property owner, or their representative), either for the purpose of discussing the application or where the application is likely to become a topic of discussion, I will hold the meeting with a planning officer present”.
4. The community is often concerned about the potential influence of developers especially when there are large sums of money at stake.
5. Operation Sandon has thrown the issue into the spotlight. The Independent Broad-based Anti-corruption Commission (IBAC) operation held public hearings in 2019 and 2020 into allegations of serious corrupt conduct in relations to planning and property development decisions at the City of Casey. The hearings looked at the transparency and integrity of planning and property development decision making, including:
 - 5.1. donations or in-kind assistance to election candidates
 - 5.2. donations, gifts, pro bono services or other hospitality
 - 5.3. the use of professional lobbyists or planning consultants.
6. In summary, IBAC’s report recommends a body of work be undertaken by the State government to improve transparency and minimise the risk of corruption in relation to planning and property development decisions in local communities.
7. Council officers have considered the IBAC recommendations and in advance of any guidance from Local Government Victoria have reached the conclusion it is appropriate to create a policy to guide Councillor contact with developers. The Developer Contact Policy (the Policy) is at Attachment 1.
8. It is acknowledged Council staff interact with a variety of participants in planning matters including developers, lobbyists and submitters. Recognising the *Local Government Act 2020* makes the Chief Executive Officer responsible for all Council staffing matters, current processes, procedures and guidelines on Senior Executive Officers’ interactions with developers are being reviewed. The same principles and standards proposed for councillors will be required of Senior Executive Officers. The outcomes of the review will be communicated to Councillors in due course.

Key issues

9. The Policy provides clarification on the recording of any contact between Councillors and developers relating to a planning or development proposal, including proposals in a preliminary stage, for which the developer is a proponent. Beyond that, the Policy provides guidance on: Councillor interactions with developers; ethical contact for Councillors when dealing with developers in relation to land use or development; transparency, consistency and public accountability in decision-making processes; and ensuring decision-making is legal, ethical, impartial and in accordance with relevant legislation.

10. A public register of all Councillor contact with developers will be available on Council's website. The register will be updated on a monthly basis.
11. The adoption of the Policy will clearly set out how Councillors should interact with developers, creates the ground rules for interactions, helps with transparency and managing community expectations.

Recommendation from management

12. That Council resolves:
 1. To adopt the Developer Contact Policy (Attachment 1 to the report from management).
 2. To note the current processes, procedures and guidelines with respect to Senior Executive Officers' interactions with developers are being reviewed. The same principles and standards proposed for councillors will be required of Senior Executive Officers. The outcomes of the review will be communicated to Councillors in due course.

Attachments:

1. Supporting Attachment (page 3 of 11)
2. Developer Contact Policy May 2024 (page 4 of 11)

Supporting Attachment

Legal

1. The implications of this report have been assessed in accordance with the requirements of the *Victorian Charter of Human Rights and Responsibilities Act 2006*. It is considered the proposed actions in this report and the Policy do not infringe unreasonably upon any prescribed human rights, freedoms or responsibilities.

Finance

2. Other than Council officer time in writing the Policy there are no financial and resource implications associated with the report.

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

Health and Safety

4. In writing the Policy no Occupational Health and Safety issues or opportunities have been identified.

Stakeholder consultation

5. No community consultation has been sought in the preparation of this report.

Environmental sustainability

6. No environmental issues were identified.



Developer Contact Policy

Adopted by Melbourne City Council on 28 May 2024

Contents

1.	Background	1
2.	Purpose	1
3.	Scope	1
4.	Definitions	2
5.	Date of Commencement	3
6.	Contact with Developers	3
7.	Disclosure	4
8.	Responsibilities	5
9.	Related Legislation and Policies	5
	Appendix A (Developer Contact Register for Councillors)	6

1. Background

Councillors interacting with developers, lobbyists and submitters is a longstanding feature of the City of Melbourne's planning system.

Councillors collectively act from time to time as the decision-makers (or advisors to the Minister Planning as decision-maker) for a range of matters to be determined under the *Planning and Environment Act 1987*. Councillors will accordingly come into frequent contact with all participants in the planning system, including developers, lobbyists and submitters, all of whom are entitled to exercise their legal rights and be heard.

In order to maintain the highest standards of integrity and public trust in City of Melbourne planning decisions, this policy creates a framework to define and report any relevant contact between Councillors and developers, lobbyists and submitters outside of formal meetings of the Council.

2. Purpose

This policy provides a mechanism for Councillors to record and make public their contact with a Developer. The policy provides clarity on:

- Councillor interactions with a Developer in matters relating to land use and development;
- Ethical conduct for Councillors when dealing with a Developer who have made, or are proposing to make submissions in relation to land use and/or development or proposed changes to the Melbourne Planning Scheme;
- Transparency, consistency and public accountability in the planning process; and
- Ensuring the Council acts as both a Planning Authority and Responsible Authority in full compliance with both legal and ethical standards.

3. Scope

This policy applies to any and all contact between Councillors and a Developer in the City of Melbourne with regard to land use and Development related matters.

This policy does not apply to a social interaction that does not discuss land use and Development matters between Councillors and other persons simply because those other persons are a Developer. However, Councillors are reminded of their obligation to both avoid conflicts of interest and disclose potential conflicts of interest and are required to carefully consider possible implications of social interaction with a Developer.

4. Definitions

Term	Definition
the Act	means the Local Government Act 2020
Contact	means any communication or conversation between a Councillor and developer, regardless of whether it is foreseen, planned, solicited or reciprocated, and includes but is not limited to the following methods of communication - telephone, electronic communication (e-mail etc.), short message service (SMS/text message), multimedia messaging service (MMS), social media platforms, written mail, face to face, facsimile, etc
Council	means the City of Melbourne
Councillor/s	means a Councillor or Councillors of the City of Melbourne, including the Lord Mayor and Deputy Lord Mayor
Developer	means a person, business or organisation that a Councillor knows, or reasonably should know, has an interest in a development in the City of Melbourne. It also extends to a lobbyist, submitter, consultant, advocate, advisor, representative, agent or other related party when they are acting on behalf or in the interests of a Developer
Development	means a property or land development proposal that is underway, planned or contemplated that, in order to proceed, may require a decision to be made by a resolution of the Melbourne City Council or its Future Melbourne Committee. These decisions may include, but are not limited to, a change to the City of Melbourne Planning Scheme, the issuance of a planning permit, the sale of Council property and the discontinuance of a Council road
Exempt Contact	<p>means:</p> <p>(a) Incidental contact with a Developer, meaning brief contact between a Councillor and Developer that either does not reference a Development or where any such reference is immediately curtailed. Examples of incidental contact include, but are not limited to:</p> <ul style="list-style-type: none"> • a chance encounter in the street where pleasantries are exchanged • the receipt by a Councillor of an email invitation to inspect a site, and an email reply declining the offer • an unsolicited post on a Councillor's facebook page with a comment by the Councillor directing the commenter to contact the planning office • the attendance by both a Councillor and a Developer at a large community event where the Developer asks the Councillor a question about a Development, and the Councillor immediately states that they do not wish to discuss the matter and ends the topic of conversation

	<p>(b) Social contact with a Developer, meaning contact between a Councillor and Developer in a social setting that either does not reference a Development or where any such reference is immediately curtailed</p> <p>(c) Formal contact with a Developer at a Future Melbourne Committee meeting or Council meeting, such as where a Developer addressed the meeting in relation to a matter listed on the agenda</p> <p>(d) Contact with a Developer in relation to matter with which the Councillor has a conflict of interest which has previously been disclosed in a personal interests return. Examples of exempt contact include, but are not limited to:</p> <ul style="list-style-type: none"> • ongoing contact with a business colleague who is conducting property development activity in the municipality • a Councillor who has a family member who is an architect with many projects in the municipality • where a Councillor themselves is a Developer
Lobbyist	means a person or entity that carries out a lobbying activity for a third-party client, such as a developer, or whose employees or contractors carry out a lobbying activity for a third party
Prescribed Contact	means any contact relating to a Development, including proposals in a preliminary stage, for which the Developer is a proponent, excluding any Exempt Contact
Routine Information	means advising a Developer where to access information on the Development or to contact the City of Melbourne administration or State Government regarding their Development proposal
Submitter	means a person or entity that makes, or proposes to make, an objection or a submission to a Development or planning scheme amendment or similar

5. Date of Commencement

This Policy comes into effect on 1 July 2024.

6. Contact with Developers

Council recognises that every person, organisation and interest group has a right to put a case forward to elected officials as part of the decision-making process.

Further, Council recognises that Councillors have an obligation to become informed about matters which are subject to Council decisions.

In fulfilling their obligation to make informed decisions, Councillors may interact with a Developer in relation to matters likely to come before them for a decision.

Council also recognises the significant risks involved in the exercising of its powers in relation to Development matters, given the potentially significant impact such decisions can have on property values. This, in the absence of robust and transparent integrity measures, can create a perception of improper conduct on the part of decision-makers.

In order to maintain community confidence in Council's contact with Developers:

- Councillors will declare conflicts of interest in accordance with the Act and Council's Governance Rules. Conflicts of interest declared by Councillors at a Future Melbourne Committee meeting or Council meeting are included in a register and published on Council's website.
- Councillors will, by reporting under this policy, disclose contact with a Developer. Contact with a Developer disclosed by Councillors are published on Council's website.

7. Disclosure

1) Subject to clause 2 below, Councillors shall:

a) In writing, record every instance of Prescribed Contact with a Developer that occurs before or during the decision making process for any Development by noting the:

- Name
- Developer Name or Descriptor
- Date and time of contact
- Type / method of contact
- Property or properties within the City of Melbourne to which the contact related
- Nature of the Councillor response

In order to comply with the *Privacy and Data Protection Act 2014*, the names of the parties to an interaction (other than Councillors) will not be released, and will instead be substituted with a descriptor to enable the reader to understand the relationship of the third party to Council. For example, the parties may be described as "the landowner of 1234 Wombat Crescent and a Director of XYZ Planning Consultants" rather than using the individual's names. Names of businesses or organisations will be provided.

b) Subject to sub-clause (c) below, not more than 14 business days after contact with the Developer, provide to the Chief Executive Officer the details referred to in sub-clause (a) above.

c) Where the Prescribed Contact occurs with a Councillor while they are on Approved Leave of Absence, then that Councillor shall provide the information referred to in subclause (a) above to the Chief Executive Officer within 14 days of the last day of their Approved Leave of Absence and / or 14 days of the email read receipt of that communication.

- d) Where the Prescribed Contact occurs in the form of a group email or other correspondence to all Councillors, then the Office of the Lord Mayor shall provide a copy of the same to the Chief Executive Officer for the purpose of compliance with clause 2 below.
- 2) The Chief Executive Officer shall ensure the publication on the Council website on a monthly basis of a register of all Prescribed Contact generally in accordance with **(Appendix A)**.
- 3) Any Prescribed Contact of the type that is a meeting with a Developer must not occur except in the presence of a planning officer appointed by the Director Planning and Building Branch.

8. Responsibilities

It is compulsory for Councillors to record Prescribed Contact. The declaration of Prescribed Contact is the direct responsibility of the individual Councillor.

An online form is available for record keeping purposes. A Developer Contact Register for Councillors form should be completed within 14 business days of the meeting taking place.

The Governance Branch (on behalf of the Chief Executive Officer) is responsible for publishing the register.

As the sole responsibility of recording Prescribed Contact lies with Councillors, Council staff hold no responsibility to update or check the developer contact register, other than publishing the register via the website.

For all queries or feedback regarding this policy, please contact the Director Governance on 9658 9658.

9. Related Legislation and Policies

There is a range of legislation, codes and Council documents that informs and supports this Policy. This includes, but is not limited to:

Legislation

Freedom of Information Act 1982 (Vic)
Local Government Act 2020 (Vic)
Planning and Environment Act 1987 (Vic)
Privacy and Data Protection Act 2014 (Vic)

Public Records Act 1973 (Vic)
Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)
Local Government (Governance and Integrity) Regulations 2020

Council Documents

Councillor Code of Conduct
 Councillor Gift Policy
 Councillor Respectful Conduct Policy
 Delegation Policy for Planning Applications
 Governance Rules
 Privacy and Data Protection Policy
 Public Transparency Policy

Appendix A



DEVELOPER CONTACT REGISTER FOR COUNCILLORS

	Councillor	Developer Name or Descriptor	Date & Time of Contact	Type/method of Contact	Related Property/ies	Nature of the Councillor Response