

## Committee report to Council

Agenda item 5.2

Council

**Notice of Motion, Cr Frances Gilley: Traditional owner entitlement to enrol and nominate in City of Melbourne elections**

11 December 2018

**Committee** Future Melbourne

**Presenter** Councillor Frances Gilley

### **Purpose**

1. The purpose of this report is to recommend Council support Traditional Custodians of lands and waters within the Melbourne City Council municipal district being entitled to enrol to vote in Melbourne City Council elections and to qualify as candidates to be a City of Melbourne Councillor.

### **Consideration at Committee**

2. At the Future Melbourne Committee meeting on 4 December 2018 the Committee considered the Notice of Motion noted in Attachment 1 and made the below recommendation for presentation to Council.

### **Recommendation**

3. That Council:
  - 3.1. Agrees in principle that Australian electoral franchises based on entitlements associated with land should include Traditional Owner as a class of entitlement, and that the City of Melbourne should pilot this inclusive franchise at the next general election in October 2020.
  - 3.2. Authorises Councillor Frances Gilley, on behalf of Council, to approach the Local Government Minister, Minister for Aboriginal Affairs and Premier to request that Cabinet approve the development of a submission on a proposed Bill to amend the *City of Melbourne Act 2001* to entitle Traditional Custodians of lands and waters within the Melbourne City Council municipal district to enrol to vote in Melbourne City Council elections and to qualify as candidates to be a City of Melbourne Councillor.
  - 3.3. Notes the key issues and potential drafting instructions included as Attachment 1 to the Notice of Motion.

### **Council report Attachment:**

1. Future Melbourne Committee Report, Agenda item 7.1, 4 December 2018

## Future Melbourne Committee

Attachment 1  
Agenda item 5.2  
Council  
11 December 2018

### Notice of Motion, Councillor Nicolas Frances Gilley: Traditional Owner entitlement to enrol and nominate for City of Melbourne elections

#### Motion

1. That the Future Melbourne Committee recommends Council:
  - 1.1. Agrees in principle that Australian electoral franchises based on entitlements associated with land should include Traditional Owner as a class of entitlement, and that the City of Melbourne should pilot this inclusive franchise at the next general election in October 2020.
  - 1.2. Authorises Councillor Frances Gilley, on behalf of Council, to approach the Local Government Minister, Minister for Aboriginal Affairs and Premier to request that Cabinet approve the development of a submission on a proposed Bill to amend the *City of Melbourne Act 2001* to entitle Traditional Custodians of lands and waters within the Melbourne City Council municipal district to enrol to vote in Melbourne City Council elections and to qualify as candidates to be a City of Melbourne Councillor.
  - 1.3. Notes the key issues and potential drafting instructions included as Attachment 1 to this motion.

#### Background

The mover has canvassed the idea of creating Traditional Custodian status as an entitlement to vote and nominate in Melbourne City Council elections with a variety of stakeholders. The current electoral system is based on ownership or occupation of land, and it is the strong belief of the mover that – given Traditional Custodians' primary relationship and ownership of the land – Traditional Custodians must be included in that entitlement.

The City of Melbourne electoral franchise (beyond the automatic residential enrolment drawn from the State electoral roll) is governed by the *City of Melbourne Act 2001*. As such, it is appropriate and efficient that the State Parliament work with the City of Melbourne to pilot a Traditional Owner voting and nomination entitlement in this municipality.

The key issues paper included as Attachment 1 has been drawn together following consultations with stakeholders including but not limited to: the Wurundjeri Land Council, the Boon Wurrung Foundation, Bunurong Land Council Aboriginal Corporation, VEC, Local Government Victoria and the Minister for Aboriginal Affairs Hon Natalie Hutchins MP.

The terms of reference of the Future Melbourne Committee provide that when considering matters of an electoral nature, the Committee will make a recommendation to Council.

**Moved: Councillor Nicolas Frances Gilley**

**Seconded: Councillor Rohan Leppert**

#### Attachments

1. Key Issues paper (Page 2 of 6)

**Traditional Owner entitlement to enrol and nominate for City of Melbourne elections**

**Key Issues paper**

**Recommendations**

- 1 That Cabinet approve the development of a submission on a proposed Bill to amend the *City of Melbourne Act 2001* (Vic) (**Act**), which will:
  - (a) entitle Traditional Custodians of lands and waters within the Melbourne City Council municipal district to enrol to vote in Melbourne City Council elections; and
  - (b) entitle Traditional Custodians of lands and waters within the Melbourne City Council municipal district to qualify as candidates to be a City of Melbourne Councillor.

**Key issues**

- 2 The City of Melbourne has never had an Aboriginal or Torres Strait Islander Councillor.
- 3 The Victorian Government has committed to a whole of government approach to self-determination and Aboriginal affairs.
- 4 The City of Melbourne has also committed to taking a lead role in reconciliation and acknowledges that Melbourne is 'regarded by many as the heart of the Aboriginal Victorian community.'
- 5 Under the Act eligibility for enrolment and candidacy is restricted to residents, business owners and property owners.
- 6 So currently, involvement in City of Melbourne elections is the right of connection to land, either through ownership, director of a business holding or lease, or residency. Aboriginals who are Traditional Custodians are recognised as having a link to land that is far stronger and deeper than many recognised land rights in the current electoral system.
- 7 Though many Traditional Custodians of lands and waters within the Melbourne City Council municipal district may not be residents or ratepayers of the City of Melbourne, the decisions and actions of the City of Melbourne Council have a particular impact on Traditional Custodians and their lands and waters. Traditional Custodians also have unique and significant contributions to make to the local community and Council decision making. As it is their lands and waters by traditional law and custom, Traditional Custodians have an inherent right to participate in decisions that affect them and their lands and waters.

The majority of Traditional Custodians were removed from country and placed in missions from the 1860s. Families have often remained in those areas partly due to the cost of property in the city and the relocation away from their wider families and friends.

- 8 The Victorian Aboriginal and Local Government Action Plan aims to increase Aboriginal representation in local government elections and participation in Council decision making. The Action Plan recognises that Traditional Custodians have a ‘fundamental right’ to engage about the matters that are important to their communities and that local government is ‘central to the achievement of equity and opportunity for Aboriginal communities and in actively supporting Aboriginal self-determination.’
- 9 Residency and property ownership in the City of Melbourne are not accessible means by which to increase Aboriginal representation in the City of Melbourne elections. Traditional Custodians of the lands and waters within the municipal district should, as of right, be eligible to apply to enrol and stand for election in the City of Melbourne.
- 10 Specific amendments to the Act are required to entitle relevant Traditional Custodians to enrol and stand for election in the City of Melbourne.
- 11 In part, the enrolment and candidacy eligibility criteria in the drafting instructions below draw on the 2017 recommendations of the Aboriginal Community Assembly’s Final Statement and Recommendations as part of the Treaty process and state wide consultations in Victoria. The City of Melbourne would welcome further engagement with Melbourne’s Traditional Custodian communities in relation to the eligibility criteria and application process.

### **Potential drafting instructions**

#### *Persons entitled to apply to be enrolled*

- 12 Insert a new sub-section in section 9B ‘Persons entitled to apply to be enrolled’.
- 13 The new sub-section 9B(1A) should entitle a person to apply to be enrolled who, on the entitlement date -
  - (a) is not a person referred to in section 9A; and
  - (b) is not less than 18 years of age or is less than 18 years of age but will attain the age of 18 years on or before election day; and
  - (c) is a Traditional Custodian of lands and waters within the municipal district.

- 14 A new s ub-section 9B(5) should provide that for the purposes of sub-section 9B(1A)(c), a Traditional Custodian of the lands and waters within the municipal district is an Aboriginal person who identifies as a Traditional Custodian of lands and waters within the municipal district, who is accepted as such in their relevant Traditional Custodian community and who has the support of a relevant Aboriginal organisation.
- 15 A relevant Aboriginal organisation is an Aboriginal Community Controlled Organisation or Traditional Custodian organisation within the voting region that, according to its objects and activities, is representative of Traditional Custodians of lands and waters within the Melbourne City Council municipal district.
- 16 Consequential amendments are required throughout the Act. Specifically, reference to the new section 9B(1A) should be included in sections 11A(2), 11C(1), 11D(3) and 11E(2).

*Enrolment application by Traditional Custodian*

- 17 The City of Melbourne (Electoral) Regulations 2012 (**Regulations**) should be amended in the following way to identify the details required by Traditional Custodian applicants.
- 18 A new section should be inserted in Part 2 Di vision 1 of the Regulations titled 'Enrolment application by Traditional Custodian'. This section should provide that for the purposes of section 9(2)(b) of the City of Melbourne Act 2001, an application by a Traditional Custodian who is entitled under section 9B(1A) of that Act to apply to be enrolled must be in writing and include the following details -
- (d) the personal details of the person making the application;
  - (e) a declaration signed and dated by that person that the person -
    - (i) is an Aboriginal person; and
    - (ii) is accepted in their relevant Traditional Custodian community as a Traditional Custodian of lands and waters within the municipal district;
    - (iii) is 18 years of age or will be 18 years of age on or before election day; and
    - (iv) would not be an elector in respect of an address in the municipal district if a roll of electors for the Legislative Assembly were compiled.
  - (f) a supporting letter from a relevant Aboriginal organisation for the purposes of section 9B(5) of that Act.
- 19 A sample City of Melbourne enrolment application form is at **Annexure 1**.

*Ongoing enrolment*

- 20 Section 9 should be amended to provide that enrolment under an application referred to in the new sub-section 9B(1A) as a Traditional Custodian should have effect from the next entitlement date after it is accepted and continue in force indefinitely, unless section 9J applies.
- 21 Section 9J should be amended to reflect the distinction between applications for enrolment under section 9B(1A) as a Traditional Custodian (valid indefinitely) and applications under section 9B and 9C(1) for enrolment as a business owner or property owners (valid for one term of the Council).
- 22 Section 11C should also be amended to reflect this distinction and require the Chief Executive Officer to give notices regarding enrolment expiry in relation to applications under section 9B(1) but not 9B(1A).

*Qualification to be a Councillor*

- 23 Traditional Custodians of lands and waters within the Melbourne City Council municipal district should be entitled to stand for election as a Councillor, even if they are not enrolled to vote in the municipal district.
- 24 Amending the qualifications to be a Councillor in section 14A of the Act provides a second pathway to increase Aboriginal representation in local government elections and participation in Council decision making.
- 25 Section 14A(1) should be amended to provide that a person is qualified to be a candidate for the office of Councillor:
- (g) if the person has an entitlement referred to in section 9 of the City of Melbourne Act 2001;
  - or
  - (h) is a Traditional Custodian of lands and waters within the municipal area.
- 26 For the purposes of 14A(1)(b), a Traditional Custodian of lands and waters within the municipal area is a person who meets the criteria for enrolment under new section 9B(1A). If required, the same acceptance process can be included for applications under Part 3 Division 1.
- 27 Section 14A(1A) should be amended to state that a person is qualified to become and continue to be a Councillor at a particular time if:
- (i) were that particular time the entitlement date and a voters' roll prepared, subsection (1)(a) would apply to that person; or
  - (j) the person has submitted a Traditional Custodian candidacy application by 4 p.m. on the entitlement date, containing the details required by the regulations.

28 Section 14A(1B) should be amended to require a Councillor to notify the Chief Executive Officer in writing if there has been any change to any entitlement referred to in section 14A(1)(a) or 14A(1)(b).

29 The Regulations should require the same information for a Traditional Custodian candidacy application as is required for a Traditional Custodian enrolment application.

*Process if enrolment or candidacy is disputed*

30 If a person's eligibility to enrol under section 9B(1A) is contested, the views of the relevant Traditional Custodian entity that represents the views of the relevant Traditional Custodians must prevail.

31 To reiterate, the City of Melbourne welcomes further engagement with Melbourne's Traditional Custodians regarding an appropriate process to address any enrolments or candidate nominations that are disputed on this ground.

32 While it is expected that this process will be rarely invoked, it is important that the power to determine Traditional Custodian status for the purpose of the Act sits with the relevant Traditional Custodian entity and not the Chief Executive Officer, Chief Municipal Inspector or the Victorian Civil and Administrative Tribunal.

33 As a starting point, section 9I should be amended to make clear that the Chief Executive Officer may determine the eligibility of a person to be enrolled except where eligibility is contested on the grounds of Traditional Custodian status. In such circumstances, the Chief Executive Officer must invoke a process to seek a determination from the relevant Traditional Custodian entity.

34 An appropriate mechanism may be to refer the matter to the Board of a Traditional Custodian entity that, according to its objects and activities, represents the interests of those Traditional Custodians of lands and waters within the Melbourne City Council municipal district in respect of whom the person enrolling states they identify with in their application.

35 The same process should apply if a person's qualification to be a Councillor under section 14A(1)(a) or (b) is contested on the grounds that the person is not accepted as a Traditional Custodian in their Traditional Custodian community.

**Peter Seidel and Caitlin Edwards**

**Public Interest Law, Arnold Bloch Leibler**

in collaboration with

**Nic Frances Gilley MBE, Councillor**

**March 2018**