

**CITY OF MARION
GENERAL COUNCIL MEETING
27 November 2012**

Originating Officer: Kate McKenzie, Manager Governance
Director: Kathy Jarrett, Director
Subject: Ombudsman Investigation – Systems of Support
Re: Conflict of Interests
Report Reference: GC271112R09

REPORT OBJECTIVES:

Following the receipt of an Ombudsman Investigation Report, a review of the Council's systems regarding conflict of interest has been completed and a number of recommended actions for improvement have been identified.

EXECUTIVE SUMMARY:

The role of the Ombudsman is to independently investigate complaints about government and local government agencies. The powers of the Ombudsman are outlined in various acts including the *Ombudsman Act 1972* and the *Local Government Act 1999*.

In June 2012, Council was notified by the Ombudsman's Office that he intended to investigate a complaint received under the *Whistleblowers Protection Act 1993* regarding the allegation that a Councillor from the City of Marion (Councillor Hutchinson) failed to disclose an interest in a matter before Council relating to the Glandore Laneways contrary to the conflict of interest provisions of section 74(4) of the *Local Government Act 1999*.

The Ombudsman has concluded his investigation into this matter and determined that Councillor Hutchinson failed to declare his interest and participated in the vote regarding the draft budget for 2012/13 that included the Glandore Laneways as new initiatives.

The Ombudsman has referred the matter to Council for consideration and has not made any recommendations. In the context of Council's strategic vision of "Excellence in Governance" a review of Council's processes for conflict of interest has been completed and a number of recommendations are included within the report.

RECOMMENDATIONS (5)

DUE DATES

After considering the outcomes of the Ombudsman report regarding conflict of interest provisions, Council endorses the following recommendations:

- 1. The development of a checklist for staff and elected members to assist in their decision making in determining when to declare a conflict of interest.**
- 2. Further information regarding conflict of interests to be available on the Elected Member extranet and Staff intranet pages to assist in managing this process.**

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| 3. The development of a conflict of interest declaration form. | December 12 |
| 4. The implementation of an annual review process for managing areas of high risk for conflict of interests. | December 12 |
| 5. The development of an annual training and awareness program for staff and elected members regarding managing conflict of interests | February 13 |

BACKGROUND

The matter being investigated by the Ombudsman specifically related to the 22 May 2012, General Council Meeting when Council considered an item in relation to the Council budget that included the Glandore Laneways new initiative.

The Glandore Laneways are six laneways within the Woodlands Ward area. They back on to 46 houses near the Glandore Oval. The laneways have been held by the public trustee since 1940. Residents of the area have complained to Council that the laneways are 'unkempt, with overgrown weeds, graffiti and illegally dumped rubbish.' Councillor Hutchinson is an elected member within the Warriparinga ward area and owns property adjoining the Glandore laneways.

The Glandore Laneways matter had previously been considered by Council at its meeting of 27 April 2011 and 13 December 2011. On these occasions, Councillor Hutchinson declared a conflict of interest on the basis of him having an interest in some of the property referred to in the report.

At the General Council Meeting of 13 December 2011, the Council resolved to 'give in principle support to a proposal that it take ownership of the Glandore Laneways and the matter be referred to the 2012/13 annual business planning and budget process for consideration and prioritisation by Council.'

At the General Council Meeting of 22 May 2012, the Council considered a draft budget for 2012/13 that included the presentation of two (2) documents. The first document set out the rating options and the second set out 18 new initiatives that had previously been proposed by the Council and referred to the 2013/13 annual business plan and budget process for consideration and prioritisation. The Glandore Laneways new initiative was listed as one of the new initiatives within the second document. Councillor Hutchinson did not declare a conflict of interest at this meeting and participated in the decision making.

At this point, the Council budget for 2012/13 was still in draft and was not formally adopted until the General Council Meeting of 26 June 2012, for which Councillor Hutchinson was not present.

ANALYSIS:

The Ombudsman has investigated specifically, "whether Councillor Hutchinson failed to declare a conflict of interest contrary to section 74(4) of the Local Government Act 1999."

In this regard, the Ombudsman considered:

1. Did Councillor Hutchinson or a person with whom he is closely associated would, if the matter were decided in a particular manner receive or have reasonable expectations of receiving a direct or indirect pecuniary benefit, or suffer (or have a reasonable expectation of suffering) a direct or indirect pecuniary detriment;
2. Either he or a person with whom he is closely associated would, if the matter were decided in a particular manner, obtain or have a reasonable expectation of obtaining

a non-pecuniary benefit, or suffer (or have a reasonable expectation of suffering) a non-pecuniary benefit.

3. Did Councillor Hutchinson share an interest with a substantial class of persons, such that he is not deemed by the Act to have an interest?

The Ombudsman found:

- Section 74 of the Local Government Act 1999 requires that a member who has an interest in a matter must not participate in council's debate on the matter. This includes proposing or seconding a motion, or participating in discussions, being present in the room and voting on the matter. The Ombudsman found that by virtue of having an interest in land adjoining the Glandore Laneways, Councillor Hutchinson would have a reasonable expectation of receiving a benefit or detriment from the Council's decision on the budget item.
- Section 73(1) of the Local Government Act 1999 states that a councillor does not have an interest if the benefit or detriment 'would be enjoyed or suffered in common with all or a substantial proportion of the ratepayers, electors or residents of the area or ward or some other substantial class of persons. Recognising the difficulty regarding clarity of this exemption, the Ombudsman held the view that that the users of the Glandore Laneways do not comprise a 'substantial class of persons' within the meaning of the Act. Hence, Councillor Hutchinson failed to declare an interest.

The Ombudsman also found that although Councillor Hutchinson failed to declare his interest and participated in the vote, this did not impact on the success of this decision as it would have been carried in any event.

Finally, the Ombudsman recognised that Councillor Hutchinson believed (based on non-specific legal advice provided at a training session) that he did not have an interest to disclose, and that he previously declared an interest in relation to the Glandore Laneways matter out of an abundance of caution. He stated that this is a mitigating factor and consequently held the view that Councillor Hutchinson's actions were at the less serious end of the scale, based on a naïve appreciation of his elected member obligations with respect to conflict of interest.

Legal/ Legislative

The role of the Ombudsman is to independently investigate complaints about government and local government agencies. The powers of the Ombudsman are outlined in various acts including the *Ombudsman Act 1972* and the *Local Government Act 1999*.

The Ombudsman may conduct investigations to determine whether a government agency's process was reasonable and fair, and that a decision is not unreasonable or unlawful. If a problem is detected, the Ombudsman may make recommendations to correct the problem.

The principal officer (or in the case of Council, the principal member being the Mayor) must be notified of the Ombudsman findings report.

Next Steps

The Ombudsman has made no specific recommendations within his report and simply referred the matter back to the Council. In the context of Councils strategic vision of "Excellence in Governance" and to develop leading accountability practices to ensure that decisions are transparent and in the best interests of the community, the following actions have been undertaken:

- A review of existing documentation that capture conflict of interest provisions.
- A review of processes for both staff and elected members regarding what to do when a conflict of interest arises.
- A risk assessment of organisational functions and processes to identify areas of high risk for potential for conflict of interests.

As a result, the following actions are recommended:

1. The development of a checklist for staff and elected members to assist in their decision making regarding when to declare a conflict of interest.
2. The development of a conflict of interest declaration form.
3. Further information regarding conflict of interests to be available on the Elected Member extranet and Staff intranet pages to assist in managing this process.
4. The implementation of an annual review process for managing areas of high risk for conflict of interests.
5. The development of an annual training and awareness session offered to both staff and elected members regarding managing conflict of interests

CONCLUSION:

Managing conflict of interests can be difficult and it is important to have a clear understanding of what constitutes a conflict. The Ombudsman review has provided the City of Marion an opportunity to take a closer look at how conflicts of interests are being managed and how processes can be improved.