

## **SUBMISSION TO THE REVIEW OF THE LOCAL GOVERNMENT ACT 1989**

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### **How councils are elected**

There are very good grounds for the election of councillors in multi - member rather than single member wards and for there to be an unequal number of councillors to be standard practice in the sector. Whilst it is reasonable to say that there are differences in the Boroondara community on the issue it did receive strong support at the most recent Electoral Representation Review conducted in 2008, and was endorsed as the preliminary preferred option in the preliminary report by the Victorian Electoral Commission, released on 8 April 2008. The Commission only varied its preliminary preferred option of three three-councillor wards and one two-councillor ward in the wake of frenetic late hour elite lobbying against the option.

The funding of election campaigns emerged as a significant corruption issue in the most recent Victorian local government elections in 2012, especially in relation to the funding of candidates in the City of Melbourne by property developers. It has also been an issue for some time in New South Wales, where property developers are now prohibited from making donations to state election candidates and registered political parties. Given these recent experiences, and the substantial policy and regulatory powers vested in state and local governments in relation to planning and construction, there are now strong grounds for banning donations by property developers in all state and local government jurisdictions.

Whilst in many local government elections the modest scale of donations received suggests there is little cause for concern that money plays much of a part in these elections, the level of resources that individual candidates apply to their election campaigns is a significant but under recognised issue. As individually wealthy candidates are in the position to apply much more substantial resources to secure their election there needs to be a higher level of disclosure on this level as well.

According to the donation returns for the 2012 election shown on the Boroondara website single gifts were disclosed by two candidates only, totalling \$2,552.50 only. This figure in all probability presents an unrealistic picture of the total cash outlays on goods and services by the 37 individual candidates who contested the election.

The financial disclosures required of candidates, limited as they are, are required to be made available for four years only, the equivalent of one election cycle. It would be appropriate for the public records of these disclosures to be indefinite as is the case for Commonwealth and State elections.

### **Recommendations**

That the Local Government Act be amended to:

- Mandate the conduct of all local government elections in Victoria based upon multi-councillor wards;
- Ban donations to local government election candidates and to registered political parties by property developers;
- Require the disclosure of all donations and expenditures by local government election candidates; and
- Provide for the indefinite maintenance of a readily accessible permanent public record of these donations and expenditures.

## **How councils operate**

### ***Public question Time***

In May 2015 Boroondara City Council severely restricted the efficacy of Public Question Time at Council meetings. It did so by reducing the number of questions a person may ask in a calendar year (to eleven), restricting the scope of the questions able to be asked to matters that have previously been the subject of a written response by the questioner and to have received a written response, or to be related to matters that are on the agenda for that meeting alone.

About fifty people made submissions in opposition to the variation in the local law which provided for these retrograde changes and many spoke articulately in opposition at council meetings on what they quite rightly identified as an attack on democratic process. But to no avail. In the course of the debate, several councillors quite improperly called into question the motives of citizens who expressed concern about the erosion of Public Question Time, a slur that they managed to have amplified through the local newspaper.

This device clearly minimises the topics upon which questions may be asked, as it was clearly intended to do, and to reduce the scope for local activism, which the Council clearly abhors. A particular long-standing practice entertained by the Council also needs to be dealt with, its refusal to include context in the question asked.

This, as is evidently its purpose, has the practical effect of rendering many questions unintelligible to the gallery. Questions are similarly recorded in minutes of meetings in reduced form which also diminishes the intelligibility of the written record.

It has also been observed over several years that the presiding officer often mumbles the text of the question which also has the practical effect of rendering the question incomprehensible to those in attendance at the meeting.

## **Recommendations**

That the Local Government Act be amended to ensure that:

- questions at Public Question Time are admitted on all matters related to the operations and functions of councils;

- that questions are permitted to be read in full by the questioner at their discretion; and
- that the full text of questions be included in full in the minutes of the meeting together with the reply.

### ***Council Proceedings***

There are several elements of council proceedings that require updating and reform. Relatively few people attend council meetings. This is of great concern given that these meetings are the senior decision-making forums for notionally democratically elected local bodies. That the proceedings are highly choreographed and permit next to no participation by citizens contributes significantly to the lack of interest and involvement by citizens.

It is true that larger attendances are more common for planning matters where the attendees are directly affected by the matters to be determined by the council. However, the relative lack of engagement on broader systemic and policy issues is very troubling.

There is no single remedy that would attract the greater informed engagement upon which our democratic system ultimately relies. However, there are several inhibitions in council processes which if removed would improve access to information and with it potentially greater citizen involvement in council processes.

The first of these relates to the live broadcasting of council meetings. Many people are unable to attend council meetings or find it difficult to do so. Several local government authorities have on their own initiative introduced live audio-visual streaming of council proceedings to assist in this process.

It would further assist if the streamed recording of council proceedings were then made available on the council website to provide a verbatim record for citizens to view later on and to research or respond to issues discussed at the meeting.

It is also important that accurate minutes of council meetings be retained. This should include recording all votes in these proceedings. I understand that at Boroondara Council these are only recorded when a division is taken.

It has been the custom and practice of Boroondara City Council to maintain minutes of meetings and agenda papers for very short periods, about three years as I recall, and certainly for less than the full time period between elections held each four years. This meant that the performance of the Council was unable to be reviewed by citizens, at least to the extent that it was recorded in official proceedings documents.

I made representations to Boroondara Council in 2015 with a request for minutes and agenda papers to be maintained on the Council website for a minimum period of 10 years, and pointed out that many other councils maintained such records on their webpage for lengthy periods. At first the Council refused outright to place these documents on the website for an extended period, suggesting that it was not practical, nor "the best use of Council resources." It was also suggested to me by the Council that "Essentially each

council makes its own decisions based on its unique set of circumstances, collective beliefs, various financial considerations, legislative powers and so on." This was relativist nonsense, as tests of accountability and the accessibility of council business information need to be standard for all local government authorities. Ideas of collective belief and such like are of no relevance at all.

The Boroondara Council often holds confidential meetings, often but not always related to the selection of tenderers for works. As a general principle all Council proceedings should be held in public, and the holding of confidential meetings should be very much the exception. I queried the Council on one occasion about the decision to hold a confidential meeting. I was advised tautologically that the meeting was confidential because it was confidential. There should be an obligation on councils to give reasons why individual matters may from time to time be required to be considered in confidential meetings.

Some councils in Victoria entitle citizens to address council meetings. These sessions are conducted at the commencement of regular meetings and commonly on a monthly basis. They provide a valuable opportunity for citizens either singly or collectively to secure the attention of councillors on issues that they believe are important. The fact that it is conducted in a public forum on a regular basis gives it a value way beyond what might be obtained from formal one to one representations.

Their potential to alert of emerging problems that require remedying or to float ideas on new initiatives in a public forum with the direct ear of councils is significant. However, the practice is by no means widespread and given that many councils are highly bureaucratized and of an anti-democratic disposition it is unlikely to be standard practice unless it were to be mandated.

## **Recommendations**

That the Local Government Act and Regulations be amended as necessary to:

- Mandate the live audio and visual streaming of all council proceedings through council websites;
- That these streamed recordings be retained for public reference on the respective council websites;
- That council minutes and agenda papers be retained on council websites for no less than ten years;
- That councils be required to state reasons that are available publicly why any matter is to be dealt with in a confidential meeting; and
- That councils be required to permit citizens to address council meetings at least on a monthly basis.

## **Council committees and advisory bodies**

Council committees, including advisory committees, which are well structured and resourced are potentially valuable structures to assist in the conduct of councils' business.

Information on the constitutions and functions of committees to which Boroondara councillors are assigned is not generally available, nor are meeting schedules and meeting minutes for most of these committees.

Boroondara City Council currently maintains an Audit Committee, as required by the Local Government Act and a Management Performance Review Committee.

It is noted at least each of the last five years (2011 to 2016) the Boroondara Council has assigned two councillors who have sat on both the Budget Process Review Working Group and the Audit Committee. This may potentially raise issues of role conflict, between that of budget planning and expenditure and the assessment of the regularity, propriety and legality of these expenditures.

Boroondara Council also has a Management Performance Review Committee established by delegation and which is comprised of three councillors. There has been relatively little turnover in committee membership as three councillors have retained membership of the committee in three of the last four years. It is difficult to reconcile the status of elected officials in assessing the performance of management collectively or individually. There are no parallels in Commonwealth or State administration.

There are also nine internal advisory committees with councillor representation and eighteen external advisory committees which also include "community" representation. Councillors have also been elected to represent the Council on five external management committees or boards (e.g. Municipal Association Victoria) and in three "partnership" groups (e.g. Boroondara Cares).

I was a resident member of the Greythorn Park Advisory Committee which was abolished in by the Council in May 2013 along with the seven other parks advisory committees in Boroondara. The committees comprised both resident and tenant sporting club representatives.

These committees were abolished largely because of the increasingly untrammelled political power of tenant sporting clubs and private schools. These bodies have for practical purposes assumed ownership status of much of the open space in the municipality. This has been accomplished through a number of devices including long-term leases of grounds and facilities and shared funding of infrastructures such as pavilions.

As a consequence, open space which had hitherto been deployed with preservation of the natural environment in mind together and with a reasonable balance between active and passive recreational use has been lost largely to organised sport. These spaces is being deployed increasingly for organised sport and associated infrastructure and car parking. The sporting bodies have assumed a disproportionate level of influence through their collective

influence on election outcomes. The schools, collectively the largest industry in the municipality, have also very effectively brought pressure to bear to achieve preferenced access to publicly owned open space. As access to land is probably the greatest single factor determining their economic viability the private schools ambition to secure access to public land on preferential terms is very understandable, even if unjustified in the public interest.

With resident representation on the parks advisory committees there was some scope, albeit limited, to call the council decision makers to account. This typically involved restructuring available open space in favour of organised sporting interests and private schools, and the concomitant council-funded outlays in organised sporting infrastructure in council-controlled open space.

As a consequence of the abolition of these committees there is now no formal advisory process on the use of open space which has citizen representation.

The Boroondara Bicycle Advisory Committee is another interesting case study. It was established in November 2006 and is now comprised of councillor and council officer representatives as well as three representatives of bicycle users groups. When originally conceived it was to have been comprised of equal numbers of cycling and other community interests. Now, there are no general community interests on the committee and no-one representing general community interests is permitted to speak at their meetings.

Significantly, there is no other advisory committee in Boroondara that deals with transport-related issues or the deployment and management of open space.

## **Recommendations**

It is recommended that this review:

- Examine the appropriateness of the joint membership of council committees which deal, respectively, with financial planning and the deployment of council funds and the audit of the expenditure of budget funds;
- Consider the appropriateness of elected councillors participating in the assessment of the performance of management either collectively or on an individual basis;
- give priority to identifying how consultative structures may be used in local government to provide for a balance of interests in the deployment of council-controlled resources and services, and in particular as a countervailing influence against highly organised and influential industry interests; and
- establish protocols in the assignment of councillors to budgetary and audit review processes which eliminate .

## **Consultations on policies, strategies and programs**

The Boroondara City Council has committed to engage with the community on a wide range of issues in what it calls its decision-forming process. These, non-exclusively, include:

- strategic projects
- policy, plan and strategy development
- service delivery programs
- major projects
- capital works.

The Council claims there is mutual benefit in involving the community in their decision making processes, which lead to better informed decision making; greater understanding of decisions made through an inclusive process; increased capacity for the community and Council to gain more information; and develop skills and confidence in collaborative engagement and decision making processes.

The Council has a dedicated "Community and Engagement" team which is budgeted to cost \$2.582 million in 2015/16. With the necessary involvement of operating departments it is likely that these processes cost much more than that on an annualised basis.

The Council uses the International Association for Public Participation (IAP2) five-fold spectrum in its community engagement processes. In practical terms this means the nature of engagement may be quite superficial, ranging from a one way flow of simple information from the Council to its public; public consultation, which involves securing feedback from the public; public involvement, which includes the Council working with the public to identify issues and concerns; Council collaboration with the public which involves jointly working up proposed solutions; and empowerment, where final decision-making is in the hands of the public.

With many issues the Council engages in consultation on issues with citizens through an online process called "Your Say." There may be a large number of matters listed on the website at any one time for response. For instance, the Boroondara website currently shows ten items covering a wide range of topics for which public responses are being sought or have recently been sought. These include revision of the tree protection local law, the draft sport and recreation strategy, library service opening hours, the Kew Traffic School, Camberwell shopping centre laneways, Glenferrie Oval pedestrian, the draft community engagement policy.

Typically, it appears, that Council prepares submissions for endorsement by Council following the receipt of feedback through "Your Say" on the Council website. No information is readily available from the Council on the proportion of issues that have been dealt with by the provision of simple advice or citizen feedback as opposed to more in depth public involvement through collaboration or empowerment.

The Boroondara Council consults on the annual budget and plan each year. For 2015-16 the Council received twenty written submissions from the public and none of the proposal

received were endorsed in the budget adopted by the Council. In the five years 2010-11 to 2014-15 only three variations have been made to an annual budget in response to submissions from the public. As a threshold matter it needs to be asked why the Council goes through the consultative process at all in these circumstances. It has the strong odour of tokenism which permits the Council to say that we have let people have their say. But it is a very time consuming exercise to run for such poor results. It is not that citizens do not have very valuable insight and expertise to contribute to the budget process; it is just that the Council is not prepared to take account of strong evidence based submissions in any circumstances.

Having contributed to many of these processes on a wide range of matters I have little doubt that most are located at the superficial engagement end of the spectrum rather than deeper citizen involvement through processes of collaboration and, much less, empowerment. This appears to have been the case recently with the Council's review of the Community Engagement Policy itself, recently endorsed by Council.

This is not as it should be, as there are matters of quite some complexity having to be dealt with in a complex environment where the Council appears to engage in quite superficial dialogue with its community and, as a consequence, the outcomes can be sub-optimal.

For example, the Council is currently reviewing its Local Law 1F for the protection of canopy trees on private property in the municipality. It is a matter of significant conjecture with the local law having been adopted in 2006 in the wake of major tree loss in Boroondara. It appears since then that the rate of canopy tree loss has, if anything, accelerated. Council has been asked several times to measure the actual loss since 2006 but it doggedly refuses to do so. It appears that they wish to hide away from the facts of the matter. In the meantime the Council has developed proposals for adoption by Council without engaging the community on an evidence based discussion and in the absence of necessary expert advice.

This is a matter upon which people feel very strongly and which is of even greater concern than it was ten years ago in the context of anthropogenic climate change and the urban heat island effect. Yet the Council is showing all the signs that they wish that it would all go away so that they can plod along as "normal."

## **Recommendations**

It is recommended that this review:

- Examine the consultative and related processes adopted by councils with a view to establishing processes and measures of accountability that permit much more effective and influential community involvement; and
- In particular, consider new emerging processes for citizen involvement in budget processes, in the light of newly emerging models, including the "people's budget" process recently undertaken by the Melbourne City Council.