

**CITY OF MARION
GENERAL COUNCIL MEETING
10 November 2015**

Originating Officer: Kathy Jarrett, Director
Subject: DAP Code of Conduct Complaint
Ref No: GC101115F02

If the Council so determines, this matter may be considered in confidence under Sections 90(2) and (3)(a) of the Local Government Act 1999 on the grounds that it relates to matters that may affect personal affairs of a person living or dead.

Adrian Skull
Chief Executive Officer

1. Pursuant to Section 90(2) and (3)(a) of the Local Government Act 1999 the Council orders that all persons present, with the exception of the following [Adrian Skull, Chief Executive Officer; Vincent Mifsud Director; Abby Dickson, Acting Director; Kate McKenzie, Manager Governance; Craig Clark, Unit Manager Communications; and Victoria Moritz, Governance Officer], be excluded from the meeting as the Council considers that the requirement for the meeting to be conducted in a place open to the public has been outweighed in circumstances where the Council will receive and consider information pertaining to Code of Conduct for Council Members issues.

CONFIDENTIALITY CONSIDERATIONS

This report deals with an alleged breach by Councillor Nick Kerry of the Code of Conduct (the Code) under Section 21A of the Development Act 1993 (the Act). It is recommended that it be considered in confidence given the matter with the behaviour of Councillor Kerry in his role as a Member of the City of Marion Development Assessment Panel.

Should Council concur with the findings of the independent investigation that has been undertaken into this matter and determine that a breach of the Code has occurred, then following this consideration, Council may wish to have regard to the standards set by the Council Member Code of Conduct, and publish this report. Note that Clause 2.24 of the Council Members Code of Conduct states that *“a breach of the Behavioural Code must be the subject of a report to a public meeting of the Council”*. There is no corresponding provision in the Code under Section 21A Act.

BACKGROUND:

In late April 2015, the Acting Chief Executive Officer received a complaint from two independent members of the Council's Development Assessment Panel (the Panel) regarding the behaviours of Councillor Nick Kerry in his role as a Member of the Panel.

The complaint was referred to the Panel's Public Officer (Ms Kathy Jarrett) for review. On receipt of this information, Mr Ted Byrt from Byrt Corporate Advisory was engaged to provide advice as to whether any of the matters raised in the complaint were substantive in nature. This advice was sought in the first instance to determine whether further investigation was warranted. Mr Byrt was engaged on the basis of his expertise in 'planning' matters, including the operation council development assessment panels.

Mr Byrt's initial review of the matter indicated that a number of substantive issues had been raised and accordingly, in line with the requirements of the Code, an investigation process was implemented over the following months. The investigation process included:

- opportunity for Councillor Kerry to respond on three occasions to the allegations made
- the gathering of further information from the complainants
- opportunity for Councillor Kerry to have a representative attend the two meetings held in relation to this matter.

Attached for Council's consideration of this matter are copies of:

1. Sections 21A and 56A (24) of the Act which outline the establishment and operation of the Code under the Act
2. The Code adopted by the Minister pursuant to the provisions of the Act
3. An outline of the investigation process, and timeline of progress
4. Mr Byrt's final report dated 27 October 2015

DISCUSSION:

Investigation Findings

The complaint received included eight (8) allegations about Councillor Kerry's behaviour being in breach of the Code.

Mr Byrt's investigation has concluded that breaches of the Code did occur for three (3) of the allegations. However, Mr Byrt added that *“while the behaviours complained about do in my*

findings provide a basis for finding various breaches of the Code of Conduct these behaviours are at the lowest end of the scale of inappropriate behaviours and they reflect more a lack of experience and understanding by Cr Nick Kerry rather than nay deliberate flouting of the Code of Conduct”.

Council Considerations

Pursuant to Section 3.4 of the Code, where an allegation of misconduct is made out, the relevant council may:

- a. Remove the person from the Panel
- b. Suspend the person from the panel for a period of time; or
- c. Take any other reasonable action deemed appropriate. Such actions may include:
 - Pass a censure motion in respect of Cr Kerry’s behaviour
 - Request a public apology, written or verbal
 - Request Cr Kerry to attend further training on the behaviours and procedures associated with being a Member of the Development Assessment Panel

Given the above options, Council’s advice as to which option it wishes to take in response to the findings of Mr Byrt is sought.

RECOMMENDATIONS:

That:

- 1. Council advises the approach it wishes to take regarding this matter.**