

**CITY OF MARION  
GENERAL COUNCIL MEETING  
14 February 2017**

**Originating Officer:** Adrian Skull, Chief Executive Officer  
**Subject:** Code of Conduct Complaint  
**Ref No:** GC140217F01

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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; Abby Dickson, General Manager City Development; Jaimie Thwaites, Acting Manager Corporate Governance], 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.

## REPORT OBJECTIVE:

The purpose of this report is to seek Council's resolution on the next steps to take in addressing a complaint regarding the conduct of Councillor Kerry and subsequent complaint regarding Councillor Hutchinson.

## BACKGROUND:

On the 21 December 2016, the Chief Executive Officer received a Code of Conduct complaint from Councillor Hutchinson regarding Councillor Kerry's behaviour at the Development Assessment Panel meeting on 21 December 2016 (**Appendix 1**). The complaint alleges that Councillor Kerry breached Section 63 of the *Local Government Act 1999* and the following Sections of the Code of Conduct for Council Members:

- 2.3 *Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.*
  - 2.4 *Show respect for others if making comments publicly.*
  - 2.9 *Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.*
  - 2.10 *Not bully or harass other Council members.*
  - 3.1 *Act honestly at all times in the performance and discharge of their official functions and duties;*
  - 3.2 *Perform and discharge their official functions and duties with reasonable care and diligence at all times;*
  - 3.6 *Ensure that relationships with external parties cannot amount to interference by improper influence, affecting judgement, decisions and/or actions.*
- And, as a Criminal Matter, outlined in the Code of Conduct - Part 7, Division 4 of the Criminal Law Consolidation Act 1935: threats or reprisals against public officers.*

The Chief Executive Officer contacted Councillor Kerry to advise him of the complaint against him. In Councillor Kerry's response (**Appendix 2**) to the complaint, dated 29 December 2016, he denies any wrong doing towards Councillor Hutchinson and states that Councillor Hutchinson has breached the following Sections of the Code of Conduct for Council Members:

- 2.3 *Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.*
- 2.9 *Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.*
- 2.10 *Not bully or harass other Council members.*
- 3.1 *Act honestly at all times in the performance and discharge of their official functions and duties;*
- 3.2 *Perform and discharge their official functions and duties with reasonable care and diligence at all times;*

On 1 February 2017, the Chief Executive Officer received another Code of Conduct complaint from Councillor Hutchinson regarding Councillor Kerry's behaviour at the Development Assessment Panel meeting on 1 February 2017 (**Appendix 3**). The complaint alleges that Councillor Kerry breached Section 63 of the *Local Government Act 1999* and the following Sections of the Code of Conduct for Council Members:

- 2.9 *Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.*
  - 2.10 *Not bully or harass other Council members.*
- And, as a Criminal Matter, outlined in the Code of Conduct - Part 7, Division 4 of the Criminal Law Consolidation Act 1935: threats or reprisals against public officers.*

## DISCUSSION:

Councillor Hutchinson's complaint on 21 December 2016 was forwarded to the Ombudsman on 23 December 2016 to ensure independence and consistency with the investigation.

The Ombudsman has concluded his assessment of the matter and provided a written response dated 23 January 2017. The Ombudsman has authorised the disclosure of the letter as the Chief Executive Officer sees fit.

An extract from the Ombudsman's letter is as follows:

***Behaviour on the Development Assessment Panel***

*The complaint concerns Cr Kerry's behaviour during and after the DAP meeting on 21 December 2016. Cr Luke Hutchinson alleges that Cr Kerry's behaviour towards him was intimidating and threatening and that Cr Kerry breached:*

- *section 63 of the Local Government Act 1999*
- *the Code of Conduct for Council Members (the Code of Conduct), and*
- *the Criminal Law Consolidation Act 1935.*

*Based on the information available to me, I do not consider that Cr Kerry's conduct would constitute a breach of the Criminal Law Consolidation Act.*

*Given that:*

- *the alleged behaviour occurred during and after a DAP meeting*
- *my Office is one of last resort, and*
- *the DAP Code of Conduct provides a mechanism for the council to deal with the Complaint*

*I consider that it would be more appropriate in this instance for the council's public officer to take action in relation to this matter as they deem appropriate.*

Under the Development Assessment Panel (DAP) Code of Conduct the Public Officer may take any action they deem appropriate and accords with the Development Act 1993 to deal with a breach or complaint under the Code of Conduct. It has been decided that as the complaints relate to the behaviour of Elected Member representatives on the DAP that the matter will be dealt with under the Elected Member Code of Conduct Procedure for Investigating Complaints. A copy of the procedure is attached at Appendix 4.

### Code of Conduct (Appendix 5)

The Code of Conduct for Council Members (the Code) is in three parts:

- Behaviour which falls under Part 2 of the Code,
- Misconduct which triggers action under Part 3 of the Code, or
- Criminal or corrupt behaviour.

Although the alleged breaches occurred at a / or following attendance at a Development Assessment Panel meeting the Code of Conduct for Council Members still applies. Council Members must comply with the provisions of the Code in carrying out their functions as public officials (which would include their appointment to the Development Assessment Panel as an Elected Member representative)

As noted above both Councillors have specified what section the alleged breaches have occurred under.

### Council Considerations

Pursuant to the Elected Member Code of Conduct Procedure for Investigating Complaints (The Procedure), Council must determine if this complaint relates to:

- Behaviour which falls under Part 2 of the Code,
- Misconduct which triggers action under Part 3 of the Code, or
- Criminal or corrupt behaviour.

Section 3 of the Procedure provides Council with three options to consider a matter:

1. Internal response
2. Referral to independent person of Councils choice for investigation
3. Dismiss the allegation.

### **Options to resolve this matter:**

The question for Council to consider is “has Councillor Kerry and /or Councillor Hutchinson breached the Code of Conduct due to their behaviour towards each other at the Development Assessment Panel on meeting on 21 December 2016 and / or 1 February 2017?”

#### If Yes:

Council may resolve the matter, if considered minor in nature, internally with the agreement of both parties. Mediation would be offered to both parties and if the matter is then resolved to the satisfaction of both parties it would be publicly reported to a meeting of Council.

If the matter cannot be resolved in this manner, it would require a report back to Council to consider the matter further.

OR

Council may resolve to refer the matter to the Ombudsman or Office for public Integrity for investigation. If this option is progressed, this report and the referral will continue to be confidential until such time as a final report is received.

#### If no:

Council may resolve to dismiss the matter if Council is of the opinion that the Code of Conduct has not been breached. This dismissal would be recorded in the minutes and made public together with this report and therefore satisfy the requirements of the Council Member Code of Conduct.

#### If unsure:

Council may resolve to forward the Code of Conduct to an independent person for investigation. If this option is progressed, this report and the referral will continue to be confidential until such time as a final report is received.

### Findings:

In accordance with Section 2.25 of the Code of Conduct for Council Members if, following investigation under the Procedure, a breach of Part 2 of the Code is found, the Council may, by resolution:

*2.25.1 Take no action;*

- 2.25.2 *Pass a censure motion in respect of the Council member;*
- 2.25.3 *Request a public apology, whether written or verbal;*
- 2.25.4 *Request the Council member to attend training on the specific topic found to have been breached;*
- 2.25.5 *Resolve to remove or suspend the Council member from a position within the Council (not including the member's elected position on Council)*
- 2.25.6 *Request the member to repay monies to the Council.*

**RECOMMENDATIONS:**

**That:**

- 1. Council advises the approach it wishes to take regarding this matter.**
- 2. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, any attachment to this report and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(a) of the Act be kept confidential and not available for public inspection for the current term of the Council. This confidentiality order will be reviewed as required by the Act with the first such review to occur at the General Council Meeting in December 2017.**

**CEOEA**

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**From:** Luke Hutchinson  
**Sent:** Wednesday, 21 December 2016 10:29 PM  
**To:** Adrian Skull  
**Subject:** Cr Kerry

Dear Adrian,

It is with regret I am writing to you regarding Cr Kerry's behaviour at tonight's DAP meeting.

This complaint is made pursuant to Section 63 of the Local Government Act 1999 and the associated Code of Conduct for Council Members (Section 2.15 - where I am compelled to report this breach to you).

**Background:**

I sensed there was something in the background going on in relation to one of the regular large developers in the room this evening; particularly when Cr Kerry made comments about not having a commercial relationship with one of directors and "*only having a drinking relationship*" with the developer - this was obviously out of the ordinary meeting practice.

**Incidents:**

I noted during the meeting he made comments regarding a motion I put forward at item 2.3 that it was a "nice try" "better luck, next time" "lost that one" and certainly innuendo was conveyed - I felt bullied, and that my contribution was not valid.

After the meeting goodbyes and Christmas wishes were exchanged by members; as I walked to my car in the carpark Cr Kerry made an approach to me, as he was also leaving, stating that "you're going to get a letter from my lawyer" in an aggressive and rather threatening rant - he then left in his car.

I was rather perplexed by this and felt rather intimidated and threatened by the suggestion of a lawyer taking some form of action against me, for a reason unbeknownst to me.

I certainly have not had any dealings with Cr Kerry and in fact I avoid him given his previous behaviour at council. His intoxication at the council meeting in June 2015 and the aggressive approach he took behind closed doors prior to the meeting alerted me to his character, notwithstanding this was never formally raised at the time; it is this behaviour and character I avoid.

**Complaint:**

Accordingly, I write to submit a complaint that Cr Kerry has breached: Section 63 of the Local Government Act 1999 and the Code of Conduct for Council Members on 3 occasions this evening:

1. During the meeting he specifically breached sections:

2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.

2.4 Show respect for others if making comments publicly.

2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.

2. His comments during the meeting regarding his "*drinking relationship that started 3 years ago*" with a developer, raised other concerns, particularly as he has voted on applications by this developer multiple times throughout the year (and has only recently declared this conflict of interest) - this is a breach of Section 3 Misconduct, which states:

- 3.1 Act honestly at all times in the performance and discharge of their official functions and duties;
- 3.2 Perform and discharge their official functions and duties with reasonable care and diligence at all times;
- 3.6 Ensure that relationships with external parties cannot amount to interference by improper influence, affecting judgement, decisions and/or actions.

In retrospect, I recall Cr Kerry has declared a conflict of interest with the same developer, at different points in time and not others.

3. Following the meeting he specifically breached:

2.10 Not bully or harass other Council members.

And, as a Criminal Matter, outlined in the Code of Conduct - he breached: *Part 7, Division 4 of the Criminal Law Consolidation Act 1935: threats or reprisals against public officers.*

Therefore I kindly request you investigate these matters and refer them on to any appropriate authority as you see fit.

Apologies for taking over your time with this complaint, however they are legitimate and serious in their nature.

Regards, Luke.

**Luke Hutchinson**

**Warriparinga Ward Councillor | City of Marion**

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PO Box 21 Oaklands Park SA 5046

**CEOEA**

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**From:** Nick Kerry <n.kerry@hotmail.com>  
**Sent:** Thursday, 29 December 2016 3:24 PM  
**To:** Adrian Skull  
**Subject:** Response to Code of Conduct Complaint 23rd December 2016

Dear Adrian,

Without Prejudice.

I refer to your letter dated 23rd December 2016, in relation to the allegations that Councillor Hutchinson made relating to the DAP meeting on the 21st December, 2016.

It is clear to me and other Councillors that Councillor Hutchinson has launched a campaign of vilification and payback since Councillor Nick Westwood and I lodged a complaint with the Ombudsman regarding Councillor Hutchinson contacting us prior to a September 2015 DAP meeting, in relation to a telecommunications tower that was being proposed, located in an area where Cr Hutchinson had a property and a direct financial interest. At the time I took no notice of it as I advised Cr Hutchinson that I was going overseas and would not be present at the vote. (Cr Hutchinson had a friendly tone.)

I totally reject Cr Hutchinson's statement that I had a "drinking relationship that started 3 years ago" with Jack Pete, the employee or consultant of a developer. Jack Pete was merely an acquaintance I had met in 2013, and I have had no further contact with him since I was elected to Council. The statement that I had a "drinking relationship that started 3 years ago" with Jack Pete is malicious and defamatory. The developer in question, Scope, made a representation at the DAP meeting of 21-12-2016. I absented myself from the deliberations as a precaution, because 'the water had been muddied' by Cr Hutchinson when he alleged via an anonymous letter that I had a commercial relationship with that developer.

Cr Hutchinson states that I have not always declared a conflict of interest when Scope have had an application before DAP. I have endeavoured to absent myself from any DAP and Council meetings where a conflict of interest may be suspected. When I have recognised that Jack Pete is representing Scope at a DAP meeting, I believe I have absented myself, but when Scope is represented by a person other than Jack Pete, I may not have absented myself, as I have never had a relationship, commercial or social, with the developer Scope, and a social meeting with a Scope employee (Jack Pete) in 2013 is in itself a tenuous basis for suspicion of conflict of interest when Scope is representing before DAP.

Unlike Councillor Hutchinson, I do not have any relationships with developers. I specifically quizzed the representative from Scope, I believe a director of that company, at the DAP meeting of 21-12-2016 to establish that I have not and had not had any commercial relationship with them. He stated that I had none, and he was aware that I had met Jack Pete socially in 2013.

The allegations that have now been brought forward by Cr Hutchinson I believe are a result of being proved wrong in front of 6 of the DAP members, and so are greatly based on an emotional position, and not on clear evidence of wrong-doing by me.

In regards to the motion that he put forward at Item 2.3 of the DAP meeting of 21-12-2016, Councillor Hutchinson stated "I'll try my luck" clearly before he actually put the motion, as he seemed to realised that it was going to be a minority position, and finally it was voted down 4 votes to 2. Following the failure of



that motion by Cr Hutchinson, my utterances, "nice try" "better luck, next time", or similar words were in response to his words before he moved the motion, being, "I'll try my luck" and perhaps other similar words. He had introduced the tone at the time of his motion and I was just continuing it. I did not initiate this line of chatter; it was Cr Hutchinson.

Councillor Hutchinson, far from being bullied, has consistently, since he found out about the ombudsmen complaint in 2016, continued an aggressive and vindictive campaign to defame and discredit me, including the Messenger article alleging that I used an alias, and then the campaign and motion in Council re the use of telecommunication facilities in the Elected Members' room (even though I was not mentioned by name), as well as making this recent report about Scope. Cr Hutchinson has in fact been quizzed at a council meeting on why he was voting against a particular motion, and his response was "because Councillor Kerry is voting for it". To me this is a major breach of the Local Government Act, at least in respect of the following sections:

2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.

2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.

3.2 Perform and discharge their official functions and duties with reasonable care and diligence at all times;

Further more, every time I have put up my hand for a position, i.e. DAP, Cr Hutchinson has put his hand up in order to block me. The rate payers of Marion deserve better.

Following the concerted efforts by Cr Hutchinson to discredit me on various occasions, including this malicious complaint, I think it is only fair and reasonable that I continue to receive advice from my lawyer on what legal action I might take against Cr Hutchinson, if he does not cease in his efforts to obstruct my contributions as a Councillor.

I reject Cr Hutchinson's assertion that there was an aggressive and threatening "rant" in the car park following the DAP meeting on 21-12-2016. In fact the CCTV recording will prove this. The event unfolded as follows. As Councillor Hutchinson was walking towards his car, I drove past, wound down the window and stated that he would be receiving a letter from my lawyer this week and I then drove off. I hate to waste Council resources, however I ask governance to obtain the CCTV recording of this occurrence to disprove his statement, if this matter is to proceed further.

Cr Hutchinson's statement that he has been avoiding me since June 2015 is false as he has lobbied me to vote against the telecommunications tower in Glandore, he has texted me to vote for a motion for closing some streets in Marion. As acting Mayor in June 2015, he raised no concerns about my behaviour at that time and in fact he wrote an email to all elected members asking to support me. Furthermore in July he sent me a text claiming to be a "friend" and that I should 'never hesitate to call him' and that 'his door was always open'.

As for "Part 7, Division 4 of the Criminal Law Consolidation Act 1935: threats or reprisals against public officers.", surely expressing my intention on 21-12-2016 to have my lawyer communicate with Cr Hutchinson could not be seen as contravening the above Act, otherwise there might be a drought for lawyers, and "the people" (including Councillors) would be denied reasonable opportunity for redress in various unjust situations.

I will send you further examples of where Cr Hutchinson has breached the code, if needed.

I strongly believe that Cr Hutchinson is trying to create a smoke screen to deflect from his own inappropriate and bullying behaviour and suggest that this vexatious complaint should be dismissed.

I will not be bullied or intimidated by anyone and will continue to report to relevant authorities any inappropriate behaviour, particularly where Councillors have a conflict of interest, with a direct financial interest.

I believe that Councillor Hutchinson has breached Section 2.10 of our Code of Conduct re bullying and harassing other council members. He has also breached Section 3.1 re acting honestly at all times in the performance and discharge of ... official functions and duties.

Yours sincerely,

Nick Kerry  
0418 960 342

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**CEOEA**

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**From:** Luke Hutchinson  
**Sent:** Wednesday, 1 February 2017 8:37 PM  
**To:** Adrian Skull; Kris Hanna  
**Subject:** Re: Cr Kerry

Dear Adrian & Kris,

It is with extreme concern I write again in relation to Cr Kerry's behaviour at this evening's Development Assessment Panel meeting.

Cr Kerry declared a conflict of interest in relation to an item which was the content of my email below and his behaviour on that evening; upon leaving this evening for a conflict of interest, he stated he in fact didn't have a conflict of interest (a direct contradiction) and made it known to all members if anyone dare suggest he has a conflict of interest he will sue them for defamation in the Supreme Court.

As public officers we each have an obligation to report suspected corruption and by Cr Kerry making such a statement is in direct contravention of the Code of Conduct for Council Members by threatening reprisal against a public officer, particularly for adherence of the Law.

Cr Kerry has again breached: Section 63 of the Local Government Act 1999 and the Code of Conduct for Council Members this evening, being:

2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.

2.10 Not bully or harass other Council members.

And - the Code of Conduct: Part 7, Division 4 of the Criminal Law Consolidation Act 1935: threats or reprisals against public officers.

His comments were clearly directed at me. This was witnessed by the DAP and staff in attendance. **This is bullying**, this is serious and I can no longer tolerate this behaviour in the workplace.

I have a right to feel safe in carrying out my duties as a public officer in the workplace. I currently do not feel safe nor comfortable. As such, I feel this is a *notifiable incident* pursuant to the *Work Health & Safety Act 2011*.

I would also like to understand the status of my previous correspondence below; as I feel there is a genuine concern regarding Cr Kerry's relationship with at least one developer and his behaviour is merely manifesting itself in this way as he seeks to cover up his indiscretions.

Finally, I would like to offer a possible reason, and the only reason, why Cr Kerry has chosen to bully me; I supported the censure motion against following his previous DAP bribery investigation. He did attempt to telephone me following that confidential meeting wanting to know why I didn't support him - I have rightly never engaged in this conversation with him because it was a confidential item about him and I believe he is targeting me for this. I do question how he knows who voted for and against the censure given that it was a confidential discussion and no division was noted.

Regards, Luke.

**Luke Hutchinson**  
**Warriparinga Ward Councillor | City of Marion**

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## Elected Member Code of Conduct Procedure For Investigating Complaints



### 1. POLICY

- 1.1 The Code of Conduct for Council Members is set by regulation and applies to all Elected Members across local government in South Australia. Depending on the nature of an alleged breach of the Code, a matter may be subject to a Council investigation or an investigation by the Ombudsman or Office of Public Integrity (OPI). This procedure applies when the Council receives a complaint against an Elected Member under the Code of Conduct for Council Members as gazetted on 29 August 2013. A copy of the Code is available on the City of Marion's website [www.marion.sa.gov.au](http://www.marion.sa.gov.au)

### 2. ALLEGED BREACH

- 2.1 Breaches of the Code of Conduct may relate to behaviour (in Part 2 of the Code) or misconduct (in Part 3 of the Code). Criminal or corruption matters, which are subject to separate legislation, do not form part of the Code of Conduct for Elected Members but are referred to in the Appendix of the Code of Conduct.
- 2.2 Where an alleged breach occurs the complainant should report the allegation, in writing to the Chief Executive Officer. The allegation should:
- 2.2.1 Be specific
  - 2.2.2 Provide as much supporting evidence as possible to assist an investigation
  - 2.2.3 Provide the name of the Elected Member who has allegedly breach the Code.
- 2.3 Complainants can, at any time, take the alternative option of lodging the complaint with the Ombudsman or Office of Public Integrity (OPI), which will direct the complaint in accordance with the ICAC Act.
- 2.4 On receipt of a complaint, the CEO will be responsible for advising the Mayor and referring the complaint to Council.
- 2.5 When no allegations have been substantiated, Council will consider the matter in confidence.
- 2.6 The Council will consider the matter, in conjunction with legal advice if required, and determine whether the complaint relates to:
- 2.6.1 Behavioural which falls under Part 2 of the Code
  - 2.6.2 Misconduct which triggers action under Part 3 of the Code, or
  - 2.6.3 Criminal or Corrupt behaviour.
- 2.7 Complaints relating to misconduct or criminal behaviour must be referred to the appropriate authorities immediately.

- 2.8 Prior to the complaint being referred to Council, the Mayor will advise the Elected Member who is the subject of the complaint and its substance. If the complaint is about the Mayor, the Deputy Mayor will undertake this function.

### **3. ALLEGED BREACH UNDER PART 2**

When considering how to investigate a complaint, Council may consider the following options:

#### **3.1 Internal Response**

- 3.1.1 Only matters which are determined to be of a minor nature will be dealt with internally and only with the agreement of the parties. Council may request that the Mayor facilitate a meeting with the complainant and the Elected Member and may seek mediation and conciliation between the parties in an attempt to resolve the matter to the satisfaction of all parties. This may be appropriate, for example, where the complainant is also an Elected Member.
- 3.1.2 The Mayor must ensure that the principles of natural justice and procedural fairness are observed.
- 3.1.3 Where the matter is resolved by the Mayor to the satisfaction of all the parties the matter will be closed and no further action will be taken. The Mayor will send written confirmation to all the parties confirming that the matter has been resolved and provide report the outcome to a public meeting of the Council.
- 3.1.4 Where the matter cannot be resolved in this manner, it will be referred back to Council for further consideration.

#### **3.2 Referral to independent person of Council's choice**

- 3.2.1 A complaint may be referred by Council to an independent person for investigation.
- 3.2.2 Complaints to an independent person will specify:
- The grounds of the complaint
  - Set out the circumstances of the complaint
  - Be accompanied by any other material that is available to support the complaint.

#### **3.3 Dismiss the allegation.**

- 3.3.1 The Council may choose to dismiss a matter if it is frivolous, vexatious, misconceived or lacking in substance. The Council must provide reasoning for undertaking this action.

#### **4. REPORTING TO COUNCIL**

- 4.1 At the conclusion of an investigation, if a breach of part 2 of the Code is found, the breach must be the subject of a report to a public meeting of the Council. The Council may, by resolution, take any of the following actions:
  - 4.1.1 Take no action
  - 4.1.2 Pass a censure motion in respect of the Elected Member
  - 4.1.3 Request a public apology, whether written or verbal
  - 4.1.4 Request the Elected Member to attend training on the specific topic found to have been breached
  - 4.1.5 Resolve to move or suspend the Elected Member from a position within the Council (not including the Members Elected position on Council)
  - 4.1.6 Request the member to repay monies to the Council.

#### **5. APPEALS**

- 5.1 The Council will not enter into any process of appeal in relation to Part 2 of the Code. If an Elected Member is aggrieved by the process and or outcome, they may refer the matter to the Ombudsman for review.

#### **6. PART 3 – MANDATORY CODE (MISCONDUCT)**

- 6.1 Any person may report an alleged breach of Part 3 of the Code to the Council, the Ombudsman or Office of Public Integrity. Alleged breaches of this Part made to Council or to the Office of Public Integrity may be referred to the Ombudsman for investigation.
- 6.2 Under the Code of Conduct, an Elected Member who is of the opinion that a breach of Part 3 of the Code has occurred, or is currently occurring, must report the breach to the Mayor of the Council or Chief Executive Officer, the Ombudsman of the Office of Public Integrity.
- 6.3 A failure to report an alleged or suspected breach of Part 3 of the Code is in itself a breach under Part 2 of the Code.
- 6.4 A failure of an Elected Member to co-operate with the Council's process for handling alleged breaches of Part 2 of the Code may be referred for investigation under Part 3.
- 6.5 A failure of an Elected Member to comply with a finding of an investigation under this procedure may be referred for investigation under Part 3 of the Code.
- 6.6 Repeated or sustained breaches of Part 2 of the Code by the same Elected Member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- 6.7 A report from the Ombudsman that finds a Council Member has breached Part 3 of the Code of Conduct must be the subject of a report to a public meeting of the Council. The Council must pass a resolution to give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.

## **7. CRIMINAL MATTERS – APPENDIX TO THE CODE OF CONDUCT**

- 7.1 The matters within the Appendix to the Code of Conduct are matters for which a criminal penalty applies. These matters must be reported to the Office of Public Integrity. In addition, allegations of a breach of any of the offence provisions in the *Local Government Act 1999* must be reported to the Office of Public Integrity.
- 7.2 In compliance with the *Independent Commissioner against Corruption Act 2012*, referral of such complaints to the Office of Public Integrity will remain confidential.

## **8. FURTHER INFORMATION**

Adopted by Council:	10 November 2015
Next Review:	November 2019 (within 12 months of general election)
Version:	1.1
Previous Version:	Adopted 24 June 2014
Owner:	Manager Governance
Applicable Legislation:	Local Government Act 1999 (sections 59-63) Local Government (General) Variation Regulations 2013 Independent Commissioner against Corruption Act 2012
Related Documents:	Code of Conduct for Council Members Directions of Guidelines issued by ICAC
Related Policies:	Elected Caretaker Policy



**CODE OF CONDUCT FOR COUNCIL MEMBERS***Local Government Act 1999: Section 63 (1)*

NOTICE under Clause 3.10 of the Code of Conduct for Council Members published by the Minister for Planning for the purposes of Section 63 (1) of the Local Government Act 1999.

For the purposes of Clause 3.10 of the Code of Conduct for Council Members adopted for the purposes of Section 63 (1) of the Local Government Act 1999 and published in the *Gazette* on the day on which this Notice is made, the value of \$100 is specified.

Dated 18 August 2013.

JOHN RAU, Deputy Premier, Minister for Planning

**Code of Conduct for Council Members**

*Published by the Minister for Planning for the purposes of Section 63 (1) of the Local Government Act 1999.*

**This Code of Conduct is to be observed by all Council members.**

Council members must comply with the provisions of this Code in carrying out their functions as public officials. It is the personal responsibility of Council members to ensure that they are familiar with, and comply with, the standards in the Code at all times.

**PART 1—PRINCIPLES****1. Higher principles—Overarching Statement**

*This part does not constitute separate enforceable standards of conduct.*

Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times.

Council members will work together constructively as a Council and will uphold the values of honesty, integrity, accountability and transparency, and in turn, foster community confidence and trust in Local Government.

As representatives of open, responsive and accountable government, Council members are committed to considering all relevant information and opinions, giving each due weight, in line with the Council's community consultation obligations.

In the performance of their role, Council members will take account of the diverse current and future needs of the local community in decision-making, provide leadership and promote the interests of the Council.

Council members will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position. All Councils are expected to provide training and education opportunities that will assist members to meet their responsibilities under the Local Government Act 1999.

Council members will comply with all legislative requirements of their role and abide by this Code of Conduct.

**PART 2—BEHAVIOURAL CODE****2. Behavioural Code**

In line with 'Part 1—Higher Principles' of this Code, the following behaviour is considered essential to upholding the principles of good governance in Councils.

This Part is for the management of the conduct of Council members that does not meet the reasonable community expectations of the conduct of Council members. It deals with conduct that does not, and is not likely to, constitute a breach of Part 3—Misconduct or criminal matters such as those contained in the Appendix to this document.

Robust debate within Councils that is conducted in a respectful manner is not a breach of this Part.

It is intended that each Council will adopt a process for the handling of alleged breaches of this Part. This process will be reviewed within 12 months of a general Local Government election.

Council members must:

**General behaviour**

- 2.1 Show commitment and discharge duties conscientiously.
- 2.2 Act in a way that generates community trust and confidence in the Council.
- 2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.
- 2.4 Show respect for others if making comments publicly.
- 2.5 Ensure that personal comments to the media or other public comments, on Council decisions and other matters, clearly indicate that it is a private view, and not that of the Council.

**Responsibilities as a member of Council**

- 2.6 Comply with all Council policies, codes and resolutions.
- 2.7 Deal with information received in their capacity as Council members in a responsible manner.
- 2.8 Endeavour to provide accurate information to the Council and to the public at all times.

**Relationship with fellow Council Members**

- 2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.
- 2.10 Not bully or harass other Council members.

**Relationship with Council staff**

- 2.11 Not bully or harass Council staff.
- 2.12 Direct all requests for information from the Council administration to the Council's Chief Executive Officer or nominated delegate/s.
- 2.13 Direct all requests for work or actions by Council staff to the Council's Chief Executive Officer or nominated delegate/s.
- 2.14 Refrain from directing or influencing Council staff with respect to the way in which these employees perform their duties.

**Requirement to report breach of Part 3**

- 2.15 A Council member who is of the opinion that a breach of Part 3 of this Code (Misconduct)— has occurred, or is currently occurring, must report the breach to the Principal Member of the Council or Chief Executive Officer, the Ombudsman or the Office for Public Integrity.
- 2.16 A failure to report an alleged or suspected breach of Part 3 of this Code is in itself a breach under this Part (Behavioural Code).

**Complaints**

- 2.17 Any person may make a complaint about a Council member under the Behavioural Code.
- 2.18 Complaints about behaviour alleged to have breached the Behavioural Code should be brought to the attention of the Principal Member or Chief Executive Officer of the Council, or nominated delegate/s.
- 2.19 A complaint may be investigated and resolved in any manner which that Council deems appropriate in its process for handling alleged breaches of this Part. This can include, but is not limited to: a mediator or conciliator, the Local Government Governance Panel, a regional governance panel or an independent investigator.
- 2.20 A complaint may be considered within this process to be trivial, vexatious or frivolous, and accordingly not investigated.
- 2.21 A failure of a Council member to cooperate with the Council's process for handling alleged breaches of this Part may be referred for investigation under Part 3.
- 2.22 A failure of a Council member to comply with a finding of an investigation under this Part, adopted by the Council, may be referred for investigation under Part 3.
- 2.23 Repeated or sustained breaches of this Part by the same Council member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- 2.24 A breach of the Behavioural Code must be the subject of a report to a public meeting of the Council.

## **Findings**

- 2.25 If, following investigation under the Council's complaints handling process, a breach of the Behavioural Code by a Council member is found, the Council may, by resolution:
  - 2.25.1 Take no action;
  - 2.25.2 Pass a censure motion in respect of the Council member;
  - 2.25.3 Request a public apology, whether written or verbal;
  - 2.25.4 Request the Council member to attend training on the specific topic found to have been breached;
  - 2.25.5 Resolve to remove or suspend the Council member from a position within the Council (not including the member's elected position on Council);
  - 2.25.6 Request the member to repay monies to the Council.

## **PART 3—MISCONDUCT**

### **3. Misconduct**

Failure by a Council member to comply with this Part constitutes misconduct. The provisions within this Part may refer to statutory matters under the Local Government Act 1999. Any breach of these provisions will be investigated under that legislation.

Any person may report an alleged breach of this Part to the Council, the Ombudsman, the Electoral Commissioner (for alleged breaches of Code 3.8) or the Office for Public Integrity. Alleged breaches of this Part made to a Council or to the Office for Public Integrity may be referred to the Ombudsman for investigation under Section 263 of the Local Government Act 1999, by the Council's Chief Executive Officer or by the Independent Commissioner Against Corruption, where he or she so determines.

A report from the Ombudsman that finds a Council member has breached this Part (Misconduct) of the Code of Conduct must be provided to a public meeting of the Council. The Council must pass resolutions, that give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.

An investigation under Part 3 of this Code does not preclude an investigation being launched as a potential breach of the criminal matters listed in the Appendix to this document.

#### **Member duties**

Council members must:

- 3.1 Act honestly at all times in the performance and discharge of their official functions and duties;
- 3.2 Perform and discharge their official functions and duties with reasonable care and diligence at all times;
- 3.3 Not release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence;
- 3.4 Not exercise or perform, or purport to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform;
- 3.5 Not attempt to improperly direct a member of Council staff to act in their capacity as a Local Government employee for an unauthorised purpose;
- 3.6 Ensure that relationships with external parties cannot amount to interference by improper influence, affecting judgement, decisions and/or actions.

#### **Gifts and benefits**

3.7 Council members must not:

- 3.7.1 Seek gifts or benefits of any kind;
  - 3.7.2 Accept any gift or benefit that may create a sense of obligation on their part or may be perceived to be intended or likely to influence them in carrying out their public duty;
  - 3.7.3 Accept any gift or benefit from any person who is in, or who seeks to be in, any contractual relationship with the Council.
- 3.8 Notwithstanding Code 3.7, Council members may accept campaign donations as provided for in the Local Government (Elections) Act 1999.

- 3.9 Notwithstanding Code 3.7.3, Council members may accept hospitality provided in the context of performing their duties, including:
- 3.9.1 Free or subsidised meals, beverages or refreshments of reasonable value provided in conjunction with:
    - 3.9.1.2 Council work related events such as training, education sessions workshops and conferences;
    - 3.9.1.3 Council functions or events;
    - 3.9.1.4 Social functions organised by groups such as Council committees and community organisations.
  - 3.9.2 Invitations to, and attendance at, local social, cultural or sporting events.
- 3.10 Where Council members receive a gift or benefit of more than a value published in the *Government Gazette* by the Minister from time to time, details of each gift or benefit must be recorded within a gifts and benefits register maintained and updated quarterly by the Council's Chief Executive Officer. This register must be made available for inspection at the principal office of the Council and on the Council website.

#### **Register of Interests**

- 3.11 Council members must lodge with the Council a complete and accurate primary return of their interests, and subsequent ordinary returns, as required by legislation.

#### **Campaign donation returns**

- 3.12 Council members must ensure that following each election an accurate campaign donation return is provided to the Chief Executive Officer of the Council as required by legislation.

#### **Conflict of interest**

- 3.13 Council members must be committed to making decisions without bias and in the best interests of the whole community and comply with the relevant conflict of interest provisions of the Local Government Act 1999.

#### **Misuse of Council resources**

- 3.14 Council members using Council resources must do so effectively and prudently.
- 3.15 Council members must not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate.
- 3.16 Council members must not use public funds or resources in a manner that is irregular or unauthorised.

#### **Repeated or sustained breaches of Part 2**

- 3.17 At the discretion of the Council to which the member is elected, repeated or sustained inappropriate behaviour, as listed in Part 2, may be escalated to an allegation of misconduct under this Part.
- 3.18 A failure to comply with a finding of inappropriate behaviour (by the Council, independent investigator or Ombudsman) under Part 2 is also grounds for a complaint under this Part.

## **APPENDIX—CRIMINAL MATTERS**

The matters within this Appendix are matters for which a criminal penalty attaches. As separate legislation operates to cover such conduct, this part does not form part of the Code of Conduct for Council Members.

Allegations of conduct breaching these matters will be investigated in accordance with the legislation governing that conduct and they are included within this document only in order to provide a complete overview of the standards of conduct and behaviour expected of Council members.

Alleged breaches of matters outlined in this Appendix should be reported to the Office for Public Integrity in the first instance.

#### ***Breaches of the Local Government Act 1999***

##### **Member duties**

A member of a Council must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council (Section 62 (3)).

A member of a Council must not, whether within or outside the State, make improper use of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council (Section 62 (4)).

#### **Provision of false information**

A member of a Council who submits a return under Chapter 5 Part 4 (Register of interest) and Schedule 3 of the Local Government Act 1999, that is to the knowledge of the member, false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence (Section 69).

#### **Restrictions on publication of information from Register of Interests**

A Council member must not publish information, or authorise publication of information, derived from a Register unless the information constitutes a fair and accurate summary of the information contained in the Register, and is published in the public interest, or comment on the facts set forth in a Register, unless the comment is fair and published in the public interest and without malice (Section 71).

#### ***Breaches of other Acts***

Acting in his or her capacity as a public officer, a Council member shall not engage in conduct, whether within or outside the state, that constitutes corruption in public administration as defined by Section 5 of the Independent Commissioner Against Corruption Act 2012, including:

An offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:

- bribery or corruption of public officers;
- threats or reprisals against public officers;
- abuse of public office;
- demanding or requiring benefit on basis of public office;
- offences relating to appointment to public office.

Any other offence, including an offence against Part 5 (Offences of dishonesty) of the Criminal Law Consolidation Act 1935, committed by a public officer while acting in his or her capacity as a public officer, or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or to an attempt to commit such an offence.

Any of the following in relation to an offence referred to in a preceding paragraph:

- aiding, abetting, counselling or procuring the commission of the offence;
- inducing, whether by threats or promises or otherwise, the commission of the offence;
- being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- conspiring with others to effect the commission of the offence.