

## **SPECIAL MEETING OF COUNCIL**

**Minutes** of a  
Special Meeting of Council held at  
the Council Chamber, 15 Stead Street, Ballan on  
Wednesday 29 June 2016,  
at 7.00 p.m.

### **Members:**

Cr. Allan Comrie (Mayor)	East Moorabool Ward
Cr. Paul Tatchell	Central Ward
Cr. David Edwards	East Moorabool Ward
Cr. John Spain	East Moorabool Ward
Cr. Tonia Dudzik	East Moorabool Ward
Cr. Tom Sullivan	West Moorabool Ward
Cr. Pat Toohey	Woodlands Ward

### **Officers:**

Mr. Rob Croxford	Chief Executive Officer
Mr. Phil Jeffrey	General Manager Infrastructure
Mr. Satwinder Sandhu	General Manager Growth and Development
Mr. Danny Colgan	General Manager Community Services

***Rob Croxford***  
***Chief Executive Officer***

## AGENDA

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**1. OPENING OF MEETING**

*The Mayor, Cr. Allan Comrie, opened the meeting at 7.00pm.*

**2. ACKNOWLEDGEMENT TO COUNTRY**

*We respectfully acknowledge the traditional owners of this land, their spirits and ancestors.*

**3. PRESENT**

<i>Cr. Allan Comrie</i>	<i>East Moorabool Ward</i>
<i>Cr. David Edwards</i>	<i>East Moorabool Ward</i>
<i>Cr. John Spain</i>	<i>East Moorabool Ward</i>
<i>Cr. Tonia Dudzik</i>	<i>East Moorabool Ward</i>
<i>Cr. Tom Sullivan</i>	<i>West Moorabool Ward</i>
<i>Cr. Pat Toohey</i>	<i>Woodlands Ward</i>

**Officers:**

<i>Mr. Rob Croxford</i>	<i>Chief Executive Officer</i>
<i>Mr. Satwinder Sandhu</i>	<i>General Manager Growth and Development</i>
<i>Mr. Phil Jeffrey</i>	<i>General Manager Infrastructure</i>
<i>Mr. Danny Colgan</i>	<i>General Manager Social and Organisational Development</i>
<i>Ms. Natalie Abbott</i>	<i>Manager Customer &amp; Business Services</i>
<i>Mr. John Whitfield</i>	<i>Governance Coordinator</i>
<i>Ms. Melissa Hollitt</i>	<i>Minute Taker</i>

**4. APOLOGIES**

*Cr. Paul Tatchell*                      *Central Ward*  
*(Leave of Absence – Refer Item 10.1.1 of Ordinary Meeting of Council - 1 June 2016 - Minutes)*

## 5. DISCLOSURE OF CONFLICT OF INTEREST

Under the Local Government Act (1989), the classification of the type of interest giving rise to a conflict is; a direct interest; or an indirect interest (section 77A and 77B). The type of indirect interest specified under Section 78, 78A, 78B, 78C or 78D of the Local Government Act 1989 set out the requirements of a Councillor or member of a Special Committee to disclose any conflicts of interest that the Councillor or member of a Special Committee may have in a matter being or likely to be considered at a meeting of the Council or Committee.

Definitions of the class of the interest are:

- a direct interest
  - (section 77A, 77B)
- an indirect interest (see below)
  - indirect interest by close association (section 78)
  - indirect financial interest (section 78A)
  - indirect interest because of conflicting duty (section 78B)
  - indirect interest because of receipt of gift(s) (section 78C)
  - indirect interest through civil proceedings (section 78D)
  - indirect interest because of impact on residential amenity (section 78E)

### Time for Disclosure of Conflicts of Interest

In addition to the Council protocol relating to disclosure at the beginning of the meeting, section 79 of the Local Government Act 1989 (the Act) requires a Councillor to disclose the details, classification and the nature of the conflict of interest immediately at the beginning of the meeting and/or before consideration or discussion of the Item.

Section 79(6) of the Act states:

While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must:

- (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
- (b) remain outside the room and any gallery or other area in view of hearing of the room.

The Councillor is to be notified by the Mayor or Chairperson of the special committee that he or she may return to the room after consideration of the matter and all votes on the matter.

There are important reasons for requiring this disclosure immediately before the relevant matter is considered.

- Firstly, members of the public might only be in attendance for part of a meeting and should be able to see that all matters are considered in an appropriately transparent manner.
- Secondly, if conflicts of interest are not disclosed immediately before an item there is a risk that a Councillor who arrives late to a meeting may fail to disclose their conflict of interest and be in breach of the Act.

***Nil.***

## 6. PRESENTATIONS / DEPUTATIONS

The Council has made provision in the business of the Special Meeting of the Council for the making of presentations or deputations to Council in relation to matters presented on the agenda for Council consideration.

Presentations or deputations are required to be conducted in accordance with the requirements contained within the **Presentation/Deputations Protocols and Procedural Guidelines**.

Persons wishing to make a presentation or deputation to the Council on a matter included in the agenda shall inform Council by 1pm on the Friday prior to the meeting by contacting the Chief Executive Officer's Office and registering their name and agenda item being spoken to.

At the meeting the Mayor will invite the persons wishing to make a presentation or delegation to address the Council on the agenda item.

The person making the presentation or deputation is to stand and address the Council on the item. No debate on the item is permitted between the person making the presentation or delegation and the Council.

A maximum of three minutes per presentation or delegation will be allocated. An extension of time may be granted at the discretion of the Mayor.

Councillors, through the Mayor, may ask the person making the presentation or delegation for clarification of matters presented.

The Mayor may direct that a member of the gallery ceases speaking if the above procedure is not followed.

**List of Persons making Presentations/Deputations other than in relation to a planning item listed on the agenda:**

***Nil.***

## **7. BUSINESS**

### **7.1 Councillor Code of Conduct Review**

#### **Introduction**

File No.: 01/03/002  
Author: John Whitfield  
General Manager: Satwinder Sandhu

#### **Background**

Recent changes to the Local Government Act 1989 (the Act) have set out a new Councillor Conduct Framework aimed at ensuring councillors conduct themselves in accordance with the standards councillors collectively set themselves in their Councillor Code of Conduct.

#### **Proposal**

A number of changes have been made to the Local Government Act that require the Councillor Code of Conduct to be reviewed and amended.

Firstly it requires the Council to review, and make any necessary amendments to its current Councillor Code of Conduct within 4 months after the commencement of Section 15 of the Local Government Amendment (Improved Governance) Act 2015 by calling a special meeting solely for the purpose of reviewing the Councillor Code of Conduct.

This effectively means a revised Councillor Code of Conduct is to be adopted by Council by 1 July 2016.

Further, Councillors should note that this policy will be reviewed again either late this year or early next year as this is required within four months of a general election.

The Act now outlines a hierarchy of conduct standards, requires an internal resolution procedure to resolve disputes, and mandates that Councillors sign a declaration to abide by the Code. It outlines sanctions which councils can apply to address any failure to meet Code standards. More details are set out below.

#### **1. The new hierarchy of conduct standards in the Act**

The reforms in the Act create a hierarchy for management of councillor conduct issues. Section 3(1) of the Act provides new definitions. These new definitions for misconduct, serious misconduct and gross misconduct are summarised in the table below, along with the authority responsible for addressing the matter.

<b>Type of Contravention</b>	<b>Definition</b>	<b>Responsible Authority</b>
Conduct inconsistent with standards council has set itself	Contraventions of the Councillor Code of Conduct	Council (via Internal Dispute Resolution Procedure)
Misconduct	Failing to comply with a council's internal resolution procedure, including failure to abide by any decision of council in relation to a contravention of the code, failure to comply with written direction and repeated contraventions of councillor conduct principles	Councillor Conduct Panel
Serious misconduct	Failing to comply with panel processes, continued and repeated misconduct, and bullying of another Councillor or staff member. Improperly directing or influencing staff, and releasing confidential information	Councillor Conduct Panel Chief Municipal Inspector
Gross misconduct	Behaviour that demonstrates lack of character to be a councillor	VCAT

## 2. Principal Conduct Officer

The Act in Section 81X now includes the role of Principal Conduct Officer. This Officer is to assist the council in the implementation of, and conduct of, the internal resolution procedure of a council; and assist the Principal Councillor Conduct Registrar to perform the functions specified in Section 81T.

The Chief Executive Officer has appointed Mr Satwinder Sandhu, the General Manager Growth & Development to be the Council's Principal Conduct Officer.

## 3. Internal resolution procedure

Councils are now required to have in place an internal resolution procedure to address conduct that is in contravention of the councillor code of conduct. The internal resolution processes must make clear how allegations of contraventions of the code of conduct are to be handled. This gives councils significantly greater authority to shape and enforce acceptable standards of conduct by their councillors.

There are three phases of internal resolution outlined in the draft policy. They are based on processes recommended to the local government sector by the Municipal Association of Victoria (MAV).



Phase One involves direct negotiation between the parties to a dispute. Phase Two utilises an external mediation method, Phase Three utilises an independent arbiter who is able to consider alleged violations of the code of conduct and make final determinations on them fairly and without bias.

In relation to the Phase Three internal resolution procedure, the Board of the MAV have invited expressions of interest for persons to go onto a local government panel of arbiters. It is the intention of the MAV to have this panel in place by the end of June 2016. The MAV will then publish a list of arbiters on its website and Councils will be able to directly engage with an arbiter of their choice.

#### **4. New Councillor Code of Conduct declaration requirements**

One of the new provisions of the Act (Section 63) requires Councillors to make a declaration to abide by a Councillor Code of Conduct.

Within one month of any amendment made to a Councillor Code of Conduct, all councillors must make a declaration stating that they will abide by the revised Councillor Code of Conduct. This declaration must be signed and witnessed by the CEO. (Section 76C(6A))

With a general election in October 2016 it is also worthwhile noting Sections 63 and 64 of the Act. Section 63 says that a person elected to be a Councillor is not capable of acting as a Councillor until the person has read the Councillor Code of Conduct and made a declaration, witnessed by the Chief Executive Officer, stating that they will abide by the Councillor Code of Conduct.

Section 64 says that the office of a Councillor becomes vacant if a person elected to be a Councillor does not, within 3 months after the day on which the person was declared elected:

- (a) take the oath of office; or
- (b) make the declaration to abide by the Councillor Code of Conduct.

Finally, an amendment made to Section 29 of the Act added sub-clause (ea). It says:

#### **29 Disqualifications**

- (1) *A person is not capable of becoming or continuing to be a councillor or nominating as a candidate at an election if—*
  - (ea) *he or she has failed to make a declaration stating that he or she will abide by the councillor code of conduct in accordance with Section 76C;.....”*

To sum up the declarations required for this current review of the Code, Councillors need to sign a declaration that they will abide by the revised Councillors Code of Conduct by 1 August 2016.

#### **5. Sanctions for contraventions of the code**

Section 81AB now specifies that councils may impose sanctions through their internal resolution procedure for contraventions of their code. These must be voted on by council as a whole and they may include:

- Requiring an apology.
- Suspension from up to two council meetings.
- Direction that they not attend or chair an advisory or special committee for up to two months.
- Direction that they be removed from a position where they represent council for up to two months.

The primacy given to councils addressing councillor conduct internally is reinforced by the way applications to establish panels are dealt with. The Principal Councillor Conduct Registrar is required to refer matters sent to a Councillor Conduct Panel back to a council to resolve if the internal council code process has not been exhausted prior to an application for a panel.

Finally, Councillors should note that when considering a report from the independent arbiter in Phase 3 of the internal dispute resolution procedures, the Councillor who allegedly contravened the Councillor Code of Conduct has a conflict of interest in the matter and must leave the meeting while the matter is discussed and resolved.

### **Policy Implications**

The 2013 - 2017 Council Plan provides as follows:

<b>Key Result Area</b>	Representation and Leadership of our community
<b>Objective</b>	Good governance through open and transparent processes and strong accountability to the community.
<b>Strategy</b>	Ensure policies and good governance are in accordance with legislative requirements and best practice.

### **Financial Implications**

There are no financial implications from this report.

### **Risk & Occupational Health & Safety Issues**

<b>Risk Identifier</b>	<b>Detail of Risk</b>	<b>Risk Rating</b>	<b>Control/s</b>
Legislative requirements	Failure to comply to the Code	Medium	Council to adopt the revised Councillor Code of Code.

### **Communications and Consultation Strategy**

The Councillor Code of Conduct must be made publicly available on the council's website. This must be done as soon as practicable after it is adopted.

## **Victorian Charter of Human Rights and Responsibilities Act 2006**

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

### **Officer's Declaration of Conflict of Interests**

Under section 80C of the Local Government Act 1989 (as amended), officers providing advice to Council must disclose any interests, including the type of interest.

*General Manager – Satwinder Sandhu*

In providing this advice to Council as the General Manager, I have no interests to disclose in this report.

*Author – John Whitfield*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

### **Conclusion**

The revised Councillor Code of Conduct as attached to this report is now placed before the Council for its consideration and adoption.

### **Resolution:**

**Crs. Edwards/Dudzik**

***That Council adopts the revised Councillor Code of Conduct as attached to this report.***

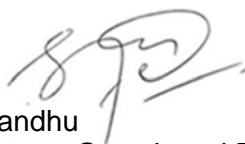
**CARRIED.**

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### **Report Authorisation**

**Authorised by:**

**Name:** Satwinder Sandhu  
**Title:** General Manager Growth and Development  
**Date:** Wednesday, 8 June 2016



**8. FURTHER BUSINESS AS ADMITTED BY UNANIMOUS RESOLUTION OF COUNCIL**

***Nil.***

**9. CLOSED SESSION OF THE MEETING TO THE PUBLIC**

***Nil.***

**10. MEETING CLOSURE**

*The meeting closed at 7.06pm.*

*Confirmed.....Mayor.*