



MELTON CITY COUNCIL

Notice is hereby given that the Special Meeting of the Melton City Council will be held in the Council Chamber, Civic Centre, 232 High Street, Melton on 20 February 2017 at 6.30pm.

SPECIAL MEETING

**Kelvin Tori
CHIEF EXECUTIVE**

Visitors to the Gallery please note:

Proceedings at Council meetings are controlled by the Chairperson. The Chairperson is empowered to enforce the provision of Council's Local Law, which includes the following aspects:

- **Silence** must be maintained by members of the public in the gallery at all times. A visitor to the gallery must not interject or take part in the debate that occurs in the Chamber.
- Members of the public in the gallery must not operate **recording equipment** at a Council or Special Committee Meeting without the prior written consent of Council.
- **Question time** is available at every Ordinary Meeting to enable members of the public to address questions to Council. All questions must be received by the Chief Executive Officer or other person nominated for this purpose no later than:
 - i) 5 pm on the day of the Ordinary Meeting if questions are submitted into the receptacle designated for public questions outside the Council Chamber
 - ii) 5pm on the day of the Ordinary Meeting if questions are submitted by electronic medium as per Council website directions.

A person must not submit more than two (2) individual questions at a meeting, inclusive of all parts and variants as interpreted by the Chairperson or other person authorised for this purpose by the Chairperson. The person directing the question must be present in the gallery at the time the question is to be dealt with for it to be valid.

- It is an offence for any person, not being a Councillor, who is guilty of any improper or disorderly conduct to not leave the meeting when requested by the Chairperson to do so.
Penalty: 20 Penalty Units
- It is an offence for any person to fail to obey a direction of the Chairperson relating to the conduct of the meeting and the maintenance of order.
Penalty: 20 Penalty Units

A penalty unit for a Local Law made under Part 5 of the *Local Government Act 1989* is \$100 in accordance with s110(2) of the *Sentencing Act 1991*.

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1. APOLOGIES AND LEAVE OF ABSENCE

The Chairperson will call for any apologies received from any Councillors who are unable to attend this meeting.

2. DECLARATION OF ANY PECUNIARY INTEREST, OTHER INTEREST OR CONFLICT OF INTEREST OF ANY COUNCILLOR

Pursuant to Section 77A, 77B, 78 and 79 of the Local Government Act 1989, any Councillor must declare any direct or indirect interest, and any conflict of interest, in any items contained within the Notice Paper.

3. PRESENTATION OF STAFF REPORTS

3.1 COUNCILLOR CODE OF CONDUCT

Author: Christine Denyer - Manager Legal and Governance
Presenter: Christine Denyer - Manager Legal and Governance

PURPOSE OF REPORT

To advise Council of the proposed amendments to the Councillor Code of Conduct following on from briefings in relation to this matter.

RECOMMENDATION:

That Council adopt the revised Councillor Code of Conduct at **Appendix 1**.

REPORT

1. Executive Summary

The *Local Government Act* ('the Act') requires that all Victorian Councils adopt a Councillor Code of Conduct and that each Councillor make a declaration, before the Chief Executive Officer, that he/she will abide by it.

Section 76C of the Act states that a Council must, within 4 months of a general election, call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct.

A revised Councillor Code of Conduct is attached at **Appendix 1**. The changes represent amendments suggested by the Manager Legal and Governance and by Councillors at two briefings held on this matter.

It is a further requirement of the Act that each Councillor formally agree to abide by the Councillor Code of Conduct within one month of its being amended and approved. The declaration must be in writing and witnessed by the Chief Executive Officer. It is proposed that these declarations be made immediately following this Special Meeting.

2. Background/Issues

The Act requires that all Victorian Councils adopt a Councillor Code of Conduct and that each Councillor make a declaration, before the Chief Executive Officer, that he/she will abide by it.

Certain information is required by the Act to be contained within each Councillor Code of Conduct such as dispute resolution provisions. Otherwise, each Councillor Code of Conduct should be a reflection of each Council's own ideas and expectations of the conduct and behavior that should be displayed by its Councillors.

Ideally, the Councillor Code of Conduct is a document, reflective of the current Council, that will strengthen the working relationships between Councillors and set out an informal and fair process to resolve internal disputes should they ever arise.

Melton City Council's current Councillor Code of Conduct was adopted by the previously constituted Council on 23 May 2016.

The current Councillor Code of Conduct includes:

- summaries of relevant parts of the Act, such as in relation to the roles of Council and of a Councillor
- clauses which set out the standards of behaviour and conduct that Melton City Council expects of its Councillors and that Councillors are entitled to expect of each other
- an internal dispute resolution procedure for the resolution of disputes between Councillors and allegations of non compliance with the Councillor Code of Conduct by one Councillor in relation to another Councillor.

Following the recent election, each Councillor of the newly (current) constituted Council made a declaration that he/she would abide by the current Councillor Code of Conduct. These declarations were made on 7 November 2016.

Given that the document is largely Council's own internal rules, imposed against itself, it is appropriate and desirable that it be reviewed and amended by the newly constituted (current) Council within a reasonable time of its having been sworn in.

This is also a requirement of the Act. The Act states, at section 76C that a Council must, within 4 months of a general election, call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct.

Proposed Changes

A summary of the substantive changes that are proposed is as follows:

1. Changes to make the Councillor Code of Conduct refer to and be consistent with Council's Governance Charter.
 - a. Acting upon a recommendation of the Audit Committee, Council staff developed a Governance Charter which sets out Council's approach to Governance. The Governance Charter was approved by Council at the last meeting and will shortly be available on Council's website.
 - b. The changes in relation to the Role of Council are not material but are more to make the text consistent with the Governance Charter.
2. Changes to assist in interpretation.
 - a. These changes include the use of defined terms such as "Act" throughout. Also a statement that where the Act and the Councillor Code of Conduct are in conflict, the Act will prevail.
 - b. References to the sections of the Act have also been added in order to assist any Councillor wishing to look up the relevant provision.
3. The Role of Councillor and Role of Mayor have been separated (reflecting separations in the Act) and made, as much as possible, consistent with the Governance Charter.
4. The Primary and General Councillor Conduct Principles have been set out rather than being incorporated by reference.
 - a. This is an important inclusion because a repeated breach of these could result in a finding of misconduct by a Councillor Conduct Panel.
5. A new 'working relationships' section to replace 'functional separation and cooperation' to provide consistency with the Governance Charter.
6. Changes in relation to the Dispute Resolution Procedures.
 - a. Phase 1 – Direct Negotiation.
 - i. Support Person but no legal representation. It is important to note here that a Support Person does not provide advice nor speak on the Councillor's behalf;

- b. Phase 2 – External Mediation.
 - i. Each party is entitled to be legally represented however representation will be at the party's own expense unless the Council resolves otherwise. Alternatively, but not in addition, each party is entitled to have with them a Support Person (as role of which is explained in (a) hereof).
- c. Phase 3 – Arbitration.
 - i. Deletion of the restriction upon an applicant if he/she withdraws an application. The current provisions mean that an applicant who withdraws an application cannot re-make an application on the same facts. Certainly a settlement agreement could include the withdrawal of an application and an undertaking/agreement that it cannot be brought again however in the absence of a settlement agreement such a restriction is likely a denial of natural justice (right to a fair hearing).
 - ii. Again each party is entitled to be legally represented however representation will be at the party's own expense unless the Council resolves otherwise. Alternatively, but not in addition, each party is entitled to have with them a Support Person (as role of which is explained in (a) hereof).
 - iii. The Arbiter's report will be presented to the in camera part of the next Council Meeting, having first been provided to the parties themselves.

It is a further requirement of the Act that each Councillor formally agree to abide by the Councillor Code of Conduct within one month of its being amended and approved. The declaration must be in writing and witnessed by the Chief Executive Officer. It is proposed that these declarations be made immediately following this Special Meeting.

3. Council Plan Reference and Policy Reference

The Melton City Council 2013-2017 Council Plan references:

- 2. A Well Governed and Leading Organisation: Operating with innovation, transparency, accountability and sustainability

2.6 Ensure timely compliance with statutory and regulatory obligations

4. Financial Considerations

There are no financial considerations.

5. Consultation/Public Submissions

There has been no public consultation in relation to the Councillor Code of Conduct nor would consultation be appropriate. The Councillor Code of Conduct is the conduct that Council expects *of itself*. It is in addition to the conduct that is required by the Act to which the public can hold Council accountable for and in relation to which appropriate authorities may be able to prosecute.

6. Risk Analysis

If a revised Councillor Code of Conduct is not adopted at a Special Meeting called for that purpose by 22 February 2017, then Council will be in breach of the provisions of the Act.

7. Options

1. Adopt the Officers recommendation.
2. Agree to other / different revisions to the draft and adopt that further revised version.

LIST OF APPENDICES

1. Councillor Code of Conduct - dated 20 February 2017

4. CLOSE OF BUSINESS