

# Central Highlands Council

## Agenda – ORDINARY MEETING – 18<sup>th</sup> July 2017

Agenda of an Ordinary Meeting of Central Highlands Council scheduled to be held at Hamilton Council Chambers, on Tuesday 18<sup>th</sup> July 2017, commencing at 9am.

I certify under S65(2) of the Local Government Act 1993 that the matters to be discussed under this agenda have been, where necessary, the subject of advice from a suitably qualified person and that such advice has been taken into account in providing any general advice to the Council.

Lyn Eyles  
General Manager

### 1.0 OPENING

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### 2.0 PRESENT

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### 3.0 APOLOGIES

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### 4.0 PECUNIARY INTEREST DECLARATIONS

In accordance with Regulation 8 (7) of the Local Government (Meeting Procedures) Regulations 2015, the Mayor requests Councillors to indicate whether they or a close associate have, or are likely to have a pecuniary interest (any pecuniary or pecuniary detriment) in any Item of the Agenda.

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### 5.0 CLOSED SESSION OF THE MEETING

**Moved:**

**Seconded:**

**THAT** pursuant to Regulation 15 (1) of the Local Government (Meeting Procedures) Regulations 2015, Council close the meeting to the public.

Items for Closed Session:

- Confirmation of Closed Session Minutes of Council's Ordinary Meeting held on 20 June 2017
  - Personnel/Industrial Relation Matters Regulation 15 (2) (a)
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### 5.1 MOTION OUT OF CLOSED SESSION

**Moved:**

**Seconded:**

**THAT** Council move out of Closed Meeting and resume the Ordinary Meeting.

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### OPEN MEETING TO PUBLIC

Meeting opens to the public at 10.00am

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## 6.0 IN ATTENDANCE

10.00am	Representative from TAC to discuss item 16.1
10.30am	Craig Hoey State Growth – Roadside Marker Program & Tas Road Safety Strategy 2017-2026

## 6.1 PUBLIC QUESTION TIME

## 7.0 MAYORAL COMMITMENTS

19 <sup>th</sup> June	Business of Council- Hamilton
	Meeting with a Councillor
20 <sup>th</sup> June	Ordinary Meeting of Council- Bothwell
26 <sup>th</sup> June	Mayors Round Table- Hobart
	STCA Meeting- Hobart
2 <sup>nd</sup> July	AGM/SpinIN Meeting- Bothwell
3 <sup>rd</sup> July	NAIDOC Flag Raising- Hobart
4 <sup>th</sup> July	Meeting with Mr Newport
5 <sup>th</sup> July	Cattlehill Wind Farm Information Session- Bothwell
11 <sup>th</sup> July	Meeting with the General Manager
	Better Health Project Meeting- Bothwell

## 7.1 COUNCILLORS COMMITMENTS

NIL

## 7.2 GENERAL MANAGER'S COMMITMENTS

20 <sup>th</sup> June	Council Meeting
21 <sup>st</sup> June	Workforce Planning for Industries – South Central Sub-Region
26 <sup>th</sup> June	STCA Meeting
27 <sup>th</sup> June	EBA meeting
28 <sup>th</sup> June	Destination Action Plan Meeting
4 <sup>th</sup> July	Agreement Signing Mayor & General Manager
5 <sup>th</sup> July	Cattle Hill Wind farm Meeting Bothwell

## 8.0 NOTIFICATION OF COUNCIL WORKSHOPS HELD

20 <sup>th</sup> June	Independent Internal Review Workshop
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## 8.1 FUTURE WORKSHOPS

NIL

## 9.0 MAYORAL ANNOUNCEMENTS

## 10.0 MINUTES

## 10.1 RECEIVAL DRAFT MINUTES ORDINARY MEETING

**Moved:**

**Seconded:**

**THAT** the Draft Minutes of the Ordinary Meeting of Council held on Tuesday 20<sup>th</sup> June 2017 be received.

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## 10.2 CONFIRMATION OF MINUTES ORDINARY MEETING

**Moved:**

**Seconded:**

**THAT** the Minutes of the Ordinary Meeting of Council held on Tuesday 20<sup>th</sup> June 2017 be confirmed.

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## 11.0 BUSINESS ARISING

- |      |   |
|------|---|
| 13.1 | Council to consider amending Strategic Plan to incorporate a Child/youth Engagement Officer |
| 14.1 | Tender to be awarded and signed   |
| 6.0  | Invitation to Treasurer from Mayor – letter sent  |
| 13.3 | Rates adopted and advertised  |
| 15.1 | DES to investigate boundary adjustment Hamilton Rec Ground – DES advised                    |
|      | Letter sent to Tasmanian Camp Drafting Committee  |
| 16.3 | Lease for Gretna Fire Station advertised  |
| 16.4 | Mr Burnett advised re council's decision on request for assistance                          |
| 16.5 | Mr Hoey invited to Council's July meeting   |
| 16.6 | Letter sent to Ms J New   |
| 16.7 | Mr & Mrs Monks advised of acceptance of 12 month rental                                     |
| 16.8 | DES Manager advised to investigate office extension   |
| 17.1 | Letter sent to LGAT re TasWater takeover campaign   |
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## 12.0 NRM REPORT

**Moved:**

**Seconded:**

**THAT** the NRM Report be received.

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# The Derwent Catchment Project

Increasing Productivity. Restoring Landscapes

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## NRM Report for Central Highlands Council 5 June – 12 July 2017

### General Business

This month has seen the wrap of the financial year and the usual flurry of paperwork, reporting and planning. In particular we have been working with NRM South on what project funds they may have available and how they can be best spent in the region to meet our combined objectives. We are working with them on continuing the Central Highlands TWWHA buffer weeds program, Dairy Cares for the Derwent and a new project on improving the health of the Styx River. We are still planning and are awaiting confirmation of funds.

### Platypus Walk restoration project

The contractor, Greg Jordan, undertaking the willow control and path construction on the platypus walk in Hamilton has finished. The contractors wrapped up their work on the project on the 6<sup>th</sup> July. The willows have been cleared from the weir to the public camp ground. The track has been formed on the mill race mound and there has been a considerable amount of fill and gravel used to complete a 1 km section of track.

Apologies to all those who were affected by the smoke from the burning piles of willows.

There is still a lot of work to go and it is now a blank canvass. We will start the planting and restoration works next month when the Workskills team begins in mid-August. We have thousands of plants to go in and we are sure the Platypus Walk will be greatly improved when they have all been planted and had a chance to grow.





## Nursery

We have employed Karen Phillips for a day a week in the Nursery. We were simply unable to keep up with demands of the Nursery and decided that some additional help was needed. Karen is very experienced in native plant production and has worked in this space for 15 years, we feel very fortunate to have her expertise. We hope that this will enable us to consistently grow plants for our revegetation projects and for local residents and farmers who may have projects of their own. There have already been some major changes with more hardening off area and more benches made by John Blyth. Who has been volunteering his time to work with Karen to make Nursery operations easier. Karen works on Tuesdays if you would like to see the progress in the Nursery or order some plants for a project.

## Pasture Hub

Trish Clements has continued to collect pasture measurements on the irrigated sites although not much is happening at this time of year. The website continues to progress in its development. Eve is meeting with Ionata, the web developers, this Friday to finalise the site construction.

## Weed Management Program

We are working with stakeholders on what the next year of investment in the Highlands will bring and compiling information on what has happened over the past weed season.

### *Wayatinah*

The Wayatinah weed plan was delayed due to lack of investment from Forestry Tasmania. All other stakeholders have agreed to fund the plan and we will continue to lobby Forestry Tas for support. Maybe this will be easier with the recent change in the focus of Forestry Tas and the name change to Sustainable Timber Tasmania.

## Threatened species grant – Tasmanian Highland Flora Conservation

We have applied for an Australian Government Grant through the latest National Landcare Program threatened species grants.

This collaborative project proposes to deliver strategic on-ground actions for threatened flora in the highland grasslands of Tasmania's Central Plateau. Highland Poa grassland and grassy sedgeland are listed as threatened vegetation communities in Tasmania and contain a unique suite of species found nowhere else in the world. This includes the nationally listed Miena cider gum (MCG), Liawenee greenhood, Crowded leek-orchid, and Swamp everlasting. They also provide important habitat for a number of rare flora species listed as threatened in Tasmania.

Investment will be targeted towards delivering actions that provide the greatest benefit to important populations with a high probability of success. The project will work with farmers to manage burning and grazing regimes to support threatened species and communities. The projects main activities are:

- Development of fire management plans for 2 major farming enterprises
- Seed collection of orchids and MCG
- Caging seedlings and tree collaring MCG
- Trialled burning/fencing

## Grants Round up

Grant source	Topic	Amount	Decision
Agricultural Landscape Rehabilitation Scheme	Ouse River Recovery	\$1,104,780	Pending
Landcare Australia – Habitat Restoration for Threatened species	Browsing protections for the Critically Endangered Miena Cider Gum	\$15,000	Pending
National Landcare Program – threatened species grant	Miena Cider Gum	\$150,000	Pending

Yours Sincerely,

Josie Kelman, Facilitator, Derwent Catchment NRM Committee 0427 044 700

Eve Lazarus, Projects Officer, Derwent Catchment NRM Committee 0429 170 048

## 13.0 FINANCE REPORT

**Moved:**

**Seconded:**

**THAT** the Finance Report be received.

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## 14.0 DEVELOPMENT & ENVIRONMENTAL SERVICES

In accordance with Regulation 25 (1) of the Local Government (Meeting Procedures) Regulations 2015, the Mayor advises that the Council intends to act as a Planning Authority under the Land Use Planning and Approvals Act 1993, to deal with the following items:

**Moved:**

**Seconded:**

**THAT** the Development & Environmental Services Report be received.

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### 14.1 REQUEST FOR LANDOWNER CONSENT

**Report By**

Manager DES (Graham Rogers)

**Background**

In January 2017 a Development Application was submitted for a proposed telecommunications tower off Lochiel Drive, Miena, however it became clear that approval to use a private access had not been secured, so the application did no progress. That DA was advertised before the access issue became apparent and four enquiries were received from the public.

Service Stream (on behalf of Vodafone) have now requested landowner consent under Section 52 of the Land Use Planning and Approvals Act 1993 for an access track to the proposed telecommunications tower Lochiel Drive, Miena. Construction of the access will require earthworks and vegetation removal.

Landowner consent is required for the Development Application to be lodged it would then be advertised for public comment and assessment as usual.

A copy of the request from Service Stream is attached.

**Recommendation:**

**Moved:** Clr

**Seconded:** Clr

**THAT** under Section 52 of the Land Use Planning and Approvals Act 1993, Central Highlands Council give landowner consent for an access track to the proposed telecommunications tower at Lochiel Drive, Miena; and

**THAT** the General Manager be authorised to sign the Development Application Form.

**Carried**

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### 14.2 TENDER NO 02/17 : SERVICES FOR SUPPLY, INSTALLATION & MAINTENANCE OF WASTE BINS & COLLECTION OF WASTE

**Report By**

Senior Environmental Health Officer (Beverley Armstrong)

To provide Council with updated information with respect to our solid waste management operations, in particular the Tender for the provision and supply of services as per Tender documents.

**Tender Submissions**

Two submissions were received by Council and evaluated via the Tender Evaluation Matrix a copy of which is attached. It was clear that Tenderer 1 had an advantage in this process .

The Tenders were also compared for price, a copy is attached. In this also Tenderer 1 had an advantage being considerably cheaper the Tenderer 2.

On these two comparisons alone it is recommended that Council accept Tender 1, it is within Councils Budget and estimates to a saving of over \$300,000.00 over the five year period of the contract over Tender 2.

**Recommendation:**

**Moved:** Clr

**Seconded:** Clr

**THAT** Tender No 02/17 for the Services for Supply, Installation and Maintenance of Waste Bins and Collection of Waste be awarded to Tenderer 1.

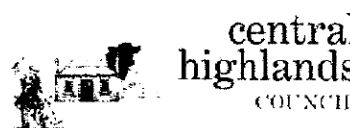
**Carried**

### 14.3 PLAQUES FOR NEW BBQ'S IN QUEENS PARK, BOTHWELL

Malcolm Scott from the Bothwell Lions has provided Council with some proposed wording for the plaques to be attached to the new BBQ's that have been installed in Queens Park, Bothwell.

Below is a copy of the proposed wording.

***For Discussion***



This Barbecue has been erected as a joint project between the **Lions Club of Bothwell and Districts** and the **Central Highlands Council** along with a generous donation from **Ian Downie** a Past Councillor and Warden of the Bothwell Council and Past President of the Lions Club in memory of his father **Keith Downie** also Past Councillor and Warden of the Bothwell Council along with generous donations from the General Public.

**Lions Club President - Tony Blake – 2017**

**Second Barbecue 100 metres →**

### 15.0 WORKS & SERVICES

**Moved:**

**Seconded:**

**THAT** the Works & Services Report be received.



## **WORKS & SERVICES REPORT**

**20th June 2017 – 11th July 2017**

### **Maintenance Grading**

Wihareja Road	Waddamana Road	Richardsons Road
Victoria Valley Road	Bashan Road	Strickland Road
Dawson Road	Interlaken Road	Gully Road

### **Re-Sheeting**

Wihareja Road	Strickland Road
Waddamana Road	Bashan Road
Gully Road	Victoria Valley Road
Richardson Road	

### **Potholing / shouldering**

Dennistoun Road	Weasel Plains	Humbie Road
Hunterston Road	Waddamana Road	Todds Corner Road
Thousand Acre Lane	Marked Tree Road	Victoria Valley Road

### **Culverts / Drainage:**

Install New Culvert- Woodspring Road	Rock Pitt Drain- Arthurs Lakes
Drainage Gully Road	Clean Culverts- Bashan Road
Clean Culverts- Victoria Valley Road	

### **Occupational Health and Safety**

Monthly Toolbox Meetings  
 Day to day JSA and daily pre start check lists completed  
 Monthly work place inspections completed  
 Playground inspections

**0hrs** Long Service Leave taken

**42.5hrs** Sick Leave taken

**51hrs** Annual Leave taken

### **Refuse / recycling sites:**

Cover Hamilton Tip twice weekly	Removal of tyres from Bronte WTS
Push up green waste Bothwell WTS	Bulky rubbish run

### **Other:**

Signs Meadowbank Bridge	Install signs on bridges
Repaid signs on Ellendale Road	Repair sign on Waddamana Road
Repair sign on Langloh Road	Trim trees- Bothwell Township
Hotmix holes- Council sealed roads	Mill and fills- Hollow Tree Road
Walk way- Platypus walk	Clean up around road side bins- Arthurs Lake
Pick up roadside litter- Ellendale Road	Spray walkway- Westerway
Install signs- Old Mans Head	Dig one grave
Repair cattle grid- Humbie Road	Clean ramps- Humbie Road
Install fence- Steppes Hall	

### **Municipal Town Maintenance:**

Collection of town rubbish twice weekly  
 Maintenance of parks, cemetery, recreation ground and Caravan Park.  
 Cleaning of public toilets, gutters, drains and footpaths.  
 Collection of rubbish twice weekly  
 Cleaning of toilets and public facilities  
 General maintenance  
 Mowing of towns and parks  
 Town Drainage

### **Plant:**

PM687 Western Star- Serviced	PM753 Triton Ute- Serviced
PM684 Komatsu Grader- Serviced	PM757 JCB Backhoe- Serviced
PM705 Mack Truck	PM749 Ranger Ute- Serviced

**Private Works:**

Steve Spotswood- Blue Metal  
 Andrew Jones- Truck and Trailer Hire  
 John Cornelius- Gravel  
 Statewide Earthworks- Gravel  
 Stornoway- Gravel  
 Rockmount Ski Club- Truck Hire and Gravel  
 P Browning- Truck Hire and Gravel  
 Ousedale Pastoral- Truck and Trailer Hire and Gravel

**Casuals**

Toilets, rubbish and Hobart  
 Bothwell general duties  
 Hamilton general duties  
 Mowing and brush cutting

**Program for next 4 weeks**

Hamilton Park Irrigation  
 Finish Cricket Nets- Bothwell  
 Mill and Fills Ellendale Road  
 Tender Preparation Capital Road Works  
 Grading Municipal Roads

**16.0 ADMINISTRATION****16.1 LETTER FROM LORD MAYOR SUE HICKEY RE AUSTRALIA DAY**

Attached is a letter from Alderman Sue Hickey, Lord Mayor, Hobart City Council seeking Council's support on a motion the City of Hobart has submitted to the LGAT General Meeting of 26 July, 2017:

*That LGAT be requested to lobby Tasmania's 29 Councils to consider efforts they could take to lobby the federal government to change the date of recognition of Australia Day. For Discussion*



LORD MAYOR'S OFFICE  
TOWN HALL  
MACQUARIE STREET  
HOBART  
TASMANIA

Her Wowsrship the Mayor of Central Highlands  
Councillor Loueen Triffitt  
Central Highlands Council  
PO Box 20  
HAMILTON TAS 7140

Dear Mayor Triffitt

I write to seek your support on a motion the City of Hobart is intending to submit to the Local Government Association of Tasmania (LGAT) General Meeting on 26 July 2017.

The motion is as follows:

**Motion**

*That LGAT be requested to lobby Tasmania's 29 councils to consider efforts they could take to lobby the federal government to change the date of recognition of Australian Day.*

Every year there are ever increasing public rallies by both indigenous and non-indigenous people protesting against the current legislated date for Australia Day because Aboriginal people view it as Invasion Day; rallies held this year in capital cities drew tens of thousands of supporters. There is a growing acknowledgement that 26 January is not a day of celebration for all Australians. The current date has only been in practice since 1994 and before that time it was celebrated on a long weekend in January.

If consideration is given to changing the date that we recognise as Australia Day it provides an opportunity to find a more inclusive date for all Australians to celebrate.

The Council will also be submitting a motion on this topic to the Australian Local Government Association (ALGA) National General Assembly (NGA).

I appreciate your consideration of this matter and would be happy to discuss it with you if you have any questions.

Yours sincerely

Alderman Sue Hickey  
**LORD MAYOR**

Friday 12 May 2017

CITY OF HOBART

GPO Box 503, Hobart Tasmania 7001 • Telephone: +61 3 6238 2705 • Email: [lord.mayor@hobartcity.com.au](mailto:lord.mayor@hobartcity.com.au)

## 16.2 LGAT ANNUAL GENERAL MEETING & GENERAL MEETING

LGAT will be holding its Annual General Meeting and General Meeting on Wednesday 26 July 2017.

The following decisions and motions are listed on the agendas:

### GENERAL MEETING

#### 1 MINUTES \*

##### Decision Sought

**That the Minutes of the special General Meeting held on 11 May 2017, as circulated, be confirmed.**

The Minutes

#### 2 CONFIRMATION OF AGENDA & ORDER OF BUSINESS

##### Decision Sought

**That the agenda and order of business be confirmed.**

#### 3 PRESIDENTS REPORT

##### Decision Sought

**That Members note the report on activity since the last General Meeting, 24 March to 23 June 2017 inclusive.**

#### 4 CEOS REPORT

##### Decision Sought

**That Members note the report on activity since the last General Meeting, 24 March to 23 June 2017 inclusive.**

#### 5 BUSINESS ARISING \*

##### Decision Sought

**That Members note the following information.**

#### 6 FOLLOW UP OF MOTIONS \*

Contact Officer: Dion Lester

##### Decision Sought

**That the meeting note the report detailing progress of motions passed at previous meetings and not covered in Business Arising.**

#### 7 MONTHLY REPORTS TO COUNCILS \*

##### Decision Sought

**That Members note the reports for March, April and May 2017.**

#### 8 ITEMS FOR NOTING

##### 8.1 Ownership of Taswater

##### Decision Sought

**That Members note that a verbal update will be provided on the day.**

##### 8.2 Review of the Local Government Act \*

##### Decision Sought

**That Members note the following report.**

##### 8.3 Code of Conduct Update

##### Decision Sought

**That Members note the progress of the Code of Conduct review.**

##### 8.4 Land Use Planning

##### Decision Sought

**That members note the progress of the planning reform and the key issues for the Local Government sector.**  
**That members also note the progress of the Planning and Building Portal.**

##### 8.5 Visitor Accommodation Changes

**That the Meeting note the concerns raised by LGAT in relation to change to Visitor Accommodation approvals.**

##### 8.6 Preventative Health

##### Decision Sought

**That Members note the following report.**

**8.7 Strategic Plan & Annual Plan \*****Decision Sought**

That Members note the new LGAT Strategic Plan 2017-2020 and the 2017/18 Annual Work Plan.

**8.8 National General Assembly of Local Government****Decision Sought**

That Members note the report on the National General Assembly and the State of the Regions Report.

**8.9 Policy Update****Decision Sought**

That Members note the following report on current policy activity.

**Motions For Which Notice Has Been Received****9 ROADS AND INFRASTRUCTURE****9.1 Motion – Public Transport Services**

Council – City of Hobart

**Decision Sought**

That the State Government be urged to increase its per capita spending on the provision of public transport services within metropolitan and regional Tasmania.

**Background Comment****10 SECTOR REFORM****10.1 Motion – Local Government Rates, Fees & Charges Regulator**

Council – Burnie City

**Decision Sought**

That LGAT write to the Minister for Local Government seeking an investigation into the merits of introducing an independent body (similar to the prices regulator for power, water and sewerage) to be the regulator of Local Government rates, fees and charges and to oversee estimates of Capital works budgets.

**11 SECTOR CAPACITY****11.1 Motion – Flood Mitigation Funding**

Council – Kentish

**Decision Sought**

That LGAT lobby the State Government to boost Tasmania's disaster resilience by providing a significant increase in funding and work with the Commonwealth Government to change the disaster resilience mitigation funding under the National Partnership Agreement back to ⅓ Commonwealth, ⅓ State and ⅓ Council contributions.

**11.2 Motion – Immunisation Programs**

Council – Devonport City

**Decision Sought**

That the Local Government Association of Tasmania lobby the State Government to investigate the coordination of school immunisation programs being undertaken on a State wide basis, rather than being an individual council responsibility to coordinate.

**12 LAND USE PLANNING & ENVIRONMENT****12.1 Motion – Container Deposit Legislation**

Council – City of Hobart/West Coast & Clarence City Council

**Decision Sought**

That the Local Government Association of Tasmania lobby the State Government to introduce container deposit legislation for the state.

Hobart City Council

**12.2 Motion – Smoking at School Crossings**

Council – George Town

**Decision Sought**

That LGAT lobby the State Government to amend the Public Health Act 1997 to declare all school road crossings a smoke free area under section 67B.

**12.3 Motion – Fluoridation Act 1968****Council – Kentish****Decision Sought**

That LGAT requests the State Government repeal section 13 of the Fluoridation Act 1968 (amended) which states that '*a Council must not hold an elector poll under Part 6 of the Local Government Act 1993 in relation to the addition of fluoride to a public water supply*'.

Repealing section 13 will enable the people of Tasmania to participate in information-sharing and debate and to state their informed position regarding the routine addition of fluoride to their drinking water, through a referendum

**13 PUBLIC POLICY GENERAL****13.1 Motion – Recognition Of Australia Day****Council – City of Hobart****Decision Sought**

That the Local Government Association of Tasmania be requested to lobby Tasmania's 29 councils to consider efforts they could take to lobby the Federal Government to change the date of recognition of Australia Day.

**ANNUAL GENERAL MEETING****1 MINUTES OF 104TH ANNUAL GENERAL MEETING \*****Decision Sought**

That the Minutes of the 104th Annual General Meeting, held 20 July, 2016 be confirmed.

**2 PRESIDENT'S REPORT****Decision Sought**

That the President's report be received.

**3 FINANCIAL STATEMENTS TO 30 JUNE 2016 \*****Decision Sought**

That the Financial Statements for the period 1 July 2015 to 30 June 2016 be received and adopted.

**4 BUDGET AND SUBSCRIPTIONS 2017/18 \*****Decision Sought**

That the Meeting adopt the Budget and Subscriptions as presented.

**5 PRESIDENT AND VICE PRESIDENT HONORARIUMS****Decision Sought**

That the President's and Vice President's allowance for the period 1 July 2017 to 30 June 2018 be adjusted in accordance with the movement in the Wages Price Index.

**6 RULES OF THE LOCAL GOVERNMENT ASSOCIATION OF TASMANIA \*****6.1 Subscription Modelling****Decision Sought**

That the Members note the report on the subscription modelling undertaken.

That Members agreed to the formula outlined as Option 21 namely, a flat fee of 40 per cent, and population and revenue fees of 30 per cent each; 8 revenue categories and 8 population categories; and a 10 per cent collar and cap.

That Members agree to the amendment of the Rules allowing application of the new formula from 2018/19.

**6.2 Term of Office of President****Decision Sought**

That Members note the concerns relating to the Rules as they currently provide for vacation of the office of the President.



That Members agree to the amend the rules such that –  
and if the office of President becomes vacant more than six months before the next AGM where a President is due to take up office in accordance with Rule 27(a), a new President shall be elected in accordance with the procedures in Rule 26.

## 7 REPORTS FROM BOARD REPRESENTATIVES \*

### Decision Sought

- (a) That the reports from representatives on various bodies be received and noted.
- (b) That Conference acknowledges the time and effort put in by all Association representatives on boards, working parties, advisory groups and committees etc.

## 16.3 DISCUSSION PAPER REVIEW – CODE OF CONDUCT PROVISIONS AND PROCESSES

LGAT has forwarded a discussion paper regarding the review of the Code of Conduct provisions. The Minister, through the Premier's Local Government Council, committed to this review in light of concerns being raised by the sector. He subsequently sought that LGAT drive the discussion with Member Councils.

As well as formal council positions, individual elected members and officers are encouraged to make submissions, particularly where they have experience of the application of these provisions.

There will be further opportunities for input as recommendations are developed, including through a face to face forum if there is sufficient interest.

The attached paper articulates some questions to assist in the discussion and considerations. Feedback is required to [dion.lester@lgat.tas.gov.au](mailto:dion.lester@lgat.tas.gov.au) by 11 August 2017.

### For Discussion

## 16.4 BOTHWELL LITERARY SOCIETY BOOKS

In March Council resolved the following:

**THAT** Council accept Option 3 within the Significant Assessment Report of the Bothwell Literary Society Library 2017 which recommends the future management by a cultural institution:-

*'Consideration to be given to donating the Library collection to an appropriately resources cultural institution elsewhere within Tasmania that recognises the significance of the collection and the need to manage it, as an historical collection. In any exploration of this option, consideration should be given to ensuring that the conditions of the donation are as follows –*

1. *Enable material from the library being made available from time to time for temporary display in Bothwell; and*
2. *Require the collection being offered back freely to Council if at some stage in the future the cultural institution no longer wishes to retain the library collection."*

The Queen Victoria Museum and Art Gallery has agreed to accept the books and forwarded a donation form for signing (see attached).

Chris Tassell has offered to help QVMAG pack the library and prepare a comprehensive list of all the books remaining in the Library. As part of this process he will also ensure that your Council receives a copy of this list.

### Recommendation:

That the General Manager be authorised to sign the Donation Form on behalf of Council for the transfer of the Bothwell Literary Society Books to the Queen Victoria Museum and Art Gallery.

## 16.5 Central Highlands Visitor Centre

Keith Allcock, a resident and volunteer at the Central Highlands Visitors Centre has written to Council with suggestions as to how Council can develop the Centre as the window and showcase of the Central Highlands.

Mr Allcock has requested that Council consider the following:

Council formally charge a Councillors to:

- (a) Consult with volunteers and representatives of appropriate community groups regarding the formation of a Visitors Centre management Committee. The current Bothwell Tourism group could be the body to be the management group with representatives from volunteers and other community groups such as Bothwell Historical Society, AGM, Lions, CWA. A new name for such a group will be appropriate to continue what Bothwell Tourism already does but widening the focus to Bothwell and the Central Highlands.
- (b) The consultation to explore and document to include:
  - Relationship with Council as a formal Council group that is accountable to Council.
  - Occupation of a defined area of a Council's building in parallel to the Australasian Golf Museum. The two groups will work co-operatively with their own objectives.
  - Preparation of a report to Council with recommendations.

### For Discussion

7 Queen Street  
 BOTHWELL, Tasmania 7030  
 Email: [admin@bthwell.com](mailto:admin@bthwell.com)  
 Telephone: 62595680  
 Mobile: 0448049878

3<sup>rd</sup> July 2017  
 The General Manager  
 Central Highlands Council

Dear Mrs Eyles,

**Re: Central Highlands Visitors Centre**

I write as a concerned resident and Volunteer at the CH Visitors Centre asking Council to provide some leadership for confirming and developing the Centre as the window and showcase of the Central Highlands especially for visitors. It is for that precise purpose that the facility has been named as the Central Highlands Visitors Centre. I have spoken informally with other volunteers, several of whom are also part of Bothwell Tourism, and there is general agreement of the views I am expressing.

Briefly, the building extension that is the CH Visitors Centre is owned by the Council. The Committee of the Australasian Golf Museum was delegated by Council some years back to seek grants to enable a Visitors Centre to be built. The Golf Museum's motivation was to remove the older visitors desk from the museum area to make more room for the Golf Museum displays. It was never intended to dramatically extend the Museum's space into the new Visitors Centre though this has been the mindset of the current museum committee which consists of approximately four members.

Since the opening of the Visitors Centre in May 2016 it has, in my view, languished and little if any effort made to develop the Centre as the window and showcase of the Central Highlands. This is not the mandate of the Australasian Golf Museum Committee whose focus and Constitution is to do with the promotion of the museum and golf in partnership with TMAG. I feel this is the time for Council to initiate and encourage the further development of the Visitors Centre as a recognised Council supported entity and not as an adjunct to the Australasian Golf Museum, before the build-up of visitors during the coming Spring and Summer.

For that reason I request that Council formally charge a Councillor (I have informally spoken with Cr Jim Poore about my views) to:

- a) Consult with volunteers and representatives of appropriate community groups regarding the formation of a Visitors Centre Management Committee. The current Bothwell Tourism group could be the body to be the management group with representatives added from volunteers and other community groups such as Bothwell Historical Society, AGM, Lions, CWA. A new name for such a group will be appropriate to continue what Bothwell Tourism already does but widening the focus to Bothwell and the Central Highlands.
- b) The consultation to explore and document to include:
  - # relationship with Council as a formal Council group that is accountable to Council.
  - # occupation of a defined area of a Council's building in parallel to the Australian Golf Museum. The two groups will work co-operatively with their own objectives.
  - # preparation of a report to Council with recommendations.

Thank you for considering this proposal



Keith Allcock

## 16.6 Community Grant Application

The Westerway Volunteer Fire Brigade has made an application for a community grant to assist with purchase of new polo shirts for their members. Total cost is \$935.00 with the Brigade seeking a community grant of \$467.50.

It has been five years since Council made a contribution to purchasing new polo shirts for the volunteers.

### For Discussion

	<b>CENTRAL HIGHLANDS COUNCIL</b> <b>COMMUNITY GRANTS PROGRAM</b> <b>APPLICATION FORM</b>	Forwarded to <input checked="" type="checkbox"/> FM <input type="checkbox"/> WM <input type="checkbox"/> DES Entered By: _____ Ref: _____
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Please ensure you have read and understand the Program Guidelines prior to completing this form.

#### 1. APPLICATION & ORGANISATION DETAILS

Name of Project: *NEW POLO SHIRTS.*

Amount of Grant Requested: *\$ 467.50*

Estimated Total Project Cost: *\$ 935.00.*

Applicant Organisation: *WESTERWAY VOLUNTEER FIRE BRIGADE*

Contact Person's Name: *STEFAN FRAZIK.*

Contact Details  
Address: *39 BRIDGE ROAD*  
*WESTERWAY 7140.*

Phone: (Business hours)

Mobile:

Fax:

Email:

Signature



Name *STEFAN FRAZIK.*

Position in Organisation *LEADING FIREFIGHTER & JUNIOR/CADET COORDINATOR.*

Date *19-06-2017.*

What is the overall aim/purpose of the applying organisation?

*TO PROTECT LIFE, PROPERTY & THE ENVIRONMENT.*

What is the membership of the organisation?

President *GRANT JOSEPH.*

Secretary } *SARAH GATENBY-CLARK.*

Treasurer }

Public Officer/s *TOM CLARK, TIM GEBBIE & STEFAN FRAZIK.*

**2. ELIGIBILITY** (see Community Grant Program Guidelines)**Is the organisation:**

- ☒ Representative of the interests of the Central Highlands Community  
☐ Incorporated  
☒ Not for Profit  
☐ Unincorporated  
☐ A Hall Committee

**OR**

- ☐ An individual community member

**Have you previously received funding from the Central Highlands Council?** (Please attached additional pages if required) **YES.**

**If yes;**

**Name of Project:** NEW POLO SHIRTS.

**Date Grant received:** 31-05-2012.

**Amount of Grant:** \$ 397.50.

**3. PROJECT DETAILS**

**Project Start Date:** AS SOON AS WE GET OUR POLO SHIRTS.

**Project Completion Date:**

**Project Objectives:** TO DEVELOP OUR TEAM'S MORALE AT COMPETITIONS AND COMMUNITY EVENTS.

**4. COMMUNITY SUPPORT**

**What level of community support is there for this project?**

OUR MEMBERS ARE VOLUNTEERS AND ARE PROUD TO WEAR THE POLO SHIRTS WHILST UNDERTAKING COMMUNITY SERVICE EVENTS.

Does the project involve the community in the delivery of the project?

NO, BUT FEED BACK FROM THE COMMUNITY ABOUT OUR POLO SHIRTS IS VERY GOOD.

How will the project benefit the community or provide a community resource?

BY THE MEMBERS OF THE FIRE BRIGADE WEARING THE POLO SHIRTS, IT WILL SHOW THE COMMUNITY WHO ARE TRAINED TO PROTECT AND EDUCATE THE COMMUNITY ON FIRE SAFETY ISSUES.

## 5. COUNCIL SUPPORT

Are you requesting other Council support? E.g. parks, halls, telephones, fax, photocopying, computers, office accommodation, cleaning facilities, street closure.

If yes, please give details. NO

Are you requesting participation by Councillors or Council Staff?

If yes, please give details. NO

If your application is successful, how do you plan to acknowledge Council's contribution?

EMBROIDERED ON ONE SLEEVE WILL BE "CENTRAL HIGHLAND COUNCIL".

## 6. FUTURE APPLICATIONS AND THE SUCCESS THIS PROJECT

Do you anticipate the organisation will apply for funding in future years?

MOST PROBABLY



How will you monitor/evaluate the success of this project?

SUCCESS WILL BE MEASURED BY THE WEARING OF THE POLO SHIRTS AND FEED BACK FROM THE BRIGADE MEMBERS AND THE COMMUNITY.

## 7. PROJECT BUDGET

Note: Amount from Council must not exceed half the project cost

Please provide a breakdown of the project expenditure and income:

Expenditure	Amount \$	Income	Amount \$
<b>Capital</b>		<b>Guarantee</b>	
Refurbishment		Government Grants	
Equipment		Trust/Foundations	
Premises		Donations from Business	
Vehicles		Special Funding	
Other:		Gifts in Kind	
25 POLO SHIRTS	935.00		
Other:		Other:	
<b>Subtotal</b>		Other	
		<b>Subtotal</b>	
<b>Revenue</b>		<b>Anticipated</b>	
Salaries (including super)		Government Grants	
Short-term contract fees		DERWENT VALLEY COUNCIL	467.50
Running costs		Central Highlands Grant	467.50
Production of information PR materials		Trust/Foundations	
Training staff/volunteers		Donations from Businesses	
Travel		Special Fundraising	
		Gifts in kind (details)	
Rent		Cash Reserves	
Reference materials		Other:	
Other:			
<b>Subtotal</b>		<b>Subtotal</b>	
<b>TOTAL</b>	<b>\$935.00</b>	<b>TOTAL</b>	<b>\$935.00</b>

## 16.7 LEGAL OPINIONS POLICY

Policy 2013-11 Legal Opinions Policy has been reviewed to take into account private legal opinions or legal advice received by Councillors in respect of a council matter or a potential council matter.

### Recommendation:

That Council adopt the revised Policy 2013-11 Legal Opinions Policy.

## 16.8 COMPUTER UPDATE

The General Manager will provide a verbal update at the meeting.

## 16.9 INDEPENDENT INTERNAL REVIEW UPDATE

### Independent Council Review - Update

The following sixteen (16) recommendations were listed within the Review. Below are Council's responses to these individual recommendations and actions undertaken so far: -

**1. That the General Manager's position description be reviewed and updated to ensure that it adequately addresses the requirements of the Local Government Act 1993 (Tas) (LG Act) as it pertains to the General Manager. The position description should address the specific issues and priorities of the Council within the context of the LG Act requirements. The process of reviewing the position description will also assist the parties to understand their respective roles and responsibilities.**

Council will review the General Manager's position description during the normal annual performance appraisal process. This will give greater understanding of elected members, the specific duties involved with that leadership role.

**2. That, following development of a position description as set out at Recommendation 1 above, a set of Key Performance Indicators (KPIs) be developed for the General Manager. This will assist to clarify performance expectations for the General Manager's role by both Councillors and the General Manager. The KPIs should be reviewed and reported annually as part of the General Manager's performance review process.**

Currently within Schedule 1 – Responsibilities and Performance Criteria of the current position description, specific KPI's are listed and used to measure performance. These will be reviewed as part of the position description update as per recommendation 1 above.

**3. That arrangements be discussed, negotiated and established to ensure: -**

**a. That the General Manager and Mayor meet regularly at agreed times to discuss activities and issues of the Council;**

ACTIONED – it has been agreed that the General Manager & the Mayor meet every Monday or the first working day of the week, to communicate any issues concerning Council and provide support for each other.

**b. That the General Manager ensure that the Mayor has access to, and support from, a person who can provide executive assistance. Ideally this would be in the same person as for the General Manager to ensure consistency and efficiency.**

ACTIONED - The General Manager has provided assistance but the guaranteeing of the same staff member each time cannot be assured – consideration must be given to staff being absent; individual workloads; and suitable timing.

**c. That the Deputy Mayor's involvement in Council related business be limited to: -**

**i. Any matter specifically delegated in writing by the Mayor in accordance with Section 27(2A)(b) of the LG Act;**

**ii. Any other duties and responsibilities authorised by the Council; or**

**iii. Any committee to which the Deputy Mayor has been appointed by Council.**

ACTIONED – These requirements are very specific under the LG Act and will be managed appropriately.

**4. That Council refer all employee grievances to the General Manager in accordance with established policies and processes; and that the General Manager provide periodic high-level advice and reports to the Council on the progress of employee grievances and disputes.**

ACTIONED - Council has adopted a new Disciplinary Policy & Procedure at its Ordinary Council Meeting on 30<sup>th</sup> May for all Staff. Within this policy there are specific clauses referring to Related Party conflict resolution and an independent external person will be engaged to conduct the disciplinary process in the future, when the need arises.

**5. That the General Manager consider items to be included on the 'Closed Session' agenda for each Council Meeting, ensuring strict compliance with Regulation 15(2) and avoiding inclusion of operational matters.**

ACTIONED – These requirements are very specific under the LG Act and will be managed appropriately.

**6. That a process be established that provides a briefing to the Mayor (in person, by phone or by other similar means), including an opportunity to provide feedback, prior to each Council agenda being publicly released.**

ACTIONED – The Mayor via weekly meetings with the General Manager will have opportunity to provide feedback during that time.

**7. That the General Manager position herself next to the Mayor during Council Meetings to provide advice and guidance in respect to procedural matters.**

ACTIONED - It has been agreed to have permanent sitting arrangements at all Council Meetings for now on, with the General Manager being seated near the Mayor. The Mayor will also introduce each individual Councillor and Senior Staff member to the Public Gallery at the beginning of all meetings as part of a 'welcome to all'.

**8. That clear guidelines / requirements for public question-time be established and published, including circumstances in which it is appropriate to refuse a public question.**

The General Manager is currently drafting a public question-time guideline. It is anticipated that this will be placed on the next Council Agenda for formal adoption.

**9. That the General Manager and Mayor consult prior to issuing memorandum or other similar advice regarding Council decisions – to ensure that the subject matter of the advice has been properly considered and determined by Council where required prior to the release of that advice.**

ACTIONED – Clear communication between the General Manager and the Mayor will be achieved by holding weekly meetings. If timing is not appropriate for urgent actions, then consultation by email or phone can be achieved quickly.

**10. That clear guidelines be established for the conduct of Councillors when sitting as a Planning Authority. Guidelines must be consistent with the Local Government (Meeting Procedures) Regulations 2015 (Tas), the Land Use Planning and Approvals Act 1993 (Tas) and any other relevant legislation applicable when Council sits as a Planning Authority.**

ACTIONED - The General Manager has drafted clear guidelines as stated above. These now appear within this Council Agenda for formal approval.

**11. That the Legal Opinions Policy be reviewed to clearly identify when legal advice is required to be provided to all Councillors, and the appropriate treatment of privately obtained advice, including responsibility for costs incurred.**

ACTIONED - The General Manager has reviewed the Legal Opinions Policy and reflect this recommendation. This now appears within this Council Agenda for formal approval.

**12. That Mayor Triffitt and General Manager Eyles commit to mediation to restore an effective working relationship as contemplated by the LG Act.**

ACTIONED – Mediation sessions have been held with Newport & Wildman and the desired outcomes have been achieved.

**13. That Mayor Triffitt and Deputy Mayor Benson commit to mediation to restore an effective working relationship, including ensuring that Deputy Mayor Benson's activities are consistent with Council decisions or delegations from Mayor Triffitt.**

This has not been achieved yet, due to non-availability. It is anticipated that it will be actioned by the next Council Meeting.

**14. That the General Manager review administrative staff arrangements to ensure adequate and consistent administrative support to the Mayor and General Manager; and to improve coordination of issues, activities and communication generally.**

ACTIONED – The General Manager has reviewed the overall staff Organisational Chart with adding a new permanent position of Deputy General Manager, which was included within the 2017-18 Budget Estimates. This will provide the needed additional support to both the Mayor and General Manager as well as Staff and other Elected Members.

**15. That Council refer the review and assessment of Council policies and guidelines to the Audit Panel. The role of the Council can then be elevated to consider if the policy frameworks are adequate and be informed of emerging issues, rather than being required to consider the ‘detail’ on each occasion. The Audit Panel, acting in accordance with Section 85(A) of the LG Act, is able to act as a source of review and advice to the General Manager in respect to policies and guidelines.**

ACTIONED – As part of the legal requirements under LG Act, the Audit Panel is provided with Council Policies index which lists the required renewal dates at every meeting held.

**16. That the Council develop and implement a guideline and/or procedure to assist Councillors and employees to manage conflicts of interest and confidentiality, including declaration and response criteria.**

ACTIONED - The Disciplinary Policy and Procedure, adopted at the May Council Meeting, has addressed conflicts of interest concerning all employees. All existing employees will sign a Confidentiality Agreement and any new employees from now on, will sign as part of their initial introduction process to Council.

All Councillors are bounded by the LG Act which covers both conflicts of interest and confidentiality.

**Recommendation:**

That Council note the recommendations and action taken to date

## **16.10 CODE OF CONDUCT DETERMINATION REPORT - COUNCILLOR ROBERT CASSIDY**

A Code of Conduct complaint was submitted by Mayor Loueen Triffitt to the Acting General Manager on 23 March 2017 alleging that on 16 February 2017 and 19 March 2017 Councillor Robert Cassidy breached the Central Highlands Council Code of Conduct.

Mayor Triffitt alleges that Cr Cassidy breached Parts 2 (1), 3 (1), 7 (1)(a) & (b) 8 (5), (6) & (7) of the Central Highlands Council's Code of Conduct, dated 17 May 2016, (the Code) in that Cr Cassidy sent an "inappropriate" email to Council employee Ms Emma Riley, and secondly Cr Cassidy in replying to an email from Mr David Dyson, made "inappropriate comments about a fellow Councillor and Bothwell residents in general". The email response to Mr Dyson copied other people into it who were listed in Mr Dyson's original email.

The following are relevant extracts from the Code:

### **Part 2 – CONFLICT OF INTEREST**

*1 When carrying out his or her public duty, a councillor must not be unduly influenced nor be seen to be unduly influenced by personal or private interests that he or she may have.*

### **Part 3 – USE OF OFFICE**

*1 The actions of a councillor must not bring the Council or the office of councillor into disrepute.*

### **Part 7 – RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES**

*1 A councillor-*

- (a) Must treat all persons with courtesy, fairness, dignity and respect: and*
- (b) Must not cause any reasonable person offence or embarrassment*

## **Part 8 – REPRESENTATION**

*5 A councillor's personal views must not be expressed in such a way as to undermine the decisions of the Council or bring the Council into disrepute.*

*6 A councillor must show respect when expressing personal views publicly.*

*7 The personal conduct of a councillor must not reflect, or have the potential to reflect adversely on the reputation of the Council*

The details of the allegations made, the investigations that were undertaken by the Code of Conduct Panel (the Panel) and the determination of the Panel are attached.

In accordance with Section 28ZK(2) of the *Local Government Act 1993* (the Act), the Panel has provided a copy of the Determination Report to Mayor Loueen Triffitt, Cllr Robert Cassidy and the General Manager.

Section 28ZK(4) of the Act states:

*If the general manager receives a determination report but no addendum, the general manager is to ensure that a copy of the determination report is tabled at the first meeting of the relevant council at which it is practicable to do so and which is open to the public.*

In accordance with the legislation, this report is presented to Council for noting at an Ordinary Council Meeting which is open to the public.

### **Recommendation:**

That:

1. Pursuant to section 20ZK(4) of the *Local Government Act 1993*, Council receives the Code of Conduct Panel Determination Report made on 13 June 2017 in relation to a complaint made against Councillor Robert Cassidy.
2. Council notes the following determination made by the Code of Conduct Panel:

*Part 2 – Conflict of Interest (1) – The Panel dismisses this complaint*

*Part 3 – Use of Office (1) – The Panel dismisses this complaint*

*Part 7 – Relationships with Community Councillors and Council Employees (1) (a) and (b) – The Panel dismisses this complaint*

*Part 8 – Representation (5), (6) and (7) – The Panel dismisses this complaint*

## *CODE OF CONDUCT PANEL*

### **CENTRAL HIGHLANDS COUNCIL CODE OF CONDUCT**

**Determination made 13 June 2017**

***Local Government Act 1993***

Code of Conduct Panel: Jill Taylor, (Chairperson), Phillip Zeeman, (Legal Representative) and David Sales.

#### **1. Summary of the complaint**

On 23 March 2017, Mayor Loueen Triffitt, Mayor of the Central Highlands Council (the Council) lodged a Code of Conduct Complaint (the Complaint), against Councillor (Cr) Robert Cassidy.

Mayor Triffitt alleges that Cr Cassidy breached Parts 2 (1), 3 (1), 7 (1)(a) & (b) 8 (5), (6) & (7) of the Central Highlands Council's Code of Conduct, dated 17 May 2016, (the Code) in that Cr Cassidy sent an "inappropriate" email to Council employee Ms Emma Riley, and secondly Cr Cassidy in replying to an email from Mr David Dyson, made "inappropriate comments about a fellow Councillor and Bothwell residents in general". The email response to Mr Dyson copied other people into it who were listed in Mr Dyson's original email.

The following are relevant extracts from the Code:

#### **Part 2 – CONFLICT OF INTEREST**

*1 When carrying out his or her public duty, a councillor must not be unduly influenced nor be seen to be unduly influenced by personal or private interests that he or she may have.*

#### **Part 3 – USE OF OFFICE**

*1 The actions of a councillor must not bring the Council or the office of councillor into disrepute.*

#### **Part 7 – RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES**

*1 A councillor-*

- (a) Must treat all persons with courtesy, fairness, dignity and respect: and*
- (b) Must not cause any reasonable person offence or embarrassment*

#### **Part 8 – REPRESENTATION**

*5 A councillor's personal views must not be expressed in such a way as to undermine the decisions of the Council or bring the Council into disrepute.*

*6 A councillor must show respect when expressing personal views publicly.*

*7 The personal conduct of a councillor must not reflect, or have the potential to reflect adversely on the reputation of the Council*



## 2. Investigation

The Chairperson of the Code of Conduct Panel (the Chairperson) conducted an initial assessment of the Complaint and determined on 29 March 2017 that it was to be investigated and determined by a Code of Conduct Panel (the Panel) in accordance with section 28ZA(1)(e) of the *Local Government Act 1993* (the Act).

The Panel met initially on 13 April 2017 and identified that Mayor Triffitt may not have been provided with a copy of Cr Cassidy's response to her Complaint. In the interests of procedural fairness, further consideration of the Complaint was adjourned to have this matter confirmed

The Panel was subsequently advised that Cr Cassidy's response had not been forwarded to Mayor Triffitt. Mayor Triffitt was then provided with a copy of Cr Cassidy's response on 13 April 2017 and requested if she wished to provide any she should do so by 26 April 2017. Mayor Triffitt contacted the Panel to request an extension of this timeframe until 8 May 2017 as she was unwell. This extension was granted. Mayor Triffitt provided the Panel with her submission on 7 May 2017, following consideration of Cr Cassidy's response to her Complaint. The Panel determined that it would not hold a hearing in relation to this Complaint in accordance with Section 28ZG 2 (b) of the *Local Government Act 1993*, in that it had sufficient written submissions before it.

The Panel received and considered the following documents in reaching its decision:

- The Local Government Code of Conduct Complaint lodged by Mayor Triffitt dated 23 March 2017 including a number of attachments:
  - Email from Emma Riley to CH councillors
  - Email from Cr Cassidy to Emma Riley
  - Map provided by Emma Riley, Director & Principal Planner
  - Letter dated 23 February 2017 from Mayor to Cr Cassidy
  - Email from David Dyson to numerous people including Cr Cassidy
  - Email from Cr Cassidy to David Dyson and others
  - A number of comments on Social Media
- Central Highlands Council Code of Conduct – adopted by Council on 17 May 2016;
- Cr Cassidy's response to the Complaint lodged by Mayor Triffitt dated 1 April 2017 including a number of attachments:
  - Yahoo7 security notice
  - Email from Mayor Triffitt to Cr Cassidy dated 6 March 2017
  - Emails between Cr Cassidy and State Growth
  - Supportive documents from Katrina Brazendale and Richard Bowden OAM
  - Email from Insp George Cretu to Cr Cassidy advising trespass complaint not to proceed.
- Mayor Triffitt's reply dated 7 May 2017 to Cr Cassidy's response to her Code of Conduct Complaint

## 3. Summary of Panel's consideration

The essence of Mayor Triffitt's complaint is that she alleges Cr Cassidy breached the Code on 16 February 2017 by sending an inappropriate email to Ms Emma Riley and on 19 March 2017 Cr Cassidy sent a "reply all" email to a number of recipients making inappropriate comments about a fellow Councillor and some Bothwell residents. Mayor

Triffitt advised that she had sent a letter to Cr Cassidy on 23 February 2017, reminding him of his obligations as a Councillor under Parts 1 and 7 of the Council's Code of Conduct. In lodging her Complaint, Mayor Triffitt included a copy of an email exchange between Cr Cassidy and Mr David Dyson which Mr Dyson initiated and was addressed to a number of people including Cr Cassidy. Mayor Triffitt claims that by responding to Mr Dyson's email which was also addressed to others, Cr Cassidy had further breached the Code.

Cr Cassidy responded to Mayor Triffitt's Complaint on 1 April 2017, denying that he had breached the Code. Cr Cassidy's response covered some Central Highlands Council's historical events and but the Panel did not take these into consideration in making its final determination. Getting to the substance of the Complaint, Cr Cassidy admitted to sending an email to Ms Emma Riley, indicating that she is not a Council employee or staff member, but rather a Planning Officer undertaking work for the Council. The purpose of his correspondence was to point out to Ms Riley, that a development application did not, in Cr Cassidy's opinion, comply with the Planning Scheme. Cr Cassidy indicated that he was not being disrespectful but rather wanted Ms Riley to be aware of concerns that had been expressed by some residents.

In relation to the allegation that he sent a "reply all" response to an email from Mr David Dyson, Cr Cassidy advised that he did not willingly send a "reply all" email in response, denying that he has never done this since 2009, and specifically since being elected as a Councillor in October 2014. Cr Cassidy attached a copy of an email from Yahoo7 Security indicating that emails sent to Yahoo users may have been affected by a security issue. However, the Yahoo advice was sent on 14 December 2016, prior to the "reply all" email dated 19 March 2017. Irrespective of his intention to "reply all" or otherwise, the Panel considered the contents of the email, whilst maybe outlandish, would not have in the Panel's opinion caused offence or embarrassment to any individual.

#### 4. Determination

The Panel determines the following:

Part 2 – Conflict of Interest (1) – The Panel dismisses this complaint. Mayor Triffitt did not provide any evidence that Cr Cassidy was unduly influenced or seen to be unduly influenced by his personal or private interests. In sending the email to Ms Riley, Cr Cassidy has indicated that he was motivated by the overall community interests and wanted the development application to be assessed against all the requirements of the Planning Scheme. Furthermore, when responding to Mr Dyson's email, Cr Cassidy did so in what he believed was a personal exchange between two individuals, and not as a Councillor.

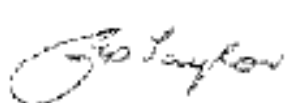
Part 3 – Use of Office (1) – The Panel dismisses this complaint. No evidence was provided that illustrated Cr Cassidy had brought the office of Councillor or the Council into disrepute. The Panel considered that Cr Cassidy's was simply bringing some related matters to Ms Riley's attention in the email he sent to her on 19 March 2017. The contents of that email could not be viewed as inappropriate in terms of its content or presentation. Cr Cassidy stated that he did not deliberately send "reply all" email to those persons listed in David Dyson's initial email to Cr Cassidy. The Panel concluded that irrespective, the contents of Cr Cassidy's reply were not of a serious enough nature to bring the role of Councillor or the Council into disrepute.

Part 7 – Relationships with Community Councillors and Council Employees (1) (a) and (b) – The Panel dismisses this complaint. Mayor Triffitt indicated in her complaint that she is receiving numerous complaints and concerns from the wider community, inferring about Cr Cassidy but did not provide any substantive evidence in relation to any specific breaches by Cr Cassidy. The Panel was not convinced that Cr Cassidy's behaviour had caused embarrassment or offence to any members of the community. Cr Cassidy action in relation to the development application, in fact, was driven by what he described as in the best interests of the community. Contents of the email that inadvertently went to a number of recipients, whilst maybe construed by some as tactless or tasteless, did not individualise anyone to offend or treat inappropriately.

Part 8 – Representation (5), (6) and (7) – The Panel dismisses this complaint. In relation to both alleged incidents, the email to Ms Riley and the email response to David Dyson, in the opinion of the Panel, Mr Cassidy did not proffer any personal view which was opposed to any recent decisions approved or endorsed formally by the Central Highlands Council. It is accepted that individual Councillors may have differing opinions on many matters before Council and it is appropriate that they be entitled to put those views, especially when representing their community. The Code requires Councillors when expressing views publicly that they do not undermine decisions of Council nor bring it into disrespect. The Panel determined that Cr Cassidy did not do either.

## 5. Right to Review

A person aggrieved by the determination of the Code of Conduct Panel is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on the grounds that the Code of Conduct Panel has failed to comply with the rules of natural justice.



**Jill Taylor**  
Chairperson



**Phillip Zeeman**  
Legal Member



**David Sales**  
Member

## 16.11 CODE OF CONDUCT DETERMINATION REPORT - MAYOR LOUEEN TRIFFITT

The complaint submitted on 9 May 2017 by Mesdames Ann Jones and Trudy Murphy, alleged that at the Central Highlands Council Meeting on 6 December 2016, Mayor Triffitt breached the Code of Conduct (the Code) during Public Question Time (OQT). The sections of the Code which Mayor Triffitt was alleged to have breached are

*3.1 The actions of a councillor must not bring the council or office of councillor into disrepute.*

*7.1 A councillor-*

- (a) must treat all persons with courtesy, fairness, dignity and respect; and*
- (b) must not cause any reasonable person offence or embarrassment; and*
- (c) must not bully or harass any person.*

*8.5 A councillor's personal views must not be expressed in such a way as to undermine the decisions of the council or bring the council into disrepute.*

*8.6 A councillor must show respect when expressing personal views publicly.*

*8.7 The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of council.*

The details of the allegations made, the investigations that were undertaken by the Code of Conduct Panel (the Panel) and the determination of the Panel are attached.

In accordance with Section 28ZK(2) of the *Local Government Act 1993* (the Act), the Panel has provided a copy of the Determination Report to Mayor Loueen Triffitt, Mrs Ann Jones, Mrs Trudy Murphy and the General Manager.

Section 28ZK(4) of the Act states:

*If the general manager receives a determination report but no addendum, the general manager is to ensure that a copy of the determination report is tabled at the first meeting of the relevant council at which it is practicable to do so and which is open to the public.*

In accordance with the legislation, this report is presented to Council for noting at an Ordinary Council Meeting which is open to the public.

### **Recommendation:**

That:

1. Pursuant to section 20ZK(4) of the *Local Government Act 1993*, Council receives the Code of Conduct Panel Determination Report made on 27 June 2017 in relation to a complaint made against Mayor Loueen Triffitt.
2. Council notes the following determination made by the Code of Conduct Panel:

*The Code of Conduct panel dismisses the complaint.*

*Local Government Act 1993*

**CODE OF CONDUCT PANEL REPORT  
CENTRAL HIGHLANDS COUNCIL CODE OF CONDUCT FOR  
COUNCILLORS**

Complaint against the Mayor, Loueen Triffitt

Date of Determination: 27 June 2017

Code of Conduct Panel:

Lynn Mason (Chairperson), David Sales, Richard Grueber

**Summary of the Complaint**

The complaint, submitted on 9 May 2017 by Mesdames Ann Jones and Trudy Murphy, alleged that at the Central Highlands Council meeting on 6 December 2016, Mayor Triffitt breached the Code of Conduct (the Code) during Public Question Time (PQT). The sections of the Code which Mayor Triffitt was alleged to have breached are

*3.1 The actions of a councillor must not bring the council or the office of councillor into disrepute.*

*7.1 A councillor-*

- (a) must treat all persons with courtesy, fairness, dignity and respect; and*
- (b) must not cause any reasonable person offence or embarrassment; and*
- (c) must not bully or harass any person.*

*8.5 A councillor's personal views must not be expressed in such a way as to undermine the decisions of the council or bring the council into disrepute.*

*8.6 A councillor must show respect when expressing personal views publicly.*

*8.7 The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the council.*

### **Preliminary Procedure**

The complaint was referred to the Code of Conduct Panel (the Panel) on 18 May 2017. The Chairperson of the Panel informed the Respondent on 19 May 2017 that she had assessed the complaint as a whole, and as per section 28ZA (1) (e) of the Act, determined that the complaint was to be investigated and determined by the Code of Conduct Panel for the following reasons:

1. The complaint substantially related to the alleged contraventions of the Central Highlands Council's Code of Conduct;
2. The complaint alleged that at the Council meeting on 6 December 2016, Mayor Triffitt breached Clauses 3.1, 7.1 (a), (b), and (c), and 8.5, 8.6, and 8.7 of the Code;
3. The complaint did not appear to be frivolous or vexatious in nature.

On 25 May 2017, after considering the complaint, the Panel determined under S.28ZG (2) (b) of the Act that it would conduct a hearing into the complaint.

The Panel asked Mayor Triffitt to respond to the complaint by 8 June 2017. On receiving Mayor Triffitt's request for an extension of time, the Panel allowed her until 14 June 2017 to respond to the complaint.

### **The Hearing**

The Panel conducted the hearing in Hobart on 27 June 2017. The hearing was attended by the Mayor Loueen Triffitt, and her advocate, Ms Angela Triffitt. Mrs Ann Jones and Mrs Trudy Murphy also attended. Mrs Jones acted as the principal spokesperson for the complainants. No witnesses were called. Mayor Triffitt, Ms Angela Triffitt, Mrs Jones and Mrs Murphy all took the oath as provided in the *Evidence Act s 21(4)*. The complainants also confirmed under oath that the written complaint they had submitted was the truth, the whole truth, and nothing but the truth.

A solicitor acting for Mayor Triffitt had previously submitted to the Panel that this complaint, and a further complaint submitted by Mesdames Jones and Murphy regarding events which took place after the council meeting on 6 December 2016, should be dealt with as a single complaint. The Panel considered this request and determined that while the second complaint dealt with events which resulted from the matters raised in the first complaint, the complaints themselves were separate matters and would be heard separately.

Documents submitted to the Panel were:

- The complaint (9 May 2017);



- A letter from the complainants to the Minister for Planning and Local Government (the Minister) (undated);
- Item 6.1 from the minutes of the council meeting of 6 December 2016
- An email from Mrs Murphy to Mrs Jones (18 January 2017);
- Mayor Triffitt's response to the complaint (14 June 2017);
- Notes used by the complainants in speaking in support of their complaint at the hearing on 27 June 2017;
- The respondent's 'Position Summary' submitted at the hearing (27 June 2017);
- An email from Mr Ian McMichael to Mrs Ann Jones (22 June 2017).

Under s 28ZE (4) of the *Local Government Act 1993*, the Panel required the Mayor to provide a copy of the *Independent Internal Review of Council* undertaken in May 2017. The Panel determined that the information contained in the Review was not material to its determination of the complaint and its contents were not taken into consideration in the Panel reaching its determination.

The Panel determined that an email from Mr Ian McMichael, tabled by the complainants at the hearing on 27 June, would not be considered in reaching its determination. The Panel based this decision on the facts that the email was not submitted with a Statutory Declaration, and that Mr McMichael could not be questioned under oath by either the Panel or the respondent.

### **The Complaint and Response**

The complainants stated that at the council meeting on 6 December 2016, in response to a question from Mrs Dierdre Flint, ex-mayor of the Council, the Mayor *treated Mrs Dierdre Flint, OAM, with complete disrespect, bullied with her shouting at and waving her finger at Mrs Flint – refusing to answer Mrs Flint's two questions because they had not been tabled for the agenda....During the verbal outrage Councillors Cassidy and Allwright tried to attract the Mayor's attention by raising their arms and signalling for the Mayor to calm down – all to no avail. Mrs Flint was visibly upset and hurt by the attack.* The Panel noted that following the council meeting in August 2016, Mrs Flint had retired from her position as Mayor of the Council; her ill health resulted in her death in February 2017.

During the hearing the Panel asked whether the Mayor had shouted at Mrs. Flint. Mrs Jones replied that the Mayor had raised her voice. Mrs Jones said that both the Mayor and Mrs Flint talked simultaneously, and that no points of order were called by any councillor present. Mrs Jones asserted that the interchange between the Mayor and Mrs Flint was *more than robust, it was a personal attack* by the Mayor.

In responding to the complaint, the Mayor agreed that she may have raised her voice to be heard *over the barrage of comment and continuous talking* (by Mrs Flint). She said she did not see any attempted interventions by Crs Allwright and Cassidy, and that her objective throughout the exchange was to keep control of the meeting, which she considered to be her primary task.

### **Determination of the Code of Conduct Panel**

The Code of Conduct Panel dismisses the complaint.

### **Reasons for the Determination**

The Panel concluded that on the evidence presented, the actions of the Mayor in dealing with Mrs Flint's questions during the council meeting did not bring the council into disrepute; did not constitute failure to treat Mrs Flint with courtesy, fairness, dignity and respect; would not have caused any reasonable person offence or embarrassment; and did not constitute bullying or harassment. The Panel did not consider that in answering Mrs Flint's questions, and managing PQT on 6 December 2016, the Mayor had acted in a personal capacity; rather, her behaviour was that of the Mayor as chairperson of a council meeting. The Panel therefore found no breach of Parts 8.5, 8.6, and 8.7.

### **Right to Review**

Under S.28ZJ of the Act, a person aggrieved by the determination of the Panel is entitled to apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on the ground that the Panel has failed to comply with the rules of natural justice.

Lynn Mason (chairperson)



David Sales



Richard Grueber



## 16.12 CODE OF CONDUCT DETERMINATION REPORT - MAYOR LOUEEN TRIFFITT

The complaint submitted on 9 May 2017 by Mesdames Ann Jones and Trudy Murphy, alleged that Mayor Triffitt breached the Central Highlands Council Code of Conduct ('the Code') in a letter written by the mayor to the complainants on 17 January 2017, by her refusal to meet the complainants when they had requested her to do so, and by forbidding other councillors to raise associated matters with the complainants. These events took place between the council meeting on 6 December 2016 and 21 February 2017. The sections of the Code which Mayor Triffitt was alleged to have breached are

*1.1 A councillor must bring an open and unprejudiced mind to all matters being decided upon in the course of his or her duties, including when making planning decisions as part of the council's role as a Planning Authority.*

*1.2 A councillor must make decisions free from personal bias or prejudgement.*

*3.1 The actions of a councillor must not bring the council or office of councillor into disrepute.*

*7.1 A councillor-*

- (a) must treat all persons with courtesy, fairness, dignity and respect; and*
- (b) must not cause any reasonable person offence or embarrassment; and*
- (c) must not bully or harass any person.*

*8.5 A councillor's personal views must not be expressed in such a way as to undermine the decisions of the council or bring the council into disrepute.*

*8.6 A councillor must show respect when expressing personal views publicly.*

*8.7 The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of council.*

The details of the allegations made, the investigations that were undertaken by the Code of Conduct Panel (the Panel) and the determination of the Panel are attached.

In accordance with Section 28ZK(2) of the *Local Government Act 1993* (the Act), the Panel has provided a copy of the Determination Report to Mayor Loueen Triffitt, Mrs Ann Jones, Mrs Trudy Murphy and the General Manager.

Section 28ZK(4) of the Act states:

*If the general manager receives a determination report but no addendum, the general manager is to ensure that a copy of the determination report is tabled at the first meeting of the relevant council at which it is practicable to do so and which is open to the public.*

In accordance with the legislation, this report is presented to Council for noting at an Ordinary Council Meeting which is open to the public.

### **Recommendation:**

That:

1. Pursuant to section 20ZK(4) of the *Local Government Act 1993*, Council receives the Code of Conduct Panel Determination Report made on 27 June 2017 in relation to a complaint made against Mayor Loueen Triffitt.
2. Council notes the following determination made by the Code of Conduct Panel:

*The Code of Conduct panel dismisses those parts of the complaint which alleged that the Mayor breached parts 1.1 and 1.2, and Part 3.1, part of Part 7.1 (a), Part 7.1 (c), and Parts 8.5, 8.6 and 8.7.*

*The Code of Conduct Panel determines that the mayor breached part of Part 7.1 (a), in that she failed to treat complainants with courtesy; and the Panel determines that the Mayor breached Part 7.1 (b), in that she caused the complainants offence and embarrassment.*

3. Council note the Sanctions imposed by the Panel on Mayor Triffitt:

*Under S 28ZI (2) of the Act, the Panel imposes the following sanctions on Mayor Triffitt:*

- (a) A caution; and
- (b) A requirement to apologise to Mrs Jones and Mrs Murphy for the words used in her letter of 17 January 2017, copied to the Minister, and for her failure to meet with them from the time of their initial request on 2 February until the day of the hearing, 27 June 2017. The apology is to take the form of a private letter to Mrs Jones and to Mrs Murphy.

*Local Government Act 1993*

**CODE OF CONDUCT PANEL REPORT  
CENTRAL HIGHLANDS COUNCIL CODE OF CONDUCT FOR  
COUNCILLORS**

**Complaint against the Mayor, Loueen Triffitt**

**Date of Determination:** 27 June 2017

**Code of Conduct Panel:**

Lynn Mason (Chairperson), David Sales, Richard Grueber

**Summary of the Complaint**

The complaint, submitted on 9 May 2017 by Mesdames Ann Jones and Trudy Murphy, alleged that Mayor Triffitt breached the Central Highlands Council Code of Conduct ('the Code') in a letter written by the Mayor to the complainants on 17 January 2017, by her refusal to meet the complainants when they had requested her to do so, and by forbidding other councillors to raise associated matters with the complainants. These events took place between the council meeting on 6 December 2016 and 21 February 2017. The sections of the Code which Mayor Triffitt was alleged to have breached are

*1.1 A councillor must bring an open and unprejudiced mind to all matters being decided upon in the course of his or her duties, including when making planning decisions as part of the council's role as a Planning Authority.*

*1.2 A councillor must make decisions free from personal bias or prejudgement.*

*3.1 The actions of a councillor must not bring the council or the office of councillor into disrepute.*

*7.1 A councillor-*

- (a) must treat all persons with courtesy, fairness, dignity and respect; and*
- (b) must not cause any reasonable person offence or embarrassment; and*
- (c) must not bully or harass any person.*

*8.5 A councillor's personal views must not be expressed in such a way as to undermine the decisions of the council or bring the council into disrepute.*

*8.6 A councillor must show respect when expressing personal views publicly.*

*8.7 The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the council.*

### **Preliminary Procedure**

The complaint was referred to the Code of Conduct Panel (the Panel) on 18 May 2017. The Chairperson of the Panel informed the Respondent on 19 May 2017 that she had assessed the complaint as a whole, and as per section 28ZA (1) (e) of the Act, determined that the complaint was to be investigated and determined by the Code of Conduct Panel for the following reasons:

1. The complaint substantially related to the alleged contraventions of the Central Highlands Council's Code of Conduct;
2. The complaint alleged that in a letter to Mesdames Murphy and Jones after they had complained to the Minister for Planning and Local Government of the Mayor's behaviour during Public Question Time at the council meeting on 6 December 2016, the Mayor accused them of telling outright lies; the Mayor refused to meet with them following these exchanges; and the Mayor wrongfully told councillors that these matters had been resolved.
3. The complaint did not appear to be frivolous or vexatious in nature.

On 25 May 2017, after considering the complaint, the Panel determined under S.28ZG (2) (b) of the Act that it would conduct a hearing into the complaint.

The Panel asked Mayor Triffitt to respond to the complaint by 8 June 2017. On receiving Mayor Triffitt's request for an extension of time, the Panel allowed her until 14 June 2017 to respond to the complaint.

### **The Hearing**

The Panel conducted the hearing in Hobart on 27 June 2017. The hearing was attended by the Mayor, Loueen Triffitt, and her advocate, Ms Angela Triffitt. Mrs Ann Jones and Mrs Trudy Murphy also attended. Mrs Jones acted as the principal spokesperson for the complainants. No witnesses were called. Mayor Triffitt, Ms Angela Triffitt, Mrs Jones and Mrs Murphy all took the oath as provided in the *Evidence Act s 21(4)*. The complainants also confirmed under oath that the written

complaint they had submitted was the truth, the whole truth, and nothing but the truth.

A solicitor acting for Mayor Triffitt had previously submitted to the Panel that this complaint, and a further complaint submitted by Mesdames Jones and Murphy regarding events which took place at the council meeting on 6 December 2016, should be dealt with as a single complaint. The Panel considered this request and determined that while the second complaint dealt with events which resulted from the matters raised in the first complaint, the complaints themselves were separate matters and would be heard separately.

Documents submitted to the Panel were:

- The complaint (9 May 2017);
- A letter from the complainants to the Minister for Planning and Local Government (the Minister) (undated);
- Item 6.1 from the minutes of the council meeting of 6 December 2016
- An email from Mrs Murphy to Mrs Jones (18 January 2017);
- A letter from the Mayor to the complainants, copied to the Minister (undated, but agreed by the parties to have been sent by email on 17 January 2017);
- Emails from the Mayor to the complainants, and from Mrs Murphy to Mrs Jones (17 and 18 January 2017);
- A letter from the Acting Deputy Mayor to the Minister (17 January 2017);
- Emails between the complainants and the general manager, requesting a meeting with the Mayor and other attendees (2 February 2017);
- A letter from Mr Peter Joyce, Consultant with Butler McIntyre and Butler, Lawyers, to the Mayor (2 February 2017);
- A letter from the complainants to the Mayor and Councillors (18 February 2017);
- An email from Mrs Jones to the general manager (20 February 2017);
- A letter from the Mayor to the complainants (21 February 2017);
- The Mayor's response to the complaint (14 June 2017);
- The respondent's 'Position Summary' submitted at the hearing (27 June 2017).

Under s 28ZE (4) of the *Local Government Act 1993*, the Panel required the Mayor to provide a copy of the *Independent Internal Review of Council* undertaken in May 2017. The Panel determined that the information contained in the Review was not material to its determination of the complaint and its contents were not taken into consideration in the Panel reaching its determination.

## The Complaint and Response

The complainants stated that *following a letter we wrote to Minister Gutwein (the Minister for Planning and Local Government) regarding the treatment of Mrs Dierdre Flint, OAM, at the Central Highlands Council Meeting held on 6<sup>th</sup> December, 2016, ... Mayor Triffitt replied on Council letterhead saying she refuted 'our outright lies' and our aggression toward her. After several emails sent to General Manager, Lyn Eyles, requesting a meeting with Gen Mangr (sic), the Mayor, Councillors Bailey and Bowden – which was declined, we then sought legal action which again has been ignored. After the Councillors being told everything had been resolved by the Mayor we wrote/mailed to all Councillors including copies of all emails and letters – all Councillors have been told by Mayor Triffitt not to speak with us.*

The complainants provided evidence in an email to the general manager they had requested a meeting with the Mayor, the general manager, and two councillors on 2 February 2017. The general manager responded to this email on the same day, saying that the Mayor requested that Mrs Jones and Mrs Murphy contact her directly. Later the same day, Mrs Jones emailed the general manager again to request a meeting with the Mayor, and suggesting that the email be forwarded to the Mayor.

Also on 2 February 2017, Mr Peter Joyce, a consultant with Butler McIntyre and Butler, Lawyers, wrote to the Mayor on behalf of the complainants regarding the Mayor's letter to the complainants of 17 January, and the request for the meeting between the complainants and the Mayor, in the presence of two other councillors and the general manager. On 21 February the Mayor replied to the complainants that after she received the correspondence from Mr Joyce, she had sought legal advice herself, and that *as a consequence of that advice I am writing to you to indicate that I now decline to meet with you to discuss the correspondence to the Minister and my response or any other issue that touches and concerns what took place at the Council meeting (of 6 December 2016). This declination includes the General Manager, and Council employees.*

During the hearing the complainants alleged that by her refusal to meet them on their request, the Mayor showed personal bias against them. They considered that the Mayor had breached Parts 7.1, 8.5, 8.6, and 8.7 of the Code in her letter to them of 17 January 2017, where the Mayor stated, in part, that *I refute your accusation of bullying, and your outright lies of the Council meeting you refer*

(sic). *I am disappointed that the aggression toward me is continuing.* The letter was copied to the Minister, Mr Peter Gutwein.

The complainants contended that in refusing to meet with them, and (as they understood the letter) not allowing them to speak to other councillors or staff about their concerns, the Mayor breached Parts 1.1 and 1.2 of the Code, as well as Part 3.1, and Parts 8.5, 8.6, and 8.7

The complainants also alleged that the Mayor had been disrespectful and discourteous, and had exhibited bias against them, when their request for their correspondence to be placed on the council agenda for the February 2017 council meeting was not granted. The Mayor stated in her response that she was unaware of this request, which was put to the general manager. In her response, the Mayor stated that she had not met the complainants because she wanted information about the subject of the meeting, and this had not been provided. She stated that she was willing to meet with them but had not done so. The Mayor stated that she had not directed other councillors to refrain from speaking with the complainants, and that she would never do so. The Mayor contended in hearing that the phrase 'outright lies' was not the same as calling the complainants liars, and should not have caused Mrs Jones and Mrs Murphy offence or embarrassment.

### **Determination of the Code of Conduct Panel**

The Code of Conduct Panel dismisses those parts of the complaint which alleged that the Mayor breached Parts 1.1 and 1.2, and Part 3.1, part of Part 7.1 (a), Part 7.1 (c), and Parts 8.5, 8.6, and 8.7.

The Code of Conduct Panel determines that the Mayor breached part of Part 7.1 (a), in that she failed to treat the complainants with courtesy; and the Panel determines that the Mayor breached Part 7.1 (b), in that she caused the complainants offence and embarrassment

### **Reasons for the Determination: sections dismissed**

The Panel concluded that Part 1 of the Code was not enlivened by a relevant decision, and that even if it was, on the evidence presented, the Mayor's letters to the complainants of 17 January 2017 and 21 February 2017, and her refusal to accede to their request for a meeting, did not indicate that the Mayor had failed to bring an open and unprejudiced mind to a matter being decided in the course of her duties; and that she had not exhibited personal bias or prejudgement.



The Panel determined that no evidence was presented to show that the Mayor had brought the council or the office of Mayor into disrepute. The Panel acknowledged that the complainants had lost respect for the office of Mayor, but did not consider this to be sufficiently widespread to constitute a breach of the Code. The Mayor's actions did not undermine a decision of the council.

The Panel considered the complainants' assertion that the Mayor had forbidden the councillors to discuss any of the matters pertaining to Mrs Flint's questions during Public Question Time at the council meeting on 6 December 2016 with the complainants. This assertion arose from the statement in the Mayor's letter of 21 February 2017, viz.,

*as a consequence of that advice I am writing to you to indicate that I now decline to meet with you to discuss the correspondence to the Minister and my response or any other issue that touches and concerns what took place at the Council meeting (of 6 December 2016). This declination includes the General Manager, and Council employees.*

Questioning by the Panel revealed that the complainants considered that the reference to council employees included councillors. The Panel explained to the complainants that councillors are not employees of the council, and they were therefore mistaken in their understanding of the content of the letter.

The Panel determined that neither the Mayor's letters, nor her refusal to meet the complainants, constituted bullying or harassment.

### **Reasons for the Determination: sections upheld**

The Panel determined that by refusing to meet the complainants after their initial request on 2 February 2017, the Mayor failed to treat those community members with courtesy. The Panel acknowledges that the Mayor stated that she had sought additional information from the complainants regarding the purpose of the meeting before she would agree to the meeting; however, the Panel considers that by virtue of her office, the Mayor had capacity to mitigate the tension and concern experienced by the complainants by taking a more conciliatory approach.

The Panel determined that in referring to part of the contents of the complainants' letter to the Minister after the council meeting on 6 December 2016 as 'outright lies', the Mayor caused offence to Mrs Jones and Mrs Murphy. In sending a copy of her letter to the complainants containing this phrase to the Minister, the Panel determined that this caused the complainants embarrassment. In both circumstances the Panel considered that the act of accusing the complainants of telling outright lies was of a character such as to cause a reasonable person offence or embarrassment. The Panel therefore found that the Mayor breached Part 7.1 (b) of the Code.

### Sanction

Under S. 28ZI (2) of the Act, the Panel imposes the following sanctions on Mayor Triffitt:

- (a) a caution; and
- (b) a requirement to apologise to Mrs Jones and Mrs Murphy for the words used in her letter of 17 January 2017, copied to the Minister, and for her failure to meet with them from the time of their initial request on 2 February until the day of the hearing, 27 June 2017. The apology is to take the form of a private letter to Mrs Jones and to Mrs Murphy.

### Right to Review

Under S.28ZJ of the Act, a person aggrieved by the determination of the Panel is entitled to apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on the ground that the Panel has failed to comply with the rules of natural justice.

Lynn Mason (chairperson)



David Sales



Richard Grueber



## 16.13 GUIDELINES ACTING AS A PLANNING AUTHORITY

Attached is a document/guidelines to assist Councillors when acting as a Planning Authority. The document covers the following points:

- The Planning Scheme
- The Role of the Planning Authority
- Process for Considering Development Applications
- Appeals Against Planning Decisions
- Points to Remember

### Recommendation:

That Council note the document/guidelines for Council Acting as a Planning Authority.

### ACTING AS A PLANNING AUTHORITY

For councillors, land-use planning decisions are a challenging and important responsibility. Consequently, land-use planning requires a lot of information and affects everyone. It is an activity that requires input from numerous trained and experienced professionals and experts, and must be conducted in an open and transparent manner.

#### The Planning Scheme

Planning schemes are regulatory instruments and councillors need to understand that, once approved, a planning scheme is reactive rather than proactive. That means it guides and regulates proposals for new use or development rather than initiating them itself.

Planning schemes are therefore a combination of local aspirations, regional interests and State requirements. They are not always entirely consistent with just local preferences.

Generally, planning approval is required if a person proposes to undertake a development, or change the use of land or buildings. While not all developments require a planning permit, your first contact, as a councillor, with land-use planning is likely to be a council decision on an individual development application. It is important to understand that this decision must be made in accordance with the planning scheme, and not in an arbitrary way or based on your personal feelings or the degree of lobbying received. To do so can ignore the legal requirements for development set out in the planning scheme and create uncertainty for the developer and residents alike.

#### The Role of the Planning Authority

Under the *Land Use Planning and Approvals Act 1993 (LUPAA)* a council is defined as a 'planning authority.' Accordingly, once you are elected as a councillor you automatically become a member of the planning authority for your municipal area.

LUPAA does not spell out any specific differences between a council and a planning authority, nor between the roles of an individual as a councillor and as a member of a planning authority. These must be inferred from the functions required of a planning authority set out in the Act.

Council planning decisions that involve the exercise of discretion require public notification and are generally made at a full council meeting when representations from the public are received. However, once a planning scheme is in place, many development applications will meet prescribed standards and decisions can be made by professional planners employed by the council solely by reference to the planning scheme without the involvement of the public or elected representatives.

As a councillor, your role as part of a planning authority is quite different to that as a representative of the community. This can become particularly apparent when considering development applications which members of the community might object to despite the proposal being allowed under the council's planning scheme. In this case, the planning scheme must be followed and enforced by the planning authority, whether or not it is politically palatable.

Each councillor has a duty to enforce the planning scheme, irrespective of how members of the community might view the appropriateness of the planning scheme provisions.,

As members of planning authorities, councillors **MUST** act with procedural fairness.

If you believe that the planning scheme is allowing inappropriate development, then the appropriate course of action is to seek changes to the planning scheme.

There are likely to be occasions when you have no option but to approve developments that are consistent with the planning scheme even though there is considerable dissatisfaction in the community.

In such situations it is important to understand that by virtue of election to a council, you are also fulfilling a role and a responsibility placed upon you by the State's planning legislation, and therefore in carrying out that responsibility you are bound to take a broader and longer-term view of things — perhaps to the detriment of individual constituents.

Of course, if an anomaly is thrown up in this process, the council is able to pursue amendments to its planning scheme that may address similar issues in the future. However, such amendments cannot be made retrospectively

**Remember: Planning is concerned with the public good, not private interests.**

As a planning authority elected councillors are stewards of the land under their control and the time horizon for that stewardship is inter-generational, not the time to the next election.

**Process for considering development applications (application for a permit)**

The process will vary according to the nature of the development. Councillors largely only consider those applications which require an element of discretion in relation to the planning scheme and where representations have been made. Otherwise the decision is delegated to a planning officer. Councillors have the power to change their delegations under LUPAA and therefore what applications are presented at Council meetings. Currently at Central Highlands Council, all planning application decisions are delegated unless a representation is received.

Councillors receive a planning officer's report in relation to the development applications that they must decide. This report sets out the proposal and the relevant parts of the planning scheme and contains a recommendation as to the decision the planning authority should make. Councillors are also provided with the application documents and any representations. It is important that Councillors review all of this information before making a decision and remember that the planning officer or other staff are available to answer questions before the meeting where the decision will be made.

In making their decision, particularly if going against the planning officer's recommendation, the Council **MUST** give reasons for their decision and these reasons are to be recorded in the Council's minutes. Decisions and reasons must be based on the planning scheme. If Council make a decision against the recommendation of the planning officer it will be necessary for Council to engage a different consultant(s) to defend the position in any appeal that may result.

Determining compliance is not as black and white as it may first seem, especially as often the planning scheme allows the exercise of discretions. When exercising a discretion, the planning report will identify what the relevant discretions are (e.g. setback from side boundary) as well as the extent of the discretion sought to be exercised. Refusal grounds or conditions that seek to alter the development must focus on the particular discretions relevant to an application to have any chance of success in an appeal. For example, if the only discretion is a variation to the front setback it would not be reasonable to refuse that application because of the proposed use of the building or the colour of it.

Councils **MUST** make decisions on all types of applications within prescribed timeframes unless the applicant agrees to an extension of time. If Council fails to make a decision within the timeframe the application is deemed to be approved and the applicant may lodge an appeal on the basis that no decision has been made. If this occurs, the council must pay all the costs of parties to the appeal. There have been many cases where such appeals have cost councils many thousands of dollars. It is important that council decisions are based on the planning scheme and professional advice provided by council's expert staff.

### Appeals Against Planning Decisions

The Resource Management and Planning Appeal Tribunal (RMPAT) determines appeals against the decisions of a council planning authority. An appeal may be made by the applicant or anyone who has lodged a representation. Many appeals are resolved by mediation but a small percentage still progress to a full public hearing. In the case of a hearing, the RMPAT decision will be based on the provisions of the planning scheme and the evidence of expert witnesses, eg. qualified planners or engineers, rather than councillors.

## REMEMBER

- The Local Government Meeting Procedure Regulations will apply to Planning Committee meetings
- The Draft Policy Public Comment on Planning Agenda Items at Council and Committee Meetings will apply when adopted by Council.
- You are acting as a member of the Planning Authority **NOT** as a Councillor.
- Professional advice is provided by the planner in a written report prior to the meeting and staff can answer any questions you may have before the meeting or at the meeting
- As a member of the Planning Authority, decisions **MUST** be made in accordance with the Planning Scheme
- Each Councillor has a duty to enforce the Planning Scheme
- Planning is concerned with the public good, not private interests
- Councillors must ensure representations or lobbying does not prejudice their ability to carry out their obligations under the Land Use Planning and Approvals Act
- While members of the public may make representations to councillors and make their views known, the members of a planning authority must ensure the decision making process is fair and free from prejudgment and bias
- Private representations to a councillor can undermine the planning process which provides for formal and open input.

## 17.0 SUPPLEMENTARY AGENDA ITEMS

**Moved:**

**Seconded:**

**THAT** Council consider the matters on the Supplementary Agenda.

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## 18.0 CLOSURE

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