

SOUTH GIPPSLAND SHIRE COUNCIL

Special Meeting of Council Minutes

Consider Notice of Rescission Councillor Code of Conduct adopted
15 February 2017 & Review and Adopt
Councillor Code of Conduct (C14)

22 February 2017
Council Chambers, Leongatha
Commenced at 11:30am



minutes



*South Gippsland
Shire Council*

Come for the beauty, Stay for the lifestyle



MISSION

To effectively plan and provide for the social, built, economic and natural environments that ensure the future wellbeing of South Gippsland Communities.

Privacy

Council is required to keep minutes of each Council meeting. The minutes contain details of proceedings which may include personal information about community members disclosed as part of presentations, submissions and questions. The minutes of Council meetings are a public record and can be inspected by members of the public.

Council undertakes audio recordings of Council Meetings as a contribution to good governance and accuracy of minutes. An audio recording of this meeting is being made for the purpose of verifying the accuracy of minutes of the meeting. In some circumstances the recording may be disclosed, such as where Council is compelled to do so by court order, warrant, and subpoena or by any other law such as the Freedom of Information Act 1982. It should be noted that other people present at the meeting may be recording the meeting and Council has limited power to regulate this. Council has developed a policy to regulate recordings, "*Sound Recording of Council Meetings*".

A copy of this policy is located on Council's website www.southgippsland.vic.gov.au.

PRESENT

COUNCILLORS:	<p>Cr Ray Argento, Mayor Cr Maxine Kiel, Deputy Mayor Cr Meg Edwards Cr Alyson Skinner Cr Jeremy Rich Cr Andrew McEwen Cr Lorraine Brunt Cr Aaron Brown Cr Don Hill</p>
APOLOGY:	<p>Nil</p>
OFFICERS:	<p>Tim Tamlin, Chief Executive Officer Vanessa Adams, Acting Director Community and Corporate Services Bryan Sword, Director Development Services Anthony Seabrook, Director Sustainable Communities & Infrastructure Rick Rutjens, Media and Communications Coordinator, Media and Communications Natasha Berry, Corporate and Council Business Officer June Ernst, Coordinator Corporate Planning & Council Business Jodi Cumming, Corporate and Council Business Officer</p>

SOUTH GIPPSLAND SHIRE COUNCIL

Special Meeting of Council
Wednesday 22 February 2017
Council Chambers, Leongatha commenced at 11:30am

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Tim Tamlin
Chief Executive Officer

1. PRELIMINARY MATTERS

1.1. WELCOME

Please ensure Mobile phones remain 'off' during the Council Meeting.

1.2. OPENING PRAYER

We pray to God to guide us so that the thoughts we have and the decisions made this day, are in the best interests of the people of the South Gippsland Shire.

Amen

1.3. ACKNOWLEDGEMENT OF TRADITIONAL CUSTODIANS

The South Gippsland Shire Council respectfully acknowledges the Traditional Custodians of this Land, Elders past and present, their Spirits and Ancestors.

1.4. REQUESTS FOR LEAVE OF ABSENCE

Nil

1.5. APOLOGIES

Nil

1.6. DECLARATION OF CONFLICT OF INTEREST FOR COUNCILLORS

Any interest that a Councillor or staff member has deemed to be significant and has disclosed as either a direct or an indirect interest is now considered to be a conflict of interest. Conflict of interest legislation is in sections 77A, 77B, 78, 78A-D and 79 of the Local Government Act 1989 (the Act). This legislation can be obtained by contacting the Council's Corporate & Community Services Directorate (Council Business) or by accessing the Victorian Legislation and Parliamentary Documents website at www.legislation.vic.gov.au.

An interest may be by close association, financial, conflicting duties or receipt of gifts. If a Councillor or staff member discloses any interest in an item discussed at any Council Meeting (whether they attend or not) they must:

- Complete a disclosure of interest form prior to the Meeting (forms are available from Council Business Department at South Gippsland Shire Council).
- Advise the Chair of the interest immediately before the particular item is considered (if attending the Meeting).
- Leave the Council Chamber or Meeting room while the item is being discussed and during any vote taken (if attending the Meeting).

The Councillor or staff member will be advised to return to the Council Chamber or Meeting room immediately after the item has been considered and the vote is complete.

Councillors should check the Minutes of the Council Meeting to ensure their disclosure is recorded accurately. Councillors are not required to disclose conflict of interest in relation to matters only considered at Meetings they do not attend. Detailed information is available in *Conflict of Interest – A Guide for Councillors – October 2012*.

Nil

1.7. DECLARATION OF CONFLICT OF INTEREST FOR STAFF

Sections 80B and 80C of the Local Government Act 1989 require members of Council staff who have delegated functions and/or provide advice to Council or a Special Committee to disclose conflicts of interest. If Council staff have written, provided information/advice or approved a Council Report and have a conflict of interest, it is the responsibility of that staff member to disclose the interest.

Guidance to identifying and disclosing a conflict of interest is contained in the Victorian State Government, Department of Transport, Planning and Local Infrastructure – *Conflict of Interest – A Guide for Council Staff – October 2011*.

Nil

2. NOTICES OF MOTION AND/OR RESCISSION

2.1. NOTICE OF RESCISSION 704 - REVIEW AMENDMENTS TO THE C14 COUNCILLOR CODE OF CONDUCT 2017 POLICY

PURPOSE

At the meeting of Council 15 February 2017, Council passed a motion to review and adopt amendments to the Councillor Code of Conduct document.

Legal advice received from Council's lawyers, which led to the final document as presented to Council for the February 15th council meeting is in conflict with the document approved in the Council vote on February 15th 2017.

The approved document states in section headed Stage 4-Councillor Conduct Panel appointed which starts on page 32 of the document, in section (j), that:

"Each party to an application for review of a decision of a Councillor Conduct Panel will be required to bear all their own costs (refer Division 8, Section 109 (1) of the Victorian Civil and Administrative Tribunal Act 1998)."

This states that a councillor must bear their own costs in all cases, (even when a Council determines to initiate the VCAT appeal). This is contrary to cl 46F of Schedule 1 to the Victorian Civil and Administrative Tribunal Act 1998 (VCAT Act) which provides:

(1) Despite section 109, the Council must bear the costs of the proceedings if the Council applies to VCAT for review under section 810(2) of the Local Government Act 1989.

(2) The Council is not required to bear the costs of the proceedings under subclause (1) if VCAT otherwise orders.

It is therefore quite clear that the approved councillor Code of Conduct document is in conflict with the law and as such is not able to be passed by Council.

This rescission motion is intended to rescind the approved motion of February 15th 2017 and allow for a new motion with an altered Councillor Code of Conduct document which is aligned to the Act to be approved of by Council.

RISK

The risk of council failing to rescind this motion is that the matter will be referred to the local Government Inspectorate and the Minister, and Council's reputation will be damaged.

MOTION

I, Councillor Don Hill, advise that I intend to submit the following motion to the Ordinary Meeting of Council scheduled to be held on 22 February 2017.

That Council Rescind motion 2.1 Review Amendments to the C14 Councillor Code of Conduct 2017 Policy as approved by Council on 15 February 2017.

MOVED: Cr Hil

SECONDED: Cr McEwen

THAT COUNCIL RESCIND MOTION 2.1 REVIEW AMENDMENTS TO THE C14 COUNCILLOR CODE OF CONDUCT 2017 POLICY AS APPROVED BY COUNCIL ON 15 FEBRUARY 2017.

LOST

For: Councillors McEwen, Hill and Rich.

Against: Councillors Skinner, Kiel, Argento, Brown, Brunt and Edwards.

3. COUNCIL REPORTS

3.1. REVIEW AMENDMENTS TO THE COUNCILLOR CODE OF CONDUCT (POLICY NUMBER C14)

Corporate and Community Services Directorate

EXECUTIVE SUMMARY

The Local Government Act 1989 (the Act) requires Council to review and approve amendments to C14 Councillor Code of Conduct by 22 February 2017, incorporating improved governance and conduct standards.

The previous C14 Councillor Code of Conduct adopted 15 February 2017 is to be replaced with the revised and amended C14 Councillor Code of Conduct (Code) in **Attachment [3.1.1]**.

RECOMMENDATION

That Council:

1. Adopts the amended Councillor Code of Conduct (Policy Number C14) contained in Attachment [3.1.1] that includes the following two clauses under the Stage 4 – Councillor Conduct Panel Appointed (located in Attachment 2 of the Code), as follows:
 - k) Despite section 109 of the VCAT Act 1998, the Council must bear the costs of the proceedings if the Council applies to VCAT for review under section 81Q(2) of the Local Government Act 1989 (refer Part 13B- Local Government Act 1989 s46F(1) of the VCAT Act 1998); and
 - l) The Council is not required to bear the costs of the proceedings under subclause k if VCAT otherwise orders (refer Part 13B- Local Government Act 1989 s46F(2) of the VCAT Act 1998);
2. Seeks the signature of each individual Councillor to the amended Councillor Code of Conduct C14 as soon as practicable, but within one month of this policy adoption; and
3. Publishes the adopted Councillor Code of Conduct (C14) on Council's website.

MOVED: Cr Brunt

SECONDED: Cr Hill

THAT COUNCIL:

- 1. ADOPTS THE AMENDED COUNCILLOR CODE OF CONDUCT (POLICY NUMBER C14) CONTAINED IN ATTACHMENT [3.1.1] THAT INCLUDES THE FOLLOWING TWO CLAUSES UNDER THE STAGE 4 – COUNCILLOR CONDUCT PANEL APPOINTED (LOCATED IN ATTACHMENT 2 OF THE CODE), AS FOLLOWS:**
 - K) DESPITE SECTION 109 OF THE VCAT ACT 1998, THE COUNCIL MUST BEAR THE COSTS OF THE PROCEEDINGS IF THE COUNCIL APPLIES TO VCAT FOR REVIEW UNDER SECTION 81Q(2) OF THE LOCAL GOVERNMENT ACT 1989 (REFER PART 13B-LOCAL GOVERNMENT ACT 1989 S46F(1) OF THE VCAT ACT 1998); AND**
 - L) THE COUNCIL IS NOT REQUIRED TO BEAR THE COSTS OF THE PROCEEDINGS UNDER SUBCLAUSE K IF VCAT OTHERWISE ORDERS (REFER PART 13B- LOCAL GOVERNMENT ACT 1989 S46F(2) OF THE VCAT ACT 1998);**
- 2. SEEKS THE SIGNATURE OF EACH INDIVIDUAL COUNCILLOR TO THE AMENDED COUNCILLOR CODE OF CONDUCT C14 AS SOON AS PRACTICABLE, BUT WITHIN ONE MONTH OF THIS POLICY ADOPTION; AND**
- 3. PUBLISHES THE ADOPTED COUNCILLOR CODE OF CONDUCT (C14) ON COUNCIL'S WEBSITE.**

CARRIED UNANIMOUSLY

REPORT

The Council elected and sworn in on 9 November 2016, signed the Councillor Code of Conduct developed by the former Council. In accordance with section 76C of the Local Government Act 1989 (the Act), Council must review and approve any amendments to the previous Councillor Code of Conduct at a Special Council Meeting within four months of the Council election. This legislated requirement continues the State Government's focus on improved governance, particularly in regard to the conduct of Councillors.

Council considered a range of issues in the review of amendments to the Councillor Code of Conduct (Policy No. C14) (the Code) and adopted these at the Special Council Meeting of 15 February 2017.

A further two clauses are proposed to be included in the Code. These are for the purpose of providing clarity to the requirement for costs to be covered, specifically in the exception whereby Council may lodge an appeal to review a decision made by a Councillor Conduct Panel under section 81Q of the Local Government Act 1989. These clauses capture Part 13 – Local Government Act 1989 section 46F of the Victorian Civil and Administrative Tribunal Act 1998 (VCAT Act).

The amended Councillor Code of Conduct C14 (Code) is contained in **Attachment [3.1.1]**. The Code contains all other amendments reviewed by Council in the Special Meeting of Council held on 15 February 2017, along with the following two clauses located in Attachment 2 of the Code under Stage 4 – Councillor Conduct Panel Appointed, as follows:

- k) Despite section 109 of the VCAT Act 1998, the Council must bear the costs of the proceedings if the Council applies to VCAT for review under section 81Q(2) of the Local Government Act 1989 (refer Part 13B- Local Government Act 1989 section 46F(1) of the VCAT Act 1998); and
- l) The Council is not required to bear the costs of the proceedings under sub clause (k) if VCAT otherwise orders (refer Part 13B- Local Government Act 1989 section 46F(2) of the VCAT Act 1998).

CONSULTATION

Council has reviewed draft changes to the Code at three Assemblies of Councillors; being 9 November 2016, 21 December 2016 and 25 January 2017.

Council considered comments received from a community member who had provided constructive feedback to Council to consider when the Code was next reviewed, along with general concerns raised in the 2016 Community Satisfaction

Survey. A number of adjustments in the amended Code reflect Council's proactive response to improve in areas highlighted as community concerns.

Council considered and has incorporated improvements provided by an Arbiter involved in a conduct matter with a former Councillor. This advice was given to clarify the Arbiter's role more succinctly and strengthen the process of managing an independent arbitration of a conduct matter.

Council considered and determined amended clauses in the Special Meeting of Council held 15 February 2017.

The amended Code, including the additional two clauses in the Code, has been reviewed by Council's lawyers, with refinements made throughout the document to strengthen its alignment with the Act.

RESOURCES

There are no financial implications in regard to the adoption of the Councillor Code of Conduct.

RISKS

The review and updated amendments of the Code have specifically addressed medium rated risks identified in the confidential internal governance audit. The adoption of this detailed and revised Code will reduce the risk of breaching the Act and mitigate the potential for reputational risks created through inadequate internal resolution of conflicts between Councillors.

STAFF DISCLOSURE

Nil

ATTACHMENTS

1. Councillor Code of Conduct Policy C 14 - 22 February 2017 **[3.1.1]**

REFERENCE DOCUMENTS

Local Government Act 1989 Part 1A - Local Government Charter, Division 1 - The Mayor and other Councillors, Division 1A - Conduct and Interests, Divisions 1AB - Internal Resolution Procedure of Council, Division 1B – Councillor Conduct Panels, Division 1C – Appointment and Functions of Principal Councillor Conduct Registrar, Division 1D – Formation, operation and Dissolution of Councillor Conduct Panels and Related Matters

Victorian Information Privacy Act 2000

Victorian Civil and Administrative Tribunal Act 1998

Accident Compensation Act 1985

Equal Opportunity Act 2010

Charter of Human Rights and Responsibilities Act 2006

Occupational Health and Safety Act 2004

Disability Discrimination Act 1992

Racial Discrimination Act 1975

Racial and Religious Tolerance Act 2001

Sex Discrimination Act 1984

Independent Broad-based Anti-Corruption Commission Act 2011

Protected Disclosure Act 2012

Victorian Inspectorate Act 2011

Public Interest Monitor Act 2011

Privacy and Data Protection Act 2014

Internal Policies

Acceptance of Gifts and Donations 2016

Anti-Discrimination, Bullying and Harassment Policy 2015

Councillor Access to Council Information Policy 2016

Communication and Engagement Policy 2014

Corporate Information Management Policy 2016

Councillor Support and Expenditure Policy 2016

Councillor Notice of Motion Guidelines 2013

Council Use of Term Mayoral Policy 2016

Council Use of Logo Policy 2016

Councillor Vehicle Policy 2014

Election Period Policy 2016

Grievance Policy 2016

Human Rights Policy 2013

Information Privacy Policy 2015

Information Security Standards 2015

Information Technology Standards 2015

Mayor, Deputy Mayor and Councillor Attendance at Functions Policy 2014

Occupational Health and Safety Policy 2013

Public Participation in Meetings with Council Policy 2016

Risk Management Policy 2012

4. MEETING CLOSED

NEXT MEETING

The next Ordinary Meeting of Council open to the public will be held on Wednesday, 22 February 2017 commencing at 2pm in the Council Chambers, Leongatha.

The Special Meeting of Council closed at 11.47am.

The Councillors signed the Codes of Conduct in the presence of the Chief Executive Officer following the conclusion of the Special Meeting of Council.

Confirmed this day of 2017.

.....
Mayor Cr Ray Argento