District Council of Mallala

NOTICE OF MEETING

Pursuant to the provisions of section 88 (1) of the
Local Government Act 1999

The Governance Advisory Panel Meeting of the District Council of Mallala

will be held in

Mallala Council Chambers
Redbanks Road
Mallala

on

Thursday 2 June 2016 at 11:00am

.....
James Miller
CHIEF EXECUTIVE OFFICER

AGENDA

1. ATTENDANCE

1.1 Members Present

1.2 Members Apologies

1.3 Members Absent

2. CONFIRMATION OF MINUTES

2.1 "that the Minutes of the Governance Advisory Panel held on Wednesday 13 April 2016 (MB Folios 1 to 19), be accepted as read and confirmed."

3. BUSINESS ARISING

3.1 No Business Arising

4. REPORTS

4.1 Policy Review – Complaints Handling Process under Council Members' Code of Conduct (CON12/543)

4.2 Community Development Advisory Committee – Review of Terms of Reference (CON12/1100)

4.3 Private Works Service – Draft Policy (CON12/772)

5. CONFIDENTIAL ITEMS

5.1 No Confidential Items

6. CLOSURE

District Council of Mallala	**2. CONFIRMATION OF MINUTES**
THURSDAY 2 JUNE 2016	

Items:

2.1 "that the Minutes of the Governance Advisory Panel held on Wednesday 13 April 2016 (MB Folios 1 to 19), be accepted as read and confirmed."

District Council of Mallala	**4. REPORTS**
THURSDAY 2 JUNE 2016	

Items:

4.1 Policy Review – Complaints Handling Process under Council Members' Code of Conduct (CON12/543)

4.2 Community Development Advisory Committee – Review of Terms of Reference (CON12/1100)

4.3 Private Works Service – Draft Policy (CON12/772)

District Council of Mallala	**4.1 Policy Review – Complaints Handling Process under Council Members' Code of Conduct**
	Container No: CON12/543 **Document No:** D16/7933
Report Date: 2 June 2016	**Prepared by:** Governance Officer

Corporate Objective:	5.1.3 Ensure governance and operational policies, procedures and activities align with organisational, legislative requirements and best practice.

Purpose:	For the Governance Advisory Panel to review, comment on and recommend any changes to Council relating to the revised Complaints Handling Process under Council Members' Code of Conduct.

Recommendation 1:	"that the Panel, having considered Item 4.1 – *Policy Review – Complaints Handling Process under Council Members' Code of Conduct* dated 2 June 2016, receive and note the report."
Recommendation 2:	"that the Panel recommends the adoption by Council of the Complaints Handling Procedure under Council Members' Code of Conduct (Attachment 1)." OR "that the Panel recommends the adoption by Council of the Complaints Handling Procedure under Council Members' Code of Conduct (Attachment 1) subject to the following amendments:- • [Details to be inserted at meeting of Panel]."

Impact Summary

Organisational and Governance	
Financial	Nil.
Legislation	*Local Government Act 1999*
Risk	The Local Government Association of South Australia provides that council must have in place a Complaints Process under the Council Members' Code of Conduct.
Consultation	Internal consultation and legal advice provided.
Asset Management Plans	Nil.
Service Standards	Will strengthen Council's governance role, teamwork and performance, thereby improving service standards.

Background

The Panel, at its meeting on 13 April 2016, considered a review of Council's current 'Complaints Handling Process under Council Members' Code of Conduct'. The Panel subsequently recommended that Council "review and amend Council's Complaints Handling Process under Council Members' Code of Conduct to align with the amended Terms of Reference and functions of the Governance Advisory Panel proposed by the Panel and that the amended document be presented to the Panel's next meeting for its consideration." This recommendation was adopted by Council at its meeting on 18 April 2016 (2016/127).

The Complaints Handling Process under the Council Members' Code of Conduct applies when the Council receives a formal complaint against a Council Member under the Code of Conduct for Council Members. It is mandatory for Councils to have a Complaints Process under the Council Members' Code in order to ensure good governance practices.

The revised procedure has been drafted based on the views expressed by the Panel at its previous meeting. The procedure has been edited via track changes, and the document is attached for the Panel's consideration **(Attachment 1).**

Discussion

The changes to the procedure are reasonably self-explanatory as identified in the attached document.

The Panel will note that provisions have now been made, by the insertion of clause 7, for the handling of complaints in relation to the Chief Executive Officer or Panel Chairperson.

In summary, the changes remove the investigatory role from the Panel whilst at the same time, continuing to provide a role of the Panel (through referrals to the Panel's Chairperson) in making recommendations to the Council about the appropriate course of action with respect to particular complaints or matters of general importance in this space.

Summary

The Panel is asked to consider the attached revised Complaints Handling Procedure under Council Members' Code of Conduct. The procedures adoption will ensure good governance, accountability, transparency and consistency across the organisation.

Attachment 1
to report
4.1 – Policy Review - Complaints Handling Process under Council Members' Code of Conduct
dated 2 June 2016

Complaints Handling Procedure under Council Members' Code of Conduct

	Complaints Handling ~~Process~~ Procedure under Council Members' Code of Conduct	
	Version Adoption by Council: 2016 **Resolution Number:** 2016/070 **Current Version:** V3.0	
	Administered by: Chief Executive Officer	**Last Review Date:** 2016 **Next Review Date:** 2017
TRIM CON: 12/570 **DOC ID:** 16/7933	**Strategic Outcome 5.1:** Effective governance, leadership and teamwork.	

1. Objective

The District Council of Mallala has declared through the Mandatory Code of Conduct for Council Members the principles of good conduct, maturity respectability, sincerity and ethical and behavioural standards that Council have agreed its community can reasonably expect both personally and professionally from its Council Members in the course of their roles and responsibilities.

The Code of Conduct applies to all Council Members across the Local Government sector and may be the subject of a Council investigation or an Ombudsman investigation, depending on the nature of the issue.

The Code of Conduct also contains sanctions which may be imposed by Council on a Council Member where a breach of the Code is found to be substantiated.

In 2016 the District Council of Mallala established the Governance Advisory Panel (Panel) as an independent body to deal with matters pertaining to issues related to the Code of Conduct for Council Members.

2. Purpose and Scope

This procedure applies when the Council receives a formal complaint against a Council Member under the Code of Conduct for Council Members. (A copy of the code may be accessed on Council's website www.mallala.sa.gov.au).

This procedure also applies to the appointed Independent Members of Council's Section 41 Committees, with the exception of Council's Development Assessment Panel (CDAP) which is administered by its Complaints Handling Policy.

~~For the purpose of these procedures **the independent membership** of the Governance Advisory Panel is referred to herein as 'the Panel'.~~

3. Breaches of the Code of Conduct

Breaches of the Code of Conduct may relate to behaviour (Part 2 of the Code) or misconduct (Part 3 of the Code).

Criminal or corruption matters, which are subject to separate legislation, do not form part of the Code of Conduct for Council Members but are referred to in the appendix to that Code. This procedure covers referral of these types of complaints to other agencies.

3.1 Alleged Breach

3.1.1 A person making a complaint that relates to an alleged breach of Part 2 of the Code of Conduct must:

a. Submit the complaint, in writing, to the Chairperson of the Panel who will, with the assistance of the Council's Chief Executive Officer, be responsible for receiving and managing the complaint as the nominated delegate pursuant to clause 2.18 of the Code.

Complaints should be marked '**Confidential**' and addressed to:

The ~~Independent Members~~Chairperson
District Council of Mallala Governance Advisory Panel
PO Box 18
MALLALA SA 5502

The Chief Executive Officer ~~(CEO) may~~will be responsible for providing advice and administrative assistance to the Chairperson in respect of any Complaint received by the Council. ~~participate as an advisor if requested by the Panel~~.

The ~~Panel~~ Chairperson of the Panel will determine whether the complaint relates to:

- behaviour which falls under Part 2 of the Code
- misconduct which triggers action under Part 3 of the Code or
- criminal or corrupt behaviour

b. Identify the provision(s) of the Code of Conduct that have allegedly been breached accompanied by any supporting material.

c. Observe strict confidentiality while the complaint is investigated.

3.1.2 The allegation should:

- be specific;
- provide as much supporting evidence as possible to assist an investigation;
- provide the name of the Member who has allegedly breached the Code.

3.1.3 Having regard to the seriousness of the allegation and information provided, the Chairperson of the Panel may, in accordance with clause 3.2.3:

a) seek to resolve the matter internally, including through conciliation or mediation;~~,~~

~~b) investigate the complaint;~~

~~c)~~b) refer the complaint for independent investigation (by persons including, but not limited to, the Local Government Governance Panel); or

~~d) refer the complaint to the Local Government Governance Panel or~~

~~e)~~c) dismiss the allegation.

3.1.4 Council maintains jurisdiction where the complaint deals with conduct that falls into Part 2 of the Code. Part 2 deals with conduct that reflects reasonable community expectations of how Council Members should conduct themselves. Robust debate within Council which is conducted in a respectful manner is not considered a breach of this Part.

The ~~Person~~ person making the complaint can, at any time, take the alternative option of lodging the complaint with the Office of Public Integrity (OPI), which will direct the complaint in accordance with the ICAC Act.

3.1.5 Complaints relating to **misconduct or criminal behaviour** must be referred to the appropriate authorities immediately. (See below at clauses 5 and 6)

3.1.6 The Complaint handling procedures are as follows:

a. Receipt of the complaint will be acknowledged by the Council's Chief Executive Officer to the ~~P~~person making the complaint within five (5) day of receiving the complaint.

b. The Member about whom the complaint has been made will be notified within five (5) days of receipt of the complaint by the Council's Chief Executive Officer and will be provided with~~and~~ a copy of the complaint.

c. Where, after consideration by the Chairperson of the Panel, the matter is found to have merit, the complaint will be investigated.

3.2 Alleged Breach of Part 2 – Referral to the Panel Chairperson

3.2.1 Only ~~matters~~ complaints which are determined to be related to Part 2 of the Code of Conduct will be dealt with internally by the Panel Chairperson as the Council's nominated delegate. ~~and only with the agreement of the parties.~~

3.2.2 The matter will be assessed initially by the Panel Chairperson who will, with the assistance of the Chief Executive Officer, determine the process to be followed and the appropriate person and/or authority who will deal with the matter. ~~The matter may be dismissed if it is frivolous, vexatious, misconceived or lacking in substance.~~

3.2.3 The Panel Chairperson may at this stage:

- dismiss the Complaint if it considered to be trivial, frivolous or vexatious;
- with the agreement of all parties, seek to resolve the matter by informal discussion, mediation or conciliation;

- refer the matter for independent investigation by a person appointed by the Panel Chairperson on advice of the Council's Chief Executive Officer.

3.2.4 Where the matter is resolved by the Chairperson of the Panel to the satisfaction of all the parties through informal discussion, mediation or conciliation, the matter will be closed and no further action will be taken. The Chairperson of the Panel will send written confirmation to all the parties confirming that the matter has been resolved.

3.2.5 If the matter proceeds to independent investigation, ~~T~~the Panel Chairperson and independent investigator must ensure that the principles of natural justice and procedural fairness are observed at all times. The Mayor, ~~nor~~ Chief Executive Officer, Panel Chairperson and Panel will not themselves investigate a complaint.

3.2.6 Complaints referred by the Panel Chairperson for independent investigation will specify the ground/s of the complaint, set out the circumstances of the complaint and be accompanied by any other material that is available to support the complaint.

~~Where a complaint progresses to an investigation, the Panel may engage an independent consultant(s) to assist with the investigation.~~3.2.7 Once the independent investigator has concluded their investigation, they must provide a report to the Chairperson of the Panel outlining their findings and recommendations. If a breach of Part 2 of the Code is found, the report should recommend whether the Council should consider:

- taking no action;
- passing a censure motion in respect of the Council Member;
- requesting the Council Member make a public apology, whether written or verbal;
- requesting the Council Member to attend training on the specific topic found to have been breached;
- resolving to remove or suspend the Council Member from a position within the Council (not including the Member's elected position on Council); or
- requesting the Council Member repay monies to the Council.

3.2.8 The Chairperson of the Panel must ensure that the report is included on the Agenda of an upcoming meeting of the Panel for the Panel's consideration. The Panel will then:

- consider the report;
- if a breach of Part 2 of the Code is found, receive written or verbal submissions from the Council Member the subject of the complaint regarding the independent investigator's recommended Course of action; and
- make a recommendation to the Council regarding the Panel's proposed course of action.

~~3.2.5 Where the matter cannot be resolved, the Panel may refer the original complaint for independent investigation (see 3.2.3) by an appropriate authority.~~

3.2.9 The investigator's report and the Panel's recommendation may, subject to this clause and to clause 3.2.11, be the subject of a report to the Council. ~~-~~ If the investigator finds that a breach of Part 2 of the Code has occurred, the report and Panel recommendation must be included as part of a public meeting (clause 2.24 of the Code). ~~Neither t~~

3.2.10 ~~If, following investigation by the Panel, a breach of Part 2 of the Code is found, the breach must be the subject of a~~The ~~report may recommend to the~~ Council~~,~~ will consider the investigator's report and the Panel's recommendation and the Council may then resolve to take appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Council under clause 2.25 of the Code of Conduct as follows:-

- Take no action;
- Pass a censure motion in respect of the Council Member;
- Request the Council Member make a public apology, whether written or verbal;
- Request the Council Member ~~to~~ attend training on the specific topic found to have been breached;
- Resolve to remove or suspend the Council Member from a position within the Council (not including the Member's elected position on Council)
- Request the Council Member ~~member to~~ repay monies to the Council.

3.2.11 Where a report finds no breach of the Code, the report will not be made public, except at the request of the Council Member who was the subject of the complaint. If such a request is made, a copy of the report will be tabled at the next practicable Council meeting. If no such request is received, no further action will be taken, although a summary report may be made to the Council by the Panel regarding other observations or recommendations made by the Panel that are of broader application.

3.2.12 The complainant will be notified by letter of the outcome of the investigation. Where the full investigation report is to be tabled at a Council meeting, the complainant will be entitled to a copy of the report at, or following, the Council meeting which receives the report. If the full report is not presented at a Council meeting, the complainant will not be provided with a copy of the report as a matter of course.

4. Appeals

Council will not enter into any process of appeal in relation to Part 2 of the Code.

5. Part 3 - Mandatory Code (Misconduct)

5.1 Any person may report an alleged breach of Part 3 of the Code to ~~the Panel as the Council's delegate~~Council, the Ombudsman, the Electoral Commissioner (for breaches of Clause 3.8 of the Code) or the Office for Public Integrity.

5.2 ~~Alleged breaches of Part 3 made to the Panel or to the Office for Public Integrity may be referred to the Ombudsman for investigation.~~ Where a complaint in relation to a breach of Part 3 is received by Council, it may be referred by the Council's Chief Executive Officer to the Ombudsman, the Electoral Commissioner (for breaches of Clause 3.8 of the Code) or the Office for Public Integrity, as required.

5.3 Under the Code of Conduct, a Council Member who is of the opinion that a breach of Part 3 of the Code has occurred, or is currently occurring, must report the breach to the Panel, the Ombudsman or the Office for Public Integrity.

5.4 A failure to report an alleged or suspected breach of Part 3 of the Code is in itself a breach under Part 2 of the Code.

5.5 A failure of a Council Member to co-operate with the Council's process for handling alleged breaches of Part 2 of the Code may be referred for investigation under Part 3.

5.6 A failure of a Council Member to comply with a finding of an investigation under Part 2 of the Code, adopted by the Council, may be referred for investigation under Part 3.

5.7 Repeated or sustained breaches of Part 2 of the Code by the same Council Member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.

5.8 A report from the Ombudsman that finds a Council Member has breached Part 3 of the Code of Conduct must be the subject of a report to a public meeting of the Council.

5.8 The Council must pass a resolution to give effect to any recommendations received from the Ombudsman, within two (2) ordinary meetings of the Council following the receipt of these recommendations.

6. Criminal Matters – Appendix to the Code of Conduct

6.1 The matters within the Appendix to the Code of Conduct are matters for which a criminal penalty attaches. These matters must be reported to the Office of Public Integrity. In addition, allegations of a breach of any of the offence provisions in the *Local Government Act1999* must also be reported to the Office of Public Integrity.

6.2 In compliance with the *Independent Commissioner against Corruption Act 2012*, referral of such complaints to the Office of Public Integrity will remain confidential.

7. Complaint in Relation to Chief Executive Officer or Panel Chairperson

7.1 Where the conduct complained of involves or includes conduct of the Panel Chairperson, the functions assigned to that person may be performed by any other independent member of the Panel determined by the Chief Executive Officer.

7.2 Where the conduct complained of involves or includes conduct of the Chief Executive Officer, the functions assigned to that person will be performed by the Council's Governance Officer.

8. References/Related Documents

Local Government Act 1999, s59-63
Local Government (General) Variation Regulations 2013
Code of Conduct for Council Members, as published in the SA Gazette on 29 August 2013,
Directions and Guidelines issued by ICAC
Independent Commissioner Against Corruption Act 2012
Caretaker Policy

9. Records Management

All documents relating to this Procedure will be registered in Council's Record Management System and remain confidential where identified.

10. Document Review

In order to ensure Council continues to provide the best possible complaints handling service for its customers, this policy will be subject to periodic evaluation and annual review.

11. Further Information

Members of the public may inspect this Procedure free of charge on Council's website at www.mallala.sa.gov.au or at Council's Principal Office at:

2a Wasleys Rd, Mallala SA 5 5 0 2
On payment of a fee, a copy of this Procedure may be obtained.

Any queries in relation to this Procedure must be in writing and directed to the Governance Officer.

District Council of Mallala	**4.2 Community Development Advisory Committee Review of Terms of Reference**
	Container No: **CON12/1100** **Document No:** **D16/7501**
Report Date: **2 June 2016**	**Prepared by:** **Governance Officer**

Corporate Objective:	5.1 Effective governance, leadership and teamwork

Purpose:	For the Governance Advisory Panel to review, comment on and make recommendations to Council regarding the Terms of Reference of the Community Development Advisory Committee (CDAC).

Recommendation 1:	"that the Panel, having considered Item *4.2 – Community Development Advisory Committee Review of Terms of Reference* dated 2 June 2016, receive and note the report."
Recommendation 2:	"that the Panel recommends to Council that the Community Development Advisory Committee's Terms of Reference be amended as per Attachment 1 to this report" OR "that the Panel recommends to Council that the Community Development Advisory Committee's Terms of Reference be amended as per Attachment 1 to this report subject to the following additional amendments:- • [Details to be inserted at meeting of Panel]."
Recommendation 3:	"that the Panel acknowledges the Chief Executive Officer's imminent review of the organisational structure and its alignment to the current Section 41 Committees' structure, and encourages the Chief Executive Officer to bring back further reports to the Panel for its consideration and recommendations in relation to any proposed changes that may arise."

Impact Summary

Organisational and Governance	
Financial	Nil
Legislation	*Local Government Act 1999* Community Development Advisory Panel Terms of Reference. Governance Advisory Panel Terms of Reference.
Risk	Breaches of Code of Conducts Non-compliance with Council's procurement principles
Consultation	Nil required.
Asset Management Plans	Nil.
Service Standards	Will strengthen Council's accountability and transparency.

Background

The Panel, at its meeting on 13 April 2016, considered a review of the Community Development Advisory Committee (CDAC). The Panel subsequently recommended that Council "undertake a review of the CDAC's Terms of Reference to address concerns associated with delegation, membership composition, conflict of interest and public perception". Council adopted this recommendation at its meeting on 18 April 2016 (2016/129).

In the context of good governance and administrative practice, the Panel is asked to consider the matters discussed below.

Discussion

1. Role and Purpose of the CDAC

   The purpose of the CDAC is to provide Council with advice on projects and initiatives relating to the delivery of its Strategic Focus Area. This is to be achieved through increasing engagement and participation of volunteers, community groups and organisations within the community. Another function of the CDAC is to advocate and promote programs, initiatives, services and facilities that enhance the well-being of the community.

   It would appear from the observations of Council's Chief Executive Officer and Governance Officer that the CDAC has largely met to consider grant funding applications as its primary purpose, however the aforementioned functions are equally as important and perhaps CDAC should refocus its attention to the administration of such duties. The Chief Executive Officer, in discussions amongst the Leadership Team, has made it quite clear his intentions to direct further resources and attention to community engagement in the pursuit of place-making initiatives.

   Full details of the Committee's purpose and function are contained in the Terms of Reference **(Attachment 1).**

2. Delegation

   The CDAC currently has full delegation to spend public funds. Attachment A of the Committee's Terms of Reference reads as follows:-

   1. *The power pursuant to Section 137 of the Local Government Act 1999 to **expend Council's approved funds** budgeted and allocated for the Community Development and Advisory Committee specifically for the Community Partnership Grant Funding Programme, , subject to the Local Government Act 1999, any other relevant Act and Council's policies, practices and procedures in the exercise, performance or discharge of the functions or duties shown in the attached Terms of Reference (Community Development & Advisory Committee).*

The Council is elected by its community to discharge public funds as it sees fit. Handing over responsibility to community individuals, whilst well intended, brings into question issues of public perception in the equity of allocating grant funds, potential conflicts of interest, and disquiet from the community in the event that the allocation of funds as awarded by CDAC is ultimately retracted and allocated elsewhere. Council assuming the ability to ratify recommendations of CDAC quells any of the aforementioned concerns.

The Panel is asked to give consideration to the suitability, or otherwise, of the extent and nature of the Committee's financial delegations.

3. Membership

The Committee consists of:-

- Seven (7) Community Members;
- Two (2) Council Members; and
- One (1) Regional Development Australia (RDA) Barossa Representative.

While the above membership alone is not problematic, the composition imbalance presents as an issue given the fact that the Committee has full delegation. This means that elected members and community members are, at present, custodians of expending public funds.

In the event that the Council retracts the delegations afforded to CDAC, the membership composition imbalance reported above is inconsequential.

4. Conflicts of Interests

The new provisions of Sections 73, 74, 75, 75A and 75B of the *Local Government Act 1999* which commenced on 31 March 2016, criminalise certain breaches of the conflict of interest provisions and provide an entire new regime for the management of conflict of interest by both elected members and non-elected committee members.

It is the responsibility of each individual member of the Committee to declare any conflicts of interests that may arise.

5. Public Perception

Given the important role played by the CDAC in the allocation of public monies, the Panel is asked to give consideration to any public perception issues that may arise by virtue of its current terms of reference. This is particularly relevant in light of the creation of a new class of conflict of interests being, perceived interests, under Section 75 of the *Local Government Act 1999*.

6. Section 41 Committee Structure – holistic overview

The Panel is advised that the Chief Executive Officer is soon to embark on a substantive review and re-organisation of Council's administrative structure. Heavily linked to this, will be a review of the Section 41 Committees' structure to ensure alignment of functions and duties with the revised organisational structure. In the context of this review, it would be prudent for the Chief Executive Officer to provide the Panel, at the appropriate time, an overview of his intentions with respect to the various Committees' structure moving forward; CDAC being one of a number of Committees that will be reviewed, as well as the Environmental Management Advisory Committee (EMAC) which Council, at its most recent meeting, also recommended be reviewed.

Summary

Given that there are a number of significant issues with the CDAC, it is recommended that the Panel review the current Terms of Reference and make recommendations to the Council regarding any amendments to the same. It is specifically recommended that the full delegation to expend public funds be removed from the Committee's Terms of Reference. The CEO plans to undertake a review of all Council Committees in the imminent future.

Attachment 1
to report
4.2 – Community Development Advisory Committee
Review of Terms of Reference
dated 2 June 2016

Community Development Advisory Committee
Terms of Reference

1. Introduction

Pursuant to *Section 41* of the *Local Government Act 1999* ("the *Act*") the Council maintains a Committee to be known as the Community Development and Advisory Committee **(Committee)** for the purpose of enquiring into and reporting to Council in respect of those matters conferred upon it and as set out in these Terms of Reference.

2. Purpose

The purpose of the Community Development & Advisory Committee will be to:

- Provide advice to Council on projects and initiatives that it should consider in delivering on the Strategic Focus Area; Community Development and its associated outcomes and strategies within a 4 year rolling Business Plan;
- Report half yearly on progress of approved plans;
- Conduct an annual review of Council's performance in Community Development and identify potential projects for input into Council's Budget, and Long Term Financial Plan process; and
- Administer functions approved by Council to be administered by the Committee.

3. Specific Functions

- Provide Council with advice on the delivery of its Strategic Focus Area; Community Development through:
  - Increased engagement and participation of volunteers, community groups and organisations within the community;
  - Advocate and promote programs, initiatives, services and facilities that enhance the well-being of the community; and
  - Promoting and developing links between Council and its community.

- Promoting the Bi-Annual Business and Information Directory to all households in the District;
- Administer the Community Partnerships Fund for community based development initiatives in line with Council approved procedures; and
- Promote and sustain a Community Bus Service for the District.

4. Membership

4.1 Members of the Committee are appointed by the Council. The Committee shall consist of:

- Seven (7) Community Members;
- Two (2) Council Members; and
- One (1) Regional Development Australia (RDA) Barossa Representative.

4.2 Appointment to the Committee shall be for the term of the Council or as amended by Council.

4.3 In selecting the community members, Council will take into account geographical location of the candidates (to ensure a fair representation of the community), and their skills and experience relevant to the required functions of the Committee.

4.4 The Council shall appoint the Presiding Member of the Committee for a twelve (12) month period.

4.5 The Committee shall appoint the Deputy Presiding Member of the Committee for a twelve (12) month term.

5. Chairperson

When the Presiding Member and the Deputy Presiding Member are absent from a meeting the Committee Members may appoint a person from those present to act as the Chairperson for the duration of the meeting.

6. Quorum

The quorum necessary for the transaction of business shall be 50% plus one of the members of the Committee. A duly convened meeting of the Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Committee.

7. Voting

7.1 All decisions of the Committee shall be made on the basis of a majority decision of the members present.

7.2 Members present must vote on all resolutions of the Committee. Proxy votes are not permitted.

8. Meeting Frequency

8.1 The Committee shall meet bi-monthly, unless amended by Council.

8.2 Ordinary meetings of the Committee will be held at times and places determined by Council or, subject to a decision of Council, the Committee. A special meeting of the Committee may be called in accordance with the *Act*.

8.3 Notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and observers, no later than three (3) clear days before the date of the meeting. Supporting papers shall be sent to Committee members (and to other attendees as appropriate) at the same time.

8.4 The General Manager Corporate & Community Services shall ensure that the proceedings and resolutions of all meetings of the Committee, including recording the names of those present and in attendance are minuted and that the minutes otherwise comply with the requirements of the *Local Government (Procedure at Meetings) Regulations 2013~~00~~*.

8.5 Minutes of Committee meetings shall be circulated within five (5) days after a meeting to all members of the Committee and to all members of the Council and will (as appropriate) be available to the public.

9. Reporting to Council

9.1 Pursuant to *Section 41(8)* of the *Act* the Committee is responsible to and reports to Council through the Strategic Community & Governance Committee.

9.2 The Committee shall make whatever recommendations to the Strategic Community & Governance Committee it deems appropriate on any area within its Terms of Reference where in its view action or improvement is needed.

~~10. Delegations~~

~~In exercise of the powers contained in *Section 44* of the *Local Government Act 1999* the following powers and functions vested in or conferred in the Council under the *Act* are hereby delegated to the Committee as provided for in Attachment 'A'. Such delegations are to be reviewed on an annual basis.~~

~~11.~~10. Meeting Procedures

Procedures at meeting will be in accordance with Council's Code of Practice – Meeting Procedures and the requirements of the *Local Government (Procedures at Meetings) Regulations 201300*.

~~12.~~11. Administrative Resources

The General Manager Corporate & Community Services shall provide sufficient administrative resources to the Committee to enable it to adequately carry out its functions.

1~~2~~.1 The Committee shall:

1~~2~~.1.1 have access to reasonable resources in order to carry out its duties; subject to any budget allocation approved by Council;

1~~2~~.1.2 be provided with appropriate and timely training, both in the form of an induction program for new members and on an ongoing basis for all members;

1~~2~~.1.3 give due consideration to laws and regulations of the *Act*;

1~~2~~.1.4 at least once a year, review its own performance and Terms of Reference to ensure it is operating at maximum effectiveness and recommend changes it considers necessary to the Council for approval.

~~**Attachment 'A'**~~

~~**DELEGATIONS**~~

~~**1.** The power pursuant to *Section 137* of the *Local Government Act 1999* to expend Council's approved funds budgeted and allocated for the Community Development and Advisory Committee specifically for the Community Partnership Grant Funding Programme, , subject to the *Local Government Act 1999*, any other relevant Act and Council's policies, practices and procedures in the exercise, performance or discharge of the functions or duties shown in the attached Terms of Reference (Community Development & Advisory Committee).~~

District Council of Mallala	**4.3 Private Works Service – Draft Policy**
	Container No: **CON12/772** **Document No:** **D16/7660**
Report Date: **2 June 2016**	**Prepared by:** **Governance Officer**
Corporate Objective:	5.1 Effective governance, leadership and teamwork

Purpose:	For the Governance Advisory Panel to review, comment on and make recommendations to Council regarding Council's Private Works Service and the attached draft Private Works Policy.

Recommendation 1:	"that the Panel, having considered Item *4.3 – Private Works Service – Draft Policy* dated 2 June 2016, receive and note the report."
Recommendation 2:	"that the Panel recommends the adoption by Council of the draft Private Works Policy (Attachment 1)" Or "that the Panel recommends the adoption by Council of the draft Private Works Policy (Attachment 1) subject to the following amendments:- • [Details to be inserted at meeting of the Panel]."

Impact Summary

Organisational and Governance	
Financial	Nil
Legislation	*Local Government Act 1999* Governance Advisory Panel Terms of Reference
Risk	Budget impacts.
Consultation	Nil required.
Asset Management Plans	Nil.
Service Standards	Will strengthen Council's governance role and ensure accountability, transparency, consistency and efficiency across the organisation.

Background

The Panel, at its meeting on 13 April 2016, considered a preliminary review of Council's current Private Works Service. The Panel subsequently requested that Council prepare a report containing information and advice regarding how other like and non-like Councils conduct private works in their areas. The Panel also recommended that a policy be drafted regarding the provision of Council's Private Work Service.

Section 8(h) of the *Local Government Act 1999* requires Council to ensure that it uses its resources fairly, effectively and efficiently. Therefore in the context of good governance and administrative practice, the Panel is asked to consider the matters discussed below.

Discussion

<u>District Council of Mallala – Current Position</u>

The District Council of Mallala's current private works program has an allocated budget of $100,020.00 and involves the use of Council's staff and plant and equipment. At present, Council responds to private works requests with an unequivocal 'yes', but with certain parameters. The undertaking of private works falls outside of Council's core responsibilities, which raises a number of concerns:-

- Council's efficiency with regard to the use of its resources.
- Depreciation of Council's plant and equipment.
- Potential safety and liability issues.
- Impact on the delivery of Council's current maintenance program/service standards (evaluated by the number of customer complaints received).
- Taking away work from local/private contractors.
- Public perception issues arising from the above.

However, there are also benefits involved with the undertaking of private works. Some of these include:-

- Provides the opportunity to increase staff potential and expertise.
- Works are undertaken to Council's standards/specifications – no need for site inspections.
- Makes effective use of existing resources/plant with spare capacity.
- Builds networks and relationships within the community.
- Provides additional revenue streams for Council.

Other Councils

Below is a summary of the position held by other Councils in the area in relation to private works:-

- *The Barossa Council* – does not perform any private works at all, and have not done so for many years. Barossa Council relies on the numerous number of contractors within the district that, in their view, can undertake the work more efficiently than Council. Barossa does, however, construct a small number of Capital Works roads.

- *Wakefield Regional Council* – undertake private works for community groups and the Department of Planning, Transport and Infrastructure only.

- *Regional Council of Goyder* – undertake private works within their district only, using very similar methodology to Mallala's current practices.

Draft Private Works Policy

Council receives a range of requests to undertake a variety of tasks which are outside its core responsibilities. Such works can include the casual hire of plant and equipment, the provision of a full service to a customer and the tendering for commercial contract works. Often, this involves the Council taking on extra works over and above its own works, which can create issues with the completion of such works but also has the potential to impact on Council's resources and budget. These concerns have given rise to the implementation of the attached Draft Private Works Policy **(Attachment 1).**

The Draft Private Works Policy has been developed following internal consultation and a review of the Private Works Policies of other Councils. The purpose of the policy is to provide a framework for undertaking private works that ensures that the process is fair transparent, objective and consistent.

The policy gives Council absolute discretion with regard to any decisions to undertake private works.

Summary

The Panel is asked to review and provide its recommendations to the Council regarding Council's current Private Works Service and the attached draft Private Works Policy.

Attachment 1

to report

4.3 Private Works Service – Draft Policy

dated 2 June 2016

DRAFT Private Works Policy

District Council of Mallala	**Private Works Policy**	
	Version Adoption by Council: Date TBA **Resolution Number:** 2016/ **Current Version:** V1.0	
	Administered by: General Manager, Assets and Infrastructure	**Last Review Date:** 2016 **Next Review Date:** 2019
TRIM CON: 12/772 **DOC ID: D16/7674**	**Strategic Outcome: 5.4** Effective Strategic and performance management	

1. Objective

Section 188 (Fees and Charges) of the *Local Government Act 1999* allows Council to impose fees and charges for services supplied or works carried out at a person's request (subsection 1a, 1b and 1c).

This policy sets out Council's position on the undertaking of works by Council (or by sub-contractor engaged by Council) to a person(s) or company at their request. These works herein shall be referred to as 'private works'.

The objective of this policy is to create a framework for undertaking private works that ensures the process is fair, transparent, objective and consistent.

Section 8(h) of the *Local Government Act 1999* requires Council to ensure that it uses its resources fairly, effectively and efficiently.

2. Scope

This policy applies to all requests for private works including the commercial supply of materials and services (plant and equipment). It covers any work undertaken by Council upon agreement with a landowner, on private lands and/or public lands outside the responsibility of Council.

This policy specifically excludes work performed on Council owned or controlled land and assets or that is under the control of other levels of Government.

3. Definitions

Private works is any works and/or services undertaken by Council staff on a commercial basis on or associated with privately owned property or infrastructure (not owned by Council). Some examples include, but are not limited to:-

- Extension to or additional kerb crossovers;
- Grading of rural driveways;
- Maintenance of private parking areas including sweeping;
- Works to public infrastructure on behalf of private developers; or
- Works for other road, rail or service authorities.

4. Policy Statement

Council is committed to the principles of transparency, accountability and consistency, while ensuring that it uses its resources fairly, effectively and efficiently in accordance with the *Local Government Act 1999.*

DRAFT

5. Specific Provisions/Responsibilities

5.1 Undertaking of Private Works

The General Manager of Infrastructure & Assets reserves the right to refuse private works if it is deemed to be outside of Council's scope of works, timelines cannot be met, resource availability or for any other reason deeming the works unachievable by Council. The General Manage of Infrastructure & Assets will use their discretion with regard to priority of private works.

When undertaking private works Council shall ensure that all relevant approvals and/or information (e.g. building, native vegetation, and underground services) have been sought by the person(s) requesting the works and copies obtained by Council.

All works relating to new, upgraded or redevelopment of Council infrastructure shall be undertaken in accordance with Council's Standards and Requirements for the Design, Construction and Development of Infrastructure Assets and other relevant works related policies.

5.2 Applications

Applicants must complete the Private Works Application Form (available on Council's website) and return to Council for consideration prior to the commencement of any works.

5.3 Contracts/Payment

All minor works up to the value of $5,000 (exclusive of GST) shall be required to be paid to the Council prior to the commencement of works.

All works between the value of $5,001 - $20,000 will require a $5,000 deposit or cost of materials (whichever is higher) prior to the commencement of works as a minimum unless an alternative payment arrangement is agreed.

All works above the value of $20,000 will require a formal written contract and that contract shall indicate deposit details and a schedule of payment(s).

Prior to commencement of any works, payment for monies due prior to work or deposits identified in any written contract or quotation must be received in full.

Council may refuse to continue with the undertaking of any works should any prescribed monies due not be paid in full or within required time frames.

A Tax Invoice shall be issued for any monies due as per relevant contract details and in accordance with Council's current finance procedures.

The recovery of any monies due shall be recovered in accordance with Council's current debt collection practices.

5.4 Delegations

Council delegates to the Chief Executive Officer the authorisation to enter into arrangements for the conduct of private works consistent with this policy. The Chief Executive Officer may sub delegate authorisations commensurable with officer roles and responsibilities.

DRAFT

6. Related Documents

Asset Financial Management Policy
Asset Management Policy
Budget Management Policy
Code of Conduct for Council Employees
Delegations Policy
'Formal Instrument of Agreement – Private Works Application Form'
Procurement Policy
Records Management Policy
Resident Contributions to Road Sealing Policy
Whistleblowers Policy
Work Health Safety Procedures

7. Records Management

All documents relating to this Policy will be registered in Council's Record Management System and remain confidential where identified.

8. Document Review

This Policy will be reviewed periodically to ensure legislative compliance and that it continues to meet the requirements of Council, its activities and programs.

9. References

Local Government Act 1999
Whistle Blower Protection Act 1993

10. Further Information

Members of the public may inspect this Policy free of charge on Council's website at www.mallala.sa.gov.au or at Council's Principal Office at:

2a Wasleys Rd, Mallala SA 5502
On payment of a fee, a copy of this policy may be obtained.

Any queries in relation to this Policy must be in writing and directed to the Infrastructure & Assets Department.

DRAFT