



## **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

**Wednesday 13 April 2016 at 11:00am**

.....  
James Miller

**ACTING CHIEF EXECUTIVE OFFICER**

## **AGENDA**

### **1. ATTENDANCE**

- 1.1 Members Present
- 1.2 Members Apologies
- 1.3 Members Absent

### **2. CONFIRMATION OF MINUTES**

- 2.1 No Confirmation of Minutes

### **3. BUSINESS ARISING**

- 3.1 No Business Arising

### **4. REPORTS**

- 4.1 Governance Panel Terms of Reference (CON16/8)
- 4.2 Policy Introduction – Informal Gatherings Policy (CON16/8)
- 4.3 Policy Review (CON16/8)
- 4.4 Community Development Advisory Committee Review (CON16/8)
- 4.5 Police Presence at 9 November 2015 Council Meeting – Request for Explanation (CON16/8)
- 4.6 Private Works (CON16/8)

### **5. CONFIDENTIAL ITEMS**

- 5.1 Code of Conduct (Conflict of Interest) Complaint – Request for Investigation (CON16/8)
- 5.2 Code of Conduct (Conflict of Interest) Complaint – Request for Investigation (CON16/8)
- 5.3 Public Apology Resolution (CON16/8)

### **6. CLOSURE**

**WEDNESDAY 13 APRIL 2016****Items:**

- 4.1 Governance Panel Terms of Reference (CON16/8)
- 4.2 Policy Introduction – Informal Gatherings Policy (CON16/8)
- 4.3 Policy Review (CON16/8)
- 4.4 Community Development Advisory Committee Review (CON16/8)
- 4.5 Police Presence at 9 November 2015 Council Meeting – Request for Explanation (CON16/8)
- 4.6 Private Works (CON16/8)

	<b>4.1 Governance Advisory Panel Terms of Reference</b>
	<b>Container No: CON16/8</b> <b>Document No: D16/5175</b>
<b>Report Date: 13 April 2016</b>	<b>Prepared by: Governance Officer</b>
<b>Corporate Objective:</b>	5.1.3 Ensure governance and operational policies, procedures and activities align with organisational, legislative requirements and best practice.

<b>Purpose:</b>	For the Governance Advisory Panel to formally note its Terms of Reference (annexed to this report) and be informed about the manner in which business may be brought before the Panel for its consideration.
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<b>Recommendation 1:</b>	“that the Panel, having considered Item 4.1 – <i>Governance Advisory Panel Terms of Reference</i> dated 13 April 2016, receive and note the report.”
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## Impact Summary

### Organisational and Governance

Financial	Nil
Legislation	<i>Local Government Act 1999</i> <i>Governance Advisory Panel Terms of Reference</i>
Risk	Nil
Consultation	Nil
Asset Management Plans	Nil
Service Standards	Will strengthen Council's governance role, teamwork and performance, thereby improving service standards.

## Background

The Panel's Terms of Reference were adopted by Council at its Ordinary Meeting held on 15 February 2016.

## Discussion

The Panel's Terms of Reference are provided for information of the Panel members (**Attachment 1**). This document sets out the scope and Purpose of the Panel, and clarifies the role and function of the Panel.

It is expected that the Panel will consider a wide variety of governance related matters. It is important for Panel members to note that there are a number of limited ways in which matters can be included on an Agenda for the Panel, or matters can be brought to the attention of the Panel:

- The Chief Executive Officer includes a matter on an Agenda for a Meeting of the Panel because it is consistent with the Terms of Reference or required by another Council policy or procedure;
- The Council resolves to refer a matter to the Panel for its consideration;
- A member of the Panel brings forward a matter to the Panel by written notice of motion or a motion without notice and the Panel considers the matter;
- A person makes a deputation to the Panel (however, it is then a matter for the Panel to determine whether they wish to take any further action arising from the deputation);
- Either the Chair or the Panel or two members of the Panel request a special meeting of the Panel be held to deal with a particular matter or matters.

These processes aside, there is no general right of an elected member of the Council who is not a member of the Panel to insist or require the Panel to consider a particular matter.

The agendas and minutes of the Panel will be prepared and administered by Council's administration and distributed to Panel members in accordance with the requirements of the *Local Government Act 1999*.

## **Summary**

It is recommended that the Panel formally note its Terms of Reference. It is particularly important that the Panel and elected members of the Council are familiar with the way in which the Panel's Agenda will be formulated and the Panel will deal with its business.

**Attachment 1**  
to report 4.1  
dated 13 April 2016

**Governance Advisory Panel Terms of Reference**

	<b>Governance Advisory Panel</b>	
	<b>Terms of Reference</b>	
	<b>Adoption by Council:</b>	15 February 2016
	<b>Resolution Number:</b>	2016/040
<b>Administered by:</b>  Chief Executive Officer	<b>Last Review Date:</b>	February 2016
	<b>Next Review Date:</b>	February 2018
<b>TRIM CON:</b> CON16/8	<b>Strategic Outcome</b>	
	<b>5.1</b> Effective governance, leadership and teamwork.	

## 1. Establishment

- 1.1 Pursuant to Section 41 of the *Local Government Act 1999* (“the Act”) the Council establishes a Panel to be known as the Governance Advisory Panel (“the Panel”).
- 1.2 The Panel will continue past the life of the current Council, thereby making it a ‘standing committee’.

## 2. Functions

Subject to compliance with all legislation, policies, plans and procedures of the Council, the functions of the Panel are to:

- 2.1 review, monitor and provide advice to the Council in relation to the Council’s governance and legislative framework, policies and processes;
- 2.2 as requested, provide Council members with advice regarding their conflict of interest obligations under the Act;
- 2.3 as requested, consider, investigate and report on alleged breaches of the Elected Member Code of Conduct;
- 2.4 investigate and provide advice to the Council on alleged breaches of Council’s governance policies in accordance with the relevant governance policy;
- 2.5 recommend and provide training to Council members, Council Committees and senior staff with an emphasis on good governance practices, procedures and processes;

- 2.6 undertake performance reviews of Council's Section 41 Committees, including, but not limited to, delegated powers.

### **3. Membership**

Membership of the Panel shall consist of:

- 3.1 Three (3) independent members with experience in governance;
- 3.2 The Mayor of the Council;
- 3.3 The Deputy Mayor of the Council; and
- 3.4 Such other person(s) as the Council may determine from time to time.
- 3.5 Where a member of the Panel has a conflict of interest in a matter before the Panel, the member must not participate in any discussion or voting in relation to the matter and must not while such discussion or voting is taking place, be present or in the room or other place at which the matter is being discussed.
- 3.6 No additional allowance will be paid to the elected member representative over and above the allowance already received by the elected member in accordance with the *Local Government (Members Allowances and Benefits) Regulations 2010*.
- 3.7 The Independent Representatives to the Panel may be paid a sitting fee which shall be negotiated with the individual concerned and accepted by the Council. The Independent Representative may choose to receive no fee.
- 3.8 The Independent Representatives to the Panel will be aware of or receive training in the conflict of interest provisions of sections 73 and 74 of the Act.

### **4. Presiding Member**

- 4.1 The Chief Executive Officer will appoint from amongst the independent members of the Panel a Chairperson for a term of two (2) years to preside at meetings of the Panel and the Chairperson will, at the expiry of their term of office, be eligible for reappointment as Chairperson.
- 4.2 The Chairperson or nominee will represent the Governance Advisory Panel as spokesperson.

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- 4.3 Where the Presiding Member is unable to attend a meeting, one of the remaining independent representatives shall chair the meeting.

## 5. Quorum

A quorum for a meeting of the Panel will be three (3) members and no business can be transacted at a meeting of the Panel unless a quorum is present.

## 6. Meetings

- 6.1 Meetings of the Panel will be conducted in accordance with the Act, Part 3 of the *Local Government (Procedures at Meetings) Regulations 2013*, these Terms of Reference and any Code of Practice for Meeting Procedures adopted by the Council and applicable to the Panel.
- 6.2 Insofar as the Act, the *Local Government (Procedures at Meetings) Regulations 2013*, these Terms of Reference and any Code of Practice for Meeting Procedures adopted by the Council and applicable to the Panel do not specify a procedure to be observed in relation to the conduct of a meeting of the Panel, then the Panel may determine its own procedure.
- 6.3 In accordance with, and subject to, the Act and the *Local Government (Procedures at Meetings) Regulations 2013* all meetings of the Panel shall be open to the public unless the Panel has resolved to exclude the public from a meeting or part of a meeting pursuant to the Act.
- 6.4 The Panel shall, at its first meeting after being established and at its first meeting after the conclusion of a general election of the Council, determine the place, date and time meetings of the Panel will be held provided that:
- 6.4.1 The Panel will meet on such dates and at times as it determines provided that at least two (2) meetings are held per calendar year.
- 6.5 All decisions of the Panel shall be made on the basis of a majority decision of the Members present and in the event of a tied vote the matter be referred to the Council for decision.
- 6.6 The Panel shall act at all times in strict accordance with relevant legislation (being the Act and associated Regulations) and with written policies and guidelines of the Council which are relevant to the Panel in the performance of its functions;

- 6.7 The Panel does not enjoy the delegation of any powers, functions and duties of the Council. All decisions of the Panel will, therefore, constitute recommendations to the Council.

## **7. Reporting Responsibilities**

- 7.1 Minutes of a meeting of the Panel will be provided to all Panel members as soon as practicable after the meeting and, in accordance with the Act, to all Council members within five (5) days after the meeting. Minutes shall be presented to Council at the next Ordinary Council Meeting.
- 7.2 Agendas and Reports of the Panel forwarded to the Panel will also be forwarded to Council members for their information prior to the Panel meeting.
- 7.3 Where the Panel makes a recommendation to Council on a matter within the scope of these terms of reference, the matter will be listed as a separate agenda item for consideration of Council.
- 7.4 The Panel shall report annually to the Council with a summary of its activities.

## **8. Review**

These terms of reference will be subject to review by the Council on a two (2) year basis, or as determined by Council.

	<b>4.2 Policy Introduction – Informal Gatherings Policy</b>
	<b>Container No: CON16/8</b> <b>Document No: D16/5177</b>
<b>Report Date: 13 April 2016</b>	<b>Prepared by: Governance Officer</b>
<b>Corporate Objective:</b>	5.2.1 Promote transparent, open and honest communication and cooperation within Council, the community and its stakeholders.

<b>Purpose:</b>	For the Governance Advisory Panel to review, comment on and recommend to Council, the adoption of the attached mandated Informal Gatherings Policy.
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<b>Recommendation 1:</b>	“that the Panel, having considered Item 4.2 – <i>Policy Introduction - Informal Gatherings Policy</i> dated 13 April 2016, receive and note the report.”
<b>Recommendation 2:</b>	“that the Panel recommends to Council that the Council adopt the Informal Gatherings Policy as presented as Attachment 1 to this Report to the Panel”.  OR  “the Panel recommends to Council that the Council adopt the Informal Gatherings Policy as presented as Attachment 1 to this Report to the Panel, subject to the following alterations: <ul style="list-style-type: none"> <li>• [Details to be inserted at meeting of Panel]”.</li> </ul>

## Impact Summary

### Organisational and Governance

Financial	Nil
Legislation	<i>Local Government Act 1999 – Section 90(8a), (8b).</i>
Risk	Council has a legal obligation to adopt an Informal Gatherings Policy if it wishes to hold any such gathering. Failure to adopt the attached policy will therefore result in a breach of the legislation.
Consultation	This policy has been consulted upon with the Leadership staff. Recommendations from that consultation are included in the attached draft.
Asset Management Plans	Nil.
Service Standards	Will strengthen Council's governance role, teamwork and performance, thereby improving service standards.

## **Background**

The Informal Gatherings Policy is a proposed new policy for Council. It has been drafted following a circular from the LGA in February 2016 informing councils of amendments made to the *Local Government Act 1999* by the *Local Government (Accountability and Governance) Amendment Act 2015*.

The amendments commenced on 31 March 2016 and require councils to adopt a policy before holding any 'informal gatherings' under Section 90(8) of the *Local Government Act 1999*.

The draft (**Attachment 1**) has been developed following a review of the LGA Model Policy together with advice from the Minister for Local Government and Council's solicitors, Norman Waterhouse.

## **Summary**

The implementation of this policy will not only ensure compliance with the *Local Government Act 1999*, but will strengthen Council's governance role, teamwork and performance, thereby improving service standards.

**Attachment 1**  
to report 4.2  
dated 13 April 2016

**Policy Introduction – Informal Gatherings Policy**

	<b>DRAFT</b>	
	<b>Informal Gatherings Policy</b>	
	<b>Version Adoption by Council:</b> XXX	
	<b>Resolution Number:</b> XXX	
	<b>Current Version:</b> V1.0	
	<b>Administered by:</b> Chief Executive Officer	<b>Last Review Date:</b> 2016 <b>Next Review Date:</b> 2017
TRIM CON: 12/536 & 12/570 DOC ID: D16/1598	<b>Strategic Outcome 5.1:</b> Effective governance, leadership and teamwork.	

## 1. Objective

Open and transparent Council meetings and Committee meetings underpin representative democracy and ensure public confidence in Council’s decision-making processes. Informal gatherings, where appropriate, provide a valuable opportunity to enhance the decision-making processes by providing opportunities for Council and Committee Members to become better informed on issues and projects and seek further clarification.

This policy has been adopted to provide Council and Committee Members with sufficient opportunity to conduct planning sessions, to receive informal briefings, to partake in educational sessions, and to convene other informal gatherings without breaching the statutory requirements provided by the *Local Government Act 1999* (“the Act”).

The Act recognises that Council may hold ‘informal gatherings’ of Council and Committee Members in circumstances where there is no legal duty to gather in a place open to the public (as compared to meetings of the Council or Council Committees where there is a clear and unequivocal legal duty to meet in a place open to the public).

Section 90(8) of the Act allows such gatherings to be held provided that the discussion does not lead to a decision, or effectively obtain a decision, on a matter that would ordinarily be dealt with at a Council or Committee meeting. This policy reflects the intention of the legislation for informal gatherings to be used for briefing, planning and educational sessions and social events and is aimed at avoiding any perception that informal gatherings will be used to build consensus for council agenda items.

## 2. Scope

This Policy provides clear direction to Council Members, Committee Members and staff in relation to holding informal gatherings, as well as assurance to the public that actual or effective decisions are not made at an informal gathering.

Informal gatherings, briefing sessions, planning sessions and other discussions captured under this policy are those gatherings that are arranged by the Council, either by the Chief Executive Officer or by the elected Council.

Section 90(8) lists just a few examples of instances in which informal gatherings may be held. The purpose of informal gatherings includes, but is not limited to, allowing the Mayor, Council Members, Committee Members and Senior Management Staff to:-

- Exchange draft information on proposals that are being worked on by staff or ideas that need to be explored.
- Receive training or briefing sessions, including any mandatory training.
- Undertake workshops or planning sessions associated with the development of policies or strategies.
- Provide a forum for discussion on proposed staff initiatives and discuss options for engaging the community in determining Council's strategic corporate direction.
- Assist Council Members, Committee Members and staff to develop trust and understanding.
- Encourage informal communication between Council Members, or between Council Members and staff.

Informal gatherings and discussions of these kinds will be used solely for the purpose of information sharing and not for the purpose of debating issues, building consensus positions or otherwise discharging Council's deliberative and decision-making functions.

Informal gatherings of Council or Committee Members and Council staff are, by their nature, a non-compulsory gathering of members of the Council. However, all Council Members and Committee Members are encouraged to attend as these sessions, particularly those designed to provide history, context or additional information, are provided to assist Council Members to carry out their functions.

### **3. Policy Statement**

Council will ensure that informal gatherings are only held in circumstances where there is no legal duty to gather in a place open to the public. The Chief Executive Officer and the Council are responsible for ensuring informal gatherings and discussions are conducted in accordance with the Act.

#### **3.1 General Business of the Council**

Informal gatherings will not be used for the purpose of conducting the general business of the Council or to stifle debate on issues that may subsequently be dealt with by the Council at a formal meeting. However, informal gatherings may be used to

discuss issues that involve strategy or policy or other matters of Council administration and to brief Council Members on issues relating to their decision-making function.

### **3.2 Decisions**

Council Members **cannot** make an actual or purported decision or issue a direction to staff at informal gatherings. Council acknowledges its legal requirements that formal decision-making must only occur at formal meetings of the Council or otherwise pursuant to the Council's delegations.

### **3.3 Format**

There will be no standing orders or formal meeting procedures. Informal gatherings will generally be led by the Chief Executive Officer.

Those in attendance at an informal gathering will act respectfully and show courtesy for the person talking. The Mandatory Code of Conduct for Council Members will still apply in the informal setting.

### **3.4 Venue**

The venue for informal gatherings will be determined by the Chief Executive Officer, but will generally be the Mallala Council Chambers

### **3.5 Date and Time**

Informal gatherings, such as workshops and briefing sessions, will generally be held on the same day as an Ordinary Council Meeting (generally the third Monday of every month), or as otherwise determined by the Chief Executive Officer.

### **3.6 Access**

Unless the Council specifically resolves to the contrary, all informal gatherings conducted in accordance with this Policy are to be conducted in a place that is not open to the public. Unless the Council specifically resolves to the contrary, the public are not permitted to attend such informal gatherings.

A schedule of informal gatherings that constitute planning sessions, briefings, training sessions or workshops will be published on Council's website to ensure that members are informed of these occurrences.

### **3.7 Agendas**

There will be no formal program or agenda for informal gatherings (workshops, training or briefing sessions). The Chief Executive Officer may use their discretion to prepare list of items for discussion.

#### **4 Related Documents**

Code of Conduct for Council Employees

Code of Conduct for Council Members

#### **5 Records Management**

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

#### **6 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.

#### **7 References**

*Local Government Act 1999 – Sections 90(8),(8a) & (8b)*

#### **8 Further Information**

Members of the public may inspect this Policy free of charge on Council's website at [www.mallala.sa.gov.au](http://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 Governance Officer.

	<b>4.3 Policy Review</b>
	<b>Container No: CON16/8</b> <b>Document No: D16/5182</b>
<b>Report Date: 13 April 2016</b>	<b>Prepared by: Governance Officer</b>
<b>Corporate Objective:</b>	5.1.3 Ensure governance and operational policies, procedures and activities align with organisational, legislative requirements and best practice.

<b>Purpose:</b>	For the Governance Advisory Panel to review, comment on and recommend any changes to Council relating to the following policies:- <ol style="list-style-type: none"> <li>1. Elected Member Grievance Procedure</li> <li>2. Complaints Handling Process under Council Members' Code of Conduct</li> <li>3. Council Members Allowances and Benefits Policy</li> </ol>
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<b>Recommendation 1:</b>	“that the Panel, having considered Item 4.3 – <i>Policy Review</i> dated 13 April 2016, receive and note the report.”
<b>Recommendation 2:</b>	“that the Panel recommends to Council that the Council revokes the current Elected Member Grievance Procedure.”
<b>Recommendation 3:</b>	“that the Panel notes the March 2016 adoption of Council’s Complaints Handling Process under Council Members’ Code of Conduct.”  OR  “that the Panel notes the March 2016 adoption of Council’s Complaints Handling Process under Council Members’

	<p>Code of Conduct (Attachment 2(b) to this Report to the Panel) and recommends to Council that the following alterations be made to the Policy:</p> <ul style="list-style-type: none"> <li>• [Details to be inserted at meeting of Panel].”</li> </ul>
<p><b>Recommendation 4:</b></p>	<p>““that the Panel notes the adoption by Council of the Council Members Allowances and Benefits Policy as presented as Attachment 3 to this Report to the Panel.”</p> <p>OR</p> <p>“that the Panel notes the adoption of Council’s Complaints Handling Process under Council Members’ Code of Conduct (Attachment 3 to this Report to the Panel) and recommends to Council that the following alterations be made to the Policy:</p> <ul style="list-style-type: none"> <li>• [Details to be inserted at meeting of Panel].”</li> </ul>

## Impact Summary

### Organisational and Governance

Financial	Nil
Legislation	<i>Local Government Act 1999</i>
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 as well as a Council Members Allowances and Benefits Policy. These are mandatory policies that ensure good governance practices.
Consultation	Internal consultation with staff, as well as the Governance Manager at Light Regional Council.
Asset Management Plans	Nil
Service Standards	Will strengthen Council's governance role, teamwork and performance, thereby improving service standards.

## Background

Attached (**Attachment 1**) is the current 'Elected Member Grievance Procedure' for the Panel's review and comment. This procedure was adopted by Council in 2011. The Elected Member Grievance Procedure is not a mandatory policy as outlined by the Local Government Association of South Australia (LGA).

Also attached (**Attachment 2(a)**) is the recently adopted 'Complaints Handling Process under Council Members' Code of Conduct'. This Policy was endorsed by Council in March 2016 and replaced Council's previous 'Council Member Code of Conduct Breaches Procedure' (track changes as per **Attachment 2(b)**). It is mandatory for Councils to have a Complaints Process under the Council Members' Code in order to ensure good governance practices.

The final policy for the Panel's consideration is the 'Council Members Allowances and Benefits Policy' (**Attachment 3**). This policy is quite complex and has been the subject of several reports to council. The most recent review of this policy involved an attempt to keep a proper record of kilometres travelled by the Mayor by completing and signing a Travel Log Form (Attachment A to the policy) for the use of the Council Fuel Card. However, the inclusion of the Mayor Travel Log Form has not been endorsed by Council.

The above policies have been provided to the Panel for review following consultation with executive staff as well as Light Regional Council's Governance.

## Discussion

### 1. Elected Member Grievance Procedure

The Elected Member Grievance Procedure outlines how Council deals with grievances made in relation to suspected improper conduct by Elected Members. The Procedure also addresses the protection of individuals making those reports.

The Elected Member Grievance Procedure is quite outdated and no longer required as grievances and other issues relating to the conduct of Elected Members are addressed in the revised 'Complaints Handling Process under Council Members' Code of Conduct' and will now be dealt with by the Governance Advisory Panel.

## 2. Complaints Handling Process under Council Members' Code of Conduct

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. The procedure also extends to Section 41 Committees, with the exception of Council's Development Assessment Panel (CDAP).

Council's previous 'Council Member Code of Conduct Breaches Procedure' provided that complaints relating to an alleged breach of Part 2 of the Code of Conduct would be addressed to the Chief Executive Officer for investigation. However, the Governance Advisory Panel will now be dealing with such complaints.

The revised policy incorporates the previous Council Member Code of Conduct Breaches Procedure with the template provided by Light Regional Council. Light Regional Council's Complaints Handling Process has been approved by its Governance Advisory Panel with input from Norman Waterhouse Lawyers.

## 3. Council Members Allowances and Benefits Policy

History regarding the Council Members Allowances and Benefits Policy is outlined below:-

- 23 March 2015 – Item 17.3 – Mayor Travel Expenses
  - Resolution 2015/088 – it was resolved to that this change of practice be reflected in the Council Members Allowances and Benefits Policy and be effective from the provision of the Fuel Card.
  - Resolution 2015/089 – it was resolved that a travel log be kept by the Mayor for the use of the Council Fuel Card.
- 13 April 2015 – Item 17.4 – Further Review of Council Members Allowances and Benefits Policy
  - Resolution 2015/106 – updated Council Members Allowances and Benefits Policy was endorsed by Council however there was no mention of the Mayor Travel Log.
- Council have a monthly record of the Mayor's Council Business Meetings attended outlining the date and name of meetings however there is no

record of the actual kilometres travelled. This information is currently presented to Council on a monthly basis.

To rectify the above, Council updated the Policy as endorsed (Resolution 2015/106) in April 2015 and included – ‘Attachment A – Mayor Travel Log Form’ to ensure the capture of a detailed monthly travel log of Council business undertaken by the Mayor and Council Records retained on this matter (Resolution 2015/089).

### **Summary**

Given the establishment of the Governance Advisory Panel, it is recommended that Council rescinds the current Elected Member Grievance Procedure and adopts both the revised Complaints Handling Process under Council Members’ Code of Conduct and revised Council Member Allowances and Benefits Policy. This will ensure alignment and consistency across the organisation and will strengthen Council’s governance role, teamwork and performance.

**Attachment 1**  
to report 4.3  
dated 13 April 2016

**Policy Review**

	<b>Elected Member Grievance Procedure</b>	
	<b>Version Adoption by Council:</b> 2011 <b>Resolution Number:</b> 2011/788 <b>Current Version:</b> V1.1	
	<b>Administered by:</b> Chief Executive Officer	<b>Last Review Date:</b> 2011 <b>Next Review Date:</b> 2013
<b>TRIM CON:</b> 12/570	<b>Strategic Outcome 5.1:</b> Effective governance, leadership and teamwork.	

## 1. Objective

The District Council of Mallala has declared through its Code of Conduct 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 Elected Members and Employees in the course of their roles and responsibilities.

Council acknowledges its responsibility to provide and support the rights of individuals to be free from any form of discrimination and harassment while engaged in activities undertaken as part of their association with Council.

As a local government institution and an employer, the Council, through Elected Members and the Senior Management Team, will take all reasonable steps to eliminate discrimination and harassment of or by any of its representatives.

## 2. Scope

This procedure outlines how Council deals with grievances made in relation to suspected improper conduct by Elected Members. It addresses the protection of individuals making those reports. This procedure applies to the Chief Executive Officer, Senior Managers and Elected Members of Council.

## 3. Definitions

**Complainant** - A person who has lodged a grievance against the Code of Ethics and under the provisions contained within this procedure.

**Conciliator** - A person familiar with Councils Code of Ethics and this Grievance Procedure, and skilled in the facilitation of conflict resolution.

**Conciliation** - The process that enables the complainant and the respondent to discuss fully all issues relating to the grievance and, if possible, reach resolution of the grievance through negotiation. Conciliation seeks to ensure that there is no recurrence of the behaviour that gave rise to the grievance, and that no victimisation occurs. As most respondents are genuinely unaware that their actions have given offence, conciliation provides the opportunity for them to understand the nature and impact of their behaviour and thereby modify it.

**Confidentiality** - Confidentiality is defined here to ensure any information provided under this procedure is only disclosed to those legitimately involved in resolving the grievance or as required by the Local Government Act 1999.

Confidentiality must be maintained to:

- prevent victimisation or defamation of the parties involved,

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Before using a printed copy, verify that it is the current version.

- facilitate prompt resolution of the grievance.

It is a breach of confidentiality to:

- discuss the matter with individuals not legitimately involved in the process,
- unnecessarily disclose information pertaining to any enquiry or grievance.

**Discrimination** - Unlawful discrimination means treating an individual and/or groups less favourably because of their sex, marital status, pregnancy, sexuality, race, disability, age, or political or religious beliefs.

**Informant** - Any person who appropriately discloses public interest information about Council that concerns:

- illegal activity or corruption,
- mal-administration, including impropriety, negligence or waste.

**Investigation** - A search for evidence connecting or tending to connect a person (either a natural person or body corporate) with conduct that infringes the criminal law or the policies and standards set by Council.

**Natural Justice** - Natural justice refers to a due process that displays fairness to all parties. It includes the right to be heard, the right of reply, the right to be treated fairly and the right to be informed of allegation(s) being made.

**Public Officer** - A member of a local government body or an officer or employee of a local government body.

**Reportable Conduct** - Conduct by a person or persons connected with Council which is:

- dishonest;
- fraudulent;
- illegal (including theft, drug sale/use, violence, or threatened violence and criminal damage against property);
- in breach of commonwealth or state legislation or local by-laws;
- unethical (either representing a breach of the Council's Code of Ethics or generally);
- an unsafe work-practice.

**Respondent** - The person who is, or each of the persons who are, alleged to have done the act(s) to which the grievance relates.

#### 4. Policy Statement

This procedure is based on the philosophy of using conciliation, education and training as the principal approach to the prevention of grievances against its Code of Ethics, it is designed to assist in the resolution of grievances by:

- providing a consistent and transparent process for managing grievances,
- investigating, and dealing with grievances promptly impartially and professionally.

## **5. Roles and Responsibilities**

### **5.1 Elected Members**

- 5.1.1 Responsible for ensuring that they cooperate in the maintenance of an environment consistent with Councils Code of Ethics ensuring that they do not engage in any unlawful behaviour or acts that will result in less favourable treatment of any individual or group.
- 5.1.2 Any member approached by someone wishing to discuss a specific instance of possible grievance covered by the Code of Ethics and this procedure should refer that person to this procedure.
- 5.1.3 All members must respect the rights of both complainant and respondent in line with natural justice and procedural fairness.
- 5.1.4 Members who provide or access information relating to any grievance are responsible for ensuring appropriate confidentiality of the information is maintained.
- 5.1.5 All members must refrain from victimisation of any person associated with a grievance.
- 5.1.6 Develop and implement strategies to facilitate the elimination and prevention of grievances against the Code of Ethics, including strategies aimed at raising awareness of the Code of Ethics and this procedure.
- 5.1.7 Monitor and review the implementation of this procedure.

### **5.2 CEO Performance Appraisal Panel (Panel)**

- 5.2.1 Investigate alleged grievances against the CEO in line with the requirements of this procedure.
- 5.2.2 Respect the rights of both complainant and CEO in line with natural justice and procedural fairness.
- 5.2.3 Where the Panel has access or is provided information relating to any grievance they are responsible for ensuring appropriate confidentiality of the information is maintained.

### **5.3 Chief Executive Officer (CEO)**

- 5.3.1 Act as first point of contact for advice or referral as identified.
- 5.3.2 Maintain appropriate confidentiality with respect to information disclosed to them regarding allegations of grievances.
- 5.3.3 Provide advice on the operation of this procedure and explain options for resolving the grievance.

5.3.4 Act in an ongoing supporting role in the resolution of the grievance.

5.3.5 The CEO has the right to withdraw as support person if there is a conflict of interest.

## **5.4 Role of Conciliators**

5.4.1 Resolve the grievance.

5.4.2 Neutrality and respect for both parties in line with natural justice will be demonstrated.

5.4.3 Facilitate communication between the complainant and the respondent,

5.4.4 Attempt to achieve a workable resolution that is mutually agreed by both parties,

5.4.5 Conduct investigation and conciliation process,

5.4.6 Provide a written report to Council.

## **6. General Requirements**

6.1 Grievances made under these procedures should be made no later than three (3) months after the alleged event(s) occurred.

6.2 The complainant will be advised that a grievance may be made to an appropriate external agency. If the respondent has been notified of the grievance, the respondent will be made aware of the complainant's right to proceed in this manner.

6.3 Allegations of behavioural breaches of the Code of Ethics Policy between Elected Members, to be resolved through the use of mediation only.

6.4 Where the matter is pursued through an external authority, including the Commissioner for Equal Opportunity, Human Rights and Equal Opportunity Commission, or South Australian Ombudsman's Office, internal action will cease.

6.5 Complainants are encouraged to seek advice in person; others may approach the CEO for advice on their behalf. However, if a complainant decides to proceed, only grievances received from the person(s) complaining (not by others on their behalf) will be investigated and/or conciliated.

## **7. Records**

A confidential file will be created and maintained by the CEO to provide a record of the grievance and subsequent action.

## **8. Disclosure Process**

Disclosures against an Elected Member or Employee can be made to the CEO in person, by telephone, in writing or via email.

Written disclosures must be addressed to:

**CONFIDENTIAL**  
**Chief Executive Officer**  
**2A Wasleys Rd**  
**Mallala, SA 5502.**

Disclosures against the Chief Executive Officer can be made to the Mayor in person, in writing or via email.

Written disclosures must be addressed to:

**CONFIDENTIAL**  
**Mayor**  
**District Council of Mallala**  
**2A Wasleys Rd**  
**Mallala, SA 5502.**

A grievance made by any person that relates to an alleged breach of the Code of Ethics should:

- identify the provision(s) of the Code which it alleges have been breached,
- provide any available evidence that supports the alleged grievance.

In cases where the complainant has chosen to leave their name and contact details, this information will remain confidential at all times. The identity of the complainant will not be implicated or divulged to anyone unless their express permission has been obtained to do so, except under circumstances where the matter is required to be reported to the Police. Under these circumstances the law may require disclosure of the identity of the complainant in legal proceedings.

## **9. Related Documents**

Elected Member Code of Conduct.

## **10. Records Management**

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

## **11. Document Review**

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

## **12. References**

Local Government Act 1999  
South Australian Equal Opportunity Act 1984  
Work Health and Safety Act 2012

### **13. Further Information**

Members of the public may inspect this Procedure free of charge on Council's website at [www.mallala.sa.gov.au](http://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 Procedure may be obtained.

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

**Attachment 2 (a)**  
to report 4.3  
dated 13 April 2016

**Policy Review**

	Complaints Handling Process 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	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 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](http://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 Panel who will 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  
District Council of Mallala Governance Advisory Panel  
PO Box 18  
MALLALA SA 5502

The Chief Executive Officer (CEO) may participate as an advisor if requested by the Panel.

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 Panel may:

- a) seek to resolve the matter internally, including through conciliation or mediation;
- b) investigate the complaint;
- c) refer the complaint for independent investigation;
- d) refer the complaint to the Local Government Governance Panel or
- e) 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.

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 to the 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 and a copy of the complaint.
- c. Where, after consideration, the matter is found to have merit, the complaint will be investigated.

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

3.2.1 Only matters which are determined to be related to Part 2 of the Code of Conduct will be dealt with internally and only with the agreement of the parties.

3.2.2 The Panel must ensure that the principles of natural justice and procedural fairness are observed.

3.2.3 The matter will be assessed initially by the Panel Chairperson who will 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 Where a complaint progresses to an investigation, the Panel may engage an independent consultant(s) to assist with the investigation.

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

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.

3.2.6 Neither the Mayor nor the Chief Executive Officer will investigate a complaint.

3.2.7 If, following investigation by the Panel, a breach of Part 2 of the Code is found, the breach must be the subject of a report to the Council (clause 2.24 of the Code). The report may recommend to the Council, and the Council may 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 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 member to repay monies to the Council.

#### 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, the Ombudsman or the Office for Public Integrity. Alleged breaches of Part 3 made to the Panel or to the Office for Public Integrity may be referred to the Ombudsman for investigation.
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.

- 5.7 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 Act 1999* 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. 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
- 8. Records Management**  
All documents relating to this Procedure will be registered in Council's Record Management System and remain confidential where identified.
- 9. 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.
- 10. Further Information**  
Members of the public may inspect this Procedure free of charge on Council's website at [www.mallala.sa.gov.au](http://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.

**Attachment 2 (b)**  
to report 4.3  
dated 13 April 2016

**Policy Review**

	<a href="#">Complaints Handling Process under Council Members' Code of Conduct</a> <del>Council Member Code of Conduct Breaches Procedure</del>	
	Version Adoption by Council: <del>2013</del> Resolution Number: <del>2013/478</del> Current Version: <del>V3.02.0</del>	
	Administered by: Chief Executive Officer	Last Review Date: <del>20163</del> Next Review Date: <del>20175</del>
TRIM CON: 12/570	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 Code)~~ 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 ~~sustained~~ substantiated.

In 2016 the District Council of Mallala established the Governance Advisory 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 ~~Part 2 of~~ the Code of Conduct for Council Members. (A copy of the code may be accessed on Council's website [www.mallala.sa.gov.au](http://www.mallala.sa.gov.au)).

This procedure also applies to the appointed Independent Members of Council's Section 41 Committee's, 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'.

Field Code Changed

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### ~~3. Definitions~~

~~**Complainant**— A person who has lodged a grievance against the Code and under the provisions contained within this procedure.~~

~~**Conciliator**— A person familiar with the Code and this Grievance Procedure, and skilled in the facilitation of conflict resolution.~~

~~**Conciliation**— The process that enables the complainant and the respondent to discuss fully all issues relating to the grievance and, if possible, reach resolution of the grievance through negotiation. Conciliation seeks to ensure that there is no recurrence of the behaviour that gave rise to the grievance, and that no victimisation occurs. As most respondents are genuinely unaware that their actions have given offence, conciliation provides the opportunity for them to understand the nature and impact of their behaviour and thereby modify it.~~

~~**Confidentiality**— Confidentiality is defined here to ensure any information provided under this procedure is only disclosed to those legitimately involved in resolving the grievance or as required by the *Local Government Act 1999*.~~

~~Confidentiality must be maintained to:~~

- ~~– prevent victimisation or defamation of the parties involved,~~
- ~~– facilitate prompt resolution of the grievance.~~

~~It is a breach of confidentiality to:~~

- ~~– discuss the matter with individuals not legitimately involved in the process,~~
- ~~– unnecessarily disclose information pertaining to any enquiry or grievance.~~

~~**Discrimination**— Unlawful discrimination means treating an individual and/or groups less favourably because of their sex, marital status, pregnancy, sexuality, race, disability, age, or political or religious beliefs.~~

~~**Informant**— Any person who appropriately discloses public interest information about Council that concerns:~~

- ~~– illegal activity or corruption,~~
- ~~– mal administration, including impropriety, negligence or waste.~~

~~**Investigation**— A search for evidence connecting or tending to connect a person (either a natural person or body corporate) with conduct that infringes the criminal law or the policies and standards set by Council.~~

~~**Local Government Governance Panel (LGGP Chair)**— means the independent Panel established by the Local Government Association (LGA) to assist Councils to deal with complaints made in relation to the Code of Conduct.~~

~~**Natural Justice**— Natural justice refers to a due process that displays fairness to all parties. It includes the right to be heard, the right of reply, the right to be treated fairly and the right to be informed of allegation(s) being made.~~

~~**Public Officer**— A member of a local government body or an officer or employee of a local government body.~~

~~**Repeated**— done or occurring again several times (three (3) or more) in any calendar year, in the same way.~~

~~**Reportable Conduct**— Conduct by a person or persons connected with Council which is, but not limited to:~~

- ~~– dishonest;~~
- ~~– fraudulent;~~

- ~~- illegal (including theft, drug sale/use, violence, or threatened violence and criminal damage against property);~~
  - ~~- in breach of commonwealth or state legislation or local by laws;~~
  - ~~- unethical (either representing a breach of the Mandatory Code of Conduct or generally);~~
  - ~~- an unsafe work practice.~~
- ~~**Respondent** – The person who is, or each of the persons who are, alleged to have done the act(s) to which the grievance relates.~~

#### ~~4. Policy Statement~~

~~This procedure is based on the philosophy of using conciliation, education and training as the principal approach to the prevention of grievances against the Mandatory Code of Conduct, it is designed to assist in the resolution of grievances by:~~

- ~~— providing a consistent and transparent process for managing alleged breaches,~~
- ~~— investigating, and dealing with alleged breaches promptly impartially and professionally.~~

#### ~~5. General Requirements~~

~~Where the matter is pursued through an external authority, including but not limited to, the Independent Commissioner Against Corruption, State Ombudsman's Office, SA Police or an external Governance Panel, internal action will cease.~~

### 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

~~Where an alleged breach occurs the complainant should report the allegation, in writing, to the Council, addressed to the CEO.~~

~~Written disclosures must be addressed to:~~

~~**CONFIDENTIAL**~~

~~**Chief Executive Officer**~~

~~**2A Wasleys Rd**~~

~~**Mallala, SA 5502.**~~

##### 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 Panel who will be responsible for receiving and managing the complaint as the nominated delegate pursuant to clause 2.18 of the Code.

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Complaints should be marked 'Confidential' and addressed to:

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

The Chief Executive Officer (CEO) may participate as an advisor if requested by the Panel.

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, ~~and~~
- ~~must be made within three (3) months of the alleged breach having occurred.~~

~~Complainants 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 Independent Commissioner Against Corruption Act.~~

~~Anonymous complaints will not be investigated by Council.~~

~~5.2.2 The CEO will be responsible for the receiving and referral of a complaint and will advise the Principal Member (or if it relates to the Principal Member, their deputy) of receipt of a complaint. The Principal Member (or deputy) will determine whether the complaint relates to:~~

- ~~behavior which falls under Part 2 of the Code;~~
- ~~misconduct which triggers action under Part 3 of the Code; or~~
- ~~criminal or corrupt behavior.~~

3.1.3 Having regard to the seriousness of the allegation and information provided, the Principal Member-Panel may:

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- a) seek to resolve the matter internally, including through conciliation or mediation;
- b) investigate the complaint;
- c) refer the complaint for independent investigation; ~~or~~
- d) refer the complaint to the Local Government Governance Panel ~~(or similar independent entity) where one exists within the region with Council as a partner, alleged breaches and subsequent complaints against the Code should be investigated and actioned by this body in the first instance; or~~
- e) 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.

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 Within three (3) days of receipt of an allegation, the Council Member who is the subject of the complaint will be advised by the ~~Principal Member Panel~~ of the complaint and provided with a copy of the complaint. The Council Member and the Person making the complaint will be advised of the manner in which the ~~Principal Member Panel~~ intends to deal with the complaint.

3.1.7 The Complaint handling procedures are as follows:

- a. Receipt of the complaint will be acknowledged to the 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 and of its content.
- c. Where, after consideration, the matter is found to have merit, the complaint will be investigated.

#### ~~5.4 Alleged Breach of Part 2 – Internal Response~~

~~5.4.1 Only matters which are determined to be of a minor nature will be dealt with internally and only with the agreement of the parties. The Principal Member may hold meetings with the complainant and the Council Member and may seek mediation and conciliation between the parties in an attempt to resolve the matter to the satisfaction of all parties. This may be appropriate, for example, where the complainant is also a Council Member.~~

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~~5.4.2 The Principal Member must ensure that the principles of natural justice and procedural fairness are observed.~~

~~5.4.3 Where the matter is resolved by the Principal Member to the satisfaction of all the parties, the matter will be closed and no further action will be taken. The Principal Member will send written confirmation within five (5) business days to all the parties confirming that the matter has been resolved and provide a report to the next available Ordinary meeting of the Council.~~

~~5.4.4 Where the matter cannot be resolved, the Principal Member will, in the first instance, refer the original complaint to a Local Government Regional Governance Panel (or similar independent entity) where one exists within the region or alternatively the Local Government Governance Panel or an independent person qualified in conflict resolution. Neither the Principal Member, CEO nor any other employee of Council will investigate a complaint.~~

#### ~~5.5 Part 2 Referral to the Local Government Governance Panel~~

~~5.5.1 Where there has been an allegation that a Council Member has breached Part 2 of the Code the complaint may be referred to a Local Government Regional Governance Panel (or similar independent entity) where one exists within the region, an independent person qualified in conflict resolution, or alternatively the independent Local Government Governance Panel by the Principal Member under this procedure, without further reference to Council.~~

~~Where a preference for referral cannot be reached the decision may be made by a resolution of Council.~~

~~Complaints referred to a Local Government Regional Governance Panel or Local Government Association Governance Panel will specify the grounds of the complaint, set out the circumstances of the complaint and be accompanied by any other material that is available to support the complaint.~~

~~The matter will be assessed initially by the Panel Chairperson who will determine the process to be followed and the person who will deal with the matter. The matter may be dismissed if it is frivolous, vexatious, misconceived or lacking in substance. Where a complaint progresses to an investigation, a report will be prepared by the specific Panel and will be provided to the Council. The report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Council under the Code of Conduct.~~

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~~5.5.2 A breach of Part 2 of the Code must be the subject of a report to a public meeting of the Council.~~

### 3.2 Alleged Breach of Part 2 – ~~Internal Response~~ Referral to the Panel

3.2.1 Only matters which are determined to be related to Part 2 of the Code of Conduct will be dealt with internally and only with the agreement of the parties.

3.2.2 The Panel must ensure that the principles of natural justice and procedural fairness are observed.

3.2.3 The matter will be assessed initially by the Panel Chairperson who will 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 Where a complaint progresses to an investigation, the Panel may engage an independent consultant(s) to assist with the investigation.

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

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.

3.2.6 Neither the Mayor nor the Chief Executive Officer will investigate a complaint.

3.2.7 If, following investigation by the Panel, a breach of Part 2 of the Code is found, the breach must be the subject of a report to the Council (clause 2.24 of the Code). The report may recommend to the Council, and the Council may 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 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 member to repay monies to the Council.

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#### 4. Appeals

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

#### ~~5.7 Repeated Breaches of Part 2 of the Code~~

~~Where a Council Member breaches Part 2 of the Code on three (3) or more occasions in any one (1) calendar year they will be in breach of Part 3 of the Code, irrespective of the nature of the behaviour. By resolution of Council the matter will be referred to the appropriate authority.~~

#### 5. Part 3 - Mandatory Code (Misconduct)

5.1 Any person may report an alleged breach of Part 3 of the Code to the Council Panel as the Council's delegate, the Ombudsman or the Office for Public Integrity. Alleged breaches of ~~this Part made to Council~~ Part 3 made to the Panel or to the Office for Public Integrity may be referred to the Ombudsman for investigation.

5.2 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 ~~Principal Member of the Council or CEO, Panel~~, the Ombudsman or the Office for Public Integrity.

5.3 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.

5.4 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.

5.5 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.

5.6 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.

5.7 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 Act 1999* 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. 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, 29 August 2013.

Independent Commissioner Against Corruption Act 2012

Code of Conduct for Council Members, as published in the South Australian Government Gazette 29 August 2013, Directions and Guidelines issued by ICAC

Caretaker Policy

**8. Records Management**

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

**9. 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.

**10. Further Information**

Members of the public may inspect this Procedure free of charge on Council's website at [www.mallala.sa.gov.au](http://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 Procedure may be obtained.

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

**Attachment 3**  
to report 4.3  
dated 13 April 2016

**Policy Review**

	<b>Council Members Allowances and Benefits Policy</b>	
	<b>Version Adoption by Council:</b> <del>13 April 2015</del> <b>Resolution Number:</b> <del>2015/106</del> <u>2016/</u> <b>Current Version:</b> V3	
	<b>Administered by:</b> Chief Executive Officer	<b>Last Review Date:</b> <del>2015</del> <u>2016</u> <b>Next Review Date:</b> <del>2016</del> <u>2017</u>
TRIM CON: 12/543	<b>Strategic Outcome 5.1:</b> Effective governance, leadership and teamwork.	

### 1. Objective

This Policy has been adopted to accommodate *Section 77(1)(b) of the Local Government Act 1999 (“the Act”)*, by specifying the types of expenses that will be reimbursed without the need for specific approval of Council each time a claim is made. It will outline the process for Council Members to obtain reimbursement of those expenses.

Council Members are paid an allowance for performing and discharging their functions and duties as a Member of the Council. The role of a Council Member is:

- (i) to participate in the deliberations and civic activities of Council;
- (ii) to keep Councils objectives and policies under review to ensure that they are appropriate and effective; and
- (iii) to keep Councils resource allocation, expenditure and activities, and the efficiency and effectiveness of its service delivery, under review.

The allowance paid to Council Members under *Section 76 of the Local Government Act 1999* is prescribed by the Remuneration Tribunal.

### 2. Scope

This Policy will cover the payment of an annual allowance to Council Members, the provision of facilities and support and the basis on which these are made available to Council Members.

This Policy summarises the provisions of the *Act* and *Regulations* in respect to Council Members allowances, the provision of facilities and support, reimbursement of the different types of expenses, the circumstances in which those expenses will be or can be reimbursed and what benefits Council Members receive that must be recorded for the purposes of maintaining the Register of Allowances and Benefits.

### 3. Policy Statement

Council will ensure that payment of Council Member allowances, the reimbursement of expenses, and the provision of facilities and support is accountable and transparent, and in accordance with the *Local Government (Members Allowances and Benefits) Regulations 1999 (“the Regulations”)*.

Note: Electronic version in TRIM is the controlled version. Printed copies are considered uncontrolled.  
Before using a printed copy, verify that it is the current version.

This Policy is underpinned by the following principles:

- Council Members should not be out-of-pocket as a result of performing and discharging their Council functions and duties;
- to assist Council Members in performing or discharging their official functions and duties they are entitled to be provided with a range of necessary facilities and support and to be reimbursed for expenses as specified in this Policy;
- any reimbursements claimed by Council Members must be for expenses actually and necessarily incurred in performing and discharging their official Council functions and duties, which will be assessed according to the role of a Council Member under the *Act*;
- Council encourages continued relevant professional training and development for Council Members. This is seen as being imperative and necessary in terms of good governance and to the improved performance of their functions and duties; and
- the accountability of the Council to its community for the use of public monies.

#### **4. Specific Provisions / Responsibilities**

##### **4.1 Roles and Responsibilities**

This Policy will apply to all Members of Council, who have an obligation to follow the procedures set by this Policy.

Councils Chief Executive Officer (CEO) (or delegate) has the duty to:

- maintain the Register of Allowances and Benefits;
- initiate an annual review of allowances paid to Council Members for the Councils consideration and review; and
- implementing and monitoring expense reimbursement procedures in accordance with the *Act, Regulations* and this Policy.

##### **4.2 Allowances and Reimbursements**

Council Members are entitled to receive an annual allowance from the Council pursuant to *Section 76 of the Act* for performing and discharging their official functions and duties.

These will be adjusted annually in accordance with legislative requirements and by the Consumer Price Index (All Groups Index for Adelaide). According to the Remuneration Tribunal Determination of 2014 the allowance for Council Members is:

Mayor	\$36,400
Deputy Mayor	\$11,375
Councillors	\$ 9,100

An additional allowance in the form of a sitting fee is also payable for Members of Council who are presiding Members of other committees where the Member is not the Mayor or Deputy Mayor or presiding Member of a prescribed committee.

Allowances will be paid on a quarterly basis in advance pursuant to *Regulation 4(2)* of the *Regulations*.

A Council Member is entitled to decline payment of the allowance under *Section 76(12)* of the *Act*. Where a Council Member declines payment of the allowance it must be recorded in the Register of Allowances and Benefits.

There is no requirement for Council Members to provide evidence to Council of expenditure incurred in respect to the payment of the allowance.

#### **4.3 Travel and Child / Dependent Care**

In addition to the allowance paid under *Section 76* of the *Act*, Council Members are entitled to receive reimbursement for travelling within the area of Council and child / dependant care expenses associated with attendance at Council and Council committee meetings, in accordance with *Section 77(1)(a)* of the *Act*, and *Regulation 5* of the *Regulations* and as detailed below:

- reimbursement for travel expenses is restricted to 'eligible journeys' (as defined in *Regulation 3*) by the shortest or most practicable route and to that part of the journey within the Council area i.e. any travelling outside the Council area in order to attend Council or Council committee meetings is not reimbursable under *Section 77(1)(a)* of the *Act*. For reimbursement for travel outside the Council area refer to "Additional Reimbursement, Facilities and Support" below;
- where a Council Member travels by private motor vehicle, the rate of reimbursement is as prescribed in *Section 82KX (1)(a)* of the *Income Tax Assessment Act 1936*. Travel by taxi, bus or other means of public transport is reimbursed on the basis of expenses 'actually and necessarily incurred', but is still limited to 'eligible journeys' by the shortest or most practicable route and the part of the journey that is within the Council area;
- reimbursement for child / dependant care expenses actually or necessarily incurred by the Council Member as a consequence of the Council Members attendance at a meeting of Council or Council committee. Child / dependant care is not reimbursed if a relative of the Council Member who ordinarily resides with the Council Member provides the care. A definition of 'relative' is contained in *Section 4* of the *Act*; and
- to receive reimbursement for these entitled expenses (travel and child / dependant care) each Council Member is required to complete a Councillor Travelling Claim Form and/or Councillor Dependant Care Claim Form and submit it to the Accounts Payable

Officer. For the purposes of administrative efficiency Council Members are requested to submit these forms on a monthly basis.

#### **4.4 Additional Reimbursement, Facilities and Support**

Additional prescribed expenses incurred by Council Members that are capable of being reimbursed by the Council are expenses that do not fall into the type of prescribed reimbursement outlined above, but may still be expenses incurred in performing or discharging official functions and duties.

*Section 77(1)(b)* of the *Act* provides that the Council may approve the reimbursement of additional expenses as set out in the *Regulations* incurred by Council Members, either on a case-by-case basis or under a policy adopted by Council.

These additional types of reimbursed expenses should also be distinguished from the payment of allowances by the fact that the allowance is paid without the Council Member needing to make a claim. They can also be distinguished from the reimbursement of entitled travel and child / dependant care expenses associated with attendance at Council and Council committee meetings upon the basis that claims for those types of expenses do not require the Council's approval, either by a resolution or under a policy because reimbursement of those expenses is specifically mandated by the *Act*.

*Regulation 6* of the *Regulations* sets out the types of additional prescribed expenses that may be reimbursed under *Section 77(1)(b)* being:

- an expense incurred in the use of a telephone, facsimile or other telecommunications device, or in the use of a form of electronic communication, on the business of Council;
- travelling expenses incurred by the Member as a consequence of the Members attendance at a function or activity on the business of Council; and
- travelling expenses incurred by the Member in undertaking an eligible journey to the extent that those expenses are attributable to travel outside the area of the Council.

Expenses for the care of:

- (i) a child of the Member; or
- (ii) a dependant of the Member requiring full-time care.
  - incurred by the Member as a consequence of the Members attendance at a function or activity on the business of the Council; and
  - expenses incurred by the Member as a consequence of the Members attendance at a conference, seminar, training course or other similar activity which is directly or closely related to the performance or discharge of the roles and duties of a Council Member.

#### 4.5 Travelling Expenses

Pursuant to *Section 77(1)(b)* of the *Act* the Council approves the reimbursement of a Council Member in travelling:

- to a function or activity on the business of the Council; and
- in undertaking an eligible journey to the extent those expenses are attributable to travel outside the area of the Council,
- travel related to attendance at a Council or Council Committee meeting being an “eligible journey” (as defined in *Regulation 3*), as it is attributable to travel outside the Council area, up to a maximum of 50 km per return journey;

Council Members will receive reimbursement for expenses incurred in travelling to a function or activity on Council business. The following conditions apply to these expenses:

- travel both within and outside the Council area must be incurred by the Council Member as a consequence of attendance at a function or activity on the business of Council. A ‘function or activity on the business of the Council’ includes official Council functions including Mayoral receptions, opening ceremonies, dinners, citizenship ceremonies and official visits etc; inspection of sites within the Council area which relate to Council or Committee agenda items; meetings of community groups and organisations as a Council appointed representative – but not to attend meetings of community groups or organisations when fulfilling the role of a local representative, and not as a Member of the Board of any such community group or organisation;
- representatives attending as the proxy will be reimbursed where the Council Member, as the appointed Member, is unable to attend, they will not be entitled to reimbursement where they are attending as an interested party;
- reimbursement is restricted to the shortest or most practicable route;
- where a Council Member travels by private motor vehicle, the rate of reimbursement is as prescribed in *Section 82KX(1)(a)* of the *Income Tax Assessment Act 1936*, (this clause relating to the reimbursement of expenses for travel by private motor vehicle is not applicable for any claim by the Mayor as they have been allocated a Council Fuel Card);
- car parking fees will be reimbursed (where they are a consequence of a Council Member attending a function or activity on the business of the Council); and
- travel by taxi, bus, or other means of public transport will be reimbursed on the basis of being expenses where they are incurred as a consequence of the Member’s attendance at a function or activity on the business of the Council however such travel must still be by the shortest or most practicable route.

#### 4.6 Other Expenses

Pursuant to *Section 77 (1)(b)* of the *Act* the Council approves reimbursement of:

- expenses incurred for the care of a child of a Council Member or a dependent of the Council Member requiring full time care as a consequence of the Council Members attendance at a function or activity on the business of Council; and
- expenses incurred by the Council Member as a consequence of the Council Members attendance at a conference, seminar, training course or other similar activity that is directly or closely related to the performance or discharge of the roles or duties of the Council Member. Expenses will only be reimbursed for attendance at conferences, seminars, etc which have been approved by Council. Where attendance at the conference, seminar etc is approved for incidentals as per the Council Member Training and Development Policy.

Supporting receipts for all re-imbusement claims must be provided at least monthly to the Accounts Payable Officer in order to validate the claimed reimbursement. Claims for reimbursement provided to Council three (3) months post the date of attendance may not be accepted by Council.

#### 4.7 Facilities and Support

The reimbursement of any other expense not covered by this Policy and prescribed in *Regulation 6* must be approved by resolution of Council.

In addition to allowances and the reimbursement of expenses, *Section 78* of the *Act* provides that Council can provide facilities and forms of support for use by its Council Members to assist them to perform or discharge their official functions and duties.

Council must consider and specifically approve the particular facility and support as necessary or expedient to the performance or discharge of all Council Members official functions or duties. In approving the provision of facilities and support *Section 78* requires that any such services and facilities must be made available to all Council Members on a uniform basis, other than those facilities or support specifically provided to the Principal Member set out below. All Council Members are provided with the following:

- Ipad.

Council has resolved to make available to the Principal Member (and to any acting Principal Member appointed during the Principal Members absence) the following additional facilities and support to assist them in performing and discharging their official functions and duties:

- mobile telephone or a phone allowance.
- Provision of a Council Fuel Card.

#### **4.8 Reimbursement for Private Use**

Each Council Member is solely responsible for those facilities released into their care and / or control for the duration of their term in office.

All facilities must be returned to Council at the end of each term in office, upon the office of a Council Member becoming vacant, or earlier at the request of the CEO.

If the facilities provided to the Council Member are damaged or lost the Council Member must lodge a written report with the General Manager Corporate & Community Services.

The use of Council facilities, support and / or services by Council Members for campaign or election purposes is not permitted under any circumstances on the basis it is not necessary or expedient to the performance or discharge of a Council Member's official functions or duties under the *Act*.

#### **4.9 Expenses and Support Requiring Council Approval**

Any expenses, additional reimbursements and facilities and support not detailed in this Policy will require the specific approval of Council prior to any expense being incurred, additional reimbursements being paid, benefits being received and facilities and / or support being provided.

#### **4.10 Claims for Reimbursement**

Council Members are required to provide details of kilometres travelled and / or evidence of expenses incurred to support all reimbursements claimed.

All claims for reimbursement must be submitted to the Accounts Payable Officer on the forms provided for this purpose on a monthly basis for the purposes of maintaining the Register of Allowances and Benefits.

Reimbursement of expenses will only be paid to a Council Member upon presentation of the form and adequate evidence supporting the claims made.

#### **4.11 Other Benefits Received**

There is no express interpretation in the *Act* of the term "benefits" received or provided to Council Members. However, it is common for Council to incur costs or pay for expenses (or provide a non monetary benefit) for the "benefit" of Council Members in the course of, or related to the performance of the Council Members role, functions or duties, as opposed to reimbursing them. Where the Council pays up-front for expenses that would otherwise be reimbursable, or provides Council Members with facilities or services that can be quantified for each Member, these are provided to Members for their "benefit". For example if a Council

Member attends at the ALGA conference in Canberra in November of any year, and the Council meets all or any of the costs associated with that attendance upfront, that is a “benefit” provided to the Council Member. Another example of a “benefit” is where the Council provides, at its own cost, all Council Members with business cards for their use in performing their official functions and duties.

The cost of “benefits” needs to be quantified for each Council Member (to the extent they can be) on a quarterly basis and recorded in the Register of Allowances and Benefits pursuant to *Section 79(1)* of the Act as a “benefit” provided to that Council Member.

#### **4.12 What is a “Benefit?”**

There is no legislative definition that constitutes a “benefit” paid, payable or provided to a Council Member. The term needs to be considered in the context of its use in *Section 79(1)(c)* of the Act and the general conspectus of *Chapter 5, Part 5* of the Act. It is a ‘catch all’ term (in addition to the terms ‘allowances’, ‘reimbursement’, ‘facilities’ and ‘support’) that constitutes expenditure by or on persons in public office made as a result of being a public official (in other words a Council Member). Monies expended are public monies and there is a public interest and element of accountability about recording where monies are expended.

#### **4.13 Register of Allowances and Benefits**

Pursuant to *Section 79* of the Act, the CEO must maintain a Register in which shall be kept a record of:

- the annual allowance paid or payable to each Council Member under *Section 76* of the Act;
- any expenses reimbursed to a Council Member under *Section 77(1)(b)* of the Act; and
- the details of any other benefits paid or payable to or provided for the benefit of a Council Member by the Council.

Those reimbursements paid under *Section 77(1)(a)* of the Act are not required to be recorded in the Register.

The CEO is required to record in the Register changes in the allowance or a benefit payable to, or provided for the benefit of, Council Members and the provision of a discretionary reimbursement (*Section 77(1)(b)* of the Act) or a benefit not previously recorded in the Register.

The CEO will update the Register each quarter and therefore each Council Member is required to provide their claim form for reimbursement to the Accounts Payable Officer on the last business day of each quarter.

The Register of Allowances and Benefits is available for inspection by Members of the public, free of charge, at the Councils Principal office during ordinary business hours. Copies or extracts of the Register are available for purchase upon payment of a fixed fee.

## **5. Related Documents**

[Mayor Travel Log Form](#)

Councillor Dependant Care Claim Form

Councillor Travelling Claim Form

Council Member Training and Development Policy

Register of Allowances and Benefits

## **6. Records Management**

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

## **7. 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.

## **8. References**

*Income Tax Assessment Act 1936*

*Local Government Act 1999*

*Local Government (Members Allowances and Benefits) Regulations ~~1999~~2010*

## **9. Further Information**

Members of the public may inspect this Policy free of charge on Council's website at [www.mallala.sa.gov.au](http://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 Governance Officer.



## MAYOR TRAVEL LOG FORM - UTILISING COUNCIL FUEL CARD

Month:.....

Day	Date	PURPOSE OF ELIGIBLE JOURNEY Council Business - Meeting/Function (including address of destination)	Km/s within district	Maximum return trip 50kms Km/s outside district
e.g.Thursday	e.g.26/11/15	Special Council Meeting – Mallala Council Chambers, Redbanks Rd Mallala	15	0
<b>Total</b>				

**Travel Log Expenses Declaration**

I, ..... declare that the above travel expenses were incurred by me for entitled and Council approved related business.

SIGNED .....DATE.....

Note: Electronic version in TRIM is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.

	<b>4.4 Community Development Advisory Committee Review</b>
	<b>Container No: CON16/8</b> <b>Document No: D16/5184</b>
<b>Report Date: 13 April 2016</b>	<b>Prepared by: Governance Officer</b>
<b>Corporate Objective:</b>	5.1 Effective governance, leadership and teamwork

<b>Purpose:</b>	For the Governance Advisory Panel to review, comment on and make recommendations to Council regarding the current structure, function and powers of the Community Development Advisory Committee (CDAC).
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<b>Recommendation 1:</b>	“that the Panel, having considered Item 4.4 – <i>Community Development Advisory Committee Review</i> dated 13 April 2016, receive and note the report.”
<b>Recommendation 2:</b>	“that the Panel considers and notes that the Community Development Advisory Committee’s Terms of Reference (Attachment 1 to this report to the Panel) are adequate for its purpose and do not require any amendment”  OR  “that the Panel recommends to Council that the Community Development Advisory Committee’s Terms of Reference (Attachment 1 to this report to the Panel) be altered as follows: <ul style="list-style-type: none"> <li>• [Details to be inserted at meeting of Panel].”</li> </ul>

## Impact Summary

### Organisational and Governance

Financial	Nil
Legislation	<i>Local Government Act 1999</i> Community Development Advisory Panel Terms of Reference. Governance Advisory Panel Terms of Reference.
Risk	Breaches of Code of Conducts Unauthorised Spending of Public Funds
Consultation	Nil required.
Asset Management Plans	Nil.
Service Standards	Will strengthen Council's accountability and transparency.

## Background

The *Local Government Act 1999* (SA) sets out the legislative standards that need to be adhered to in order to ensure transparency and accountability within Local Government. This in turn ensures the sustainability of Council's long-term performance.

The Community Development Advisory Committee (CDAC) was established in March 2015. Attached for the Panel's consideration are the CDAC's Terms of Reference **(Attachment 1)**.

In the context of good governance and administrative practice, the Panel is asked to consider the following matters with respect to the:-

1. Delegation
2. Membership
3. Conflicts of Interest
4. Public Perception

These will be discussed below.

## Discussion

### 1. Delegation

The CDAC currently has full delegation to spend public funds. The Terms of Reference, at number 10, states:-

*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.*

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

## 2. Membership

The Terms of Reference state that the members of the committee are appointed by Council. The Committee consists of:-

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

In light of its activities, the Panel is asked to consider the suitability or otherwise of the current composition of the Panel.

## 3. Conflicts of Interests

A number of stakeholders associated with the Committee have outside affiliations to clubs/groups etc. Whilst this is not unusual or improper in itself, this inevitably leads to conflicts of interest arising in respect of matters to be considered by the Committee.

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 entirely new regime for the management of conflict of interest by both elected members and non-elected committee members. This provides a timely opportunity to review the terms of reference in this context.

## 4. 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*.

## **Summary**

Given that there are a number of significant issues with the CDAC, it is recommended that the Panel undertake a review of the Committee's terms of reference, with a view to making recommendations to the Council regarding their suitability or the need for any amendment to the same.

**Attachment 1**  
to report 4.4  
dated 13 April 2016

**Community Development Advisory Committee Review**

	<b>Community Development and Advisory Committee (non prescribed) Terms of Reference</b>	
	<b>Adoption by Council:</b>	10 March 2015
	<b>Resolution Number:</b>	(2015/058)
	<b>Administered by:</b>  General Manager Corporate & Community Services	<b>Last Review Date:</b> 10 March 2015  <b>Next Review Date:</b> 2017
<b>TRIM CON:</b> 12/1100	<b>Strategic Outcome</b> <b>1.5</b> A safe community	

## 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 2000*.

**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. Meeting Procedures**

Procedures at meetings will be in accordance with Council's Code of Practice – Meeting Procedures and the requirements of the *Local Government (Procedures at Meetings) Regulations 2000*.

## 12. 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.

### 12.1 The Committee shall:

- 12.1.1 have access to reasonable resources in order to carry out its duties; subject to any budget allocation approved by Council;
- 12.1.2 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;
- 12.1.3 give due consideration to laws and regulations of the *Act*;
- 12.1.4 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.

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**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).

Page 4 of 4

	<b>4.5 Police Presence at 9 November 2015 Council Meeting – Request for Explanation</b>
	<b>Container No: CON16/8</b> <b>Document No:</b>
<b>Report Date: 13 April 2016</b>	<b>Prepared by: Governance Officer</b>
<b>Corporate Objective:</b>	5.1.3 Ensure governance and operational policies, procedures and activities align with organisational, legislative requirements and best practice.

<b>Purpose:</b>	For the Governance Advisory Panel to review, comment on and provide recommendation(s) to Council regarding the information and request contained within this report.
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<b>Recommendation 1:</b>	“that the Panel, having considered Item 4.5 – <i>Police Presence at 9 November 2015 Council Meeting – Request for Explanation</i> dated 13 April 2016, receive and note the report.”
<b>Recommendation 2:</b>	“that the Panel request that a report be prepared by the Council’s Acting Chief Executive Officer and presented to the next meeting of the Panel regarding the circumstances under which police attendance: <ul style="list-style-type: none"> <li>• was requested for the Special meeting of Council of 9 November 2015; and</li> <li>• will be requested for future meetings of Council, Council Committees, or other public meetings arranged or promoted to by Council.” </li></ul> <p>OR</p> “that the Panel resolves that it does not wish to consider the matter further.”

## Impact Summary

### Organisational and Governance

Financial	Nil
Legislation	<i>Local Government Act 1999</i> <i>Work Health and Safety Act 2012</i>
Risk	Nil
Consultation	Nil
Asset Management Plans	Nil
Service Standards	Nil

## **Background**

On 9 November 2015 Council held a Special Council Meeting at the Mallala Council Chambers to discuss the proposed relocation of the principal office of Council from Mallala to Two Wells.

Police were present at the meeting at the request of Council's then Chief Executive Officer.

Cr Steve Jones has requested that the Panel give consideration to the circumstances that gave rise to the attendance of Police at this meeting.

## **Discussion**

Item 4.1 of this agenda notes the manner in which business may be brought to the Panel for its consideration. A single elected member of the Council, who is not a member of the Panel, is not empowered to bring forward an item of business for the consideration of the Panel.

In order for the Panel to deal with this matter, it is necessary for the Panel to specifically resolve that it wishes to consider the matter at a future meeting and that a report should be prepared for its consideration on that basis.

In the alternative, the Panel may determine that it does not wish to receive a report in relation to this matter.

## **Summary**

Councillor Jones wishes for this matter to be investigated further by the Panel. The Panel should determine whether it wishes to receive a report in relation to this matter.

	<b>4.6 Private Works</b>
	<b>Container No: CON16/8</b> <b>Document No: D16/5188</b>
<b>Report Date: 13 April 2016</b>	<b>Prepared by: Governance Officer</b>
<b>Corporate Objective:</b>	5.1 Effective governance, leadership and teamwork

<b>Purpose:</b>	For the Governance Advisory Panel to review, comment on and provide advice and recommendations to Council regarding its current private works service.
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<b>Recommendation 1:</b>	“that the Panel, having considered Item 4.6 – <i>Private Works</i> dated 13 April 2016, receive and note the report.”
<b>Recommendation 2:</b>	“that the Panel requests that the Acting Chief Executive Officer prepare a report, obtain information and provide advice regarding how other like and non-like Councils conduct private works in their areas.”
<b>Recommendation 3:</b>	“that the Panel requests that the report requested in recommendation 2 above provide, for the Panel’s consideration, a draft policy regarding the provision of Council’s private works service.”

## Impact Summary

## Organisational and Governance

Financial	Nil
Legislation	<i>Local Government Act 1999 – Section 188</i>
Risk	Nil
Consultation	Nil
Asset Management Plans	Nil
Service Standards	Nil

## **Background**

The District Council of Mallala has for many years provided a private works service to the community. This has involved entering into many contracts and tenders.

Private works involves the use of Council's plant and equipment as well as personnel.

## **Discussion**

At present, Council has an allocated budget of \$100,020.00 to undertake a variety of private works within the Council's area.

It is suggested that the Governance Advisory Panel undertakes a review of Council's current private works service. In particular, it is recommended that the Panel:-

1. Consider how other Councils undertake private works within their areas; and
2. Give consideration to the Introduction of a private works policy to govern the operation of the current service and ensure good governance.

Acting Chief Executive Officer, Mr James Miller, has identified public perception concerns regarding the use of Council's plant, machinery and resources to undertake works on private land. Some issues that may arise include:-

- Depreciation of Council's plant and machinery;
- The impact on capital program (does the private work initiative impact on the delivery of our own program?); and
- Concerns surrounding Council tendering against local private contractors for work.

## **Summary**

A review of Council's current private works service is recommended in order to ensure that Council's time and resources are being used effectively. It is also important from a good governance perspective.

**WEDNESDAY 13 APRIL 2016****Items:**

- 5.1 Code of Conduct (Conflict of Interest) Complaint – Request for Investigation (CON16/8)
- 5.2 Code of Conduct (Conflict of Interest) Complaint – Request for Investigation (CON16/8)
- 5.3 Public Apology Resolution (CON16/8)