

Code of Conduct

Originating Officer Manager Corporate Governance - Kate McKenzie

Corporate Manager Manager Corporate Governance - Kate McKenzie

General Manager Chief Executive Officer - Tony Harrison

Report Reference GC210525F01

Confidential ☒

Confidential Motion

That pursuant to Section 90(2) and (3)(a) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, Manager Corporate Governance and Governance Officer, be excluded from the meeting as the Council receives and considers information relating to Code of Conduct, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential, given the information relates to the conduct of Elected Members.

REPORT OBJECTIVE

For Council to consider a complaint relating to Councillor Masika and determine how to proceed in accordance with the Council Member Code of Conduct Procedure for Investigating Complaints.

EXECUTIVE SUMMARY

A complaint has been received regarding the conduct of Councillor Masika and the potential that confidential information may have been released to a resident. The matter relates to the release of an email trail regarding Glandore Oval and the installation of new cricket nets and the removal of a memorial rose garden. This information has now been used by the resident on the City of Marion Facebook page. A copy of email is included as Attachment 1.

Council is required to consider the complaint in line with the Code of Conduct (Attachment 2) and the Council Member Code of Conduct Procedure for Investigating Complaints (Attachment 3). Council must determine what category the complaints falls within - either behavioural, misconduct or criminal.

Behavioural matters are dealt with by Council (including dismissal of the complaint), misconduct matters must be referred to the Office of Public Integrity and Criminal matters must be referred to the relevant authority.

Councillor Masika will be provided an opportunity to provide the Council with a personal explanation prior to the item being considered. This personal explanation will be recorded within the meeting minutes.

RECOMMENDATION

That Council determines how it wishes to deal with the Code of Conduct complaint for:

- 1. Councillor Masika**
- 2. In accordance with Section 91 (7) and (9) of the Local Government Act 1999 the Council orders that the report, attachments and minutes of the report having been considered in confidence under Section 90(2) 3(a) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2021.**

GENERAL ANALYSIS

On the 12 May 2021, a complaint was received regarding Councillor Masika and the potential that confidential information has been released to a resident.

The matter has been raised with Mayor Hanna and Councillor Masika has been advised of the alleged complaint.

Copies of the Council Member Code of Conduct and the Council Member Code of Conduct Procedure for Investigating Complaints are included as Attachments 2 and 3.

Council is required to consider the complaint and determine how to proceed.

Code of Conduct

The Code of Conduct for Council Members is separated into three parts:

1. Behaviour which falls under part 2
2. Misconduct which triggers action under part 3 of the Code
3. Criminal and corrupt behaviour.

The first step for Council is to determine what section of the Code the complaint relates to: 1. behaviour, 2. misconduct or 3. criminal.

Behavioural matters can be dealt with either internally by Council directly, an independent person or the Local Government Governance Panel. Misconduct matters must be referred to the Office of Public Integrity and Criminal matters must be referred to the relevant authority.

Procedure:

Section 3.1 of the Procedure raises a number of items for Council to consider when making its determination.

If the matter is deemed to be behavioural, Section 4 of the Procedure then provides Council with four (4) options to consider if the matter relates to a behavioural code:

1. seek to resolve the matter internally
2. refer the matter to an independent person of Council's choice
3. refer the complaint to the Local Government Governance Panel or
4. dismiss the allegation

Options for Council to consider:

After determining the type of Code of Conduct, if Council determines that the matter is behavioural, Council then needs to consider if Councillor Masika have breached the Code of Conduct.

Option 1 - further information required

If Council feels that further information is required to assess if a breach has occurred it may:

- request further information be brought to Council before a determination is made
- refer the matter to an independent person for further advice/investigation
- refer the matter to the Local Government Governance Panel for investigation. The Panel Manager will make an initial assessment and may form a provisional conclusion or else recommend the matter proceed to a full investigation. The Panel will only invest those matters that relate to behaviour.

If this option is progressed, the Council must keep the report, minutes and referral confidential until such time as the report is finalised.

Option 2 - no breach

If Council determines that no breach of the Code of Conduct has occurred, it may resolve to dismiss the matter. This dismissal (including the reasoning for the dismissal) must be recorded in the minutes. The Procedure requires the minutes, together with this report needs to remain confidential unless authorisation is sought from the parties involved for the matter to be released.

Note: if Council wishes to dismiss the allegation, Council must be certain that no breach has occurred.

Option 3 - breach has occurred

If Council determines that a breach of the Code has occurred and requires no further information, in accordance with the procedure, the Council must detail its decision making and by resolution:

- 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.

If Council does determine a breach has occurred, it must be recorded in the Conduct register available on Councils website

Attachment

#	Attachment
1	Attachment 1 - Code of Conduct
2	Attachment 2 - Code of Conduct for Council Members
3	Council-Member-Code-of-Conduct-Procedure-for-Investigating-Complaints