

# **ATTACHMENT TO AGENDA ITEM**

**Special Meeting**

**27 January 2016**

**Agenda Item 4.3      Alleged Contraventions of Local Government Act 1989  
and Councillor Code of Conduct**

**Attachment 1      Report on Alleged Contraventions of Local Government  
Act 1989 and Councillor Code of Conduct - Maddocks  
Lawyers - 22 December 2015..... 6**

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**Date**

22 December 2015

**Subject****Alleged contraventions of *Local Government Act 1989* and Councillor  
Code of Conduct****Questions**

You have asked us to advise you on whether the conduct found to be proven by the Worklogic Investigation into Mr Gavin Cator's complaints against Councillors Patterson, Oroszvary and Ryan constitutes a breach of the *Local Government Act 1989 (Act)* and the Greater Shepparton City Council Councillor Code of Conduct (**Code**).

**Summary of advice**

*Below is a summary of our advice. Please read it in conjunction with the detailed advice that follows.*

**Councillor Patterson**

Allegation	Breach of Act	Breach of Code
CP1 (Overarching allegation)		
CP3	✓	✓
CP5	X	X
CP7	X	X
CP9	✓	✓
CP11	✓	✓
CP13	✓	✓

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**Councillor Oroszvary**

Allegation	Breach of Act	Breach of Code
CO1 (Overarching allegation)		
CO3	X	X
CO5	X	X

**Councillor Ryan**

Allegation	Breach of Act	Breach of Code
CR1 (Overarching allegation)		
CR5	X	X
CR6	X	X
CR9	X	X
CR11	X	X
CR13	X	X

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Catherine Dunlop

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## Detailed analysis

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### Background

1. By letter dated 11 March 2015, Mr Gavin Cator, Council's then Chief Executive Officer, made a complaint against Councillors Patterson, Oroszvary and Ryan (**Respondents**), alleging that they had:  
  
    'failed in their duty of care to me as an employee and engaged in conduct unbefitting of a Councillor. In doing so they have breached their obligations under Part 4 of the Local Government Act 1989 (Vic) ... and the Greater Shepparton City Council Code of Conduct adopted by resolution of the Council on 16 April 2013' (**Complaint**).
2. By letter dated 23 March 2015, in accordance with your instructions, Maddocks commissioned Tom Henry of Worklogic (**Investigator**) to undertake an investigation into the Complaint (**Investigation**).
3. The Investigator commenced the Investigation in April 2015. Maddocks was provided with a final Investigation Report and Executive Summary on 7 December 2015.
4. On 11 December 2015, we provided you with preliminary advice on Council's health and safety obligations. Together with that advice, we provided you with the Investigation Report and Executive Summary. You should read this advice in conjunction with the Investigation Report, the Executive Summary and our advice dated 11 December 2015.
5. This advice now sets out whether the conduct found proven by the Investigation Report constitute breaches of the Act and the Code, as alleged by Mr Cator.

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### Other matters

6. We acknowledge your feedback regarding the high level of frustration expressed by some Councillors about the length of time taken to finalise the Investigation. We too have been frustrated by delays in finalising the investigation, often the result of things done or failed to be done by the Investigator (**Worklogic**). We attach, at **Annexure A** of this letter, a response to the concerns raised.

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### Legal analysis

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#### Councillor Patterson

7. **Allegation CP3**
  - 7.1 This allegation relates to the alleged conduct the subject of Allegation CP2. On the basis of the alleged conduct and examples that make up Allegation CP2 found to be proven or part-proven by the Investigator, we:
    - 7.1.1 do not consider that Councillor Patterson has failed to act in accordance with his obligations under section 76B(a) of the Act; however
    - 7.1.2 consider he has acted contrary to the expectations placed upon him by section 76B(b) and consequently section 76BA(g) of the Act and clause 2 of the Code.

- 7.2 We are of this view for the following reasons.
- 7.2.1 Councillor Patterson was found to have acted towards Mr Cator with a lack of fair-mindedness/objectivity in the regular Mayor/CEO catch-up on 12 November 2014, and during the Investigation admitted to doing so.
- 7.2.2 Section 76B(a) requires Councillor Patterson to act with integrity.
- 7.2.3 Councillor Patterson's admitted conduct falls short, in our view, of being found to have failed to act with integrity. Councillor Patterson acted towards Mr Cator in this manner after receiving repeated negative feedback about Mr Cator's performance as CEO. In Councillor Patterson's view, he was justified in acting in the manner he did. While misconceived, Councillor Patterson's conduct does not equate to a breach of section 76B(a) of the Act.
- 7.2.4 This "closed-mindedness", however, does indicate that Councillor Patterson was not impartially exercising his responsibilities in the interests of the local community, a requirement imposed on him by section 76B(b) of the Act.
- 7.2.5 Councillor Patterson did not bring a balanced, unbiased and even-handed approach to his interactions with Mr Cator. This conduct continued after the conclusion of the bullying investigation carried out by Rose Bryant-Smith of Worklogic (**Worklogic Bullying Investigation**) which found the allegations against Mr Cator could not be substantiated.
- 7.2.6 For these reasons, we consider Councillor Patterson has contravened section 76B(b) of the Act and, by extension, section 76BA(g) of the Act as he has not supported and promoted the principle of impartiality in the exercise of his responsibilities by leadership and example.
- 7.2.7 Clause 2 of the Code largely reflects the requirements of sections 76B and 76BA of the Act. On this basis, we consider that Councillor Patterson has also contravened clause 2 of the Code.

## 8. Allegation CP5

- 8.1 This allegation relates to the alleged conduct the subject of Allegation CP4. On the basis of the alleged conduct and examples that make up Allegation CP4 found to be proven or part-proven by the Investigator, we:
- 8.1.1 do not consider that Councillor Patterson has failed to act with integrity, failed to impartially exercise his responsibilities in the interests of the local community or sought to improperly confer a disadvantage on Mr Cator;
- 8.1.2 do not consider that Councillor Patterson failed to support the principles in section 76B and 76BA by leadership and example;
- 8.1.3 do not consider that Councillor Patterson misused his position by exercising a function he is not authorised to exercise; and
- 8.1.4 do not consider that Councillor Patterson sought to improperly direct or influence Council staff in the exercise of their duties.
- 8.2 We are of this view for the following reasons.
- 8.2.1 As noted above, Councillor Patterson had received repeated negative feedback regarding Mr Cator's performance as CEO. Some of this feedback had been provided by very emotional Council staff and Councillor Patterson had received

reports that some Council staff did not wish to participate in the Worklogic Bullying Investigation.

- 8.2.2 It was on this basis that Councillor Patterson took it upon himself to, as proven, solicit information from staff about Mr Cator and encourage staff to participate in an investigation. The conduct as proven, however, does not indicate that Councillor Patterson failed to act with integrity.
- 8.2.3 It is our view that a finding contrary to section 76B(a) of the Act requires a certain level of deceit and untruthfulness. These elements are lacking in Councillor Patterson's conduct in respect of the proven conduct.
- 8.2.4 Further, it cannot be said that Councillor Patterson failed to act with impartiality in this regard, or that he sought to confer a disadvantage on Mr Cator as required by sections 76B(b) and (c) of the Act. He was merely encouraging staff to participate in an investigation. He was not encouraging staff to make allegations against Mr Cator. Had it been found that Councillor Patterson was encouraging staff to make allegations of bullying, this conduct would amount to a failure to act impartially in the exercise of his duties and that he was seeking to confer a disadvantage on Mr Cator. The absence of such proven conduct means there has not been a breach of section 76B(b) or (c) of the Act.
- 8.2.5 Section 76D(1)(b) of the Act states that a Councillor, among others, must not misuse their position to cause, or attempt to cause, detriment to the Council or another person. Section 76D(2) of the Act then goes on to set out the circumstances involving the misuse of a position which includes the conduct as alleged against Councillor Patterson, that is, exercising a power, duty or function he was not authorised to exercise or perform.
- 8.2.6 We note that it has not been alleged that Councillor Patterson misused his position to cause, or attempt to cause, detriment to Council or Mr Cator. In any event, we do not consider that Councillor Patterson has contravened this section. His conduct as proven does not evince an intention to cause a detriment to Mr Cator (or Council). Further, this is a particularly serious offence, which carries particularly significant penalties. There is insufficient evidence to indicate that Councillor Patterson contravened section 76D(1).
- 8.2.7 Given that we do not consider that Councillor Patterson sought to cause detriment to Council, or Mr Cator (under section 76D(1)(b)) section 76D(2) is not enlivened. That is, a Councillor cannot contravene section 76D(2) as alleged, without having been found to have breached section 76D(1)(a) or (b). For this reason, there has been no breach by Councillor Patterson of section 76D in this regard.
- 8.2.8 Finally, we do not consider Councillor Patterson has contravened section 76E of the Act or, by extension, clause 8 of the Code.
- 8.2.9 Section 76E(1) of the Act provides that a Councillor must not improperly direct or improperly influence or seek to improperly direct or improperly influence a member of council staff in the exercise of any power or in the performance of any duty or function by the member.
- 8.2.10 This section requires impropriety on the part of a Councillor for a contravention to be made out. That impropriety is lacking with respect to Councillor Patterson. While his actions in seeking to solicit information from staff and encouraging staff to participate in a bullying investigation may have been unauthorised, his conduct was not improper for the purposes of section 76E(1) of the Act or clause 8 of the Code.

**9. Allegation CP7**

- 9.1 This allegation relates to the alleged conduct the subject of Allegation CP6. The overarching allegation in CP6 is that Councillor Patterson interfered with Mr Cator's duties and functions as CEO. The Investigator did not make any findings as to whether Councillor Patterson interfered with Mr Cator's duties and functions, as this was outside the scope of his instructions.
- 9.2 Based on the examples that make up Allegation CP6, we do not consider, as a threshold issue, that Councillor Patterson interfered with Mr Cator's duties and functions. Councillor Patterson definitely "involved himself" in Mr Cator's duties and functions in respect of staff issues but did not go so far as interfering in those duties and functions.
- 9.3 Councillor Patterson raised concerns about staff feedback he had received, noting he had a list of 20 staff who "were not satisfied". This conduct does not amount to interference in Mr Cator's role. Further, Councillor Patterson sent an email to all Councillors about redundancy offers made to staff. There is no evidence in the Investigation Report to suggest that, as a result of this email, Mr Cator's ability to perform his duties and functions was impacted or hindered.
- 9.4 Finally, while it was found proven that Councillor Patterson continued to allow staff to report concerns to him, and actively listened to those concerns, there was again no evidence that this behaviour interfered with Mr Cator's duties and functions. In this regard, we note that it was also proven that Councillor Patterson encouraged those staff to report concerns to the Australian Services Union (ASU) through John Gribbin and had raised concerns in the presence of Kaye Thomson.
- 9.5 Given that we do not consider Councillor Patterson interfered with Mr Cator's duties and functions on the basis of the examples that make up Allegation CP6, the specific alleged breaches of the Act and Code set out in Allegation CP7 are not made out.

**10. Allegation CP9**

- 10.1 This allegation relates to the alleged conduct the subject of Allegation CP8. On the basis of the alleged conduct and examples that make up Allegation CP8 found to be proven or part-proven by the Investigator, we:
- 10.1.1 do not consider that Councillor Patterson has failed to act with integrity;
  - 10.1.2 do not consider that Councillor Patterson has failed to impartially exercise his responsibilities in the interests of the local community or sought to improperly confer a disadvantage on Mr Cator;
  - 10.1.3 do consider that Councillor Patterson failed to act honestly and avoid statements or actions that are likely to mislead or deceive a person;
  - 10.1.4 do consider that Councillor Patterson failed to support the principles in section 76B and 76BA by leadership and example;
  - 10.1.5 do consider that Councillor Patterson failed to treat Mr Cator with respect, but do not consider that failure extended to Mr Cator's associates; and
  - 10.1.6 do not consider Councillor Patterson relied on resources he was unauthorised to access for an improper purpose.
- 10.2 We are of this view for the following reasons.
- 10.2.1 The particular proven conduct that we consider to result in the above contraventions is Councillor Patterson's comment at a Councillor briefing session

that Mr Cator had incurred \$5,000 in legal costs prior to the Worklogic Bullying Investigation (Allegation CP8 – Example 6). We do not consider that Councillor Patterson's "false and misleading statement to other Councillors" in respect of the CT Management screen shots (Allegation CP8 – Example 2) amount to a breach of the Act or the Code.

- 10.2.2 By making the comment in respect of Mr Cator's legal expenditure, Councillor Patterson has not treated Mr Cator with respect and contravened section 76BA(c) of the Act. This is because it was found proven that Councillor Patterson made this comment with the partial intention of discrediting Mr Cator. The manner in which Councillor Patterson made the comment, under his breath, also indicates a failure to treat Mr Cator with respect. It was open to Councillor Patterson to raise any issues he may have had with Mr Cator's legal expenditure in an open and transparent manner. He chose not to do so.
- 10.2.3 The comment led to Councillors Polan and Houlihan making further enquiries about the payment, resulting in division among Councillors. It is our view that the comment either misled, or was likely to mislead Councillors in respect of the circumstances of Mr Cator's legal fees, thereby resulting in a breach of section 76BA(b) of the Act. By extension, Councillor Patterson has contravened section 76BA(g) of the Act by failing to support the principles by leadership and example.
- 10.2.4 As noted, clause 2 of the Code largely reflects the language of section 76B and 76BA of the Act, and so we consider Councillor Patterson has by extension contravened the Code.
- 10.2.5 We do not consider that Councillor Patterson has failed to act with integrity in this particular regard, as his conduct does not involve the deceit or dishonesty necessary to establish a breach of section 76B(a) of the Act.
- 10.2.6 In respect of the assertion that Councillor Patterson contravened section 76D(2)(e) of the Act by relying on resources he was unauthorised to access, we note the Investigator did not make a finding as to whether Councillor Patterson was unauthorised to have access to the screen shots of purchases. The only evidence on this issue is that the screen shots "turned up in [his] letter box". In any event, for the reasons discussed above in paragraph 8.2.5 to 8.2.7, there cannot be a breach of section 76D(2)(e) without a finding of a contravention of section 76D(1)(a) or (b). Such a contravention does not exist in respect of this particular conduct.

## 11. Allegation CP11

- 11.1 This allegation relates to the alleged conduct the subject of Allegation CP10. On the basis of the alleged conduct that makes up Allegation CP10 found to be proven by the Investigator, we consider that Councillor Patterson, as alleged:
- 11.1.1 failed to act with integrity and impartiality in the exercise of his responsibilities;
- 11.1.2 sought to improperly confer a disadvantage on Mr Cator;
- 11.1.3 failed to act honestly and avoid statements/actions that will or are likely to mislead or deceive;
- 11.1.4 failed to support the principles of leadership;
- 11.1.5 failed to treat Mr Cator with respect; and
- 11.1.6 failed to ensure the message communicated to the media was clear, consistent and positively portrayed the Council.



- 11.2 In this regard, Councillor Patterson has contravened both the Act and the Code.
- 11.3 We are of this view for the following reasons.
- 11.3.1 Fundamentally, Councillor Patterson's conduct had the potential, as noted by the Investigator, to have created questions in the public mind as to whether Mr Cator had in fact bullied staff, despite Council declaring otherwise in a media release two days earlier. The letter to the editor did not positively portray Council as a decisive and responsible body. Rather, it had the potential to portray Council as a divided body with unclear and uncertain messaging or, even worse, that its media release was inaccurate.
- 11.3.2 The untrue statements in the letter to the editor indicated a lack of respect for Mr Cator, and the Worklogic Bullying Investigation, and had the potential to undermine public confidence in the Council. Further, the Investigator found that the media release was issued with the partial motivation to destroy public confidence in Mr Cator. Not only does this show an absence of integrity in Councillor Patterson's conduct, it also indicates an improper conferring of a disadvantage on Mr Cator, that is, less public confidence in him and potential reputational harm.
- 11.3.3 We also note that it was open to Councillor Patterson to declare in the letter to the editor that his comments were his own personal view. He did not do this. The letter to the editor is authored by "City of Greater Shepparton Councillor Dennis Patterson". In this regard, Councillor Patterson has further breached clause 10 of the Code which requires Councillor to make clear that any unofficial comment is a personal view and does not represent the position of Council as a whole.

## 12. Allegation CP13

This allegation relates to the alleged conduct the subject of Allegation CP12. On the basis of the alleged conduct and examples that make up Allegation CP10 found to be proven by the Investigator, we consider that Councillor Patterson has, as alleged failed to treat Mr Cator and Council staff with respect, but has not failed to act with integrity.

- 12.1 We are of this view for the following reasons.
- 12.1.1 By raising his voice at Mr Cator, calling Mr Cator an "arsehole" within ear-shot of Council staff, aggressively confronting Council staff and needing to be taken outside to "cool-off", among other things, Councillor Patterson has behaved inappropriately, offensively and generally inconsistently with the expectations of a Councillor. He has, on one view, demonstrated poor judgement and a failure to treat all people with respect, as required by section 76BA(c) of the Act. His conduct was not isolated to the CEO, but to other Council staff. This conduct also constitutes a contravention of clause 2 of the Code.
- 12.1.2 While capable of being characterised as inappropriate, we do not consider the actions of Councillor Patterson as evidencing a failure to act with integrity in this particular regard. His conduct does not involve the deceit or dishonesty to establish a breach of section 76B(a) of the Act.

## Councillor Oroszvary

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## 13. Allegation CO3

- 13.1 This allegation relates to the alleged conduct the subject of Allegation CO2. On the basis of the alleged conduct and examples that make up Allegation CO2 found to be proven by the Investigator, we do not consider that Councillor Oroszvary has contravened the Act or the Code as alleged.

- 13.2 There is no evidence to suggest that Councillor Oroszvary has acted in a manner inconsistent with the primary principle or other conduct principles expected of Councillors (as set out in section 76B and section 76BA of the Act).
- 13.3 Further, and as noted above in paragraph 8.2.5 to 8.2.7, the allegation in respect of section 76D(2)(d) cannot be made out without a finding of a contravention of section 76D(1)(a) or (b).
- 13.4 We note that the Investigator found that Councillor Oroszvary was not proactively or inappropriately seeking to involve himself in matters beyond the scope of his role. Rather, Councillor Oroszvary was either responding to concerns raised by staff or clarifying information provided by Mr Cator. In this regard, Councillor Oroszvary has not been found to have acted inconsistently with the Act or the Code.
- 14. Allegation CO5**
- 14.1 This allegation relates to the alleged conduct the subject of Allegation CO4. On the basis of the alleged conduct and examples that make up Allegation CO4 found to be proven by the Investigator, we do not consider that Councillor Oroszvary has contravened the Act or the Code as alleged.
- 14.2 This is because Councillor Oroszvary was not found to have made false and misleading statements about Mr Cator. As a result, this allegation cannot be made out against Councillor Oroszvary.

#### **Councillor Ryan**

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- 15. Allegation CR5**
- 15.1 This allegation relates to the alleged conduct the subject of Allegations CR2, CR3 and CR4. On the basis of the alleged conduct that make up Allegations CR2, CR3 and CR4P2 found to be proven or part-proven by the Investigator, we do not consider that Councillor Ryan:
- 15.1.1 failed to act with integrity and impartiality or sought to improperly confer a disadvantage on Mr Cator;
  - 15.1.2 failed to act honestly or avoid statements/actions likely to mislead or deceive;
  - 15.1.3 failed to support the principles in section 76B and 76BA by leadership;
  - 15.1.4 failed to treat Mr Cator with respect; or
  - 15.1.5 misused his position by exercising a function he is not authorised to exercise.
- 15.2 We are of this view for the following reasons.
- 15.2.1 As noted above in respect of Councillor Patterson, Councillor Ryan attended the meeting at Councillor Patterson's home with up to 5 current staff members on the basis of repeated negative feedback he had received regarding Mr Cator's performance.
  - 15.2.2 In Councillor Ryan's view he was justified in attending the meeting at Councillor Patterson's home and in asking the series of questions in relation to staffing matters. This conduct, while an incursion into the functions of the CEO, does not amount to a breach of the provisions alleged.

- 15.2.3 It has not been established that Councillor Ryan failed to act with integrity. Further, there is an absence of any evidence of bias or partiality in Councillor Ryan's conduct.
- 15.2.4 It is not readily apparent how Councillor Ryan has failed to act honestly, or avoid statement/actions likely to mislead or deceive or failed to treat Mr Cator with respect.
- 15.2.5 Finally, as previously noted, there cannot be a breach of section 76D(2) of the Act without it being established that section 76D(1) of the Act has been contravened.

#### 16. Allegation CR6

- 16.1 This allegation relates to the assertion that Councillor Ryan disclosed the questions asked of Mr Cator to the Shepparton News. The Investigator found that it was not proven that Councillor Ryan disclosed to the questions to the Shepparton News. Allegation CR6, therefore, cannot be made out.

#### 17. Allegation CR9

- 17.1 This allegation relates to the alleged conduct the subject of Allegations CR7 and CR8. On the basis of the conduct found to be proven in Allegation CR8 (noting that the conduct in Allegation CR7 was found to be not proven), we do not consider that Councillor Ryan:
  - 17.1.1 failed to act with integrity and impartiality in the exercise of his responsibilities or sought to improperly confer a disadvantage on Mr Cator;
  - 17.1.2 failed to treat Mr Cator with respect;
  - 17.1.3 failed to support the principles in section 76B and 76BA by leadership and example; or
  - 17.1.4 breached his obligations of confidentiality under section 77 of the Act.
- 17.2 We are of this view for the following reasons.
  - 17.2.1 Councillor Ryan's comment, while inappropriate and unprofessional, falls short of amounting to a breach of the Act in respect of the provisions alleged. The comment, made during the course of a conversation in relation to kerb and channel costs, does not indicate that Councillor Ryan has failed to act with integrity or did not bring an impartial mind in the exercise of his responsibilities as required by section 76B(a) and 76B(b) of the Act.
  - 17.2.2 Councillor Ryan's comment is to be seen in the context of repeated concerns being raised about Mr Cator's performance and ongoing unrest and conjecture about the functions of Council. Councillor Ryan's comment, to which he admitted making, must be seen within this context. Within this setting, we do not consider Councillor Ryan's comment to amount to a contravention of the Act.
  - 17.2.3 We further note that there was no finding made as to whether the comment was confidential information for the purposes of the Act. In our view, such a comment was not confidential information and therefore section 77 of the Act has not been breached.

**18. Allegation CR11**

18.1 This allegation relates to the alleged conduct the subject of Allegation CR10. On the basis of the conduct found to be proven in Allegation CR10 (noting that the conduct in Allegation CR7 was found to be not proven), we do not consider that Councillor Ryan:

18.1.1 failed to act with integrity and impartiality in the exercise of his responsibilities or sought to improperly confer a disadvantage on Mr Cator;

18.1.2 failed to act honestly and avoid statements that will or are likely to mislead or deceive a person; or

18.1.3 failed to support the principles in section 76B and 76BA by leadership and example.

18.2 We are of this view for the following reasons.

18.2.1 While it was proven that Councillor Ryan questioned Mr Cator's whereabouts and expressed doubt as to whether Mr Cator was meeting Mr Duffy of the ASU, it was not proven that he went so far as stating Mr Cator was not in the meeting with Mr Duffy.

18.2.2 Given the absence of this subsequent conduct, it cannot be established that Councillor Ryan made untrue statements and therefore has not breached the Act or Code as alleged.

**19. Allegation CR13**

19.1 This allegation relates to the alleged conduct the subject of Allegation CR12, which is also relevant to the alleged conduct the subject of Allegation CP8 – Example 2 against Councillor Patterson. On the basis of the conduct found to be proven in Allegation CR12, we do not consider that Councillor Ryan:

19.1.1 failed to act with integrity and impartiality in the exercise of his responsibilities or sought to improperly confer a disadvantage on Mr Cator;

19.1.2 failed to act honestly and avoid statements that will or are likely to mislead or deceive a person treat Mr Cator with respect;

19.1.3 failed to support the principles in section 76B and 76BA by leadership;

19.1.4 failed to treat Mr Cator with respect (or those individuals associated with Mr Cator); or

19.1.5 sought to rely on resources he was unauthorised to access for an improper purpose.

19.2 We are of this view for the following reasons.

19.2.1 While it was found proven that Councillor Ryan calculated the figures on the CT Management screenshots, and then provided this information to Councillor Patterson, this conduct does not amount to Councillor Ryan being found to make false and misleading, or untrue, statements.

19.2.2 His calculations were incorrect. He cannot be found to have breached the Act or the Code as alleged as a consequence of those incorrect calculations.

- 19.2.3 Further, Councillor Ryan's conduct in seeking to obtain information relating to expenditure paid by Council to CT Management does not equate to him making untrue statements, or false and misleading statements.
- 19.2.4 Councillor Ryan has potentially entered into the realm of staffing matters which are the purview of the CEO, however this allegation was not made against Councillor Ryan. The allegation as made against Councillor Ryan cannot be made out.

## 20. Next steps

- 20.1 On the basis of the above, it is our view that Councillor Patterson has engaged in misconduct as defined by section 81A of the Act. That is, he has engaged in conduct that is in breach of the Code.
- 20.2 Section 81B of the Act sets out the process by which a Councillor Conduct Panel (CCP) is convened. According to section 81B of the Act:
- An application for a Councillor Conduct Panel to make a finding of misconduct against a Councillor, or to authorise an application to VCAT for a finding of serious misconduct, may be made by -
- (a) the Council, following a resolution of the Council to make an application to a Councillor Conduct Panel under this section in respect of a Councillor's conduct; or
  - (b) a Councillor; or
  - (c) a group of Councillors.
- 20.3 It is open to Council, by resolution, or to any of the Councillors individually or as a group, to make an application for a CCP to make a finding of misconduct against Councillor Patterson. The application must specify the grounds for the application, the circumstances and actions of Councillor Patterson that are alleged as constituting misconduct and the name and address of the Councillor appointed as representative of Council or the group (as set out in section 81B of the Act).
- 20.4 If an application to form a CCP is made, the CCP will comprise two members selected from a pool of potential members. It is likely that one will have a legal background while the other will have a local government background.
- 20.5 In order for the CCP to make a finding, it will hold a hearing. The hearing will be held in private and lawyers will generally not be permitted. Each party will represent themselves. The hearing is similar to a tribunal but somewhat less formal. Each of the parties will be asked to present the CCP with evidence which supports or denies the allegations forming the basis of the application.
- 20.6 After the CCP has conducted a hearing, it may:
- 20.6.1 make a finding of misconduct;
  - 20.6.2 authorise an application to the Victorian Civil and Administrative Tribunal (VCAT) if the CCP considers there are reasonable grounds on which VCAT may make a finding of serious misconduct;
  - 20.6.3 whether or not a finding of misconduct is made, make a finding that remedial action is required;
  - 20.6.4 direct that Council amend its Code in a particular way to address a particular issue; or

- 20.6.5 dismiss the application.
- 20.7 A CCP has limited sanctions available to it if it makes a finding of misconduct against Councillor Patterson. If the CCP makes a finding of misconduct against Councillor Patterson, it has the power, according to s 81J(2) of the Act, to:
- 20.7.1 reprimand Councillor Patterson;
- 20.7.2 direct that Councillor Patterson make an apology in a form or manner determined by the CCP; or
- 20.7.3 direct that Councillor Patterson take a leave of absence for a period not exceeding two months.
- 20.8 Please let us know if you would like our further advice on a CCP once you have considered the above.
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### Contact

Please contact Catherine Dunlop on 03 9258 3633 or Michael Nicolazzo on 03 9258 3306 if you have any other queries.

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**Annexure A**

1. We acknowledge your feedback regarding the high level of frustration expressed by some Councillors about the length of time taken to finalise the Investigation. We take this feedback very seriously, and seek to address your concerns in this document.
2. As explained in our letter to you of 6 November 2015, and in our subsequent conversations with you, there are many reasons for the delays in the progress of this investigation. These have been largely beyond our control.
3. We have summarised these matters again so that you have a record of why the investigation has taken the time that it has.
4. **Progress of the matter from March until November 2015**
  - 4.1 11 March 2015 – Gavin Cator makes complaint in relation to 3 Councillors.
  - 4.2 17 March 2015 – Council resolves to investigate complaint.
  - 4.3 23 March 2015 – Worklogic appointed as investigator.
  - 4.4 8 April 2015 – Worklogic sends letter to Mr Cator requesting contact, after defining scope of investigation and drafting allegations. There was some correspondence between Maddocks and Maurice Blackburn (Mr Cator's legal representatives) regarding the investigation process prior to the interview with Mr Cator being able to proceed.
  - 4.5 29 April 2015 – Mr Cator meets with Worklogic to discuss the complaint. Three new allegations were raised during the interview and 8 new allegations were subsequently raised.
  - 4.6 15 May 2015 – Worklogic's 'investigator's understanding of allegations' finalised.
  - 4.7 1 June 2015 – updated guide for participants and letters regarding investigation are sent to the 3 Councillors, drafted on the basis of the investigator's understanding of allegations. The 3 Councillors initially declined to participate in the investigation.
  - 4.8 Between 10 June 2015 and 10 August 2015 there were lengthy delays brought about by various matters including the Councillors' requests for interviews to be postponed until after Mr Cator's last day of employment, their requests to be interviewed together (generating lengthy negotiations between the parties as to whether this was appropriate) and their requests to seek independent legal advice before being interviewed (which could not occur until 10 August 2015).
  - 4.9 10 – 26 August 2015 - Worklogic conducts interviews with Councillors Paterson, Oroszvary and Ryan.
  - 4.10 4 September 2015 – Worklogic completes final interview transcripts for provision to Councillors and completes preliminary witness list. The number of witnesses initially identified more than doubled.
  - 4.11 4 September 2015 – 1 October 2015. The majority of witness interviews were completed.
  - 4.12 15 October 2015 – final witness interviews are completed. Some interviews needed to be conducted in Shepparton and others in Melbourne. It was also necessary to address concerns expressed by one of the witnesses regarding potential victimisation.

- 4.13 As at 28 October 2015 we anticipated that Worklogic would provide contradictory evidence to the witnesses by 30 October 2015. We confirm that this was done on 31 October 2015 and the 4 parties were asked to provide a response within 7 days.
- 4.14 We were then informed that Cr Oroszvary was on leave for 3 weeks, as of 31 October 2015. Mr Henry informed us on 6 November 2015 that he had received a response to contradictory evidence from Cr Oroszvary.
- 4.15 In addition, Cr Ryan, as late as 10 November 2015, requested a face to face interview with Mr Henry to provide his response to contradictory evidence. The investigator reached a compromise with Cr Ryan such that a phone interview was conducted on 11 November 2015.
- 4.16 As we outlined in our letter to you of 6 November, we expected that we would receive the report by 13 November 2015 and that, all being well, we would have the advice to you by 24 November 2015.
- 5. Progress of the matter since November 2015**
- 5.1 We received the first drafts of the Investigation Report (Report) and the Executive Summary from Worklogic on Sunday 15 November 2015.
- 5.2 We commenced reviewing the draft Report and Executive Summary on 16 November 2015.
- 5.3 Upon reviewing the draft Report, we discovered that there were a considerable number of issues that needed to be clarified and addressed before we could provide the Report to Council, and for us to properly advise Council.
- 5.4 It took us from 16 November 2015 until 7 December 2015 (three weeks) to do this work, which entailed, in summary, the following:
- 5.4.1 lengthy conversations with Tom Henry to obtain further clarification about the findings and the analysis used in the Report;
  - 5.4.2 Mr Henry considering our requests for further clarification and preparing further drafts of the Report and Executive Summary;
  - 5.4.3 reviewing further drafts of the Report and Executive Summary; and
  - 5.4.4 summarising the findings in table format for ease of reference and updating these as further drafts of the Report and Executive Summary were provided to us.
- 5.5 This was unexpected and should not have been necessary. As noted below we have told Worklogic that we were extremely concerned that this work was necessary and that Council was subject to a further delay.
- 5.6 The final drafts of the Report and the Executive Summary were finally provided to us on 7 December 2015.
- 5.7 During this time we had conversations with you regarding providing Council with two sets of advice - one on Council's health and safety obligations, and the other on whether any of the conduct found proven in the Report breached the Local Government Act 1989 and/or the Greater Shepparton City Council Councillor Code of Conduct. We informed you that the second, more detailed advice, would be both expensive and time-consuming because of the complexity of the matter.
- 5.8 You instructed us to prepare both sets of advice.



5.9 We provided our advice on Council's health and safety obligations to you on 11 December 2015. Our second, more detailed advice to Council is set out in the main document to which this Annexure is attached.

**6. Worklogic's fees**

6.1 It is not unusual for us to have to spend some time with an investigator clarifying aspects of an investigation report. However, in this matter, the amount of work we have had to do is, in our view, excessive and far beyond what we would normally expect to have to do.

6.2 We have had a number of recent conversations with Grevis Beard, Director of Worklogic, regarding Worklogic's professional fees for this investigation.

6.3 On 1 December 2015, we informed you that Worklogic's fees (as at that date) were approximately \$17,000 (plus GST) over and above their fee estimate of up to \$75,000 (plus GST). We sought a discount on that amount and Worklogic offered us a reduction in fees of \$4,645 (plus GST). We accepted that proposal after discussing the matter with you.

6.4 Since then, we have had further discussions with Worklogic about the fact that we had to do an excessive amount of work before the Report was finalised.

6.5 Worklogic has now agreed to waive approximately \$25,000 (plus GST) in professional fees capping their fees at \$75,000.

6.6 We confirm that we have your instructions to accept that offer.

6.7 We understand that Council are unlikely to use Worklogic again for workplace investigations and we understand that position.

**7. Our fees**

7.1 We are in the process of assessing our professional fees to date for this matter and will be looking at options for offering Council a reduction in our fees. The work we have performed was necessary but unfortunately much of our recent work was required because of the poor quality of parts of the draft Report provided. This is obviously a disappointment to us. In light of all the circumstances we will reduce our fees to provide a fair outcome for Council.

7.2 In the meantime, we thank you for your ongoing patience and understanding in what has been a challenging matter for all concerned.