

Executive Summary

C.2 Councillor Conduct Panel Determination

This item is considered confidential under Section 89(2) (h) of the Local Government Act, as it involves discussion of Any other matter which the Council or special committee considers would prejudice the Council or any person.

Enquiries: (Michael Craighead: Corporate Development)

Council Plan

Community Outcome:	3. Sustainable City
Strategy:	3.3 Ensure good governance and management of Council resources
Priority Action	3.3.3 Continue to build organisational capability and a customer service culture

Purpose

To formally convey to Council the determination of the Councillor Conduct Panel.

Recommendation (Director Corporate Development)

That Council receives the Council Conduct Panel Determination and, pursuant to Section 81(M)2 of the *Local Government Act 1989*, incorporates the determination into the minutes of the meeting.

Key Points / Issues

- A Councillor Conduct Panel was convened in mid-December 2015 to hear complaints from Councillor Taylor regarding the alleged behaviour of Councillor Hampton at the private [REDACTED] event held at The Deck Bar on Wednesday 25 November 2015. The Panel was comprised of Mr Peter Harris (Barrister and Legal member) and Mr Matt Evans (Governance member).
- Councillor Hampton also lodged complaints about Councillor Taylor's alleged breach of Council Policy at the same event.
- The Panel held a preliminary conference on Tuesday 2 February 2016, at which Directions were given to both parties and it was determined to join both matters to be heard together on a date to be fixed.
- The Panel Hearing was held on Friday 8 April 2016, commencing at 9.12 am and concluding at 3.32 pm. The Panel heard evidence from both Councillors, the Chief Executive Officer and the Mayor.
- The Panel Determination was received some two months after the Hearing, on Friday 10 June 2016.
- Pursuant to clause 81(M)(1) of the *Local Government Act 1989* a copy of the Determination has been sent to the Minister for Local Government and also to the Government appointed Principal Councillor Conduct Registrar, as required by legislation.
- The delays in dealing with this matter have been extremely unfortunate. The Municipal Association of Victoria MAV, as the body then responsible for appointing Panel members, and the recently appointed Principal Councillor Conduct Panel Registrar who is now responsible for overseeing all such matters following recent amendments to the Local Government Act, have been advised of our dissatisfaction.

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- Council is required to pay for the Panel and accounts are yet to be received. Councillors will be advised of the cost once the accounts are received for the Panel Members' services.
- In respect to Cr Taylor the Panel found; *'...that Cr. Taylor did not purport to speak on behalf of Council and did not breach clause 8.1 of the Councillor Code of Conduct'..... and 'dismiss(d) the Application made by Cr Hampton'.*
- In respect to Cr Hampton the Panel found *'... the only conduct of Councillor Hampton that is capable of constituting a breach of the Councillors' Code of Conduct is his conduct in respect to [REDACTED] and [REDACTED]. That conduct, as the Panel has found, was, as they apparently perceived it, threatening and intimidating. The Panel accepts also that Councillor Hampton's conduct, involving pointing of a finger and demanding an answer, was objectively threatening behaviour, in light of how it must have appeared to bystanders'.*
- Accordingly, *'Pursuant to section 81(2)(b) the Panel directs that formal written apologies are to be issued by Councillor Hampton to [REDACTED] and [REDACTED] within 14 days after the tabling of these Reasons for Determination at the next ordinary meeting of the Council. The apology is to include:*
 - (a) *an unqualified apology to each of [REDACTED] and [REDACTED] for the inappropriate conduct of Councillor Colin Hampton at the [REDACTED] and for any distress this has caused to [REDACTED] or [REDACTED]; and*
 - (b) *a commitment by Councillor Hampton that he will in future adhere to clause 6.3 of the Councillors' Code of Conduct (and the equivalent clause in any future versions of the Code) and that he will act respectfully, courteously and without intimidation when interacting with Council staff.'*
- Further the Panel determined that *'At the next available ordinary meeting of the Council following the issue of the letters of apology to [REDACTED] and [REDACTED], a copy of each is to be tabled by Councillor Hampton'.*
- The Panel Determination is tabled in accordance with section 81(M) (2) so that the Determination forms part of the Council meeting minutes and is not open to Council debate.

Financial Impact

It is noted that the State Government has introduced legislation that prevents Councils from raising rates above inflation levels from 1 July 2016. Victorian councils will be forced to cap rates at the consumer price index (CPI) which has been declared for 2016/17 at 2.50 per cent. The CPI (based on a basket of common household goods and services that Council purchases very little of) is a very poor index of the cost of providing services that are very heavily based on labour costs.

The financial gap between the previous editions of Council's Long Term Financial Plan and the revised plan in terms of rate revenue over the next four year period is approximately \$28 million; this increases to \$43 million over a five year period. This reduction will have a severe impact on Council's ability to maintain services, deliver key initiatives and improvements and maintain adequate levels of capital expenditure.

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It is also noted that in 2015/2016, Council's debt will peak at \$37.2 million. While this debt has been used to deliver key community assets such as the Peninsula Aquatic Recreation Centre (PARC), Frankston Yacht Club and the Frankston Regional Resource and Recycling Centre (FRRRC), the cost of servicing this debt in a rate capping environment will severely limit Council's ability to provide further improved facilities and services.

It is anticipated that the financial cost of the Panel will be in the order of \$5,000. There was also a significant amount of staff time involved in servicing the Panel.

Legal advice has also been required, with cost estimated to be approximately \$8,000.

Consultation**1. External Stakeholders**

The MAV is the only external body consulted to date. The Minister of Local Government has received a copy of the Panel Determination as required.

2. Other Stakeholders

Nil.

Analysis (Environmental / Economic / Social Implications)

Nil.

Legal / Policy / Council Plan ImpactCharter of Human Rights and Responsibilities

The Charter of Human Rights and Responsibilities has been considered in the preparation of this report but is not relevant to the content of the report.

Legal

The Local Government Act requires that Panel determination be tabled at the next Ordinary Meeting of the Council and be recorded in the minutes for that meeting. A copy must also be provided to the parties and the Minister.

Policy Impacts

Nil

Officer's Declaration of Interests

Council officers involved in the preparation of this report have no Conflict of Interest in this matter.

Risk Mitigation

There are no significant risks with the tabling of the Panel Determination unless one or both parties to the matter decide to take the matter to VCAT on appeal. Any such decision by either party would likely delay any outcome for several months at best, likely after the next Council Elections to be held in October 2016.

Conclusion

Receipt of the Councillor Conduct Panel Determination concludes this part of the Code of Conduct matter. Either Councillor Taylor or Councillor Hampton have a right to appeal the decision to the Victorian Civil and Administrative Tribunal, but must do so within 28 days of the receipt of the Panel's determination.

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ATTACHMENTS

Attachment A: CCP Frankston Final2

Local Government Act 1989

**IN THE MATTERS OF APPLICATIONS FOR A COUNCILLOR CONDUCT
PANEL FOR THE FRANKSTON CITY COUNCIL**

B E T W E E N:

COUNCILLOR COLING HAMPTON

Applicant/Respondent

and

COUNCILLOR DARREL TAYLOR

Respondent/Applicant

**REASONS FOR DETERMINATION OF THE COUNCILLOR CONDUCT
PANEL**

1. Before the Panel are applications by Councillors Darrel Taylor and Colin Hampton in which each alleges breach by the other of provisions of the Councillor Code of Conduct of the City of Frankston.
2. On 29 November 2015 Councillor Hampton lodged a complaint against Councillor Taylor, alleging that he had breached sub-clause 8.1 of the Councillors' Code of Conduct of the City of Frankston ("the Code"). That provision is in the following terms:

Because the Mayor is, together with the Chief Executive Officer, the official spokesperson of the Council, an individual Councillor must not, without authority, purport to speak on behalf of the Council.

3. On 15 December 2015 Councillor Taylor lodged a complaint against Councillor Hampton. The complaint alleged that Councillor Hampton had, on 25 November 2015, conducted himself in a manner which was in breach of cl. 3.2 of the Code (which incorporates a reference to section 76BA of the *Local Government Act 1989* ("the Act"), and in particular sub-cll. 3.2.3, 3.2.7, 4.1.4 and cl. 6.3.1 – 6.3.3. In summary, the conduct alleged against Councillor Hampton concerned his "...behaviour towards a member of the public, a fellow Councillor and members of Council staff."

Councillor Hampton's Complaint

The conduct alleged against Councillor Taylor

4. Councillor Colin Hampton complains that Councillor Darrel Taylor breached the Councillor Code of Conduct 2013 (Adopted by Council at OM246 on 21 October 2013). Cr Hampton complains that “At the function, Cr. Taylor acted in contravention of clause 8.1 of the Frankston Councillor Code of Conduct that all Frankston City Councillors signed in October 2013”.
5. Under the heading “8. External Communications”, Clause 8.1 of the Code reads “Because the Mayor is, together with the CEO the official spokesperson of the Council, an individual Councillor must not, without authority, purport to speak on behalf of the council”. Clause 8.2 provides context for the importance of 8.1. It states, “Although any Councillor is entitled to communicate his or her views to the media, constituents and others, they should not in doing so:
 - 8.2.1 seek to actively undermine any decision, or position already taken by the Council; or
 - 8.2.2 bring the Council into disrepute”.
6. The allegation that Cr. Taylor had spoken on behalf of the Council without authority was based upon Cr. Hampton’s assertions that:
 - a. “Town planning issues can be commercially sensitive, with millions of investment dollars at stake riding on decisions to develop. The function was commercially-orientated with many developers and investors present”.
 - b. “At no time in his speech did he say that the views he was expressing were just his own. This, combined with the context of the speech, made Cr. Taylor appear to the audience as speaking on behalf of the Council”; and,
 - c. “When I saw Cr. Taylor speak at the [REDACTED] function on an occasion normally reserved for the Frankston Mayor, I formed the conclusion that yet again Cr. Taylor was promoting himself to advance himself politically”.
7. Cr. Hampton’s written evidence contains background information relating to both Cr. Taylor’s and his own party political activities. The Panel finds that this information has no relevance to its’ consideration of the allegations made by Cr. Hampton against Cr. Taylor.
8. The Panel was informed at the hearing that at the time of the event, neither Cr. Hampton, the Mayor nor the CEO were aware that Cr. Taylor was scheduled to speak at the event after the Mayor. However, during the hearing a running sheet titled ‘[REDACTED], *Launch Event, The Deck Restaurant*’ was tabled. The Panel was informed that the running sheet was attached to the original emailed invitation. Neither Cr Taylor, Cr Hampton, the CEO nor the Mayor had viewed the running sheet prior to the event.

9. At the hearing, Councillor Taylor said that he assumed that the other attendees from Council were aware of his speaking role at the event. Both the Mayor and the CEO said that they were surprised when Cr Taylor was called to the stage to speak.
10. Cr Taylor informed the Panel that when he was speaking at the event, he did so without a written speech, so a copy of the speech could not be provided to the Panel. None of the parties could recall a video-recording of the event being made.
11. In verbal evidence, Cr. Hampton expressed concern at the content of Cr. Taylor's speech. In particular, Cr Hampton described Cr. Taylor's comments made in the speech he delivered about the need to convert approvals into development "coming out of the ground", and that he thought these comments were inappropriate in the context of the event.
12. The Chief Executive Officer (CEO) Dennis Hovenden attended the hearing as a witness, and the Panel appreciates the CEO's participation in difficult circumstances. The CEO provided an account of proceedings at the [REDACTED] event at which he was present. The CEO described the "strange" tone and content of Cr. Taylor's speech which included comments about the need to convert approvals into development "coming out of the ground". Reflecting upon the purpose of the event as essentially for sales and marketing of the [REDACTED] development, the CEO expressed "surprise" that Cr. Taylor's speech would provide commentary on this topic.
13. The CEO did not claim in his evidence that Cr. Taylor was purporting to speak on behalf of the council. Rather, the CEO expressed disappointment that Cr. Taylor did not use the ample opportunity available either before the event or prior to the formalities to discuss the contents of his speech with the Mayor and the CEO. The CEO was asked if Cr. Taylor needed to seek permission from the Council to speak at such an event. The CEO confirmed that permission was not required.
14. The Panel asked the CEO if he thought that Cr. Taylor had, in his speech, spoken contrary to any formal position, policy or resolution already taken by the Council, particularly on the need to convert approvals into development "coming out of the ground". The CEO could not recall any formal position taken by Council on this matter.
15. The Mayor of Frankston City, Cr. James Dooley attended the hearing, and also provided his account of proceedings at the [REDACTED] event at which he was present and at which he spoke prior to Cr Taylor. In his written evidence the Mayor described Cr. Taylor's speech as "reasonably coherent" but that he would not have stressed, as Cr Taylor did, that "development after development has failed to come out of the ground".

16. The Mayor also expressed similar concerns to those expressed by the CEO in relation to Cr. Taylor choosing not to consult with himself, the CEO or Communications Unit prior to speaking at the event. The Mayor described the protocols in place for speeches to be reviewed by the Communications Unit, protocols that were not followed by Cr. Taylor. The Mayor did not suggest in his evidence that Cr. Taylor was purporting to speak on behalf of the council.

Councillor Taylor's explanation

17. In response to the allegations made by Cr. Hampton, Cr. Taylor advised the Panel that he did not purport to speak on behalf of Council at the event, nor purport to discuss plans and policies of the Council for the future.
18. Cr Taylor advised that his speech covered issues such as:
 - a. the potential of Frankston and its future prospects;
 - b. his frustrations in regard to planning permits being issued for major developments and sites sitting idle with construction not commencing; and
 - c. how exciting it was that the developer was actually commencing construction, and that this would be the catalyst for future development.
19. Cr. Taylor contends that there is no requirement under the Act or the Code that he must state that he isn't speaking on behalf of the Council. He claims that it was evident that the Mayor, who spoke before him, was speaking on behalf of the Council.
20. The Panel agrees with Cr. Taylor that section 8.1 of the Code is not intended to control or shut down individual Councillors from speaking at functions arranged by Council or at the invitation of other appropriate organisations, whether or not the Mayor is speaking at the same event. When invited to an event in an official capacity, the Panel accepts that Cr Taylor had the right to accept the invitation to speak.
21. Notwithstanding, the Panel cautions Cr. Taylor, and in future the Panel suggests that he make reasonable efforts to communicate with his fellow Councillors and the CEO to ensure that his speech, or any official communication at a Council or external function that he attends in his capacity as a Councillor, does not conflict with a position or policy of the Council.

Conclusion: Did Cr Taylor engage in misconduct by speaking at the [REDACTED] event?

22. On the basis of the evidence presented, the Panel finds that Cr. Taylor did not purport to speak on behalf of Council and so did not breach clause 8.1 of the Councillor Code of Conduct. Cr Taylor did not seek to actively undermine any decision, or position already taken by the Council or bring the Council into disrepute.
23. No credible evidence was presented that Cr. Taylor's speech was contrary to a formal policy, position or resolution of the Council, although his reference to previous development approvals having failed to "come out of the ground" was unwise and open to misinterpretation. Cr. Taylor did not require authority or permission to speak at the event as he was not purporting to speak on behalf of the Council.
24. The LG Act gives the Panel the option of either dismissing the application or making one or other of the orders – i.e. reprimand, apology or requirement to take period of leave. In the circumstances and for the reasons outlined above, the Panel dismisses the Application made by Cr. Hampton and finds that there has been no breach by Cr. Taylor of section 8.1 of the Frankston City Council Councillors' Code of Conduct.

Councillor Taylor's Complaint

The conduct alleged against Councillor Hampton

25. Councillor Taylor's complaint also arises in respect of the [REDACTED] Launch Event at "The Deck". It is best to set out the substance of the complaint. Councillor Taylor alleges that, after he had completed his speech, he walked over to the developer, [REDACTED] to congratulate him on his development. At that time, he alleges:

Councillor Colin Hampton approached [REDACTED] tapped aggressively on his shoulder, pointed his finger close to him and spoke in an aggressive manner and stated "why have you allowed that idiot up to talk".

I then witnessed Councillor Hampton approach the Council CEO Mr Dennis Hovenden. [REDACTED] a reporter from the Frankston Standard leader and [REDACTED] a Council employee, pointing at them and speaking to them in a loud, aggressive manner.

I approached Councillor Hampton to see what the issue was. Councillor Hampton commented in a loud aggressive voice "you have a bloody cheek, you don't have the right to speak on behalf of Council". I replied "I wasn't speaking on behalf of Council I was speaking as a Councillor. They have invited me to speak and I have every right as a Ward Councillor to speak" Councillor Hampton replied, once again in a loud

aggressive voice "Piss off". I replied "I beg your pardon". He replied, once again in a loud aggressive voice "piss off".

26. Councillor Taylor asserts that the conduct he alleges was witnessed by "up to 200 guests" This alleged conduct led Councillor Taylor and claims that it reflected badly on the Council and the City of Frankston, has brought the Council into disrepute, was behaviour towards ██████████, Councillor Taylor, the CEO and Council staff that was offensive and inappropriate, and caused embarrassment to the developer and his guests.
27. Written evidence in the form of witness statements was provided to the Panel. These consisted of:

- Letter of complaint on letterhead of ██████████ dated 26 November 2015, purporting to be signed by ██████████;
- Notes prepared by the CEO, Mr Dennis Hovenden dated 8 February 2016;
- Statement of ██████████, dated 10 February 2016, responding to questions put to him by Councillor Taylor. In particular, the Panel notes the following passage:

When Councillor Taylor approached the stage and collected the microphone to speak Cr Hampton became visibly agitated. He hollered something to the effect of "why is he (Cr Taylor) speaking?" I can't remember the exact words, but he said it loudly enough that people around us (general event attendees) took notice. At this time, it became apparent to me that Cr Hampton had "snapped", with agitation turning to anger. He then approached me, pointed his finger in my face and asked (loudly and in a public view) "are you responsible for this?" I believed that the question was referring to Cr Taylor and whether I had arranged for him to speak. I was initially taken aback by Cr Hampton's behaviour, and could only gather myself enough to reply "no". He then turned to face my colleague, ██████████, and did the same thing – pointed his finger at him and asked loudly "are you responsible for this?" ██████████ said no and advised Councillor Hampton that this was not a Council organised or sanctioned event – we were just invitees.

- Statement of ██████████ dated 17 February 2016 responding to questions put to him by Councillor Taylor. In particular, the Panel notes the following passages:

[At the time that Councillor Taylor was invited to speak] [s]omething happened mid-conversation between ██████████ and Councillor Hampton which caught my attention away from the speech and towards them. At that moment Councillor Hampton came towards me pointing his finger at me and asked a question to the affect [sic] of "did you know about this?" or "are you responsible for this?" I was taken aback by the aggressive and accusatory approach and tone of Cr Hampton. He appeared furious. This caused me to stammer, hesitate at first and then eventually reply by saying "no". I distinctly remember looking at ██████████ before replying as I was in shock and afraid. Thankfully Councillor Hampton did not question me any further and walked away.

.....

While speaking to one of the [estate] agents...we were interrupted by Cr Hampton who put his arm around the agent to move him aside while uttering “move out of the way or you'll lose a limb. Shocked at what I had heard I turned to the Councillor as he walked by to head toward a waitress carrying oysters. I expected him to turn around and smile or acknowledge us to somehow hint this was a cheeky remark or a joke. This did not happen.

- Statement of [REDACTED], dated 24 February 2016.

[REDACTED]
She refers to chatting with Councillor Hampton when Councillor Dooley had moved to the stage to make his speech. She states that Councillor Hampton became “quite cross” when Councillor Taylor was speaking, expressing the view that Councillor Taylor had no place to be speaking about the development as the Mayor was the official spokesperson of the Council. Her statement continues:

It was just after this conversation with me that that Cr Hampton approached the next table where [REDACTED] and [REDACTED] colleague were sitting. I'm pretty sure he asked them what was going on and whether they knew that Cr Taylor had been asked to speak and who authorised it. I didn't think that Cr Hampton was aggressive towards the Council officers he just wanted answers and seemed really frustrated. It all happened very quickly. The council officers didn't appear to know what was going on either. Cr Hampton then left their table and asked someone in the crowd, near our table, who the Developer was and went off in search of the Developer. He disappeared into the crowd and didn't come back. I didn't see him leave but knew that he was really annoyed with the sequence of events and left shortly afterwards.

28. Before the Panel, Councillor Taylor purported to introduce further claims against Councillor Hampton for the first time. These were that:
- a. when he was addressing the gathering, Councillor Hampton was seen by him to be waving his arms and shouting “No, no, no”;
 - b. towards the end of his address he observed Councillor Hampton talking pointedly and aggressively at [REDACTED] at which time Councillor Hampton was at the back of the room;
 - c. Councillor Hampton “stormed up” to [REDACTED] and said to him “what's that fucking idiot doing up there?”
 - d. he was present with [REDACTED] when Councillor Hampton approached;
 - e. he did not actually see Councillor Hampton touch [REDACTED], but noticed Mr Khouri “launch forward” at which time he was less than a metre away;

- f. Councillor Hampton moved towards the Council's CEO, pointing at him in an aggressive manner, causing the CEO to step back and put his hands up and shake his head;
 - g. Councillor Hampton "tapped vigorously" on ██████████'s notebook and pointed closely at him;
 - h. Councillor Hampton yelled at Councillor Taylor from another point in the room, about six metres away, and mouthed the words "wake up to yourself";
 - i. Councillor Hampton was escorted from the building by ██████████'s security staff.
29. As noted above, the Council's CEO, Mr Hovenden, gave evidence to the Panel. He said that he had been standing with the Mayor near the stage at the back wall. He observed Councillor Taylor, when he finished his speech, come down from the stage and move towards the right hand side of the room, facing towards the bar. He also observed Councillor Hampton making his way in a direct line towards ██████████ and his team, where he was seen to engage in a discussion with the developer. Councillor Hampton was with the developer for about a minute, then ██████████ turned his back on Councillor Hampton, to resume the position he was in before speaking to Councillor Hampton. ██████████ definitely did not push Councillor Hampton away.
30. It was Mr Hovenden's impression that that Councillor Hampton had a "definite purpose" in walking over to ██████████ where he engaged in a discussion with ██████████ which, Mr Hovenden considered, had not been pleasant, and was curtailed by ██████████. When questioned by Councillor Hampton, Mr Hovenden said that he may have seen Councillor Hampton tap ██████████ on the shoulder to gain his attention, but that that gesture did not cause ██████████ to lurch forward, and he did not observe ██████████ to do so. Councillor Hampton was, on his observation, with ██████████ only for about one minute.
31. Councillor Hampton then moved towards the Mayor, Mr Hovenden, and ██████████ who were at that stage standing together. Mr Hovenden said that Councillor Hampton had not pushed anyone out of the way in order to get to the Mayor and CEO and denied that, as alleged by Councillor Taylor, he had taken a step back or that he in any way felt threatened by Councillor Hampton. Councillor Hampton asked him if he was aware that Councillor Taylor was going to speak at the function and who had given him permission.
32. Mr Hovenden said that, after the speeches had concluded people were "spread everywhere talking in groups" and the noise level in the room rose considerably, and that to be heard it would have been necessary for anyone who wished to be heard to elevate the level of their voice.
33. Both Mr Hovenden and the Mayor told Councillor Hampton that neither had given Councillor Taylor permission to speak, but that Councillor Taylor had probably spoken because he had a working

- relationship with [REDACTED] and that Councillor Taylor had assisted [REDACTED] at his request with moving the project along through the Council by approaching the CEO.
34. Shortly afterwards, the CEO, the Mayor and Councillor Hampton were joined by Councillor Taylor who wanted to know “what the problem was”. Both the Mayor and the CEO told Councillor Taylor that they were attempting to talk to Councillor Hampton about who had given permission for Councillor Taylor to speak. Councillor Hampton stated that he did not want Councillor Taylor to be part of that conversation, and he then told Councillor Taylor to “piss off”, said that he “was a cheeky bastard”, had “a hide” and said that he did not want Councillor Taylor in the conversation. Mr Hovenden said that all were standing together in a group; they were “not in each other's face” and were not “cheek to cheek”.
 35. When questioned by Councillor Hampton, Mr Hovenden said that Councillor Hampton's attitude to the development had been positive, that he had made positive observations about the promotional brochure, and that his demeanour reflected the good feeling in the room – conversation was friendly, and there was banter with the media representatives. Mr Hovenden said that he had not heard Councillor Hampton state (as had been alleged by Councillor Taylor) “move aside or lose a limb” but accepted that if that had been said, it would have been said in jest, as Councillor Hampton's well-known desire for oysters would have led him to push through to where they were being served. Mr Hovenden also recalled that Councillor Hampton had walked upstairs with [REDACTED] in a friendly manner to look at the view from the Deck.
 36. With regard to the complaints made by [REDACTED] and [REDACTED], Mr Hovenden said that they complaints were not made until the next day, when both these staff members sought him out in his office. These staff members were not experienced in dealing with difficult situations, and expressed their concern to Mr Hovenden.
 37. Mr Hovendon confirmed that, at the start of the evening, Councillor Hampton had told him that he would be able to stay at the function no longer than 7:30 pm [REDACTED]. He stated that just before Councillor Taylor joined him, the Mayor and Councillor Hampton, Councillor Hampton had mentioned that he was about to leave. Councillor Taylor's arrival delayed Councillor Hampton's departure for another minute.
 38. Mr Hovenden said that, from his observation, Councillor Hampton was not escorted from the building.
 39. Asked about the complaint from [REDACTED], Mr Hovenden said that it had been withdrawn on two occasions. [REDACTED] had spoken with Mr Hovenden, who told him that if he were to complain he should put it in writing. A couple of weeks after the complaint was received, Mr Hovenden was advised by [REDACTED] that it had been withdrawn. Despite that, Councillor Taylor claimed that the complaint had not been withdrawn.

40. Mr Hovenden told the Panel that he had been advised that ██████████ was not in fact the author of the complaint and that at the time the complaint was lodged ██████████ had been in hospital with a painful condition that required narcotic medication, such that he did not have the capacity to author the letter of complaint. In a meeting with Mr Hovenden, ██████████ had stated that he advised Councillor Taylor to talk with his Personal Assistant about the events, and that a letter would be drafted in terms proposed by Councillor Taylor.
41. At the conclusion of his evidence, Mr Hovenden made a brief oral statement to the Panel which may be summarized as follows:
- a. He was disappointed and uncomfortable about having to give evidence to the Panel. He has a good working relationship with both Councillors, who should sort out their differences;
 - b. Councillor Hampton was not, as suggested by Councillor Taylor, intoxicated. Though he became upset and angry, he did not speak in a derogatory way about the development or the developer;
 - c. The noise level in the room was very loud, but people would have been alerted to their being some incident or issue at the presentation;
 - d. It was always Councillor Hampton's intention to leave at 7:30 pm. He saw no-one ask Councillor Hampton to leave, or escort him from the building;
 - e. Councillor Taylor had an obligation, as a matter of common courtesy, at a function where the Mayor is present, to tell him that he was going to speak and what he was going to say – it was insufficient for Councillor Taylor to rely upon the attachment to the emailed invitation as providing the necessary information;
 - f. The two officers who complained to him the following day should, if they were concerned, have approached him at the time;
 - g. He was disappointed that the parties could not resolve the matter through mediation, particularly that one Councillor went directly to a Councillor Conduct Panel without accessing mediation.
42. The Mayor, Councillor Dooley, gave evidence to the Panel. He had been standing about five metres away from the stage when the speeches were given. He was aware of Councillor Hampton being a further five or six metres behind him. He observed Councillor Hampton tap ██████████ on the shoulder, and saw ██████████ turn around, but could not hear what was said. He described the conversation as appearing “urgent” but not “aggressive”.

43. Later, he had seen Councillor Hampton wave his hand and say “piss off you cheeky bastard” to Councillor Taylor. ██████████ had observed the exchange, and claimed that it was “just like two blokes in a pub”. Councillor Dooley accepted that Councillor Hampton was agitated.
44. As to ██████████'s letter of complaint, Councillor Dooley said that he was aware that at the time the letter was drafted ██████████ ██████████ “was flat on his back after surgery and drugged with Ketamine”. He said that ██████████'s personal assistant wrote the letter, with Councillor Taylor's assistance. The matter had been referred to the appropriate authorities for investigation.
45. In response to questions from Councillor Hampton, Councillor Dooley agreed that Councillor Hampton's demeanour at the start of the evening was “very happy” and “pretty good”; all were positive about the design of the development, and there was a “party atmosphere”.
46. Councillor Dooley, having addressed the gathering, said that, from the stage, it was not possible to see anything in the room, except for “a foot in front of you”. When he moved from one part of the stage to another, he was still “hit” by the spotlight, and could not see anything.
47. Councillor Dooley's evidence was that he had not seen Councillor Hampton yelling and screaming across the room at Councillor Taylor at any time.
48. Councillor Dooley said that the claim and cross claim were particularly upsetting to him because Councillors Taylor and Hampton were two of the most productive and constructive Councillors in the City. He would have liked to see them mediate matters and get back to work, though in his opinion this issue has not affected the workings of Council.
49. Councillor Dooley observed that, as he was leaving the function he came across the two officers who made complaints against Councillor Hampton, ██████████ and ██████████ in discussion with Councillor Taylor.
50. Councillor Hampton gave evidence to the Panel. He talked first about his time on Council, some 15 years, and a term as Mayor. He knew that Councillor Taylor had not told the Mayor that he was to speak at the function, and was aggrieved by that conduct.
51. Councillor Hampton said that he had never had a problem with Council officers in his 15 years on the Council and he was concerned about their reaction to what had occurred at the function. He had found their comment's hurtful. He apologised to them and believed that they do a good job. He denied that there was anything other than humour in his statement “move aside or lose a limb”. He said that he had approached the officers to find out who had given Councillor Taylor permission to speak, but he did not confront anyone, but rather just went up to people and asked questions. He did

- not continue with [REDACTED] when it became clear that he did not want to talk with him. But he was frustrated, and wanted to get answers, and what [REDACTED] said in her statement on this point is accurate.
52. Councillor Hampton denied that he had engaged in shouting across the room and denied that Councillor Taylor would have been in any position to see what he was doing whilst on the stage. The bright lighting focussed on the speakers meant that Councillor Taylor would have been unable to observe members of the audience – so that he would be unable to see people at the back of the room and, in particular Councillor Hampton, or [REDACTED], the latter being positioned behind a pillar.
53. Councillor Hampton said that he had been back to the venue and tested the lighting and the ability of a person on the stage to see someone at the back of the room. His assessment was that it was not possible for a person on the stage to do so.
54. In response, Councillor Taylor expressed concern as to what the Panel might do with the issue of [REDACTED]'s letter of complaint, and considered that he may need to consult lawyers. At the time of preparing these Reasons for Determination, no response has been received by the Panel from Councillor Taylor on this question.
55. Councillor Taylor told the Panel that he had assumed that the Mayor was aware that he was to speak at the function. Councillor Hampton's conduct was totally inappropriate and he was aware that staff were being aggressively approached.
56. Written statements were provided to the Panel by [REDACTED] and [REDACTED]. Both were unwilling to give oral testimony to the Panel. Their statements, particularly that of [REDACTED] covered many matters, some of observation, and some being matters of opinion which go beyond the events at the function. Many of these matters of opinion are not matters that the Panel needs to deal with in this application and appear to reflect the views put by Councillor Taylor at the hearing.
57. In view of the fact that neither officer gave oral testimony to the Panel, it is the Panel's view that only so much of their evidence as relates to their interactions with Councillor Hampton are to be taken into account in our consideration of this matter.

The Panel's Findings of Fact

58. Numerous allegations were made by Councillor Taylor against Councillor Hampton. The Panel finds that Councillor Taylor's evidence was exaggerated and, to the extent that matters were advanced by him at the hearing rather than in the documentation

that gave rise to his application, intended enhance, without any sound factual basis, the case that his formal application sought to make against Councillor Hampton. Of the matters are of concern to the Panel, chief amongst those is the involvement of Councillor Taylor with ██████████'s personal assistant in drafting ██████████'s letter of complaint at a time that ██████████ was incapacitated by reason of surgical treatment and according to the evidence, incapable of composing the letter. Notably, that complaint was withdrawn by ██████████, although Councillor Taylor persisted in asserting that it had not been withdrawn, suggesting that he had some investment in the complaint.

59. The Panel also accepts that, contrary to the evidence of Councillor Taylor, it would not have been possible for him to see, because of the stage lighting, any conduct that had been engaged in by Councillor Hampton during the course of his speech. The Panel rejects, also, Councillor Taylor's assertion that Councillor Hampton was ejected from the meeting by ██████████'s security staff, preferring, as we do, the evidence of Mr Hovenden and Councillor Hampton. Councillor Taylor's evidence in respect of these matters is rejected.
60. On the evidence before the Panel we are satisfied that Councillor Hampton:
- a. was not affected by alcohol on the evening, and had a positive attitude to the development and the occasion;
 - b. did not call out and wave his arms about during Councillor Taylor's speech to the gathering;
 - c. made the statement "move aside or lose an arm" in jest, as he sought to approach the waitress serving oysters;
 - d. tapped ██████████ on the shoulder, and did not cause him to bend forward at all;
 - e. had an animated conversation with ██████████ which was not aggressive or in any way intimidating;
 - f. left ██████████'s company immediately upon ██████████ indicating, by turning away, that he did not wish to continue talking to him;
 - g. approached ██████████ and ██████████ and pointed a finger at them whilst aggressively demanding they explain how Councillor Taylor had come to address the meeting;
 - h. was sufficiently loud in his interrogation of ██████████ ██████████ that other guests in the approximate vicinity would have heard Councillor Hampton's inquiries and observed his demeanour;
 - i. approached Mr Hovenden in an un-threatening manner and did not cause Mr Hovenden to take a step back or be concerned for his well-being;
 - j. whilst in the company of the Mayor and Mr Hovenden, Councillor Hampton was approached by Councillor Taylor and,

when he perceived Councillor Taylor to be intruding in his personal space, told him to “piss off”;

k. Was not ejected from the meeting by ██████████'s security staff.

61. Of particular concern to the Panel is the approach made at the function by Councillor Hampton to ██████████. The Panel has carefully considered their statements. Although Councillor Taylor was observed to speak with them after the function, there is no evidence that their complaints to the CEO were initiated or provoked by Councillor Taylor. A fair reading of their evidence – albeit in response to questions posed to them by Councillor Taylor – makes it clear that each of them felt some degree of threat or intimidation from Councillor Hampton's approach and questioning. The Panel has no reason to believe that either of them were other than guests at the function and not persons engaged in the planning of the function or decision making about who would speak. Text messages which the panel has seen from ██████████ to Councillor Taylor make it clear that Councillor Taylor spoke at the function in response to an invitation from ██████████.

Conclusion: Has Councillor Hampton breached the Councillors' Code of Conduct?

62. In light of the findings of fact made by the Panel, set out above, view the only conduct of Councillor Hampton that is capable of constituting a breach of the Councillors' Code of Conduct is his conduct in respect of ██████████ and ██████████. That conduct, as the Panel has found, was, as they apparently perceived it, threatening and intimidating. The Panel accepts also that Councillor Hampton's conduct, involving pointing of a finger and demanding an answer, was objectively threatening behaviour, in light of how it must have appeared to bystanders. Clause 6.3 of the Code is in the following terms:

6.3 Councillors will, when interacting with Council staff, act:

6.3.1 respectfully;

6.3.2 with courtesy; and

6.3.3 in a manner that is not (or not likely to be) intimidatory.

63. In the circumstances it is not necessary to deal with Councillor Taylor's claims based upon the more general propositions raised by section 76BA of the LG Act and cll. 3.2 and 4.1 of the Code.
64. In the Panel's view Councillor Hampton, in addressing ██████████ ██████████ and ██████████, in the manner that he did, as he did acted contrary to clause 6.3 of the Code.

Disposition

65. Undoubtedly Councillor Hampton was angry that Councillor Taylor addressed the function. He mistakenly believed that Councillor Taylor had purported to do so as a representative of the Council. He may have been aware of Councillor Taylor's relationship with [REDACTED], but knew nothing of the arrangements made for Councillor Taylor to speak at the function. Regrettably, neither did the Mayor or the CEO.
66. Although Hampton's enthusiastic conduct at the function in endeavouring to ascertain who it was that had permitted Councillor Taylor to speak, it was not, as the Panel has found, in breach of the Code, it was nevertheless inappropriate.
67. The Panel accepts that Councillor Hampton was piqued that Councillor Taylor spoke at the meeting, but his frustration led him to question [REDACTED] and [REDACTED] in a fashion that should not be accepted. It accepts, also, his assertion that his conduct might have been influenced by the need to leave early [REDACTED].
68. Councillor Hampton's observations to the Panel that, in his 15 years as a Councillor and Mayor of the City of Frankston he had always conducted himself in an appropriate manner towards Council staff was not challenged by Councillor Taylor or any witness. Indeed, [REDACTED] in his statement says that he has a good working relationship with Councillors Hampton and Taylor, and that his relationship with Councillor Hampton has lasted for over 20 years. It is necessary for the Panel to give credit to that history.
69. The Panel notes that Councillor Hampton has provided an apology to the two staff members we have referred to. He sent a letter or email to [REDACTED] (the copy in the possession of the Panel is undated). The text of the letter is as follows:

After reading the complaint in your statement about my behaviour at the [REDACTED] function, I felt I needed to write to you.

I wish to apologise for any misunderstanding you may have gained from my approach to you that evening.

In my 15 years as a councillor I have never had a complaint about my behaviour with any officer of council and have always held you in deep regard.

Especially the work you done [sic] on [REDACTED].

Leaving aside the other allegations in your statement, I am deeply sorry that you misunderstood my intentions, as there is no way I meant you any distress or discomfort.

By way of explanation I was in a desperate hurry [REDACTED] and as a consequence I might have been a little brisk.

I was trying to confirm if Cr Taylor had breach [sic] the Councillor Code of Conduct or not and he had.

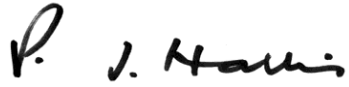
I have always had the greatest respect for officers of council, as you all do a great job for our community, sometimes under great pressure.

70. A letter of apology (apparently sent by email on 23 February 2016) was similarly provided to [REDACTED]. Leaving out the personal reference to [REDACTED] contained in paragraph 5, and adding "Also the saying 'move aside or loose [sic] a limb' is an old Australian joke and it was meant in that manner". [REDACTED] replied by email on the same day, stating:

Dear Cr Hampton
Thank you for your apology [REDACTED]
Regards
[REDACTED]

71. However it is the Panel's view that an unqualified and more formal acknowledgement by way of an apology should be made by Councillor Hampton to both [REDACTED] and [REDACTED]. This is required to reinforce the importance of Councillor behaviour when interacting with Council staff which is found in cl. 6.3 of the Councillor' Code of Conduct.
72. Pursuant to section 81(2)(b) the Panel directs that formal, written, apologies are to be issued by Councillor Hampton to [REDACTED] [REDACTED] and [REDACTED] within 14 days after the tabling of these Reasons for Determination at the next ordinary meeting of the Council. The apology is to include:
- a. an unqualified apology to each of [REDACTED] and [REDACTED] for the inappropriate conduct of Councillor Colin Hampton at the [REDACTED] and for any distress this has caused to [REDACTED] or [REDACTED]; and
 - b. a commitment by Councillor Hampton that he will in future adhere to clause 6.3 of the Councillors' Code of Conduct (and the equivalent clause in any future versions of the Code) and that he will act respectfully, courteously and without intimidation when interacting with Council staff.
73. At the next available ordinary meeting of Council following the issue of the letters of apology to [REDACTED] and [REDACTED], a copy of each of them is to be tabled by Councillor Hampton.

Dated: 10 June 20116

Handwritten signature of Peter Harris in black ink.

PETER HARRIS

Chairperson, Legal Member

Handwritten signature of Matt Evans in blue ink.

MATT EVANS

Governance Member