Scheduled Council Meeting - 3 April 2023 Attachments

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GPO Box 4912 Melbourne Victoria 3001 Inspectorate@lgi.vic.gov.au Telephone: 1800 469 359

Ref: INV 785

By email to: PSchneider@warrnambool.vic.gov.au

WARRNAMBOOL CITY COUNCIL (WCC) REAPPOINTMENT OF VIKKI KING AS DIRECTOR COMMUNITY DEVELOPMENT

Dear Mr Schneider

I write to advise you that the Inspectorate has finalised the investigation into the following allegations:

- i. On 16 August 2020, a complaint form was submitted to the Inspectorate, it was alleged that the Vikki King, former Acting Chief Executive Officer (**'CEO'**) misused her position in contravention of section 76D of the *Local Government Act 1989* (**'the Act'**) to be reappointed to her substantive position of Director Community Development renewed for a further five years.
- ii. On 14 September 2020, another complaint was submitted, it was alleged that the contract renewal process for the Director Community Development was in breach of the Act.
- iii. On 18 November 2020, the Inspectorate received a complaint which alleged a misuse of position by Vikki King to reappoint herself into her previous position as Director Community Development for another five years.
- iv. On 12 April 2022, another complaint was submitted which alleged Vikki King misused her position pertaining to her reappointment as Director Community Development.

As you are aware the Local Government Inspectorate (Inspectorate) is the dedicated integrity agency for local government in Victoria, and is responsible for receiving, assessing and, where appropriate, investigating offences under the *Local Government Act 2020* (Act).

The Inspectorate has considered the allegations and without any clear evidence we are unable to substantiate or proceed further with any investigation or action.

The following comments are for your further information and in response to the claims:

I base this on the following information I have received and assessed:

i. The Inspectorate explored the possibility of a Misuse of position by Vikki King, however the elements of s 76D (1) cannot be satisfied. Vikki King was a former staff member, *not a "former Councillor or a member of a special committee*" as stated in the Act. It is therefore decided that Vikki King has not breached s 76 D of the Act.



76D Misuse of position

A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position –

ii. The Inspectorate also investigated into 'Misconduct in public office' by Vikki King. It has been decided that Vikki King did not carry out any unlawful activities. Vikki King instructed Anthony Massaro, Russell Kennedy, who advised that the CEO powers could be delegated to a *"member of council staff"*. Vikki King delegated her powers to Noel Reid who was a part-time *staff member* at Warrnambool City Council. Further clarification on this point was sought by Simon Fleming, Mr. Massaro stated the following:

"Section 47(1)(a) of the Local Government Act 2020 provides that the delegation must be to a member of Council staff, which is defined to mean any person appointed who is not an independent contractor or volunteer".

- iii. Vikki King approached three senior members of staff, all of which did not feel comfortable with accepting the delegations. There is an argument to suggest that Vikki King made reasonable attempts to have a director accept the delegations before turning to a less senior member of staff.
- iv. It should be noted that Noel Reid is not a senior member of staff, however, Mr. Reid took advice from both Simon Fleming and Graham Shiell before he accepted the delegation. In an interview with the Inspectorate, Mr. Reid stated there was,

"...no negative response through the Organisational Development Manager, Graham Shiell, etc."

- v. Vikki King was advised by Anthony Massaro to "engage a suitably qualified consultant to provide an independent assessment". An independent report was drafted by Christine Mileham, Recruitment, Workplace Relations & HRM Consultant. On 6 August 2020, Ms. Mileham made a declaration that she did not have a past work or personal relationship with Vikki King. Without any evidence to the contrary, it has been decided that no conflict of interest exists between Vikki King and Christine Mileham. During Mr. Reid's interview with the Inspectorate, he advised that he based his decision on whether to reappoint Vikki King on the conclusion of the independent report.
- vi. It is noteworthy that although the legislation states that *"any staff member"* can be delegated the powers of the CEO, it is a shortcoming of council that Mr. Reid was placed in a position to accept the delegations. It can be argued that Mr. Read does not have the adequate experience to accept the CEO delegations. I have addressed this in the recommendations below.
- vii. Furthermore, it appears that Vikki King circumvented a proper procurement process in the appointment of Ms. Mileham. This has been addressed the in the below recommendations.
- viii. Another shortcoming to arise out of this investigation is that Ms. Mileham was unable to obtain documented performance plans for Vikki King. Vikki King sent Ms. Mileham an "unassessed performance plan" again, indicating that there was nothing formal on council's case management system relating to her performance. I have also addressed this shortfall the recommendations below.



Conclusion:

- i. As a staff member, Vikki King is not subject to the provisions governed by section 76D of the *Local Government Act 1989.*
- ii. It has been decided that Vikki King has not undertaken any unlawful activities.
- iii. No breach and / or offence of the Local Government Act 1989 has occurred.

Recommendations:

- i. Council should devise a policy pertaining to the reappointment of senior staff members.
- ii. Council should define the staff members capable of accepting the CEO delegations in certain circumstances.
- iii. Council should have a policy in place for the performance reviews of senior staff members. All performance reviews should be adequately documented and saved onto Council's case management system.
- iv. Council should ensure all procurement / tender policy documents have been updated and that staff members are reminded of the importance of the same.
- v. The recommendations in this letter should be tabled at the next open Council meeting.

Should you have any questions or would like to discuss this matter further, please contact Sinead Flatley at email inspectorate@lgi.vic.gov.au.

Yours sincerely

David Walker Team Leader Investigations

1/06/2022



Date: Tuesday 21 February 2023.		Time: 11.00 am	. Location: Airport Terminal.	
Mee	ting Objective:	Discussion & Advise on Airport Operations and	d Development, Securit	y, and Emergency Management.
Atte	ndees:	Stephen Lucas (Chairman) Cr Max Taylor (Wa Services) Patrick HEMS4 MICA Paramedic.	rrnambool City) John S	tuart, Errol Stewart, Stephen Wood (Off Shore
wco	C Attendees:	David Leahy (Director City Infrastructure) Abe Airport Operations & Compliance)	bel Farrell (Manager Infrastructure Services) Terry O'Sullivan (Coordinator	
MSC	Attendees;	Michelle Grainger (Manager Energy Projects (Officer)	
For I	nformation:	Shane Robe (ARO)		
•	logies:	(Moyne Shire) Ken Veal, Chris Daffy, Troy Bent Property and Projects/Governance, Property,	ley, Toby Hunt (Babcoo Projects & Legal) Tina	Bryant (Property Officer)
No		Discussion	Who Chairman.	Action
1.	Welcome & Apo	biogles.	Chairman.	
2.	Declaration of conflict of interest.		All.	Stephen Lucas – Hangar Owner/Aero Club. John Stuart – Hangar Owner. Errol Stewart – Hangar Owner/Aero Club.
3.	Confirmation of minutes of Meeting Monday 21 November 2022. Minutes tabled as follows: Executive Management Team Meeting Tuesday 13 December. Council briefing Monday 19 December. Council Meeting Monday 6 February 2023.			Moved: John Stuart Seconded. Cr Max Taylor. Carried.
	Business arising from the Minutes.		All.	Nil.
4.	U U	2021 Airport Development Plan, ADP. Future development of the Airport is centred on enhancing safety and catering for larger Aircraft as the region grows.		

	Going forward there is a need for a Strategic Plan to complement the ADP covering but not limited to closer liaison with Moyne Shire (on nearby development, protection of Airspace, etc) leases, commercial activities, permitted usage, etc. Any future development on site, applicants will require Councils in principal approval for use and consent to build in the first instance and specifically if the need arises to make application for a Planning Permit to the Moyne Shire for uses other than primary Aviation based uses.		 Altitude, MSA, and Obstacle Limitation Surfaces, OLS, as highlighted by recent State Government Panel Hearing's on Windfarm Developments. Reference Group to be included in above for review/comment. The above to be reported to Council for adoption. Council to Express an Interest in becoming part of Regional Capitol Australia. Moyne Shire Council, MSC, recently advertised for Expressions of Interest to purchase or lease land for a new Depot as they have outgrown their site at Koroit. Council staff continue to field calls from interested parties enquiring about operating larger Aircraft from Warmambool, construction of Hangars, lease terms, conditions of use, etc.
6.	Runway 13/31. Resealed February 2016.To clearly determine the current asset life of the runway a detailed pavement investigation needs to be undertaken as soon as practical.With increasing and larger traffic the pavement life expectancy is becoming less and early signs of ponding are evident.	David Leahy/Abel Farrell.	Skid resistance and surface texture testing to be undertaken. The GHD Pavement Investigation report 2010 still a relevant reference to existing pavement.

7.	Runway 04/22.		
	Usage of Runway continues to increase.	Abel Farrell/Terry O'Sullivan.	Runway to be suction swept Thursday 23 February to remove loose stone.
	Runway swept Thursday 15 December.		
	A second 7mm seal was applied Monday 23 January. Rolling of Runway undertaken Tuesday 24 and Wednesday 25 January and again Tuesday 8, Wednesday 9, & Friday 10 February.		Turning nodes each end are planned along with line markings plus grading of runway shoulders to improve drainage commencing Monday 27 February and scheduled for completion by Friday 24 March.
			Runway will be available for light Aircraft movements with displaced threshold of 334 metres.
8.	Obstacle Limitation Surfaces, OLS.		
	O'Sullivan maintains ongoing consultation with neighbouring property owners with regard to any vegetation identified infringing the approach, transition, and take off surfaces.	Terry O'Sullivan.	Property owner of tree plantation on approach to Runway 13 (west end main runway) has given consent to Council to lop back part of the plantation for approximately 120 metres.
9.	Wind Farm Developments.		
	As previously agreed Council's position that no change to the MSA occur in order to protect the current Airspace.	WCC & MSC Staff.	Michelle Grainger, MSC, provided an update on windfarm developments.
	Moyne Shire Council. Moyne Shire Council's current resolution is to oppose all new wind farms in Moyne (attached)		Has been recent panel hearings for Willatook and Woolsthorpe developments.
			In future Warrnambool to attend and make
	Willatook. Subject to Panel Hearing in Warrnambool Tuesday 11 October through to Monday 7 November.		representation at hearings in unison with Moyne.
	WCC made submission through Public Exhibition/Planning		Critical that Development and Strategy Plans for the Airport are adopted by Council.
	Process WCC's submission based on protecting the current Airspace and Obstacle Limitation Surfaces well received along with future development for the Airport as outlined in the ADP		Aviation consultants continually advise that a raise in the MSA is not a safety issue and is
	plus an overview of usage of the Airport.		purely an administrative task.

	 Thanks to Moyne Shire in particular Michelle Grainger and Vicki Askew-Thornton for their support in protecting the Airports Airspace throughout the hearing. Woolsthorpe. Woolsthorpe Wind Farm, Planning Permit amendment application, reduce number of turbines from 20 to 13 but increase height from 168 metres to 230 metres This application is seeking to amend planning permit and proposes to increase MSA from 2100 to 2300ft. To be considered by MSC Tuesday 8 November. WCC made submission through Public Exhibition/Planning Process to DEWLP Friday 4th November (copy MSC) Currently subject to Panel Hearing. Hawkesdale. Works have commenced. Hexham. Nothing further to report from last meeting. 		In all discussions to date it is not clear who has the regulatory authority to approve or reject the requests for an increase in the MSA, i.e. who has control/ownership of Air Space? Fair to say the end result sits with the Minister for Planning. The outcome of the Willatook Panel Hearing is expected in a month or so. Await outcome in anticipation. Outcome of Woolsthorpe hearing to follow. Again thanks to Moyne Shire in particular Michelle Grainger and Vicki Askew-Thornton for their support in protecting the Airports Airspace throughout the hearing. Works in progress. Expect development in this space shortly. Towers planned are 260 metres AGL.
10.	Communications & Water Towers. 63 McKenzies (Telstra 35m monopole) subject to a hearing in April. 366 Wollaston (Telstra 35m monopole) has been appealed at VCAT and is scheduled for a hearing in September.	Terry O'Sullivan.	For information.
11.	VCAT drid is scheduled for d freding in september. Fees and Landing Charges. Income for 2022/2023 to date: Avdata charges \$28,629.00 Local Commercial Operators \$6,109.09 "Recreational \$3,568.68		Noted by group.

	 Group to be advised when Budget is put out for public comment. Response to operators that fail to pay landing fees. Warmambool City Council has engaged Avdata to act on its behalf for the purposes of collecting landing fees at YWBL. An amount of \$0.00 is owing for movements at YWBL. Please settle this outstanding amount at your earliest convenience, failure to do so will result in Council engaging its Debt Collectors. 		Group in agreement that if Aircraft Operators are not willing to pay landing fees at YWBL then please refrain from using Warrnambool, all others pay as per Councils landing Fees.
12.	 Airport Works & Maintenance. The Apron pavement is subject to ongoing failure due to larger and heavier Aircraft mainly from AW 139 Rotary Aircraft. Pavement repairs undertaken on apron Tuesday 31 January. Wednesday 23 November, Friday's 6 and 20 January full day of applying Herbicide on runway strips, drains, and grazing land to control noxious weed. 		Noted by group.
13.	Leases. Chairman has had discussion with Manager Governance, Property, Projects, & Legal, on leases. Monday 13 February, e-mail to Hangar owners. Draft lease attached for information and comment. Please see attached Draft Lease for the Warrnambool Airport Land Leases. Can you please read through this document and provide comment back to Stephen Lucas. Please note, we still need to provide details on Rent terms which we look to charge on Land	Julie Anderson/Tina Bryant.	Ongoing discussion to review and refine draft lease

	space rather than Hanger space. This is to accommodate those who wish to use the Land space as well as Hanger. The price per m2 will be lowered to reflect this change, with minimal impact to your yearly Rent charges. If you have any questions please do not hesitate to get in touch.		
14.	Australian Airports Association, AAA. Re e-mail 19 August 2022 to AAA MOS 139 Technical Working Group with reference to 2019 MOS in particular Runway Strips.	Terry O'Sullivan.	Warrnambool's main Runway is classified a Code 3 runway and is now grouped in with Code 4 runways and greater that cater for large domestic and international operations. Critical that Council through the AAA and other like Airports continue to lobby CASA to review its standards and allow Airports like Warrnambool and similar that have plans to extend existing runways to be able to do so as a Code 3 (30m wide with 150m Runway Strip not updated standard requiring 280m Runway Strip.
15.	Hangar/Building Construction Lot 14. Applicant provide landowners consent to build. Lease agreement to be entered into.	Abel Farrell/Terry O'Sullivan.	Noted by group.
16.	On/Off Shore operations. Off Shore Operations for the Thylacine Gas Rig continue. Recent request from Offshore Services for Pavement concession for AW 139 Rotary Aircraft. Approved Tuesday 7 February.	For information.	Noted by group.
17.	Flight Training. Ideally a provider should be based locally and have aircraft on site.		Noted by group.

	Nothing further to report since last meeting.			
18.	Aero Club Redevelopment. Works in progress.		Noted by group.	
19.	Drag Race Club. E-Mail received from Club 1 st November requesting use of the Airport for Saturday's 25 th February, and 15 th April 2023. In event the Airport can be made available on the requested dates, daylight hours Saturday only, approval and conditions of use will be at the discretion of Council's Airport Manager and/or Coordinator Airport Operations & Compliance.	Terry O'Sullivan.	Noted by group.	
20.	 General Business. 20.1. Air Transport Operations. Regular operations occurring into Warrnambool from Kingscote SA. 20.2. CASA. CASA under flight validation of published procedures, etc, Saturday 10 December 2022. 20.3. DEECA had observer Fire Spotter Aircraft on site Saturday 14 and Tuesday 17 January when weather was warmer. 20.4. Patrick HEMS4 MICA Paramedic, advised the concrete landing pad for the Helicopter is to be cleaned to remove moss. 20.5. Hangar 13. Owner has advised of intentions to sell facility in near future. 		Noted by group.	
21.	Next Meeting. Close of Meeting.		Monday 22 May 2023. Meeting closed at 11.55am.	

Info	rmal Meeting of Council Record		
Name of Committee or Group (if applicable):	Informal Meeting of Council (Councillor Briefing)		
Date of Meeting:	14 March 2023		
Time Meeting Commenced:	3.03pm		
Councillors in Attendance:	Cr. D. Arnott, Mayor Cr. O. Akoch Cr. B. Blain – Zoom – joined meeting at 3.11pm Cr. V. Jellie AM - Zoom Cr. A. Paspaliaris Cr. M. Taylor Cr. R. Ziegeler		
Council Officers in Attendance:	Cr. R. ZiegelerAndrew Mason, Chief Executive OfficerPeter Utri, Director Corporate StrategiesDavid Leahy, Director City InfrastructureLuke Coughlan, Acting Director City Growth – until 4.00pmWendy Clark, Executive AssistantJackson Fary, Project Manager (3.23pm – 3.32pm)Thomas Hall, Acting Co-ordinator, Project Manager (3.23pm – 3.32pm)Paul Cugley, Co-ordinator, Infrastructure Management (3.23pm – 4.02pm)		
Other persons present:	N/A		
Apologies	Ingrid Bishop, Director Community Development		
Matters Considered:	 Airport Reference Group Meeting Minutes 21 February 2023 - (3.03pm - 3.07pm) Local Government Inspectorate Letter - (3.07pm - 3.22pm) Confidential - Tender Evaluation 2023015 Warrnambool Hockey Club Pitch Replacement - (3.23pm - 3.32pm) This report has been declared confidential under the following section of the Local Government Act 2020: Section 3 (g) - private commercial information, being information provided by a business, commercial or financial undertaking that (i) relates to trade secrets; or (ii) if released would unreasonably expose the business, commercial or financial undertaking to disadvantage. Car Parking & Traffic Strategy - South West Health Care 		
	 Redevelopment - (3.33pm – 4.02pm) 5. Citizenship Ceremony Trees - (4.02pm - 4.05pm) 6. Regional Cities Victoria General Meeting Summary Report (4.05pm - 4.12pm) 7. Items Raised By Councillors & Officers - (4.12pm - 4.38pm) 		
Council and Officer Items Raised	 Lady Bay dredging. Speed humps in Merrivale Drive. North car park at breakwater. Rubbish being washed up on beaches. Basketball court at Lake Pertobe. Long term masterplan for tennis courts on Pertobe Road. Overgrown weeds at the cutting. VEC Electoral boundary review. Credit card fraud press article. Great Ocean Road Parks Authority. Lore with Law cricket match. Flagstaff Hill planning consultations. 		

	May Races sponsorship.
Councillor Conflicts of interest Disclosures: Nil.	
Councillor /officer Name:	
Meeting close time:	4.38pm
Record Completed by:	Wendy Clark Executive Assistant

Infor	mal Meeting of Council Record
Name of Committee or Group (if applicable):	Informal Meeting of Council (Councillor Briefing)
Date of Meeting:	21 March 2023
Time Meeting Commenced:	2.00pm
Councillors in Attendance:	Cr. D. Arnott, Mayor Cr. O. Akoch Cr. B. Blain – arrived 2.30pm Cr. V. Jellie AM Cr. A. Paspaliaris Cr. M. Taylor Cr. R. Ziegeler
Council Officers in Attendance:	Andrew Mason, Chief Executive Officer Peter Utri, Director Corporate Strategies David Leahy, Director City Infrastructure Luke Coughlan, Acting Director City Growth Ingrid Bishop, Director Community Development John Brockway, Manager Finance (2.00pm - 3.35pm) Wendy McGorm, Co-ordinator Financial Services (2.00pm - 3.35pm) Wendy Clark, Executive Assistant (3.40pm onwards) Julie McLean, Manager City Strategy & Development (3.40pm - 3.45pm) Rob Wandell, Co-ordinator City Development (3.40pm - 3.45pm) Ashish Sitoula, Manager, Strategic Community Planning & Policy (3.45pm - 3.59pm)
Other persons present:	N/A
Apologies	Nil.
Matters Considered:	 Budget Workshop – (2.00pm – 3.35pm) PP2000-0135.04 - 355 Koroit Street - Amended Grounds for VCAT Proceeding P1737/2022 - (3.40pm – 3.45pm) Confidential - Update on the Commonwealth Home Support Program Reform - (3.45pm – 3.58pm) This report has been declared Confidential under the following Section of the Local Government Act 2020: Section 3(a) – Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released.
	 Contract Extension - Meals On Wheels Service - (3.58pm – 3.59pm) It's All Happening Campaign Report - (4pm) - 4.11pm) Optus - Proposed Lease (4.11pm - 4.28pm)
Council and Officer Items Raised	 Bonza Airlines. Meeting with Roma Britnell MP. Meeting with Midfield Meats. Meeting with Warrnambool Golf Club. Councillors meetings with CEO. International Women's Day event on 30 March 2023. Future direction of Flagstaff Hill sessions. Bushfield-Woodford Community Drop In session.

Councillor /officer Name:

Cr Angie Paspaliaris – Item 3.1. PP2000-0135.04 - 355 Koroit Street - Amended Grounds For VCAT Proceeding P1737/2022. Cr Paspaliaris left the meeting at 3.35pm and returned to the meeting at 3.45pm.

Meeting close time:	4.37pm
Record Completed by:	Wendy Clark Executive Assistant

Informal Meeting of Council Record		
Name of Committee or Group (if applicable): Date of Meeting:	Informal Meeting of Council (Councillor Briefing)	
	28 March 2023	
Time Meeting Commenced:	3.08pm	
Councillors in Attendance:	Cr. D. Arnott, Mayor Cr. O. Akoch Cr. B. Blain Cr. V. Jellie AM Cr. A. Paspaliaris Cr. M. Taylor Cr. R. Ziegeler	
Council Officers in Attendance:	Andrew Mason, Chief Executive Officer Peter Utri, Director Corporate Strategies David Leahy, Director City Infrastructure Luke Coughlan, Acting Director City Growth Ingrid Bishop, Director Community Development (3.20pm – 4.49pm) Wendy Clark, Executive Assistant Ali Kemp, Manager Recreation & Culture – ZOOM (3.21pm – 4.38pm) Aaron Bradbrook, Director, Warrnambool Art Gallery (3.21pm – 4.33pm) Steve Hoy, Manager Economic Development & Events (4.53pm – 4.58pm) Chloe Jewell, Events & Promotion (4.53pm – 4.58pm) Victoria Black, Events & Promotion 4.53pm – 4.58pm) Nick Higgins, Manager Communications (5.16pm – 5.26pm) John Brockway, Manager Finance (5.29pm – 6.16pm) Wendy McGorm, Co-ordinator Financial Services (5.29pm – 6.16pm)	
Other persons present:	Oonagh Kilpatrick, GSC Food & Fibre – ZOOM (3.08pm – 3.20pm) Stephanie Hope, RP Infrastructure – ZOOM – (3.35pm – 4.33pm) Geoff Croker, fjmt Architecture – ZOOM - (3.35pm – 4.33pm) Heidi Sinclair, fjmt Architecture – ZOOM - (3.35pm – 4.33pm)	
Apologies	Nil.	
Matters Considered:	 GSC Food & Fibre Presentation (3.08pm – 3.20pm) Warrnambool Art Gallery Preliminary Business Case (3.25pm- 4.33pm) Aquazone - Extension of Open Hours of Outdoor Pool - (4.33pm – 4.37pm) Aquatic Strategy - (4.37pm – 4.38pm) GSC Food & Fibre - Annual Fee Increase Request (4.39pm- 4.49pm) Festivals & Events Grants & Sponsorship Program - (4.53pm- 4.58pm) Port of Warrnambool Dredging - (4.59pm – 5.03pm) City Centre - Central Bus Interchange (5.03pm – 5.14pm) Mayoral Diary Update - (5.14pm) Local Government Inspectorate Letter - (5.24pm - 5.25pm) Appointment of Audit & Risk Committee Chairperson - (5.25pm) Council Plan 2023 Review - Actions And Initiatives - (5.25pm - 5.26pm) February Monthly Finance Report - (5.30pm – 5.32pm) Budget Workshop 4 - (5.37pm - 6.16pm) 	

Council and Officer Items Raised Councillor Conflicts of int	 Meeting with Dean Montgomery. Meeting with Hockey South West. On Country Native Title Consent Determination Hearing. Warrnambool Ski Club. International Women's Day event - 30 March 2023. Bushfield-Woodford Community drop in. VCAT referral 39 Ziegler Parade. Proposed DAMA press article.
Councillor /officer Name: Nil.	
Meeting close time:	6.16pm
Record Completed by:	Wendy Clark Executive Assistant