

# **DOCUMENTS AND THE PROVISION OF ADVICE IN RELATION TO THE DAREBIN CITY COUNCIL**

Further Report by the Municipal Monitor – Darebin  
City Council, May 2015

Letter from the Minister for Local Government to  
the Mayor of Darebin City Council

Letter from the Mayor of Darebin City Council to the  
Minister for Local Government

25 JUNE 2015

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**28th May, 2015**

**Minister for Local Government, Minister for Aboriginal Affairs and Minister for Industrial Relations  
Level 27,  
1 Spring Street,  
Melbourne 3000, VIC**

**Dear Minister,**

**Further Report by the Municipal Monitor – Darebin City Council  
May 2015**

You have requested a further report regarding my observations as Municipal Monitor, of governance issues at Darebin City Council.

In this report I outline the key observations and concerns I have in relation to governance at the Council over the period of my engagement. This report reflects:

1. Observations and concerns previously outlined to you, that have also been relayed to the Mayor and Chief Executive Officer (CEO) and individual Councillors from time to time and in a formal verbal briefing to Councillors in September 2014.
2. My report to you in February 2015 in which I summarised my concerns regarding governance at the Council after twelve months in my role as Municipal Monitor.
3. My referral to the Local Government Investigations and Compliance Inspectorate in April 2015 of the matter of the Mayor executing a new contract with the CEO without the appropriate approval of Councillors pursuant to a resolution at an Ordinary meeting on 15<sup>th</sup> December, 2014.

I note that you have reflected these concerns in your letter to the Mayor dated 30<sup>th</sup> April, 2015. This report focusses on matters raised in your letter.

I note that your letter sought a response to all your concerns within 14 days. I understand that an initial brief response was sent to you on 15<sup>th</sup> May 2015 by the law firm retained by the Mayor. This stated that advice was being sought from Senior Counsel prior to providing a substantive response.

I understand that a copy of this letter has not been provided to Councillors or Council Officers. At the time of writing I am not aware that any further response to your letter has been provided by the Mayor or Council.

### **Section 1 - Observations**

My report addresses my concerns within the context of my Terms of Reference and includes the matters outlined in your letter to the Mayor of 30<sup>th</sup> April, 2015. In summary my general conclusions regarding governance at the Council in this context are as follows.

1. Council has in place a sound framework of governance policies. However, there is still a high level of non-compliance with key policies.

The CEO being responsible for administrative matters is primarily responsible for ensuring compliance by Council staff with policies that have been agreed by Council. In this respect I believe there are continuing concerns that the CEO is not adequately fulfilling this function. In addition, the Mayor and individual Councillors are responsible for ensuring that elected Councillors abide by the policies that they have agreed upon. Again, in respect to Darebin this does not appear to be the case. Failure to ensure full compliance with Council policies, by both staff and Councillors, is a key governance issue at Darebin.

This report identifies non-compliance only with Councillor Support and Expense Policy, Councillor Gifts and Hospitality Policy and Councillor Code of Conduct.

2. Another significant governance issue at Darebin is the lack of respectful behaviour by Councillors towards each other.

Over my period as Municipal Monitor I have observed acrimonious exchanges between Councillors including allegations of breaches of the Councillor Code of Conduct. There have been a number of investigations of Code breaches and there is one formal investigation underway. There are Councillor Conduct Panel applications in progress and one Councillor

has contacted the Local Government Investigations and Compliance Inspectorate complaining about Councillor behaviour.

This behaviour has been particularly evident by acrimony shown in recent debates concerning the process for renewing the CEO contract in March 2015. The breakdown in relationships between Councillors is now in the public arena via the press and in the Council chamber with four Councillors walking out of a number of meetings.

In my opinion, through observation, relationships between Councillors have broken down and this constitutes a significant threat to ensuring good governance at the Council. I have also observed a lack of trust between some Councillors and the CEO.

I have also observed the CEO's failure to ensure Councillors abide by Councillor / Staff interaction protocols with serious impacts on workloads of staff.

3. The specific matter of the Mayor's adherence to the Council resolution of 15<sup>th</sup> December 2014 with regards the re-appointment of the CEO, and the subsequent letter from you to Council referring to this matter and to other governance issues identified by myself has resulted in severe divisions between Councillors. It is clear now, as evident from recent public airing of these differences, that there is little trust between Councillors and between some Councillors and the CEO.

Given these poor relationships and observations in this and the preceding section, it is difficult to see Councillors re-establishing a sound working relationship. This will impact on the ability of Council to operate effectively and in a timely manner, effectively supported and guided by the CEO.

4. Between the Mayoral elections in November 2014 and up to 30<sup>th</sup> April, 2015, the date of your letter, there have been 7 Ordinary Council meetings. At each of these meetings Councillors did not deal with all agenda items meaning significant Council business was not completed. As a consequence an additional 4 Special meetings have had to be held in order to conclude the unfinished business that needed to be carried forward from these earlier meetings. Two of these Special meetings were conducted after scheduled Planning Committee meetings adding to the workload of staff and Councillors on those occasions. The other two Special meetings were held on additional unscheduled meeting days.

This represents, in my opinion poor governance practice and decision making. It has meant that consideration of reports has been delayed with consequential delays in having staff undertake the required work arising from reports. In addition residents have been inconvenienced in having to attend multiple meetings when the items they have an interest in are held over to subsequent meetings. These additional meetings also mean additional costs are incurred by Council and onerous requirements are placed on Council staff in terms of additional meeting preparations, time attending meetings and preparation of relevant documents e.g. agendas and minutes.

## **Section 2 – My Terms of Reference**

I now make the following observations in relation to the specific matters set out in my Terms of Reference.

### **Part 1 - To monitor the implementation of the actions requested of Council by the Minister for Local Government by letter dated 17<sup>th</sup> September 2013.**

The letter referred to ten specific items regarding the performance and behaviour of a number of past and present Councillors and activities and policies of Council.

It is my view that all of these matters have been addressed by Council.

However, I have observed that although sound policies have been put in place to address the issues identified in the letter, some policies are not adequately complied with. This is particularly the case with regard to the Councillor Support and Expenses Policy and how compliance with this policy is being monitored by the Audit Committee. I make specific observations in regard to this matter below.

**Part 2 - To monitor the activities and performance of the Council, in particular the:**

- (a) actions taken to ensure that the respective roles of the Mayor and Councillors, Chief Executive Officer and staff and Independent Audit Committee are properly delineated and understood within Council and externally.***

While the delineation between Councillors and CEO and staff is understood, in practice it is generally not observed. Whilst the CEO put in place sound processes and protocols for Councillor/Staff interaction these are not complied with effectively. I address issues regarding the Audit Committee below.

The Councillor/Staff interaction protocols and procedures are set out in both the Councillor Code of Conduct and in briefing papers presented to Councillors and memoranda to staff. Upon commencing my role as Municipal Monitor it was evident that whilst the processes were sound, and clearly documented and communicated, they were generally not followed by Councillors and some staff. Accordingly, the process was strengthened in August 2014.

The up-dated processes for this interaction are also clearly spelt out. They cover email contact and contact other than via email. They require “Green Slips” to be prepared by staff to record contact with Councillors other than via email, and including personal contact. There is also an electronic process for Councillors to log resident concerns, rather than directly engaging with Council staff.

As Monitor I have observed a great deal of email and “Green Slip” interaction between Councillors and staff on internal and resident matters that is not consistent with these protocols – both before and after the up-dates in August 2014. This includes direct contact by Councillors with staff on resident matters rather than being dealt with via the established Council processes through the electronic EPathways system. Interaction outside the agreed protocols also includes Councillors communication with staff in relation to planning matters.

I have reviewed the “Green Slips” filled out by Council staff since this process was introduced in late 2013 and observe that a significant number – in excess of 100 – occurred outside the guidelines, even after the up-date in August 2014. Such communication relates generally to resident and operational matters, but some also to planning matters.

These Green Slips are meant to be reviewed by the CEO on a regular basis but I observe that the last review occurred in May 2014 at which time a number of breaches of the protocol were reported. However, attempts have been made by the CEO to address but I have observed that these have been ineffective.

The inconsistency between the agreed protocols and what occurs in practice has been raised by me on a number of occasions with the CEO who is responsible for ensuring compliance by both staff and Councillors. I raised this issue formally in July 2014 as a major governance concern.

It is my view that this Councillor/Staff interaction protocol is sound and clear, but continues to be disregarded by both Councillors and staff. If rigorously implemented and reviewed by the CEO as required and with the Mayor reinforcing compliance by Councillors and the CEO reinforcing compliance by staff, a major governance weakness at Council would be addressed.

***b) effectiveness of processes and other controls in place to ensure Councillors do not direct or influence staff in the distribution of community grants.***

In response to concerns raised in the letter from the Minister dated 17<sup>th</sup> September 2013, the Community Grants procedure has been changed significantly and implemented during 2014 and the early part of 2015 I have not observed any governance issues with regards this matter. It is my view that the current policy and processes are operating as intended.

***c) effectiveness of the review activities of the Audit Committee, including how ineffective processes identified by that Committee are addressed.***

I have observed a number of shortcomings in the Audit Committee process that impact on the ability of Committee members to independently monitor Council activities. This is particularly in relation to effective compliance with Councillor Support and Expense Policy, Gifts and Hospitality Policy and up until recently Council procurement policies with regards compliance with Section 186 of the *Local Government Act 1989*.

This arises as a result of weaknesses in the way information is provided to the Committee in that the volume and presentation of meeting papers do not assist Committee members to absorb the information required. It also makes analysis of the information difficult.

The Committee does not allow enough time to adequately cover all the items in the agenda as the meeting is usually arranged on the afternoon before Council Planning Committee or Ordinary Council meetings.

The end result is that the Committee's role in ensuring sound governance and compliance with audit requirements is impeded and needs to be improved by the CEO. In particular the CEO should take

steps to present material in a more accessible way and provide the Committee with sufficient time to fully consider all items on the agenda. In addition the Committee should be encouraged to undertake a more critical analysis of all of the material presented. In particular it should focus on ensuring compliance with Councillor Support and Expenses policy.

**d) *steps taken to identify Council and non-Council related calls and to recover the cost of non-Council related calls made by Councillors and former Councillors.***

I have observed the process by which Council undertook to identify and recover the cost of non-Council related calls from a previous Councillor. Council obtained independent legal advice in relation to dealing with amounts owing by this former Councillor that noted that despite evidentiary issues associated with the passage of time, the amount recovered was appropriate. In these circumstances it is my opinion that this particular matter has now been addressed.

Notwithstanding the resolution of this particular instance, the broader issue of Councillor compliance with Support and Expenses Policy remains inconsistent.

**e) *the adequacy of the Support and Expenses Policy in ensuring probity regarding expenses reimbursed, in particular whether it effectively excludes expenses claimed which by their nature ought be met by the Councillor from the Councillor allowance, and whether publication on the Council website every quarter of each Councillor's total telephone use and reimbursement provides sufficient transparency and accountability.***

I have paid close attention to this policy and compliance by Councillors as this is a significant governance issue that needs to be transparent and seen to be transparent. This policy is clear about Councillors obligations to disclose and the basis for determining, accurately and on a timely basis private usage of telephones and other support expenses such as cabcharge.

I note that Council now discloses on its website, on a quarterly basis, Councillor expenditure on cabcharges, telephone calls and any overdue declarations of personal usage. I note that these declarations and disclosures for the quarter ended March 2015 have not yet been placed on the website as they are to be considered by the Audit Committee when it meets on 1<sup>st</sup> June.

I attach copies of the Council schedules summarising Councillor usage of cabcharge and telephone for the 12 months ended 31 December 2014.



These schedules indicate failure by some Councillors to comply adequately with this important policy. In particular they fail, in my view to submit declarations of personal usage on a timely basis. In some instances the delay in submitting these declarations has been in excess of three months, and in the case of one Councillor, 6 months.

I have also observed, and have expressed my concerns to the CEO about one Councillor's high usage of mobile phones – both in monetary terms and the number of calls made as well as this Councillor's cabcharge usage. I note also that declarations when provided are unclear about what usage is of a personal nature and when refunds made they are nominal rather than related to specific private use.

I note that Council Governance Officers are making an effort to improve compliance by the Councillor, but with little effect and I understand that the CEO has initiated an internal review of cabcharge usage by this Councillor. I understand that this review supports my observations, but I am not aware of any action taken to date.

I have reviewed telephone and cabcharge expenses for Councillors for the period since January 2014 and believe that such expenditure by one Councillor is significantly out of line with the practice of other Councillors.

The following table summarises expenditure disclosed on the Council website for the 12 months to 31<sup>st</sup> December 2014, and the number of calls per the Councillors telephone accounts:

<b>Expense Item</b>	<b>Total for all Councillors</b>	<b>Total for Councillor</b>	<b>%</b>
Mobile Phones	\$11,239	2,739	24%
Other Communication (Plans for each)	\$8,856	\$439	5%
Local Travel	\$6,181	\$3,597	58%
Other Expenses	\$5,194	\$1,430	27%
Total Expenses	\$33,678	\$8,205	24%
Reimbursement	\$68	\$14	21%
Number of Mobile phone calls	7,945	4,527	56%

This level of detail has not been obtained in relation to the 4 months to 30 April 2015 as I am not aware that declarations of personal usage have been received or disclosed from the Councillor concerned, but my perusal of the Councillor's phone accounts and cabcharge usage in this 4 month period, indicate similar relativities.

In addition to the above matters I am also concerned that Council is meeting the costs of a university degree for the Mayor under this policy. It is my opinion that this expenditure is outside the guidelines of the policy and as such should not be paid for by Council.

The policy guidelines with regards professional development are clear. The policy provides for Councillors to undertake a formal program relevant to their role as a Councillor, and limits expenditure per Councillor per year.

In my view this particular course relates specifically to areas that are the domain of management in the context of local government which is specifically not a role undertaken by Councillors. An additional concern is that the amount paid significantly exceeds the monetary limit in the policy.

My concerns were raised with the CEO who authorised it and he advised that in his opinion this is a professional development program in accordance with the policy.

***f) the adequacy (content and format) of reporting on Councillor expenses and reimbursement by the Audit Committee.***

The Audit Committee receives reports from Officers that broadly reflect what is disclosed on Council's website. The above analysis of disclosures on the Council website, supported by additional analysis undertaken by me and the CEO support my concern about the extent and depth of the Committee's analysis and review of these specific areas. It is my view that monitoring of compliance of expenses and reimbursement of Councillors by the Committee is largely ineffective at the moment.

In my opinion the Audit Committee should adopt new processes with regards the quality and timeliness of the information it receives. Further that it should undertake more rigorous analysis of the information provided, either directly or through the Internal Audit providers.

However it is done, steps need to be taken to ensure the Committee effectively performs its role in ensuring Councillor compliance with the key policies directed to ensuring probity and transparency of Council transactions.

***g) relevant processes under the community grants program, including documentation of recommendations by Council officers; the rationale behind the acceptance or rejection of such recommendations; and acquittal processes.***

As stated above I have observed Council has reviewed its policies and procedures relating to the Community Grants program. This has been re-named the Community Support Program and reflects much improved governance that in my opinion addresses the concerns of the Minister in her letter of September 2013 and this Term of Reference.

I have not identified any concerns with the 2014 program which will be replicated in the 2015 program.

***h) policies, processes and systems to ensure the Audit Committee is provided with sufficient material to effectively monitor expenditure reimbursements by Councillors and Council staff and the Councillor Support and Expenses Policy.***

I have noted above my concerns with regards the provision of meaningful information to the Audit Committee and given that the Committee meets only quarterly, allowing an appropriate amount of time to cover its agenda in the sections above.

I note that the new Chair of the Audit Committee and new support team within Council are endeavouring to improve information provided to the Committee. However overall responsibility for ensuring this material is provided in the appropriate way rests with the CEO.

***i) the adequacy of policies, processes and internal controls in place to ensure the assets of the Council are only used in accordance with Council policies.***

Other than the issues raised above and in earlier reports with regard to Councillor usage of phones and cabcharge accounts I have identified no specific matters in relation use of Council assets by Councillors.

**Part 3 - To otherwise monitor and provide advice regarding the activities, capacity and performance of the Council in providing good governance with particular regard to:**

- a) Council accountability for decisions and actions taken by Council.***
- b) Effective implementation by Council administration of Council decisions.***
- c) The impact on the community of Council decisions and implementation processes.***
- d) Ensuring all interests in the municipality are effectively represented by Council.***
- e) Ongoing management and ensured viability of Council resources.***

As Municipal Monitor I have observed that Council has adopted a sound framework of governance policies to guide Councillor conduct. However, as noted above compliance with these policies by Councillors is inadequate.

As a result of these observations I have advised Council, individual Councillors and the CEO, in writing, in informal communications and in a briefing in September 2014 of my opinions with regards non-compliance.

Such advice is effectively reflected in your letter to the Council dated 30<sup>th</sup> April 2015.

I now address a number of remaining matters noted in your letter that have not been covered in my observations above.

**The Manner in Which Council Meetings are Conducted**

I have expressed concern about Council failing to deal with all agenda items at every Ordinary Meeting, specifically since November 2014.

I am also concerned that in an attempt to address all items on the agenda the practice of adopting reports “en bloc” is becoming the norm rather than the exception. On two occasions this practice was agreed before the meeting, thereby pre-determining outcomes that should be determined by debate in the chamber. In one meeting over half the Officer reports were resolved en bloc, yet the meeting still had a carried forward item.

As a consequence of this deferral of agenda items an additional 4 meetings were scheduled – 2 following scheduled planning meetings and 2 on specially arranged meeting days. At one Special meeting General Business items were further deferred due to the absence of the Councillor proposing them.

Such routine deferral of reports places onerous demands on the time and workloads of staff, already having to deal with a large number of General Business items and a backlog of reports, many of which are overdue. It is also unfair to residents who attend Council meetings expecting to present questions at Public Question time and hear debates and resolutions on a timely basis.

### **Timely Declaration of Gifts and Hospitality**

From the commencement of my role as Municipal Monitor I have observed that Councillors failed to comply with the requirement to disclose gifts and hospitality in accordance with Council protocols. I have noted that whilst Councillors are obliged to declare gifts and hospitality in accordance with the Council's guidelines and Local Government Act by July 2014 only 4 such declarations had been made since November 2012.

At the time I wrote to each Councillor asking them to consider their compliance. As a result a large number of retrospective declarations, many with imprecise times and details were made.

More recently I reviewed diaries maintained by the CEO's office in relation to Councillor activities and acceptances of invitations in the Council's electronic diary system. I also noted Councillor reports, each month at Council meetings, of activities undertaken during that period.

In my opinion, from reviewing the above and considering events attended by Councillors, I would have reasonably expected that a significant number of events attended by Councillors should have been recorded in the Gifts and Hospitality register. I am concerned that this represents continuing non-compliance with the recently introduced Councillor Gifts and Hospitality Policy and earlier guidelines.

The policy and earlier guidelines require disclosure in the register regardless of whether the gift or hospitality is accepted or declined.

### **Full Compliance with Procurement Practices and the Local Government Act**

Until late 2013 Council had a history of non-compliance with both its own procurement policies and the Section 186 of the Local Government Act.

Section 186 addresses the requirement to conduct tenders for contract amounts over \$100,000 and Section 186 A (9) requires a Council to comply with its procurement policy.

In late 2013 the CEO undertook to address this non-compliance and put in place a process to address these issues. At the time 28 contracts or other arrangements, some valued in excess of \$500,000 and many several years old, were identified as being in breach of policy and the Act. A further 53 arrangements could not be determined as being compliant or otherwise due to lack of documentation. The Officers established a S186 reporting process and senior staff commenced taking steps to address this significant non-compliance. I note significant effort has gone into addressing these concerns over a 12-14 month period, including centralisation of the procurement process.

From 1<sup>st</sup> August 2014 procedures were strengthened, but Council's own internal reporting since 1<sup>st</sup> August has identified a number of new contracts and arrangements as not complying with Section 186 or Council policy (and hence Section 186 A (9)). The latest report I have is dated April 2015 and identifies a number of contracts and arrangements in breach of Section 186 and not in compliance with Council policy. I note that some are long standing arrangements and all are being actively addressed by the Procurement team and are noted as close to resolution.

Nevertheless this does not represent full compliance with Section 186 of the Act and the recurrence of non-compliant procurement arrangements, however minor or technical some might be, indicates the need for the CEO to reinforce a better culture of compliance in this important function.

## Planning Matters

All Councillors are members of the Planning Committee and are provided with detailed reports prior to all meetings, usually twice per month. I have expressed concern about the high number of Officer recommendations to the Planning Committee being reversed or deferred thereby causing delays in decisions for applications, missing statutory deadlines and incurring costs for both the Council and applicants.

I have reviewed the minutes of all Planning Committee meetings since my appointment and obtained similar information from the Planning department for the period from the commencement of the current term of Council.

For the term of the current Council, in November 2012 and up to 30<sup>th</sup> April 2014 planning decisions can be analysed in the following table, reflecting mayoral terms of office:

Period	Officer Reports	Supported by Committee		Amended or Deferred by Committee	
Nov 2012 to Oct 2013	61	35	58%	26	42%
Nov 2013 to Oct 2014	78	57	74%	21	26%
Nov 2014 to April 2015	47	25	54%	22	46%
<b>Total</b>	<b>186</b>	<b>117</b>	<b>63%</b>	<b>69</b>	<b>37%</b>

The statistics in the above table indicate a very high rate of rejection, amendment or deferral rate of Officer recommendations since November 2014. The consequence of this practice has been an increase in VCAT matters and re-submission of applications to the Committee, resulting in significant budget over-runs for the current and last financial years.

It is incumbent on the CEO to ensure processes are in place, with Councillors sitting on the Planning Committee fully informed on applications, to ensure the timely resolution of all planning matters.

## Execution of the CEO Contract

I have referred the matter of the execution and validity of the new contract for the CEO by the Mayor in March 2015 to the Local Government Investigations and Compliance Inspectorate on 20<sup>th</sup> April, 2015. This matter is currently being investigated and no further comment on any potential breach of the Local Government Act is appropriate.

However, the execution of the CEO's contract also raises issues of governance at Council.

The subject of the renewal of the new contract for the CEO was considered at a meeting of Councillors on 15<sup>th</sup> December, 2014. The resolution approved the re-appointment subject to a number of conditions, principally that the Mayor negotiates final terms and brings the agreed final draft, together with a report and legal advice back to Council for consideration and resolution.

The Mayor did not execute the contract in accordance with this resolution and this issue has been the subject of considerable and often acrimonious debate in ordinary and special meetings of Council since then, resulting in a further breakdown of the relationship between Councillors and between some Councillors and the CEO.

Yours sincerely



**Peter Lewinsky**



**Attachments:**

- 1. Schedule of Councillor Expenses – Quarterly for 12 months to Dec 2014**
- 2. Councillor Declarations of Personal Calls 2014**
- 3. Councillor Declaration of Cab Charge Usage 2014**

# Schedule of Councillor Expenses

1 January 2014 to 31 March 2014

	Cr Fontana	Cr McCarthy	Cr Tsitas	Cr Greco	Cr Laurence	Cr Walsh	Cr Li	Cr Williams	Cr Villella	Total
<b>Day-to-Day Activities</b>										
Mobile	142	258	194	342	215	509	193	320	178	2,351
Landline	158	153	132	141	139	-	67	143	132	1,065
Internet	186	114	113	247	114	113	76	113	113	1,189
Local Travel	-	-	64	-	-	262	23	-	-	349
Family Care	-	-	-	-	-	-	-	1,816	-	1,816
Other	-	-	-	-	-	-	-	-	-	-
<b>Development</b>										
Conferences/Training	-	-	-	-	-	-	-	41	-	41
Functions/Events	-	-	-	-	-	-	-	-	-	-
Related Travel	-	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-
<b>Approved by Council Resolution</b>										
Conferences/Events	-	-	-	-	-	-	-	-	-	-
Travel	-	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-
Net expenses	486	525	503	730	468	884	359	2,433	423	6,811
Reimbursements to Council	- 4					- 7				- 11
Total net expenses	482	525	503	730	468	877	359	2,433	423	6,800

# Schedule of Councillor Expenses

1 April 2014 to 30 June 2014

	Cr Fontana	Cr McCarthy	Cr Tsitas	Cr Greco	Cr Laurence	Cr Walsh	Cr Li	Cr Williams	Cr Villella	Total
<b>Day-to-Day Activities</b>										
Mobile	141	238	433	455	273	621	208	320	229	2,918
Landline	150	146	150	152	142	-	-	149	132	1,021
Internet	339	122	122	255	122	121	10	121	121	1,333
Local Travel	-	-	517	-	-	1,646	495	-	-	2,658
Family Care	-	-	-	-	-	-	-	196	-	196
Other	-	-	-	-	-	-	-	-	-	-
<b>Development</b>										
Conferences/Training	-	-	-	3,061	-	1,026	-	41	-	4,128
Functions/Events	-	-	-	-	-	-	-	-	-	-
Related Travel	-	-	-	453	-	235	-	-	-	688
Other	-	-	-	-	-	-	-	-	-	-
<b>Approved by Council Resolution</b>										
Conferences/Events	-	-	-	-	-	-	-	-	-	-
Travel	-	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-
Net expenses	630	506	1,222	4,376	537	3,649	713	827	482	12,942
Reimbursements to Council	- 12					- 7				- 19
Total net expenses	618	506	1,222	4,376	537	3,642	713	827	482	12,923

1 July 2014 to 30 September 2014										
	Cr Fontana	Cr McCarthy	Cr Tsitas	Cr Greco	Cr Laurence	Cr Walsh	Cr Li	Cr Williams	Cr Villella	Total
<b>Day-to-Day Activities</b>										
Mobile	146	261	732	458	203	727	220	332	190	3,269
Landline	158	140	166	137	146	-	-	136	131	1,014
Internet	341	123	123	390	123	123	-	123	123	1,469
Local Travel	-	-	380	582	-	1,247	152	-	-	2,361
Family Care	-	-	-	-	-	-	-	196	-	196
Other	-	-	-	-	-	-	-	-	-	-
<b>Development</b>										-
Conferences/Training	-	-	-	104	-	-	-			104
Functions/Events	-	-	-	-	-	-	-	-	-	-
Related Travel	-	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-
<b>Approved by Council Resolution</b>										-
Conferences/Events	-	-	-	-	-	-	-	-	-	-
Travel	-	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-
Net expenses	645	524	1,401	1,671	472	2,097	372	787	444	8,413
Reimbursements to Council	- 15							- 5		- 20
Total net expenses	630	524	1,401	1,671	472	2,097	372	782	444	8,393

## Schedule of Councillor Expenses

1 October 2014 to 31 December 2014

	Cr Fontana	Cr McCarthy	Cr Tsitas	Cr Greco	Cr Laurence	Cr Walsh	Cr Li	Cr Williams	Cr Vilella	Total
<b>Day-to-Day Activities</b>										
Mobile	143	205	126	389	179	882	245	310	222	2,701
Landline	127	137	132	124	134	-	-	129	120	903
Internet	155	82	82	215	82	82	-	82	82	862
Local Travel	-	-	171	45	62	442	30	63	-	813
Family Care	-	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-
<b>Development</b>										-
Conferences/Training	-	-	-	-	-	169	-	32	32	233
Functions/Events	-	-	-	-	-	-	-	-	-	-
Related Travel	-	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-
<b>Approved by Council Resolution</b>										-
Conferences/Events	-	-	-	-	-	-	-	-	-	-
Travel	-	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-
Net expenses	425	424	511	773	457	1,575	275	616	456	5,512
Reimbursements to Council	- 7							- 11	-	18
Total net expenses	418	424	511	773	457	1,575	275	605	456	5,494

**2014 COUNCILLOR'S DECLARATION OF PERSONAL CALLS (Date Due - Date Received)**

[illegible]

**2014 COUNCILLOR'S DECLARATION OF CAB CHARGE USAGE (Date Sent - Date Received)**

	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
DATE DUE					4-Jun	24-Jul	14-Aug	12-Sep	8-Oct	19-Nov	24-Dec	
Cr. Laurence	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C		N/C
Cr. Li	27-May-11	27-May-12	27-May-13	27-May-14	11-Jun-14	22-Jul-14	11-Aug-14			N/C	15-Dec-14	N/C
Cr. Tsitas	N/C								10/12/2014		10/12/2014	N/C
Cr. Walsh	18-Jun-14	18-Jun-14	18-Jun-14	18-Jun-14	12-Sep-14		5-Feb-15	5-Feb-15	6-Feb-15		18-Nov-14	
Cr. Williams	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C			N/C

Councillor sent account for Month and Declaration due

N/C: Nil charges incurred for the month

NOTE: Crs Greco, Fontana, McCarthy, and Villella did not incur any Cab Charge expenses during 2014.



The Hon Natalie Hutchins MP

Minister for Local Government  
Minister for Aboriginal Affairs  
Minister for Industrial Relations

COPY

1 Spring Street  
Melbourne Victoria 3000  
Telephone: 03 8392 6125  
DX210292

Ref: BMIN15000577R  
File: 14/000304

Cr Steven Tsitas  
Mayor  
Darebin City Council  
PO Box 91  
PRESTON VIC 3072

Dear Cr Tsitas

### GOVERNANCE ISSUES

As the Minister for Local Government it is my responsibility to ensure that councils deliver good government for their constituents and, where appropriate, to use my powers under the *Local Government Act 1989* ('the Act') to make certain that this occurs. I am particularly concerned to ensure that your Council is delivering the high governance standards that the Darebin community is entitled to expect.

As you are aware, Mr Peter Lewinsky has been acting as a municipal monitor at Darebin City Council since January 2014. After twelve months in the role, Mr Lewinsky has provided me with a report summarising his observations of governance at the Council.

Mr Lewinsky advises that Council has made progress on the specific matters that it was asked to address. In particular, Mr Lewinsky advises that Council has put in place policies to address Councillor expenditure, the Mayoral Event and the Community Grants process. He also advises that Council has ensured expenditure repayments from past Councillors which has finalised this matter and has satisfactorily concluded a probity matter involving the CEO.

I am advised both by Mr Lewinsky and by my Department that the process used recently to enter into a contract with the CEO is open to legal challenge in that the purported execution of the contract by the Mayor is inconsistent with the authorisation granted by Council. Further I am advised that the terms of this purported contract are in excess of sector standards.

I note that Mr Lewinsky has referred a possible breach of the Act to the Local Government Investigations and Compliance Inspectorate for investigation in this regard. Any potential breach of the Act will be dealt with by the Inspectorate and I expect Council to fully co-operate with any investigation.

In the meantime, I would expect Council to take steps to ensure the validity of the contract and to ensure the terms of a properly executed contract are consistent with sector standards and include appropriate means for monitoring the CEO's performance.



In addition to this matter I am advised there are continuing governance concerns that have been identified by Mr Lewinsky, most significantly that Council policies and processes are not being adhered to by Councillors. Of particular concern is that the policy governing Councillor-staff interaction is not being observed. Specifically, Mr Lewinsky has observed that despite protocols requiring Councillors to make requests of staff through senior officers, they continue to deal directly with staff who are clearly below that level and the CEO is not effectively liaising with Councillors to ensure that staff are not subject to unreasonable or onerous demands, especially at Council briefings.

Other governance concerns that Mr Lewinsky has raised with Council that remain to be fully addressed are:

- The manner in which Council meetings are conducted - in particular the failure to deal with all agenda items in a timely manner and multiple requests for information by Councillors that place onerous demands on Council staff.
- Councillor compliance with Council policies including timely and comprehensive declarations related to gifts and hospitality as well as those related to Councillor support and expenses.

With respect to procurement, Mr Lewinsky has noted that Council has identified that it is currently in breach of section 186 of the *Local Government Act 1989* ('the Act') in respect of multiple contracts. He notes that the remedial steps that Council has taken so far have not brought it into full compliance with the Act.

Further, Mr Lewinsky has noted a number of complaints regarding the process for dealing with planning applications by the Council. In particular, he has stated that the planning committee often departs from officer's recommendations and rejects and amends or otherwise causes delays to planning applications. It is my expectation that Councillors will give the material that they are provided the attention that it warrants and will ensure that Council's planning decisions take into account all relevant considerations prior to them being made and will ensure that decisions are made expeditiously and without undue delay.

These are significant governance issues and it is my expectation that Council will give the highest priority to addressing them. I would now ask Council to consider these observations and, as a matter of urgency, provide me with a clear plan of action to address these remaining concerns.

I request a response, including details of the specific actions proposed, within the next 14 days. Subject to your response I will then consider appropriate next steps in the ongoing monitoring of governance at the Council.

Yours sincerely



**Hon Natalie Hutchins MP**  
Minister for Local Government

30 APR 2015

Steven Tsitas  
Darebin City Council  
PO Box 91  
Preston Vic 3072

The Hon Natalie Hutchins MP  
Minister for Local Government  
1 Spring Street  
Melbourne Vic 3000

28 May 2015

Dear Minister,

I refer to your letter dated 30 April 2015.

I would firstly like to address the issue of the leaking of your letter.

#### **Leaking of your letter**

I made a decision that as your letter referred to "Council policies and processes ... not being adhered to by Councillors", I would distribute a copy of your letter to all Councillors, the CEO, the Manager, Corporate Governance, and the Monitor.

I distributed your letter in confidence hoping that the Council would be able to work together in order to respond to the matters you raise in your letter, but that has not been the case. One of those people has leaked your letter to *The Age*.

I apologise that your letter was leaked. Regrettably, self-serving leaks to the media appear to be a continuing course of conduct by some Council members in order to undermine my standing and the good operations of the Darebin Council.

#### **CEO Contract**

At a confidential part of the Council meeting of 15 December, 2014, a resolution was passed (Annexure 'A' to this letter) that reappointed the CEO for a further term. That resolution was carried 5-4. There is no question that there was a properly constituted meeting, debate and a resolution put and passed: the CEO was reappointed.

The practice at Darebin Council is that all 'Greens' (viz. confidential Council agendas, minutes and papers) are returned to the Manager, Corporate Governance and Performance.

I handed back my confidential papers at the end of that meeting.

On either 23 or 24 March, the Manager, Corporate Governance and Performance, contacted me and said that the Council's solicitors had finalised the CEO's employment contract and the following conversation took place between the Mayor, the Manager, Corporate Governance and Performance and the HR Manager:

I asked "If there are no further amendments and everyone is happy are we able to sign?"

On being told "yes" by the Manager, Corporate Governance and Performance, I then asked if a meeting could be organised with the CEO in order to sign the Contract.

The Manager, Corporate Governance and Performance and the HR Manager then organised a meeting for 26 March, 2015 and for the CEO, for me (as Mayor), a Councillor (as a witness), the Manager, Corporate Governance and Performance, and the Human Resources Manager.

On 26 March, the Manager, Corporate Governance and Performance, informed me that a Councillor was needed to witness the employment contract, and she telephoned the Councillors to see who was nearby and could



attend. Councillor Vince Fontana was nearby and available. He then arrived at the meeting and was a witness to the execution of the Contract.

The employment Contract was executed and I then sent an email informing other Councillors of the executed Contract.

### **'Conditions Precedent'**

The Manager, Corporate Governance and Performance received two pieces of advice on the CEO's employment contract: advice from Maddocks dated 17 April 2015 [Annexure 'B']; advice from Macquarie Local Government Lawyers dated 23 April 2015 [Annexure 'C'].

After receiving your letter and the concerns you raise in relation to the CEO's Contract, I asked the Manager, Corporate Governance and Performance in a discussion about your letter on 5 May whether any legal advice had been sought. He was on that date provided with the Maddocks advice and the Macquarie Local Government Lawyers' advice. The other Councillors were provided with those pieces of Advice on 7 May at a Special Council meeting.

On 18 May, the Council resolved to ratify the 26 March execution of the Contract, and further sought to ensure that the CEO is employed according to sector standards, viz. in relation to FBT and annual leave.

The CEO's contract was drafted by the Council's solicitors Maddocks, who are experienced local government employment lawyers; they advised Council that the Contract was consistent with industry standards.

In respect of the decision to ratify the CEO's contract, the following considerations are relevant:

1. The Local Government Act requires the Council to appoint a CEO;
2. The CEO's prior contract was due to expire on 11 May, 2015;
3. The conditions of 15 December 2014 concerning the appointment of the CEO, namely legal advice and presentation of a report to Council, had been satisfied; and
4. Legal advice indicated a contract with the CEO had been entered

This matter has now been resolved.

### **Sector Standards regarding salary**

I am sure, given recent publicity relating to Local Government salaries, that you will be interested to know that the Darebin Council has cut the CEO's salary by approximately 15% (from \$420,000 to \$358,000 for this current term of employment). The Darebin Council is committed to ensuring the best value for money is delivered to the community it serves.

I would be interested to know what the Monitor has referred to the Local Government Investigations and Compliance Inspectorate – I do not believe there are any breaches in relation to the CEO's contract. I do not believe the Monitor has been present at all meetings, but has chosen to inform himself by speaking with some of the Councillors.

### **Policy governing Councillor-staff interaction**

In October 2013 the Councillor-staff interaction protocol (Protocol) was established and incorporated into the Councillor Code of Conduct and Excellence in Governance @ Darebin City Council Employee Code of Conduct.

At the time of establishment Darebin was one of only two Councils that had implemented such a protocol. Council appreciates the concerns raised by Mr Lewinsky however those concerns seem to be out dated as there has been a significant reduction in the number of reported interactions between Councillors and officers since August 2014.

I acknowledge that whilst there was a period of adjustment and change in culture across Council, a number of divisions of Council and a number of individuals were spoken to and have since ceased the frequent interaction with Councillors. Further, the CEO has on a number of occasions and continues to do so, communicated with staff and Councillors on the importance of the Protocol and in ensuring adherence.

If Mr Lewinsky has any evidence to the contrary I would welcome that information so it can be acted upon expeditiously.

**CEO not effectively liaising with Councillors to ensure that staff are not subject to unreasonable or onerous demands, especially at Council briefings.**

Council's Governance Local Law requires the Mayor, or in my absence, the Deputy Mayor, to chair Councillor briefing sessions. Further, a Councillor briefing policy was developed and adopted by Council in April 2013 which guides the manner in which the briefings are conducted. I acknowledge that there needs to be an increase to the adherence of the policy and will reinforce that as part of the action plan being developed. In addition, consideration will be given to recording the briefing sessions and amending the Councillor Code of Conduct to ensure the code extends to councillors conduct during any Assembly of Councillor briefing/meeting.

The CEO has advised that currently staff are not being subject to onerous or unreasonable demands by Councillors and that every question by a Councillor must go through directors and CEO at which time the CEO determines if the request is going to be onerous he deals with them directly.

**The manner in which Council meetings are conducted – in particular the failure to deal with agenda items in a timely manner and multiple requests for information by councillors that places onerous demands on Council staff.**

During this current term of Council there have been 247 General Business requests via Council resolution for information or reports required to go back to Council. This extraordinarily high number of general business resolutions is in addition to actions or reports requested through Notice of Motion resolutions by Council and general officer reports that require a resolution of Council.

Through the increase of reports requested by councillors, Council acknowledges there has been a backlog of reports being presented to Council for their consideration. The backlog is near completion therefore there will be a significant improvement in the timely manner in which Council meetings are conducted.

To ensure Council maintains a manageable level of agenda items at any Council meeting, Council, as part of the development of the action plan, will be proposing to amend the Governance Local Law by removing the General Business provision and proposing any request for councillor information is requested through the "Information Requests" section within Councillor briefing sessions. Under the Councillor briefing policy this section of the briefing allows for 5 minutes to be allocated for Councillors to seek information or clarification on matters not listed in the agenda.

**Councillor compliance with Council policies including timely and comprehensive declarations related to gifts and hospitality as well as those related to Councillor support and expenses.**

Council has devoted a substantial amount of effort in developing policy and procedures to ensure compliance in these two areas. Since November 2013 all councillor expenses and reimbursements have been made available



on Council's website. To further enhance compliance and transparency, since March 2015 declarations for mobile phone and cab charge expenses have also been made available on Council's website for viewing by the community. The information released on the website in relation to declarations indicates the councillor name, date due and the actual date received by Council. This new process is being monitored by the governance team to ascertain if there is an increase with councillor compliance in submitting declarations.

### **Section 186 of the Local Government Act 1989 - Procurement**

I am informed by the Manager, Corporate Governance and Performance that over the past 12 to 18 months Council has implemented a range of processes that have significantly enhanced the way Council undertakes its procurement. As an example Darebin is the only Council across the state that has a Purchasing Accreditation Committee (**PAC**) which reviews procurement processes over \$100,000 prior to the financial delegate signing off (including the full Council) and contracts being executed. The requirements of PAC also extends to reviewing Strategic Procurement Plans, Probity Plans and Risk Plans prior to the release of open tenders, tender and expression of interest documentation and any variation to contract terms or scope of works.

I do not agree with Mr Lewinsky's noting of being in breach of s186 in respect of multiple contracts. Council currently has no breaches that relate to goods or services, or the carrying out of works that are over \$100,000 and require public notice under s186 of the *Local Government Act 1989*. Whilst Council had identified a small number of breaches under s186 prior to August 2014, CEO has since centralised procurement, effective August 2014, assigned an account manager to each directorate who assisted in rectifying the situation and are now in compliance with the *Local Government Act*. It should be noted in 2014 Darebin adopted a centralised purchasing system bringing all purchases under the supervision of the governance department which placed procurement controls better than any other Council in Victoria. Council has also adopted a stringent procurement policy that goes well beyond what is stipulated in the *Local Government Act*. Council has progressively brought all financial transactions (about 37,000 per year) under the procurement policy.

At the moment Council only has a handful of smaller purchases to comply with the internal policy. It is to be stated that Council's best practice is being followed up by other organisations. When Council proactively audited and monitored our procurement activities those initial details of non-compliances were shared with Mr Lewinsky who may have quoted from those raw data documents in his reports to the department. These have been audited and reported through the Audit Committee and external Governance Committee. Any audit will show Council's processes and compliance in this area are best practice. It is surprising that Mr Lewinsky at this point of time has raised this best practice as a point of concern.

Council acknowledges that under s186A (9) of the *Local Government Act 1989* there are currently only ten (10) internal operational process breaches identified relating to Council's procurement policy. Whilst they could be seen as minor internal breaches, for example failure to bring the process through PAC prior to financial delegation sign off, the CEO does take these breaches seriously and is working with the Executive Management team and officers across Council to achieve a greater awareness of procurement practices so as to reach full compliance with the policy.

### **Planning Matters**

I understand Mr Lewinsky notes that there have been a number of complaints regarding the process for dealing with planning applications. Without specific knowledge of the complaint(s) mentioned, I am unable to address this concern. I welcome further information on this so they can be given due consideration and provide a further response as necessary. I do however note that on occasion complaints are received from applicants whereby they have not received the decision they were seeking. This is part of the merit based decision making process



and Council makes no apologies for this. Be assured that all legitimate complaints received regarding Council processes are taken seriously. It should be noted that the monitor has raised a handful of complaints that he had received, including a high profile case from the department (as he referred to it). On each occasion they have been dealt with appropriately and found no wrong doing from the Planning department. Since Council received your letter the monitor has requested details from the Manager, Planning.

In terms of Planning Committee decision departures from officer recommendations, full year data for 2013 and 2014 shows that the Committee agreed with officer recommendations at a rate of 73% and 76% respectively. For the period between January 2012 (date of records at hand) and April 2015 (total of 243 applications received), the rate of agreement with officer recommendations was 66%. We disagree that this constitutes a frequent departure from officer recommendations as noted by Mr Lewinsky.

I would also like to note that since November 2012, where VCAT hearings were instigated against a decision made by the Committee, which supported Officer Recommendations, VCAT determined in favour of Council in 92% of these cases.

Concerning deferrals, of the 186 applications received over the period, the Committee deferred a total of 11 applications (less than 6%). Deferrals are often implemented to seek further information or clarification, and to ensure decisions are made cognisant of all relevant considerations.

I can also confirm that planning permit processing days from 2011 to current are as follows:

Year	Applications received	Decisions made (v % applications received)	Processing days (average)
2011	1210	1154 (95%)	57
2012	1184	1064 (89%)	48
2013	1261	1095 (87%)	43
2014	1551	1185 (76%)	40
2015 (to May)	505	303 (60% in progress)	35

Note: *Processing days (average)* is defined as the average total time taken (working days) for application processing, from receipt to decision. This does not include the time taken by applicants to respond to requests for further information.

As shown, processing times for planning permits have declined over the last five years, despite an increase in applications over the later years.

Based on the information presented, I refute the assumption that there are "often" departures from officer recommendations, and that the committee rejects and amends or otherwise causes delays to planning applications.

#### **Further Matters**

By 30 June 2015, I will provide you with the outcome of any negotiations between the Chief Executive's lawyer and Council's independent lawyer. Furthermore, it is proposed that on a three monthly basis Council will provide you with a status update on the action plan.

I am happy to meet with you and discuss any aspect of the information contained within this letter or Action Plan and can provide further evidence of Council's governance work on any of your concerns. I should note that I have

not been provided with a copy of the Monitor's report and would appreciate the opportunity to read and consider it.

In relation to all these matters I avail myself of the whistleblower protections afforded under the *Whistleblower Protections Act* and have reported the leaking of confidential matters to the CEO of the Council.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Steven Tsitas", with a stylized, cursive script.

Steven Tsitas  
Mayor, Darebin City Council



## Proposed Action Plan for Minister Local Government

Minister's Concern	Current Status	Proposed Action	Timeframe
1 Councillor -Staff Interaction	Since August 2014, significant reduction in recorded (green form) interaction being submitted by officers.	Seek information from monitor in relation to any known interaction not recorded on 'green' file note. Act on any identified interaction through the Codes of Conduct process	By 31 May 2015
2 CEO not effectively liaising with Councillors regarding unreasonable or onerous demands put on officers.	Councillor Briefing Policy has been in place since April 2013. Training and notification has been given to Councillors and officers by the CEO on the policy.	1. Reinforce adherence of policy at all councillor briefings. 2. Amend the Councillor Code of Conduct to extend councillor conduct to any Assembly of Councillor briefing/meeting	1. Immediately 2. By 1st Council meeting in June 2015
3 Manner of council meetings, conduct, agenda items in timely manner	Council meeting agenda's are larger than usual in response to 247 general business item requests which is in addition to Notice of Motions and general officer reports.	1. Amend Governance Local Law to remove the provision of general business - seek interim agreement from Councillors not to submit general business items through Council meeting agenda's 2. Information to be sought through the "Information Requests" section of the Councillor Briefing policy each fortnight	1. Commence process of amending Governance Local Law immediately. Put a report to Council at its meeting of 1 June 2015 seeking suspension of all general business requests for future Council meetings. 2. Commence from the first Councillor briefing after the 1 June 2015 Council meeting
4 Councillor compliance with gift and hospitality and Councillor support and expenses	Since November 2013 Councillor expenses and reimbursement have been published on the Darebin website. In addition, effective March 2015 declarations for mobile phones and cab charges have also been published on Darebin's website	Continue to monitor the effectiveness of declarations being submitted by publishing them on the website until August 2015.	Review compliance of declarations submitted on 1 August 2015
5 s186 Procurement	Council is compliant with s186 of Local Government Act. Procurement at Council was centralised in August 2015 and can demonstrate best procurement practice across all Local Government Councils. Work will continue with the CEO, Executive Management Team and officers to address the 10 minor breaches of Council's internal processes under the procurement policy (Compliance with the Procurement Policy falls under s186A(4) of Local Government Act)	No action required. Continue to monitor and report procurement on a monthly basis to the CEO and Executive Management Team	Ongoing
6 Complaints regarding planning applications and Councillors departing from the officer recommendation	In 2013, 73% of the officer recommendations were agreed to by the Planning Committee.  In 2014 there was an increase to 76% of the officer recommendations being agreed to by the Planning Committee.  Concerning deferrals, of the 186 applications referred to the Planning Committee over the period, the Planning Committee deferred a total of 11 applications (less than 6%).  In 2011 the average working days to process planning applications was 57. Since 2015 the average number of days to process a planning applications has been reduced to 35 days despite the increase of planning applications.	No further action is required  No further action is required  No further action is required  No further action is required	Not applicable  Not applicable  Not applicable  Not applicable