

RECEIVED

20 NOV 2015

Local Government Victoria

Inspectors of Municipal Administration

Darebin City Council

Final Report to the Minister for Local Government

Mark Madden

Bill Mountford

What we were asked to do

Terms of appointment and terms of reference

We were appointed as Inspectors of Municipal Administration to assist Darebin City Council on June 25, 2015. The original completion date was September 25, 2015. However this was extended to November 27, 2015 when circumstances beyond our control required the rescheduling of key stages of our engagement with councillors and the executive management team.

The terms of reference for Mark Madden were:

1. To support Darebin City Council's councillors to improve their professional relationships as councillors and to facilitate the councillors achieving working arrangements that assist the timely and orderly conduct of council business;
2. To support Darebin City Council's councillors to develop processes through which their differences can be resolved informally, and where possible, without recourse to Councillor Conduct panels;
3. The reference point for working with the councillors to achieve these outcomes will be the councillor conduct principles contained in the Local Government Act 1989 and Darebin City Council's Councillor Code of Conduct; and
4. To provide a report to the Minister for Local Government at the conclusion of the appointment providing an assessment of the ongoing professional relationships of Darebin City Council's councillors.

The terms of reference for Bill Mountford were:

1. To provide assistance to Darebin City Council, through the Chief Executive Officer and senior staff, to develop effective administrative processes for ensuring that Council policies are effectively implemented;
2. To provide assistance to Darebin City Council to ensure Council policies are rigorously adhered to by councillors and council staff;
3. To provide assistance to Darebin City Council to develop processes for effectively monitoring compliance with council policies; and
4. To provide a report to the Minister for Local Government at the conclusion of the appointment providing an assessment of the processes in place at Darebin City Council to ensure that its policies are effectively implemented.

While the terms of reference focused our individual work on councillors and management respectively, the work was done collaboratively given the considerable crossover of many of the issues.

Those we would like to thank

Acknowledgements

We would like to acknowledge and thank the following people for the positive and constructive way they engaged with us to identify issues and develop ways to improve processes, procedures and professional relationships:

- Mayor Steven Tsitas (2014/15), and councillors Vince Fontana, Julie Williams, Trent McCarthy, Bo Li, Angela Vilella, Gaetano Greco, Tim Laurence and Oliver Walsh,
- The members of the executive management team: Rasiah Dev (Chief Executive Officer), Tiffany White (Acting Director, Corporate Services), Katrina Knox (Director, Community Development), Steve Hamilton (Director, Assets and Business Services), Sally Jones (Acting Director, Culture Leisure and Works) and Jacinta Stevens (Executive Manager, Corporate Governance and Performance).

We would also like to thank Anna Giuliani and Dianne Jamieson for their administrative support, as well as the many other staff who contributed to a supportive and welcoming environment in which to do our work.

Mark Madden would like to also thank RMIT University's Centre for Innovative Justice, which promotes innovative approaches to justice including restorative justice, a form of which was used in his work with councillors. Thanks also to David Moore, the President of the Victorian Association for Restorative Justice and Dr Alikki Vernon from La Trobe University for their advice and guidance.

Bill Mountford would like to thank a number of people who were kind enough to provide their time and insights into local government practice including; Graeme Emonson, Andrew Newton, Michael Ulbrich, Vijaya Vaidyanath, Rob Spence, Lydia Wilson and Nerina DiLorezo.

The way we went about it

Our approach to the task

From the outset we made it clear that we were not at the Darebin Council to do things *for* them or *to* them, but to work *with* them to address the issues of concern and to improve processes and procedures, decision-making and professional relationships. Ours was a 'restorative' rather than a 'punitive' approach: to ask what had happened or was happening, to get a shared understanding of the impacts (negative and positive) and then to work with councillors, the Chief Executive Officer and senior managers to improve the situation.

Our work involved attending and observing numerous Council meetings (in person and or via web-streaming), Council Planning Committee meetings and councillor briefing sessions.

Bill Mountford met with individual councillors and members of the executive management team (individually and as a group) as well as with senior managers of other Councils. From this process he developed a model of Council and executive relationships that identified a number of key issues to address. A series of facilitated workshops with members of the executive management team was then held to discuss, develop and put in place new processes and procedures, as well as to get clarity around shared expectations.

Mark Madden met with all councillors informally at first and then conducted a more formal process involving responses to a questionnaire as well as interviews. This process identified an additional number of issues or flashpoints for further discussion as well as suggestions to improve the situation. A group/workplace conference was then conducted, followed by a series of facilitated workshops.

The two streams of work were brought together through a joint workshop with councillors and the executive management team as well as a joint workshop with councillors and the Chief Executive Officer.

The executive management team and councillors met several times without Inspectors present to discuss, decide on, and then put in place an implementation plan for the proposed reforms to processes and procedures.

The context

While the work with councillors and the executive management team focussed on issues in the current term of the Council, it was clear that some of the issues having an impact on personal and professional relationships went back beyond the current term. There were also a number of specific legacy issues that cast a shadow over both groups. These include an Ombudsman's inquiry, initiated in the previous term; reports of the Municipal Monitor; as well as a yet to be completed investigation by the Local Government Investigations and Compliance Inspectorate into the execution of the CEO contract.

The Darebin community and its Council is evolving, as is the political makeup of the region. The Council brings together councillors with a diverse range of political backgrounds and experiences. There are two ALP councillors, three former ALP members now sitting as independents, two independents with no previous party affiliation, one Liberal councillor and one councillor representing the Greens. There are a number of long-serving councillors who were part of ALP-dominated Councils, as well as councillors serving their first full-term. In this context, there are differing views about the role of Council (as a collection of councillors) and the individual role of councillors. On the one hand there is a view that councillors should act as a 'team' or be a 'board of governance', like those that govern corporations. Another view is that councillors come from different backgrounds, have differing values and ideologies and are elected on different platforms, and therefore you should not be surprised when the process gets a bit messy, as they engage in a robust battle of ideas and influence in what they believe is in the best interests of their community. In this 'age of disruptive technologies' democracy, it must be remembered, is perhaps one of the oldest 'disruptive technologies'.

It could be said then, that Darebin Council, as a whole, had failed up until now to respond adequately to the new political reality and adjust systems and processes to develop shared understandings, harness 'creative conflict' and facilitate the identification of common ground in decision making. In saying that, however, Darebin, would not have been the first, and won't be the last to find itself in this situation.

The reforms contained within the *Local Government Amendment (Improved Governance) Act 2015* requiring all councillors to understand and sign up to their Council's Code of Conduct in order to become a councillor will provide all Councils and councillors in the future, whatever their political make-up or background, with the opportunity to review and re-set their 'guidelines for constructive engagement' at the beginning of each term.

What we found

Councillors

(Mark Madden's response to his Terms of Reference 1 and 2)

My initial observations confirmed those of the Municipal Monitor that there was a 'lack of respectful behaviour by councillors towards each other'; a breakdown of relationship between councillors; and 'little trust between councillors and between some councillors and the CEO'. While I didn't necessarily agree with his view that in light of these and other issues it was 'difficult to see councillors re-establishing a sound working relationship', I understood why he would have said that.

In my meetings with councillors and the executive management team, it is important to note that I found a group of people who were passionate about their community and their role, but concerned about the damage recent events had done to the reputation of the Council and to their own reputations - either directly or by association. Good people caught in a cycle of bad processes and poor behaviours, perhaps. They welcomed the opportunity for a 'circuit breaker'; to find ways to improve things and to prevent a recurrence.

It soon emerged that the situation with councillors in Darebin was not a series of resolvable 'disputes' but a serious and ongoing 'conflict'. In a dispute, for example, the facts are the dominant concern and the dispute can often be resolved through mediation. In a conflict, however, the negative emotions between people dominate. As a result, and to provide a circuit-breaker, those involved in a conflict need an opportunity to understand and acknowledge the specific emotional and motivational sources of that conflict. The best way to achieve this is through a restorative justice process called group or workplace conferencing, the aim of which is to move from 'conflict' to 'co-operation' focusing on how to make things better.

Key elements of workplace conflict were observed at Darebin:

- Incidents or a series of incidents which were unresolved or unsatisfactorily resolved. There was dissatisfaction across the board with the complaints or dispute handling process linked to the Code of Conduct. This meant there was a reluctance to resolve issues internally. The process was not seen as impartial, fair or effective.
- A strong sense of 'us' versus 'them'. The councillors had formed into two blocs of five and four. People on the 'outside', including managers and staff, were in invidious positions where actions were being perceived through that prism. Inevitably, and despite the best of intentions, this can often lead to accusations of, or perceptions of, bias or favouritism. While voting did not always run along these lines, there was a sense that in the absence of a commitment to genuine collective decision-making, there would always be a dominant group ready to exclude the other group. As a result, managers and staff would remain in invidious position described above.

- A deficit of trust. There was little or no trust between councillors. There was limited faith in processes across the board. There was little confidence that that 'confidences' would be kept, that 'confidential' information or conversations between councillors would remain so. Indeed, the Council was caught in a 'spiral of distrust', that is, a lack of trust (and a lack of adherence to processes) that leads to the imposition of new regulations and processes, which then only reinforce the lack of trust, and do nothing to rebuild it.
- A lack of clarity around what collective decision-making meant in practice. This was exacerbated by the imposition of the 'three question rule' for councillor briefings, which limited the ability of councillors to get all of the information and understanding they required to make an informed decision. This in turn meant that what should have been done in these briefings often ended up being done in the Council chamber, unnecessarily prolonging discussion and debate.
- Insensitive communication. This included hurtful comments being made (intentionally or inadvertently) usually via email, and, at other times, general negative comments, poor body language and a poor tone of communication.
- Concerns raised about key staff leaving the organisation.
- Differing expectations about the levels of information sharing, consultation, discussion and decision-making around policy and planning issues, coupled with a perception of bias and favouritism.

The strained nature of relationships, the unresolved issues, the perceptions of bias/favouritism, and the inadequate decision-making processes meant that, as a result, proxy battles were often taking place through Notices of Motion and items of General Business, which in turn cut across processes and policy, added to workloads, prolonged meetings and raised the level of frustration.

This situation had persisted despite a number of 'external interventions' including an Ombudsman's inquiry, the appointment of a Municipal Monitor and letters from Ministers.

To restore morale and to improve relationships and decision-making, it was agreed that a collective circuit breaker was required, as well as a process to put the future of the Council back into the hands of the councillors and the executive management team.

For councillors this included a workplace/group conference, and then a series of both separate and joint workshops with the executive management team on the best way to turn workplace 'conflict' into workplace 'co-operation' and to put in place necessary changes to processes, procedures and behaviours.

A group conference is a meeting where colleagues are brought together and guided through the sequence of restorative questions to reach a shared understanding of:

- What's happened/or is happening and
- What has been/is the impact? (positive and negative) and then
- A plan or agreement in response to the questions: how can we respond constructively and how can we prevent a recurrence?

The steps involved include all the potential conference participants being interviewed to try and establish the key incidents or flashpoints in the ongoing conflict. In this case, this was done through a series of informal and formal meetings as well as a questionnaire. (Any suggestions given in the questionnaire about changes to processes and procedures were fed into the process involving the executive management team).

Three key areas of focus were identified: the appointment and term of the Municipal Monitor; the processes around the performance appraisal and reappointment of the Chief Executive Officer; and the lack of faith in the complaints handling process. The first two issues were the focus of the group/workplace conference. While the discussions were confidential, it was clear that the impact of the behaviours, processes and decisions leading up to and around the re-appointment of the CEO in particular, had caused a great deal of stress (professional and personal), not only for those directly concerned but also for families, friends and staff.

The group/workplace conference was then followed by a series of more traditionally facilitated workshops (including joint sessions with the executive management team) that explored the impact of the complaints process, discussed shared expectations around behaviours and workplace culture and the importance of leadership (personal and collective). Through these workshops councillors and the executive management team agreed on a series of reforms to improve the situation and prevent a recurrence.

What we found

The executive management team

(Bill Mountford's response to his Terms of Reference 1, 2 and 3)

The executive management team was despairing of the lack of trust and respect they believed they received from the councillors, despite their efforts to continue doing their jobs to the best of their ability in increasingly difficult circumstances. Internal relations between members of the executive by contrast, were amicable and supportive. This, together with some of the controls on interaction introduced over the previous year, had led to the executive becoming very passive and reactive to the councillors and the Council as a whole. The problem was not so much that they lacked adequate governance policies, or failed to implement these, but rather that they were over-governed and burdened with counter-productive governance policies.

The essential 'partnership' between a board or council and management was broken. This situation also contributed to the executive relying excessively on external legal advice on issues that arose with councillors. All of this contributed to undermining the performance of the executive in supporting the Council, resulting in, for example, unproductive briefing sessions for Council, excessively long council papers, and an inability to resolve issues quickly and efficiently.

Based on my observations, meetings with councillors, members of the executive and experts in the field, material was prepared to focus the executive on potential avenues of improvement through a number of workshops. This material included a model of Council interaction, and how Darebin currently stood in relation to this; case studies of major issues the Council had struggled with over the past year; and some data on the Council's recent experience with Items of General Business and Notices of Motion. The model of Council interaction is reproduced below.

Council and Executive Interaction

Aspects of Council and Executive Interaction

	Desired	Examples	Darebin
Relationship	<ul style="list-style-type: none"> Mutual trust and respect Alignment of interests Independent and fair 	<ul style="list-style-type: none"> Multi-faceted interactions Don't rely on 3rd parties Don't rely on power to exclude items 	<ul style="list-style-type: none"> <i>They don't trust us</i> <i>There is too much game playing</i> <i>People not treated with respect</i>
Approach	<ul style="list-style-type: none"> Early warnings/ no surprises Advice without fear or favour Proactive on issues 	<ul style="list-style-type: none"> Hold council to account Multiple briefings on issues Informal contact on issues 	<ul style="list-style-type: none"> Passive and reactive Rely on legal advice Over governed Green papers made contact very difficult
Performance	<ul style="list-style-type: none"> Responsive to councillor needs High quality reports and recommendations Timely and effective implementation 	<ul style="list-style-type: none"> Priority for councillor responses to electors Assistance with alternate resolutions Lead time with papers 	<ul style="list-style-type: none"> 4 days to read papers Briefings variable in quality Councillor issues to customer service

Source: Interviews with external council CEOs, Darebin councillors and executives

Copyright © 2003 Christopher McEwen

Three workshops with the executive management team were facilitated jointly with Mark Madden to work through this material and develop policies to address the issues raised, and improve the operation and effectiveness of the Council and councillors' interaction with the executive. The executive team embraced this process enthusiastically and developed a wide range of reforms and process innovations to suggest to the councillors in their joint sessions.

The end results of our work

Time to push the 'reset' button

As mentioned earlier, when we first met with councillors, the Chief Executive Officer and the executive management team, we said our role was not to do things *to* them or *for* them, but to work *with* them. As a result of our work with them they have developed a series of reforms to improve governance, decision-making and professional relationships - to in effect, push the 'reset' button. A summary of the reform is provided below.

It is important to note that a number of the proposed reforms at Council level, particularly in relation to Codes of Conduct and complaints handling, respond in turn to the reforms contained in *Local Government Amendment (Improved Governance) Act 2015*, which was recently passed by the Victorian Parliament and will be proclaimed progressively over the coming months. These include:

- The requirement for all councillors to understand and sign up to their Council's Code of Conduct in order to become a councillor. This includes the provision that within four months of being elected the new Council must review and adopt a new councillor code which councillors are again required to sign;
- The requirement for Councils to take responsibility for resolving councillor behavioural issues internally as far as possible;
- Greater clarity and transparency around the process for making and resolving complaints, as well as determining the sanctions for a breach of the Code of Conduct, including the requirement for independent arbiter to resolve allegations of breaches of the Code;
- A clear definition of 'misconduct' as well as what constitutes 'bullying'. The definition of 'bullying' is consistent with that contained in the Fair Work Act 2009 and is also used by WorkSafe.
- New processes and more powers for Councillor Conduct Panels, including a new position of Principal Councillor Conduct Registrar.

The Minister has stated that the aim of these reforms is to ensure councillors know that breaching the standards of behaviour that they have adopted, will have consequences and that by enforcing these standards, the behavioural issues that escalate into serious governance disruption can be prevented.

Importantly, the reforms to the Code of Conduct and complaints process contained in the *Act* deal with the key issues and concerns raised individually and collectively by the councillors at Darebin. While these reforms refer in effect to future Councils, it has been agreed that there is nothing to stop these reforms being applied to the current Council and being put in place as soon as possible.

The new Act also clarifies the roles of the Mayor, councillors and the Chief Executive Officer. In particular, the function of the Mayor now clearly includes providing guidance (based on the Code of Conduct) about what is expected of councillors and 'supporting the good working relationships between councillors'.

This makes it clear that while the responsibility to deliver the changes to governance, processes and behaviours is the individual and collective responsibility of the councillors and senior managers, the development of a strong culture and a healthy, productive workplace, as well as a council clearly focussed on delivering for the community, must be led strongly by the Mayor and Chief Executive Officer.

Summary of reforms

The following is a summary of the reforms developed and agreed by councillors, the Chief Executive Officer and the executive management team.

Code of Conduct and complaints/disputes

- Darebin Council will review the Councillor Code of Conduct to ensure it reflects the outcomes of the discussions on shared expectations and behaviours as well as changes proposed by the *Local Government Amendment (Improved Governance) Act*. The aim is to provide a clearer, simpler and shorter (less repetitive) Code.
- This process will involve all councillors in at least one facilitated session to ensure that everyone has a say, and that the resulting Code of Conduct is a concise, clear and well written document. This session will also include the development of a shared understanding of the key elements of 'collective decision-making'.
- All councillors will sign the revised Code once agreed and approved.
- Darebin Council will put in place the key internal elements of the complaints process as set out in the new *Local Government Act (Improved Governance) Act*.
- While the new process is being established, Darebin Council will appoint a skilled independent arbiter, with experience in mediation and workplace/group conferencing, to resolve expeditiously any outstanding issues to allow all councillors to 'draw a line in the sand' and move quickly into the new arrangements.

Strengthening the relationship between the CEO and councillors

- An agreed process will be developed and implemented for the performance appraisal and appointment or reappointment of current and future Chief Executive Officers. This will draw on independent advice, reflect best practice in the sector be is informed by relevant State Government legislation and policy.
- A monthly meeting will be scheduled involving all councillors and the CEO to provide two-way feedback. This meeting will have a formal agenda and will provide, among others things, an opportunity to track the implementation and impact of the reforms that have been agreed upon.
- The Mayor will provide feedback to fellow councillors from the weekly meetings with the CEO and establish a process to take informal feedback from councillors to the CEO, in between the scheduled monthly meetings.

Councillor support

- A Councillor Liaison Officer will be appointed to provide support to the CEO to ensure councillor issues and queries are attended to and followed up, as well as to help coordinate the flow of information to councillors and communication strategies for major projects and issues.
- The councillor and staff interaction protocol will be redrafted with less rigidity, allowing for greater responsiveness from officers, and to facilitate improved information flow. Strong oversight by members of the executive management team and managers remains, as does the requirement that councillors must not direct staff.
- The councillor-induction model and the quality of its content will be reviewed. A key aim will be to broaden the learning approach and include regular updates and opportunities for skills development and consolidation.

Informed Council

- A number of changes will be made to improve communications, that include:
 - Councillors getting regular updates outside of normal meetings and briefings;
 - A more strategic use of the councillor e-Bulletin;
 - Better information flow about major issues and projects;
 - More timely updates on significant media and advocacy issues so councillors are equipped to handle queries from constituents and others;
 - A 6-to-12-month report planner that sets out strategic issues, major projects, the budget process and annual reports; and
 - A social media strategy for councillors.

- There will be regular councillor workshops for nominated major projects.

Council meetings, reports, agendas and councillor briefings

- A longer-term planning cycle will be implemented that includes:
 - A forward agenda provided twice-yearly in January and July of the items either for briefing and/or consideration by the Council;
 - A planning and review day in December of each year for councillors to review the year and suggest issues to be addressed in a strategic planning session to be held early in the following year.
- All councillor briefing, Planning Committee and Council agendas will be circulated to councillors at least seven days prior to a meeting. Councillors will be expected to provide any proposed amendments to agenda items at least five days prior to a meeting. This will allow issues to be clarified and considered advice given before the Council meeting to assist the debate.
- The format of Council reports will be changed to improve their quality, reduce repetition, and to provide a summary of key information and recommendations on the first page.
- The following changes will be made to speaking times: Mover, three minutes; Seconder, two minutes; other speakers, two minutes. The Mayor/Chair will have the discretion to extend speaking time up to three minutes.
- Councillor reports will be provided in writing and included in the Minutes but not directly spoken to in the Chamber.
- A number of improvements will be made to Public Question Time, that include:
 - Giving community members the opportunity to lodge Questions online by 4:00 p.m. on the day of the Council meeting. Residents will still be able to lodge questions in person by 7 p.m. No questions will be accepted after 7.00 p.m.;
 - Assisting community members in the preparation of their questions, from 3.00 p.m. on each day of a Council meeting;
 - Making clear that questions in relation to items that are listed on the Council meeting agenda will not be accepted;
 - Ensuring that questions that cannot be answered on the night will be answered in writing as soon as possible after the meeting.
- The CEO and Mayor will work together to finalise the agendas and time allocation for items for both the councillor briefing and the Council meetings.
- Council and Planning Committee meetings will begin at 7p.m. and be preceded by a councillor briefing session and working dinner from 5.30 p.m. so that advice and clarification can be provided before the Council meeting. This will assist the debate and the timely completion of the agenda.

- Council meetings will conclude by 10.30 p.m. with no extension options.
- Notices of Motion (NoMs) will be required to be lodged with councillors, the CEO or a delegate by 5.00 p.m. two weeks prior to the Council meeting. This will allow time to ensure appropriate wording and the preparation of advice for all councillors on the impact of the NoMs, to assist the debate, as well as the timely circulation of Council papers in advance.
- Changes to the format of Council Minutes will be made to avoid duplication and increase efficient distribution. The revised Minutes will include for each agenda item: the report summary and officer recommendation, any alternative recommendations and the adopted resolution. The Reports and attachments contained in the original Agenda will not be included, but will continue to be available on the Council website and circulated to all Councillors.
- Changes will be made to councillor briefing sessions in to improve the exchange of information, the presentation of issues and for Councillors to raise issues, seek clarification and information. A longer-term strategic agenda for these briefings will be developed. The three-question limit will be removed and be replaced by a nominated time by which the meeting should conclude.
- The councillor register-of-interests will be made publicly available.

Timing of implementation

All of the reforms, except for the review of the councillor induction model, will be implemented progressively over the next three months according to the agreed implementation plan, with the expectation that they are fully operational by Monday March 7. (The outcomes of the review of the councillor induction model will be completed in time for the next Council term following elections in late 2016.)

The reforms related to the preparation for, and conduct of, Council meetings are to be in place for the first meeting of 2016 (Monday February 1). The changes to Public Question Time will be implemented in consultation with the community and will take some time to bed down and become fully operational. Reforms that require changes to the local law, such as speaking times in debates, will be implemented by agreement before the formal change is made.

Culture, Leadership and Trust

As Paul Geyer, the Victorian State Manager of the Australian Institute of Company Directors and Chair of Darebin Council's External Governance Committee, noted in the Committee's final report, 'the Council has an abundance of policies and procedures and ultimately it is culture and leadership that determines compliance with policies and the ethical behaviour in an organisation.'

These new processes and procedures are designed to underpin the development of a positive culture and a healthier, more productive workplace. Success, however, will require strong leadership by the Mayor and Chief Executive Officer in the first instance, as well by councillors and senior managers, both individually and collectively.

In addition, the necessary rebuilding of trust can only occur through the progressive implementation of and ongoing commitment to these reforms as well as to individual and group behaviour consistent with agreed expectations and their own Code of Conduct.

Any failure to do so will become apparent soon enough, in time for provisions of the new Act to be invoked or for Darebin citizens to take action through the ballot box at the next Council elections.

The Future

The future of the Darebin City Council is now in the hands of the councillors and the executive management team, where it belongs. They have made significant progress in resetting the terms of their engagement and improving processes and procedures. That said, the real challenge now is to implement and sustain these initiatives over the remainder of this Council's term of office and to set an example of good practice for future Councils.

We recommend that the Minister appoint a Municipal Inspector/s to review the implementation of these reforms on a three-monthly basis, with the express remit of reviewing progress, assisting with overcoming of any barriers that have emerged, and reporting on the outcomes.