

Instrument of Delegation

A Special Committee of Council to protect, promote and develop the Kernot Hall and Reserve for the use and enjoyment of the local community and visitors.

In exercise of the power conferred by Section 86 of the *Local Government Act 1989*, Bass Coast Shire Council delegates to the Kernot Hall and Reserve Committee, being a Committee established by resolution of Council on **21 March 2018**, the powers, duties and functions as set out herein, and declares that:-

1. This instrument of delegation is authorised by a resolution of Council, passed on **21 March 2018**
2. The Delegation shall:
 - i. Come into force immediately the common seal of Council is affixed to this Instrument of Delegation
 - ii. Remain in force until Council resolves to vary or revoke it.
 - iii. Be subject to any conditions and limitations set out herein
 - iv. Be exercised in accordance with any guidelines or policies which Council from time to time adopts
3. **Definitions**

“Person” shall mean any person who is a resident or ratepayer of the Bass Coast Shire or who has an interest in the Kernot Hall and Reserve Committee.

“Special Committee” means a Committee appointed under the terms of Section 86 of the *Local Government Act 1989*.
4. **Powers, Duties and Functions** granted under this delegation to the Kernot Hall and Reserve Committee are:
 - 4.1 Aims of the Special Committee
 - (a) To undertake activities designed to protect, promote, utilise and develop the Kernot Hall and Reserve for the use and enjoyment of the local community and visitors

4.2 Objectives of the Special Committee

- a) Under the delegated and management powers conferred upon the Committee by the Bass Coast Shire Council, to effectively develop the Kernot Hall and Reserve as a community facility.
- b) To ensure fairness in the use of the Kernot Hall and Reserve by individuals and community groups.
- c) To keep the Kernot Hall and Reserve and surrounds clean and presentable for those who use it.
- d) To work towards developing the Kernot Hall and Reserve and improving its usefulness to the community.
- ~~e) To maintain and develop the former Railway Station Reserve for the enjoyment of the community~~
- f) To keep the Council informed on the proposed improvements of the Kernot Hall and Reserve.
- g) To provide a copy of minutes of ordinary, extraordinary and annual meetings within two weeks of the meeting date, and to report annually on Committee operations in August each year.
- h) To maintain appropriate user charges subject to Council's approval where appropriate subject to Council approval.
- i) To provide and maintain buildings, furniture and fittings within the Kernot Hall and Reserve in accordance with the Terms of Arrangement with the Council as set out below.
- j) To liaise with the local community and keep the community informed of the Committee's plans and activities

4.3 Terms of Arrangement between Council and Kernot Hall and Reserve Committee

It is provided that the responsibility for capital works, repairs and maintenance, and Kernot Hall and Reserve developments be divided between the Council and the Committee as follows:

The Council

The following shall be the responsibility of the Council including

- a) maintenance of a major capital works nature subject to sufficient available resources and Committee financial assistance
- b) maintenance of playground equipment

The Committee will:

- a) minor electrical works including supply/repairs/replacement of globes, light fittings, and electrical repairs
- b) minor plumbing works including supply/repairs/replacement of fittings, fixtures, guttering, leaks
- c) minor carpentry works including supply/repair/replacement of benches, and other fittings and fixtures
- d) supply/repair/replacement of breakages of equipment, fixtures and fittings
- e) rectify maintenance defects or risk management issues after seeking approval from Council to proceed. All risk management issues must be submitted to Council in writing as they arise
- f) adhere to and rectify notices issued under the Essential Services requirements of the Building Control Act within the specified timelines
- g) maintenance of courts and fencing
- h) mowing and maintenance of grassed areas and garden beds and surrounds

Capital Works

Any proposed capital works **must be submitted** to the Council for consideration and approval. All proposed projects must be approved by the Council **prior to applying for grants** or other sources of funding.

If funding is required from the Council through its Capital Works Program, advice must be received by the November prior to the next financial year

Insurances

- *Building and Contents*

The Council shall insure and keep insured the Kernot Hall and Reserve and content against loss and damage,

- *Members*

Subject to the Special Committee and its members acting within the scope powers and functions set out in this Instrument of Delegation, the Public Liability insurance held by Council shall protect individual members from liability other than for criminal matters

- *Volunteers*

Any volunteers co-opted to assist with the Committee to discharge its obligations will be covered by the Council's insurance policies where the names of the volunteers have been previously advised to the Council and approved in writing

- *Hirers/Users*

All hirers/users of the site for organised activities/events must have their own public liability insurance cover when using the site. Council's Hirer Insurances Scheme is available for non commercial hirers.

4.4 *Pecuniary Interest (Schedule 2)*

All non Council members of the Special Committee shall be exempt to the Register of Interest provisions of the *Local Government Act 1989* pursuant to S81(2A) of the Act.

The members of the Special Committee shall observe the Pecuniary Interest requirements of Sections 78 and 79 the *Local Government Act* with regard to disclosure of interest in a matter of business before a meeting.

4.5 *Code of Conduct (Schedule 3)*

All members of the Special Committee shall observe the provisions of the Bass Coast Shire Council Working Together Policy and Code of Conduct.

Should a member of the Special Committee be found in breach of the provisions of the Code of Conduct or Working Together policy, dependent on the severity of the breach, will be issued with a written warning. A second breach shall result in instant dismissal as an elected member of the Special Committee.

Should a breach of either policy be of a severe nature it may result in instant dismissal, with no warning issued.

All incidents are required to be reported to the Arts and Leisure Manager or his/her representative.

4.6 *Books of Account*

The Committee may operate such bank accounts and books of accounts as the Committee thinks necessary, and may receive all monies and meet routine expenditure in connection with the matters listed in the Terms of Arrangement (above) and operation of the various Park functions.

4.7 Limits of Expenditure

Notwithstanding Clause 4.4 (above), the Committee may not expend without written approval of the Council, total expenditure in any one year (1st July - 30th June) in excess of \$15,000, or expenditure on any single purchase order or item in excess of \$2,000, or the sponsorship of any program or special event with a budget in excess of \$1,000.

4.8 Property

All property, materials furniture, fittings, appliances and funds held by the Committee shall be and remain the property of the Kernot Hall and Reserve Committee or as otherwise indicated in the Asset Register.

The Committee must prepare a register of assets which is updated annually and presented to the Annual General Meeting and a copy lodged with Council so that contents insurance can be kept at the appropriate level

4.9 Contractors

The Committee may engage such persons and on such terms as are appropriate to carry out planning, special tasks, administrative and operating functions of the Committee. Such persons shall be deemed contractors, not employees of the Council. Such contractors shall have the relevant insurance cover relating to their engagement.

Site Induction

A Committee representative shall undertake an induction of the site prior to the commencement of works by any contractor or his/her representative. Should the Committee not be confident to undertake this action, Council will provide an appropriate person to undertake the induction. The induction will identify any Occupational Health and Safety issues.

Such induction shall provide advice on possible risks such as but not limited to-

- a) lifting of items that are excessive and could cause injury
- b) use of ladders to access areas that may require other access equipment to meet the Occupational Health and Safety
- c) any other area that may cause injury or death

4.10 Audit

The books of account of the Special Committee shall be balanced to 30th June each year and audited forthwith by a suitably qualified person. Audited statements and books of account shall be submitted for approval by the Council's auditor when requested by the Council.

4.10 Reports

The Committee shall submit a copy of its minutes of ordinary and extraordinary and annual general meetings within fourteen days of the meeting date,

4.11 Fairness

The Committee shall ensure that the functions, meetings and special events conducted under the auspices of the Committee are open to all members of the community, and that The Kernot Hall and Reserve be available on reasonable and equitable terms. The Committee is empowered to adjudge questions of equity. Where issues may require to be dealt with “in camera” the meeting shall be closed to the public. Committee members are not empowered to divulge the discussions or decision made whilst “in camera” outside the meeting. Issues to be dealt with “in camera” must be considered in the following areas -

- personal matters
- personal hardship
- contractual matters
- legal advice
- matters affecting the security of the assets

Non-Committee members when asked to leave the meeting must be advised of the reason as provided above for the Committee going into “in camera”.

In the case of a dispute that cannot be resolved by the Committee, the Council shall be requested to consider the matter and Council’s decision shall be accepted as final.

4.12 Money

The Special Committee may:

- a) Fix and levy membership fees, user charges, entrance fees to functions, and registration fees for special events subject to Council approval.
- b) Solicit and collect donations.
- c) Seek and receive grants and contributions, (including Government grants to a limit of \$3,000 **without express approval** of the Council).
- d) Repay to the Council any advances
- e) Pay to the Council any sums of money for agreed works undertaken by the Council for the Committee

- f) Maintain a petty cash float to reimburse operating expenses such as postage, stationery and other expenses incurred in the Committee's operation. Receipts will be produced with each claim and made available to the person appointed to undertake the audit
- g) Maintain credit accounts with suppliers of services where necessary. In purchasing supplies the Committee will have regard to purchasing goods locally where possible.

The Treasurer shall receive all monies on behalf of the Committee and shall bank all monies received within 7 days unless otherwise agreed to by Council.

Committee funds shall be used only towards the aims and objectives stated herein except where otherwise approved by the Council

4.13 *Disputes*

The Committee shall be the arbiter of disputes. In the event of a dispute involving perceived fairness of the Committee, such matter shall be referred to the Council only after consideration by the Committee.

4.14 *Rules, Behaviour*

The Committee may make such rules as it deems expedient for the safety, conduct and well-being of people using the facilities under its control, and may ensure compliance by whatever lawful means the Committee considers fit. A copy of such laws shall be approved by the Council.

4.15 *Security*

The Committee shall provide for the security of the area as best to its abilities

5. **Committee Structure**

The Special Committee shall comprise no less than 4 and no more than 9 persons, being appointed by the Council for a four (4) year term.

The Council may appoint one or more non-voting co-opted members from time to time

The Special Committee to be appointed shall at its first meeting after the Annual General Meeting elect the following office bearers for the following year:

- Chairman
- Vice Chairman
- Secretary
- Treasurer

- Booking Officer

All members of the Special Committee shall be officially appointed by the Council before acting as a member.

Co-opted Persons

The Committee shall have the power to co-opt additional non-voting persons for a specific purpose and for a specified period. All co-opted members must be approved by the Council before acting as co-opted persons.

Vacancy on Committee

Where a vacancy occurs on the Committee, the Committee may submit nominations to the Council for appointment for the filling of the vacancy for the duration of the remaining term of office.

The Council may choose to fill the vacancy from the names submitted or call for public nominations.

Re-forming or Amending Committee

The Council may from time to time re-form or amend the membership of the Special Committee at its discretion.

6. Meetings

6.1 All meetings shall be conducted in accordance with the procedures and conventions of Council's Local Laws as far as is practicable.

6.2 Committee Meetings

Meetings of the Committee shall be at times, dates and places as determined by its members. The Committee shall hold at least one meeting each calendar month.

6.3 Meeting Procedure (Schedule 1)

The provisions of the *Local Government Act 1989* as amended from time to time in relation to the conduct of Special Committee meetings shall be observed by the Special Committee (Sections 89 and 90, 91, 92 and 93 - composition of meetings, meetings open to the public, voting, conduct of meetings, minutes, and validity of proceedings).

6.4 Quorum

The quorum necessary for the holding of a meeting of the Special Committee shall be four members.

7. Limitation of Powers

7.1 Amendments to Instrument of Delegation

No amendment may be made to this Instrument of Delegation except by Council. Amendments may be proposed to Council by the Committee.

7.2 Other Limitations

The Special Committee has no power to:

- itself delegate its functions
- declare a rate or charge (except the fixing and collection of user charges admittance fees to functions, and the levy of membership fees)
- borrow money other than advances from Council
- enter into contracts, (other than for administrative functions and engagement of short term special purpose entertainers, facilitators and guest speakers authorised in this Instrument of Delegation)
- exceed expenditure limits specified

8. Attestation Clause

The Common Seal of Bass Coast

Shire Council was hereto affixed in

the presence of:

..... Chief Executive Officer

Dated: 21 March 2018

- I. The following persons have been appointed to the Kernot Hall and Reserve Special Committee of Council under Section 86 of the *Local Government Act 1989* as of **21 March 2018:**

Mark Rowe , Frank Garry, Julie Johnston, Jan Pettenuzzo ,Gay Garry , Lisa Huitson, Paul Johnston, Sheila Campbell, Barrie Stewart , Pat Russell , Allan Kerr, Joan Kerr , Diane Dunn , Barb Stewart , Sally Blackney, Rob Parsons.

Murray Huitson, Gary Blackney, Steve Cochrane, Ken Adshed, Lyndal Standish
Malcom Dunn, Bruce Campbell

PLAN OF AREA UNDER COMMITTEE RESPONSIBILITY



Schedule No. I

Extract From *Local Government Act 1989*

Sections 86, 89, 90, 91, 92 and 93

Special Committees of Council

Section 86. Special committees of the Council

- (1) In addition to any advisory committees that a Council may establish, a Council may establish one or more special committees of the following—
 - (a) Councillors;
 - (b) Council staff;
 - (c) other persons;
 - (d) any combination of persons referred to in paragraphs (a), (b) and (c).
- (2) A Council may appoint members to a special committee and may at any time remove a member from a special committee.
- (3) Except as provided in sub-section (4), a Council may by instrument of delegation delegate any of its functions, duties or powers under this or any other Act to a special committee.
- (4) A Council cannot delegate to a committee the following powers—
 - (a) this power of delegation;
 - (b) to declare a rate or charge;
 - (c) to borrow money;
 - (d) to enter into contracts for an amount exceeding an amount previously determined by the Council;
 - (e) to incur any expenditure exceeding an amount previously determined by the Council;
 - (f) any prescribed power.
- (5) A Council may require a special Committee to report to the Council at intervals determined by the Council

Section 89. Meetings to be open to the public

- (1) Unless sub-section (2) applies, any meeting of a Council or a special committee must be open to members of the public.
- (2) A Council or special committee may resolve that the meeting be closed to members of the public if the meeting is discussing any of the following—
 - (a) personnel matters;
 - (b) the personal hardship of any resident or ratepayer;
 - (c) industrial matters;
 - (d) contractual matters;
 - (e) proposed developments;
 - (f) legal advice;
 - (g) matters affecting the security of Council property;
 - (h) any other matter which the Council or special committee considers would prejudice the Council or any person;
 - (i) a resolution to close the meeting to members of the public.
- (3) If a Council or special committee resolves to close a meeting to members of the public the reason must be recorded in the minutes of the meeting.
- (4) The Council must provide reasonable notice to the public of meetings of the Council.
- (5) The Chairperson of a special committee must provide reasonable notice to the public of meetings of the special committee.

Section 90. Voting

- (1) A question before a meeting of a Council or special committee is to be determined as follows—
- (a) each Councillor present at a meeting of the Council and each member of a special committee present at a meeting of the special committee who is entitled to vote is entitled to one vote;
 - (b) unless otherwise prohibited by this Act, each Councillor or member of the special committee present must vote;
 - (c) unless the procedures of a Council or special Committee otherwise provide, voting must be by a show of hands;
 - (d) the question is determined by a majority of the votes;
 - (e) subject to sub-section (2), if there is an equality of votes the Chairperson has a second vote.
- (2) If there is an equality of votes on a question arising under section 71(1), 87(2), 87(3), or 88(4), the matter is to be determined by lot.

Section 91. Conduct of meetings

- (1) A Council must make local laws governing the conduct of meetings of the Council and special committees.
- (2) Except as provided in this Act and subject to any local laws, the conduct of meetings of a Council is in the Council's discretion.
- (3) Except as provided in this Act and subject to any local laws and any resolutions of a Council, the conduct of meetings of a special committee is in the special committee's discretion.
- (4) (3A) A quorum at a meeting of the Council or a special committee must be at least a majority of the members of the Council or the special committee.
- (5) Resolutions made at a meeting of a Council or special committee must clearly state the intention and effect of the resolution

Section 92. Validity of proceedings

Proceedings of a Council or committee are not invalidated because of-

- (a) any vacancy in the number of Councillors or members; or
 - (b) any defect in the election or appointment of a Councillor or member;
- or
- (c) any incapacity to be a Councillor or member; or
 - (d) any failure to comply with section 89.

Section 93. Minutes of meetings

- (1) The Council must keep minutes of each meeting of the Council.
- (2) The minutes of a Council meeting must be submitted to the next appropriate meeting of the Council for confirmation.
- (3) The Chairperson of a special committee must arrange for minutes of each meeting of the committee to be kept.
- (4) If subsection (3) applies, the Chairperson must submit the minutes of a committee meeting to the next meeting of the committee for confirmation.
- (5) If the minutes are confirmed the Chairperson at the meeting must sign the minutes and certify that they have been confirmed.
- (6) The minutes of a meeting of the Council or a special committee must-
 - (a) contain details of the proceedings and resolutions made;
 - (b) be clearly expressed;
 - (c) be self-explanatory;
 - (d) in relation to resolutions recorded in the minutes, incorporate relevant reports or a summary of the relevant reports considered in the decision making process

Schedule No. 2

Extract From *Local Government Act 1989*

Sections 78 And 79

Pecuniary Interests

Section 78. Pecuniary interests

- (1) Section 79 does not apply to a direct or indirect pecuniary interest in a contract, proposed contract or other matter which a Councillor or a member of a special committee has—
- (a) only as a voter or ratepayer and in common with other voters or ratepayers; or
 - (b) only because the contract, proposed contract or other matter involves expenditure from money belonging to or held by the Council and the Councillor or member of a special committee is as a ratepayer a contributor to the money; or
 - (c) in relation to the declaration of rates and charges or the fixing of a fee by the Council; or
 - (d) in relation to the terms and conditions on which the right to participate in the supply of goods and services is offered to members of the public; or
 - (e) only as a person to whom goods or services are supplied in the like manner and subject to the same terms and conditions as apply to members of the public; or
 - (f) only by reason of receiving an allowance or travelling allowances as permitted by this Act; or
 - (g) only by reason of the Councillor or member of a special committee or his or her spouse or domestic partner being insured by the Council; or
 - (h) only as a member of a local community body, club, union or other organisation which is a non-profit organisation if no personal gain to the Councillor or member of a special committee or his or her spouse or domestic partner is involved; or
 - (i) only in planning and development matters which have a general application throughout the municipal district or a ward; or
 - (j) in relation to the consideration of an application or request for a consent, permission, approval, authorisation, licence, permit, exemption or other right or privilege under this or any other Act, if the extent of the interest of the Councillor or member of a special committee or his or her spouse or domestic partner is the same as other members of the public; or
 - (k) only as an employee in the service of the Crown or of a body established by or under any Act for a public purpose; or
 - (l) only by reason of being a candidate for election as Mayor; or
 - (m) only as a member of a body (whether or not incorporated) who is appointed or nominated by the Council and whether or not any remuneration or allowances are received.
- (2) For the purposes of section 79, a person is to be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter if—
- (a) the Councillor or member of a special committee or a nominee of the Councillor or member of a special committee is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct or indirect pecuniary interest in the matter under consideration; or
 - (b) the Councillor or member of a special committee is a partner, agent, consultant or employee of a person with whom the contract is made or is proposed to be made or who has a direct or indirect pecuniary interest in the matter under consideration; or

- (c) the Councillor or member of a special committee is a director, manager, employee or agent of a company which has a direct or indirect pecuniary interest in the matter under consideration; or
 - (d) the spouse or domestic partner of the Councillor or member of a special committee has an interest of a kind referred to in paragraph (a), (b) or ©; or
 - (e) the spouse or domestic partner of the Councillor or member of a special committee has a direct or indirect pecuniary interest in the contract, proposed contract or other matter.
- (3) If a Councillor or a member of a special committee has an indirect pecuniary interest in any contract or proposed contract with the Council or in any other matter referred to in section 79(1) only because he or she, or his or her spouse or domestic partner, has a beneficial interest in shares of a company or other body and the total nominal value of those shares does not exceed \$2000 or 1% of the total nominal value of the issued share capital of the company or body (whichever is the less), section 79(1) does not preclude him or her from taking part in the consideration or discussion of, or voting on any question with respect to the contract, proposed contract or other matter.
- (4) In this section, “domestic partner” of a person means an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
- (a) for fee or reward; or
 - (b) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation).
- (5) For the purposes of the definition of “domestic partner” in sub-section (4)—
- (a) in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the Property Law Act 1958 as may be relevant in a particular case;
 - (b) a person is not a domestic partner of another person only because they are co-tenants.

Section 79. Disclosure of conflict of interest

- (1) If a Councillor or member of a special committee has a conflict of interest in any contract or proposed contract with the Council, or in any other matter in which the Council is concerned which is to be, or is likely to be, considered or discussed at a meeting of the Council or a special committee, the Councillor or member of the special committee must—
- (a) if he or she intends to be present at the meeting, disclose the nature of the conflict of interest immediately before the consideration or discussion; or
 - (b) if he or she does not intend to be present at the meeting, disclose the nature of the conflict of interest to the Chief Executive Officer or the Chairperson of the special committee at any time before the meeting is held.
- (2) The Councillor or member of the special committee may choose to remain in

the room in which the meeting is being held during any consideration or discussion of the contract, proposed contract or other matter.

- (3) The Councillor or member of the special committee may take part in the consideration or discussion but cannot move or second a motion on any question relating to the contract, proposed contract or other matter.
- (4) While any vote is taken on a question relating to the contract, proposed contract or other matter, the Councillor or member of the special committee must—
 - (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
 - (b) remain outside the room and any gallery or other area in view or hearing of the room.
- (5) After the result on the vote on the question relating to the contract, proposed contract or other matter has been declared, the Mayor or the Chairperson of the special committee must cause the Councillor or member of the special committee to be notified that he or she may return to the room.
- (6) If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson of the special committee must record the declaration and the nature of the conflict of interest in the minutes of the meeting at which the consideration or discussion took place.
- (7) Unless sub-section (8) or section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence. Penalty: 100 penalty units.
- (8) It is a defence to a prosecution if the Councillor or member of the special committee proves that he or she did not know—
 - (a) that he or she had a conflict of interest in respect of the contract, proposed contract or other matter; or
 - (b) that a contract, proposed contract or other matter in respect of which he or she had a conflict of interest was considered or discussed at the meeting.
- (9) This section does not prevent any person from taking part in the consideration or discussion of, or voting on—
 - (a) any question whether the amount payable for goods or services previously supplied or provided under any contract should be paid from money held by the Council; or
 - (b) the election of a Councillor to be the Mayor; or
 - (c) any question whether an application should be made to the Minister for the exercise of the powers conferred by section 80.

Schedule No. 3

Extract From *Bass Coast Shire Council*
Working Together and Code of Conduct Policies

Working Together and Code of Conduct

Working Together Policy

We do not tolerate any forms of:

- bullying
- harassment
- discrimination
- threatening behaviour
- sexual harassment
- equal opportunity breaches.

You have the right to act as a Council volunteer free from these unacceptable behaviours and we all have a responsibility to ensure that this happens.

Working together is a partnership. It requires everyone to understand and follow the principles, procedures and rules.

Working together gives everyone a fair go. This is what we all expect and deserve. This is good for everyone..

Policy objectives

The Working Together Policy aims to:

- stress that non-complying behaviours such as bullying, harassment, sexual harassment, violent or threatening behaviours or discrimination will not be tolerated under any circumstances
- promote a Committee that provides fair and equal opportunity to all in accordance with equal opportunity principles
- comply with obligations under Federal and State anti-discrimination laws including the Equal Opportunity Act 1995, the Sex Discrimination Act 1984, the Disability Discrimination Act 1992 and the Racial and Religious Tolerance Act 2001
- comply with Council's obligations under the Occupational Health and Safety Act 2004 and Local Government Act 1989.

Policy statement

Policy applies to whom?

The Working Together Policy applies to everyone who is:

- a customer of Bass Coast Shire Council
- employed by the Bass Coast Shire Council as an employee
- engaged by the Bass Coast Shire Council by way of contract
- elected to the Bass Coast Shire Council as a Councillor
- a volunteer for the Bass Coast Shire Council

Principles

This policy is based on the principles of professional behaviour and which are expected to be displayed by persons employed by, engaged by or elected to the Bass Coast Shire Council.

Professional behaviour includes:

- treating everyone with respect, dignity and courtesy
- being sensitive to different points of view
- including rather than excluding people because of prejudice
- moving from “blame” to problem solving as a way of dealing with mistakes
- open and balanced communication
- respecting the roles of other
- valuing diversity – the similarities in differences, and the differences in similarities
- making decisions based on merit, choosing only because of an ability to do the job
- remembering the basic courtesies of “please”, “thank you” and “I’m sorry”
- acknowledging people’s contributions

Professional behaviour definitely does not include:

- racial graffiti, comments or jokes
- any forms of communication with sexual or racial messages
- crude jokes, gestures and sexual innuendo
- requests for sexual favours, unwanted sexual attention
- psychological or physical harassment
- stereotyping people
- touching, leering, invading personal space
- yelling and screaming or deliberately ignoring people, malicious rumours
- bullying, swearing and physical or psychological threats
- intimidation or use of strength or power to coerce others by fear, degrading or humiliating someone
- actions or comments that treat someone differently because of their age, physical features, disability, religious or political beliefs, industrial activity, marital status, sexual orientation, race, sex, pregnancy, carer status or parental status.

Dealing with breaches of the policy

If, for any reason, you believe that you or someone else isn’t being treated fairly and professionally, or that there is any breach of this Policy then:

Speak up

- ask the offender to stop the inappropriate behaviour
- talk to a reliable friend/colleague, the Arts and Leisure or his/her representative

What will happen next?

The top priority is to get the behaviour stopped. If you haven’t been able to resolve the issue yourself through the Special Committee, the incident will be investigated in a fair, confidential and timely manner for all parties.

Unacceptable behaviour will lead to disciplinary action depending on the severity of the incident. Members of a Special Committee will be given one written warning of inappropriate behaviour. A second incident will result in dismissal as a member of a Council Special Committee. Should the incident be of a severe nature, disciplinary action may result in instant dismissal as a member of a Special Committee.

How are incidents reported?

Any incidents occurring should be reported and a written incident report completed.

Incident and Reporting Mechanism

- Committee member and Committee member report to Arts and Leisure Manager or his/her representative
- Committee member and community member report to Arts and Leisure Manager or his/her representative
- Committee member and Contractor report to Arts and Leisure Manager or his/her representative
- Councillor/Council Staff and Committee member report to Chief Executive Officer

Definitions

Bullying

Bullying is defined as “repeated, unreasonable behaviour directed toward another person or group of persons that creates a risk to health and safety”.

Unreasonable behaviour is behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten. Behaviour includes: actions of individuals or a group; and may involve using a system or work as a means of victimising, humiliating, undermining or threatening. Risk to health and safety includes risk to the mental or physical health of the employee.

Types of behaviour that could be considered as bullying are, but not limited to:

- verbal abuse
- excluding or isolating others
- psychological harassment
- intimidation
- assigning meaningless tasks unrelated to the position
- deliberately withholding information that is vital for effective work performance or decision making

Threatening or violent behaviour

Threatening or violent behaviour may include any incident where a person is physically attacked or threatened. Threat means a statement or behaviour that causes a person to believe they are in danger of being physically attacked. Physical attack means the direct or indirect application of force by a person to the body of, or to clothing or equipment worn by, another person, where that application creates a risk to health and safety.

Equal Opportunity

It is against the law to treat any member less favourably because of any one or combination of the following personal characteristics:

- age
- breastfeeding
- carer status
- disability/impairment
- gender identity
- industrial activity
- lawful sexual activity
- marital status
- parental status
- physical features
- political belief or activity
- pregnancy
- race
- religious belief or activity
- sex
- sexual orientation
- personal association with someone who has, or is assumed to have, one of these personal characteristics

Discrimination

It is against the law to discriminate. Discrimination is unfair treatment based on a personal characteristic protected by law and outlined under the Equal Opportunity definition. It can be direct or indirect. Direct discrimination: when treating people differently is unfair. Direct discrimination happens when a person treats someone who has one of the personal characteristics protected by law less favourably than someone who doesn't have that personal characteristic. Even if the behaviour is unintentional, or the person responsible doesn't believe the treatment is less favourable, it will still be discrimination.

Indirect discrimination: when treating everybody the same is unfair. In some cases, treating everybody the same way will be unfair. This is known as indirect discrimination. Under the law it means setting a requirement which:

- someone with a particular personal characteristic protected by law can't satisfy
- a higher proportion of people without that characteristic or with different characteristics can satisfy
- the requirement is not reasonable in all the relevant circumstances

Sexual Harassment

It is against the law to sexually harass. A person sexually harasses another person if he or she:

- makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person
- engages in any other unwelcome conduct of a sexual nature in relation to the other person in circumstances in which a reasonable person, having regard to all the

circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

Conduct of a sexual nature includes:

- subjecting a person to any act of physical intimacy
- making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence
- making any gesture, action or comment of a sexual nature in a person's presence.

Code of Conduct

Preamble

Bass Coast Shire Council has developed this Code of Conduct for all employees and persons acting on behalf of the Council to reflect the underlying principle that all of its business/service provision be conducted legally, ethically and with the highest standards of integrity and professionalism to ensure corporate governance standards are upheld.

The Code of Conduct reflects the corporate values of Council. It establishes the minimum standards of behaviour expected from all persons appointed to represent Council. Bass Coast Shire Council's six values are: **Integrity, Respect, Pride, Commitment, Customer Focus and Continuous Improvement.**

As employees and/or representatives of the community, we must be responsible and accountable for our behaviour, actions and use of public resources.

The *Local Government Act 1989* (Section 95) sets out that Council employees and representatives must in the course of their duties -

- act impartially
- act with integrity including avoiding real or apparent conflicts of interest
- accept accountability for results
- provide responsive service

Policy objectives

This Code of Conduct is designed to assist employees/representatives to understand their responsibilities and obligations and to provide guidance where an employee/representative is faced with an ethical dilemma and/or conflict of interest. The Code covers various areas of professional conduct, corporate governance and details the minimum standards of behaviour expected from employees.

Breaches of the Code will be considered as serious misconduct which can involve instant dismissal. Breaches will be dealt with in accordance with the disciplinary procedures outlined in the *Working Together Policy*.

The Code of Conduct provides a framework upon which employees/representatives of Council are required to base their behaviours.

Policy statement

Personal Behaviour

Honesty and Integrity

Employees/representatives will treat all people with whom they have contact in the course of their duties with fairness, respect, courtesy and professionalism. Council does not tolerate discrimination, sexual harassment, harassment (physical, verbal or written) or bullying in the workplace. This behaviour not only breaches the Code of Conduct, but can be unlawful.

Respect for Others

Due respect will be shown to each other, to members of the community and to any other person who has contact with the Special Committee This includes:

- acting and being seen to act properly and in accordance with the requirements of the law, one's delegated responsibilities, and the terms of this Code
- observing the principles of equal opportunity
- performing duties impartially and to the best of one's ability
- refraining from conduct or the use of offensive language that would cause any reasonable person offence or embarrassment
- treating others with the respect that one would expect from any organisation committed to quality customer service

Gifts, Bribery and Offers of Hospitality

Employees/representatives will not expect, seek or accept (directly or indirectly) any gift, fee, reward or benefit for oneself, one's family or any other person or body for anything done in pursuit of one's delegated duties. It is acceptable for employees/representatives to receive a gift within the internal reward and recognition guidelines. Examples being, recognition by Council of services, meeting meals and similar.

Exceptions to this may be for the receipt of gifts of a token or promotional nature where there is clearly no suggestion of personal obligation. In some circumstances it may be highly offensive to refuse the offer of a gift

Compliance with Lawful Directions

Employees/representatives shall obey any lawful instruction given by any person having authority to make or give such an instruction, with any doubts as to the propriety of any such instruction being taken up with Arts and Leisure Manager or his/her representative. Any lawful direction given will be carried out by the person with the appropriate authority regardless of whether or not the person personally agrees with or approves of the direction.

Fraud

Employees/representatives must act with integrity at all times and should never engage in fraudulent activity of any kind. Examples of fraud include stealing or misusing equipment, cash, intellectual property or other property belonging to Council or Special Committee. All incidents of fraud will be investigated and, where appropriate, reported to the police for prosecution. Council will seek financial recovery of losses in all cases. Civil proceedings will be initiated where appropriate.

Conflict Of Interest

Employees/representatives must ensure there is no conflict or incompatibility between their personal interests, whether pecuniary (relates to money) or non-pecuniary, and the impartial fulfilment of their Council and Special Committee duties. Members of the public need to be confident that Council employees/representatives make decisions free of any conflict of interest.

An employee/representatives has a conflict of interest when they have a personal or private interest that might compromise their ability to act in the public interest. A conflict of interest exists even if no improper act results from it.

The *Local Government Act 1989* defines the circumstances that give rise to a conflict of interest for Council officers and representatives of Council. In general terms, an employee/representatives has a conflict of interest if they have a direct interest in a matter, including where they are likely to gain or lose financially or where their residential amenity is likely to be directly affected.

A conflict of interest also exists where an employee/representatives has one or more of the following five types of indirect interest:

- An indirect interest because of a close association with a family member, relative or housemate who has a defined interest
- An indirect financial interest, including holding shares above a certain value in a company with a direct interest
- Having received an applicable gift/s valued at \$500 or more from a person with a direct interest
- Being a party to the matter by having become a party to civil proceedings in relation to the matter
- Having a likelihood that there will be an impact on residential amenity
- If an employee/representatives is in doubt as to whether a conflict exists, they must raise the issue with their Manager.

If a Committee member has a conflict of interest they must disclose the relevant interests to the Special Committee as directed in the Schedule 3 of the Instrument of Delegation.