

# Local Government

Welcome to Hunt & Hunt

January 2016



Local government law is at the core of Hunt & Hunt's practice. Our Government clients benefit from extensive industry knowledge and know-how. We sustain accountable and trustworthy professionals who have previously held senior positions in the sector.

Having a unique understanding of the inside operations of local government is a distinct advantage. This helps ensure early identification of the legal challenges and critical risks councils face.

We are resolute in our commitment to the local government sector and pride ourselves on being practical, accessible and cost conscious.

"THEY RIVAL THE DOMINATING FIRM IN MELBOURNE. THEY'RE WILLING TO DEVELOP AND LEARN ABOUT THEIR CLIENTS AND THEIR NEEDS."

*(IN-HOUSE LAWYER, LARGE METROPOLITAN COUNCIL)*



# Local government experts

We maintain long-standing relationships with many government clients, acting for more than 30 councils across Australia with more than 20 in greater Melbourne and regional Victoria.

## LEGAL SPECIALTIES

- Administrative law
- Building and construction law
- Competition law
- Compliance and enforcement
- Compulsory acquisition
- Conflict of interest/probity
- Corporate and commercial
- Dispute resolution and litigation
- Employment and workplace relations
- Environment and climate change
- Freedom of information and privacy
- Governance
- Information technology
- Insurance and public liability
- Intellectual property
- Land use and planning
- Local laws
- Property
- Planning
- Statutory interpretation and prosecutions
- Tendering

## IN VICTORIA WE ACT FOR

- Banyule City Council
- Central Goldfields Shire Council
- City of Ballarat
- City of Kingston
- City of Melbourne
- City of Melton
- City of Port Phillip
- City of Stonnington
- City of Yarra
- Hume City Council
- Macedon Ranges Shire Council
- Mitchell Shire Council
- Moorabool Shire Council
- Moreland City Council
- Mornington Peninsula Shire
- Mount Alexander Shire Council
- Murrindindi Shire Council
- Wellington Shire Council
- Wyndham City Council

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**"WE ARE FOCUSED ON ASSISTING CLIENTS TO SEIZE OPPORTUNITIES AND ACHIEVE THEIR OBJECTIVES QUICKLY, EFFICIENTLY AND WITH MINIMAL EXPOSURE TO RISK. OUR DEPTH OF UNDERSTANDING OF THE LOCAL GOVERNMENT SECTOR CONTRIBUTES SIGNIFICANTLY TO AN EXCEPTIONAL OUTCOME."** *TONY RAUNIC, PARTNER, HUNT & HUNT (FORMER MAYOR, SHIRE OF NILLUMBIK)*

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# Our people



**David Thompson,  
Partner**

David has partnered for many years with CEOs, HR and ER professionals and Senior Officers with local government to bring about effective solutions to employee

related issues. His expertise is in employment, industrial relations, Occupational Health & Safety and discrimination law. With more than 20 years' extensive experience in local government, David is truly an expert in his field, and can predict your needs ahead of time.



**Nick Miller,  
Partner**

Nick specialises in corporate and commercial transactions, with a particular emphasis on acquisitions and disposals of businesses and companies. His expertise includes commercial

contracts, joint ventures, governance, corporate law, due diligence and foreign investment. Nick has represented Australian (government and private), European, Asian and United States clients operating in various industry sectors, including clients in the manufacturing, distribution, electricity and agribusiness sectors. He is highly regarded for his negotiation skills and pragmatic approach.



**Des Bethke,  
Consulting, Principal**

Des is a respected local government professional who is able to give relevant pragmatic advice. He has worked in local government for 30 years, including ten as

the CEO of the City of Melbourne; as an Adviser to the Minister for Local Government in 1994; as Commissioner of the City of Stonnington; and as former Commissioner and Administrator of the City of Camberwell. Des provides in-house sensibility and pragmatic advice.



**Tony Raunic,  
Partner**

Tony has extensive local government experience both as a trusted legal advisor and as an elected Councillor and Mayor of Nillumbik Shire Council. This first-hand experience

means Tony truly understands critical council issues such as accountability, confidentiality, probity, transparency and security. Tony served terms as Mayor, Deputy Mayor, VLGA and MAV delegate, chair of the Statutory Planning and Building Committee and numerous other council committees. Tony is a longstanding key advisor to many councils on governance, commercial, contract and property and planning issues. Tony regularly regularly conducts both council officer and councillor training and runs forums in community engagement.



**Anton Dunhill,  
Partner**

Anton's focus is primarily in the area of Property Disputes and Compulsory Acquisitions including complex planning matters.

Anton has many years of experience in compulsory acquisition, handling hundreds of matters (from individuals to large corporate clients and organisations). He assesses the likely impacts of the acquisition through balanced analysis of claim scenarios, including those less obvious. He is an experienced negotiator, attending mediations (including Valuers' conferences) and running complex trials.

Anton has acted in a range of complex Commercial Disputes including administrative law and judicial review matters for council and organisations.



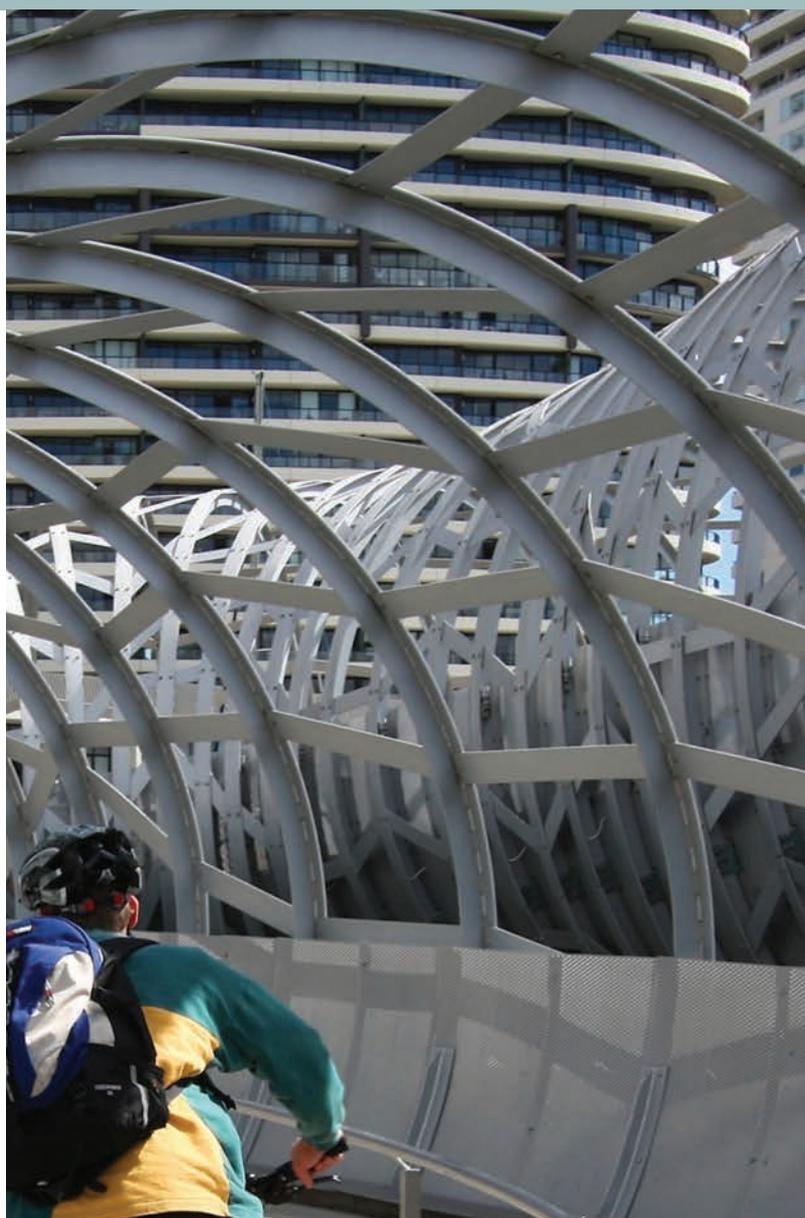
**Nick Sissons,  
Associate**

Nick has extensive planning, local government, environment and property experience in both private practice and local government.

Nick's primary area of practice is planning law, although his legal experience includes most areas of law associated with the broad range of local government functions and duties.

The majority of Nicks advocacy work is within the bounds of planning appeals and applications before the Victorian Civil and Administrative Tribunal where Nick regularly advocates for his clients position in hearings and mediations. Nick has also appeared before Council meetings, Planning Panels Victoria and the Magistrates Court acting on prosecution matters as well as attendance at the Victorian Supreme Court on restrictive covenant applications.

Nick is also a qualified town planner and has previously worked in-house for the Glen Eira City Council and has consulted for the City of Melbourne. Nick has also worked as a planning lawyer at another leading Melbourne law firm with a large local government practice and in a large multi-disciplinary consulting practice.



“THE ON-HAND AVAILABILITY OF A WELL-REGARDED AND RESPECTED LOCAL GOVERNMENT CONSULTING PRACTICE THAT PROVIDES CONTEMPORARY AND PRAGMATIC ADVICE IS A GENUINE VALUE-ADD IN THE PROVISION OF LOCAL GOVERNMENT LEGAL SERVICES”.  
*DES BETHKE, PRINCIPAL, HUNT & HUNT CONSULTING (FORMER CEO, CITY OF MELBOURNE)*



# Legal training and development

Members of our team have provided in-house training to council clients on topics such as bullying, performance management and dismissal, discrimination and harassment, conflict of interest and building infringements. These sessions are delivered by our lawyers and, on occasion, by specially selected industry experts. We can also deliver one-on-one or small group training on specific areas of interest to Council.

Examples of previous training:

- Conducted a two day councillor induction programme for the City of Ballarat on Local Government Act (1989) responsibilities, conduct of council meetings, conflict of interest provisions, councillor code of conduct, statutory planning approval process and principles of unbiased decision making, and the Winky Pop decision
- Provided training sessions for Wyndham City Council employees on conflict of interest obligations in 2014
- Provided training to the City of Ballarat building and planning department on the implementation of the Building Act (2004) and building regulations provisions
- Provided employment training for City of Stonnington in relation to disciplinary action and dismissal; enterprise bargaining and changes to workplace laws under the Fair Work Act (2009)
- Presented to more than 40 Council employees for Moreland City Council in relation to contractual drafting and contractual risk management, seminars to Council's corporate management team on "Managing Performance, Disciplinary matters and WorkCover", including discussion of "The Council Way" and seminars on the graffiti legislation and its ramifications to 20 Council officers
- Provided employment training for Hume City Council on the relationship between performance management and WorkCover stress claims
- Delivered seminars for 'MAV's Governance Fundamentals Program', focusing on the practical and technical issues related to the role of a Councillor
- Delivered seminars to council's on 'Contracts, Tendering and Risk Management', 'Native Vegetation', 'Presenting Cases at VCAT' and 'The Infringements Act (2006)'
- Regularly provide legal editing services for the Local Government Service Victoria (3rd volume) Thomson Reuters publication. Hunt & Hunt recently updated chapters for 'Council Administration', 'Roads', and 'Tendering for Local Government'
- One of our partners, Tony Raunic is the Victorian editorial panel representative and has authored several articles for the national 'Local Government Reporter' published by LexisNexis.

“HUNT & HUNT HAS ESTABLISHED THEMSELVES AS AN IMPORTANT SUPPLIER OF LEGAL SERVICES TO THE COUNCIL. MUCH OF THIS SUCCESS HAS BEEN DUE TO THEIR COMMITMENT TO UNDERSTANDING THEIR CLIENT AND ITS NEEDS AND THE EXCEPTIONALLY PERSONABLE WAY THEY SUPPLY THEIR SERVICES. IT IS A PLEASURE INSTRUCTING THE FIRM, NEVER A TASK.”  
*IN-HOUSE LAWYER, LARGE METROPOLITAN COUNCIL*

# Applied expertise

## PROPERTY, PLANNING AND ENVIRONMENT

- Advising on numerous sales of land for significant developments in council districts, lease holdings and road closures
- Acting as council's legal agents in obtaining stamp duty assessment and registration of dealings with council land at the State Revenue and Land Titles offices
- Obtaining significant compensation payments for councils facing compulsory acquisition of council property assets
- Advising and representing councils in Building Act prosecution and enforcement
- Advising on responsibilities, functions, interpretation and application of the Planning and Environment Act 1987, including:
  - Planning scheme interpretation
  - Land use definition assessment
  - Planning permit application advice
  - Planning enforcement advice and advocacy
  - Planning appeal advocacy at VCAT and Supreme Court
  - Planning Scheme Amendment preparation advice and review
  - Planning Panel representation
  - Existing use rights review
  - Subdivision advice
  - ResCode assessment
  - Development contributions
- Advice in relation to the implementation and collection of development contributions towards the provision of community infrastructure
- We have provided advice to a number of councils in connection with the management of waste services contracts and the operation of their landfill facilities. From time to time we have been called on to advise in relation to compliance with relevant legislation and permit conditions
- Advice in relation to interpretation and application of responsibilities and provisions of the Water Act
- Interpretation of Restrictive Covenants as well as advice in relation to removal or retention

- Consideration of heritage, native vegetation and cultural heritage requirements
- Advice in relation to preparing, declaring and defending general rates as well as special charge and rates schemes
- Advice in relation to Road Management Act responsibilities and functions

## EMPLOYMENT AND WORKPLACE RELATIONS AND WORK HEALTH AND SAFETY

- Strategic advice on management issues to CEO's and senior officers
- Preparation / renewal of employment contracts for CEO's and senior officers
- Assistance with employee performance management and disciplinary action
- Pre-termination advice, strategies and assistance
- Assistance with enterprise bargaining, including strategy and compliance issues
- Assistance with individual disputes, including industrial action
- Arranging / advising on workplace investigations into allegations of bullying, discrimination and harassment, plus workplace fraud
- Advice on management of injured employees
- Advice on ageing workforce issues
- Assistance with health and safety incidents, including defending WorkSafe prosecutions
- Advice on all manner of equal opportunity, discrimination and harassment issues
- Defending all types of litigation issued in the Fair Work Commission, Federal Court, Federal Circuit Court, Victorian Equal Opportunity and Human Rights Commission and the Australia Human Rights Commission relating to termination of employment, adverse action, discrimination, harassment, etc.
- Advice on obligations under the Protected Disclosure Act 2012
- Reviewing and updating HR policies and procedures.

## LOCAL LAWS, GOVERNANCE AND GENERAL ADVICE

- Reviewing and redrafting local laws so they are easy to understand, relevant and reflective of the type of residents, land and issues distinctive to each council
- Assisting with municipal amenity of private premises and public places, animals, vehicles, waste disposal for domestic, industrial and commercial entities, asbestos, general health, permits and setting of fees and charges. We also help to administer and provide general enforcement of the laws including monetary penalties.

## FREEDOM OF INFORMATION AND PRIVACY

- Advising on the application of the exemptions of the Freedom Of Information Act (1982) (FOI Act)
- Advising on privacy issues arising in the context of the internet, electronic surveillance and interception, employee email policies and social network policies

## COMMERCIAL, TENDERING AND CONTRACTUAL MATTERS

- Advising on conflicts between management and councillors over preferred tenderers for outsourced services
- Drafting contracts and review works
- Advising on copyright, designs and patents.

## DISPUTE RESOLUTION AND LITIGATION

- Advising on commercial and insurance claims and coverage disputes
- Advising on compliance with relevant legislation which may result in litigation or disputes with third parties and protocols to be adopted by councils in dealing with claims
- Advising on high profile media sensitive litigation.

## BUILDING AND CONSTRUCTION

- Drafting head contracts and sub-contracts for council works
- Drafting standard form and specific building contracts to meet the particular needs of councils
- Conducting contract due diligence
- Providing written advice and analysis on construction pathways, risk allocation and project requirements.



# Highlights

## CITY OF MELBOURNE

Appointed in 2008, we have built a close working relationship with Council's in-house team and have acted in numerous sales, purchases and leasing transactions. Hunt & Hunt has been called on in areas as diverse as use of Crown land, trespass, human rights, local laws, enforcement techniques, permits and approvals, administrative law issues including judicial review of decisions, Council's consideration and decision making processes and defending injunction applications. We have seconded lawyers to the City of Melbourne to further support their in-house legal team.

Hunt & Hunt were appointed to represent the City of Melbourne in relation to their actions to protect crown land during the "Occupy Melbourne" movement. The "Occupy Melbourne" movement grabbed the media's attention in 2011 in relation to the occupation of three public parks by protesters. The subsequent actions taken by the City of Melbourne and Victoria Police to enforce Local Laws and Crown Land (Reserves) Act Regulations to protect public spaces from damage by protesters led to confrontation. The Federal Court ultimately ruled that neither the Council nor the Police had acted improperly.

In 2014 and 2015 we represented the City of Melbourne, the Second Defendant to an administrative law / judicial review proceeding brought by Dustday Investments Pty Ltd. The Plaintiff commenced the matter to object to a proposed planning amendment which sought to apply a heritage overlay over the Plaintiff's land and was unsuccessful in relation to its complaints against the City of Melbourne. Ultimately, the Plaintiff did not obtain an injunction against the Planning Minister. Costs were awarded in favour of the City of Melbourne and the Planning Minister.

## CITY OF KINGSTON

Advising in relation to the purchase for \$21,500,500 from ING Management Limited of Council's main civic offices at Nepean Highway Cheltenham, including undertaking due diligence, vetting contracts and handling conveyancing to settlement.

Advised and prepared documents in relation to a joint venture with Melbourne Water, relating to the development of Namatjira Park. Advice related to planning permit issues dealing with the competing interests of parties, including an owner in liquidation and mortgagees in possession of the property.

Regularly advise on subdivision and sales, and creation of easements. We have reviewed HR policies-EEO, Discrimination, Harassment and Maternity Leave and provide advice regarding duty of care, award interpretations, CEO contract and flexibility terms required in enterprise agreements.

Throughout 2014, we advised Council in relation to obtaining compensation for the compulsory acquisition of Council parkland by a statutory authority. The initial offer of \$10,800 compensation was rejected based on our advice. Ultimately we obtained a payment for Council and the Kingston community of \$622,500. A great result.



## CITY OF STONNINGTON

We have worked closely with the City of Stonnington over the last 20 years, providing advice in all areas of employment and workplace relations and assisting in delivering solutions to many issues.

We have assisted Council in walking through the process of disciplinary action and dismissal issues, including successfully defending unfair dismissal and discrimination claims.

We have advised on all manner of health and safety issues, including the management of injured staff, return to work issues and ageing workforce issues. We have also commissioned external investigations of staff relating to bullying complaints and have developed strategies following completion of the investigation process, including liaison with relevant unions.

We have advised on enterprise bargaining negotiation and compliance issues. This has included preparation of a joint venture enterprise agreement and disbanding that agreement many years later, with advice on transfer of business issues.

We have assisted on advice on the investigation process and fraud investigations, in addition to advice on outcomes following investigation completion.

We have provided training to managers on performance management and dismissal including enterprise bargaining and legislative changes.

Outside of the employment and workplace relations area, we have also drafted local laws for meeting procedures.

Training sessions have also been provided to both managers and councillors on the *Charter of Human Rights and Responsibilities Act (2006)*.

## CITY OF BALLARAT

Our work involved advising on tax and trusts involving receipt of tax deductible donations to help fund a public street art. Hunt & Hunt was able to provide advice that included a roadmap to obtaining the Australian Taxation Office's (ATO) approval of the arrangement.

Administrative law advice involving advising on validity of infringement notices that were questioned which would have resulted in a large number of fines being invalid, which would have had a significant financial penalty for Council. Hunt & Hunt succeeded in finding a solution to the problem that upheld the infringement notices. Turnover was achieved in one week.

Local laws, governance and general advice involved various matters relating to the issue of property rate exemptions under section 154 of the *Local Government Act 1989* (LGA) based on charitable uses. We advised on councillors' conflict issues under the LGA and Code of Conduct. We advised on duties and process for disclosure of noise-related amenity concerns to prospective residents of properties surrounding Ballarat Airport. We also provided advice on the conduct of the councillor election in 2012.

Providing general advice on a range of issues related to Employment and workplace relations, including drafting the CEO and senior officer employment contracts and advising on selection process issues, senior officer terms and conditions of employment, employee discipline and termination and minimum pay rates. We also advise on privacy issues and independent contractor and defamation issues.

Providing extensive advice on Freedom of Information, including advising on the application of the exemptions in the Act and advising on redaction of documents.

Reviewing a consultant agreement that Council proposed to enter into with a large developer in relation to a \$100M retail development in the municipality.

# About Hunt & Hunt

Conducted a competitive neutrality analysis for Council of a proposed provision of free camping facilities for RV users.

With offices across Australia, an office in Shanghai, and a client base of major corporations and government departments we have the experience, resources and reputation to support the needs of Councils as they expand operations in Australia.

Across our legal group, we employ approximately 60 partners and 400 professionals who strive to provide the highest-quality legal services available.

Our high standard of service is evidenced by our independent accolades – being named as a finalist in the BRW Client Choice Awards for 2011, featuring in the category of Best Provider by the Professional Services Sector and in 2010, featuring in the category of Outstanding Client Care.

Confident in our technical abilities, we build relationships founded on a genuine interest in our clients, characterised by understanding and trust.

## ABOUT HUNT & HUNT CONSULTING

Hunt & Hunt Consulting was established in 2009 for the specific purpose of providing a full suite of managerial services to local government. We are one of the few Australian law firms to offer the local government sector the supplementary benefit of an in-house consulting service.

We undertake:

- CEO and senior officer recruitment
- CEO and senior officer performance reviews
- Consulting in respect to internal restructuring and general management issues within both local government and the public sector.

WE ARE RESOLUTE IN OUR  
COMMITMENT TO THE LOCAL  
GOVERNMENT SECTOR AND PRIDE  
OURSELVES ON BEING PRACTICAL,  
ACCESSIBLE AND COST CONSCIOUS

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The Australian Member of Interlaw

