



MINUTES

SPECIAL MEETING OF COUNCIL

Tuesday, 27 February 2018

Held at the
Council Conference & Reception Centre
City Hall, Little Malop Street, Geelong
commencing at 7.00pm

COUNCIL:

Cr B Harwood (*Kardinia Ward*)
Mayor

Cr S Asher (*Bellarine Ward*)
Cr J Mason (*Bellarine Ward*)
Cr T Sullivan (*Bellarine Ward*)

Cr E Kontelj (*Brownbill Ward*)
Cr S Mansfield (*Brownbill Ward*)
Cr P Murrhly (*Brownbill Ward*)

Cr R Nelson (*Kardinia Ward*)
Cr P Murnane (*Kardinia Ward*)

Cr A Aitken (*Windermere Ward*)
Cr K Grzybek (*Windermere Ward*)

SECTION A - PROCEDURAL MATTERS

Acknowledgements 1
Declarations of Conflicts of Interest 1

SECTION B – REPORTS

1. Councillor Code of Conduct 1-2

**MINUTES OF THE SPECIAL MEETING
OF THE GREATER GEELONG CITY COUNCIL
HELD AT THE COUNCIL CONFERENCE AND RECEPTION CENTRE
CITY HALL, LITTLE MALOP STREET, GEELONG
TUESDAY, 27 FEBRUARY 2018
COMMENCING AT 7.00 PM**

PRESENT: Cr B Harwood (Mayor), Crs A Aitken, S Asher, K Grzybek, E Kontelj, S Mansfield, J Mason, P Murnane, P Murrhy, R Nelson, T Sullivan

Also present: K Spiller (Chief Executive Officer), K Walsh (Director Manager Planning and Development), B Luxford (Director Investment & Attraction), G Wilson-Browne (Director City Services), L Quinn (Director Community Life), P Anderson (Director Finance & Strategy), R Leonard (Executive Manager Legal Services & Governance)

OPENING: The Chair declared the meeting open at 7.00pm

ACKNOWLEDGEMENTS:

Council acknowledged Wadawurrung Traditional Owners of this land and all Aboriginal and Torres Strait Islander People who are part of the Greater Geelong community today.

APOLOGIES: Nil

DECLARATIONS OF CONFLICTS OF INTEREST: Nil.

1. COUNCILLOR CODE OF CONDUCT

Source: Governance and Legal Services
Executive Manager: Rebecca Leonard
Index Reference: Governance

Purpose

To consider reviewing, amending if necessary and adopting a Council policy, the Councillor Code of Conduct 2018 (**Attachment 2**).

Background

The *Local Government Act 1989* (the Act) requires Council to review, and make any necessary amendments to, its Councillor Code of Conduct (the Code).

The current Code was adopted by Council on 20 September 2017.

Key Issues

- The Code includes a commitment to conduct principles and values, clarifies roles, provides for decision making arrangements and provides guidance on Councillor behaviour, interests, gifts and hospitality, lawful conduct and other obligations. It also provides a framework and processes for managing the conduct of Councillors. It articulates the boundaries of conduct and behaviour as well as expectations for behaviour. It provides clear markers as to what behaviour is prohibited and what behaviour is expected.
- One of the primary critiques of codes is that they can be too abstract and because of that they are difficult to enforce. This view is one that has been strongly conveyed by councillor conduct panel members in recent years when faced with applying codes that are too general. As a consequence, the Code is quite specific.
- The Code's conduct management framework has been reviewed. This is the only change recommended for Council's consideration. The amended Code (refer attachment) provides for a more robust process which includes provision for:
 - reinforced obligations and guidance for Councillors to prevent disputes and, when a dispute occurs, to negotiate an acceptable outcome or seek the assistance of a mediator;
 - recognising the role of the Mayor in dispute resolution guidance and mediation of disputes;
 - impartial administration of the arbitration of conduct complaints by Council's Principal Conduct Officer including the establishment of a panel of arbiters based on specified eligibility, skills and experience;
 - the avoidance of the use of an arbiter who has a conflict of interest;
 - the arbiter to assess whether a conduct complaint has been made for an improper purpose.
- The Code must be reviewed by Council, and amended if necessary, within four months after a general election. Consequently, Council's review must be completed by 28 February 2018.
- Council must call a Special Meeting solely for the purpose of reviewing and amending the Code.
- Following adoption of an amended Code, the Act requires that a Councillor must make a declaration stating that they will abide by the Code in writing, and witnessed by the Chief Executive Officer within one month of the adoption of the new Code.

Cr Murrihy moved, Cr Mansfield seconded -

That Council adopts the Councillor Code of Conduct 2018 at Attachment 2 of this report.

Carried.

Attachment 1

Financial Implications

There are no financial or economic implications identified for the subject of this report.

Community Engagement

Consultation with councillors, governance and legal services officers, the CEO and Directors has been undertaken.

Social Equity Considerations

There are no social equity considerations identified for the subject of this report.

Policy/Legal/Statutory Implications

The Code is a Council Policy and is published on Council's internet site.

Section 76C of the Act requires Council to review, and make any necessary amendments to the Code within four months after a general election. The Code must therefore be adopted by Council no later than 28 February 2018 in order to comply with the Act.

Section 76C of the Act also requires that Council must, call a special meeting solely for the purpose of reviewing and amending the Councillor Code of Conduct.

Following adoption of an amended code, Section 76C(6A) of the Act requires that a Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct in writing, and witnessed by the CEO.

Alignment to City Plan

How we do business.

Conflict of Interest

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Risk Assessment

The Code, upon adoption, will ensure statutory compliance and mitigate reputational, governance and financial risks associated with Councillor misconduct.

The Code also mitigates the risks associated with conflicts of interest attached to the roles of the Mayor, CEO and arbiters in the conduct management process.

Environmental Implications

There are no environmental implications identified for the subject of this report.

COUNCIL POLICY

Councillor Code of Conduct	Document No:	CPL40.7
	Approval Date:	27 February 2018
	Approved By:	Council
	Review Date:	February 2021
Responsible Officer: Chief Executive Officer	Expiry Date:	N/A
	Version No:	08
Authorising Officer:	Chief Executive Officer	

Contents

1	Introduction	4
2	Commitment, Principles and Values	4
2.1	Commitment	4
2.2	Councillor Conduct Principles	4
2.2.1	Primary principle	5
2.2.2	General principles	5
2.3	Values.....	5
2.4	Community Expectations	6
3	Roles and Relationships	6
3.1	Role of the Council.....	6
3.2	Role of a Councillor	7
3.2.1	Relationships.....	8
3.2.2	Positive Duty	9
3.2.3	Political Affiliations	9
3.3	Role of the Mayor	9
3.3.1	The Mayor takes precedence.....	9
3.3.2	Functions of Mayor.....	10
3.3.3	Mayor’s responsibilities	10
3.4	The Role of the Deputy Mayor.....	11
3.5	Chief Executive Officer	11
3.6	Relationship between Councillors and Council Officers.....	12
3.7	Role of Delegate or Council Representative on Committees	13
3.8	The Community	14
4	Civic Representation	15

4.1	Multimember Ward Representation	15
4.2	Media Relations	15
4.3	Mayoral Robe and Chain Protocol	15
4.4	The Council Crest	16
5	Conduct	17
5.1	Appropriate Use of Council Resources	17
5.2	Access to Information	17
5.3	Requests for Service/Complaints	17
5.4	Conduct at Council Meetings	18
5.5	Decision Making in the Community Interest	18
5.6	Formal Community Forums	18
5.7	Misuse of Position	19
5.8	Improper Direction	20
5.9	Breach of Confidentiality	20
5.10	Conflict of Interest	22
5.10.1	Direct Conflict of Interest	22
5.10.2	Indirect Conflict of Interest	22
5.10.3	Certain Situations where a Councillor is taken to not have a Conflict of Interest	23
5.10.4	Exemptions	24
5.10.5	Conflicting Personal Interest	24
5.10.6	Perceived and Potential Conflicts of Interest	25
5.10.7	Conflict of Role	25
5.10.8	Conflict of Interest when Attending a Council Meeting	25
5.10.9	Conflict of Interest Accountability	26
5.10.10	Assembly of Councillors	26
5.11	Register of Interests	27
5.12	Gifts and Hospitality	27
5.12.1	Acceptance and Declaration of Gifts and Hospitality	27
5.12.2	Giving Civic Gifts	27
5.12.3	Reporting Inappropriate Offers	28
5.13	Unlawful Conduct	28
5.13.1	Discrimination and Harassment	28
5.13.2	Personal Characteristics Protected by law in Victoria	29
5.13.3	Victimisation	30
5.13.4	Vilification	30

5.13.5	Bullying.....	30
5.13.6	Violence	30
5.13.7	Accountability in relation to Unlawful Conduct.....	31
5.14	Councillor Eligibility.....	31
6	Conduct Management	31
6.1	Conduct Management Framework.....	31
6.1.1	Conduct Management Hierarchy.....	31
6.1.2	Breaches and Sanctions under the Act	33
6.2	Managing Disputes	36
6.2.1	Prevention.....	36
6.2.2	Negotiation.....	37
6.2.3	Mediation	39
6.3	Internal Resolution Procedure	41
6.3.1	Conduct Complaints.....	41
6.3.2	Conduct Complaints Made for an Improper Purpose	41
6.3.3	Detrimental Action.....	42
6.3.4	Compliance with Requirements.....	42
6.3.5	Disclosure of Information	42
6.3.6	Arbitration.....	43
6.3.7	Establishing a Panel of Arbiters	43
6.3.8	Principal Conduct Officer Duties	45
6.3.9	Making a Conduct Complaint	45
6.3.10	Withdrawing a Conduct Complaint	46
6.3.11	Establishing an Arbiter	46
6.3.12	Arbiter Costs	47
6.3.13	Arbiter Must Reject Certain Conduct Complaints	48
6.3.14	Arbiter Must Refer Certain Conduct Complaints	48
6.3.15	Breach of Act by Councillor	49
6.3.16	Suspension of Arbitration during Elections.....	49
6.3.17	Notice of Arbitration.....	49
6.3.18	Conduct of Arbitration	50
6.3.19	Determinations by an Arbiter.....	51
6.3.20	Dissolution of Arbitration	51
6.3.21	Tabling Determinations and Council Sanctions.....	51

1 Introduction

This Code of Conduct (Code) is a public declaration that Councillors of the Greater Geelong City Council (Council) are committed to provide good governance to the whole of the municipality and its administration (the City).

Within three months of being declared elected as a Councillor, each Councillor must make a written declaration witnessed by the Chief Executive Officer (CEO) stating they will abide by this Code.

Within four months of on a municipal general election, this Code must be reviewed and adopted by the Council at a Special Meeting.

If the Code is amended and approved by Council, each Councillor must make a written declaration witnessed by the CEO stating that they will abide by the amended Code.

This Code does not apply to Council officers, who are instead bound by the City's Staff Code of Conduct.

2 Commitment, Principles and Values

2.1 Commitment

This Code:

- is a statement of how Councillors will behave and work with the Greater Geelong community, with each other and with Council officers; and
- represents the Councillors commitment to governing the municipality and the City effectively, and observe the principles of good governance and integrity that the Greater Geelong community expects and deserves.

All Councillors are committed to working together constructively as a team to achieve the long-term Clever and Creative vision for the whole of the Greater Geelong community.

Councillors acting together constitute the Council. As individuals, Councillors cannot bind the Council to any actions or decisions. All Councillors will act to ensure that decision making responsibilities are only exercised in Council meetings.

2.2 Councillor Conduct Principles

The Councillor conduct principles are set out in sections 76B and 76BA of the *Local Government Act 1989 (Act)* (the Principles) and set standards of conduct of Councillors that the community has a right to expect of all Councillors. The Principles consist of:

- The primary principle of Councillor conduct; and
- The seven general Councillor conduct principles (the General Principles).

These principles must be observed by every Councillor.

2.2.1 Primary principle

In accordance with section 76B of the Act, in performing the role of a Councillor, each Councillor will:

- act with integrity;
- impartially exercise their responsibilities in the interests of the local community; and
- not improperly seek to confer an advantage or disadvantage on any person.

2.2.2 General principles

In accordance with section 76BA of the Act, in performing the role of a Councillor, a Councillor must:

- avoid conflicts between their public duties as a Councillor and their personal interests and obligations;
- act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other persons;
- exercise reasonable care and diligence and submit themselves to the lawful scrutiny that is appropriate to their office;
- endeavour to ensure that public resources are used prudently and solely in the public interest;
- act lawfully and in accordance with the trust placed in them as an elected representative; and
- support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

2.3 Values

The four Values of the City are to:

- Respect and encourage each other;
- Embrace new ideas and better ways to work;
- Create a healthy and safe environment for all;
- Make people the centre of our business.

The four Values prioritise people and provide a clear framework for how Councillors and Council officers engage with each other and with other people, including Council officers.

Councillors are required to actively model and foster the Values. Values-based leadership is required of all Councillors, cognisant that the standards set by Councillors inform and guide all of those people who work for the organisation and the greater Geelong community.

Core to the delivery of effective and efficient community outcomes, the Values reinforce that Councillor behaviour must always be appropriate, positive and productive when Councillors are, or are reasonably assumed to be, acting in connection with the Council.

2.4 Community Expectations

Councillors recognise the community's high expectations of Councillors as their representatives, who they have elected into a position of public trust.

Councillors will regularly report back to the community on legislative obligations and the obligations in this code through the reporting commitments outlined herein.

Councillors are expected to observe the principles of good governance and integrity. Central to both of these are transparency and accountability:

- Transparency achieved through following proper process that are open to public scrutiny; and
- Accountability achieved through being accessible and responsive to the needs of the whole Greater Geelong community.

3 Roles and Relationships

3.1 Role of the Council

The Council is responsible for setting the vision and strategic direction for the Greater Geelong region, determining strategic policy and appointing the CEO of the City.

3.2 Role of a Councillor

Councillors are able to exercise authority as members of Council after they are formally sworn in and when they meet formally as Council.

Councillors:

- Participate in decision-making of Council;
- Represent the local community in that decision making; and
- Contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

In performing their role as Councillor, a Councillor must:

- Consider the diversity of interests and needs of the local community;
- Observe principles of good governance and act with integrity;
- Provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under the Act and other Acts;
- Participate in the responsible allocation of Council resources through the annual budget; and
- Facilitate effective communication without bias or discrimination between Council and the community.

In addition, Councillors will behave in a transparent, collaborative and professional matter in undertaking their civic responsibilities, and will:

- ensure transparency and accountability in decision making;
- abide by the confidentiality requirements of the Act;
- avoid conflicts of interest;
- ensure that they do not misuse their position:
 - to gain or attempt to gain, directly or indirectly, an advantage for themselves or for another person; or
 - to cause, or attempt to cause, detriment to the Council or another person;
- strive to achieve the best outcomes by working with colleagues and Council officers in a manner that demonstrates mutual respect and worthiness;

- be respectful to each other, and will listen and communicate in a way which is inclusive and collaborative;
- be honest and open with other Councillors and adopt a 'no surprises' approach;
- recognise and respect the individual strengths of fellow Councillors, and where possible, offer encouragement and support as needed;
- prioritise their attendance at Council and committee meetings;
- ensure punctual attendance at meetings;
- read all appropriate documentation prior to engaging in debate and decision making;
- debate contentious issues respectfully and be open minded, and value perspectives of their Councillor colleagues, Council officers and the community;
- seek to expand their knowledge and understanding of issues before making decisions;
- consider the best interests of the Council and municipality as a whole;
- refrain from personal attacks or conduct that demeans, bullies or vilifies other Councillors, Council officers or members of the public, ensuring a focus on the issue at hand; and
- participate in any internal resolution procedure specified in the Code, in good faith.

The role of a Councillor excludes the performance of any functions that are specified as functions of the CEO as set out in section 94A of the Act and referred to in this Code.

3.2.1 Relationships

Developing and maintaining positive and productive working relationships between Councillors is integral to achieving the best outcomes for the community. It is incumbent upon each Councillor to recognise and value diversity and ensure deferential regard is shown to Councillor colleagues.

It is the responsibility of Councillors to recognise and embrace the importance of appropriate and productive relationships. As part of their role, Councillors will demonstrate a commitment to professional engagement that supports the relationships that they have with each other, Council officers and the community as they work cooperatively to achieve Council's strategic vision in a way that ensures the organisation is not brought into disrepute.

3.2.2 Positive Duty

It is the responsibility of Councillors to adopt the principles of positive duty as relevant to the mode of operation of the Council at large. Introduced as a requirement of Council under the Victorian *Equal Opportunity Act 2010*, positive duty places an onus on the Council to ensure that reasonable and proportionate measures to identify and eliminate inappropriate and unlawful workplace and work-related behaviour across all levels, are undertaken in an informed and timely way.

This positive duty places an obligation on the Council and in turn those who represent the mind and will of the Council, to be proactive and pre-emptive. It requires action that educates about, and prevents, unlawful discrimination, harassment, victimisation, vilification and bullying. There is an obligation that potential problems are identified and dealt with thoroughly and swiftly by persons in leadership roles, including Councillors.

Employing the concept of positive duty is both a group and an individual responsibility that places people first. Councillors have a positive duty to act in order that any risk of unfair treatment or harm to others is mitigated.

3.2.3 Political Affiliations

Councillors will maintain a clear and primary duty to the Greater Geelong community, rather than a political body or other jurisdiction. Councillors will avoid conflicts of interest, or the appearance of conflicts of interest, that affiliation with a political party may create.

Councillors will remain mindful of the importance of real and perceived impartiality of their position, and will not act in a way to compromise this. Councillors will not use Council resources to promote a political body or related organisation.

3.3 Role of the Mayor

3.3.1 The Mayor takes precedence

The Mayor takes precedence within the Council as follows:

- The Mayor take precedence at all municipal proceedings within the municipal district;
- The Mayor must take the chair at all meetings of the Council at which he or she is present; and
- If there is a vacancy in the office of the Mayor or the Mayor is absent, incapable of acting or refusing to act, the Council may be resolution appoint the Deputy Mayor to be the acting Mayor until the Mayor is capable of acting, or is willing to act, as Mayor again.

An acting Mayor may perform any function or exercise any power conferred on the Mayor.

Where the Mayor is not present but his or her attendance is required to carry out the Mayoral functions or duties, the Deputy Mayor will carry out the functions and duties of the Mayor that require the Mayor to be present.

3.3.2 Functions of Mayor

The functions of the Mayor include:

- providing guidance to Councillors about what is expected of a Councillor including the obligations and responsibilities of a Councillor; and
- acting as the principal spokesperson for Council; and
- supporting good working relations between Councillors; and
- carrying out the civic and ceremonial duties of the office of Mayor.

3.3.3 Mayor's responsibilities

The principle responsibilities of the Mayor are to:

- provide leadership and represent, support and promote the businesses and people of the municipality;
- facilitate the setting of the strategic direction and goals for the municipality;
- establish and maintain inter-governmental relationships at Regional, State and Federal levels;
- maintain an effective working relationship with the CEO;
- lead and provide guidance to Councillors in their role, conduct and working relationships, with this Code as the basis for those interactions;
- generate community cohesion and inclusiveness and advocate on behalf of community programs, needs and wellbeing;
- promote high standards of democratic and internal governance;
- preside efficiently, firmly and fairly over Council meetings; and
- represent Council at key civic ceremonial and social occasions.

3.4 The Role of the Deputy Mayor

The role of the Deputy Mayor is to represent the Mayor in all capacities in the event of the Mayor's inability to carry out his or her functions. In practice, the Deputy Mayor, being elected by all Councillors, provides a critical role in supporting the Mayor's leadership of Council. Given the demands and complexity of the role of the Mayor, the Deputy Mayor, with the agreement of the Mayor, will provide support in areas such as:

- assistance with communication between Councillors and between Councillors and the Mayor;
- providing leadership support to Councillors to ensure adherence with Council values and behaviours;
- taking the lead on strategic Council initiatives on behalf of the Mayor;
- liaising with Council's administration on behalf of Councillors to ensure organisation support meets their role requirement; and
- advising the Mayor on a broad range of Council and Councillor matters.

If the Deputy Mayor is required to be acting Mayor for a period exceeding one month, the Council must elect another Councillor to be acting Deputy mayor for the relevant period.

Where the Mayor is not present but his or her attendance is required to carry out the Mayoral functions or duties, the Deputy Mayor will carry out the functions and duties of the Mayor that require the Mayor to be present.

3.5 Chief Executive Officer

The City's administration is accountable to Council through the CEO, who is responsible for the management and administration of the organisation. The organisation is responsible for implementing Council policy and decisions, operational policy and procedures, service delivery and providing professional advice to Council.

The CEO will provide professional, relevant and timely information to the Council, and maintain a close working relationship that supports the Mayor.

The CEO is responsible for:

- establishing and maintaining an appropriate organisational structure for the Council;
- ensuring that the decisions of the Council are implemented without undue delay;

- the day to day management of the Council's operations in accordance with the Council Plan;
- developing, adopting and disseminating a code of conduct for Council officers;
- providing timely advice to the Council;
- ensuring that the Council receives timely and reliable advice about its legal obligations under the Act and any other Act;
- supporting the Mayor in the performance of the Mayor's role as Mayor;
- carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the *Accident Compensation Act 1985* or the *Workplace Injury Rehabilitation and Compensation Act 2013*; and
- performing any other function or duty of the CEO specified in the Act or any other Act.

The CEO:

- may appoint as many Council officers as are required to enable the functions of the Council under the Act or any other Act to be carried out and to enable the CEO to carry out their functions;
- is responsible for appointing, directing, managing and dismissing Council officers and for all other issues that relate to Council officers; and
- managing interactions between Council officers and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interactions between Council officers and Councillors.

3.6 Relationship between Councillors and Council Officers

The relationship between Councillors and Council officers must be one of mutual co-operation and support with a clear understanding of each other's roles and responsibilities.

Subject to section 76E(2) of the Act and clause 5.9 of this Code, Councillors will:

- work cooperatively with the CEO and Council officers;
- treat Council officers with respect and dignity at all times, ensuring written and verbal communication is professional, courteous, fair, constructive, honest, equitable and ethical;

- avoid engaging in any form of inappropriate or intimidating behaviour, including discrimination, harassment, bullying, victimisation or vilification;
- demonstrate a commitment to working co-operatively and constructively with Council officers to achieve the Council's common goals;
- refer their requests for service through the relevant Executive Manager or Director, or where they are seeking direct support from the Mayor & Councillor Support Unit in accordance with the Working with Councillors Protocol;
- understand and respect the distinction in roles of Councillors and Council officers, acknowledging that the CEO is responsible for the operations of Council and the management of Council officers. Councillors will not involve themselves, directly or indirectly, in any personnel matter relating to a Council officer;
- recognise the role of Council officers to provide professional, 'best' advice to Council;
- acknowledge that Councillors must not in any way direct, reward, instruct or inculcate members of staff in the performance of their duties;
- acknowledge that support from staff in the Mayor & Councillors Support Unit shall be available in accordance with approved protocols;
- refrain from using the Councillor position to improperly influence Council officers in their duties or functions, or to seek preferential treatment or gain an advantage for themselves or others;
- advise the CEO in a timely way of any concerns relating to a Council officer who has acted in a manner contrary to a formal Council policy or decision, or the Council officers' Code of Conduct. Any discussions pertaining to the performance of a Council officer must be held privately with the CEO or appropriate Director or Executive Manager in a constructive and objective manner; and
- refrain from publicly criticising or vilifying Council officers in a way that casts aspersions on their professional competence or credibility.

3.7 Role of Delegate or Council Representative on Committees

The participation on a range of local specific issues committees established by Council, peak body/sector associations, and local and regional forums, is an essential part of Council's representative role. The Mayor and/or the Council nominates or appoints representatives and delegates to these committees annually, or as needed, in accordance with the Council Committee Representation Policy.

A Councillor appointed as a delegate or representative to a committee will represent the position of Council, and report back to Council at an Ordinary Council Meeting on the issues or progress of the committee, and any recommendations made by the committee for Council to consider.

3.8 The Community

Councillors are elected to govern the municipality as Council. On behalf of the community, Councillors are committed to representing constituents and the broader community, working together to achieve the Council's strategic vision, common goals and associated outcomes that are in the best interests of the municipality.

Consultation, representation, fair and equitable treatment, ethical engagement, openness and accountability are the key features of the relationships that are to be established and maintained between Council and the community.

Councillors will:

- treat members of the community with respect and dignity at all times ensuring written and verbal communication is professional, courteous, fair, constructive, honest, equitable and ethical;
- strive to understand and acknowledge diversity, including the emergence of different points of view within the community;
- be available to interact, listen actively and respond to community concerns, mindful of the need to avoid promising outcomes which cannot, or may not, be delivered;
- make decisions in the best interest of the whole community after considering all relevant interests and points of view;
- be cognisant of the principles of procedural fairness prior to making statements on issues where public submissions have been invited;
- encourage partnerships with the community so that mutual strengths can be utilised to achieve common goals; and
- encourage understanding, tolerance and harmony across the community, ensuring to act to discourage divisiveness among citizens of the municipality.

4 Civic Representation

4.1 Multimember Ward Representation

Councillors will share information and work collaboratively with their fellow ward Councillors on ward based issues and initiatives. In relation to sharing information, a Councillor will inform their fellow ward Councillors, the Mayor, the Deputy Mayor and the CEO, and then the remaining Councillors if appropriate.

4.2 Media Relations

Councillors will comply with the Council's Media and Engagement Policy.

4.3 Mayoral Robe and Chain Protocol

The Mayor will decide whether to wear or not to wear the current Mayoral robe and /or chain during their term of office, subject to the conditions set out below.

The Mayoral robe and chain can only be worn by the Mayor:

- at official swearing in of the Mayor ceremony;
- at Citizenship ceremonies held in the municipality;
- at Australia Day Civic ceremonies and presentation of Order of Australia awards;
- Remembrance Day memorial services;
- as a representative of the Council at graduation and dedication ceremonies held by universities and education institutions;
- for the purposes of official portraits to be placed at City Hall and advertising materials which signify official capacity;
- on occasions when the Mayor represents or is asked to officially represent the Council as the Mayor at events, functions and delegations where the objective is to showcase the City's profile, only with the approval of the CEO; and
- as otherwise agreed from time to time with the CEO to the benefit, official promotion and credit of the Council.

The Mayoral robe and chain are not to be worn by other elected Councillors, Council officers or citizens, with the exception of the Deputy Mayor if standing in for the Mayor.

The Mayoral robe and chain will be stored in a secure Council location at the direction of, and as determined solely by, the CEO.

The CEO will be responsible for ensuring the maintenance of the Mayoral robe and chain, and for arranging the necessary delivery to, and collection from the Mayor promptly after use.

The Mayoral robe and chain must not be left unattended when not stored in a secure Council location.

4.4 The Council Crest

The heritage themed Council Crest adopted in 2014 is the most prestigious branding device available to the Council and, as such, has restrictions on its use and reproduction.

It can only be used for:

- for Council sanctioned functions and civic events where the Council has an official role; and/or
- on official correspondence originating from the Mayor and Councillors' Office.

If the Crest is accompanied by words, they shall appear below the Crest, and read *City of Greater Geelong* only.

The Council Crest does not replace the City's official logo, adopted in the City's (visual) *Style Guide 2017*.

The use of the Council Crest must not:

- appear more than once in a publication;
- appear at the bottom of a page;
- be positioned next to branding or any other logos, but it can appear on the same document or publication (i.e. the Crest can be on the top left of the page and other logos can be printed at the bottom of that same page);
- be presented as a stylised version or other artistic interpretation - only the authorised image is permitted; and/or
- be used for commercial purposes, including gifts, souvenirs or collector's items, or on any sporting apparel or uniform.

The Council Crest artwork remains the property of Council and shall not be altered or used by any other person or organisation, and unauthorised use may result in legal proceedings to enforce Council's ownership rights in the Crest.

5 Conduct

5.1 Appropriate Use of Council Resources

Councillors are responsible for ensuring the resources of Council are allocated efficiently and effectively to meet the needs of the community. In doing so, Councillors are expected to balance the competing needs of different sections of the community in deciding resource allocations within budget constraints. This requires an understanding of community needs alongside a commitment to sound financial management. It also encompasses ensuring the Council remains in a sustainable financial position into the future.'

Councillors are able to access reasonable resources and facilities to support them in fulfilling their Council role. Councillors will only use Council resources for their Council duties, and in accordance with the Council's Facilities and Expenses Policy.

5.2 Access to Information

Councillors will be provided with relevant information from the organisation to help them make informed decisions and fulfil their duties. This information may be publicly available, or in some instances, restricted or confidential. Councillors will act in accordance with the Access to Information Protocol, including when requesting a briefing from Council officers or requesting information on Council matters.

A Councillor may request operational or confidential information in order to gain a broader understanding of an issue that falls under their role and responsibilities (for example, as a committee delegate), or if it relates to a matter currently before - or expected to come before – Council for a decision. Requested information by one Councillor will be provided to all Councillors. Information may be unable to be provided if the CEO determines that providing the information is likely to be a breach of privacy, prejudice Council or any person, breach legal privilege or in his or her sole discretion be otherwise inappropriate to disclose. The CEO will provide all Councillors with information on any declined requests for information, including the reason the information was not able to be provided.

5.3 Requests for Service/Complaints

A Councillor request for service is a request made by a Councillor on their own behalf, or on behalf of a community member.

In accordance with the Victorian Ombudsman's good practice guide, to ensure transparency and fairness, complaints received by Councillors should be treated the same way as ones made to Council officers. A Councillor must not seek to direct or influence the complaint handling process.

Councillors are aware the same service standards apply to a Councillor request, as a request for service from a community member. All requests will be entered into Council's customer service system, and sent to the appropriate Director for actioning. A Councillor may contact the relevant Director about the progress of the complaint, but will not attempt to direct or influence the process. Council officer investigations and actions will be recorded and monitored in Council's customer request system, and status reports will be provided regularly to Councillors.

5.4 Conduct at Council Meetings

Council's Meeting Procedures Local Law governs the conduct of Council Meetings and Special Committee meetings. The Chair plays a crucial role in facilitating an orderly, respectful, transparent and constructive meeting by ensuring all Councillors have the opportunity to be heard, matters are adequately discussed, meeting procedures are followed and statutory requirements are met.

Councillors will comply with the Council Meeting Procedures Local Law and this Code of Conduct when participating in Council Meetings and Special Committee meetings. Councillors will act respectfully towards the Chair, their fellow Councillors, Council officers, guests and any community members or media attending the meeting.

5.5 Decision Making in the Community Interest

Councillors will make decisions in the best interests of the whole Greater Geelong community. Councillors will act fairly and without bias when making decisions that affect the rights and interests of others, and in accordance with 'natural justice'.

Councillors will listen to each other as matters are discussed in Council Meetings, and not pre-determine any decisions proposed to be made prior to consideration at a Council Meeting. As part of this consideration, Councillors will take into account the outcomes of consultation or feedback from the community on a matter.

5.6 Formal Community Forums

Forums or committees are convened from time to time to enable community members to express their views in relation to a specific matter. Councillors invited or appointed to hear from the community may ask questions to clarify issues raised. However, Councillors will not behave or comment in a way that may be perceived as pre-determining their own, or Council's, position in relation to a matter, or direct Council officer responses.

Formal community forums include:

- Planning forums – coordinated by the City Planning Department. The purpose of the Planning forum is for applicants and objectors to speak about their support/concerns regarding a planning application.
- Section 223/Major Policy Consultation Committee (Hearing of Submissions) meetings – convened in accordance with Section 223 of the Act to hear from people in support of written submissions in relation to matters such as proposals to adopt a Budget, Council Plan or Local Law, or in relation to selling Council property;
- Single issue consultation forums – coordinated by the department responsible for a proposal or response to a community issue, single issue forums will be arranged as required.

While these forums are all formal in nature, and may involve some or all of the Councillors, these forums are not meetings of the Council and Councillors will not make decisions at these forums, or commit Council to a course of action.

5.7 Misuse of Position

Councillors will not use their position, or knowledge gained in their role as a Councillor, to disadvantage Council or someone else, or advantage themselves or someone else.

Section 76D of the Act states that a person who is or has been a Councillor or a member of a special committee must not misuse their position:

- to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- to cause, or attempt to cause, detriment to the Council or another person.

Misuse of position includes:

- making improper use of information acquired as a result of the position they hold/held;
- disclosing information that is confidential;
- directing or improperly influence a Council officer (or seeking to do so);
- exercising or performing, or purporting to, a power, duty or function that they are not authorised to perform;
- using public funds or resources in a manner that is improper or unauthorised; and/or
- failing to disclose a conflict of interest.

Under the Act, the penalty for a Councillor misusing his or her position can be up to 600 penalty units or imprisonment for 5 years or both.

5.8 Improper Direction

Councillors will not use their position to direct or influence Council officers in any of the Council officers' powers, duties or functions.

Under Section 76E of the Act, a Councillor must not direct, or seek to, Council officers:

- in the exercise of a delegated power, duty or function;
- in the exercise of a power, duty or function as an authorised officer;
- in the exercise of a power, duty or function the officers exercises under the Act or any other Act;
- in relation to advice provided to the Council or a special committee, including advice in a report to Council or a special committee.

Under the Act, the penalty for a Councillor who breaches section 76E can be 120 penalty units.

5.9 Breach of Confidentiality

Councillors will observe the confidentiality of the information they receive in the course of performing their Councillor duties and responsibilities, and will not convey (electronically, verbally, or in writing) information they know, or should reasonably know, is confidential.

Section 77 of the Act states a person who is, or has been, a Councillor must not disclose information that the person knows, or should reasonably know, is confidential information. The penalty for breach of section 77 of the Act is 120 penalty units and may amount to Serious Misconduct.

Information is confidential for the purpose of section 77 of the Act if:

- the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or
- the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or

- the information has been designated in writing as confidential information by the CEO specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential. Confidential information designated by the CEO under section (2)(c) ceases to be confidential at the expiry of the period of 50 days after the designation is made, unless subsection (2)(a) or (2)(b) applies to the information.

Additionally, all briefing material provided to Councillors shall be considered to be confidential, unless that information is otherwise publicly available.

Section 89 (2) of the Act sets out grounds for designating information as confidential:

- 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.

Councillors will treat Council information appropriately by:

- not using information gained by virtue of being a representative for any purpose other than to exercise their role as a Councillor;
- adhering to Council's policy in relation to public comments and communication with the media;
- not releasing information deemed 'Confidential Information';
- recognising the requirements of the Privacy and Data Protection Act 2014 regarding the access, use and release of personal information; and
- adhering to this Code of Conduct when seeking to access Council information (refer to Attachment 4).

Councillors may only disclose confidential information in accordance with the provisions of section 77(1A) of the Act.

Councillors will appropriately store and dispose of both hard copy and electronic confidential information. Hard copy confidential information will be either shredded or returned to the Mayor and Councillor Support Unit.

5.10 Conflict of Interest

A conflict of interest occurs when a Councillor has a direct or indirect interest, or a personal interest that is in conflict with their duty as a Councillor and has been accepted by Council. A conflict will prevent the Councillor in question from debating and voting on the related matter.

Councillors are required to proactively assess their individual circumstances and are personally responsible for determining if they have a conflict of interest in an honest, timely and transparent manner. Where necessary, additional information and advice to enable a Councillor to determine whether a conflict of interest exists can be provided by persons authorised by the CEO.

5.10.1 Direct Conflict of Interest

If a Councillor's financial benefits, obligations or circumstances would directly change for better or worse due to a matter being decided in a particular way at Council, then the Councillor has a direct conflict of interest. This includes where the Councillor or members of the Councillor's family have a controlling interest in an entity with a direct interest in the matter before Council.

5.10.2 Indirect Conflict of Interest

Indirect conflicts of interest occur when a matter comes before Council and:

- a **close association** exists when a Councillor's family member has a **direct or indirect** interest in a matter, or a relative or household member has a **direct** interest in a matter;
- Councillor has an **indirect financial interest** and is likely to gain or lose financially as a result of a financial gain or loss to someone else with a direct or indirect interest in a matter;
- a Councillor has **conflicting duties** if a Councillor is a:
 - manager or member of a governing body of a company (including an incorporated association which most clubs are) or body that has a direct interest in a matter;
 - partner, consultant, contractor, agent or employee of a person, company or body with a direct interest in a matter; and/or
 - trustee for someone with a direct interest in a matter;

- a Councillor receives an **applicable gift** or gifts worth \$500 or more during the last five years from people who have a direct interest in a matter (reasonable hospitality at an event or function attended in an official capacity, isn't considered an applicable gift);
- the Councillor is an **interested party**, who has initiated or is a party to, civil proceedings related to a matter that comes before Council; and/or
- there is a reasonable likelihood that the **residential amenity** in a Councillor's neighbourhood will be altered as a result of a matter.

5.10.3 Certain Situations where a Councillor is taken to not have a Conflict of Interest

A Councillor is taken to not have a conflict of interest if the matter only relates to:

- the nomination or appointment by Council of the Councillor to a position for which the Councillor will not be remunerated;
- the appointment of an acting Mayor;
- a decision in relation to the payment of allowances to the Mayor or Councillors;
- the adoption of a policy in relation to the reimbursement of expenses;
- the adoption of a Councillor Code of Conduct;
- an application to a Councillor Conduct Panel or VCAT;
- an application for Ministerial exemption;
- the appointment of members and Chairpersons of special committees;
- a resolution that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under taxation legislation;
- the conduct of a Councillor with respect to:
 - an internal dispute that involves the Councillor;
 - an allegation of misconduct or serious misconduct by the Councillor;
- a submission provided to an electoral representation review; and
- a submission provided for the purposes of a subdivision review.

If a budget or revised budget to be approved by Council includes funding for a matter in respect of which a Councillor has a conflict of interest, the Councillor is taken to not have a conflict of interest for the purposes of approving the budget or revised budget if:

- Council previously approved the matter and the proposed funding for the matter for inclusion in the budget or revised budget; and
- the Councillor disclosed the nature of the conflict of interest when the decision in respect of the matter and the proposed funding for the matter was previously considered and made.

If a Council Plan to be approved by Council includes a matter in respect of which a Councillor has a conflict of interest, the Councillor is taken to not have a conflict of interest for the purposes of approving the Council Plan if:

- Council previously approved the matter for inclusion in the Council Plan; and
- the Councillor disclosed the nature of the conflict of interest when the decision in respect of the matter was previously considered and made.

If a Councillor with a conflict of interest notifies the Mayor prior to the consideration of the budget, revised budget or Council Plan of the conflict of interest, the Mayor must allow a prior motion to be put that the matter or funding be considered for inclusion in the budget, revised budget or Council Plan.

5.10.4 Exemptions

A Councillor does not have a conflict of interest in a matter if:

- the interest is so remote or insignificant that it could not reasonably be regarded as capable of influencing the Councillor in relation to the matter;
- the interest is held:
 - as a resident, ratepayer or voter and does not exceed the interests generally held by other residents, ratepayers or voters; or
 - in common with a large class of persons and does not exceed the interests generally held by the group of persons;
- the circumstances of the interest are unknown to the Councillor and who would not reasonably be expected to know about the interest.

5.10.5 Conflicting Personal Interest

A Councillor can have a **conflicting personal interest** (a personal interest that is in conflict with their public duty) that is neither direct nor indirect.

Where a Councillor considers that he or she has a personal interest in relation to a matter that is in conflict with his or her public duty in relation to the matter, the Councillor or member may, immediately before the matter is considered, apply to the Council or special committee to be exempt from voting on the matter.

The Councillor must detail the reasons why they are conflicted in support of their application to be exempt from voting.

A council or special committee may consent to a Councillor's application to be exempt from voting, and that consent cannot be unreasonably withheld.

If consent is given, the personal interest is treated in the same way as a conflict of interest specified in the Act, and the Councillor must leave the room when the matter is considered

5.10.6 Perceived and Potential Conflicts of Interest

While there are some exceptions to conflicts of interest under the Act, in the interests of good governance and sound community relationships, it is essential that Councillors understand and are responsive to perceived conflicts of interest and potential conflicts of interest.

A **potential conflict of interest** is one that may arise between the Councillor's public duties and their private interests.

A **perceived conflict of interest** is where a third party (such as a community member or business owner) could reasonably form the view that a conflict exists and that the Councillor's private interests could improperly influence their actions in the immediate or longer term.

5.10.7 Conflict of Role

It is required of Councillors that they are cognisant of, and in turn respond appropriately to, situations where there is a **conflict of role**. This occurs when a Councillor has two or more roles, related to or under the auspice of the Council, and there is a conflict between their duties when they act in each role.

5.10.8 Conflict of Interest when Attending a Council Meeting

If a Councillor with a conflict of interest attends a Council meeting, the Councillor must disclose and describe the interest, including whether it is a direct, indirect or personal type.

Alternatively, the Councillor can describe the conflict, providing detail about the type of conflict, to the CEO in writing before the meeting. The Councillor then only needs to disclose the type of interest in the Council meeting immediately before the matter is considered. The Councillor must leave the Council chamber before the discussion that leads to the vote on the matter. The Councillor cannot be present for the vote, post the discussion.

All conflicts of interest must be recorded in the council meeting minutes, including the type and description of the conflict. This information can be provided verbally by the Councillor at the meeting or in writing to the CEO prior to the meeting, and in this circumstance the CEO is to read the correspondence out at the meeting.

When a conflict is disclosed to the CEO in writing, it is to be kept by the CEO in a secure place for three years after the Councillor stops holding office. The disclosure must then be destroyed.

5.10.9 Conflict of Interest Accountability

Councillors play a key role in ensuring the reputation of the Council and are required to diligently manage their duties and personal circumstances so as to maintain professional credibility. Early identification, appropriate disclosure and timely action in relation to conflict of interest, including potential and perceived conflict of interest, is incumbent upon each individual Councillor.

If not managed appropriately, conflict of interest can bring the Council into disrepute and undermine confidence in the Council and local government at large. While managing conflicts of interest is an important part of Council business, it is the conduct of individual Councillors that will ensure operational success and in turn protect the public interest.

5.10.10 Assembly of Councillors

Section 3 of the Act includes the definition of an Assembly of Councillors. An Assembly of Councillors is a planned or scheduled meeting comprising at least half of the Councillors and one Council officer, or an advisory committee with at least one Councillor present, that discusses or considers matters that are likely to be:

- The subject of a Council decision; or
- Subject to the exercise of a power or duty under delegation by a person (including Council officers) or committee.

Section 80A of the Act requires a Councillor attending an Assembly of Councillors to:

- Disclose the conflict of interest and leave the assembly while the matter is being discussed and considered;
- Disclose the conflict of interest either before the matter is considered, or when a Councillor becomes aware they have a conflict of interest.

5.11 Register of Interests

It is incumbent upon a Councillor to provide the CEO with accurate details of all registrable interests. This must be done within thirty days of the election or within seven days of making the oath of office of a Councillor, whichever date is later. In addition, each year after being elected, Councillors must update and submit an **ordinary return** by 9 February and 9 August. Councillors are required to provide notice of any changes to their registerable interests to the CEO within 14 days of any change, or before the next Council or Committee meeting, whichever is earlier. New items must also be recorded on the next ordinary return.

5.12 Gifts and Hospitality

5.12.1 Acceptance and Declaration of Gifts and Hospitality

Councillors are aware receipt of a gift from a person or organisation can result in a conflict of interest (as an applicable gift) under the Act, including monetary or in-kind gifts, and campaign donations. It is illegal for a Councillor to accept an anonymous gift valued at \$500 or more.

A Councillor may be offered gifts or hospitality from members of the public or other organisations. While these offers are usually genuine in nature, they can give rise to perceived inappropriate relationships and potential conflicts of interest (and possible breaches of the Act).

Councillors will not accept a gift or hospitality if it could be perceived as intended to, or likely to, influence them in the fair, impartial and efficient discharge of their duties. Councillors will not solicit gifts or hospitality, and will not accept any offers of money.

If a Councillor receives a gift for Council, for example, an artwork, from an external organisation, delegation or person, the Councillor will present it to the Chair at the next Ordinary Council Meeting, for retention by Council. Councillors will not purchase, donate or bid on items (on behalf of Council) at any auction, community fundraising event or similar, without the authority of Council.

Councillors will comply with the Council's Gifts and Hospitality Policy, including by disclosing receipt of any gifts and hospitality, including any offers of gifts or hospitality declined, on the gift declaration form, for recording in Council's gift register.

5.12.2 Giving Civic Gifts

A civic gift is a gift given on behalf of the Council. Types and financial thresholds for civic gifts are set out in the Councillor Gifts Protocol (Attachment 7). The purchase or giving of civic gifts other than as provided by the Protocol, will be determined by the CEO.

5.12.3 Reporting Inappropriate Offers

A Councillor will notify the CEO of any inappropriate offer of a gift or hospitality. The CEO will determine an appropriate course of action, including possible investigation and/or referral to a relevant authority.

5.13 Unlawful Conduct

It is incumbent upon Councillors to ensure that they do not allow, permit, aid, foster, encourage, reward, incite or instruct any form of unlawful conduct, nor in engage in a manner that condones unlawful conduct. Councillors have individual legal obligations and can be held accountable as individuals by external courts and tribunals, for conduct that compromises the rights of other Councillors, Council officers and members of the community.

Under the Victorian *Equal Opportunity Act 2010* it is against the law for local governments to treat, or propose to treat, someone unfavourably because of a personal characteristic protected by law. It is also against the law to sexually harass. For example a Councillor must not discriminate against, harass or sexually harass another Councillor, Council committee member, Council officer or community member.

Council also has responsibilities in other areas of public life covered by the *Equal Opportunity Act 2010* including employment and provision of goods and services.

5.13.1 Discrimination and Harassment

Direct discrimination is unfavourable treatment due to a personal characteristic protected by law. Indirect discrimination occurs when an unreasonable requirement, condition or practice is imposed resulting in disadvantage for a person or group because of a personal characteristic protected by law.

Systemic discrimination relates to behaviour and action that affects a person or group with personal characteristics protected by law, and the outcomes of the behaviour and action have become entrenched or part of the culture, and are reinforced by policies or procedures.

Harassment is a form of discrimination. It is unwelcome conduct that offends, humiliates or intimidates on the basis of a personal characteristic protected by law. Intent or motive is irrelevant – it is the nature and the impact of the behaviour that is assessed. A single incident can amount to harassment.

Sexual harassment is unwelcome behaviour of a sexual nature that offends, intimidates or humiliates. It can be physical, verbal, written or online conduct. Sexual harassment is unlawful and can also be criminal. Intent or motive is irrelevant – it is the nature and impact of the behaviour that is assessed. A single incident can amount to sexual harassment.

5.13.2 Personal Characteristics Protected by law in Victoria

The personal characteristics protected by law in Victoria are:

- age;
- breastfeeding;
- carer and parental status;
- disability (physical, sensory, intellectual disability, work-related injury, medical conditions, and mental, psychological and learning disabilities);
- employment activity;
- expunged homosexual conviction;
- gender identity;
- industrial activity;
- lawful sexual activity;
- marital status;
- physical features;
- political belief or activity;
- pregnancy (including potential pregnancy);
- race (including colour, nationality, ethnicity and ethnic origin);
- religious belief or activity;
- sex;
- sexual orientation; and
- association with someone who has one of the personal characteristics.

The *Australian Human Rights Commission Act 1986* provides guidance in relation to the inappropriate nature of discrimination on the basis of irrelevant criminal record, irrelevant medical record and social origin. These characteristics are adopted by the Council and are deemed protected personal characteristics under this Code, and shall be adhered to in the same manner as all other protected personal characteristics identified under the *Victorian Equal Opportunity Act 2010*. It is noted that under this Code 'social origin' is used by Council to refer to place of origin, place of residency and presumed social status.

5.13.3 Victimisation

Victimisation is subjecting, or threatening to subject, someone to reprisal or detriment because they have asserted their rights under equal opportunity law, made a complaint, helped someone else to make a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation.

5.13.4 Vilification

Vilification is behaviour that incites physical harm or hatred, serious contempt, revulsion or severe ridicule of a person or group because of their race or religion. It is unlawful conduct.

5.13.5 Bullying

Bullying is unlawful. It is repeated, unreasonable behaviour, directed towards an individual or a group of people, that creates a risk to health and safety. It includes both physical and mental risks and abuse. 'Repeated behaviour' refers to the persistent or systematic nature of the behaviour or pattern of behaviours, over a period of time. 'Unreasonable behaviour' means behaviour that a reasonable person, having regard to all the circumstances, would expect to intimidate, humiliate, undermine, frighten or threaten.

Stalking can constitute bullying. It is willful, repeated behaviour (or obsessive attention) that arouses apprehension and fear placing physical or mental health and safety at risk. Stalking involves intent and is often calculated behaviour, be it in person, or via other intrusive means such as surveillance, interfering with property, or the repeated delivery of messages, items or gifts. Stalking is unlawful conduct.

Cyber-bullying utilises technology and operates via social media sites, text messages, chat, and websites. It is willful, repeated behaviour (or obsessive attention) that humiliates, intimidates and causes anxiety and fear, placing physical or mental health and safety at risk. Abusive text messages, malicious rumours or inappropriate images posted on-line and establishing false internet profiles are examples of cyber-bullying.

5.13.6 Violence

Violence refers to any incident where a person is physically attacked, threatened, or subjected to significant aggression. It can be a single incident where a person is abused, or assaulted. It covers abusive and aggressive behaviours that place physical or mental health and safety at risk, including verbal threats to harm, maim or kill, physical assault, the dangerous application of force to the body or clothing of a person, holding a person against their will or attacking a person with a weapon or makeshift weapon.

5.13.7 Accountability in relation to Unlawful Conduct

It is incumbent upon Councillors to ensure that they do not allow, permit, aid, foster, encourage, reward, incite or instruct any form of unlawful conduct, no engage in a matter that condones unlawful conduct. Councillors have individual legal obligations and can be held accountable as individuals by external courts and tribunals for conduct that compromises the rights of other Councillors, Council officers and members of the community.

5.14 Councillor Eligibility

Division 3 of the Act describes the qualifications for eligibility to hold the office of a Councillor. It also describes the circumstances in which a Councillor may become ineligible or disqualified from holding office.

A Councillor will notify the CEO in writing as soon as practicable of any change in circumstance that affects their right or eligibility to hold office as a Councillor.

6 Conduct Management

6.1 Conduct Management Framework

6.1.1 Conduct Management Hierarchy

Having and expressing differing viewpoints is a normal function of the process of democratic local government. Sharing and expressing these different views leads to informed and well considered decisions. All Councillors have the right to influence the decisions made by Council through debate.

A hierarchy for management of Councillor conduct issues has been established as set out below.

1. Councillors should always aim for prevention of disputes and complaints.
2. If a dispute arises, Councillors should try to resolve the matter through any or all of the following processes:
 - (a) Negotiation, where the parties involved talk to each other and work together to try to resolve the issue; or
 - (b) Mediation, where the parties involved are assisted by the Mayor to try to reach agreement.
3. Where negotiation and/or mediation fails to resolve a dispute, a complaint may be made in accordance with clause 6.3 herein (Conduct Complaint) is made, and the procedures set out in clause 6.3 (Internal Resolution Procedure) will be used to determine the matter through arbitration.

4. Where the Internal Resolution Procedures have been exhausted and have failed to resolve a Conduct Complaint, or where the issue is having a serious impact on Council or any of the parties, the Act provides for external management of Councillor conduct which may involve any or all of the following processes:
 - (a) Councillor Conduct Panel, where a panel established by the Principal Councillor Conduct Registrar, consisting of two suitably qualified members, hears allegations of misconduct and serious misconduct, makes findings in relation to applications and imposes sanctions if required;
 - (b) Victorian Civil and Administrative Tribunal, which hears—
 - (i) Allegations of gross misconduct; and
 - (ii) Appeals against decisions of Councillor Conduct Panels.
 - (c) Ministerial governance direction, where the Chief Municipal Inspector or a municipal monitor has recommended that governance processes and policies require improvement;
 - (d) Ministerial power to stand down a Councillor, where the minister is empowered to recommend an Order in Council to stand down a Councillor against whom a complaint of serious or gross misconduct is made and a municipal monitor confirms that such a Councillor's conduct threatens someone's health and safety, is obstructing Council business, or is not in accordance with the role expected of a Councillor;
 - (e) Ministerial power to suspend all councillors, where the minister is empowered to recommend an Order in Council to stand down all councillors if the Minister is satisfied on reasonable grounds that there has been a serious failure to provide good government or that Council has acted unlawfully in a serious respect or that Council has repeatedly and substantially failed to comply with a general Order and any special Order; and
 - (f) Magistrates' Court of Victoria, for alleged breaches of the Act investigated and prosecuted by the Chief Municipal Inspector.

The foregoing conduct management processes are summarised in the following table for ease of understanding.

Degree of Seriousness	Definition	Applicant	Responsible Authority
No dispute or complaint	Prevention. Communicating respectfully and with an open mind.	Not applicable.	Councillors
Dispute	Negotiation Mediation	No formal applicant	Councillors
Conduct inconsistent with standards Council has set itself	Internal resolution procedure. Breaches of the Councillor Code of Conduct.	Council, Councillor, Councillors	Arbiter Council
Misconduct	Panel proceedings. Failing to comply with a council's internal resolution procedure, including failure to abide by any decision of Council in relation to a breach of the code and repeated breaches of councillor conduct principles.	Council, Councillor, Councillors	Councillor Conduct Panel
Serious misconduct	Panel proceedings. Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct.	Council, Councillor, Councillors, Chief Municipal Inspector	Councillor Conduct Panel
Gross misconduct	Tribunal proceedings. Behaviour that demonstrates lack of character to be a councillor.	Chief Municipal Inspector	VCAT
Statutory offences	Prosecution Breaches of the Act.	Chief Municipal Inspector	Court system

6.1.2 Breaches and Sanctions under the Act

There are a number of conduct related sanctions established under the Act. The following table summarises breaches and sanctions of provisions in the Act incorporating amendments as at 1 January 2018.

Section	Breach	Sanction
64	Failure to take oath of office or make Code of Conduct declaration within three months after the day on which the person was declared elected.	The office of a Councillor becomes vacant.

Section	Breach	Sanction
66	Acting as Councillor if incapable.	A term of imprisonment not exceeding one year or a fine not exceeding 120 penalty units. Return to the Council any allowances, reimbursements, equipment or materials received.
66AB	Offences committed by person acting as Councillor.	A term of imprisonment not exceeding one year or a fine not exceeding 120 penalty units. Return to the Council any allowances, reimbursements, equipment or materials received.
76D	Misuse of position. Gaining or attempting to gain, directly or indirectly, an advantage for themselves or for any other person. Causing, or attempting to cause, detriment to the Council or another person.	600 penalty units or imprisonment for five years or both.
76E	Directing, or seeking to direct, a member of Council staff	120 penalty units.
77	Disclosing confidential information	120 penalty units.
79	Failure to disclose a conflict of interest at a meeting of the Council or special committee	A fine not exceeding 120 penalty units.
80A	Failure to disclose a conflict of interest at an assembly of councillors	120 penalty units.
81	Failure to submit a primary or ordinary return in the prescribed form within the prescribed time which discloses the prescribed information	60 penalty units.
218A	Chief Municipal Inspector or a municipal monitor has advised the Minister that governance processes and policies require improvement and the Minister agrees.	Minister may in writing direct the Council to amend, discontinue or replace its governance processes and policies.
219	Serious failure to provide good government; or Council has acted unlawfully in a serious respect; or Council has repeatedly and substantially failed to comply with a general Order and any special Order.	Minister may recommend to the Governor in Council that all the Councillors of a Council be suspended.

Section	Breach	Sanction
219AF	<p>An application has been made to a Councillor Conduct Panel or VCAT alleging serious misconduct or gross misconduct; and</p> <p>A municipal monitor has advised the Minister, and the Minister agrees, that a Councillor—</p> <ul style="list-style-type: none"> • Is creating a serious risk to the health and safety of a Councillor or a member of Council staff; or • Is preventing the Council from performing its functions; or • Is behaving in a manner that does not accord with the role of Councillor 	<p>On the recommendation of the Minister, the Governor in Council may, by Order in Council, stand down the Councillor.</p>
223C	<p>Investigations by Chief Municipal Inspector where there is—</p> <ul style="list-style-type: none"> • Failure to comply with investigation requirement. • Giving false or misleading information. • Refusal to take an oath or affirmation or making a false or misleading statement when appearing. <p>Non-compliance with a Supreme Court order.</p>	<p>240 penalty units or imprisonment for 2 years or both. Supreme Court order.</p> <p>Contempt of court – arrest, committal to prison or fine or both as well as costs.</p>
238	Obstructing Council	A fine not exceeding 60 penalty units.
238A	False written declaration	120 penalty units
239	Persons who aid, abet, counsel or procure or are knowingly concerned in the commission of an offence under the Act, Regulations or local laws	Guilty of that offence and liable to the penalty for that offence.

6.2 Managing Disputes

Councillors should use prevention, negotiation or mediation processes to avoid disputes or escalation of disputes and to resolve disputes as quickly as possible.

Council recognises the important role of the Mayor in Councillor dispute management, consistent with the following key functions of the Mayor under the Act:

- providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act, and the observation of the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C of the Act; and
- supporting good working relations between Councillors.

6.2.1 Prevention

Councillors should seek to prevent disputes about, and breaches of this Code.

In seeking to prevent disputes, Councillors should:

- Be open to other points of view;
- Communicate to manage differences;
- Give everyone the chance to respectfully communicate their points of view;
- Listen and try to understand other points of view;
- Find out what the other people involved want, for example by asking them;
- Think of the other people involved as 'equal and different'; and
- Accept some or all of the needs of the other people involved. In communicating to manage differences

Councillors should endeavour to:

- Listen:
 - For what they have in common with other parties. This is a good place to start looking for an outcome;
 - For what other parties need or are concerned about, responding reasonably to what they are saying;

- Then checking with the other parties involved to make sure they have been understood.
- Ask questions:
 - That start with 'How can we' or 'What possibilities are there for';
 - To try to find out what is important to the other parties involved, for example by asking 'How is that important to you?'
 - About how the other parties involved would like to move forward.
- Respond:
 - After listening well;
 - Using 'I think', 'I'd prefer' or 'I wonder whether', instead of 'I want' or 'I have decided';
 - Making suggestions for an outcome that meets the other parties' needs and that can be accepted;
 - Speaking for themselves and listening to the other parties.
- Avoid:
 - Reacting to demands or threats;
 - Asking questions that accuse, such as 'You did' or 'You told me that';
 - Saying 'You did' or 'You are', which can lead to blaming;
 - Saying 'Obviously', which can seem demeaning;
 - Making conclusions about what the other parties involved said without confirming that those conclusions are valid.

6.2.2 Negotiation

Councillors who are parties to a dispute, have an individual and collective responsibility to try every avenue possible to resolve such issues themselves in a courteous and respectful manner.

Councillors should attempt to achieve a resolution to a dispute themselves in the first instance through negotiation where the parties:

- Listen to and are heard by each other;
- Work out what the disputed issues are;

- Work out what is agreed;
- Work out what is important to each other;
- Aim to reach a workable agreement;
- Develop options to resolve each issue; and
- Consider what can be done next if an agreement cannot be reached through negotiation.

To facilitate resolution of disputes through negotiation, Councillors should:

- Seek guidance from the Mayor;
- Talk to the other people before making decisions (talk first, decide last);
- Think about what is behind the disputed issues for themselves and each of the other people involved;
- Try to think of options for outcomes that address what each party wants;
- Think about what they will do if you do not reach an agreement at the negotiation;
- Commit to finding an outcome that benefits everyone;
- Choose a time and place for the negotiation that suits all of the parties;
- Being hard on the problem by talking about all the issues completely;
- Being soft on the person by avoiding blaming the other people involved;
- Focussing on the issues in dispute, not the personalities of the other people involved;
- Emphasising any common ground the parties involved share to help to understand each other;
- Think creatively about options that could resolve the dispute;
- Not using unfair tactics;
- Manage their emotions;
- Making sure that the parties involved understand what each other is saying;
- Communicating well;
- Looking for an outcome that will work for everybody;

- Being clear that an agreement has been reached by writing the agreement down at the end of the negotiation.

Direct negotiation, where the parties talk about the dispute and seek a resolution themselves, can be used where the parties:

- Can have a discussion and make decisions without the assistance of another person;
- Want to make the decision themselves;
- Want to maintain the best possible ongoing relationship;
- Want to control the outcome, rather than ask someone else to decide;
- Want to keep discussions confidential;
- Want to find innovative ways to resolve the dispute, such as an outcome where everybody benefits.

6.2.3 Mediation

Councillors should consider using mediation to assist to resolve a Councillor dispute.

Mediation is where the parties are assisted to achieve a negotiated resolution by the Mayor, and can be used where the parties:

- Think mediation can set up a respectful discussion on the issues;
- Feel safe in the presence of each other;
- Want a third person to assist the discussion;
- Want to control the outcome, rather than ask someone else to decide the outcome;
- Want to make the decision themselves;
- Want to maintain an ongoing relationship;
- Want to keep discussions confidential;
- Want to find innovative ways to resolve the dispute, such as an outcome where everybody benefits.

The Mayor can:

- Design a mediation to suit the circumstances;
- Help decide whether mediation is suitable for the situation;

- Use their experience and knowledge and provide some information;
- Bring the appropriate people together;
- Explain how the mediation process will work;
- Provide a supportive environment;
- Set the guidelines or ground rules for how the mediation will work;
- Help the parties to understand each point of view;
- Help the parties to stay focused on resolving the dispute;
- Make sure the parties know and understand what issues have been agreed;
- Help the parties to keep communication going;
- Manage interactions so that they are fair;
- Help the parties to decide whether possible solutions are realistic;
- Support the parties to try to reach a final agreement that is agreed to be appropriate.

The Mayor will not—

- Take sides;
- Make decisions;
- Tell the parties what to agree to;
- Decide which party is right or wrong;
- Give legal, financial or other expert advice;
- Provide counselling.

The Mayor should not mediate disputes where he or she has a conflict of interest in the matter or where it is likely that they might be perceived as being influenced by a personal interest in the matter. Where the Mayor believes that he or she has a conflict of interest, the Deputy Mayor shall be appointed as the mediator. Where the Deputy Mayor has a conflict of interest in a matter to be mediated or where it is likely that they might be perceived as being influenced by a personal interest in the matter, an independent mediator with appropriate skills and qualifications will be appointed by the CEO to mediate the Councillor dispute.

6.3 Internal Resolution Procedure

6.3.1 Conduct Complaints

A Conduct Complaint is a complaint that alleges conduct on the part of a Councillor acting in their official capacity that on its face, if proven, would constitute a breach of a provision of this Code.

Only Conduct Complaints are to be dealt with under the procedures provided by this Internal Resolution Procedure:

- Complaints that relate to differences in policy or decision making are not Conduct Complaints, unless they involve a breach of this Code. They are appropriately resolved through discussion, debate and voting in a meeting of Council.
- Complaints that otherwise do not satisfy the definition of a Conduct Complaint are to be dealt with under Council's Complaints Handling Policy and Procedures or by negotiation or mediation as the case may be.
- The Internal Resolution procedure must be applied to, or attempted to be applied to, a Conduct Complaint before an application for a Councillor Conduct Panel can be made under section 81B of the Act, except for an application made by the Chief Municipal Inspector under section 81B(1B)(c) of the Act.

6.3.2 Conduct Complaints Made for an Improper Purpose

Councillors must not make a Conduct Complaint or cause a Conduct Complaint to be made for an improper purpose.

A Conduct Complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:

- To intimidate or harass another Council official;
- To damage another Council official's reputation;
- To obtain a political advantage;
- To influence a Council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions;
- To influence Council in the exercise of its functions or to prevent or disrupt the exercise of those functions;
- To avoid disciplinary action;
- To take reprisal action against a person for making a Conduct Complaint except as may be otherwise specifically permitted;

- To take reprisal action against a person for exercising a function prescribed under the Internal Resolution Procedure except as may be otherwise specifically permitted;
- To prevent or disrupt the effective administration of an Internal Resolution Procedure.

6.3.3 Detrimental Action

Councillors must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a Conduct Complaint they have made.

Councillors must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under an Internal Resolution Procedure.

Detrimental action is an action causing, comprising or involving any of the following:

- Injury, damage or loss;
- Intimidation or harassment;
- Discrimination, disadvantage or adverse treatment in relation to employment;
- Dismissal from, or prejudice in, employment; or
- Disciplinary proceedings.

6.3.4 Compliance with Requirements

Councillors must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this Code.

Councillors must comply with a reasonable and lawful request made by a person exercising a function under this Code.

Councillors must comply with any Council resolution requiring them to take action as a result of a breach of this Code.

6.3.5 Disclosure of Information

Councillors must report breaches of this Code in accordance with the reporting requirements under the Internal Resolution Procedure.

Councillors must not make allegations of suspected breaches of this Code at Council meetings or in other public forums.

Councillors must not disclose information about the consideration of a Conduct Complaint except for the purposes of seeking legal advice unless the disclosure is otherwise permitted.

All documents relating to a Conduct Complaint are designated as confidential information by the CEO under section 77(2)(c) of the Act, because they are matters which Council considers would prejudice Council or any person, except where it is provided to be otherwise.

6.3.6 Arbitration

Arbitration will be used where a Conduct Complaint has been made. It is a process where:

- The parties to a Conduct Complaint present their points of view and facts to an independent person (the Arbitrator);
- The Arbitrator then makes findings based on this information and presents the findings, reasons for the findings, determination and recommendations to Council and the respondent;
- Council, after reviewing the Arbitrator's determination and recommendations, resolves the sanctions, if any, to be applied to the respondent.

Arbitration will be conducted in accordance with the requirements of the Internal Resolution Procedure.

6.3.7 Establishing a Panel of Arbitrators

Council may establish a panel of Arbitrators.

Council may enter into an arrangement with one or more other councils to share a panel of Arbitrators.

A Panel of Arbitrators is to be established following a public expression of interest process.

To be eligible to be a member of a Panel of Arbitrators, a person must:

- Be independent of Council and meet the eligibility requirements for membership of a panel of Arbitrators; and
- Have any other skills and experience Council considers relevant to the position.

Skills and experience that will be considered in relation to persons who apply to be on the list are:

- Experience serving on or appearing before tribunals and panels;
- Experience relating to mediation and dispute resolution;

- Comprehensive understanding of the rules of natural justice and procedural fairness that apply to decision making processes;
- Knowledge and understanding of the local government sector;
- Experience relating to the application of and compliance with good governance principles;
- Experience relating to ethics and probity.

A person is not eligible to be a member of a Panel of Arbiters if they are:

- A councillor or a family member, relative or household member of a councillor; or
- A nominee for election as a councillor or a family member, relative or household member of a nominee for election as a councillor; or
- An administrator or a family member, relative or household member of an administrator; or
- An employee of a council or a family member, relative or household member of an employee of a council, or
- A member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
- A nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
- A person who has a conviction for an indictable offence that is not an expired conviction.

A person is not precluded from being a member of Council's Panel of Arbiters if they are a member of another council's panel of arbiters.

Members of Council's Panel of Arbiters may be appointed for a term of up to four years.

Council may terminate a Panel of Arbiters or any individual member of a Panel of Arbiters at any time.

When the term of a Panel of Arbiters concludes or is terminated, Council may establish a new Panel of Arbiters.

A person who was a member of a previous Panel of Arbiters established by Council may be a member of subsequent Panels of Arbiters established by Council.

6.3.8 Principal Conduct Officer Duties

The duties of the Principal Conduct Officer in relation to Panels of Arbiters, applications for arbitration of Conduct Complaints and arbitration proceedings include:

- Conducting the public expression of interest process to establish a Panel of Arbiters;
- Recommending the selection of a Panel of Arbiters to Council;
- Receiving Conduct Complaints;
- Selecting, from Council's Panel of Arbiters, an Arbiter to arbitrate a Conduct Complaint;
- Coordinating the conduct of Council's Internal Resolution Procedure;
- Liaising with and providing administrative support to an Arbiter who is arbitrating a Conduct Complaint;
- Attending Conduct Complaint arbitration hearings;
- Keeping a written summary of Conduct Complaint arbitration hearings;
- Keeping copies of all documents requested by, and given to, an Arbiter;
- Ensuring that venues and resources are made available for Conduct Complaint arbitration hearings conducted by an Arbiter;
- Sealing the records of the Arbiter at the conclusion of the arbitration process and giving those records to the CEO; and
- Ensuring that copies of a Conduct Complaint application or referral or any other document relevant to a Conduct Complaint are not provided to any person, other than in accordance with the Act and this Code, unless instructed by an Arbiter to do so.

6.3.9 Making a Conduct Complaint

A Councillor is able to make a Conduct Complaint.

Any group of Councillors is able to make a Conduct Complaint which must include the name of the Councillor whom that group of Councillors has appointed as its representative for the purposes of arbitration. This Councillor will have the responsibility of representing that group of Councillors in the arbitration hearing.

Council as a whole can make a Conduct Complaint by Council resolution at a meeting of Council that is closed to the public which must include the name of the Councillor whom Council has appointed as its representative for the purposes of arbitration. This Councillor will have the responsibility of representing Council in the arbitration hearing.

Conduct Complaints must be made to Council's Principal Conduct Officer.

Any person, who is not the Principal Conduct Officer, who receives a Conduct Complaint must refer that Conduct Complaint to the Principal Conduct Officer.

Conduct Complaints must be made in writing:

- Specifying the name of the respondent;
- Specifying the provision or provisions of the Code that it is alleged have been contravened;
- Including evidence in support of the Conduct Complaint;
- Naming the applicant Councillor appointed to be the representative where the application is made by a group of councillors or by Council; and
- Signed and dated by the applicant.

The Principal Conduct Officer must, without undue delay, ensure that a copy of the Conduct Complaint is provided to the respondent, Mayor and CEO.

6.3.10 Withdrawing a Conduct Complaint

An applicant may withdraw a Conduct Complaint application.

Once a Conduct Complaint application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

6.3.11 Establishing an Arbiter

When the Principal Conduct Officer receives a Conduct Complaint he or she must, without undue delay, select a person from the Panel of Arbiters list (the list) to arbitrate the Conduct Complaint.

On the first occasion that an Arbiter is required, the Principal Conduct Officer must select the person at the beginning of the list to arbitrate the Conduct Complaint.

On the second or subsequent occasion, the Principal Conduct Officer must select the next person, after the person who has most recently been selected, on the list.

A person selected to be an Arbiter of a Conduct Complaint must excuse himself or herself if he or she:

- Ceases to meet the eligibility requirements for an Arbiter; or
- Has a conflict of interest of any kind.

A person selected to be an Arbiter of a Conduct Complaint may excuse himself or herself if he or she is unavailable at the time they must hear and deliberate the matter.

If a list member excuses himself or herself for any of the reasons set out above, he or she must provide written reasons to the Principal Conduct Officer.

If a person selected to be an Arbiter of a Conduct Complaint excuses himself or herself the Principal Conduct Officer must select the next person that appears on the list after the excused member.

If it is not possible to establish an Arbiter using the persons on the list, the Principal Conduct Officer may recommend a person the Principal Conduct Officer considers to be suitable to be the proposed Arbiter of the Conduct Complaint.

The Principal Conduct Officer must provide the applicant and respondent with the name of the proposed Arbiter.

The applicant and respondent will have two business days from the date of the advice provided of the name of the proposed Arbiter to lodge an objection to the proposed Arbiter on the basis of the proposed Arbiter having a conflict of interest in the Conduct Complaint, including evidence for the objection, with the Principal Conduct Officer.

The Principal Conduct Officer, if no objection to the proposed Arbiter has been received, must appoint the proposed Arbiter to arbitrate the Conduct Complaint.

The Principal Conduct Officer, if an objection to the proposed Arbiter has been received, will consider the objection received and either:

- Appoint the proposed arbiter; or
- Find that the proposed Arbiter does have a conflict of interest in the Conduct Complaint and repeat the process of selecting an arbiter.

The Principal Conduct Officer must provide an Arbiter with a copy of the Conduct Complaint as soon as the Arbiter is appointed.

6.3.12 Arbiter Costs

It is the responsibility of Council to pay the costs of Conduct Complaint arbitration hearings, including paying the Arbiter in accordance with the schedule of fees set for this purpose.

Council will provide administrative support for Conduct Complaint arbitration hearings through the Principal Conduct Officer.

6.3.13 Arbiter Must Reject Certain Conduct Complaints

An Arbiter, after examining a Conduct Complaint, must not hear, or continue to hear, the matter if the Arbiter is satisfied that:

- On the balance of probabilities, the Conduct Complaint has been made for an improper purpose; or
- There is insufficient evidence to support an allegation of a breach or Breaches Of This Code As Specified In The Conduct Complaint.

The Arbiter must determine to reject a Conduct Complaint if the Arbiter is satisfied that any of the above conditions. Such a determination must be given to Council by the Arbiter together with written reasons for that determination.

The rejection of a Conduct Complaint by an Arbiter does not prevent a further application being made, with further supporting evidence, in respect of the same conduct by a Councillor that was the subject of the rejected Conduct Complaint.

6.3.14 Arbiter Must Refer Certain Conduct Complaints

An Arbiter, after examining a Conduct Complaint, must not hear, or continue to hear, the matter if the Arbiter is satisfied, on the balance of probabilities, that the Conduct Complaint constitutes misconduct or serious misconduct involving:

- Failure by a Councillor to comply with the Internal Resolution Procedure; or
- Failure by a Councillor to comply with a written direction given by Council under section 81AB of the Act; or
- Repeated contravention of any of the Councillor conduct principles; or
- The failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or
- The failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or
- The failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or
- Continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or
- Bullying of another Councillor or member of Council staff by a Councillor; or

- Conduct by a Councillor in respect of a member of Council staff in contravention of section 76E of the Act; or
- The release of confidential information by a Councillor in contravention of section 77 of the Act.

The Arbiter must determine to refer a Conduct Complaint to Council recommending that Council resolve to make an application to the Principal Councillor Conduct Registrar for a Councillor Conduct Panel, if the Arbiter has determined that the Conduct Complaint constitutes misconduct or serious misconduct as defined in the Act. Such a determination must be given to Council by the Arbiter together with written reasons for that determination.

6.3.15 Breach of Act by Councillor

If it appears to an Arbiter that a Councillor has committed an offence under the Act the Arbiter must as soon as possible, by notice in writing, notify the Chief Municipal Inspector that a Councillor appears to have committed an offence under the Act.

An Arbiter must not hear, or continue to hear, a Conduct Complaint if the Chief Municipal Inspector has been notified of an apparent breach of the Act.

The Arbiter must by notice in writing notify Council that the Chief Municipal Inspector has been notified of an apparent breach of the Act and that arbitration of the Conduct Complaint is suspended.

6.3.16 Suspension of Arbitration during Elections

Conduct Complaint applications and hearings must be suspended during the election period for a general election.

If an application is made for a Conduct Complaint arbitration hearing against a person who is a Councillor before a general election, and that person is not returned to the office of Councillor as a result of the general election, the application made against that person who was a Councillor before the election lapses.

If an application is made for a Conduct Complaint arbitration hearing against a person who is a Councillor before a general election, and that person is returned to the office of Councillor as a result of the general election, the application made against the Councillor may resume, whether or not the applicant or applicants were returned as a result of the general election.

6.3.17 Notice of Arbitration

An Arbiter must:

- Invite by written notice the respondent to make a written submission in relation to the matter within 14 days or such other reasonable period specified in the notice; and

- Fix a time and a place that is within the municipal district, for the hearing of a Conduct Complaint to be conducted; and
- Serve by written notice of the time and place of the hearing of a Conduct Complaint on the applicant, respondent and Council.

An Arbiter may fix a place for the hearing that is not within the municipal district if the Arbiter considers it necessary or appropriate in the circumstances.

The respondent may, within seven days of receipt of the notice of the time and place of the hearing, request in writing that the Arbiter provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them.

The Arbiter in response to a request for further information will only be obliged to provide such information that the Arbiter considers reasonably necessary for the respondent to identify the substance of the allegation against them.

6.3.18 Conduct of Arbitration

An Arbiter must not make a determination of a Conduct Complaint unless that Arbiter has conducted a hearing of that Conduct Complaint.

An Arbiter, in the process of conducting arbitration of a Conduct Complaint, may:

- Request a person to attend a Conduct Complaint hearing and answer questions;
- Request information from the applicant, the respondent or Council, including confidential information held by Council.

An Arbiter who is provided with confidential information must ensure that the information is not released to the public.

The following applies to a hearing of a Conduct Complaint by an Arbiter:

- The proceedings must be conducted with as little formality and technicality as the proper consideration of the matter permit;
- There is no right to representation at the hearing except if the Arbiter considers that a party requires representation to ensure that the hearing is conducted fairly;
- The proceedings must not be open to the public;
- The proceedings must be held in confidence;
- If the hearing is based on a Conduct Complaint made by Council or group of Councillors, the appointed representative must represent Council or group of Councillors at the hearing;

- The Arbiter is not bound by rules of evidence but may inform himself or herself in any way he or she thinks fit;
- The Arbiter is bound by the rules of natural justice;
- The procedure of an Arbiter is otherwise at his or her discretion.

At the hearing of a Conduct Complaint, the Arbiter must provide the applicant and the respondent with an opportunity to be heard.

6.3.19 Determinations by an Arbiter

After an Arbiter has conducted a hearing into a Conduct Complaint, the Arbiter must make a finding:

- That the respondent has contravened a provision or provisions of this Code; or
- That the Conduct Complaint is dismissed.

The Arbiter:

- Must provide the findings and written reasons for the findings to Council together with any recommendations regarding a sanction or sanctions if a contravention of this Code is found; and
- Provide the applicant and respondent with the findings and written reasons for the findings.

6.3.20 Dissolution of Arbitration

An Arbiter's duties cease in respect of a Conduct Complaint upon the Arbiter giving to Council the findings of the arbitration and the reasons for those findings.

6.3.21 Tabling Determinations and Council Sanctions

Where a Conduct Complaint has been rejected by an Arbiter on the grounds that the Conduct Complaint was made for an improper purpose, a copy of that determination and the reasons for that determination given to Council must be:

- Tabled at the next Ordinary Meeting of Council; and
- Recorded in the minutes for that meeting.

Council may, by resolution, or a group of Councillors may, or a Councillor may make a Conduct Complaint against a Councillor who has made, or is party to, a Conduct Complaint which has been made for an improper purpose.

Where it is found that a respondent has contravened a provision or provisions of this Code, a copy of that determination, the reasons for that determination and any recommendations regarding sanctions given to Council must be:

- Tabled at the next Ordinary Meeting of Council; and
- Recorded in the minutes for that meeting.

Council may, by resolution, give any or all of the following written directions to the Councillor who has contravened this Code:

- Direct the Councillor to make an apology in a form or manner specified by Council;
- Direct the Councillor to not attend up to, but not exceeding, two meetings of Council in respect of the next scheduled meetings of Council after the direction is made;
- Direct that, for a period of up to, but not exceeding, two months commencing on a date specified by Council, the Councillor:
 - Be removed from any position where the Councillor represents Council; and
 - Not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

CLOSE OF MEETING

As there was no further business the meeting closed at 7.07pm. Tuesday, 27 February 2018.

Signed: _____
Cr Bruce Harwood (Mayor)

Date of Confirmation: _____.