

**COUNCILLOR**

**CODE OF CONDUCT**

**February 2021**

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## 1. PURPOSE

- 1.1 This Code of Conduct (the **Code**) has been adopted as required by the Local Government Act 2020 (the **Act**) and is binding on all Councillors. It mandates statutory Standards of Conduct expected to be observed by Councillors and sets out other norms and expectations to ensure that the conduct of Councillors is legal, ethical and appropriate at all times.
- 1.2 A Councillor Code of Conduct:
- must include the Standards of Conduct prescribed by the *Local Government (Governance and Integrity) Regulations 2020* (**Regulations**) expected to be observed by Councillors;
  - must include any provisions prescribed by the Regulations;
  - must include provisions addressing any matters prescribed by the Regulations; and
  - may include any other matters which Council considers appropriate, other than any other Standards of Conduct.
- 1.3 The Standards of Conduct with which Councillors are required to comply are specified in Schedule 1 to the Regulations. Failure by a Councillor to comply with the Standards of Conduct constitutes misconduct under the Act, which may be pursued in accordance with the processes set out in this Code.
- 1.4 In accordance with section 30 of the Act, a person elected to be a Councillor is not capable of acting as a Councillor until the person has taken the oath of office specified in the Act, by which Councillors undertake to abide by the Code and uphold the Standards of Conduct.

## 2 COUNCIL'S FRAMEWORK FOR GOOD GOVERNANCE

### Council

- 2.1 The role of Council, as set in section 8 of the Act, is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. Council provides good governance if:
- 2.1.1. it performs its role in accordance with the Overarching Governance Principles in s 9 of the Act; and
  - 2.1.2. the Councillors perform their roles in accordance with s 28 of the Act.
- 2.2 In performing its role, Council may:
- 2.2.1. perform any duties or functions and exercise any powers conferred on it under the Act or any other Act; and
  - 2.2.2. perform any other functions that it considers are necessary to enable that performance.

### Overarching governance principles

- 2.3 Councillors will support the role of Council by ensuring that Council gives effect to the overarching governance principles when participating in Council's decision-making functions.

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- 2.4 The overarching governance principles are set out in s 9(2) of the Act and are as follows:
- 2.4.1. Council decisions are to be made and actions taken in accordance with the relevant law;
  - 2.4.2. priority is to be given to achieving the best outcomes for the municipal community, including future generations;
  - 2.4.3. the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
  - 2.4.4. the municipal community is to be engaged in strategic planning and strategic decision making;
  - 2.4.5. innovation and continuous improvement is to be pursued;
  - 2.4.6. collaboration with other councils and governments and statutory bodies is to be sought;
  - 2.4.7. the ongoing financial viability of Council is to be ensured;
  - 2.4.8. regional, state and national plans and policies are to be taken into account in strategic planning and decision making; and
  - 2.4.9. the transparency of Council decisions, actions and information is to be ensured.

### **Councillors**

- 2.5 The City of Glen Eira is governed by nine Councillors who are democratically elected in accordance with the Act. Collectively, they constitute the Council.
- 2.6 Section 28(1) of the Act states that the role of a Councillor is:
- 2.6.1. to participate in the decision-making of the Council;
  - 2.6.2. to represent the interests of the municipal community in that decision-making; and
  - 2.6.3. to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.
- 2.7 Section 28(2) of the Act states that in performing the role of a Councillor, a Councillor must:
- 2.7.1. consider the diversity of interests and needs of the municipal community;
  - 2.7.2. support the role of the Council;
  - 2.7.3. acknowledge and support the role of the Mayor;
  - 2.7.4. act lawfully and in accordance with the oath or affirmation of office;
  - 2.7.5. act in accordance with the Standards of Conduct;
  - 2.7.6. comply with Council procedures required for good governance.
- 2.8 The role of a Councillor expressly excludes the performance of any responsibilities or functions of the Chief Executive Officer (**CEO**).

**Mayor**

- 2.9 Section 18 of the Act states that the role of the Mayor of a Council is to:
- 2.9.1. chair Council meetings;
  - 2.9.2. be the principal spokesperson for the Council;
  - 2.9.3. lead engagement with the municipal community on the development of the Council Plan;
  - 2.9.4. report to the municipal community, at least once each year, on the implementation of the Council Plan;
  - 2.9.5. promote behaviour among Councillors that meets the Standards of Conduct set out in this Code;
  - 2.9.6. assist Councillors to understand their role;
  - 2.9.7. take a leadership role in ensuring the regular review of the performance of the CEO;
  - 2.9.8. provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and
  - 2.9.9. perform civic and ceremonial duties on behalf of the Council.

**Governance and Administration**

- 2.10 Key governance responsibilities of Council include:
- 2.10.1. developing and adopting a Council Plan which sets out the strategic objectives of Council and strategies for achieving them over at least the next four years, a requirement under section 90 of the Act;
  - 2.10.2. approving the annual Budget;
  - 2.10.3. developing and adopting policies covering key programs and services (including home and community care, maternal and child health, waste management, town planning);
  - 2.10.4. hosting and engaging in numerous community forums, activities and events; and
  - 2.10.5. making representations to the Federal and State governments, parliamentary inquiries, peak local government bodies etc in order to advocate for the interests of the Glen Eira community.
- 2.11 Councillors govern, and managers manage, within a framework which is made up of:
- 2.11.1. the Act and the Local Government Act 1989;
  - 2.11.2. the Council's Local Laws;
  - 2.11.3. this Code; and
  - 2.11.4. other Policies adopted by Council.
- 2.12 The aim is for those who govern and those who manage to work together in order to produce the best outcomes for the community over the longterm.
- 3** (Clause 3 to remain blank)

## **4 STANDARDS OF CONDUCT**

The Standards of Conduct to be observed by Councillors are set out in the Regulations. Failure to comply with the Standards of Conduct constitutes 'misconduct' for the purposes of the Act. If allegations of misconduct cannot be resolved between Councillors informally, they will be referred to the internal arbitration process, which may result in the imposition of sanctions.

### **4.1 Treatment of others**

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor:

- 4.1.1 takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010;
- 4.1.2 supports Council in fulfilling its obligation to achieve and promote gender equality;
- 4.1.3 does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- 4.1.4 in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

### **4.2 Performing the role of Councillor**

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor:

- 4.2.1. undertakes any training or professional development activities that Council decides it is necessary for all Councillors to undertake to effectively perform the role of a Councillor;
- 4.2.2. diligently uses Council processes to become informed about matters which are subject to Council decisions;
- 4.2.3. is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- 4.2.4. represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

### **4.3 Compliance with good governance measures**

A Councillor, in performing the role of a Councillor, to ensure the good governance of Council, must diligently and properly comply with the following:

- 4.3.1. any policy, practice or protocol developed and implemented by the CEO in accordance with s 46 of the Act for managing interactions between members of Council staff and Councillors;
- 4.3.2. the Council expenses policy adopted and maintained by Council under s 41 of the Act;
- 4.3.3. the Governance Rules developed, adopted and kept in force by Council under s 60 of the Act; and

- 4.3.4. any directions of the Minister for Local Government issued under s 175 of the Act (governance directions).

#### **4.4 Councillor must not discredit or mislead Council or public**

In performing the role of a Councillor, a Councillor must:

- 4.4.1. ensure that their behaviour does not bring discredit upon Council; and
- 4.4.2. not deliberately mislead Council or the public about any matter related to the performance of their public duties.

#### **4.5 Standards do not limit robust political debate**

Councillors acknowledge that nothing in the Standards of Conduct is intended to limit, restrict or detract from robust public debate in a democracy. So, while Councillors must always meet these Standards of Conduct, participation in vigorous debate of matters before Council for decision should not be viewed as being inconsistent with them.

### **5 PRINCIPLES FOR COUNCILLOR CONDUCT**

Nothing in Part 5 or 6 of the Code is intended to impose a binding Standard of Conduct on Councillors. These matters are expressed as operating in addition to the Standards of Conduct. Further, nothing in these parts of the Code is intended to modify or derogate from the Standards of Conduct.

Parts 5 and 6 of the Code set out conduct that the Councillors agree will contribute to the good governance, integrity and responsible operation of Council.

#### **5.1 HONESTY**

Councillors have a duty to act honestly. This involves:

- 5.1.1 making decisions solely in the public interest;
- 5.1.2 not acting in order to gain benefits for themselves, their family, friends, outside interests or business interests;
- 5.1.3 avoiding statements (whether oral or in writing) or actions that will or are likely to mislead or deceive; and
- 5.1.4 acting lawfully and in accordance with the trust placed in them as elected representatives.

#### **5.2 INTEGRITY**

Councillors must:

- 5.2.1 act with integrity;
- 5.2.2 impartially exercise their responsibilities in the interests of the Glen Eira community;
- 5.2.3 not improperly seek to confer an advantage or disadvantage on any person;
- 5.2.4 not place themselves under any financial or other obligation to any

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individual, interest group or organisation that might reasonably be thought to influence them in the performance of their duties as Councillors;

- 5.2.5 avoid conflicts between their public duties as a Councillor and their personal interests and obligations;
- 5.2.6 declare any private interests or conflicts of interest as required by the Act relating to their public duties and take steps to resolve any conflicts arising in such a way that protects the public interest; and
- 5.2.7 endeavour to ensure that public resources are used prudently and solely in the public interest.

### 5.3 *OBJECTIVITY*

Councillors are accountable to the public for their decisions and actions. Decisions must be made solely on merit and in accordance with their statutory obligations when carrying out Council business. This includes awarding contracts, determining town planning applications, funding proposals and recommending individuals for rewards, recognition or benefits.

### 5.4 *DILIGENCE*

Councillors must:

- 5.4.1 exercise reasonable care and diligence. This includes reading and familiarising themselves with papers for consideration at Council Meetings and Assemblies of Councillors;
- 5.4.2 not purport to offer or communicate anything which could only be offered or communicated by a collective decision of Council or a decision of Council's delegate; and
- 5.4.3 submit themselves to the lawful scrutiny that is appropriate to the office of Councillor.

### 5.5 *RESPECT*

Councillors must:

- 5.5.1 treat each other and all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other persons; and
- 5.5.2 as a member of Council, respect the decision-making processes of Council which are based on decisions of the majority of Councillors.

### 5.6 *COMMUNITY ENGAGEMENT*

As representatives of the community, Councillors must listen to community views, be responsive to them and adequately communicate the positions and decisions of Council. There may be times when a Councillor, as an individual, disagrees with a majority decision of Council and wants the community to know that.

Although Councillors are entitled to present their own views, in doing so,

each Councillor should nevertheless acknowledge that:

- 5.6.1 as a member of Council, they respect the decision-making process of Council which is based on a decision by the majority of Councillors;
- 5.6.2 an overriding concern ought to be to achieve a balance in the matters that are communicated and to strive to achieve an outcome that presents the Council as effective and cohesive;
- 5.6.3 save where otherwise agreed, the Mayor or, in the absence of the Mayor, the Deputy Mayor and the Chief Executive Officer or nominee are the designated persons authorised to speak to the media and others on behalf of Council;
- 5.6.4 information of a confidential nature must not be communicated;
- 5.6.5 information relating to decisions of Council on approvals and permits ought only be communicated in an official capacity by a designated officer of Council; and
- 5.6.6 information concerning adopted policies, procedures and decisions of Council must be communicated accurately.

Additionally, negotiations should be through proper processes which are consistent with the other principles listed here and within part 6 of this Code. If information is to be made available to some parties to a matter, it should be made available to all parties to the matter. After considering all views, Councillors must decide matters in the best interests of the community as a whole.

#### 5.7 *TRANSPARENCY*

Councillors have a duty to give effect to Council's Public Transparency Policy and the Public Transparency Principles specified in the Act. This includes being as transparent as possible about their decisions and actions, giving reasons for their decisions (where permitted by the Act and Council's Local Law) and restricting information only when it is permitted under the Act or the Public Transparency Policy.

#### 5.8 *TEAMWORK*

- 5.8.1 There are nine members of Council. Councillors acknowledge that Council decisions cannot be made other than by resolutions made at properly constituted Council meetings following fulsome public debate in the Council Chamber. Most decisions of Council are collective decisions. Councillors should contribute towards the Councillor group working its way towards decisions.
- 5.8.2 Councillors' decisions are made in properly constituted Council Meetings. In discussions leading up to such decisions, for example, in Assemblies of Councillors not open to the public, Councillors may explore a range of positions and express a range of views. Those views must not be reported outside those meetings. To do so would discourage full discussion of developing issues and the ability for Councillors to firm up their views as questions are answered and information provided.  
Councillors' accountability is for their vote and statements in support

of their vote at the time that the matter is decided in the properly constituted Council Meeting.

- 5.8.3 It is important that third parties feel they can deal with Council in good faith and that officers can advise Councillors in confidence. In order to achieve this, Councillors should not distribute or disclose the contents of correspondence to or from Council or internal Council working documents, it is for the benefit of Council or otherwise in the public interest and the Councillor group has first agreed.

## **5.9 LEADERSHIP**

Councillors have a duty to promote and support these Councillor Conduct Principles by leadership and example and to act in a way that secures and preserves public confidence in the office of Councillor. To this end, Councillors must not by their actions or statements do anything that may bring the Council into disrepute.

## **6 GENERAL CONDUCT OBLIGATIONS**

### **6.1 FAIRNESS AND EQUITY**

Councillors must consider issues consistently, promptly and fairly by taking into consideration all relevant facts known to them, or all relevant facts of which they should be reasonably aware. Councillors must have regard to the particular merits of each case and must not take irrelevant matters or circumstances into consideration when making decisions.

### **6.2 HARASSMENT AND DISCRIMINATION**

Councillors must not harass, bully, vilify, or discriminate against colleagues, staff members or members of the public. They must discourage others if they do so. This includes harassment and discrimination on the grounds of sex, pregnancy, age, race (including their colour, nationality, descent, ethnic or religious background), political affiliation, marital status, impairment, sexual orientation, gender identity, parental status or status as a carer, breast feeding, physical features, industrial activity or personal association.

Councillors acknowledge that, in addition to possibly constituting a breach of the Standards of Conduct, harassment in the form of bullying or sexual harassment may amount to 'serious misconduct' for the purposes of the Act. Allegations of 'serious misconduct' may be the subject of an application to convene a Councillor Conduct Panel to hear the allegation.

### **6.3 DEVELOPMENT DECISIONS**

Councillors must ensure that decisions on town planning applications are properly made according to law and that parties involved in the development process are dealt with fairly. In considering and determining development applications, Councillors must follow established processes for dealing with the parties.

#### **6.4 DEVELOPING POLICY**

As elected representatives, one of the most important responsibilities of Councillors is to make decisions on priorities, directions and policy. These decisions often involve making choices between competing interests, many of which may be worthy. Councillors must make these decisions in accordance with the principles set out herein, in the best interests of the community as a whole.

#### **6.5 GUIDE TO ETHICAL DECISION-MAKING**

If Councillors are unsure about the ethical issues involving an action or decision, consideration should be given to the following:

- 6.5.1 Is the decision or conduct lawful?
- 6.5.2 Is the decision or conduct consistent with Council's policies, objectives and this Code of Conduct?
- 6.5.3 What will the outcome be for the community, Council, a Councillor(s) and any other parties?
- 6.5.4 Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- 6.5.5 Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

Should there be any uncertainty about the ethical nature of any action or decision, Councillors should seek advice from appropriate people which may include the Chief Executive Officer, the independent members of the Audit Committee, the Municipal Association of Victoria, the Victorian Local Governance Association or the Department of Environment, Land, Water and Planning.

#### **6.6 PUBLIC FUNDS**

Councillors must make decisions concerning public funds impartially, responsibly and prudently.

#### **6.7 USE OF COUNCIL RESOURCES**

Councillors commit to using Council resources effectively, economically and only for proper purposes connected with their role as a Councillor, consistent with relevant Council policies and procedures. In particular, Councillors will:

- 6.7.1 maintain adequate security over Council property, facilities and resources provided by Council to assist in performing their role;
- 6.7.2 comply with any legislation and Council policies and procedures applying to the use of Council property, facilities and resources provided by Council to assist in performing their role;
- 6.7.3 not use Council resources, including the services of members of Council staff, for private purposes, unless authorised to do so, and paying for those resources where required to do so; and
- 6.7.4 not use public funds or resources in a manner that is improper or unauthorised.

**6.8 COUNCILLOR EXPENSES**

Councillors must only claim for expenses in accordance with Council's Expenses Policy, adopted and maintained under s 41 of the Act

**6.9 GIFTS AND BENEFITS**

Councillors will avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from Council.

Councillors will take all reasonable steps to ensure that their immediate family members do not receive gifts or benefits that give rise to the appearance of an attempt to gain favourable treatment.

Councillors will only accept gifts that exceed the gift disclosure threshold (currently, \$500) if:

- 6.9.1 the name and address of the person making the gift are known to them; or
- 6.9.2 at the time when the gift is made, they reasonably believe that the name and address provided are the true name and address of the person making the gift.

Anonymous gifts that exceed the gift disclosure threshold will be disposed of to Council within thirty (30) days of receiving the gift.

Councillors will comply with the Councillor Gift Policy, once adopted, and any other policies and procedures adopted by Council from time to time relevant to the acceptance of gifts.

**6.10 MISUSE OF POSITION OR INFORMATION**

Councillors must not misuse their position:

- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person;
- (b) to cause, or attempt to cause detriment to the Council or another person;
- (c) by making improper use of information acquired as a Councillor;
- (d) by disclosing information that is confidential information;
- (e) by directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff;
- (f) by exercising or performing, or purporting to exercise or perform, a power, duty or function that they are not authorised to exercise or perform;

- (g) by using public funds or resources in a manner that is improper or unauthorised; or
- (h) participating in a decision on a matter in which the Councillor has a conflict of interest.

#### 6.11 PERSONAL DEALINGS WITH COUNCIL

When Councillors deal with Council in their private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) they must not expect, nor will they request preferential treatment in relation to any such private matter. Councillors must avoid any action that could lead Council staff or members of the public to believe that they are seeking preferential treatment.

#### 6.12 CONFIDENTIAL INFORMATION

6.12.1 For the purposes of the Act 'confidential information' means the following information:

- (a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
- (b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
- (c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
- (d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;
- (e) legal privileged information, being information to which legal professional privilege or client legal privilege applies;
- (f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
- (g) private commercial information, being information provided by a business, commercial or financial undertaking that:
  - relates to trade secrets; or
  - if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
- (h) confidential meeting information, being the records of meetings closed to the public under the Act;
- (i) internal arbitration information, being information specified in s145 of the Act;
- (j) Councillor Conduct Panel confidential information, being information specified in s169 of the Act;

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- (k) information prescribed by regulations to be confidential information for the purposes of the Act; and
- (l) information that was confidential information for the purposes of s77 of the Local Government Act 1989.

6.12.2 A Councillor must not intentionally or recklessly disclose information that they know, or should reasonably know, is confidential information.

6.12.3 A Councillor may disclose information that would be considered 'confidential information' if the information that is disclosed is information that Council has determined should be publicly available.

6.12.4 Otherwise, a Councillor may disclose information that the Councillor knows is confidential information in the circumstances permitted by section 125(3) of the Act.

6.12.5 Councillors acknowledge that they will have access to confidential information in many forms and that it will not always be labelled as being 'confidential'. Councillors will take reasonable steps to inform themselves about the confidential nature of any Council information before discussing it outside the organisation.

### **6.13 RELATIONS AND COMMUNICATION WITH COUNCIL STAFF**

Councillors acknowledge and agree that:

- 6.13.1 section 28(3) of the Act states that the role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under section 94A of the Local Government Act 1989 (note that from 1 July 2021, s 94A of the Local Government Act 1989 will be replaced by s 46 of the Act, which will specify the role and functions of the CEO);
- 6.13.2 all staff members are accountable to the Chief Executive Officer and pursuant to section 94A of the Local Government Act 1989 (from 1 July 2021, section 46 of the Act), the Chief Executive Officer is responsible for appointing, directing, managing and dismissing all Council staff and for all other issues that relate to Council staff;
- 6.13.3 while Council may decide whether or not to accept the advice or written reports of Council officers, Councillors cannot direct officers to change their advice or reports and cannot set the priorities or work deadlines of staff except by Council resolution;
- 6.13.4 where Councillors have concerns about the performance of any staff member or service unit, they will direct such concerns to the Chief Executive Officer;
- 6.13.5 Councillor requests for information and advice must be reasonable and accord with Council policies, legislation, resourcing, and Council resolutions;
- 6.13.6 outside Council meetings and briefings, Councillors agree that requests for action, information or advice from Council staff will be limited to contact with the Executive Team, Councillor Secretariat, Managers where appropriate, and in response to contact from other officers. Additionally, the Executive Team may authorise communications with Managers or other senior staff where appropriate on the basis of knowledge, skills or expertise.

### **6.14 OBLIGATIONS DURING MEETINGS**

Councillors must conduct themselves in accordance with Council's Governance Rules during Council and Committee Meetings.

During all properly constituted Council Meetings, Delegated Committee Meetings, Assemblies of Councillors (whether statutory or informal) and other meetings under the auspices of Council, Councillors must conduct themselves constructively in order to assist the Meeting or Assembly to deal with its agenda and transact its business in an orderly way and behave consistently with the principles set out herein. Councillors must respect the Chair, other Councillors, officers, third parties in attendance and any members of the public.

## **7 DISCLOSURE OF INTERESTS AND CONFLICTS OF INTERESTS**

- 7.1 For the purpose of this Code, “conflict of interest” has the meaning specified in the Act.
- 7.2 Councillors must comply with the Governance Rules and all the provisions of sections 126-127 of the Act in regard to conflicts of interest.
- 7.3 In particular, if a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of Council or a delegated committee, a meeting of a community asset committee, or any other meeting held under the auspices of Council, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the Governance Rules (unless any of the exemptions apply).

## **8 INTERPERSONAL DISPUTES BETWEEN COUNCILLORS**

Councillors acknowledge that interpersonal differences and disputes (as distinct from allegations of contravention of the Standards of Conduct) may arise from time to time. Councillors commit to taking reasonable steps to resolve any interpersonal difference or dispute that arises without recourse to formal processes with a view to maintaining effective working relationships.

In resolving interpersonal differences or disputes, Councillors will consider pursuing informal steps, including:

### **8.1 *Informal discussions between Councillors***

Councillors will first consider discussing their interpersonal difference or dispute informally with a view to resolving it.

### **8.2 *Councillor conduct reference group***

Before commencing any formal conflict/dispute resolution process, Councillors who are parties to any disagreement have an individual and collective responsibility to try every avenue possible to resolve such conflict or disputes in-house in a courteous and respectful manner, including escalating concerns to the Councillor Conduct Reference Group which may be convened.

If the interpersonal difference or dispute cannot be resolved informally, the Councillors will consider whether any of the conduct giving rise to it constitutes a contravention of the Standards of Conduct. If they consider that it does, they may choose to pursue it as such under part 8 of this Code.

## **9 INTERNAL DISPUTE RESOLUTION PROCEDURES**

This conflict/dispute resolution process is intended to be used where Councillors have been unable to resolve a conflict or dispute between themselves or others and where the matter involves an alleged contravention of the Standards of Conduct.

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It is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion, debate and voting in meetings of Council and Delegated Committees.

An allegation that the Standards of Conduct have been breached by a Councillor can be made by:

- 9.1.1 Council, by resolution;
- 9.1.2 a Councillor; or
- 9.1.3 a group of Councillors

Where an allegation is made by Council or by a group of Councillors, a single Councillor must be nominated to act as the representative of Council or the group of Councillors (as the case may be) in the internal resolution process. Only that Councillor will be entitled to participate in the internal resolution process.

When an allegation of a breach of the Standards of Conduct is alleged, the Councillors who are party to the allegation undertake to use their best endeavours to resolve it in a courteous and respectful manner without recourse to formal processes under this Code or under the Act. If, after these endeavours have been exhausted, the allegation remains unresolved, either or both of the Councillors may have recourse to any or all of the internal resolution processes set out in this Code.

A conflict or dispute may arise between two individual Councillors, between one Councillor and another Councillor or group of Councillors or between two or more different groups of Councillors. The following conflict/dispute resolution procedure will apply regardless of the dynamics and numbers involved.

Council's conflict resolution procedure comprises:

- 9.1.4 Referring matter to the Councillor Conduct Reference Group (Optional);
- 9.1.5 Internal Mediation (Optional);
- 9.1.6 External Mediation (Optional); and
- 9.1.7 Internal Arbitration Process (Mandatory).

Councillors recognise that the first three phases are voluntary and that they are not obliged to agree to participate in them but will endeavour to resolve allegations without resorting to the mandatory internal arbitration process.

## **9.2 THE APPLICATION**

An application alleging a breach of the Standards of Conduct must:

- 9.2.1 include the:
  - (a) name of the Councillor alleged to have breached the Standards of Conduct;
  - (b) clause(s) of the Standards of Conduct that the Councillor is alleged to have breached;
  - (c) particular misconduct, or behaviour, that the Councillor is alleged to have engaged in that resulted in the breach;  
and

- (d) phase of the internal resolution process being pursued by the Councillor making the allegation at the first instance; and
- 9.2.2 if the application seeks an internal mediation process, be submitted to the Mayor or, if the Mayor is involved in the allegation, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the allegation, the most recent past Mayor (as the case may be); or
- 9.2.3 if the application seeks external mediation or a formal internal arbitration process, be submitted to the Councillor Conduct Officer.

If an application received by the Mayor or the Councillor Conduct Officer does not meet the requirements of this Part 8.2, the Mayor or the Councillor Conduct Officer will return it to the Councillor submitting it with a brief statement of the ways in which the application is deficient.

A Councillor may revise and resubmit to the Mayor or the Councillor Conduct Officer a deficient application, provided that the Councillor submits the revised application no later than 3 months after the alleged breach of the Standards of Conduct occurred (see s 143(3) of the Act).

### 9.3 *INTERNAL MEDIATION*

- 9.3.1 On receiving an application from a Councillor which meets the requirements of Part 9.2 of this Code and which seeks internal mediation, the Mayor or, if the Mayor is involved in the allegation, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the allegation, the most recent past Mayor (as the case may be) will take the following steps:
  - 9.3.1.1 notify the CEO (for the CEO's information only) and provide them with a copy of the application;
  - 9.3.1.2 notify the Councillor the subject of allegation in the application and provide them with a copy of the application;
  - 9.3.1.3 request the Councillor the subject of the application to advise whether they will participate in the internal mediation within 5 days of receiving the application, noting that, if no advice is received, the Councillor will be taken to have declined;
  - 9.3.1.4 if the Councillor agrees to participate in internal mediation, arrange a suitable time and place to convene the internal mediation, to be no later than 5 days from the date of the advice provided under paragraph (c) above;
  - 9.3.1.5 conduct the internal mediation and provide a record of the outcome to the Councillors involved in the application and the CEO no later than 5 days after the discussion takes place.

- 9.3.2 In the event that the internal mediation is not completed in accordance with Part 9.3 of this Code, the internal mediation does not resolve the allegation or the party the subject of the allegation does not comply with the agreed outcomes, the matter may be escalated in accordance with the further dispute resolution phases described below.

#### 9.4 *EXTERNAL MEDIATION*

- 9.4.1 In the event that reconciliation of the dispute is not possible after internal mediation, or the internal mediation is not conducted, a Councillor or group of Councillors may apply to Council's Councillor Conduct Officer for a dispute to be referred for external mediation.
- 9.4.2 On receiving an application from a Councillor which meets the requirements of Part 9.2 of this Code and which seeks external mediation, the Councillor Conduct Officer will take the following steps:
- 9.4.2.1 notify the CEO and provide them with a copy of the application;
  - 9.4.2.2 notify the Councillor the subject of allegation in the application and provide them with a copy of the application;
  - 9.4.2.3 request the Councillor the subject of the application to advise whether they will participate in mediation within 5 days of receiving the application, noting that, if no advice is received, the Councillor will be taken to have declined;
  - 9.4.2.4 if the Councillor agrees to participate in mediation, the Chief Executive Officer will engage the services of an external and independent mediator to conduct the mediation at the earliest available opportunity. Mediators and conciliators can be selected from a listed panel of practitioners maintained by Council's Corporate Counsel;
  - 9.4.2.5 the CEO will, with the cooperation of the Councillors involved in the application, arrange a suitable time and place for the mediation, to be no later than 10 business days from the date of the advice provided under paragraph (c) above;
  - 9.4.2.6 if the mediation is not complete within 5 business days of the date nominated for it to take place, the Councillors will be taken as not having agreed to participate in the mediation, unless both Councillors agree to extend the time for completion;
  - 9.4.2.7 the mediator will document any agreement or outcomes reached at the meeting and copies will be provided to both parties and the CEO. If the dispute remains unresolved, the mediator or conciliator will be required to provide a written report for the parties involved in the dispute and the CEO as to why the process did not result in a resolution.

9.4.3 In the event that the external mediation is not completed in accordance with Part 9.4 of this Code, the external mediation does not resolve the allegation or the party the subject of the allegation does not comply with the agreed outcomes, the matter may be escalated in accordance with the further dispute resolution phases described below.

## 9.5 INTERNAL ARBITRATION

9.5.1 A breach of the Standards of Conduct constitutes 'misconduct' for the purposes of the Act and may be referred to an arbiter for determination. The process for internal arbitration is prescribed by Part 6 of the Act and r 11 of the Regulations.

9.5.2 Internal arbitration may be commenced either after attempting to resolve the matter using the optional phases of the internal resolution process or as the first step in an application.

9.5.3 On receiving an application from a Councillor which meets the requirements of Part 9.2 of the Code, the Councillor Conduct Officer will:

9.5.3.1 refer the application to the Principal Councillor Conduct Registrar;

9.5.3.2 notify the Councillors involved in the application of the referral;

9.5.3.3 advise the Mayor and Chief Executive Officer (for their information) of the application without undue delay;

9.5.3.4 await advice from the Principal Councillor Conduct Registrar about the application;

9.5.3.5 take such steps as are necessary to give effect to the Principal Councillor Conduct Registrar's advice, in accordance with any instructions received.

9.5.4 Councillors recognise that an application for internal arbitration for an allegation of a breach of the Standards of Conduct will only be accepted by the Principal Councillor Conduct Registrar, and an arbiter will only be appointed, if the Principal Councillor Conduct Registrar is satisfied that:

9.5.4.1 the application is not frivolous, vexatious, misconceived or lacking in substance; and

9.5.4.2 there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct.

9.5.5 It is for the Councillor or Councillors submitting an application to ensure that the application meets these requirements.

9.5.6 If the Principal Councillor Conduct Registrar is satisfied that an application for internal arbitration should be accepted, the Principal Councillor Conduct Registrar will appoint an arbiter from a panel list compiled by the Secretary to the Department of Jobs, Precincts and Regions.

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- 9.5.7 In conducting an arbitration the arbiter must:
  - 9.5.7.1 ensure that the parties involved are given an opportunity to be heard;
  - 9.5.7.2 ensure that a Councillor who is a party does not have a right to representation, unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly;
  - 9.5.7.3 conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
  - 9.5.7.4 ensure that the hearing is not open to the public.
- 9.5.8 Additionally, in conducting an arbitration the arbiter:
  - 9.5.8.1 may hear each party to the matter in person or solely by written or electronic means of communication;
  - 9.5.8.2 is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit;
  - 9.5.8.3 may at any time discontinue the hearing if the arbiter considers that the:
    - 9.5.8.3.1 application is vexatious, misconceived, frivolous or lacking in substance;
    - 9.5.8.3.2 Councillor making the application, or representing the group of Councillors making the application, has not responded, or has responded inadequately, to a request for further information.
- 9.5.9 If, at the completion of the internal arbitration process, the arbiter determines that a Councillor has breached the Standards of Conduct, the arbiter may make a finding of misconduct against the Councillor and impose any one or more of the following sanctions:
  - 9.5.9.1 direct the Councillor to make an apology;
  - 9.5.9.2 suspend the Councillor from the office of Councillor for a period specified by the arbiter (not exceeding one month);
  - 9.5.9.3 direct that the Councillor be removed from any position where the Councillor represents Council for a period determined by the arbiter;
  - 9.5.9.4 direct that the Councillor is removed from being the chair of a delegated committee for a period determined by the arbiter; and/or
  - 9.5.9.5 direct a Councillor to attend or undergo training or counselling specified by the arbiter.
- 9.5.10 The arbiter must give a copy of the arbiter's findings and statement of reasons to Council, the applicant and the respondent and the Principal Councillor Conduct Registrar.
- 9.5.11 A copy of the arbiter's decision and statement of reasons must be tabled to the next Ordinary Meeting of Council after the arbiter's findings and statement of reasons are provided. If the arbiter's decision and statement of reasons contain any confidential information, the confidential information must be redacted before it is tabled.

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- 9.5.12 Councillors recognise that a failure to participate in and comply with the internal arbitration process or a direction given to the Councillor by an arbiter is 'serious misconduct' for the purposes of the Act.

### **9.6 SERIOUS MISCONDUCT**

- 9.6.1 Serious misconduct is defined in section 3 of the Act.
- 9.6.2 Allegations of serious misconduct are heard on application by a Councillor Conduct Panel as outlined in section 154 of the Act. Councillor Conduct Panels are established under, and regulated by, Division 7 of Part 6 of the Act.
- 9.6.3 Applications for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by Council (following resolution of Council), a Councillor, a group of Councillors or the Chief Municipal Inspector.
- 9.6.4 Applications for a Councillor Conduct Panel must be made directly to the state-appointed Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149 of the Act.
- 9.6.5 If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, the Councillor Conduct Panel may:
- 9.6.5.1 reprimand the Councillor
  - 9.6.5.2 direct the Councillor to make an apology;
  - 9.6.5.3 suspend the Councillor from office for a period of up to 12 months
  - 9.6.5.4 direct that the Councillor is ineligible to chair a Delegated Committee for a period not exceeding the remainder of the Council's term;
  - 9.6.5.5 require remedial action, including mediation, training or counselling;
  - 9.6.5.6 direct that the Council amend its Councillor Code of Conduct in a particular way or to address a particular issue.

### **10 CARETAKER PERIOD**

- 10.1 The Act prescribes an 'election period' in the lead up to Council elections being the period that starts on the last day on which nominations for that election can be received and ends at 6pm on election day.
- 10.2 Councillors must comply with the provisions of section 69 of the Act and Council's Election Period Policy (see Council's Governance Rules).

### **11 ADOPTION OF THIS CODE**

- 11.1 This Code was adopted by a resolution of Council made at the Council meeting held on 23 February 2021, with a majority of at least two thirds of all Councillors voting in favour of it.
- 11.2 This Code may be reviewed at any time during the Council term but need not be reviewed until after the general election to be held in October 2024.