

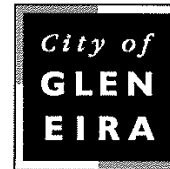


GLEN EIRA CITY COUNCIL

SPECIAL COUNCIL MEETING

MINUTES

21 JUNE 2016



MEMORANDUM

To Councillors

Cc

From Rebecca McKenzie, Chief Executive Officer

Date 6 June 2016

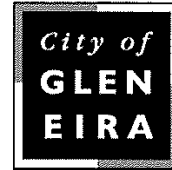
Subject Special Council Meeting – Tuesday, 21 June 2016

In accordance with Section 84(3) of the Local Government Act 1989, you are hereby called to attend a Special Council Meeting of the Glen Eira City Council which has been called by His Worship the Mayor, Cr Neil Pilling, and which will be held on **Tuesday, 21 June 2016 commencing at 7.00 pm** in the Council Chamber, corner Hawthorn Road and Glen Eira Road, Caulfield.

The business to be transacted at this meeting will be to consider adopting a revised Councillor Code of Conduct pursuant to s76C(1) of the Local Government Act 1989. The Act requires Council to adopt an amended Councillor Code of Conduct by 1 July 2016, by resolution at a Special Council meeting held specifically to consider the reviewed Code of Conduct.

A handwritten signature in black ink, appearing to be "RM", written over a light blue horizontal line.

REBECCA MCKENZIE
CHIEF EXECUTIVE OFFICER



MEMORANDUM

To Rebecca McKenzie, CEO

Cc

From His Worship the Mayor, Cr Neil Pilling

Date 6 June 2016

Subject Special Council Meeting – Tuesday, 21 June 2016

In accordance with Section 84(1) of the Local Government Act 1989, I hereby call a Special Council Meeting of the Glen Eira City Council to be held on **Tuesday, 21 June 2016 commencing at 7.00 pm** in the Council Chamber, corner Hawthorn Road and Glen Eira Road, Caulfield.

The business to be transacted at this meeting will be to consider adopting a revised Councillor Code of Conduct pursuant to s76C(1) of the Local Government Act 1989. The Act requires Council to adopt an amended Councillor Code of Conduct by 1 July 2016, by resolution at a Special Council meeting held specifically to consider the reviewed Code of Conduct.


Please call the Special Council Meeting as detailed above in accordance with Section 84(3) of the above Act.

A handwritten signature in black ink, appearing to read "Neil Pilling".

CR NEIL PILLING
MAYOR

The Age

14/06



Glen Eira City Council

**Special Council Meeting —
Tuesday 21 June 2016**

In accordance with Section 84(3) of the Local Government Act 1999, I hereby call a Special Council Meeting at Glen Eira City Council to be held on Tuesday 21 June 2016 in the Council Chamber, corner Glen Eira and Hawthorn Roads, Caulfield, commencing at 7pm.

The business to be transacted at this meeting will be to consider adopting a revised Councilor Code of Conduct pursuant to section 76C(1) of the Local Government Act 1999. The Act requires Council to adopt an amended Councilor Code of Conduct by 1 July 2016, by resolution at a Special Council Meeting held specifically to consider the revised Code of Conduct.

Chief Executive Officer
Rebecca McKenzie

CITY OF GLEN EIRA GLEN EIRA CITY COUNCIL
Special Council Meeting
Tuesday 21 June 2016
Warwick, Seabrook, East Brighton, East Camber, Fairbank, Eastbank, Glenvale, Glen Huntly, Morningside, Moorvale, Ormond, St Albans Park

In accordance with Section 84(3) of the *Local Government Act 1989*, I hereby call a Special Council Meeting at Glen Eira City Council to be held on Tuesday 21 June 2016 in the Council Chamber, corner Glen Eira and Hawthorn Roads, Caulfield, commencing at 7pm.

The business to be transacted at this meeting will be to consider adopting a revised Councillor Code of Conduct pursuant to Section 76C(1) of the *Local Government Act 1989*. The Act requires Council to adopt an amended Councillor Code of Conduct by 1 July 2016, by resolution at a Special Council Meeting held specifically to consider the reviewed Code of Conduct.

Chief Executive Officer
Rebecca McKenzie

Phone: 9524 3333 Email: mail@gleneira.vic.gov.au National Relay Service
Fax: 9523 0336 www.gleneira.vic.gov.au TTY: 18 36 77 44
Speak and Listen: 1800 555 122
www.gleneira.vic.gov.au 03 9524 3333

 GLEN EIRA CITY COUNCIL
Special Council Meeting, Tuesday 21 June 2016
Special Council Meeting, Tuesday 21 June 2016, Council Chamber, Glen Eira City Council, 51 Glen Eira Road, Caulfield, VIC 3162

In accordance with Section 84(3) of the *Local Government Act 1989*, I hereby call a Special Council Meeting at Glen Eira City Council to be held on Tuesday 21 June 2016 in the Council Chamber, corner Glen Eira and Hawthorn Roads, Caulfield, commencing at 7pm.

The business to be transacted at this meeting will be to consider adopting a revised Councillor Code of Conduct pursuant to Section 76C(1) of the *Local Government Act 1989*. The Act requires Council to adopt an amended Councillor Code of Conduct by 1 July 2016, by resolution at a Special Council Meeting held specifically to consider the reviewed Code of Conduct.

**Chief Executive Officer
Rebecca McKenzie**

Phone 9524 3333
Fax 9523 0029

Email mail@glenira.vic.gov.au
www.glenira.vic.gov.au

National Relay Service
TTY 13 36 77 or
Speak and Listen 190 600 727
or www.glenira.vic.gov.au Press letter 03 9524 3333

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**MINUTES OF THE SPECIAL MEETING OF THE
GLEN EIRA CITY COUNCIL HELD ON TUESDAY, 21 JUNE 2016**

1. ACKNOWLEDGEMENT

In the spirit of respect Council acknowledges the people and elders of the Kulin Nation who have traditional connections and responsibilities for the land on which Council meets.

2. APOLOGIES – Cr Delahunty and Cr Esakoff

Crs Lipshutz/Sounness

That the apologies be received and noted.

The motion was put and carried unanimously.

3. OATH OF OFFICE AND DISCLOSURES OF INTERESTS

Councillors are reminded that we remain bound by our Oath of Office to undertake the duties of the office of Councillor in the best interests of the people of the municipal district of Glen Eira and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in us under the Local Government Act or any other Act, to the best of our skill and judgement.

Councillors are also reminded of the requirement for disclosure of conflicts of interest in relation to items listed for consideration on the Agenda, or which are considered at this meeting, in accordance with Sections 77 to 79 of the Local Government Act.

4. PRESENTATION OF OFFICERS REPORTS

4.1 Councillor Code of Conduct

Item 4.1**COUNCILLOR CODE OF CONDUCT**

File No:
Enquiries: Wendy Mason
Legal and Governance Co-ordinator

1. Proposal

To approve amendments to the Councillor Code of Conduct in response to recent changes to the *Local Government Act 1989 (Vic)* (the Act).

2. Community Plan

Governance – to deliver strong local leadership and governance in an open and responsible manner in the best interests of the community.

3. Background

At a Council Assembly on 3 May 2016, Councillors gave consideration to how the Councillor Code of Conduct should be amended and whether it should be replaced by the Model Code of Conduct developed by the MAV. Councillors indicated a wish not to adopt the MAV Code, but to keep the existing Councillor Code of Conduct and amend it to accord with recent changes to the Act.

Attached is Council's existing Councillor Code of Conduct with relevant changes shown tracked (Attachment A to this report).

Attachment B to this report is a "clean" version of the Councillor Code of Conduct with proposed changes accepted into a final version of the Code.

Councillors should also note that a further review of the Councillor Code of Conduct is required within four month of the Council election - that is, before 22 February 2017.

4. Recommendation

That Council consider the proposed changes to the Councillor Code of Conduct attached and approve the changes.

COUNCILLOR CODE OF CONDUCT

Crs Pilling/Sounness

That Council approve the changes to the Councillor Code of Conduct and adopt the revised Code of Conduct.

The MOTION was put and CARRIED unanimously.

The Chief Executive Officer invited all Councillors present to sign the new Councillor Code of Conduct declaring that they 'have been given a copy of the Councillor Code of Conduct of the Glen Eira City Council' and that they 'have read the Code and agree to abide by it.'

All Councillors present signed the Code in the presence of the Chief Executive Officer who witnessed their signing.

Attachment A



COUNCILLORS'

CODE OF CONDUCT

REVISED EDITION

June 2016

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Declaration by Councillor

I, declare

that I have been given a copy of the Councillors' Code of Conduct
of the Glen Eira City Council.

I have read the Code and agree to abide by it.

Signed:

Date:.....

Witnessed by the
Chief Executive Officer:

Date:

1. PURPOSE

- 1.1 This Code of Conduct has been adopted to assist Councillors in meeting their responsibilities, by setting down the standards of conduct for Councillors in the City of Glen Eira so as to ensure that the conduct of Councillors is legal, ethical and appropriate at all times.
- 1.2 As the performance of ~~the~~ Council and the wellbeing of the Glen Eira community are directly affected by the conduct of the City's elected Councillors, the community is entitled to expect that:-
- 1.2.1 ~~The~~ ~~the~~ business of ~~the~~ Council is conducted with efficiency, impartiality transparency and integrity;
- 1.2.2 Councillors obey the spirit and letter of the law in particular, the provisions of relevant statutes, regulations, local laws and instruments; and
- 1.2.3 ~~Responsibility~~ responsibility to the community is always to be given absolute priority over the private interests of Councillors.
- 1.3 This Code is Adopted by Council as required by ~~section 76C~~ of the Local Government Act 1989 ("the Act") and is binding on all Councillors.
- ~~1.3.1.4~~ In accordance with section 63 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 and read this Code and made a declaration stating that they will abide by the Code.

2 INTRODUCTION: THE FRAMEWORK FOR GOOD GOVERNANCE

- ~~2.1 The City of Glen Eira is governed by nine Councillors who are democratically elected in accordance with the Act. Collectively, they constitute the Council.~~
Council
- 2.1 The primary objective of ~~the~~ Council, as set by section 3C(1) of the Act, is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.
- 2.2 The role of ~~the~~ Council, as set out in section 3D(2) of the Act, is:
- acting as a representative government by taking into account the diverse needs of the local community in decision making;*
 - providing leadership by establishing strategic objectives and monitoring their achievement;*
 - maintaining the viability of ~~the~~ Council by ensuring that resources are managed in a responsible and accountable manner;*

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- d. *advocating for the interests of the local community to other communities and governments;*
- e. *acting as a responsible partner in government by taking into account the needs of other communities; and*
- f. *fostering community cohesion and encouraging active participation in civic life.*

Councillors

2.31. The City of Glen Eira is governed by nine Councillors who are democratically elected in accordance with the Act. Collectively, they constitute the Council.

2.4 Section 65(1) of the Act states that the role of a Councillor is:

2.4.1. to participate in the decision-making of the Council;

2.4.2. to represent the local community in that decision-making; and

2.4.3. 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.

2.5 Section 65(2) of the Act states that in performing the role of a Councillor, a Councillor must—

2.5.1. consider the diversity of interests and needs of the local community;

2.5.2. observe principles of good governance and act with integrity; and

2.5.3. provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts; and

2.5.4. participate in the responsible allocation of the resources of Council through the annual budget; and

2.5.5. facilitate effective communication between the Council and the community.

2.6 Section 65(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 Act. The position and duties of the Chief Executive Officer are set out in clause 2.9 of this Code of Conduct.

~~2.4 These roles and activities are supported by the following principles of Councillors working collaboratively by:~~

~~2.4.1 Respecting respecting the right of each Councillor to speak and represent their views on the needs of citizens;~~

~~2.4.2 Speaking speaking well of each other and the Council in public;~~

~~2.4.3 Demonstrating demonstrating commitment to consult with other Councillors, within the decision making framework and with no surprises;~~

~~2.4.4 Respecting respecting the diverse needs, views and nature of the greater Glen Eira community;~~

~~2.4.5 Supporting supporting and having regard for the role of local~~

~~government as an important level of government within Australia;~~

~~2.4.6 Committing committing to a consultative approach to solving problems, developing effective decisions and communicating outcomes that build teamwork and cooperation;~~

~~2.4.7 Demonstrating demonstrating leadership by focusing on issues and refraining from personalising matters particularly in relation to making personal remarks regarding other Councillors; and~~

~~2.4.8 Respecting respecting each Councillor's right to hold different views and engage in constructive debate on matters of difference, while being united in representing Council decisions.~~

Mayor

2.7 Section 73AA of the Act states that the functions of the Mayor of a Council include:

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

2.7.2. acting as the principal spokesperson for the Council;

2.7.3. supporting good working relations between Councillors; and

2.7.4. carrying out the civic and ceremonial duties of the office of Mayor.

Governance and Administration

~~2.5~~ 2.8 Key governance responsibilities of ~~the~~ Council include:

2.8.1. developing and adopting a Council Plan which sets out the strategic objectives of ~~the~~ Council and strategies for achieving them over at least the next four years, a requirement under section 125 of the Act;

2.8.2. approving the annual Budget;

2.8.3. developing and adopting policies covering key programs and services (including home and community care, maternal and child health, waste management, town planning);

2.8.4. hosting and engaging in numerous community forums, activities and events; and

2.8.5. 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.

~~2.6~~ 2.9 Within this framework of strategic leadership, advocacy and representative government, sections 94 and 94A of the Act provide for the establishment of the position and duties of the Chief Executive Officer who is to be responsible for:

2.9.1. establishing and maintaining an appropriate organisational structure for ~~the~~ Council;

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- 2.9.2. ensuring that the decisions of ~~the~~Council are implemented without undue delay;
 - 2.9.3. the day to day management of ~~the~~Council's operations in accordance with the Council Plan;
 - 2.9.4. developing, adopting and disseminating a code of conduct for Council staff;
 - 2.9.5. providing timely advice to ~~the~~Council; and
 - 2.9.6. appointing and managing all Council staff and ~~for~~managing all issues that relate to Council staff.
- 2.~~7~~10 Councillors govern, and managers manage, within a framework which is made up of:
- 2.10.1 the Local Government Act;
 - 2.10.2 the Council's Local Laws;
 - 2.10.3 this Code of Conduct; and
 - 2.10.4 other Policies adopted by ~~the~~Council.
- 2.~~11~~8 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 long term.

3 OATH OF OFFICE

At the commencement of each Ordinary or Special Meeting of ~~the~~Council, the Chair will remind ~~the~~Councillors present that they remain bound by their Oath of Office to undertake the duties of the office of Councillor in the best interests of the people of the municipal district of Glen Eira and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in Councillors under the Local Government Act 1989 or any other Act, to the best of ~~the~~Councillors' -skill and judgement.

4 PRINCIPLES FOR COUNCILLOR CONDUCT

4.1 HONESTY

Councillors have a duty to act honestly. This involves:-

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

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4.2 INTEGRITY

Councillors must:-

- 4.2.1 act with integrity;
- 4.2.2 impartially exercise their responsibilities in the interests of the Glen Eira community;
- 4.2.3 not improperly seek to confer an advantage or disadvantage on any person;
- 4.2.4 not place themselves under any financial or other obligation to any individual, interest group or organisation that might reasonably be thought to influence them in the performance of their duties as Councillors;
- 4.2.5 avoid conflicts between their public duties as a Councillor and their personal interests and obligations;
- 4.2.6 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
- 4.2.7 endeavour to ensure that public resources are used prudently and solely in the public interest.

4.3 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 ~~of~~ contracts, determining town planning applications, funding proposals and recommending individuals for rewards, recognition or benefits.

4.4 DILIGENCE

Councillors must:-

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

4.5 RESPECT

Councillors must:

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4.5.1 ~~Councillors must~~ 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-~~

4.5.2 ~~a~~As a member of ~~the~~ Council, respect the decision making processes of ~~the~~ Council which are based on decisions of the majority of ~~the~~ Councillors.

4.6 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 ~~the~~ Council. There may be times when a Councillor, as an individual, disagrees with a majority decision of ~~the~~ 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:

4.6.1 as a member of ~~the~~ Council, they respect the decision making process of ~~the~~ Council which is based on a decision by the majority of ~~the~~ Councillors;

4.6.2 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;

4.6.3 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 ~~the~~ Council;

4.6.4 information of a confidential nature must not be communicated;

4.6.5 information relating to decisions of ~~the~~ Council on approvals and permits ought only be communicated in an official capacity by a designated officer of ~~the~~ Council; and

4.6.6 information concerning adopted policies, procedures and decisions of ~~the~~ Council must be communicated accurately.

Additionally, negotiations should be through proper processes which are consistent with the other principles listed here and within section 5 of this Code. ~~Relevant~~ ~~if~~ information ~~should not~~ ~~is to~~ be made available to some parties to a matter, it should be made available to all parties to the matter but not others. After considering all views, Councillors must decide matters in the best interests of the community as a whole.

4.7 TRANSPARENCY

Councillors have a duty to be 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 the wider public interest clearly demands.

4.8 TEAMWORK

4.8.1 There are nine members of ~~the~~ Council. Most decisions of ~~the~~ Council are collective decisions. Councillors should contribute towards the Councillor group working its way towards decisions.

4.8.2 Councillors' decisions are made in ~~Statutory properly constituted~~ Council Meetings. In discussions leading up to such decisions, ~~for example, in Assemblies of Councillors Meetings~~ 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 Statutory properly constituted Council Meeting.

4.8.3 It is important that ~~outside 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 unless those documents have not been designated as confidential, it is for the benefit of Council or otherwise in the public interest and the Councillor group has first been notified agreed.

4.9 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.

5 GENERAL CONDUCT OBLIGATIONS

5.1 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.

5.2 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.

5.3 DEVELOPMENT DECISIONS

Councillors must ensure that decisions on town planning applications are properly made according to law and that parties involved in the development

Code of Conduct 2016

process are dealt with fairly. In considering and determining development applications, Councillors must follow established processes for dealing with the parties.

5.4 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.

5.5 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:

5.5.1 Is the decision or conduct lawful?

5.5.2 Is the decision or conduct consistent with Council's policies, ~~and with Council's~~ objectives and ~~the~~ this Code of Conduct?

5.5.3 What will the outcome be for the community, ~~the~~ Council, a Councillor(s) and any other parties?

5.5.4 Do these outcomes raise a ~~Conflict-conflict~~ of ~~Interest-interest~~ or lead to private gain or loss at public expense?

5.5.5 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 Transport, Planning and Local Infrastructure.

5.6 PUBLIC FUNDS

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

5.7 COUNCILLOR EXPENSES

Councillors must:

5.7.1 only claim for expenses that are reasonable bona fide Councillor out-of-pocket expenses incurred while performing duties as a Councillor or in a manner prescribed by ~~the~~ Council;

5.7.2 apply in writing to ~~the~~ Council for reimbursement of expenses;

5.7.3 use Council facilities and equipment economically and efficiently;

- 5.7.4 except in accordance with any policy of ~~the~~ Council, not use Council facilities, equipment and resources for personal benefit or for the benefit of any other person or organisation; and
- 5.7.5 ensure that Council facilities and equipment are kept separate from similar resources that may be used in a Councillor's private business activities.

In making any claim for reimbursement of expenses, Councillors acknowledge that section 75(2) of the Act defines *duties as a Councillor* as duties performed by a Councillor that are necessary or appropriate for the purposes of achieving the Council's objectives, ~~of the Council~~ having regard to any relevant Act, regulation, Ministerial guidelines or Council policies.

5.8 MISUSE OF POSITION OR INFORMATION

5.8.1. 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 within the meaning of section 77(2) of the Act;
- (e) by directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E of the Act;
- (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; or
- (g) by using public funds or resources in a manner that is improper or unauthorised.

5.8.2. 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.

5.9 CONFIDENTIAL INFORMATION

- 5.9.1 Information is confidential as provided under section 77 of the Act, where the information:
 - (a) ~~The information~~ was provided to ~~the~~ Council or a Special Committee in relation to a matter considered in a meeting

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closed to members of the public in accordance with section 89(2) of the Act, and ~~the~~ Council or ~~the~~ Special Committee has not passed a resolution that the information is not confidential; or

- (b) ~~The information~~ has been designated as confidential information by a resolution of ~~the~~ Council or ~~a~~ Special Committee which specifies the relevant grounds applying under section 89(2) of the Act and ~~the~~ Council or the Special Committee has not passed a resolution that the information is not confidential; or
- (c) ~~The information~~ has been designated in writing as confidential information by the Chief Executive Officer specifying the ground(s) applying under section 89(2) of the Act and ~~the~~ Council has not passed a resolution that the information is not confidential.

5.9.2 A Councillor must not disclose information that they know, or should reasonably know, is confidential information, except in the circumstances permitted by section 77(1A) of the Act.

~~5.10 — COUNCILLORS AND THE MAYOR~~

~~The governance of the Council is the responsibility of the Councillors collectively. The Mayor is “first among equals”.~~

~~While the Mayor does not have executive authority, councillors Councillors acknowledge and respect that the Mayor has been elected by the Councillors to~~

~~5.10.1 — lead the group; and~~

~~5.10.2 — represent the Council.~~

~~Accordingly, Councillors agree to co-operate with the Mayor of the day in the fulfilment of the Mayoral leadership role.~~

5.11 RELATIONS WITH COUNCIL STAFF

Councillors acknowledge that:

5.11.1 ~~that~~ section 95 of the Act requires Council staff to

- (a) act impartially,
- (b) act with integrity including avoiding conflicts of interest,
- (c) accept accountability for results; and
- (d) provide responsive service;

5.11.2 ~~that~~ all staff members are accountable to the Chief Executive Officer. Councillors respect that, pursuant to section 94A of the Act, ~~that~~ 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;

5.11.3 ~~that~~ a professional and well-managed team of managers and staff is essential to the wellbeing of the community; and

5.11.4 ~~that~~ the Chief Executive Officer is under an obligation to provide timely advice to ~~the~~ Council and implement Council decisions without undue delay and that reports written by officers are based on their professional knowledge and skill. While Council may decide whether to accept the advice that is submitted, Councillors cannot direct officers to change their reports.

Where Councillors have concerns about the performance of any staff member or service unit, they acknowledge that such concerns should be directed to the Chief Executive Officer.

5.12 OBLIGATIONS DURING MEETINGS

Councillors must conduct themselves in accordance with Council's Local Law in relation to Meeting Procedures during Council and Committee Meetings.

During all properly constituted Council-related meetings and assemblies of Councillors (whether statutory or informal), 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, ~~other third~~ parties in attendance and any members of the public.

6 DISCLOSURE OF INTERESTS AND CONFLICTS OF INTERESTS

s. 79

6.1 For the purpose of this Code, "conflict of interest" has the meaning specified in the Act.

6.2 Councillors must comply with all the provisions of sections 77A-79B and 80A of the Act in regard to conflicts of interest, in particular:

6.2.1 ~~(1)~~ If a Councillor has a conflict of interest in a matter which is to be, or is likely to be, considered or discussed at a meeting of the Council or a ~~s~~Special ~~e~~Committee, the Councillor must:

~~(a)~~ if he or she intends to be present at the meeting, disclose the conflict of interest in accordance with ~~subsection (2); section 79(2) of the Act, by either:~~

~~(b)~~ if he or she does not intend to be present at the meeting, disclose the conflict of interest in accordance with ~~subsection (3).~~

~~(2)~~ A Councillor who has a conflict of interest and is attending the meeting of the Council or special committee must make a full disclosure of that interest:

~~(a)~~ by either:

- (a) advising ~~the~~ Council or ~~the s~~Special ~~e~~Committee at the meeting of the details required under section 79(2)(b) and (c) of the Act~~paragraphs (b) and (c)~~ immediately before the matter is considered at the meeting; or
- (b) ~~(ii)~~—advising the Chief Executive Officer in writing of the details required under section 79(2)(d) of the Act~~under paragraphs (b) and (c) before the meeting; and~~

~~6.2.2~~ The A Councillor who has a conflict of interest in a matter which is to be, or is likely to be, considered or discussed at a meeting of the Council or a Special Committee must:

- (a) ~~(b)~~—classifying the type of interest that has given rise to the conflict as either—
 - ~~(i)~~—(i)—a direct interest; or
 - ~~(i)(ii)~~—(ii)—an indirect interest, and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, or 78D; and
- ~~(b)~~ describing the nature of the interest; ~~and~~

6.2.3(d) ~~if~~ the Councillor advised the Chief Executive Officer of the details under paragraph (a)(ii) in writing of their conflict of interest under section 79(2)(a)(ii) of the Act before the meeting, the Councillor must disclose ~~make a disclosure of~~ the class of interest only to the meeting immediately before the matter is considered. ~~at the meeting.~~

~~6.2.4~~ (3) ~~A Councillor who has a conflict of interest and will not be attending the relevant meeting of Council or the sSpecial eCommittee must make a full disclosure of is urged, in any event, to disclose that interest to the Chief Executive Officer or Chairperson that:~~

- ~~(a)~~ ~~is in writing; and~~
- ~~(b)~~ ~~classifying~~ies the type of interest that has given rise to the conflict as either—
 - ~~(i)~~—a direct interest; or
 - ~~(ii)~~—an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, or 78D; and
- ~~(c)~~ ~~describ~~inges the nature of the interest.

~~(4)~~6.2.45 While the matter in respect of which a Councillor has disclosed a conflict of interest is being considered or any-voted on, is taken in relation to the matter, the Councillor must leave the room and notify the Mayor or the Chairperson of the sSpecial eCommittee that he or she is doing so and remain outside the room and any gallery or other area in view or hearing of the room.

7 INTERNAL DISPUTE RESOLUTION PROCEDURES ~~DISPUTE RESOLUTION~~

~~7.1— Councillors commit to working effectively together at all times and to develop and maintain constructive working relationships. In the event that Councillors are unable to resolve an interpersonal conflict between them that unduly affects the operation of the Council, the parties to the dispute agree to work together in good faith to resolve the dispute.~~

~~7.2— The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.~~

~~7.3— The Mayor, as the leader elected by the Council, will work to facilitate good relationships among Councillors and between Councillors, the Chief Executive Officer and Council staff.~~

~~If a dispute arises among Councillors, the Mayor will facilitate the resolution of the dispute by working with the parties to the dispute, and may recommend the engagement of a mediator if appropriate.~~

~~If the Mayor is a party to the dispute, the parties will nominate another Councillor to facilitate a resolution of the dispute by working with the parties to the dispute, including recommending the engagement of a mediator if appropriate.~~

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 or where the situation is unduly affecting the operation of Council. 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 Special Committees.

7.1 DISPUTES BETWEEN COUNCILLORS

7.1.1 Councillors are mindful that having and expressing differing and sometimes opposing views is a normal function of the process of democratic local government. Sharing and expressing these different views leads to informed and well considered debate. All Councillors have the right to influence the decisions made by Council through this debate.

7.1.2 While all Councillors will endeavour to foster and encourage positive and productive interactions at all times, conflict and/or disputes may emerge when the differences between Councillors become personal or the behaviour of Councillors towards each other is of a nature that threatens the effective operation of Council's decision-making process.

7.1.3 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 to prevent them from further escalating.

7.1.4 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.

7.1.5 Council's conflict resolution procedure **comprises:**

- (a) Internal Mediation (Optional);
- (b) External Mediation (Optional); and
- (c) Internal Resolution Procedure by Independent Arbiter (Mandatory).

7.2 INTERNAL MEDIATION (OPTIONAL)

7.3.1 If **an informal resolution of a dispute** between Councillors is unsuccessful or not implemented, a formal request for internal mediation must be made to the Mayor who will facilitate "formal" discussions between the parties in dispute **as soon as practicably possible**. The Mayor will **advise** the Chief Executive Officer of the situation.

7.3.2 The request must be made in writing, indicating the reason for the dispute, the names of those involved, provisions of this Code that may have been breached, any evidence to support the allegation and, if the request is being made by a group of Councillors, the name of the Councillor representative.

7.3.3 The Mayor will convene a meeting at the earliest available opportunity and will provide guidance during that meeting as to what is expected of a Councillor under the Act in relation to roles, responsibilities and conduct. The Mayor will document any outcomes and will provide copies to all parties.

7.3.4 In the event that one party does not comply with the agreed outcomes, the other party has the option for further action as described **below**.

7.3.5 In the event that a conflict or dispute involves the Mayor, the Deputy Mayor shall perform the role of the Mayor in facilitating discussion between the parties in dispute and liaise with the Chief Executive Officer.

7.4 EXTERNAL MEDIATION (OPTIONAL)

7.4.1 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 Principal Conduct Officer for a dispute to be referred for external mediation.

7.4.2 This request must be made in writing, indicating the reason for the dispute, the names of those involved, provisions of this Code that may have been breached, any evidence to support the allegation and, if the request is being made by a group of Councillors, the name of the Councillor representative. The applicant must also notify the other

party of the request and provide them with a copy of the application at the same time the application is made to the Principal Conduct Officer.

7.4.3 The Principal Conduct Officer will ascertain whether or not the other party will attend external mediation and, if they decline, they must provide reasons for doing so to the Principal Conduct Officer. These reasons may be taken into account if the matter is the subject of an application for a Councillor Conduct Panel at a later stage. Declining to attend external mediation does not constitute a breach of this Code.

7.4.4 If the other party agrees to participate in external mediation, the Principal Conduct Officer will advise the applicant, the Mayor and the Chief Executive Officer accordingly. 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](#).

7.4.5 The mediator will document any agreement or outcomes reached at the meeting and copies will be provided to both parties. In the event that one party has not agreed to mediation, one party does not comply with the agreed outcomes or mediation does not reach a satisfactory outcome, either party has the option for further action as described [below](#).

7.4.6 If the dispute remains unresolved, the mediator or conciliator will be required to provide a written report for Councillors and the parties involved in the dispute as to why the process did not result in a resolution.

7.5 INTERNAL RESOLUTION PROCEDURE BY INDEPENDENT ARBITER

7.5.1 If a conflict or dispute arises from an alleged contravention or breach of this Code and has not been resolved through any of the previous processes, then a Councillor or group of Councillors ([applicant](#)) may apply to Council's [Principal Conduct Officer](#) for internal resolution by an independent arbiter alleging that a Councillor (or Councillors) ([respondent](#)) has contravened this Code.

7.5.2 This application must be made in writing, specify the name of the Councillor alleged to have contravened this Code, specify the provisions of this Code that may have been contravened, any evidence to support the allegation and, if the request is being made by a group of Councillors, the name of the Councillor representative.

7.5.3 An application for an internal resolution procedure cannot be made during a Council Election Period and any procedure in progress will be suspended for the duration of an Election Period.

7.5.4 On receiving an application, the Principal Conduct Officer will:

- (a) advise the Mayor and Chief Executive Officer of the application without undue delay;
- (b) provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application;

- (c) contact the President of the Law Institute of Victoria to appoint an arbiter in accordance with clause 7.5.5;
- (d) obtain from the proposed arbiter written advice that they have no conflict of interest in relation to the Councillors involved;
- (e) notify the parties of the name of the proposed arbiter and provide them with the opportunity (two working days) to object to the person proposed to be the arbiter;
- (f) consider the grounds of any objection and appoint the proposed arbiter or request the President of the Law Institute of Victoria to appoint another arbiter;
- (g) provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired;
- (h) after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
- (i) attend the hearing(s) and assist the arbiter in the administration of the process

7.5.5 The Principal Conduct Officer will request the President of the Law Institute of Victoria to appoint an arbiter who is suitably independent and able to carry out the role of arbiter fairly.

7.5.6 The role of the arbiter is to:

- (a) consider applications alleging a contravention of this Code by a Councillor;
- (b) make findings in relation to any application alleging a contravention of this Code which the arbiter must give to Council;
- (c) give a written statement of reasons supporting the findings to Council; and
- (d) recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened this Code.

7.5.7 In considering an application alleging a contravention of this Code, an arbiter will:

- (a) in consultation with the Principal Conduct Officer, fix a time and place to hear the application;
- (b) authorise the Principal Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing;
- (c) hold as many meetings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing;
- (d) have discretion to conduct the hearing(s) as he or she deems fit while ensuring that the hearing(s) are conducted with as little formality and technicality as due and proper consideration of the application allows;
- (e) ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
- (f) consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application;

- (g) ensure that the rules of natural justice are observed and applied in the hearing of the application; and
- (h) ensure that the hearing(s) are closed to the public.

7.5.8 Where an application to have legal representation is granted by an arbiter, the costs of the Councillor's legal representation are to be borne in their entirety by the Councillor.

7.5.9 An arbiter:

- (a) may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened this Code; or
- (b) may find that a Councillor who is a respondent to an internal resolution procedure has contravened this Code; and
- (c) will suspend consideration of an internal resolution procedure during the Election Period for a general election.

7.5.10 The arbiter is to give a copy of his or her findings and statement of reasons to Council, the applicant and the respondent. At the same time that the arbiter provides the findings and statement of reasons, he or she shall, where a Councillor has been found to have contravened this Code, recommend an appropriate sanction or sanctions for the contravention for consideration by Council.

7.5.11 A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next Ordinary Meeting of Council for its consideration. If an arbiter has found that a contravention of this Code has occurred, Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor:

- (a) direct the Councillor to make an apology in a form or manner specified by Council;
- (b) direct the Councillor to not attend up to, but not exceeding, two meetings of Council (in respect of the next scheduled meetings of Council);
- (c) direct that, for a period of up to, but not exceeding, two months on a date specified by Council, the Councillor:
 - (i) be removed from any position where the Councillor represents Council; and
 - (ii) to not chair or attend any Advisory Committee or Special Committee meeting or an Assembly of Councillors or any other meeting specified in the direction.

7.5.12 A Councillor who does not participate in the internal resolution procedure may be guilty of misconduct.

7.6 COUNCILLOR MISCONDUCT

7.6.1 Councillor misconduct is defined in section 3 of the Act (see misconduct, serious misconduct and gross misconduct). Allegations of misconduct are heard on application by a Councillor Conduct Panel as

outlined in section 81B of the Act and Councillor Conduct Panels are established under, and regulated by, Division 1D of the Act.

7.6.2 Applications for a Councillor Conduct Panel to make a finding of misconduct against a Councillor may be made by Council (following resolution of Council), a Councillor or a group of Councillors.

7.6.3 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.

7.6.4 Applications for a Councillor Conduct Panel must be made directly to the state-appointed Principal Councillor Conduct Registrar.

7.6.5 Depending on the allegation and outcome, a Councillor Conduct Panel may:

- (a) discipline a Councillor by reprimand, direct an apology or require the Councillor to take up to two months leave of absence;
- (b) direct that the Councillor is ineligible to take up the position of Mayor for a period specified by the Panel;
- (c) require remedial action, including mediation, training or counselling;
- (d) suspend the Councillor from office for a period not exceeding six months; or
- (e) refer a matter to VCAT if the Panel considers gross misconduct has been conducted by a Councillor.

8 CARETAKER PERIOD

8.1 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.

8.2 Councillors must comply with the provisions of sections 55D and 93A of the Act (Appendix B) and ~~the~~ Council's Election Period Policy (Appendix C).

Appendix A – Section 76B, 76BA & 76D(1)– Rules of Conduct

s. 76B

76B Primary principle of Councillor conduct

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must:

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.

76BA General Councillor conduct principles

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must:

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, council officers and other persons;
- (d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;
- (g) 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.

76D Misuse of position

- (1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.

Penalty: 100 penalty units.

Appendix B – Section 93A – Conduct of Council

93A Conduct of Council during election period

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- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.
- (6) In this section, a major **policy decision** means any decision:
 - (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
 - (b) to terminate the appointment of a Chief Executive Officer under section 94;
 - (c) to enter into a contract the total value of which exceeds whichever is the greater of—
 - (i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
 - (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

Appendix C to Councillors' Code of Conduct

Policy ID Number:1.3

Election Period Policy

Date first adopted: 15 March 2016 Amended and Adopted:	Version: 1 Next review date: Not later than 12 months before the commencement of each subsequent general election period.	Status: New
Position Title of Responsible Business Unit Manager:	Corporate Counsel	

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1. TITLE

Election Period Policy

2. OBJECTIVE

To ensure:

- (a) compliance with the provisions of the *Local Government Act 1989* dealing with the election period during the lead up to local government elections;
- (b) Council does not make inappropriate decisions or use resources inappropriately during the election period;
- (c) there are limits on public consultation and the scheduling of Council events; and
- (d) access to information held by Council is made equally available and accessible to candidates during the election.

This policy forms part of the Glen Eira City Council Code of Conduct for Councillors.

3. DEFINITIONS AND ABBREVIATIONS

Term	Meaning
Election Period	the period before an election day that: (a) starts on the last day on which nominations for that election can be received; and (b) ends at 6 p.m. on election day.
Electoral Matter	Matter intended or likely to affect voting but not including any electoral material produced by or on behalf of the returning officer for the purposes of an election. Matter is to be taken to be intended or likely to affect voting if it contains an express or implicit reference to, or comment on— (a) the election; or (b) a candidate in the election; or (c) an issue submitted to, or otherwise before, voters in connection with the election

4. INTRODUCTION

- 4.1 Governments at all levels have long-standing caretaker conventions. They aim to provide assurance that public resources will not be used for electoral purposes and that major decisions will not be made during the period leading up to an election day which pre-empt incoming governments.
- 4.2 The *Local Government Act 1989 (Vic)* (the Act) includes a number of provisions relevant to Election Periods and in 2015, the Act was amended by the insertion of section 93B which requires Council to adopt an election period policy. Relevant extracts of the Act are attached as Attachment 2 to this policy.
- 4.3 Section 93B states that an election period policy must include:

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- procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the Election Period before a general election;
- limits on public consultation and the scheduling of Council events; and
- procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.

4.4 Other key sections of the Act imposing obligations or prohibitions during the Election Period include:

- Section 93A, which prohibits a council, special committee or delegate from making 'major policy decisions' during an Election Period. The section includes a mechanism for seeking a Ministerial exemption from the general prohibition against major policy decisions in extraordinary circumstances.
- Section 55D, which prohibits certain publications during the election period; and
- Section 76D, which imposes severe penalties on Councillors who misuse their positions for private benefit. The section identifies improper use of public resources as a misuse of position and this includes electioneering.

4.5 In accordance with the requirements of the Act and recommended practice, the following arrangements apply during the Election Period.

5. POLICY

5.1 Major Policy Decisions

5.1.1 The Council, special committees and delegates must not make any Major Policy Decisions during the Election Period. Major Policy Decisions are decisions:

- that relate to the employment or remuneration of a Chief Executive Officer under section 94 of the Act, other than a decision to appoint an acting Chief Executive Officer;
- to terminate the appointment of a Chief Executive Officer under section 94 of the Act;
- to enter into a contract the total value of which exceeds whichever is the greater of \$150,000 (for contracts for the purchase of goods and services) or \$200,000 (for contracts for the carrying out of works)¹ and one per cent of Council's revenue from rates and charges in the preceding financial year²;
- to exercise any power under section 193 of the Act if the sum assessed under section 193(5A) of the Act in respect of the

¹ These amounts were fixed pursuant to an Order in Council dated 5 August 2008.

² For the 2014/2015 financial year, 1% of Council's revenue from rates and charges was approximately \$910,000.00

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proposal exceeds whichever is the greater of \$100,000 or one per cent of the Council's revenue from rates and charges in the preceding financial year.

- 5.1.2 Agendas for Council meetings held during the Election Period must contain a certification by the Chief Executive Officer that no agenda item involves the making of a Major Policy Decision.
- 5.1.3 A Major Policy Decision made in contravention of section 93A is invalid. Any person who suffers any loss or damage as a result of acting in good faith based on a Major Policy Decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.

5.2 Inappropriate Decisions

During the Election Period Council must not make any decisions that:

- would affect voting in an election; or
- could reasonably be made after the election.

5.3 Council Resources and Misuse of Position

- 5.3.1 Council resources, including land lines and mobile telephones, computers and email accounts, offices, meeting rooms, secretarial support, equipment and stationery will be used exclusively for normal Council business and must not be used in connection with any candidate's election campaign.
- 5.3.2 Photographs or images taken by or on behalf of Council must not be used for the purposes of electioneering.
- 5.3.3 Glen Eira City Council's logo, branding and letterhead must not be used in connection with a candidate's election campaign.
- 5.3.4 Reimbursements of Councillors' out-of-pocket expenses must only apply to costs that have been incurred in the performance of normal Council duties, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign.
- 5.3.5 Council officers must not assist in preparing Electoral Matter or any related activity.
- 5.3.6 Councillors and members of a special committee must not misuse their position to gain an advantage or cause detriment to another person at any time in accordance with section 76D of the Act, including by:
 - making improper use of information acquired as a result of their position;
 - disclosing confidential information;
 - directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E;
 - exercising or performing, or purporting to exercise or perform, a power, duty or function that they are not authorised to exercise or perform (and for this reason Councillors must ensure that they do not make electoral promises that cannot be kept);

- using public funds or resources in a manner that is improper or unauthorised; and
- failing to disclose a conflict of interest as required by the Act.

5.4 Publications and Advertising

5.4.1 As set out in section 55D of the Act, the Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the Election Period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.

5.4.2 The Chief Executive Officer must not certify an advertisement, handbill, pamphlet or notice containing Electoral Matter during the Election Period unless it only contains information about the election process.

[Note that the Act imposes a penalty of 60 penalty units for breaching this obligation.]

5.4.3 The Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under the Act to a Council officer.

5.4.4 A Councillor or Council officer must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an advertisement, handbill, pamphlet or notice containing Electoral Matter during the election period on behalf of, or in the name of, the Council or a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer as required by the Act.

[Note that the Act imposes a penalty of 60 penalty units for breaching this obligation.]

5.4.5 Prohibited publications do not include the publication of any document published before the commencement of the Election Period or the publication of any document required to be published under any Act or regulation.

5.4.6 Council follows the recommended practice of refraining from all publication activity during the Election Period, however, where the printing, publishing or distribution of a document is essential for the conduct of Council's operations, and where that document is an "advertisement, handbill, pamphlet or notice" (thus caught by Section 55D), the Chief Executive Officer will certify the document following the procedure set out in Attachment 1 to this policy: Election Period Certification Procedure.

5.4.7 Any publications appearing via social media tools, including on Facebook, Twitter and You Tube, must meet the requirements of this policy and the Chief Executive Officer must certify relevant documents in the terms set out above.

5.4.8 It should be noted that there is no requirement for the section 55D certification to appear on the face of a publication. Nor is there a requirement for publications to be individually certified; categories of publications can be certified by the Chief Executive Officer in accordance with section 55D of the Act.

5.4.9 In accordance with recommended practice, Council must, as far as is practicable and taking into account part 5.4.5 above, restrict details about Councillors on Council's website. Material that could be viewed as Electoral

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Matter on social media pages operated by Council will not be permitted to be posted during the Election Period. Council officers will review comments to be posted on Council's social media pages during the Election Period prior to posting.

- 5.4.10 Councillors will be reminded of the legislative restrictions and this policy immediately prior to the Election Period.
- 5.4.11 Councillors who are standing for re-election must ensure that their own campaign material (to be prepared at their expense) does not bear any reference or inference that such material is from Council, or is supported or endorsed by Council and must not bear any Council identification such as logos, design schemes or colour schemes.
- 5.4.12 Council officers may not make any public statement that could be construed as influencing the election. This does not include statements of clarification that are approved by the Chief Executive Officer.
- 5.4.13 Council publicity during the Election Period will be restricted to promoting normal Council activities. Council-funded publicity will not feature Councillors except the Mayor when representing Council in an official capacity. Where a publicity campaign is deemed necessary for a Council service or function (e.g. vaccinations), it must be approved by the Chief Executive Officer.
- 5.4.14 Public Questions at Council Meetings, which would normally be recorded in the Minutes, should avoid Electoral Matter and a question may be ruled out of order on that ground.
- 5.4.15 Any requests for media advice or assistance from Councillors during the Election Period must be decided by the Chief Executive Officer or the Chief Executive Officer's delegate. In any event, no media advice or assistance will be provided in relation to election campaign matters, or in regard to publicity that involves specific Councillors.

5.5 Election Signs on Public Land

Election signs and notices, posters or advertisements containing Electoral Matter must not be erected, posted or displayed on land, buildings or structures owned or managed by Council except by the Victorian Electoral Commission in connection with the conduct of the election.

5.6 Public Consultation

- 5.6.1 No public consultation will be undertaken during the Election Period unless prior approval is obtained from the Chief Executive Officer.
- 5.6.2 Public consultation in this part means a process involving an invitation and opportunity for the public to comment or provide an opinion on a matter, proposed action or proposed policy.
- 5.6.3 The Chief Executive Officer will consider the following factors when deciding whether to approve public consultation:
 - whether the consultation could reasonably take place after the election;
 - whether conducting the consultation could affect voting in the election;
 - whether risks of influencing the election can be reduced or avoided;

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- whether special circumstances exist which make the consultation necessary during the election period; and
- the financial and other repercussions of postponing the consultation until after the election.

5.6.4 Where public consultation during an Election Period is approved, the results of that consultation will not be published or disclosed until after the Election Period except where approved by the Chief Executive Officer.

5.6.5 Public consultations in this part do not include consultations required by any Act or regulation which are conducted in the normal course of Council operations, such as public consultation on planning applications required under the *Planning and Environment Act 1987 (Vic)*.

5.7 Council Events

5.7.1 Council organised events and functions held during the Election Period will be reduced to only those essential to the operation of the Council or which are held to mark national celebrations and which can't reasonably be held at other times (eg. Seniors Festival).

5.7.2 Publications promoting any Council events or functions held during the Election Period must comply with part 5.4 of this policy.

5.7.3 Councillors are able to continue to attend meetings, events and functions in the course of performing their duties as a Councillor. Speeches at Council functions should not contain any express or implied reference to Electoral Matters.

5.7.4 Councillors are able to attend events or functions conducted by external bodies, but must be mindful of the obligations in the Act to avoid misuse of their position.

5.8 Information for Candidates

5.8.1. Access to information held by Council must be made equally available and accessible to candidates during the election, subject to applicable legislative requirements.

5.8.2. Councillors will continue to receive information necessary to perform their roles, however, neither Councillors nor candidate will receive information or advice from Council officers that may advantage them in the election.

5.8.3. Corporate Counsel will maintain an Information Request Register during the Election Period to record all requests for information connected to the election or to Electoral Matters by Councillors and candidates and the responses provided to those requests and staff must provide details of such requests and responses to Corporate Counsel to include in the Information Request Register.

5.8.4. The Information Request Register will be available to the public to view on request at the Council offices.

5.9 Distribution of this Policy

A copy of this policy must:

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- be provided to each Councillor as soon as practicable after it is adopted;
- be available for inspection by the public at the Council office; and
- be published on Council's website.

6. HUMAN RIGHTS CHARTER COMPATIBILITY

This Policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006*.

7. ASSOCIATED DOCUMENTS

Glen Eira City Council Code of Conduct for Councillors
Election Period Certification Procedure (Attachment 1 to this policy)

8. REFERENCES/RESOURCES

Local Government Act 1989 (Vic) (Attachment 2 to this policy contains selected extracts)

Attachment 1
Election Period Certification Procedure

1 Background

- 1.1 This procedure is an attachment to the Election Period Policy (the Policy) and applies to all publications proposed during the Election Period (as defined in the Policy).
- 1.2 Section 55D of the *Local Government Act 1989 (Vic)* prohibits Council from printing, publishing or distributing or authorising to be printed, published or distributed, any publication during the Election Period unless the publication has been certified, in writing, by the Chief Executive Officer (CEO). The CEO must not certify any publication containing Electoral Matter (as defined in the Policy) during the Election Period unless it only contains information about the election process.
- 1.3 This procedure sets out the process for submitting a publication to the CEO for certification in order to meet the requirements of the Act.

2 Definitions

“Publication” means an advertisement, handbill, pamphlet or notice, but does not include any document published before the commencement of the Election Period or the any document required to be published under any Act or regulation.

3 Procedure

- 3.1 All publications proposed to be printed, published or distributed, or approved or authorised during the Election Period must be submitted to Corporate Counsel.
- 3.2 Corporate Counsel must review all proposed publications received under this procedure and if satisfied a publication contains no Electoral Matter, will submit it to the CEO for certification with advice attached containing words to the effect of:
- “This publication has been reviewed by Corporate Counsel and assessed as containing no Electoral Matter. In accordance with section 55D of the *Local Government Act 1989 (Vic)* the publication is in order for you to certify that it is appropriate to be published or distributed.”
- 3.3 The CEO may approve such publications using words to the effect of:
- “I certify that the attached material is appropriate for printing, publication or distribution in accordance with section 55D of the *Local Government Act 1989 (Vic)*.”

Attachment 2
Extract from Local Government Act 1989
– sections relevant to Election Period

SECTION 55D
Prohibition on Council

- (1) A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.
- (1A) For the purposes of subsection (1), the publication of a document of a kind specified in that subsection does not include—
 - (a) publication of any document published before the commencement of the election period; and
 - (b) publication of any document required to be published in accordance with, or under, any Act or regulation.
- (2) The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

Penalty: 60 penalty units.

- (3) Despite section 98(2), the Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.
- (4) A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section.

Penalty: 60 penalty units.

SECTION 76D
Misuse of position

- (1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.

Penalty: 600 penalty units or imprisonment for 5 years or both.

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- (2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—
- (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of section 77(2); or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using public funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under this Division.
- (3) This section—
- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and
 - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

SECTION 76E

Improper direction and improper influence

- (1) A Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A Councillor must not direct, or seek to direct, a member of Council staff—
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
 - (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
 - (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

- (3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

SECTION 93A

Conduct of Council during election period

- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.
- (6) In this section, a "major policy decision" means any decision—
- (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
 - (b) to terminate the appointment of a Chief Executive Officer under section 94;
 - (c) to enter into a contract the total value of which exceeds whichever is the greater of—
 - (i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
 - (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

SECTION 93B

Council to adopt an election period policy

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- (1) A Council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.
- (2) A Council must prepare and adopt an election period policy as required by subsection (1)—
 - (a) by 31 March 2016; and
 - (b) following the general election on 22 October 2016, continue to maintain the election period policy by reviewing and, if required, amending the policy not later than 12 months before the commencement of each subsequent general election period.
- (3) An election period policy must include the following—
 - (a) procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election;
 - (b) limits on public consultation and the scheduling of Council events;
 - (c) procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.
- (4) A copy of the election period policy must—
 - (a) be given to each Councillor as soon as practicable after it is adopted; and
 - (b) be available for inspection by the public at the Council office and any district offices; and
 - (c) be published on the Council's Internet website maintained under section 82A.
- (5) In this section—

"inappropriate decisions" made by a Council during an election period includes any of the following—

 - (a) decisions that would affect voting in an election;
 - (b) decisions that could reasonably be made after the election.

Attachment B



COUNCILLOR

CODE OF CONDUCT

REVISED EDITION

June 2016

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Declaration by Councillor

I, declare

that I have been given a copy of the Councillor Code of Conduct
of the Glen Eira City Council.

I have read the Code and agree to abide by it.

Signed:

Date:.....

Witnessed by the
Chief Executive Officer:

Date:

1. PURPOSE

- 1.1 This Code of Conduct has been adopted to assist Councillors in meeting their responsibilities, by setting down the standards of conduct for Councillors in the City of Glen Eira so as to ensure that the conduct of Councillors is legal, ethical and appropriate at all times.
- 1.2 As the performance of Council and the wellbeing of the Glen Eira community are directly affected by the conduct of the City's elected Councillors, the community is entitled to expect that:-
 - 1.2.1 the business of Council is conducted with efficiency, impartiality transparency and integrity;
 - 1.2.2 Councillors obey the spirit and letter of the law in particular, the provisions of relevant statutes, regulations, local laws and instruments; and
 - 1.2.3 responsibility to the community is always to be given absolute priority over the private interests of Councillors.
- 1.3 This Code is Adopted by Council as required by the Local Government Act 1989 ("the Act") and is binding on all Councillors.
- 1.4 In accordance with section 63 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 and read this Code and made a declaration stating that they will abide by the Code.

2 INTRODUCTION: THE FRAMEWORK FOR GOOD GOVERNANCE

Council

- 2.1 The primary objective of Council, as set by section 3C(1) of the Act, is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.
- 2.2 The role of Council, as set out in section 3D(2) of the Act, is:
 - a. *acting as a representative government by taking into account the diverse needs of the local community in decision making;*
 - b. *providing leadership by establishing strategic objectives and monitoring their achievement;*
 - c. *maintaining the viability of Council by ensuring that resources are managed in a responsible and accountable manner;*
 - d. *advocating for the interests of the local community to other communities and governments;*
 - e. *acting as a responsible partner in government by taking into account the needs of other communities; and*

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- f. fostering community cohesion and encouraging active participation in civic life.*

Councillors

- 2.3 The City of Glen Eira is governed by nine Councillors who are democratically elected in accordance with the Act. Collectively, they constitute the Council.
- 2.4 Section 65(1) of the Act states that the role of a Councillor is:
- 2.4.1. to participate in the decision-making of the Council;
 - 2.4.2. to represent the local community in that decision-making; and
 - 2.4.3. 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.
- 2.5 Section 65(2) of the Act states that in performing the role of a Councillor, a Councillor must—
- 2.5.1. consider the diversity of interests and needs of the local community;
 - 2.5.2. observe principles of good governance and act with integrity; and
 - 2.5.3. provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts; and
 - 2.5.4. participate in the responsible allocation of the resources of Council through the annual budget; and
 - 2.5.5. facilitate effective communication between the Council and the community.
- 2.6 Section 65(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 Act. The position and duties of the Chief Executive Officer are set out in clause 2.9 of this Code of Conduct.

Mayor

- 2.7 Section 73AA of the Act states that the functions of the Mayor of a Council include:
- 2.7.1. providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65, and the observation of the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C;
 - 2.7.2. acting as the principal spokesperson for the Council;
 - 2.7.3. supporting good working relations between Councillors; and
 - 2.7.4. carrying out the civic and ceremonial duties of the office of Mayor.

Governance and Administration

- 2.8 Key governance responsibilities of Council include:
- 2.8.1. 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 125 of the Act;

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- 2.8.2. approving the annual Budget;
 - 2.8.3. developing and adopting policies covering key programs and services (including home and community care, maternal and child health, waste management, town planning);
 - 2.8.4. hosting and engaging in numerous community forums, activities and events; and
 - 2.8.5. 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.
- 2.9 Within this framework of strategic leadership, advocacy and representative government, sections 94 and 94A of the Act provide for the establishment of the position and duties of the Chief Executive Officer who is to be responsible for:
- 2.9.1. establishing and maintaining an appropriate organisational structure for Council;
 - 2.9.2. ensuring that the decisions of Council are implemented without undue delay;
 - 2.9.3. the day to day management of Council's operations in accordance with the Council Plan;
 - 2.9.4. developing, adopting and disseminating a code of conduct for Council staff;
 - 2.9.5. providing timely advice to Council; and
 - 2.9.6. appointing and managing all Council staff and managing all issues that relate to Council staff.
- 2.10 Councillors govern, and managers manage, within a framework which is made up of:
- 2.10.1 the Local Government Act;
 - 2.10.2 the Council's Local Laws;
 - 2.10.3 this Code of Conduct; and
 - 2.10.4 other Policies adopted by Council.
- 2.11 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 long term.

3 OATH OF OFFICE

At the commencement of each Ordinary or Special Meeting of Council, the Chair will remind the Councillors present that they remain bound by their Oath of Office to undertake the duties of the office of Councillor in the best interests

of the people of the municipal district of Glen Eira and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in Councillors under the Local Government Act 1989 or any other Act, to the best of the Councillors' skill and judgement.

4 PRINCIPLES FOR COUNCILLOR CONDUCT

4.1 HONESTY

Councillors have a duty to act honestly. This involves:-

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

4.2 INTEGRITY

Councillors must:-

- 4.2.1 act with integrity;
- 4.2.2 impartially exercise their responsibilities in the interests of the Glen Eira community;
- 4.2.3 not improperly seek to confer an advantage or disadvantage on any person;
- 4.2.4 not place themselves under any financial or other obligation to any individual, interest group or organisation that might reasonably be thought to influence them in the performance of their duties as Councillors;
- 4.2.5 avoid conflicts between their public duties as a Councillor and their personal interests and obligations;
- 4.2.6 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
- 4.2.7 endeavour to ensure that public resources are used prudently and solely in the public interest.

4.3 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

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awarding contracts, determining town planning applications, funding proposals and recommending individuals for rewards, recognition or benefits.

4.4 *DILIGENCE*

Councillors must:-

- 4.4.1 exercise reasonable care and diligence. This includes reading and familiarising themselves with papers for consideration at Council Meetings and Assemblies of Councillors;
- 4.4.2 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
- 4.4.3 submit themselves to the lawful scrutiny that is appropriate to the office of Councillor.

4.5 *RESPECT*

Councillors must:

- 4.5.1 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
- 4.5.2 as a member of Council, respect the decision making processes of Council which are based on decisions of the majority of Councillors.

4.6 *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:

- 4.6.1 as a member of Council, they respect the decision making process of Council which is based on a decision by the majority of Councillors;
- 4.6.2 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;
- 4.6.3 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;
- 4.6.4 information of a confidential nature must not be communicated;
- 4.6.5 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

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- 4.6.6 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 section 5 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.

4.7 *TRANSPARENCY*

Councillors have a duty to be 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 the wider public interest clearly demands.

4.8 *TEAMWORK*

- 4.8.1 There are nine members of Council. Most decisions of Council are collective decisions. Councillors should contribute towards the Councillor group working its way towards decisions.
- 4.8.2 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.
- 4.8.3 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 unless those documents have not been designated as confidential, it is for the benefit of Council or otherwise in the public interest and the Councillor group has first agreed.

4.9 *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.

5 GENERAL CONDUCT OBLIGATIONS

5.1 *FAIRNESS AND EQUITY*

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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.

5.2 *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.

5.3 *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.

5.4 *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.

5.5 *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:

- 5.5.1 Is the decision or conduct lawful?
- 5.5.2 Is the decision or conduct consistent with Council's policies, objectives and this Code of Conduct?
- 5.5.3 What will the outcome be for the community, Council, a Councillor(s) and any other parties?
- 5.5.4 Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- 5.5.5 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

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Committee, the Municipal Association of Victoria, the Victorian Local Governance Association or the Department of Transport, Planning and Local Infrastructure.

5.6 *PUBLIC FUNDS*

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

5.7 *COUNCILLOR EXPENSES*

Councillors must:

- 5.7.1 only claim for expenses that are reasonable bona fide Councillor out-of-pocket expenses incurred while performing duties as a Councillor or in a manner prescribed by Council;
- 5.7.2 apply in writing to Council for reimbursement of expenses;
- 5.7.3 use Council facilities and equipment economically and efficiently;
- 5.7.4 except in accordance with any policy of Council, not use Council facilities, equipment and resources for personal benefit or for the benefit of any other person or organisation; and
- 5.7.5 ensure that Council facilities and equipment are kept separate from similar resources that may be used in a Councillor's private business activities.

In making any claim for reimbursement of expenses, Councillors acknowledge that section 75(2) of the Act defines *duties as a Councillor* as duties performed by a Councillor that are necessary or appropriate for the purposes of achieving Council's objectives, having regard to any relevant Act, regulation, Ministerial guidelines or Council policies.

5.8 *MISUSE OF POSITION OR INFORMATION*

5.8.1. 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 within the meaning of section 77(2) of the Act;
- (e) by directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E of the Act;

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- (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; or
- (g) by using public funds or resources in a manner that is improper or unauthorised.

5.8.2. 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.

5.9 *CONFIDENTIAL INFORMATION*

5.9.1 Information is confidential as provided under section 77 of the Act, where the information:

- (a) was provided to Council or a Special Committee in relation to a matter considered in a meeting closed to members of the public in accordance with section 89(2) of the Act, and Council or the Special Committee has not passed a resolution that the information is not confidential; or
- (b) has been designated as confidential information by a resolution of Council or a Special Committee which specifies the relevant grounds applying under section 89(2) of the Act and Council or the Special Committee has not passed a resolution that the information is not confidential; or
- (c) has been designated in writing as confidential information by the Chief Executive Officer specifying the ground(s) applying under section 89(2) of the Act and Council has not passed a resolution that the information is not confidential.

5.9.2 A Councillor must not disclose information that they know, or should reasonably know, is confidential information, except in the circumstances permitted by section 77(1A) of the Act.

5.11 *RELATIONS WITH COUNCIL STAFF*

Councillors acknowledge that:

5.11.1 section 95 of the Act requires Council staff to

- (a) act impartially,
- (b) act with integrity including avoiding conflicts of interest,
- (c) accept accountability for results; and

- (d) provide responsive service;
- 5.11.2 all staff members are accountable to the Chief Executive Officer. Councillors respect that, pursuant to section 94A 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;
- 5.11.3 a professional and well-managed team of managers and staff is essential to the wellbeing of the community; and
- 5.11.4 the Chief Executive Officer is under an obligation to provide timely advice to Council and implement Council decisions without undue delay and that reports written by officers are based on their professional knowledge and skill. While Council may decide whether to accept the advice that is submitted, Councillors cannot direct officers to change their reports.

Where Councillors have concerns about the performance of any staff member or service unit, they acknowledge that such concerns should be directed to the Chief Executive Officer.

5.12 OBLIGATIONS DURING MEETINGS

Councillors must conduct themselves in accordance with Council's Local Law in relation to Meeting Procedures during Council and Committee Meetings.

During all properly constituted Council Meetings and Assemblies of Councillors (whether statutory or informal), 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.

6 DISCLOSURE OF INTERESTS AND CONFLICTS OF INTERESTS

s. 79

- 6.1 For the purpose of this Code, "conflict of interest" has the meaning specified in the Act.
- 6.2 Councillors must comply with all the provisions of sections 77A-79B and 80A of the Act in regard to conflicts of interest, in particular:
 - 6.2.1 If a Councillor has a conflict of interest in a matter which is to be, or is likely to be, considered or discussed at a meeting of the Council or a Special Committee, the Councillor must if he or she intends to be present at the meeting, disclose the conflict of interest in accordance with section 79(2) of the Act, by either:
 - (a) advising Council or the Special Committee at the meeting of the details required under section 79(2)(b) and (c) of the Act immediately before the matter is considered at the meeting; or
 - (b) advising the Chief Executive Officer in writing of the details required under section 79(2)(d) of the Act.

- 6.2.2 A Councillor who has a conflict of interest in a matter which is to be, or is likely to be, considered or discussed at a meeting of the Council or a Special Committee must:
- (a) classify the type of interest that has given rise to the conflict as either—
 - (i) a direct interest; or
 - (ii) an indirect interest, specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, or 78D; and
 - (b) describe the nature of the interest.
- 6.2.3 If the Councillor advised the Chief Executive Officer in writing of their conflict of interest under section 79(2)(a)(ii) of the Act before the meeting, the Councillor must disclose the class of interest only to the meeting immediately before the matter is considered.
- 6.2.4 While the matter in respect of which a Councillor has disclosed a conflict of interest is being considered or voted on, the Councillor must leave the room and remain outside the room and any gallery or other area in view or hearing of the room.

7 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 or where the situation is unduly affecting the operation of Council. 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 Special Committees.

7.1 DISPUTES BETWEEN COUNCILLORS

- 7.1.1 Councillors are mindful that having and expressing differing and sometimes opposing views is a normal function of the process of democratic local government. Sharing and expressing these different views leads to informed and well considered debate. All Councillors have the right to influence the decisions made by Council through this debate.
- 7.1.2 While all Councillors will endeavour to foster and encourage positive and productive interactions at all times, conflict and/or disputes may emerge when the differences between Councillors become personal or the behaviour of Councillors towards each other is of a nature that threatens the effective operation of Council's decision-making process.
- 7.1.3 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

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such conflict or disputes in-house in a courteous and respectful manner to prevent them from further escalating.

7.1.4 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.

7.1.5 Council's conflict resolution procedure comprises:

- (a) Internal Mediation (Optional);
- (b) External Mediation (Optional); and
- (c) Internal Resolution Procedure by Independent Arbiter (Mandatory).

7.2 INTERNAL MEDIATION (OPTIONAL)

7.2.1 If an informal resolution of a dispute between Councillors is unsuccessful or not implemented, a formal request for internal mediation must be made to the Mayor who will facilitate "formal" discussions between the parties in dispute as soon as practicably possible. The Mayor will advise the Chief Executive Officer of the situation.

7.2.2 The request must be made in writing, indicating the reason for the dispute, the names of those involved, provisions of this Code that may have been breached, any evidence to support the allegation and, if the request is being made by a group of Councillors, the name of the Councillor representative.

7.2.3 The Mayor will convene a meeting at the earliest available opportunity and will provide guidance during that meeting as to what is expected of a Councillor under the Act in relation to roles, responsibilities and conduct. The Mayor will document any outcomes and will provide copies to all parties.

7.2.4 In the event that one party does not comply with the agreed outcomes, the other party has the option for further action as described below.

7.2.5 In the event that a conflict or dispute involves the Mayor, the Deputy Mayor shall perform the role of the Mayor in facilitating discussion between the parties in dispute and liaise with the Chief Executive Officer.

7.3 EXTERNAL MEDIATION (OPTIONAL)

7.3.1 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 Principal Conduct Officer for a dispute to be referred for external mediation.

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- 7.3.2 This request must be made in writing, indicating the reason for the dispute, the names of those involved, provisions of this Code that may have been breached, any evidence to support the allegation and, if the request is being made by a group of Councillors, the name of the Councillor representative. The applicant must also notify the other party of the request and provide them with a copy of the application at the same time the application is made to the Principal Conduct Officer.
- 7.3.3 The Principal Conduct Officer will ascertain whether or not the other party will attend external mediation and, if they decline, they must provide reasons for doing so to the Principal Conduct Officer. These reasons may be taken into account if the matter is the subject of an application for a Councillor Conduct Panel at a later stage. Declining to attend external mediation does not constitute a breach of this Code.
- 7.3.4 If the other party agrees to participate in external mediation, the Principal Conduct Officer will advise the applicant, the Mayor and the Chief Executive Officer accordingly. 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.
- 7.3.5 The mediator will document any agreement or outcomes reached at the meeting and copies will be provided to both parties. In the event that one party has not agreed to mediation, one party does not comply with the agreed outcomes or mediation does not reach a satisfactory outcome, either party has the option for further action as described below.
- 7.3.6 If the dispute remains unresolved, the mediator or conciliator will be required to provide a written report for Councillors and the parties involved in the dispute as to why the process did not result in a resolution.

7.4 INTERNAL RESOLUTION PROCEDURE BY INDEPENDENT ARBITER

- 7.4.1 If a conflict or dispute arises from an alleged contravention or breach of this Code and has not been resolved through any of the previous processes, then a Councillor or group of Councillors (applicant) may apply to Council's Principal Conduct Officer for internal resolution by an independent arbiter alleging that a Councillor (or Councillors) (respondent) has contravened this Code.
- 7.4.2 This application must be made in writing, specify the name of the Councillor alleged to have contravened this Code, specify the provisions of this Code that may have been contravened, any evidence to support the allegation and, if the request is being made by a group of Councillors, the name of the Councillor representative.
- 7.4.3 An application for an internal resolution procedure cannot be made during a Council Election Period and any procedure in progress will be suspended for the duration of an Election Period.
- 7.4.4 On receiving an application, the Principal Conduct Officer will:

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- (a) advise the Mayor and Chief Executive Officer of the application without undue delay;
- (b) provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application;
- (c) contact the President of the Law Institute of Victoria to appoint an arbiter in accordance with clause 7.5.5;
- (d) obtain from the proposed arbiter written advice that they have no conflict of interest in relation to the Councillors involved;
- (e) notify the parties of the name of the proposed arbiter and provide them with the opportunity (two working days) to object to the person proposed to be the arbiter;
- (f) consider the grounds of any objection and appoint the proposed arbiter or request the President of the Law Institute of Victoria to appoint another arbiter;
- (g) provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired;
- (h) after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
- (i) attend the hearing(s) and assist the arbiter in the administration of the process

7.4.5 The Principal Conduct Officer will request the President of the Law Institute of Victoria to appoint an arbiter who is suitably independent and able to carry out the role of arbiter fairly.

7.4.6 The role of the arbiter is to:

- (a) consider applications alleging a contravention of this Code by a Councillor;
- (b) make findings in relation to any application alleging a contravention of this Code which the arbiter must give to Council;
- (c) give a written statement of reasons supporting the findings to Council; and
- (d) recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened this Code.

7.4.7 In considering an application alleging a contravention of this Code, an arbiter will:

- (a) in consultation with the Principal Conduct Officer, fix a time and place to hear the application;
- (b) authorise the Principal Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing;
- (c) hold as many meetings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing;
- (d) have discretion to conduct the hearing(s) as he or she deems fit while ensuring that the hearing(s) are conducted with as little formality and technicality as due and proper consideration of the application allows;

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- (e) ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
- (f) consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application;
- (g) ensure that the rules of natural justice are observed and applied in the hearing of the application; and
- (h) ensure that the hearing(s) are closed to the public.

7.4.8 Where an application to have legal representation is granted by an arbiter, the costs of the Councillor's legal representation are to be borne in their entirety by the Councillor.

7.4.9 An arbiter:

- (a) may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened this Code; or
- (b) may find that a Councillor who is a respondent to an internal resolution procedure has contravened this Code; and
- (c) will suspend consideration of an internal resolution procedure during the Election Period for a general election.

7.4.10 The arbiter is to give a copy of his or her findings and statement of reasons to Council, the applicant and the respondent. At the same time that the arbiter provides the findings and statement of reasons, he or she shall, where a Councillor has been found to have contravened this Code, recommend an appropriate sanction or sanctions for the contravention for consideration by Council.

7.4.11 A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next Ordinary Meeting of Council for its consideration. If an arbiter has found that a contravention of this Code has occurred, Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor:

- (a) direct the Councillor to make an apology in a form or manner specified by Council;
- (b) direct the Councillor to not attend up to, but not exceeding, two meetings of Council (in respect of the next scheduled meetings of Council);
- (c) direct that, for a period of up to, but not exceeding, two months on a date specified by Council, the Councillor:
 - (i) be removed from any position where the Councillor represents Council; and
 - (ii) to not chair or attend any Advisory Committee or Special Committee meeting or an Assembly of Councillors or any other meeting specified in the direction.

7.4.12 A Councillor who does not participate in the internal resolution procedure may be guilty of misconduct.

7.5 COUNCILLOR MISCONDUCT

- 7.5.1 Councillor misconduct is defined in section 3 of the Act (see misconduct, serious misconduct and gross misconduct). Allegations of misconduct are heard on application by a Councillor Conduct Panel as outlined in section 81B of the Act and Councillor Conduct Panels are established under, and regulated by, Division 1D of the Act.
- 7.5.2 Applications for a Councillor Conduct Panel to make a finding of misconduct against a Councillor may be made by Council (following resolution of Council), a Councillor or a group of Councillors.
- 7.5.3 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.
- 7.5.4 Applications for a Councillor Conduct Panel must be made directly to the state-appointed Principal Councillor Conduct Registrar.
- 7.5.5 Depending on the allegation and outcome, a Councillor Conduct Panel may:
- (a) discipline a Councillor by reprimand, direct an apology or require the Councillor to take up to two months leave of absence;
 - (b) direct that the Councillor is ineligible to take up the position of Mayor for a period specified by the Panel;
 - (c) require remedial action, including mediation, training or counselling;
 - (d) suspend the Councillor from office for a period not exceeding six months; or
 - (e) refer a matter to VCAT if the Panel considers gross misconduct has been conducted by a Councillor.

8 CARETAKER PERIOD

- 8.1 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.
- 8.2 Councillors must comply with the provisions of sections 55D and 93A of the Act (Appendix B) and Council's Election Period Policy (Appendix C).

Appendix A – Section 76B, 76BA & 76D(1)– Rules of Conduct

76B Primary principle of Councillor conduct

s. 76B

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must:

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.

76BA General Councillor conduct principles

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must:

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, council officers and other persons;
- (d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;
- (g) 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.

76D Misuse of position

- (1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.

Penalty: 100 penalty units.

Appendix B – Section 93A – Conduct of Council

93A Conduct of Council during election period

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- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.
- (6) In this section, a major **policy decision** means any decision:
 - (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
 - (b) to terminate the appointment of a Chief Executive Officer under section 94;
 - (c) to enter into a contract the total value of which exceeds whichever is the greater of—
 - (i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
 - (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

Appendix C to Councillor Code of Conduct

Policy ID Number:1.3

Election Period Policy

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1. TITLE

Election Period Policy

2. OBJECTIVE

To ensure:

- (a) compliance with the provisions of the *Local Government Act 1989* dealing with the election period during the lead up to local government elections;
- (b) Council does not make inappropriate decisions or use resources inappropriately during the election period;
- (c) there are limits on public consultation and the scheduling of Council events; and
- (d) access to information held by Council is made equally available and accessible to candidates during the election.

This policy forms part of the Glen Eira City Council Code of Conduct for Councillors.

3. DEFINITIONS AND ABBREVIATIONS

Term	Meaning
Election Period	the period before an election day that: (a) starts on the last day on which nominations for that election can be received; and (b) ends at 6 p.m. on election day.
Electoral Matter	Matter intended or likely to affect voting but not including any electoral material produced by or on behalf of the returning officer for the purposes of an election. Matter is to be taken to be intended or likely to affect voting if it contains an express or implicit reference to, or comment on— (a) the election; or (b) a candidate in the election; or (c) an issue submitted to, or otherwise before, voters in connection with the election

4. INTRODUCTION

- 4.1 Governments at all levels have long-standing caretaker conventions. They aim to provide assurance that public resources will not be used for electoral purposes and that major decisions will not be made during the period leading up to an election day which pre-empt incoming governments.
- 4.2 The *Local Government Act 1989 (Vic)* (the Act) includes a number of provisions relevant to Election Periods and in 2015, the Act was amended by the insertion of section 93B which requires Council to adopt an election period policy. Relevant extracts of the Act are attached as Attachment 2 to this policy.
- 4.3 Section 93B states that an election period policy must include:

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- procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the Election Period before a general election;
- limits on public consultation and the scheduling of Council events; and
- procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.

4.4 Other key sections of the Act imposing obligations or prohibitions during the Election Period include:

- Section 93A, which prohibits a council, special committee or delegate from making 'major policy decisions' during an Election Period. The section includes a mechanism for seeking a Ministerial exemption from the general prohibition against major policy decisions in extraordinary circumstances.
- Section 55D, which prohibits certain publications during the election period; and
- Section 76D, which imposes severe penalties on Councillors who misuse their positions for private benefit. The section identifies improper use of public resources as a misuse of position and this includes electioneering.

4.5 In accordance with the requirements of the Act and recommended practice, the following arrangements apply during the Election Period.

5. POLICY

5.1 Major Policy Decisions

5.1.1 The Council, special committees and delegates must not make any Major Policy Decisions during the Election Period. Major Policy Decisions are decisions:

- that relate to the employment or remuneration of a Chief Executive Officer under section 94 of the Act, other than a decision to appoint an acting Chief Executive Officer;
- to terminate the appointment of a Chief Executive Officer under section 94 of the Act;
- to enter into a contract the total value of which exceeds whichever is the greater of \$150,000 (for contracts for the purchase of goods and services) or \$200,000 (for contracts for the carrying out of works)¹ and one per cent of Council's revenue from rates and charges in the preceding financial year²;

¹ These amounts were fixed pursuant to an Order in Council dated 5 August 2008.

² For the 2014/2015 financial year, 1% of Council's revenue from rates and charges was approximately \$910,000.00

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- to exercise any power under section 193 of the Act if the sum assessed under section 193(5A) of the Act in respect of the proposal exceeds whichever is the greater of \$100,000 or one per cent of the Council's revenue from rates and charges in the preceding financial year.

5.1.2 Agendas for Council meetings held during the Election Period must contain a certification by the Chief Executive Officer that no agenda item involves the making of a Major Policy Decision.

5.1.3 A Major Policy Decision made in contravention of section 93A is invalid. Any person who suffers any loss or damage as a result of acting in good faith based on a Major Policy Decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.

5.2 Inappropriate Decisions

During the Election Period Council must not make any decisions that:

- would affect voting in an election; or
- could reasonably be made after the election.

5.3 Council Resources and Misuse of Position

5.3.1 Council resources, including land lines and mobile telephones, computers and email accounts, offices, meeting rooms, secretarial support, equipment and stationery will be used exclusively for normal Council business and must not be used in connection with any candidate's election campaign.

5.3.2 Photographs or images taken by or on behalf of Council must not be used for the purposes of electioneering.

5.3.3 Glen Eira City Council's logo, branding and letterhead must not be used in connection with a candidate's election campaign.

5.3.4 Reimbursements of Councillors' out-of-pocket expenses must only apply to costs that have been incurred in the performance of normal Council duties, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign.

5.3.5 Council officers must not assist in preparing Electoral Matter or any related activity.

5.3.6 Councillors and members of a special committee must not misuse their position to gain an advantage or cause detriment to another person at any time in accordance with section 76D of the Act, including by:

- making improper use of information acquired as a result of their position;
- disclosing confidential information;
- directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E;
- exercising or performing, or purporting to exercise or perform, a

power, duty or function that they are not authorised to exercise or perform (and for this reason Councillors must ensure that they do not make electoral promises that cannot be kept);

- using public funds or resources in a manner that is improper or unauthorised; and
- failing to disclose a conflict of interest as required by the Act.

5.4 Publications and Advertising

5.4.1 As set out in section 55D of the Act, the Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the Election Period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.

5.4.2 The Chief Executive Officer must not certify an advertisement, handbill, pamphlet or notice containing Electoral Matter during the Election Period unless it only contains information about the election process.

[Note that the Act imposes a penalty of 60 penalty units for breaching this obligation.]

5.4.3 The Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under the Act to a Council officer.

5.4.4 A Councillor or Council officer must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an advertisement, handbill, pamphlet or notice containing Electoral Matter during the election period on behalf of, or in the name of, the Council or a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer as required by the Act.

[Note that the Act imposes a penalty of 60 penalty units for breaching this obligation.]

5.4.5 Prohibited publications do not include the publication of any document published before the commencement of the Election Period or the publication of any document required to be published under any Act or regulation.

5.4.6 Council follows the recommended practice of refraining from all publication activity during the Election Period, however, where the printing, publishing or distribution of a document is essential for the conduct of Council's operations, and where that document is an "advertisement, handbill, pamphlet or notice" (thus caught by Section 55D), the Chief Executive Officer will certify the document following the procedure set out in Attachment 1 to this policy: Election Period Certification Procedure.

5.4.7 Any publications appearing via social media tools, including on Facebook, Twitter and You Tube, must meet the requirements of this policy and the Chief Executive Officer must certify relevant documents in the terms set out above.

5.4.8 It should be noted that there is no requirement for the section 55D certification to appear on the face of a publication. Nor is there a requirement for publications to be individually certified; categories of publications can be certified by the Chief Executive Officer in accordance with section 55D of the Act.

- 5.4.9 In accordance with recommended practice, Council must, as far as is practicable and taking into account part 5.4.5 above, restrict details about Councillors on Council's website. Material that could be viewed as Electoral Matter on social media pages operated by Council will not be permitted to be posted during the Election Period. Council officers will review comments to be posted on Council's social media pages during the Election Period prior to posting.
- 5.4.10 Councillors will be reminded of the legislative restrictions and this policy immediately prior to the Election Period.
- 5.4.11 Councillors who are standing for re-election must ensure that their own campaign material (to be prepared at their expense) does not bear any reference or inference that such material is from Council, or is supported or endorsed by Council and must not bear any Council identification such as logos, design schemes or colour schemes.
- 5.4.12 Council officers may not make any public statement that could be construed as influencing the election. This does not include statements of clarification that are approved by the Chief Executive Officer.
- 5.4.13 Council publicity during the Election Period will be restricted to promoting normal Council activities. Council-funded publicity will not feature Councillors except the Mayor when representing Council in an official capacity. Where a publicity campaign is deemed necessary for a Council service or function (e.g. vaccinations), it must be approved by the Chief Executive Officer.
- 5.4.14 Public Questions at Council Meetings, which would normally be recorded in the Minutes, should avoid Electoral Matter and a question may be ruled out of order on that ground.
- 5.4.15 Any requests for media advice or assistance from Councillors during the Election Period must be decided by the Chief Executive Officer or the Chief Executive Officer's delegate. In any event, no media advice or assistance will be provided in relation to election campaign matters, or in regard to publicity that involves specific Councillors.

5.5 Election Signs on Public Land

Election signs and notices, posters or advertisements containing Electoral Matter must not be erected, posted or displayed on land, buildings or structures owned or managed by Council except by the Victorian Electoral Commission in connection with the conduct of the election.

5.6 Public Consultation

- 5.6.1 No public consultation will be undertaken during the Election Period unless prior approval is obtained from the Chief Executive Officer.
- 5.6.2 Public consultation in this part means a process involving an invitation and opportunity for the public to comment or provide an opinion on a matter, proposed action or proposed policy.
- 5.6.3 The Chief Executive Officer will consider the following factors when deciding

whether to approve public consultation:

- whether the consultation could reasonably take place after the election;
- whether conducting the consultation could affect voting in the election;
- whether risks of influencing the election can be reduced or avoided;
- whether special circumstances exist which make the consultation necessary during the election period; and
- the financial and other repercussions of postponing the consultation until after the election.

5.6.4 Where public consultation during an Election Period is approved, the results of that consultation will not be published or disclosed until after the Election Period except where approved by the Chief Executive Officer.

5.6.5 Public consultations in this part do not include consultations required by any Act or regulation which are conducted in the normal course of Council operations, such as public consultation on planning applications required under the *Planning and Environment Act 1987 (Vic)*.

5.7 Council Events

5.7.1 Council organised events and functions held during the Election Period will be reduced to only those essential to the operation of the Council or which are held to mark national celebrations and which can't reasonably be held at other times (eg. Seniors Festival).

5.7.2 Publications promoting any Council events or functions held during the Election Period must comply with part 5.4 of this policy.

5.7.3 Councillors are able to continue to attend meetings, events and functions in the course of performing their duties as a Councillor. Speeches at Council functions should not contain any express or implied reference to Electoral Matters.

5.7.4 Councillors are able to attend events or functions conducted by external bodies, but must be mindful of the obligations in the Act to avoid misuse of their position.

5.8 Information for Candidates

5.8.1. Access to information held by Council must be made equally available and accessible to candidates during the election, subject to applicable legislative requirements.

5.8.2. Councillors will continue to receive information necessary to perform their roles, however, neither Councillors nor candidate will receive information or advice from Council officers that may advantage them in the election.

5.8.3. Corporate Counsel will maintain an Information Request Register during the Election Period to record all requests for information connected to the election or to Electoral Matters by Councillors and candidates and the responses provided to those requests and staff must provide details of such requests and responses to Corporate Counsel to include in the Information Request Register.

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5.8.4. The Information Request Register will be available to the public to view on request at the Council offices.

5.9 Distribution of this Policy

A copy of this policy must:

- be provided to each Councillor as soon as practicable after it is adopted;
- be available for inspection by the public at the Council office; and
- be published on Council's website.

6. HUMAN RIGHTS CHARTER COMPATIBILITY

This Policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006*.

7. ASSOCIATED DOCUMENTS

Glen Eira City Council Code of Conduct for Councillors
Election Period Certification Procedure (Attachment 1 to this policy)

8. REFERENCES/RESOURCES

Local Government Act 1989 (Vic) (Attachment 2 to this policy contains selected extracts)

Attachment 1
Election Period Certification Procedure

1 Background

- 1.1 This procedure is an attachment to the Election Period Policy (the Policy) and applies to all publications proposed during the Election Period (as defined in the Policy).
- 1.2 Section 55D of the *Local Government Act 1989 (Vic)* prohibits Council from printing, publishing or distributing or authorising to be printed, published or distributed, any publication during the Election Period unless the publication has been certified, in writing, by the Chief Executive Officer (CEO). The CEO must not certify any publication containing Electoral Matter (as defined in the Policy) during the Election Period unless it only contains information about the election process.
- 1.3 This procedure sets out the process for submitting a publication to the CEO for certification in order to meet the requirements of the Act.

2 Definitions

“Publication” means an advertisement, handbill, pamphlet or notice, but does not include any document published before the commencement of the Election Period or the any document required to be published under any Act or regulation.

3 Procedure

- 3.1 All publications proposed to be printed, published or distributed, or approved or authorised during the Election Period must be submitted to Corporate Counsel.
- 3.2 Corporate Counsel must review all proposed publications received under this procedure and if satisfied a publication contains no Electoral Matter, will submit it to the CEO for certification with advice attached containing words to the effect of:
- “This publication has been reviewed by Corporate Counsel and assessed as containing no Electoral Matter. In accordance with section 55D of the *Local Government Act 1989 (Vic)* the publication is in order for you to certify that it is appropriate to be published or distributed.”
- 3.3 The CEO may approve such publications using words to the effect of:
- “I certify that the attached material is appropriate for printing, publication or distribution in accordance with section 55D of the *Local Government Act 1989 (Vic)*.”

Attachment 2
Extract from Local Government Act 1989
– sections relevant to Election Period

SECTION 55D
Prohibition on Council

- (1) A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.
- (1A) For the purposes of subsection (1), the publication of a document of a kind specified in that subsection does not include—
 - (a) publication of any document published before the commencement of the election period; and
 - (b) publication of any document required to be published in accordance with, or under, any Act or regulation.
- (2) The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

Penalty: 60 penalty units.

- (3) Despite section 98(2), the Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.
- (4) A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section.

Penalty: 60 penalty units.

SECTION 76D
Misuse of position

- (1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.

Penalty: 600 penalty units or imprisonment for 5 years or both.

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- (2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—
- (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of section 77(2); or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using public funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under this Division.
- (3) This section—
- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and
 - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

SECTION 76E

Improper direction and improper influence

- (1) A Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A Councillor must not direct, or seek to direct, a member of Council staff—
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
 - (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
 - (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

- (3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

SECTION 93A

Conduct of Council during election period

- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.
- (6) In this section, a "major policy decision" means any decision—
 - (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
 - (b) to terminate the appointment of a Chief Executive Officer under section 94;
 - (c) to enter into a contract the total value of which exceeds whichever is the greater of—
 - (i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
 - (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

SECTION 93B

Council to adopt an election period policy

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- (1) A Council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.
- (2) A Council must prepare and adopt an election period policy as required by subsection (1)—
 - (a) by 31 March 2016; and
 - (b) following the general election on 22 October 2016, continue to maintain the election period policy by reviewing and, if required, amending the policy not later than 12 months before the commencement of each subsequent general election period.
- (3) An election period policy must include the following—
 - (a) procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election;
 - (b) limits on public consultation and the scheduling of Council events;
 - (c) procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.
- (4) A copy of the election period policy must—
 - (a) be given to each Councillor as soon as practicable after it is adopted; and
 - (b) be available for inspection by the public at the Council office and any district offices; and
 - (c) be published on the Council's Internet website maintained under section 82A.
- (5) In this section—

"inappropriate decisions" made by a Council during an election period includes any of the following—

 - (a) decisions that would affect voting in an election;
 - (b) decisions that could reasonably be made after the election.

5. CLOSURE OF MEETING

The meeting closed at 7.05PM.

CONFIRMED THIS 10 OCTOBER 2016

CHAIRPERSON