

# **ATTACHMENT TO AGENDA ITEM**

**Special Meeting**

**28 June 2016**

**Agenda Item 4.1      Councillor Code of Conduct**

**Attachment 1      Report Attachment - Final - Councillor Code of Conduct  
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**Greater Shepparton City Council**  
**Councillor Code of Conduct**

Adopted: **28 June 2016**

TRIM No. : M16/34587

## COUNCILLOR CODE OF CONDUCT

This Code, which incorporates the statutory requirements specified for a Code of Conduct in accordance with section 76C of the Local Government Act 1989, was adopted by resolution of the Greater Shepparton City Council on **28 June 2016**.

### 1. Introduction

The purpose of local government is to provide a system under which Councils perform the functions and exercise the powers conferred by or under the *Local Government Act 1989* (the Act) and any other Act for the peace, order and good government of their municipal districts. Good governance is fundamental to a Council being able to perform its purpose, and relies on good working relations between Councillors.

As Councillors of Greater Shepparton City Council we are committed to working together in the best interests of the people within our municipality and to discharging our responsibilities to the best of our skill and judgment.

Our commitment to working together constructively will enable us to achieve the Council Plan in a manner that is consistent with our ethics, values and beliefs.

This code sets out the standards of conduct expected of elected representatives. It endeavours to foster good working relations between councillors to enable councillors to work constructively together in the best interests of the local community. The code mandates councillor conduct designed to build public confidence in the integrity of local government.

### 2. Role of Mayor and Councillors

Section 65 of the Act provides that the role of a Councillor is:

- (a) to participate in the decision-making of the Council; and
- (b) to represent the local community in that decision-making; and
- (c) 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.

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

- (a) consider the diversity of interests and needs of the local community; and
- (b) observe principles of good governance and act with integrity; and
- (c) provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts; and
- (d) participate in the responsible allocation of the resources of Council through the annual budget; and
- (e) facilitate effective communication between the Council and the community.

Section 73AA of the Act describes the functions of the Mayor as including:

- (a) 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; and
- (b) acting as the principal spokesperson for the council; and
- (c) supporting good working relations between councillors; and
- (d) carrying out the civic and ceremonial duties of the office of Mayor.

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.

### 3. Relationships with Staff

As Councillors, we will work as part of the Council team with the Chief Executive Officer and other members of staff. There must be mutual respect and understanding between Councillors and officers in relation to our respective roles, functions and responsibilities.

The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors, and should ensure that appropriate policies, practices and protocols are in place defining arrangements for interaction between Council staff and Councillors.

We undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.

We acknowledge that officers have been directed through the Employee Code of Conduct not to provide information directly to Councillors without first receiving approval from the relevant Director. As Councillors, we will refer all enquiries and requests for information to the Chief Executive Officer or relevant Director, with the only exceptions being:

- contact required for routine administrative matters associated with the meetings of Committees on which the Councillor is appointed as a representative
- direct contact with members of the Governance and Marketing and Communications teams is permitted without the requirement of approval from the Chief Executive Officer / relevant Director.

A councillor's role is one of advocacy, leadership and strategic direction rather than management and administration. The Chief Executive Officer is responsible for all staff matters.

As Councillors, we are aware of the requirements of Section 76E of the Local Government Act 1989 and must not seek to improperly direct or influence members of Council staff in the exercise of their duties. It is appropriate to notify the relevant Director when specific issues are required to be addressed.

### 4. Councillor Conduct Principles

The Act places obligations on Councillors in relation to the way they should act. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions. As Councillors of Greater Shepparton City Council, we undertake to comply with the various provisions of the Act and with this Code of Conduct.

Section 76B of the Act sets out the primary principle of councillor conduct as follows:

"It is the 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."

Section 76BA of the Act sets out the general principles of councillor conduct as follows:

"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 orally 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 staff 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."

In endorsing and agreeing with these principles we additionally agree to abide by all Council policies as adopted from time to time

#### **5. Councillor Values and Beliefs**

As Councillors we acknowledge and endorse Greater Shepparton City Council's Organisational Values and Beliefs which follow, and how they relate to our roles as Councillors:

##### **Values**

###### **Respect first, always**

We are attentive, listen to others and consider all points of view in our decision making.

###### **Take ownership**

We take pride in honouring our promises and exceeding expectations, and are transparent with and accountable for our actions.

###### **Courageously lead**

We lead with integrity, and stand up and stand by what is in the best interests of the Greater Shepparton community.

###### **Working together**

We work collaboratively to create higher quality outcomes that are more efficient, thoughtful, effective and responsive. We cannot accomplish all that we need to do without working together.

###### **Continually innovate**

We are open to new ideas and creatively seek solutions that encourage us to do our best for our community.

###### **Start the celebration**

As ambassadors for our people and place, we proudly celebrate the strengths and achievements of Council and the Greater Shepparton community.

##### **Beliefs**

###### **Inspired to lead**

Guided and inspired by our community, we boldly lead on their behalf to achieve the vision of creating a "Greater Shepparton".

**Protect and enhance liveability**

We continuously strive to position Greater Shepparton as a key regional city that boasts a vibrant and diverse culture, and an accessible, safe, connected and healthy community with a sense of belonging and pride.

**Good to Great**

We provide professional services for our community and have a best practice approach to everything we do. We have a passion to do our very best and proactively follow through on the goals created by our community.

**Innovation unlocks opportunity**

We are passionately progressive, consistently exploring innovative approaches and fresh thinking to improve what we do in creating a prosperous future for our community.

**Actively celebrate our community**

We play a vital role in creating a strong sense of community by actively sharing our community's successes, achievements and the uniqueness of Greater Shepparton.

**6. Council decision making**

We are committed to making all decisions impartially and in the best interests of the community. We acknowledge that effective decision-making is vital to the democratic process and an essential component of good governance and therefore:

- we will actively and openly participate in the decision making process, striving to be informed to achieve the best outcome for the community;
- we will respect the views of individuals during the debate. However, we also accept that decisions are based on a majority vote; and
- we accept that no Councillor can direct another Councillor on how to vote on any decision.

**7. Confidential information**

A Councillor must not disclose information that he or she knows, or should reasonably know, is confidential information, unless one or more of the below exemptions apply.

Information is confidential if:

- The information 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
- The information has been designated as confidential by a resolution of Council or the special committee which specifies the relevant grounds applying under section 89(2) of the Act and Council has not passed a resolution that the information is not confidential; or
- The information has been designated in writing as confidential information by the Chief Executive Officer specifying the ground or grounds applying and Council has not passed a resolution that the information is not confidential. In this part c) confidential information referred to ceases to be confidential at the expiry of 50 days after the designation unless the above dot points apply.

**Exemptions**

A Councillor may disclose information that he or she knows is confidential information in the following circumstances:

- (a) for the purposes of any legal proceedings arising out of this Act;
- (b) to a court or tribunal in the course of legal proceedings;
- (c) pursuant to an order of a court or tribunal;
- (d) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- (e) to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
- (f) to a municipal monitor to the extent reasonably required by the municipal monitor;
- (g) to the extent reasonably required for any other law enforcement purposes.

**Councillor Briefing Sessions – Confidentiality**

The purpose of Councillor briefing sessions is for staff to inform, advise and seek advice from Councillors on new or existing matters. These sessions also provide the opportunity for Councillors to be informed, to discuss, to challenge, question and clarify matters, as well as discussing the development of strategy and policy.

These briefing sessions do not involve decision making as Council decisions are made at the formal meetings of Council. However Councillors may provide options for investigation that they wish to be pursued as part of any Council investigation.

Information provided at Council briefings is frequently confidential, and attendees at these briefing sessions must not disclose to any person, other than the staff directly involved in the confidential matter and fellow Councillors, any information deemed as confidential at such sessions, whether in the form of information or advice provided, discussions held, or opinions or views given, as to do so would breach section 77 of the *Local Government Act 1989*.

Councillors acknowledge that briefing papers which will form the basis of a future Council report should be treated as confidential until such time as the agenda papers are released to the public as part of the council meeting process.

**8. Access to and use of council information**

We will treat Council information sensitively and appropriately, by:

- Not using information gained by virtue of our position as a Councillor for any purpose other than to exercise our role as a Councillor; and
- Respecting Council's policies in relation to public comments and communications with the media (refer section 11); and
- Not releasing information deemed 'confidential information' in accordance with section 77 of the Act (refer section 7); and
- Recognising the requirements of the Privacy and Data Protection Act 2014 regarding the access, use and release of personal information; and
- Councillors acknowledge that all requests made by Councillors for briefings from Council officers or access to information on Council files will be registered and reported. This obligation does not apply to requests for clarification/explanation of items on a forthcoming Council agenda.

**9. Use of council resources (including funds and property)**

Council resources are to be used effectively and economically.

- We will maintain adequate security over Council property, facilities and resources provided to us to assist in performing our role and will comply with any Council policies applying to their use.
- We will ensure any expense claims that we submit are in compliance with the relevant legislative provisions and Council Policy.
- We will not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate.
- We will not use public funds or resources in a manner that is improper or unauthorised.

**Inappropriate Use of Councils Information, Communication and Technology Systems**

Councils Information, Communication and Technology (ICT) systems must only be used for carrying out Council business, and must not be used inappropriately.

Inappropriate use of ICT systems includes any deliberate act of:

1. transmitting, communicating or accessing any material which could reasonably be perceived as discriminatory, harassment or vilification of any person on grounds which may include, but are not limited to:
  - sex
  - age
  - race, nationality, descent or ethnic background
  - social background
  - religion
  - marital status
  - disability
  - sexuality
  - pregnancy
2. transmitting, communicating or accessing any material that could reasonably be perceived as offensive, malicious, obscene, threatening, abusive or defamatory
3. transmitting, communicating or accessing any material for personal use or any purpose other than carrying out council business without the prior permission of the relevant Manager, Director or the Chief Executive Officer
4. transmitting, communicating or accessing any material that could cause damage to Councils reputation
5. transmitting, communicating or accessing any material that is likely to infringe copyright or give rise to other legal liability
6. attempting to intercept, alter or steal data in order to harm Council or achieve personal gain
7. leaking confidential council information
8. accessing, modifying or deleting content from another person's mailbox without their permission, including sending messages on their behalf
9. downloading or distributing "pirated" (or stolen) software or data
10. propagating any malicious software or malware



11. attempting to disable or overload any computer system or network, or to circumvent any system intended to protect the privacy or security of another user
12. releasing Council information to which the intended recipient is not otherwise automatically entitled without authorisation from the relevant Manager
13. purchase, installation or use of ICT software not approved by Council
14. failing to keep Council passwords secure
15. making telephone or mobile telephone calls to subscription numbers (e.g. 1900 numbers) or overseas / IDD numbers where specific exemptions have not been authorised.

#### **10. Gifts**

In accordance with Councils Gifts and Benefits Policy (37.POL1), we will avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from the Council.

We will take all reasonable steps to ensure that our immediate family members (parents, spouse, children and siblings) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

- We will not solicit or ask for a gift or benefit; and
- We will not accept offers of money under any circumstance; and
- A gift valued greater than \$25 received in the line of duty will be regarded as the property of Council; and
- We will notify the Chief Executive Officer in relation to any gift received, and arrange for the details to be registered on Council's Gift Register to protect us from any accusations that may be made in the future about misuse of position or dishonesty for not having declared a gift.

We acknowledge that a gift can be accepted where the gift would generally be regarded as only having a token value and could not be perceived to influence our actions as a Councillor.

In some circumstances it may be appropriate to accept a gift where refusal may cause offence or embarrassment. In this case, the gift may be accepted on behalf of Council and Councillors acknowledge that the gift becomes the property of Council. For transparency and accountability purposes, these gifts will be recorded in the Councillors Gifts Register with a notation that it is the property of the Council.

We recognise that gifts equal to or above the gift disclosure threshold received in the twelve months prior to election from a person or body that has a direct interest in a matter may give rise to an indirect interest because of receipt of an applicable gift.

We will record all campaign donations in our campaign donation return which are equal to or greater than the gift disclosure threshold, in accordance with section 62 of the Local Government Act 1989.

#### **11. Communication**

As representatives of the community, we have a primary responsibility to be responsive to community views and to adequately communicate the views and decisions of Council.

We will endeavour to ensure that the messages communicated through the media are clear and consistent, and positively portray Council as a decisive and responsible governing body.

We undertake to comply with the Council's Media Policy (07.POL1) and respect the functions of the Mayor and Chief Executive Officer to be the spokespersons for the Council in accordance with our policy.

As individual Councillors we are entitled to express independent views through the media (including social media as consistent with Councils policy), however we will make it clear that any unofficial comment is a personal view, and does not represent the position of Council as a whole.

We undertake to ensure that any such comment is devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any Councillor, member of staff or any other person.

- We will not provide official information or documentation to the media directly; this will be done through or with the assistance of the Marketing and Communications Department; and
- We will not provide confidential information or documentation information to any person or organisation until such information is declared non confidential in accordance with s77 of the Local Government Act 1989.

#### **Official Spokespersons**

The Mayor will provide official comment to the media on behalf of Council where the matter is of a political, controversial or sensitive nature.

This includes:

- State-wide political issues affecting Local Government
- Contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community
- Issues pertaining to policy and Council decisions
- Issues relating to the strategic direction of Council.
- The Mayor may nominate to a portfolio Councillor or other Councillor to make official comment on behalf of Council, where appropriate.

The CEO is the official spokesperson for all operational matters pertaining to the Greater Shepparton City Council as an organisation including:

- Staffing and structure of the organisation.
- Corporate issues relating to service provision or the day-to-day business of Council.

The CEO may nominate a Council officer spokesperson if appropriate.

#### **Personal dealings with Council**

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

## 12. Conflict of Interest Procedures

Council is committed to making all decisions impartially and in the best interests of the whole community. We therefore recognise the importance of fully observing the requirements of the Act in regard to the disclosure of conflicts of interest.

For the purpose of this Code, "direct interest", "indirect interest" and "conflicts of interest", have the meanings specified in s 77A, 77B, 78, 78A, 78B, 78C, 78D and 78E of the Act.

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or special committee, an assembly of councillors, an audit committee or a section 223 committee, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the provisions of the Act (unless exemptions apply).

A Councillor has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the Councillor would be directly altered if the matter is decided in a particular way. This includes where there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms and where the Councillor, or together with a member or members of the person's family have a controlling interest in a company or other body that has a direct interest in the matter.

A conflict of interest also exists where a Councillor has any of the six types of indirect interest. These indirect interests are

- Close association - an indirect interest because of a close association with a family member, relative or member of the household who has a direct interest
- Indirect financial interest - an indirect financial interest, including holding shares above a certain value in a company with a direct interest
- Conflicting duty - a conflicting duty arising from having particular responsibilities to a person or organisation with a direct interest
- Applicable gift - receipt of an applicable gift or gifts from a person or organisation with a direct interest
- Interested party - a party to the matter by having become involved in civil proceedings in relation to the matter
- Residential amenity – this occurs where there is a reasonable likelihood that the person's residential amenity will be altered if the matter is decided in a particular way.

Council agrees to comply with all the provisions of the Act in regard to Conflicts of Interest:

1. If as a Councillor I consider that I have a direct or indirect interest in a matter before Council, a special committee of council or an assembly of Councillors, I have a conflict of interest; and
2. If I as a Councillor have a conflict of interest in a matter I will comply with the requirements of the Act and ensure that I disclose the class and nature of the interest, leave the room in which the meeting or assembly is being held during any discussion, debate and vote on the matter; and
3. If I as a Councillor have a personal interest in a matter to be considered by Council or a special committee that is not a conflict of interest, and I consider that my personal interest may be in conflict with my public duty to act impartially and in the interest of the whole community, I will declare a conflicting personal interest under section 79B of the Act immediately before the matter is considered at the relevant

meeting and apply to Council or special committee to be exempted from voting on the matter.

In addition to the requirements of the Act:

- We will give early consideration to each matter to be considered by Council, any special committee to which we belong, or assembly of Councillors, to ascertain if we have a conflict of interest; and
- We recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each of us as individual Councillors and that Council officers cannot offer any advice in relation to potential conflicts. If we cannot confidently say that we do not have a conflict of interest, we will declare a conflict of interest and comply with the relevant requirements as if we had a conflict of interest; and
- If we consider that we may be unable to vote on a matter because of a conflict of interest, we will notify, as soon as possible, the Mayor or the Committee Chair, depending on whether the matter is to be considered by Council, a special committee, or an assembly of Councillors, as well as the Chief Executive Officer.

#### **Other legislative requirements**

The Act includes requirements in relation to Councillor eligibility, electoral conduct and the election period (caretaker period). Alleged contraventions of these provisions are not to be dealt with by the Council using the internal resolution procedure in this Code of Conduct. Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

We undertake to comply with the various provisions relating to these matters.

#### **13. Candidature of Councillors State or Federal Elections**

The commonwealth and state constitutions disqualify a person from holding office who is profiting from the crown or the state.

Should a Councillor wish to stand for State or Federal Government, it may be prudent for them to seek legal advice in relation to this matter prior to becoming a nominated candidate.

Councillors considering candidature will be expected to abide by the following guidelines:

1. A Councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as an independent candidate for a state or federal election (a prospective candidate), should provide written advice to the CEO as soon as practical, who will then advise all Councillors.
2. A Councillor who is a prospective candidate, should declare his or her intended candidacy at a meeting of the council as soon as practical after notifying the CEO.
3. A Councillor who nominates as a candidate for state or federal election should consider whether it is appropriate for them to apply for leave of absence from the council. If choosing to do so, this leave of absence should commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election (nomination date) and conclude no earlier than the close of voting for the election. During this period, a councillor who is on a leave of absence should not attend meetings of the council or otherwise act as a councillor. A

Councillor may use his or her discretion on whether or not to accept an allowance during this leave of absence.

4. Any councillor / staff relationship protocol which the council has in place in respect of the caretaker period prior to a council election, should be observed by a nominated candidate and this should apply from their nomination date until the close of voting for the election.
5. A Council, upon receiving an application for a leave of absence from a councillor who is, or intends to become a nominated candidate, should approve that application.
6. A Councillor who is a prospective candidate or a nominated candidate, should take care to differentiate between his or her role as a state or federal election candidate and role as a councillor when making public comment.
7. A Councillor who is a prospective candidate or a nominated candidate should not use council resources, including council equipment and facilities, in relation to his or her candidacy.
8. A Councillor who is a prospective candidate or a nominated candidate, should not use Council activities, including committee meetings and council related external activities, in relation to his or her candidacy.

#### **14. Prohibited Conduct**

The Act has specific provisions that prohibit Councillors from certain conduct. This conduct relates to:

- Misuse of position
- Improper direction and improper influence
- Confidential information
- Conflict of interest
- Electoral conduct

These matters are set out below in order to provide a complete picture of the obligations on Councillors. While these matters are not of a nature to be addressed as a contravention of the Councillor Code of Conduct, we undertake to comply with the prohibitions on Councillor conduct set out below. These matters should more properly be the subject of an application to a Councillor Conduct Panel for a finding of serious misconduct or a complaint to the Local Government Inspectorate or the Independent Broad-based Anti-corruption Commission depending on the nature of the allegation.

*(Note: Serious misconduct by a Councillors means:*

- (a) the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or*
- (b) the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or*
- (c) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or*
- (d) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or*
- (e) bullying of another Councillor or member of Council staff by a Councillor; or*
- (f) conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or*
- (g) the release of confidential information by a Councillor.)*

**Misuse of position**

A Councillor 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;
- (b) to cause, or attempt to cause, detriment to the Council or another person.

Circumstances involving the misuse of position by a Councillor include:

- (a) making improper use of information acquired as a result of the position he or she held or holds;
- (b) disclosing information that is confidential information within the meaning of section 77(2);
- (c) directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E;
- (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;
- (e) using public funds or resources in a manner that is improper or unauthorised;
- (f) failing to disclose a conflict of interest as required under this Division.

**Improper direction and improper influence**

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;
- (b) in the exercise of a power or the performance of a duty or function exercise or performed by the member as an authorised officer under this Act or any other Act;
- (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;
- (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

**15. Dispute Resolution Procedures**

This dispute resolution procedure will apply should a Councillor or group of Councillors breach any of the matters outlined above.

The dispute resolution procedure is not intended to resolve differences in policy or decision making, which are appropriately resolved through debate and voting in Council and Committee meetings.

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner, recognising that they have been elected to represent the best interests of our community. Where, after these endeavours have been exhausted, the matter still remains unresolved, the parties may resort to any or all of the Council's three phase dispute resolution process.

This process applies to any alleged breaches to the Councillor Code of Conduct and requires that the complainant submit the complaint in writing to the Mayor. The complainant, under the guidance of the Mayor, may engage in any or all of the three phases outlined below in attempt to resolve the dispute. Should the matter remain unresolved or these resolution processes be deemed inappropriate due to the seriousness of the matter, the complainant may request that the matter be escalated to a Councilor Conduct Panel.

The Council's three phase dispute resolution process involves:

- direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance;
- external mediation by an independent mediator engaged by the Chief Executive Officer; and
- an internal resolution procedure involving an independent arbiter.

#### **Phase 1 – Direct negotiation**

Where Councillors who are in dispute have not been able to resolve the dispute between them, either (or both) party (parties) may request the Mayor to convene a meeting of the parties.

A dispute referred for direct negotiation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of the Councillor Code of Conduct.

The party requesting the direct negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a "direct negotiation" dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the request is made by a group of councillors; and
- be signed and dated by the requestor or the requestor's representative.

The requestor is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Mayor or as soon as practicable thereafter.

The Mayor is to ascertain whether or not the other party is prepared to attend a "direct negotiation" meeting.

If the other party is not prepared to attend a meeting, the Mayor is to advise the requestor forthwith. No further action is required of the Mayor.

If the other party declines to participate in a meeting, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party consents to a meeting, the Mayor is to convene a meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within 5 working days of receiving the consent of the other party.

The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act, and the observation of the councillor conduct principles and the Councillor Code of Conduct.

The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, either or both of the parties have recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor (if any) or the immediate past Mayor. The Deputy Mayor or the immediate past Mayor will perform the functions ascribed to the Mayor.

#### **Phase 2 – External mediation**

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for “direct negotiation”.

An application made for a dispute to be referred for external mediation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of the Councillor Code of Conduct.

The applicant is to submit a written application to the Principal Conduct Officer setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an “external mediation”. Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the application is made by a group of councillors; and
- be signed and dated by the applicant or the applicant’s representative.

The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time that it is submitted to the Principal Conduct Officer or as soon as practical thereafter.

The Principal Conduct Officer is to ascertain (in writing) whether or not the other party is prepared to attend an “external mediation”. If the other party declines to participate in an external mediation, he or she is to provide their reasons for doing so in writing to the Principal Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

When the other party declines to participate in an external mediation, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party agrees to participate in an external mediation, the Principal Conduct Officer is to advise the applicant, the Mayor and Chief Executive Officer forthwith.



The Chief Executive Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

### **Phase 3 - Internal resolution procedure - Arbiter**

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:

- the application was made by the Council and the Council so resolves; or
- the application were made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application; or
- the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

A councillor or a group of councillors may make an application alleging that a Councillor has contravened this Councillor Code of Conduct. The application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the application is made by a group of councillors; and
- be signed and dated by the applicant or the applicant's representative.

The application must be submitted to the Council's Principal Conduct Officer.

An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and CEO of the application without undue delay;
- 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;
- identify an arbiter to hear the application;
- obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved;
- notify the parties of the name of the proposed arbiter and provide them with the opportunity (2 working days) to object to the person proposed to be the arbiter;

- consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter;
- 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;
- after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
- attend the hearing(s) and assist the arbiter in the administration of the process

In identifying an arbiter to hear the application, the Principal Conduct Officer must select an arbiter who is suitably independent and able to carry out the role of arbiter fairly.

The role of the arbiter is to:

- consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor;
- make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council;
- give a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council;
- recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct.

In considering an application alleging a contravention of the Councillor Code of Conduct, an arbiter will:

- in consultation with the Principal Conduct Officer, fix a time and place to hear the application;
- authorise the Principal Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing;
- hold as many meetings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing;
- have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the application allows;
- ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
- 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;
- ensure that the rules of natural justice are observed and applied in the hearing of the application; and
- ensure that the hearings are closed to the public.

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

An arbiter:

- may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened the Code;
- may find that a Councillor who is a respondent to an internal resolution procedure has contravened the Code;
- will suspend consideration of an internal resolution procedure during the election period for a general election.

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

A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next ordinary meeting of the Council for its consideration. If an arbiter has found that a contravention of the Code has occurred, the 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:

- direct the Councillor to make an apology in a form or manner specified by the Council;
- direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (in respect of the next scheduled meetings of the Council);
- direct that, for a period of up to, but not exceeding, 2 months on a date specified by the Council the Councillor:
  - be removed from any position where the Councillor represents the Council; and
  - 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.

A Councillor who does not participate in the internal resolution procedure may be guilty of misconduct. The Act provides that misconduct by a Councillor means any of the following:

- (a) failure by a Councillor to comply with the Council's internal resolution procedure
- (b) failure by a Councillor to comply with a written direction given by the Council under section 81AB
- (c) repeated contravention of any of the Councillor conduct principles.

Allegations of misconduct are heard on application by a Councillor Conduct Panel.

#### **Endorsement**

This Code of Conduct was adopted by Council on 28 June 2016 and is signed by the following Councillors:

Signatures

Cr Dinny Adem

Cr Fern Summer

Cr Hazelman

Cr Jenny Houlihan

Cr Les Oroszvary

Cr Dennis Patterson

Cr Kevin Ryan