

## SPECIAL MEETING OF COUNCIL

**Notice** is hereby given of a  
Special Meeting of Council to be held at  
the Council Chamber, 15 Stead Street, Ballan on  
Wednesday 29 June 2016,  
commencing at 7.00 p.m.

### Members:

Cr. Allan Comrie (Mayor)	East Moorabool Ward
Cr. Paul Tatchell	Central Ward
Cr. David Edwards	East Moorabool Ward
Cr. John Spain	East Moorabool Ward
Cr. Tonia Dudzik	East Moorabool Ward
Cr. Tom Sullivan	West Moorabool Ward
Cr. Pat Toohey	Woodlands Ward

### Officers:

Mr. Rob Croxford	Chief Executive Officer
Mr. Phil Jeffrey	General Manager Infrastructure
Mr. Satwinder Sandhu	General Manager Growth and Development
Mr. Danny Colgan	General Manager Community Services

**Rob Croxford**  
**Chief Executive Officer**

## AGENDA

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**1. OPENING OF MEETING**

**2. ACKNOWLEDGEMENT TO COUNTRY**

**We respectfully acknowledge the traditional owners of this land, their spirits and ancestors.**

**3. PRESENT**

**4. APOLOGIES**

## 5. DISCLOSURE OF CONFLICT OF INTEREST

Under the Local Government Act (1989), the classification of the type of interest giving rise to a conflict is; a direct interest; or an indirect interest (section 77A and 77B). The type of indirect interest specified under Section 78, 78A, 78B, 78C or 78D of the Local Government Act 1989 set out the requirements of a Councillor or member of a Special Committee to disclose any conflicts of interest that the Councillor or member of a Special Committee may have in a matter being or likely to be considered at a meeting of the Council or Committee.

Definitions of the class of the interest are:

- a direct interest
  - (section 77A, 77B)
- an indirect interest (see below)
  - indirect interest by close association (section 78)
  - indirect financial interest (section 78A)
  - indirect interest because of conflicting duty (section 78B)
  - indirect interest because of receipt of gift(s) (section 78C)
  - indirect interest through civil proceedings (section 78D)
  - indirect interest because of impact on residential amenity (section 78E)

### Time for Disclosure of Conflicts of Interest

In addition to the Council protocol relating to disclosure at the beginning of the meeting, section 79 of the Local Government Act 1989 (the Act) requires a Councillor to disclose the details, classification and the nature of the conflict of interest immediately at the beginning of the meeting and/or before consideration or discussion of the Item.

Section 79(6) of the Act states:

While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must:

- (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
- (b) remain outside the room and any gallery or other area in view of hearing of the room.

The Councillor is to be notified by the Mayor or Chairperson of the special committee that he or she may return to the room after consideration of the matter and all votes on the matter.

There are important reasons for requiring this disclosure immediately before the relevant matter is considered.

- Firstly, members of the public might only be in attendance for part of a meeting and should be able to see that all matters are considered in an appropriately transparent manner.
- Secondly, if conflicts of interest are not disclosed immediately before an item there is a risk that a Councillor who arrives late to a meeting may fail to disclose their conflict of interest and be in breach of the Act.

## 6. PRESENTATIONS / DEPUTATIONS

The Council has made provision in the business of the Special Meeting of the Council for the making of presentations or deputations to Council in relation to matters presented on the agenda for Council consideration.

Presentations or deputations are required to be conducted in accordance with the requirements contained within the **Presentation/Deputations Protocols and Procedural Guidelines**.

Persons wishing to make a presentation or deputation to the Council on a matter included in the agenda shall inform Council by 1pm on the Friday prior to the meeting by contacting the Chief Executive Officer's Office and registering their name and agenda item being spoken to.

At the meeting the Mayor will invite the persons wishing to make a presentation or delegation to address the Council on the agenda item.

The person making the presentation or deputation is to stand and address the Council on the item. No debate on the item is permitted between the person making the presentation or delegation and the Council.

A maximum of three minutes per presentation or delegation will be allocated. An extension of time may be granted at the discretion of the Mayor.

Councillors, through the Mayor, may ask the person making the presentation or delegation for clarification of matters presented.

The Mayor may direct that a member of the gallery ceases speaking if the above procedure is not followed.

**List of Persons making Presentations/Deputations other than in relation to a planning item listed on the agenda:**

**As listed.**

## **7. BUSINESS**

### **7.1 Councillor Code of Conduct Review**

#### **Introduction**

File No.: 01/03/002  
Author: John Whitfield  
General Manager: Satwinder Sandhu

#### **Background**

Recent changes to the Local Government Act 1989 (the Act) have set out a new Councillor Conduct Framework aimed at ensuring councillors conduct themselves in accordance with the standards councillors collectively set themselves in their Councillor Code of Conduct.

#### **Proposal**

A number of changes have been made to the Local Government Act that require the Councillor Code of Conduct to be reviewed and amended.

Firstly it requires the Council to review, and make any necessary amendments to its current Councillor Code of Conduct within 4 months after the commencement of Section 15 of the Local Government Amendment (Improved Governance) Act 2015 by calling a special meeting solely for the purpose of reviewing the Councillor Code of Conduct.

This effectively means a revised Councillor Code of Conduct is to be adopted by Council by 1 July 2016.

Further, Councillors should note that this policy will be reviewed again either late this year or early next year as this is required within four months of a general election.

The Act now outlines a hierarchy of conduct standards, requires an internal resolution procedure to resolve disputes, and mandates that Councillors sign a declaration to abide by the Code. It outlines sanctions which councils can apply to address any failure to meet Code standards. More details are set out below.

#### **1. The new hierarchy of conduct standards in the Act**

The reforms in the Act create a hierarchy for management of councillor conduct issues. Section 3(1) of the Act provides new definitions. These new definitions for misconduct, serious misconduct and gross misconduct are summarised in the table below, along with the authority responsible for addressing the matter.

<b>Type of Contravention</b>	<b>Definition</b>	<b>Responsible Authority</b>
Conduct inconsistent with standards council has set itself	Contraventions of the Councillor Code of Conduct	Council (via Internal Dispute Resolution Procedure)
Misconduct	Failing to comply with a council's internal resolution procedure, including failure to abide by any decision of council in relation to a contravention of the code, failure to comply with written direction and repeated contraventions of councillor conduct principles	Councillor Conduct Panel
Serious misconduct	Failing to comply with panel processes, continued and repeated misconduct, and bullying of another Councillor or staff member.	Councillor Conduct Panel
	Improperly directing or influencing staff, and releasing confidential information	Chief Municipal Inspector
Gross misconduct	Behaviour that demonstrates lack of character to be a councillor	VCAT

## 2. Principal Conduct Officer

The Act in Section 81X now includes the role of Principal Conduct Officer. This Officer is to assist the council in the implementation of, and conduct of, the internal resolution procedure of a council; and assist the Principal Councillor Conduct Registrar to perform the functions specified in Section 81T.

The Chief Executive Officer has appointed Mr Satwinder Sandhu, the General Manager Growth & Development to be the Council's Principal Conduct Officer.

## 3. Internal resolution procedure

Councils are now required to have in place an internal resolution procedure to address conduct that is in contravention of the councillor code of conduct. The internal resolution processes must make clear how allegations of contraventions of the code of conduct are to be handled. This gives councils significantly greater authority to shape and enforce acceptable standards of conduct by their councillors.

There are three phases of internal resolution outlined in the draft policy. They are based on processes recommended to the local government sector by the Municipal Association of Victoria (MAV).



Phase One involves direct negotiation between the parties to a dispute. Phase Two utilises an external mediation method, Phase Three utilises an independent arbiter who is able to consider alleged violations of the code of conduct and make final determinations on them fairly and without bias.

In relation to the Phase Three internal resolution procedure, the Board of the MAV have invited expressions of interest for persons to go onto a local government panel of arbiters. It is the intention of the MAV to have this panel in place by the end of June 2016. The MAV will then publish a list of arbiters on its website and Councils will be able to directly engage with an arbiter of their choice.

#### **4. New Councillor Code of Conduct declaration requirements**

One of the new provisions of the Act (Section 63) requires Councillors to make a declaration to abide by a Councillor Code of Conduct.

Within one month of any amendment made to a Councillor Code of Conduct, all councillors must make a declaration stating that they will abide by the revised Councillor Code of Conduct. This declaration must be signed and witnessed by the CEO. (Section 76C(6A))

With a general election in October 2016 it is also worthwhile noting Sections 63 and 64 of the Act. Section 63 says that a person elected to be a Councillor is not capable of acting as a Councillor until the person has read the Councillor Code of Conduct and made a declaration, witnessed by the Chief Executive Officer, stating that they will abide by the Councillor Code of Conduct.

Section 64 says that the office of a Councillor becomes vacant if a person elected to be a Councillor does not, within 3 months after the day on which the person was declared elected:

- (a) take the oath of office; or
- (b) make the declaration to abide by the Councillor Code of Conduct.

Finally, an amendment made to Section 29 of the Act added sub-clause (ea). It says:

#### **29 Disqualifications**

- (1) *A person is not capable of becoming or continuing to be a councillor or nominating as a candidate at an election if—*
  - (ea) *he or she has failed to make a declaration stating that he or she will abide by the councillor code of conduct in accordance with Section 76C;.....”*

To sum up the declarations required for this current review of the Code, Councillors need to sign a declaration that they will abide by the revised Councillors Code of Conduct by 1 August 2016.

#### **5. Sanctions for contraventions of the code**

Section 81AB now specifies that councils may impose sanctions through their internal resolution procedure for contraventions of their code. These must be voted on by council as a whole and they may include:

- “ Requiring an apology.
- “ Suspension from up to two council meetings.
- “ Direction that they not attend or chair an advisory or special committee for up to two months.
- “ Direction that they be removed from a position where they represent council for up to two months.

The primacy given to councils addressing councillor conduct internally is reinforced by the way applications to establish panels are dealt with. The Principal Councillor Conduct Registrar is required to refer matters sent to a Councillor Conduct Panel back to a council to resolve if the internal council code process has not been exhausted prior to an application for a panel.

Finally, Councillors should note that when considering a report from the independent arbiter in Phase 3 of the internal dispute resolution procedures, the Councillor who allegedly contravened the Councillor Code of Conduct has a conflict of interest in the matter and must leave the meeting while the matter is discussed and resolved.

**Policy Implications**

The 2013 - 2017 Council Plan provides as follows:

<b>Key Result Area</b>	Representation and Leadership of our community
<b>Objective</b>	Good governance through open and transparent processes and strong accountability to the community.
<b>Strategy</b>	Ensure policies and good governance are in accordance with legislative requirements and best practice.

**Financial Implications**

There are no financial implications from this report.

**Risk & Occupational Health & Safety Issues**

Risk Identifier	Detail of Risk	Risk Rating	Control/s
Legislative requirements	Failure to comply to the Code	Medium	Council to adopt the revised Councillor Code of Code.

**Communications and Consultation Strategy**

The Councillor Code of Conduct must be made publicly available on the council's website. This must be done as soon as practicable after it is adopted.

## **Victorian Charter of Human Rights and Responsibilities Act 2006**

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

### **Officer's Declaration of Conflict of Interests**

Under section 80C of the Local Government Act 1989 (as amended), officers providing advice to Council must disclose any interests, including the type of interest.

*General Manager – Satwinder Sandhu*

In providing this advice to Council as the General Manager, I have no interests to disclose in this report.

*Author – John Whitfield*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

### **Conclusion**

The revised Councillor Code of Conduct as attached to this report is now placed before the Council for its consideration and adoption.

### **Recommendation:**

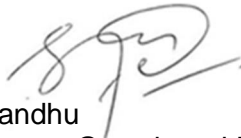
**That Council adopts the revised Councillor Code of Conduct as attached to this report.**

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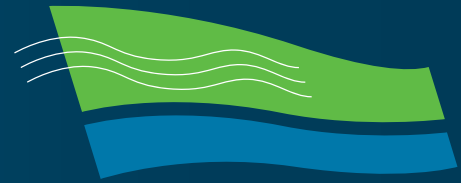
### **Report Authorisation**

**Authorised by:**

**Name:** Satwinder Sandhu  
**Title:** General Manager Growth and Development  
**Date:** Wednesday, 8 June 2016

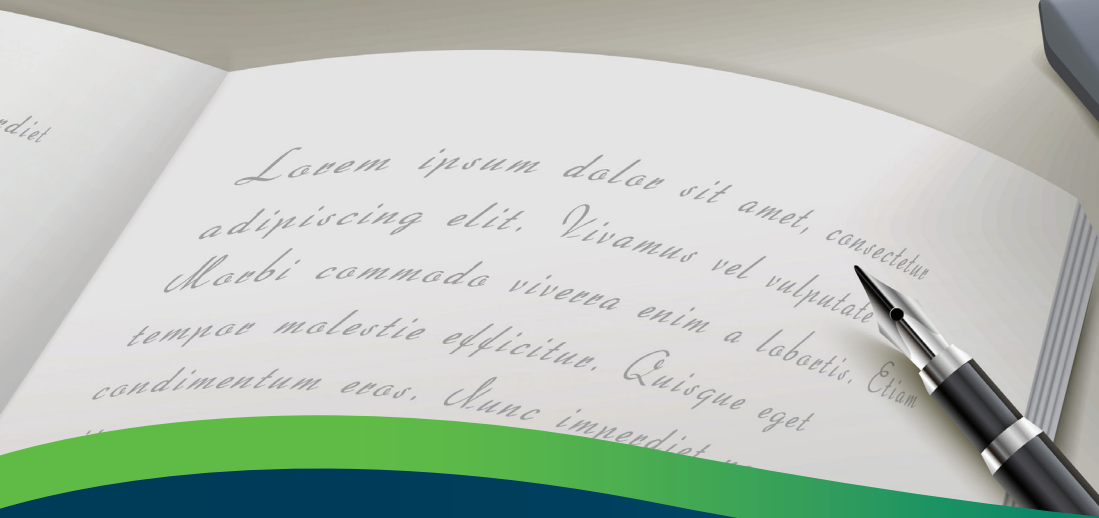


# Attachment - Item 7.1



MOORABOOL  
SHIRE COUNCIL

# Code of Conduct



## COUNCILLORS CODE OF CONDUCT

This Code, which incorporates the statutory requirements specified for a Code of Conduct under Section 76C of the *Local Government Act* 1989, was adopted by resolution of Moorabool Shire Council on xx June 2016.

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## 1. Introduction

The Code of Conduct is a tool of corporate governance. As Moorabool Shire Councillors, we are committed to working together in the best interests of our communities and discharging our responsibilities to the best of our knowledge, skill and judgement. This Code of Conduct is established as part of Council's commitment to govern our Shire effectively and adhering to the principles of good governance.

Good governance involves making and implementing good decisions which are based upon processes, protocols and good conduct.

Good conduct and good relationships are particularly significant because it relies on working together as the government to make decisions in the name of the Council, regardless of individual differences. This involves mutual respect, shared values and courtesy which are important especially when there are differences of opinion.

This Code of Conduct is established in accordance with the requirements of section 76C of the *Local Government Act 1989* and will be reviewed periodically.

Further to this Councillor Code of Conduct, there is also Employees Code of Conduct which Council staff are bound by and adhere to as part of good conduct.

## 2. Definitions

The following definitions are listed to assist with the reading of the document:

<b>Word</b>	<b>Definition</b>
Act	means the <i>Local Government Act 1989</i> (as Amended) and sections made under it.
Bullying	means the Councillor repeatedly behaves unreasonably towards another Councillor(s) or member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor(s) or member of Council staff.
Council	means Moorabool Shire Council, being a body corporate constituted as a municipal Council under the <i>Local Government Act 1989</i> .
Councillor Conduct Panel (CCP)	means a panel of 2 people selected by the Principal Councillor Conduct Registrar under section 81V of the Act.
Councillors	means the individuals holding the office of a member of Moorabool Shire Council.
Council Officers	means the Chief Executive Officer (CEO) and staff of Council appointed by the CEO.
Community	means the whole of the Moorabool community.
Complaint	means a grievance concerning the conduct of a Councillor or a member of the organisation.
Dispute	means a circumstance in which 2 or more Councillors are unable to resolve an interpersonal conflict amongst themselves.



Gross misconduct	means behaviour that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor.
Internal resolution procedure	means the procedure specified in the Councillor Code of Conduct and developed and maintained Council in accordance with section 81AA of the Act.
Misconduct	means any of the following: <ul style="list-style-type: none"> <li>• Failure by a Councillor to comply with the Council's internal resolution procedure; or</li> <li>• Failure by a Councillor to comply with a written direction given by the Council under section 81AB of the Act; or</li> <li>• repeated contravention of any of the Councillor Conduct principles.</li> </ul>
Principal Conduct Officer	means the person appointed in writing by the Chief Executive Officer to be the Principal Conduct Officer for the Council under Section 81Y of the Act. For this purpose the General Manager Growth & Development has been appointed to this role.
Principal Councillor Conduct Registrar	means the person appointed by the Secretary to be the Principal Councillor Conduct Registrar under Section 81S of the Act.
Serious misconduct	means: <ul style="list-style-type: none"> <li>• The failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or</li> <li>• The failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or</li> <li>• The failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or</li> <li>• 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</li> <li>• Bullying of another Councillor or member of Council staff by a Councillor; or</li> <li>• Conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or</li> <li>• the release of confidential information by a Councillor in contravention of section 77 of the Act.</li> </ul>

### 3. Values and Principles

#### 3.1 Moorabool Shire Council Values

Moorabool Shire Council has determined the following Values to guide its decision making and operations.

- Respect                      Treat others the way you want to be treated.
- Integrity                     Do what is right.
- Practicality                 Always be part of a solution.
- Excellence                 Continually improve the way we do business.
- Equity                         Fair distribution of resources.

These Values are laid out in the Council Plan that is adopted by the Council each term. Based on these Values and the Conduct Principles within the *Local Government Act 1989*, Moorabool Shire Council has developed the following set of Principles for this Code of Conduct.

#### 3.2 Moorabool Shire Council Principles

As Councillors of Moorabool Shire Council we endorse, as is specified in the *Local Government Act 1989*, that it is a primary principle of Councillor Conduct that, in performing the role of a Councillor, we as Councillors will:

- Act with integrity;
- Impartially exercise our responsibilities in the interests of the local community; and
- Not improperly seek to confer an advantage or disadvantage on any person.

Furthermore, we acknowledge that in performing our role as Councillors we will:

- Avoid conflict between our public duties as a Councillor and our personal interests and obligations;
- Act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- Treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, council staff and other persons;
- Exercise reasonable care and diligence and submit ourselves to the lawful scrutiny that is appropriate to our office;
- Endeavour to ensure that public resources are used prudently and solely in the public interest;
- Act lawfully and in accordance with the trust placed in each of us as elected representatives;
- Ensure when expressing our own opinions on Council matters, it does not undermine the standing of Council in the community and/or does not impede with the decisions of Council.
- Conduct ourselves in a manner that does not cause detriment to Council or the community of Moorabool Shire; and
- Support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

## 4. Roles and Responsibilities

### 4.1 The Functions of a Councillor

We acknowledge the role of a Councillor as specified in Section 65 of the Act which articulates the role is to:

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

We acknowledge that the administrative management of the Council is the responsibility of the Chief Executive Officer, and Councillors have no authority to give directions to Council staff. We endeavour to ensure our interactions with members of Council staff do not, and are not perceived to improperly direct or influence members of Council staff in the exercise of their duties, or in their professional advice to Council. Accordingly, our interactions with the administration will be through the Chief Executive Officer, General Managers and Managers as required by the *Local Government Act 1989*.

### 4.2 The Functions of the Mayor

The Mayor is elected by Council to represent the views and directions of Council and the functions of the Mayor include:

- Providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act and the observation of the Councillor Conduct Principles and the Councillor Code of Conduct by Councillors under section 76B, 76BA and 76C;
- Acting as the principal spokesperson of the Council;
- Supporting good working relations between Councillors; and
- Carrying out the civic and ceremonial duties of the Mayor.

The Act also includes other functions of the Mayor which differentiate the role of mayor from other Councillors. These include:

- Being chairperson of meetings of Council at which the Mayor is present;
- Having the casting vote where necessary; and
- Taking precedence at all municipal proceedings.

That Act also expands the function of the Chief Executive Officer to specifically include the responsibility of the CEO to support the Mayor in the performance of his or her role. This also includes managing the interactions between Councillors and staff.

### **4.3 Working with the Chief Executive Officer and Management**

The Chief Executive Officer is responsible for administrative and operational matters of Council including the appointment of Council officers and structuring an organisation that allows the implementation of decisions made by Council. The Council appoints and reviews the performance of the Chief Executive Officer.

Staff are responsible for providing information to Councillors that will assist their representation and decision-making roles. To obtain information that is up-to-date and offered in the right context, liaison should occur with the Chief Executive Officer, or appropriate General Manager. Speaking directly to Council officers below General Manager level without the authorisation of the officer's General Manager may result in Councillors receiving advice that has not been formally endorsed by senior management.

Exceptions are made with support staff and other designated staff who, for operational reasons, will have regular contact with Councillors. The provision of information and advice to Councillors operates on the principle that information provided to one Councillor should generally be made available to all Councillors.

Councillors should refrain from publicly criticising Council officers in a way that casts aspersions on their professional competence or credibility. Councillors should advise the Chief Executive Officer in a timely fashion of any concerns that a Council officer has acted contrary to a formal Council policy or decision.

In addition to statutory provisions regarding confidential information (Section 77 of the Act), Councillors must not release to an external person or organisation any documents or information that the Chief Executive Officer or a General Manager has deemed to be kept confidential or that has been marked confidential.

### **4.4 The Functions of the Principal Conduct Officer**

The Principal Conduct Officer of the Council plays a key role in the Code of Conduct dispute resolution process. The functions of a Principal Conduct Officer include to assist the council in the implementation of, and conduct of, the internal resolution procedure of a council as specified under the Act.

The Principal Conduct Officer is responsible for appointing the Independent Arbiter.

### **4.5 The Functions of the Independent Arbiter**

The role of the independent 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.

## 5. Councillor Conduct

### 5.1 Use of Council resources

We commit to using Council resources 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;
- Ensure any expense claims that we submit are in compliance with the relevant legislative provisions and Council policy;
- 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; and
- Not use public funds or resources in a manner that is improper or unauthorised.

[Refer - Councillor and Members of Committees Expenses and Resources Policy]

### 5.2 Gifts and Benefits

We will scrupulously 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.

Where a gift is received on behalf of the Council, the gift becomes the property of the 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 ~~62~~ campaign donation return+.

### 5.3 Communication

We recognise that as representatives of the local community, we have a primary responsibility to be responsive to community views and to adequately communicate the position and decisions of Council.

In line with Council's Communications Strategy and Action Plan, the Mayor will be the designated official spokesperson for all Council policies and decisions and will provide official comment to the media on behalf of Council where the matter is of a political, controversial or sensitive nature. This includes major Council announcements and civic occasions. Where the Mayor is not available, he/she may delegate authority to another Councillor.

We acknowledge that individual Councillors are entitled to express their personal opinions through the media (both public and private).

Where we choose to do so, we will make it clear that such comment is a personal view and does not represent the position of Council. 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 person. Furthermore, our dealings will be in accordance with the principles as set in this code

The Chief Executive Officer will be the official spokesperson on behalf of Council for all media enquiries regarding operational matters.

#### 5.4 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.

#### 5.5 Dealing with contraventions of Conduct

The following table below summarises the authority responsible for addressing a contravention of misconduct, serious misconduct and gross misconduct as defined within the Act:

Type of Contravention	Definition	Responsible Authority
Conduct inconsistent with standards council has set itself	Contraventions of the Councillor Code of Conduct	Council (via Internal Dispute Resolution Procedure)
Misconduct	Failing to comply with a council's internal resolution procedure, including failure to abide by any decision of council in relation to a contravention of the code, failure to comply with written direction and repeated contraventions of councillor conduct principles	Councillor Conduct Panel
Serious misconduct	Failing to comply with panel processes, continued and repeated misconduct, and bullying of another Councillor or staff member.	Councillor Conduct Panel
	Improperly directing or influencing staff, and releasing confidential information	Chief Municipal Inspector
Gross misconduct	Behaviour that demonstrates lack of character to be a councillor	VCAT

## 6. Internal Dispute Resolution Procedure

### 6.1 A three phase Internal Resolution Procedure

The dispute resolution process is intended to be used when a conflict and/or dispute emerges when differences between Councillors become personal or the behaviour of Councillors towards each other and/or staff is of a nature that unduly affects the operation of the Council. It is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in council and committee meetings. Disputes may also involve allegations of contraventions of this Code of Conduct.

All Councillors are committed to resolving disputes or dealing with alleged contraventions of the Code of Conduct without the need for external assistance as a demonstration of unity and teamwork wherever possible and to resolve issues using their best endeavours without resorting to this dispute resolution process.

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.

Each of the three phases follow set processes and these have been provided as appendices to this Councillor Code of Conduct.

Phase No.	Description	Appendix No.
1	<b>Direct Negotiation</b> between the parties in dispute with the Mayor in attendance to provide guidance;	1
2	<b>Using External Mediation</b> by an independent mediator engaged by the Chief Executive Officer; and	2
3	<b>Using an Independent Arbiter</b> for the internal resolution process.	3

### 6.2 Failure of the Councillor to comply

In the event a Councillor fails to comply with Council's Internal Resolution Procedure, or with a written direction given by Council at the conclusion of the internal resolution process, this will constitute misconduct under the Act, and therefore will be dealt with by a Councillor Conduct Panel.

### 6.3 Internal Resolution Procedure – during the Election Period

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.

## 7. Misconduct Resolutions Processes

### 7.1 Councillor Conduct Panel

The Council notes that in relation to a formal dispute resolution process, Division 1B of the Act provides for the establishment of Councillor Conduct Panels to hear disputes between Councillors and allegations of misconduct and serious misconduct by Councillors.

In this context, section 81B (1) provides that an application for a panel hearing may be made by:

- The Council, following a resolution of the Council to make an application to Councillor Conduct Panel under this section in respect of a Councillor's misconduct or serious misconduct; or
- A Councillor; or
- A group of Councillors.

The Principal Conduct Officer will assist the Principal Councillor Conduct Registrar to perform the functions as required by section 81T of the Act specifically relating to the Councillor Conduct Panel.

### 7.2 Councillor misconduct and serious misconduct

Section 81B of the Act provides for the application for a Councillor Conduct Panel (CCP) to investigate alleged Councillor Misconduct and serious misconduct.

If a CCP makes a finding of misconduct against a Councillor, then the Councillor may be reprimanded or directed to make a formal apology or take leave of absence for a specified period. A CCP may also direct that the Councillor attends mediation, training or counselling and direct that Council amends its Code of Conduct.

### 7.3 Jurisdiction of VCAT

VCAT will hear allegations of gross misconduct. The Chief Municipal Inspector will be responsible for making applications to VCAT for findings of gross misconduct against councillors.

If VCAT makes a finding of gross misconduct, then a Councillor may be disqualified from office for a maximum of 8 years. Councillors may also be ineligible to hold the office of Mayor for a maximum period of 8 years.

If a Councillor party to the matter is not satisfied with the ruling of the Councillor Conduct Panel, that Councillor can take the matter to VCAT for a review of that decision.

## 8. Guidance and Advice

Councillors are individually responsible for seeking relevant advice from the Mayor, Chief Executive Officer or General Manager Growth & Development as to the application of the Code.



## 9. Related Policies & Procedures

Other related Council policies and procedures are:

- Councillors and Members of Council Committees Expenses Policy
- Protected Disclosure Procedures
- Privacy Policy
- Election (Caretaker) Period Policy
- Occupational Health & Safety Policy

## 10. Endorsement

We acknowledge that in accordance with the Local Government Act 1989, this Code of Conduct addresses the statutory requirements set out in section 76C and 81AA of the Act; namely it:

- Includes Councillor conduct principles; and
- Includes an internal resolution procedure of Council.

We, the following Councillors, declare that we will abide by this Councillor Code of Conduct and that we agree to comply with the Internal Resolution Procedures contained within it.

Councillor	Witnessed
Cr. Allan Comrie, East Moorabool Ward	Rob Croxford, Chief Executive Officer
Date	Date
Cr. Tonia Dudzik, East Moorabool Ward	Rob Croxford, Chief Executive Officer
Date	Date
Cr. David Edwards, East Moorabool Ward	Rob Croxford, Chief Executive Officer
Date	Date
Cr. John Spain, East Moorabool Ward	Rob Croxford, Chief Executive Officer
Date	Date
Cr. Tom Sullivan, West Moorabool Ward	Rob Croxford, Chief Executive Officer
Date	Date
Cr. Paul Tatchell, Central Moorabool Ward	Rob Croxford, Chief Executive Officer
Date	Date
Cr. Pat Toohey, Woodlands Ward	Rob Croxford, Chief Executive Officer
Date	Date

**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 steps in Phase 1 are set out below:

1. 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.
2. 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.
3. The Mayor is to ascertain whether or not the other party is prepared to attend a %direct negotiation+meeting.
4. If the other party is not prepared to attend a meeting, the Mayor is to advise the requestor forthwith. The requestor can then choose to resolve the matter using either Phase 2 or Phase 3 internal disputes resolution procedures.
5. If the other party declines to participate in a meeting, this does not constitute a contravention of this Councillor Code of Conduct.
6. 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.
7. The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.

8. 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.
9. 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.
10. 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.
11. Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor. In the absence of a Deputy Mayor the request is to be made to the immediate past Mayor in office. The Deputy Mayor or the immediate past Mayor in office will perform the functions ascribed to the Mayor.

**Phase 2 – Using 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 steps in Phase 2 are set out below:

1. 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.
2. 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.
3. 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.
4. When the other party declines to participate in an external mediation, this does not constitute a contravention of this Councillor Code of Conduct.
5. 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.
6. The Principal Conduct Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

7. The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties, the Mayor and the Chief Executive Officer. Where one party does not comply with the agreement, the other party has recourse to Phase 3 of Councils internal resolution procedures where the matter relates to an alleged contravention of the Councillor Code of Conduct.
  
8. 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 Phase 3 of Councils internal resolution procedures where the matter relates to an alleged contravention of the Councillor Code of Conduct.

**Phase 3 – Using an Independent Arbiter**

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 steps in Phase 3 are set out below:

1. The application must be submitted to the Council's Principal Conduct Officer.
2. 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.
3. 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.

4. 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.
5. 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.
6. 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.
7. 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.

8. 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.
9. 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.

[Section 81AB]



## Extracts of Sections of the Local Government Act 1989

### Section 29 – Disqualifications

(1) A person is not capable of becoming or continuing to be a councillor or nominating as a candidate at an election if-

- (ea) he or she has failed to make a declaration stating that he or she will abide by the councillor code of conduct in accordance with Section 76C;õ ..+

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### Section 63 – Oath of office and councillor code of conduct

(1) a person elected to be a councillor is not capable of acting as a councillor until the person has -

- (a) taken the oath of office specified in subSection (1A); and
- (b) read the councillor code of conduct and, in accordance with subSection 3, made a declaration stating that they will abide by the Council of code of conduct.

(2) The oath of office must be -

- (a) made before the Chief Executive Officer; and
- (b) dated and signed before the Chief Executive Officer; and
- (c) recorded in the minutes of the council.

(3) A declaration by a person elected to be a councillor under subSection (1) (b) must be -

- (a) in writing; and
- (b) witnessed by the Chief Executive Officer.

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### Section 64 - Failure to take oath of office or make Code of Conduct declaration

The office of a Councillor becomes vacant if a person elected to be a Councillor does not, within 3 months after the day on which the person was declared elected-

- (a) take the oath of office; or
- (b) make the declaration specified in section 63(1)(b).

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### Section 65 – The role of a Councillor

The role of a Councillors 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.

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.

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### **Section 73AA Functions of Mayor**

The functions of the Mayor of a Council include .

- (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.
- 

### **Section 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.
- 

### **Section 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 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 it 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.
-

## **Section 76C Councillor Code of Conduct**

### **Section 76C (2)**

A Council must, within the period of 4 months after a general election .

- (a) call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
- (b) at that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.

### **Section 76C (3)**

A Councillor Code of Conduct:

- (a) must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor; (Section 81AA)
- (b) may set out processes for the purpose of resolving an internal dispute between Councillors;
- (c) must include any provisions prescribed for the purpose of this section;
- (d) must include provisions addressing any matters prescribed for the purpose of this section;
- (e) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.

### **Section 76C (6)**

A copy of the current Councillor Code of Conduct must be:

- (a) given to each councillor;
- (b) available for inspection by the public at the council office and any district offices;
- (c) published on the Council's internet website maintained under section 82A.

### **Section 76C (6A)**

Within one month of amendments to a Councillor Code of Conduct being approved in accordance with this section, a Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct.

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## **Section 76D Misuse of position**

- (1) A person who is, or has been, a councillor -
  - (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.
- (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.
- 

### **Section 76E (2) 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; or
  - (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; 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.
- 

### **Section 77(1A) Confidential Information**

- (1) A Councillor must not disclose information that the he or she knows, or should reasonably know, is confidential information.
  - (1A) A Councillor may disclose information that the 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.
- 

### **Section 77A Direct and indirect interests**

- (1) A relevant person has a conflict of interest in respect of a matter if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person has a direct interest in a matter if the relevant person has an interest of a kind described in section 77B.
- (3) A relevant person has an indirect interest in a matter if the relevant person has
  - (a) a close association as specified in section 78; or
  - (b) an indirect financial interest as specified in section 78A; or
  - (c) a conflicting duty as specified in section 78B; or
  - (d) received an applicable gift as specified in section 78C; or

- (e) become an interested party as specified in section 78D; or
  - (f) a residential amenity that may be altered as specified in section 78E.
- (4) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (5) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest the relevant person holds .
- (a) is held as a resident, ratepayer or voter and does not exceed the interests generally held by other residents, ratepayers or voters; or
  - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (6) A relevant person does not have a conflict of interest in a matter if the relevant person-
- (a) does not know the circumstances that give rise to the conflict of interest; and
  - (b) would not reasonably be expected to know the circumstances that give rise to the conflict of interest.

#### **Section 81AB Sanctions for contravention of Councillor Code of Conduct**

- (1) If, after an internal resolution procedure has been conducted, it is found that a Councillor has contravened the Councillor Code of Conduct, the Council may 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 the Council;
  - (b) direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council;
  - (c) direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by the Council, the Councillor-
    - (i) be removed from any position where the Councillor represents the 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.
- (2) A direction given under subsection (1)(b) must be in respect of the next scheduled meetings of the Council after the direction is made.

#### **Section 81AA Internal resolution procedure of Council**

- (1) A Council must develop and maintain an internal resolution procedure for the purposes of addressing an alleged contravention of the Councillor Code of Conduct by a Councillor.
- (2) The internal resolution procedure of a Council must-
- (a) be specified in the Councillor Code of Conduct; and
  - (b) incorporate any prescribed processes including any application process; and
  - (c) provide for the selection of an arbiter who is suitably independent and able to carry out the role of arbiter fairly; and
  - (d) specify the role an arbiter is expected to undertake in the conduct of any internal resolution procedure including that the arbiter must-
    - (i) consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor; and

- (ii) make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council; and
  - (e) provide processes to ensure that parties affected by an application alleging a contravention of the Councillor Code of Conduct are given an opportunity to be heard by the arbiter; and
  - (f) specify that the Council and the Councillor the subject of any application made alleging a contravention of the Councillor Code of Conduct are to be given written reasons for any findings made by an arbiter; and
  - (g) address any matters prescribed for the purposes of this section; and
  - (h) include any provisions prescribed for the purposes of this section.
- 

### **Section 81AB Sanctions for contravention of Councillor Code of Conduct**

- (1) If, after an internal resolution procedure has been conducted, it is found that a Councillor has contravened the Councillor Code of Conduct, the Council may 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 the Council;
    - (b) direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council;
    - (c) direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by the Council, the Councillor .
      - (i) be removed from any position where the Councillor represents the 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.
  - (2) A direction given under subsection (1)(b) must be in respect of the next scheduled meetings of the Council after the direction is made.
- 

### **Section 81B Application to Councillor Conduct Panel**

- (1) A Councillor Conduct Panel may hear an application that alleges misconduct or serious misconduct by a Councillor.
- (1A) An application for a Councillor Conduct Panel to make a finding of misconduct against a Councillor may be made by .
  - (a) the Council following a resolution of the Council to make an application to a Councillor Conduct Panel under this subsection in respect of a Councillor's conduct; or
  - (b) a Councillor or a group of Councillors.
- (1B) An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by .
  - (a) the Council following a resolution of the Council to make an application to a Councillor Conduct Panel under this subsection in respect of a Councillor's conduct; or
  - (b) a Councillor or a group of Councillors; or
  - (c) the Chief Municipal Inspector.
- (2) *Repealed*
- (3) An application made under this section must .
  - (a) specify the ground or grounds for the application;

- (b) set out .
  - (i) the circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting misconduct or serious misconduct; and
  - (ii) the particulars of any evidence of those circumstances, actions or inactions of the Councillor that are alleged as constituting the misconduct or serious misconduct;
- (c) specify .
  - (i) any steps taken by Council to resolve the matter that is the subject of the application and the reason why the matter was not resolved by the taking of those steps; or
  - (ii) if the Council did not take any steps to resolve the matter that is the subject of the application, the reason why the Council did not take any steps to resolve the matter;
- (d) if the application is made by the Council or a group of Councillors, state the name and address of the Councillor whom the Council has, or group have, appointed as representative of the Council or group.

### **Section 81X Functions of a Principal Conduct Officer**

A Principal Conduct Officer must .

- (a) assist the Council in the implementation of, and conduct of, the internal resolution procedure of a Council; and
- (b) assist the Principal Councillor Conduct Registrar to perform the functions specified in section 81T.

### **Section 81Y Duties of the Chief Executive Officer in relation to Councillor Conduct Panels**

- (1) The Chief Executive Officer must appoint, in writing, an eligible person to be the Principal Conduct Officer.
- (2) For the purposes of subsection (1), a person is an eligible person if .
  - (a) the person is a senior officer (other than the Chief Executive Officer); or
  - (b) the Council resolves that the person is suitably qualified to perform the functions of the Principal Conduct Officer.

### **Section 94A Functions of the Chief Executive Officer**

- (1) A Chief Executive Officer is responsible for:
  - (a) establishing and maintaining an appropriate organisational structure for the Council; and
  - (b) ensuring that the decisions of the Council are implemented without undue delay; and
  - (c) the day to day management of the Council's operations in accordance with the Council Plan; and
  - (d) developing, adopting and disseminating a code of conduct for Council staff; and
  - (e) providing timely advice to the Council; and
  - (f) ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act;
  - (g) supporting the Mayor in the performance of the Mayor's role as Mayor;
  - (h) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013; and

- (i) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.
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**Section 94A (3A)**

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

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**8. FURTHER BUSINESS AS ADMITTED BY UNANIMOUS RESOLUTION OF COUNCIL**

**9. CLOSED SESSION OF THE MEETING TO THE PUBLIC****Recommendation:**

That pursuant to the provisions of the Local Government Act 1989, the meeting now be closed to members of the public to enable the meeting to discuss matters, which the Council may, pursuant to the provisions of Section 89(2) of the Local Government Act 1989 (the Act) resolve to be considered in Closed Session, being a matter contemplated by Section 89(2) of the Act, as follows:

- (a) personnel matters;
- (b) the personal hardship of any resident or ratepayer;
- (c) industrial matters;
- (d) contractual matters;
- (e) proposed developments;
- (f) legal advice;
- (g) matters affecting the security of Council property;
- (h) any other matter which the Council or special committee considers would prejudice the Council or any person;
- (i) a resolution to close the meeting to members of the public

**10. MEETING CLOSURE**