As Councillors we will promote good conduct and behaviour through leadership and example. We will also support and promote public confidence in the office.

The Local Government Act 1989 (the Act) requires a Council to develop and maintain a Councillor Code of Conduct. The Councillor Code of Conduct is required to be periodically reviewed, including within four months after a general election at a special meeting called solely for that purpose. This Code of Conduct was adopted by resolution of the Horsham Rural City Council on 6 February 2017 in accordance with section 76C of the Act.
# TABLE OF CONTENTS

1. **INTRODUCTION**  
   1.1 Core Values  
   1.2 Under the Local Government Act 1989 Councillors must:  
   1.3 In respect of the Mayor, Councillors must:  
   1.4 Definitions/Acronyms  
   1.5 Review of this Code of Conduct  
   1.6 Useful Resources  

2. **STANDARDS OF CONDUCT**  
   2.1 Horsham Rural City Councillors will endeavor to display the following attributes in all that they do:  
   2.2 General Guide to Ethical Decision Making  
   2.3 Expectations and obligations of Councillors and Council officers to guide Councillor, Chief Executive and staff interactions  
   2.4 Prohibited conduct from Local Government Act  
   2.5 Other Statutory Obligations  
   2.6 Media Obligations  
   2.7 Other General Obligations  

3. **DISPUTE RESOLUTION**  
   3.1 Internal Resolution Procedure (Breaches of this Code of Conduct)  
   3.2 Sanctions for breach of this Code  
   3.3 External Resolution Procedure (Misconduct, Serious misconduct, and Gross misconduct  

4. **ENDORSEMENT**
1. INTRODUCTION

1.1 Core Values

In pursuing its strategic objectives, Horsham Rural City Council believes in and is committed to the following overall values.

We will be:

1.2 Under the Local Government Act 1989 Councillors must:

- Contribute to the strategic direction of the Council through the collective development and review of the Council Plan and other key strategic documents
- Participate in the decision-making of the Council and represent the local community in that decision-making
- Provide civic leadership in relation to council functions and responsibilities, through attendance and participation in a range of community meetings, events and activities
- Facilitate effective communication between Council and the community, by responding to calls from the public, attending meetings, being available to all members of the community and conveying community views back to the Council
- Observe principles of good governance, including:
  - transparency through proper processes that are open to public scrutiny
  - Accountability through being accessible/responsive to local community
  - Acting with integrity
  - Acting impartially in the interests of the local community
  - Not improperly giving anyone an advantage or disadvantage
  - Avoiding conflicts between public duties and personal interests
- Acting honestly and avoiding statements or actions that may mislead or deceive someone
- Not improperly giving anyone an advantage or disadvantage
- Avoiding conflicts between public duties and personal interests and not misusing their position for gain or to cause detriment
- Acting honestly and avoiding statements or actions that may mislead or deceive someone
- Considering the diversity of interests and needs of other Councillors, Council staff and the local community and treating everyone’s opinions, beliefs, rights and responsibilities with respect
- Taking reasonable care and diligence, and understanding legal obligations of office as a Councillor
- Participating in the responsible allocation of the resources of Council through the annual budget, making sure decisions are in the public interest whilst ensuring the Council remains in a sustainable financial position
- Acting lawfully and not breaching the public’s trust
- Protecting confidential and privileged information

1.3 In respect of the Mayor, Councillors must:

• allow the Mayor to provide 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
• accept guidance from the Mayor about what is expected of a Councillor, including in relation to the role of a Councillor under the Act
• accept the authority of the Mayor to discuss with, and provide advice about, a Councillor’s conduct or behavior
• accept the role of the Mayor as principal spokesperson for the Council
• support and allow the Mayor to foster positive working relationships between Councillors
• respect the role of the Mayor as representative of the Council on civic and ceremonial occasions
• respect that the Chief Executive has a responsibility to support the Mayor in the performance of his or her role and that, on occasion, this will require the Chief Executive to treat the Mayor differently

Councillors must support and promote all of these values and principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.
1.4 Definitions/Acronyms

“Benefit” includes
- property, advantage or service;
- anything that is for a person’s good;
- any gifts, gratuities, entertainment, remuneration, allowances, fees, subsidies, considerations, incentives, discounts or entry fees, memberships or loans provided under special conditions

“CE” Chief Executive and includes a person acting in that position at the time

“Conflict of Interest” A conflict of interest exists when a reasonable person in possession of the relevant facts would conclude that the person has a private or personal interest sufficient to influence the objective exercise of his/her official duties. Formal definitions and arrangements, requirements and obligations relating to “conflict of interest” are contained in Division 1A of the Local Government Act 1989.

“Director” includes a person acting in that position at the time

“HRCC” Horsham Rural City Council

1.5 Review of this Code of Conduct

The Councillor Code of Conduct must be reviewed within four months after a general election. Following a general election, Council must within four months call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct. At that special meeting Council must 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.

A new Councillor must, within three months of being elected, make a declaration that they will abide by the Councillor Code of Conduct

Within one month of any amendments being made to a Councillor Code of Conduct, a Councillor must make a declaration stating that they will abide by the Code.
1.6 Useful Resources

- MAV - www.mav.asn.au/
- Councillors Transition Manual
- Media Policy
- Council Election Period Policy
- Municipal Association of Victoria – Model Councillor Code of Conduct, Draft Template, April 2016
2. **STANDARDS OF CONDUCT**

2.1 **Horsham Rural City Councillors will endeavor to display the following attributes in all that they do:**

**Leadership:** Councillors have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public’s trust and confidence in the integrity of the Council. This means promoting public duty to others in the Council and outside, by individual ethical behavior.

**Integrity:** Councillors must not place themselves under any financial or other obligation to any individual or organization that might reasonably be thought to influence them in the performance of their duties.

**Respect:** Councillors must treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognizing the different roles others play in local government decision-making.

**Selflessness:** Councillors have a duty to make decisions in the public interest. Councillors must not act in order to gain financial or other benefits for themselves, their family, friends or business interests. This means making decisions because they benefit the public, not because they benefit the decision maker.

**Openness:** Councillors have a duty to be as open as possible about their decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. This means recording, giving and revealing reasons for decisions; revealing other avenues available to the client or business; when authorized, offering all information; communicating clearly.

**Accountability:** Councillors are accountable to the public for their decisions and actions and should consider issues on their merits, taking into account the views of others. This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails, etc.

**Honesty:** Councillors have a duty to act honestly. Councillors must declare certain private interests and take steps to resolve any conflicts arising in such a way that protects the public interest. This means obeying the law; following the letter and spirit of policies and procedures; observing this Code of Conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.
Impartiality: Councillors should make decisions on merit and in accordance with their statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits. This means fairness to all.

2.2 General Guide to Ethical Decision Making

If Councillors are unsure about the ethical issues around an action or decision they are about to take, the following five points should be considered:

- Is the decision or conduct lawful?
- Is the decision or conduct consistent with Council’s policy and with Council’s objectives and this Code of Conduct?
- What will the outcome be for the employee or Councillor, work colleagues, the Council, persons with whom there is an association, and any other parties?
- Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- Can the decision or conduct be justified in terms of public interest and would it withstand public scrutiny?

2.3 Expectations and obligations of Councillors and Council officers to guide Councillor, Chief Executive and staff interactions

2.3.1 Councillors expect that officers will:

- Act professionally and honestly with an appropriate sense of goodwill
- Provide recommendations that are accurate, timely and outline alternatives and their implications
- Act without bias
- Make recommendations that are consistent with the Council Plan
- Be accessible within reason and respond in a timely manner
- Action resolutions of Council

2.3.2 Officers expect that Councillors will:

- Convey principles and Council values
- Say when they don’t understand something and ask for clarification
- Not give directions to Council staff or interfere in operational matters – advice and questions will be directed to the Chief Executive and Directors. Councillors will comply with the policies and protocols put in place by the Chief Executive governing communication with Council staff
- Have a vision for the Council and represent the community’s interest
• Share information early
• Respect and trust professional opinion
• Express any view about administrative matters or implementation to the Chief Executive

2.3.3 **Councillors agree to give to officers:**

• Professional and honest behaviour
• Diversity – A broad range of skills, perceptions and opinions
• Trust, good judgement and vision
• Community linkages
• Healthy, productive debate

2.3.4 **Officers agree to give to Councillors:**

• Frank and fearless advice
• The whole story
• Acknowledge mistakes
• Full support
• The same advice will be provided to all Councillors
• Benefit of experience and expertise

2.3.5 **Councillors agree that the Chief Executive is responsible for:**

• establishing and maintaining an appropriate organisational structure for the Council;
• ensuring that the decisions of the Council are implemented without undue delay;
• the day-to-day management of the Council’s operations in accordance with the Council Plan;
• developing, adopting and disseminating a code of conduct for Council staff;
• providing timely advice to the Council;
• ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act;
• supporting the Mayor in the performance of the Mayor’s role as Mayor;
• carrying out the Council’s responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013; and
• performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.
The Chief Executive 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.

Councillors undertake to respect the functions of the Chief Executive 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.

2.4 Prohibited conduct from Local Government Act

The Local Government Act 1989 has specific provisions that prohibit Councillors from certain conduct. This conduct relates to the following sections of the Act:

- **76D Misuse of Position** – refers to the misuse of position to gain or attempt to gain directly or individually personal advantage for self or for another person.
- **76E Improper Direction** – Refers to a Councillor relationship with a member of Council staff and the prohibition on giving staff direction.
- **77 Breach of Confidentiality** – Refers to the release of known confidential information.
- **93A Conduct during an Election Period** – Refers to the ability to make decisions during the election period (refer to separate Council Election Period Policy for detailed arrangements).
- **Section 77A-80A Conflict of Interest** – Refers to Councillor requirements in terms of conflict of interest

These matters are set out below in order to provide a complete picture of the obligations on Councillors, with Conflict of Interest matters addressed in more detail. While these matters are not of a nature to be addressed as a contravention of the Councillor Code of Conduct, Councillors 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.

2.4.1 Section 76D - 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; or
(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; 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.

2.4.2 Section 76E - 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 exercised or performed by the member as an authorised officer under this Act or any other Act; or
(c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee
2.4.3 Section 77 - Confidential information

A Councillor must not disclose information that the he or she knows, or should reasonably know, is confidential information.

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;
   to the extent reasonably required for any other law enforcement purposes

2.4.4 Section 77A-80A - Conflict of Interest

Some questions a Councillor may like to ask are:

- Do you have a personal interest in a matter you are officially involved with?
- Is it likely you could be influenced by a personal interest in carrying out your public duty?
- Would a reasonable person believe you could be so influenced?
- What would be the public perception of whether or not you have a conflict of interest?
- Do your personal interests conflict with your official role?
- What steps do you need to take and what steps would a reasonable person expect you to take to appropriately manage any conflicts of interest?

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 one of the three general exceptions apply relating to: remoteness, interests held in common and lack of knowledge. (Section 4 Exemptions, Conflict of Interest, A Guide for Councillors, October 2012, Department of Planning and Community Development).
2.4.4.1 What is a Direct Interest (77B)?

- Reasonably likely that a Councillor’s benefits, obligations, opportunities or circumstances will be **directly altered**
- Reasonably likely that a Councillor will receive a direct benefit or loss **measurable in financial terms**
- A councillor or a member of their family has a controlling interest in a company or body that has a direct interest in the matter

2.4.4.2 What is an Indirect Interest (78-78E)?

**By Close Association (78)**

- A member of a Councillor’s **family** has a direct interest or an indirect interest
- A Councillor’s **relative** has a direct interest
- A member of a Councillor’s **household** has a direct interest

**By Indirect Financial Interest (78A)**

- A Councillor is likely to receive a benefit or loss, measureable in financial terms, resulting from a change to another person’s interests
- A Councillor holds **shares** in a company or body that has a direct interest (subject to threshold)
- When a person with a direct interest **owes money** to a Councillor

**Through conflicting duty to another (78B)**

- If a Councillor is a Director in a company with direct interest
- If a Councillor is a member of a governing body of an entity with a direct interest
- If a Councillor is an employee of or contractor to a person with a direct interest

**Through other means (78C-78E)**

- If a Councillor received gifts over $500 in value during the preceding 5 years
- If a Councillor is a party to or initiates civil proceedings in a matter
- If it is reasonably likely that a Councillor’s residential amenity will be altered
2.5 Other Statutory Obligations

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

Councillors are also required to comply with the following statutory obligations and any relevant Council policies:

- OH&S and WorkCover
- Equal Opportunities
- Bullying/harassment
- Human Rights Charter

2.6 Media Obligations

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

Councillors undertake to comply with any relevant Council media policy/policies and respect the functions of the Mayor and Chief Executive to be the spokespersons for the Council in accordance with agreed arrangements.

Councillors acknowledge that individual Councillors are entitled to express their personal opinions through the media. Where Councillors choose to do so, they will make it clear that such comment is a personal view and does not represent the position of Council. Councillors 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.

2.6.1 Matters where council has yet to adopt an official position:

In general terms, Councillors are free to make public comments on matters yet to be determined by Council, bearing in mind the dangers of taking a predetermined stance in administrative matters (such as Planning permits), which may later be subject to claims of apprehended bias. (see case law - Winky Pop)
2.6.2 Matters where council has an adopted position:

- When dealing with the media in relation to an adopted position of the council, the spokespersons, in order of preference, are the Mayor (or Councillor delegated by the Mayor), CE, Directors then the Media & Communications Officer.
- When Council has adopted a position, Councillors retain the right to make public comment. However, this right should be balanced against the virtue of Councillors uniting behind majority decisions of Council.
- A Councillor can make comment to the media when they have a portfolio or position on a Council committee of management, in which case they may make comment in line with the position of the committee and the Council’s adopted position.
- If a matter is minor in nature and a response only provides simple and factual information and where the issue is positive in nature, another staff member may be delegated by the CE or a Director to make comment.

2.7 Other General Obligations

2.7.1 Use of Council resources

Councillors commit to using Council resources effectively and economically. Councillors will:
- maintain adequate security over Council property, facilities and resources provided to them to assist in performing their role and will comply with any Council policies applying to their use;
- ensure any expense claims submitted 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.

2.7.2 Gifts and benefits

Councillors 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.

Councillors will take all reasonable steps to ensure that 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’ Gift Register with a notation that it is the property of the Council.
Councillors 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.

Councillors will record all campaign donations in their “campaign donation return”.

2.7.3 Personal dealings with Council

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

3.  DISPUTE RESOLUTION

The Act provides a hierarchy for management of Councillor conduct issues, including breaches of the Code of Conduct. The hierarchy reinforces the responsibility and authority of Council to manage breaches of conduct agreed in this code through a mandatory internal resolution procedure. The hierarchy escalates management of misconduct and serious misconduct to a Councillor Conduct Panel when Council cannot resolve the matter internally. Panels have greater power to manage and resolve misconduct and serious misconduct. The hierarchy retains the capacity to manage gross misconduct through the Victorian Civil & Administrative Tribunal.

The Act provides for the appointment of a Principal Conduct Officer which must be appointed by Council. The PCO will assist Council in the implementation and conduct of the internal resolution procedure. The PCO will also assist the Principal Councillor Conduct Registrar provided for in the external resolution procedure. The PCO is appointed by the Chief Executive and must be either a senior Council officer or the subject of a Council resolution approving their qualifications for the role.

3.1 Internal Resolution Procedure (Breaches of this Code of Conduct)

Many disputes between Councillors will revolve around personal differences and issues relating to behaviours under this Code of Conduct. The Mayor has a role in fostering positive relationships between Councillors and helping to ensure that the Councillor conduct principles in the Act and this Code of Conduct are adhered to. Issues including policy or decision making should be resolved through discussion and voting in Council and committee meetings.
Before commencing any formal dispute resolution process, the Councillors who are parties to any disagreement will endeavour to resolve their differences in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the 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.

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; and
- appointment of an 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.

**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 this 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 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 forthwith.

The Chief Executive 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 this 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 this Code of Conduct.

**Phase 3 – Appointment of an Arbiter**

An application cannot be made for an internal resolution procedure using an arbiter 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 was 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 Chief Executive 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.

An arbiter may be selected from the panel established for this purpose by the Municipal Association of Victoria. The MAV will publish a list of arbiters on its website and the Principal Conduct Officer may select and directly engage with an arbiter of their choice in accordance with the internal resolution procedure.
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; or
(b) failure by a Councillor to comply with a written direction given by the Council under section 81AB; or
(c) repeated contravention of any of the Councillor conduct principles.

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

3.2 Sanctions for breach of this Code

Section 81AB of the Act specifies that Council may impose sanctions for breaches of this Code of Conduct. 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 a Councillor may not attend or chair an advisory or special committee for up to two months
- direction that a Councillor be removed from a position where they represent Council for up to two months.
### 3.3 External Resolution Procedure (Misconduct, Serious misconduct and Gross misconduct)

These matters are defined and dealt with in accordance with the Act and the hierarchy for management of Councillor conduct issues, which generally provides as follows:

<table>
<thead>
<tr>
<th></th>
<th>Definition</th>
<th>Responsible Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Misconduct</strong></td>
<td>Failing to comply with Council’s resolution procedure, including failure to abide by any decision of Council in relation to a breach of the code and repeated breaches of Councillor conduct principles</td>
<td>Councillor Conduct Panel</td>
</tr>
<tr>
<td><strong>Serious misconduct</strong></td>
<td>Failing to comply with Panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct</td>
<td>Councillor Conduct Panel</td>
</tr>
<tr>
<td><strong>Gross misconduct</strong></td>
<td>Behaviour that demonstrates lack of character to be a Councillor</td>
<td>Victorian Civil &amp; Administrative Tribunal</td>
</tr>
</tbody>
</table>

The following table outlines the process for managing claims of misconduct, serious misconduct and gross misconduct.
Flowchart for the management of misconduct, serious misconduct and gross misconduct

**Applicant**
- Council
- Councillor, Councillors
- Council
- Councillor, Councillors, Chief Municipal
- Chief Municipal Inspector

**Grounds**

**Misconduct**
- Failure to comply with internal resolution procedure
- Repeated breaches of the Councillor conduct principles

**Serious misconduct**
- Failure to attend panel, provide information to or comply with direction of panel
- Repeated misconduct after a finding of misconduct by the panel
- Bullying of Councillor or staff
- Contravention of Section 76E or 77

**Gross misconduct**
- Not of good character or fit and proper person to hold office of Councillor

**Findings**

**Remedial action**

**Consequence**

- Mediation
- Training
- Counselling

- Reprimand
- Apology
- Leave of absence (Max. 2 months)
- Ineligible to be Mayor (Max. 4 years)

- Ineligible to be Mayor (Max. 4 years)
- Reprimand
- Apology
- Leave of absence (Max. 2 months)
- Suspension (Max. 6 months)
- Ineligible to chair special committee (Max. 4 years)

- Disqualification (Max. 8 years)
- Ineligible to be a candidate (Max. 8 years)

Principal Councillor Conduct Registrar

Councillor Conduct Panel

VCAT

Refer to VCAT on appeal only

Gross misconduct by Councillor

VCAT

Page | 24
The Principal Councillor Conduct Registrar is appointed by the Department of Environment, Land, Water & Planning and will manage implementation of the panel process including the establishment of Councillor Conduct Panels.

The Victorian Civil & Administrative Tribunal will continue to hear allegations of gross misconduct. The Chief Municipal Inspector will be responsible for making applications to VCAT for findings of gross misconduct against Councillors.

Decisions of a Councillor Conduct Panel may be appealed to VCAT.

Additional to these arrangements, the Minister for Local Government is empowered to appoint municipal monitors to monitor governance and provide reports to the Minister who may, on their advice, issue governance orders to a Council or stand down a Councillor in certain circumstances.
4. Endorsement

This version of the Code of Conduct was reviewed and adopted by Council on 6 February 2017.

I declare that I have read and received a copy of this Code of Conduct and that I will abide by its provisions:

(Cr. Pamela Clarke) signed in the presence of: Chief Executive

(Cr. David Grimble) signed in the presence of: Chief Executive

(Cr Josh Koenig) signed in the presence of: Chief Executive

(Cr Les Power) signed in the presence of: Chief Executive

(Cr. Mark Rapford) signed in the presence of: Chief Executive

(Cr John Robinson) signed in the presence of: Chief Executive

(Cr Alethea Sedgman) signed in the presence of: Chief Executive

A Councillor may not continue in office if he or she has failed to make a declaration stating that he or she will abide by the Councillor Code of Conduct. This Code of Conduct must be made available on the Council website and at the Council office for inspection.