

HORSHAM RURAL CITY COUNCIL

COUNCILLOR CODE OF CONDUCT

2023



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Councillors' Purpose, Values and Agreed Behaviours

Our Purpose:

We exist to strengthen our community now and into the future.

Group Values:

Honest

Respectful

Supportive

Accountable

Agreed Behaviours:

- Accept, respect and support Council resolutions.
- Address behaviour in the moment.
- Actively listen, be open and respect other's views.
- Be prepared and engage in informed discussions/decision-making.
- Engage in open, honest and timely conversations with a pure intent.

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1 INTRODUCTION

INTRODUCTION

1. Legislative framework

The *Local Government Act 2020* (Act) requires a council to develop and maintain a Councillor Code of Conduct. The Councillor Code of Conduct is required to be periodically reviewed. This Councillor Code of Conduct (Code) has been adopted by Council to comply with the requirements of the Act.

A Councillor Code of Conduct:

- a) must include the Standards of Conduct prescribed by the *Local Government (Governance and Integrity) Regulations 2020 (Regulations)* expected to be observed by Councillors; and
- b) must include any provisions prescribed by the Regulations; and
- c) must include provisions addressing any matters prescribed by the Regulations; and
- d) may include any other matters which the Council considers appropriate, other than any other Standards of Conduct.

The Standards of Conduct with which Councillors are required to comply are specified in Schedule 1 to the Regulations.

Failure by a Councillor to comply with the Standards of Conduct constitutes misconduct under the Act, which may be pursued in accordance with the processes set out in the Act and in this Code.

2. Council's Vision, Mission and Values

Councillors acknowledge that Council's Vision, Mission and Values provide important context and guidance in relation to ethical decision-making and Councillor behaviour.

Councillors have also developed a collective purpose and established a set of shared values and behaviours to demonstrate a commitment to mutual respect and authentic engagement.

3. Purpose of this Code

The purpose of this Code is to set out the Standards of Conduct with which Councillors must comply and to:

- a) foster good working relationships between Councillors to enable Councillors to work constructively together in the best interests of the municipal community;
- b) maintain a high standard of behaviour of Councillors during Council meetings, Councillor briefings and any other meetings which Councillors participate in from time to time; and
- c) establish benchmarks for Councillor conduct designed to:
 - build public confidence in the integrity of local government; and
 - give effect to Council's Vision, Mission and Values.

2 ROLES AND RESPONSIBILITIES

ROLES AND RESPONSIBILITIES

1. Role of Council

The role of Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community (see s 8 of the Act).

Council provides good governance if:

- a) it performs its role in accordance with the Overarching Governance Principles in s 9 of the Act; and
- b) the Councillors perform their roles in accordance with s 28 of the Act.

In performing its role, Council may:

- a) perform any duties or functions and exercise any powers conferred on it under the Act or any other Act; and
- b) perform any other functions that it determines are necessary to enable that performance.

Good governance is fundamental to Council being able to perform its role. Good governance relies on, among other things, good working relationships between Councillors.

2. Role of a Councillor

Section 28 of the Act provides that the role of every Councillor is:

- a) to participate in the decision-making of Council; and
- b) to represent the interests of the municipal community in that decision-making; and
- c) to contribute to the strategic direction of 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 municipal community; and
- b) support the role of Council; and
- c) acknowledge and support the role of the Mayor; and
- d) act lawfully and in accordance with the oath or affirmation of office; and
- e) act in accordance with the Standards of Conduct; and
- f) comply with Council procedures required for good governance.

The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer (CEO).

3. Role of the Mayor

Section 18 of the Act provides that the role of the Mayor is to:

- a) chair Council meetings; and
- b) be the principal spokesperson for Council; and
- c) lead engagement with the municipal community on the development of the Council Plan; and
- d) report to the municipal community, at least once each year, on the implementation of the Council Plan; and
- e) promote behaviour among Councillors that meets the Standards of Conduct set out in the Councillor Code of Conduct; and
- f) assist Councillors to understand their role; and
- g) take a leadership role in ensuring the regular review of the performance of the CEO; and
- h) provide advice to the CEO when the CEO is setting the agenda for Council meetings; and
- i) perform civic and ceremonial duties on behalf of Council.

4. Role and powers of the Deputy Mayor

Section 21 of the Act provides that the Deputy Mayor must perform the role of the Mayor and may exercise any of the powers of the Mayor if:

- a) the Mayor is unavailable for any reason to attend a Council meeting or part of a Council meeting; or
- b) the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or
- c) the office of Mayor is vacant.

5. Functions of the Chief Executive Officer

Section 46 of the Act sets out the responsibilities of the Chief Executive Officer, which include at s 46(1):

- a) supporting the Mayor and the Councillors in the performance of their roles; and
- b) ensuring the effective and efficient management of the day to day operations of the Council.

Without limiting the generality of s 46(1)(a), s 46(2) provides that the CEO's responsibility includes:

- a) ensuring that the decisions of the Council are implemented without undue delay;
- b) ensuring that Council receives timely and reliable advice about its obligations under this Act or any other Act;
- c) supporting the Mayor in the performance of the Mayor's role as Mayor;
- d) setting the agenda for Council meetings after consulting the Mayor;
- e) when requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;
- f) 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 *Workplace Injury Rehabilitation and Compensation Act 2013*.

Without limiting the generality of s 46(1)(b), s 46(3) provides that the CEO's responsibility includes:

- a) establishing and maintaining an organisational structure for the Council;
- b) being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff;
- c) managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between members of Council staff and Councillors are developed and implemented;
- d) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.

For the purposes of s 46(3)(a), the CEO must—

- a) develop and maintain a workforce plan that—
 - (i) describes the organisational structure of the Council; and
 - (ii) specifies the projected staffing requirements for a period of at least 4 years; and
 - (iii) sets out measures to seek to ensure gender equality, diversity and inclusiveness; and
- b) inform the Council before implementing an organisational restructure that will affect the capacity of the Council to deliver the Council Plan; and
- c) consult members of Council staff affected by a proposed organisational restructure, before implementing the organisational restructure.

In developing and maintaining a workforce plan, a CEO must have regard to the requirements of the *Gender Equality Act 2020*.

Councillors acknowledge that these day to day functions are entirely the domain of the CEO and that they have no power to direct the CEO in the fulfilment of these functions. It follows that the CEO will determine the extent to which Councillors will be informed of decisions made in pursuit of these day to day functions, with a view to maintaining good working relationships.

It is neither the role nor the responsibility of the CEO to mediate disagreements arising between Councillors, or to draft, or otherwise assist in the drafting of, an application under this Code or the Act.

ROLES AND RESPONSIBILITIES

6. Functions of a Councillor Conduct Officer

The CEO must appoint a person in writing to be the Councillor Conduct Officer and notify the Principal Councillor Conduct Registrar of the appointment under s 150 of the Act. As per s 151 of the Act a Councillor Conduct Officer must:

- a) assist Council in the implementation of, and conduct of, the internal arbitration process of a Council; and
- b) assist the Principal Councillor Conduct Registrar to perform the functions specified in s 149(1); and
- c) assist the Principal Councillor Conduct Registrar in relation to any request for information under s 149(3).

It is neither the role nor the responsibility of the Councillor Conduct Officer to draft, or to otherwise assist in the drafting of, an application under this Code or the Act.

7. Role of the Principal Councillor Conduct Registrar

The Principal Councillor Conduct Registrar is appointed by the Secretary of Government Services under s 148 of the Act.

Functions and powers of the Principal Councillor Conduct Registrar relevantly include:

- a) receiving applications for the appointment of an arbiter;
- b) appointing an arbiter from the panel list established under s 142 of the Act; and
- c) publishing any guidelines in relation to processes and procedures relating to internal arbitration process applications that the Principal Councillor Conduct Registrar has determined to be necessary.

3 STANDARDS OF CONDUCT

STANDARDS OF CONDUCT

The Standards of Conduct to be observed by Councillors are set out in Schedule 1 to the Regulations. Failure by a Councillor to comply with the Standards of Conduct constitutes 'misconduct' for the purposes of the Act, as defined in s 3(1) of the Act. If allegations of misconduct cannot be resolved between Councillors informally, they will be referred to the internal arbitration process, which may result in the imposition of sanctions.

1. Treatment of others

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

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

2. Performing the role of Councillor

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

- a) undertakes any training or professional development activities that Council decides it is necessary for all Councillors to undertake to effectively perform the role of a Councillor;
- b) diligently uses Council processes to become informed about matters which are subject to Council decisions;
- c) is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and

- d) represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

3. Compliance with good governance measures

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

- a) any policy, practice or protocol developed and implemented by the CEO in accordance with s 46 of the Act for managing interactions between members of Council staff and Councillors;
- b) the Council expenses policy adopted and maintained by Council under s 41 of the Act;
- c) the Governance Rules developed, adopted and kept in force by Council under s 60 of the Act; and
- d) any directions of the Minister for Local Government issued under s 175 of the Act (Governance directions).

4. Councillor must not discredit or mislead Council or public

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

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

5. Standards do not limit robust political debate

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

4 OTHER CATEGORIES OF MISCONDUCT

OTHER CATEGORIES OF MISCONDUCT

Councillors acknowledge that the Act creates two other categories of misconduct, being 'serious misconduct' and 'gross misconduct'. In the case of allegations of conduct constituting:

- a) 'serious misconduct', application can be made by a Councillor, a group of Councillors, a Council resolution or the Chief Municipal Inspector to convene a Councillor Conduct Panel to hear the allegation; and
- b) 'gross misconduct', application can be made by the Chief Municipal Inspector to the Victorian Civil and Administrative Tribunal.

It is noted that allegations of serious misconduct arising from alleged conflict of interest breaches can only be pursued by the Chief Municipal Inspector and are not pursued by Councillors under this Code or the Act.

In addition, although allegations of conduct constituting 'serious misconduct' and 'gross misconduct' might not be capable of being addressed as contraventions of this Code, Councillors acknowledge and commit to the following with respect to:

- bullying; and
- sexual harassment,

each of which constitutes 'serious misconduct' for the purposes of the Act.

1. Bullying

'Bullying' by a Councillor is defined by s 3(1) of the Act as:

'...the Councillor repeatedly behaves unreasonably towards another Councillor or a member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff.'

A Councillor who bullies another Councillor or a member of Council staff engages in 'serious misconduct' under the Act and may be the subject of an application to convene a Councillor Conduct Panel.

Councillors agree that bullying is unacceptable under any circumstances and each commit to avoiding conduct which might constitute bullying, and to calling out their fellow Councillors when they exhibit conduct which might constitute bullying, whether directed at another Councillor or at a member of Council staff.

2. Sexual harassment

The Act provides that 'sexual harassment' has the meaning given by section 92 of the *Equal Opportunity Act 2010*, which defines it as follows:

- (1) For the purpose of this Act, a person sexually harasses another person if he or she—
 - a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
 - b) engages in any other unwelcome conduct of a sexual nature in relation to the other person—
in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.
- (2) In subsection (1) *conduct of a sexual nature* includes—
 - a) subjecting a person to any act of physical intimacy;
 - b) making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence; or
 - c) making any gesture, action or comment of a sexual nature in a person's presence.

A Councillor who engages in sexual harassment towards another Councillor or a member of Council staff engages in 'serious misconduct' and may be the subject of an application to convene a Councillor Conduct Panel.

Councillors agree that sexual harassment is unacceptable under any circumstances and each commit to avoiding conduct which might constitute sexual harassment, and to calling out their fellow Councillors when they exhibit conduct which might constitute sexual harassment, whether directed at another Councillor or at a member of Council staff.

It is acknowledged that Councillors may also be subjected to sexual harassment from outside Council, for example from members of the public.

OTHER CATEGORIES OF MISCONDUCT

3. Addressing bullying and sexual harassment

A Councillor who feels that they have been subjected to bullying or sexual harassment by another Councillor, a member of Council staff or a member of the public may:

- a) access Council's Employee Assistance Program for confidential support, with contact details available from the Councillor Conduct Officer;
- b) where that conduct is perpetrated by a fellow Councillor, make an allegation of 'serious misconduct' by way of an application to convene a Councillor Conduct Panel in accordance with the Act, with details of that process available from the Councillor Conduct Officer; and/or
- c) make a complaint to an appropriate external body, such as the Local Government Inspectorate, the Victorian Equal Opportunity and Human Rights Commission and Victoria Police.

Councillors acknowledge that a Councillor who feels that they have been subjected to bullying or sexual harassment by another Councillor may not be comfortable pursuing any of the informal or internal dispute resolution procedures set out in this Code. Those informal and internal dispute resolution procedures are not compulsory and there is no expectation that they will be followed in those circumstances.

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5 IMPROPER CONDUCT

IMPROPER CONDUCT

In addition to observing the Standards of Conduct, Councillors acknowledge that the Act prohibits them from engaging in certain conduct and that doing so constitutes a criminal offence. This conduct relates to:

- a) misuse of position (s 123);
- b) directing a member of Council staff (s 124);
- c) disclosing confidential information (s 125);
- d) failing to disclose a conflict of interest (serious misconduct and an offence against s 130); and
- e) other legislative requirements (including electoral conduct).

Councillors acknowledge that, while these matters are not Standards of Conduct and are not to be addressed as a contravention of this Code, they must comply with them at all times.

In the case of non-compliance, these matters could be the subject of an application to a Councillor Conduct Panel made by the Chief Municipal Inspector, or of a complaint to the Local Government Inspectorate, the Independent Broad-based Anti-corruption Commission or Victoria Police, depending on the nature of the allegation.

1. Misuse of position

A Councillor must not misuse their 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 Council or another person.

Circumstances involving the misuse of position by a Councillor include, but are not limited to:

- a) making improper use of information acquired as a result of the Councillor's position (current and past);
- b) disclosing information that is confidential information;
- c) directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff;
- d) exercising or performing, or purporting to exercise or perform, a power, duty or function that the Councillor is not authorised to exercise or perform;
- e) using public funds or resources in a manner that is improper or unauthorised; or
- f) participating in a decision on a matter in which the Councillor has a conflict of interest.

2. Directing a member of Council staff

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

3. Confidential information

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

- 5.3.1. Councillors acknowledge that, in accordance with the above, they are responsible for the safekeeping of any confidential information in their possession.
- 5.3.2. For the purposes of the Act 'confidential information' means the following information:
 - a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
 - b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
 - c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
 - d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;
 - e) legal privileged information, being information to which legal professional privilege or client legal privilege applies;
 - f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;

IMPROPER CONDUCT

- g) private commercial information, being information provided by a business, commercial or financial undertaking that:
 - relates to trade secrets; or
 - if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
 - h) confidential meeting information, being the records of meetings closed to the public under section 66(2)(a);
 - i) internal arbitration information, being information specified in s 145 of the Act;
 - j) Councillor Conduct Panel confidential information, being information specified in s 169 of the Act;
 - k) information prescribed by regulations to be confidential information for the purposes of this definition; and
 - l) information that was confidential information for the purposes of s 77 of the *Local Government Act 1989*.
- 5.3.3. A Councillor may disclose information that would be considered 'confidential information' if the information that is disclosed is information that Council has determined should be publicly available.
- Otherwise, a Councillor may disclose information that they know is confidential information in the following limited circumstances:
- a) for the purposes of any legal proceedings arising out of the Act;
 - b) to a court or tribunal in the course of legal proceedings;
 - c) pursuant to an order of a court or tribunal;
 - d) in the course of an internal arbitration and for the purposes of the internal arbitration process;
 - e) in the course of a Councillor Conduct Panel 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 Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
 - h) to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry; and
 - i) to the extent reasonably required by a law enforcement agency.

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

4. Conflict of interest

As per ss 130 and 131 of the Act, any Councillor who has a conflict of interest in a matter to be considered at a Council meeting (s 130(1)(a)), a delegated committee meeting (s 130(1)(b)), a meeting of a community asset committee (s 130(1)(c)) or any other meeting conducted under the auspices of Council (s 131(2)), then the Councillor must disclose the conflict of interest in manner required by the Council's Governance Rules (ss 130 (2)(a) and 131(2)(b)) and exclude themselves from the decision-making process in relation to that matter (s 130(2)(b)) (unless any of the exemptions apply).

A Councillor may have a 'general' or a 'material' conflict of interest in a matter being considered at such a meeting.

A Councillor has a 'general' conflict of interest in a matter if an impartial, fair-minded person would consider that the Councillor's private interests could result in the Councillor acting in a manner that is contrary to their public duty.

For the purposes of general conflict of interest:

- a) 'private interests' means any direct or indirect interest of a Councillor that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief; and
- b) 'public duty' means the responsibilities and obligations that a Councillor has to members of the public in their role as a relevant person.

A Councillor has a 'material' conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.

The benefit may arise or the loss incurred:

- a) directly or indirectly; or
- b) in a pecuniary or non-pecuniary form.

IMPROPER CONDUCT

For the purposes of a material conflict of interest, any of the following is an 'affected person':

- a) the Councillor;
- b) a family member of the Councillor;
- c) a body corporate of which the Councillor or their spouse or domestic partner is a Director or a member of the governing body;
- d) an employer of the Councillor, unless the employer is a public body;
- e) a business partner of the Councillor;
- f) person for whom the Councillor is a consultant, contractor or agent;
- g) a beneficiary under a trust or an object of a discretionary trust of which the Councillor is a trustee; or
- h) a person from whom the Councillor has received a disclosable gift (i.e. a gift or gifts with a value of \$500 or more).

Councillors acknowledge that they must be clear about their associations with parties external to Council and to avoid conflicts between those associations and their role as Councillors.

Situations where a conflict of interest does not arise are outlined in s 129 of the Act and exemptions from conflict of interest requirements are provided in r 7 of the Regulations.

5. Other legislative requirements

The Act includes requirements relating to eligibility to be a Councillor, electoral conduct and the election period ('caretaker period'). Allegations in relation to contraventions 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 acknowledge that they are responsible for complying with the various provisions relating to these matters.

6 GOOD GOVERNANCE

GOOD GOVERNANCE

This part of the Code sets out conduct that the Councillors agree will contribute to the good governance, integrity and responsible operation of Council. It is informed by Act and Regulations, including the Standards of Conduct.

1. Overarching Governance Principles

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

The overarching governance principles are set out in s 9(2) of the Act and are as follows:

- a) Council decisions are to be made and actions taken in accordance with the relevant law;
- b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
- d) the municipal community is to be engaged in strategic planning and strategic decision making;
- e) innovation and continuous improvement is to be pursued;
- f) collaboration with other councils and governments and statutory bodies is to be sought;
- g) the ongoing financial viability of Council is to be ensured;
- h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making; and
- i) the transparency of Council decisions, actions and information is to be ensured.

According to s 9(2) of the Act, in giving effect to the overarching governance principles, Council must take into account the following supporting principles—

- a) the community engagement principles;
- b) the public transparency principles;
- c) the strategic planning principles;
- d) the financial management principles;
- e) the service performance principles.

2. Use of Council resources

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

In particular, Councillors will:

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

3. Gifts and benefits

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

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

In accordance with s 137 of the Act, Councillors will only accept gifts with a value that equals or exceeds the gift disclosure threshold (currently, \$500) if:

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

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

Councillors will also comply with Council's Gifts, Benefits and Hospitality Policy and any other policies and procedures adopted by Council from time to time relevant to the acceptance of gifts.

4. External communications

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 are committed to respecting the function of the Mayor as the spokesperson of Council in accordance with the Act.

Councillors undertake to comply with Council's Media and Communication Policies, as adopted from time to time, including recognition and respect for the role of the CEO in communicating with the media on behalf of Council.

Councillors acknowledge that individual Councillors are entitled to express their personal opinions through the media. In doing so, Councillors will make it clear that such comment is their personal view and does not represent the position of Council. Councillors will ensure that such comments avoid being derogatory, offensive or insulting of Council, Councillors, members of Council staff, members of the community and others.

When Council has adopted a position, Councillors retain their entitlement to make public comment in their personal capacity. However, Councillors should consider whether the benefits of doing so would outweigh the benefit of Councillors being perceived as uniting behind majority decisions of Council

5. Personal dealings with Council

When Councillors deal with Council in their private capacity (eg as a ratepayer, recipient of a Council service or applicant for a permit), they will not expect or request preferential treatment in relation to any such private matter.

Councillors will avoid any action that could lead members of Council staff or members of the community to believe that they are seeking, or being given, preferential treatment.

6. Occupational health and safety

Councillors acknowledge that meeting Council's obligations as an employer under the *Occupational Health and Safety Act 2004* by, among other things, providing a safe workplace for Councillors, members of Council staff and visitors to Council premises is essential.

Councillors are committed to working in ways that protect and promote the health and safety of their fellow Councillors, members of Council staff and visitors to Council premises and to minimise risks to them.

7. Council decision-making

Councillors are committed to ensuring a high level of transparency in Council's decisions and Council's decision-making processes. Councillors acknowledge that Council decisions cannot be made other than by resolutions made at properly constituted Council meetings following fulsome public debate in the Council Chamber (except, of course, in the case of matters concerning confidential information).

While Councillors will engage in informal discussion of matters coming before Council for decision, they acknowledge that these informal discussions are not decision-making forums, and that a final position on such matters cannot be reached before the Council meeting.

8. Elections

Councillors may nominate as candidates in elections at all levels of government. If nominating as a candidate in an election, or assisting in the campaign of a candidate in an election, Councillors commit to not using their position as a Councillor for purposes associated with their campaign, or the campaign of any other candidate.

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7 DISPUTE RESOLUTION

DISPUTE RESOLUTION

1. Dispute Resolution Procedure

This dispute resolution procedure provides a framework to be followed by Councillors where a conflict or dispute amongst their own number arises, including where it is alleged that a Councillor has breached their obligations under this Code.

This dispute resolution procedure is not intended to resolve differences in policy or decision-making, which are appropriately resolved through discussion, debate and voting in Council Meetings.

2. Disputes between Councillors

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

Whilst Councillors must always endeavour to foster and encourage positive and productive interactions, conflicts or disputes may emerge when the differences between Councillors become personal or the behaviour of Councillors towards each other is of a nature that threatens the effective operation of Council's decision-making processes.

A conflict or dispute may arise between one Councillor and another Councillor or one Councillor and a group of Councillors or between two or more different groups of Councillors. This dispute resolution procedure will apply regardless of the dynamic and numbers involved.

3. Steps in dispute resolution procedure

Council's dispute resolution procedure is comprised of four steps as follows. They are:

- Self-resolution
- Internal mediation
- External mediation
- Internal arbitration procedure.

Before commencing any formal dispute resolution process Councillors must be mindful that they have an individual and collective responsibility to use their best endeavours to resolve disputes in an efficient, courteous and respectful manner to prevent them from escalating unnecessarily and creating additional expense for the organisation.

Parties to a dispute should work through each of these steps in sequence in an effort to resolve their differences. Step 3 should always be completed before Step 4 is instigated.

Whenever a difference, dispute or allegation under this Code involves the Mayor, the Deputy Mayor will fulfil the role of the Mayor in respect of that difference, dispute or allegation. If both the Mayor and the Deputy Mayor are involved, Step 2 will not operate.

With respect to Step 4, Councillors should note that:

- it will only apply where a dispute alleges that a Councillor has breached the Standards of Conduct and therefore engaged in misconduct; and
- any application must be made no later than 3 months after the alleged misconduct occurred.

Step 1: Self Resolution

Councillors should take personal responsibility and endeavour to resolve disputes in an informal but courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

- A Councillor claiming that a dispute has arisen must notify the other party or parties in writing of the details of the dispute (Dispute Notice).
- A dispute will only arise upon service of a Dispute Notice.
- The parties must meet within 10 days of the service of the Dispute Notice and negotiate in good faith to resolve the dispute.

Either party may ask the Mayor, as the leader of the Council team, to informally facilitate any discussions between the parties to the dispute.

In the event of a party not engaging in self-resolution process within 10 days of service of a Dispute Notice, a party not complying with the agreed outcome of that discussion, or of the discussion not achieving a satisfactory outcome, either party has the option to progress to Step 2 of the dispute resolution procedure.

DISPUTE RESOLUTION

Step 2: Internal Mediation

If Step 1 is unsuccessful, a formal request for internal mediation should be made to the Mayor. As the leader of the Councillor team, the Mayor will facilitate formal discussions between the parties in dispute. The Mayor will ensure the CEO is advised of the situation.

A request for internal mediation must be made in writing, describing the nature of the dispute, the names of those involved, (if relevant) provisions of the Code of Conduct that are alleged to have been breached and any evidence to support the allegation. If the request is being made by a group of Councillors, it must specify the Councillor to act as their representative. The Councillor making the request must provide a copy of the request to the other party (or parties) and to the CEO at the same time it is made.

The request must be made within 20 days of the dispute arising and the Mayor must use their best endeavours to ensure that the internal mediation occurs within 10 days of the request being received.

The Mayor may, at their discretion, request any necessary administrative assistance from the CEO to assist in undertaking the informal mediation, noting that the CEO plays no role in resolving Councillors disputes.

The Mayor will convene an informal mediation at the earliest available opportunity.

During the informal mediation each party must:

- Be given the opportunity to present their view of the alleged dispute;
- Be given a right of reply to any new matters raised at the mediation; and
- Use their best endeavours to resolve the dispute and agree upon a set of outcomes.

The Mayor will document any outcomes from the informal mediation and will provide copies to all parties and to the CEO for Council's records.

In the event of a party not engaging in informal mediation process within 10 days of being advised of a request, a party not complying with the agreed outcome of an informal mediation, or of the informal mediation not achieving a satisfactory outcome, either party has the option to progress to Step 3 of the dispute resolution procedure.

Step 3: External Mediation

Prior to any dispute proceeding to Step 4 of this dispute resolution procedure, the parties to it should refer it to external mediation.

To instigate external mediation, the Councillor referring the matter must provide Council's Conduct Officer (CCO) with written notice of the reason for the dispute, the names of those involved, the provisions of the Code of Conduct that may have been breached and any evidence to support the allegation. If the request is being made by a group of Councillors, it must specify the Councillor to act as their representative. The Councillor referring the matter must provide a copy of the written notice to the other party (or parties) and to the CEO at the same time the matter is referred to the CCO.

The application must be made by the later of:

- 30 days after the dispute arising; and
- 5 days after the completion of Step 2.

Where external mediation is sought, the CCO will ascertain whether or not the other party to the dispute will attend. Councillors acknowledge that declining to attend external mediation may constitute a breach of this Code of Conduct.

If the other party agrees to participate in external mediation, the CCO will advise the applicant, the Mayor and the CEO accordingly. The CEO will engage the services of an external and independent mediator to conduct the mediation at the earliest available opportunity, and in any event no more than 45 days after the matter is referred for mediation.

The mediator will document any agreement or outcomes reached at the mediation and copies will be provided to both parties. In the event of one party not engaging in a formal mediation process within 45 days of the matter being referred for external mediation, a party not complying with the agreed outcome of an external mediation, or of the external mediation not achieving a satisfactory outcome, either party has the option to progress to Step 4 of the dispute resolution procedure.

DISPUTE RESOLUTION

Step 4: Internal Arbitration Process

If a conflict or dispute arises from an alleged contravention of the Standards of Conduct, and it has not been resolved through any of the previous Steps of the dispute resolution process for whatever reason, an application may be made for internal arbitration of the dispute.

The application may be made by:

- the Council following a resolution of the Council; or
- a Councillor or a group of Councillors.

The application must be completed by the Councillor alleging the breach in the form required by the Principal Councillor Conduct Registrar (PCCR). The application will be provided by the Councillor to the CCO, who will deliver it to the PCCR.

The application must be made within 3 months of the alleged breach of the Standards of Conduct.

The PCCR, after examining an application for internal arbitration, must appoint an arbiter to hear the matter, as long as the PCCR is satisfied that:

- the application is not frivolous, vexatious, misconceived or lacking in substance; and
- there is enough evidence to support an allegation of a breach of the Standards of Conduct as specified in the application.

The PCCR must reject an application if they are not satisfied of both of these matters.

The rejection of an application by the PCCR does not prevent a further application being made in respect of the same conduct by a Councillor that was the subject of the rejected application.

The arbiter will ensure that parties involved in the internal arbitration process are given an opportunity to be heard by the arbiter.

The arbiter will ensure that a Councillor who is a party to an internal arbitration process does not have a right to representation unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly.

Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information.

If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the Code of Conduct, the arbiter may

make a finding of misconduct against the Councillor and apply any sanction available under the Act for such a finding, which may include:

- directing the Councillor to make an apology in a form or manner specified by the arbiter;
- suspending the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month; or
- directing that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter.

A failure by a Councillor to comply with step 4, and a failure of a Councillor to comply with any sanction imposed by an arbiter following a finding of misconduct, constitute serious misconduct.

4. Disputes between members of the public and Councillors

Where a complaint is received from the public in respect of a Councillor, the matter will be referred to the Mayor for consideration. Where the Mayor considers that a breach of the Standards of Conduct has occurred, the Mayor will decide whether to progress the matter in accordance with this dispute resolution procedure.

Where the complaint involves the Mayor, the Deputy Mayor will fulfil the role of the Mayor.

The Mayor will inform the member of the public of the outcome of their consideration of the complaint under this paragraph 4.

If the Mayor decides not to take further action in relation to a complaint received from a member of the public, it will not prevent another Councillor from pursuing the matter under this Code or the Act.

5. Disputes between Councillors and staff

The CEO has sole responsibility for the management of Council staff. In the event of a dispute between a Councillor and a member of Council staff, it must be brought to the immediate attention of the CEO. The CEO will decide whether to investigate the dispute and/or take any other action in relation to the matter in their absolute discretion.

8 ADOPTION OF THIS CODE

ADOPTION OF THIS CODE

8.1

This Code was adopted by a resolution of Council made at the Council meeting held on, with a majority of at least two thirds of all Councillors voting in favour of it.

8.2

This Code may be reviewed at any time during the Council term but need not be reviewed until after the general election to be held in October 2024.

Appendix 1: Summary of dispute resolution

The table below provides a summary of the steps in Council's dispute resolution process up to and including referral as per the Councillor Conduct Framework.

| DISPUTE ARISES | DISPUTE NOTICE | STEP 1 Self-resolution | STEP 2 Internal mediation | STEP 3 External mediation | STEP 4 Internal arbitration |
|---------------------|--|--|--|--|--|
| Dispute arises | Dispute Notice is issued by the relevant Councillor to the relevant Councillor | Self-Resolution to occur within 10 days of service of Dispute Notice | Formal written request to Mayor for internal mediation within 20 days of dispute arising. | Formal request to Councillor Conduct Officer for external mediation: later of 30 days after dispute arises or 5 days after completion of Step 2. | Application to Councillor Conduct Officer, who in turn delivers the application to the Principal Councillor Conduct Registrar. Application must be in the form specified by the Principal Councillor Conduct Registrar. |
| | | | Mayor to endeavour to ensure internal mediation occurs within 10 days of request being received. | Mediation to be conducted within 45 days of application for mediation being received. | Application must be made within 3 months of the alleged breach of Standards of Conduct (in accordance with Section 143(3) of the Act). |
| | | If not resolved go to Step 2. | If not resolved go to Step 3. | If not resolved go to Step 4. | Application will provide a conclusion to the matter. |
| Managed by | | HRCC | HRCC | HRCC (with external provider) | Principal Councillor Conduct Registrar with administrative assistance from the Councillor Conduct Officer. |
| How managed? | | <i>Informally resolved between Councillors upon notification via a dispute notice.</i> | <i>Managed via internal mediation (request made to Mayor) with Mayor to facilitate formal discussions.</i> | <i>Before progressing to Internal Arbitration the relevant parties to any dispute should refer the dispute to external mediation.</i> | <i>Appointed by and managed under the Councillor Conduct Framework provided for in the Act.</i> |

Note the below are dealt with outside of the above processes:

Refer Chapter 4 – Other Categories of Misconduct

In the case of allegations of conduct constituting:

- 'serious misconduct' application can be made to convene a Councillor Conduct Panel to hear the allegation (where such allegations relate to alleged conflict of interest breaches these can only be pursued by the Chief Municipal Inspector)
- 'gross misconduct' application can be made to the Victorian Civil and Administrative Tribunal

Refer Chapter 5 – Improper Conduct

The Act prohibits Councillors from engaging in certain conduct. In the case of non-compliance, these matters could be the subject of an application to a Councillor Conduct Panel made by the Chief Municipal Inspector, or of a complaint to the Local Government Inspectorate, the Independent Broad-based Anti- corruption Commission or Victoria Police, depending on the nature of the allegation.

