Code of Conduct for Councillors

EFFECTIVE DATE  14 February 2017
REVIEW DATE     Within 4 months after a general election
AUTHOR          Governance Coordinator
DIRECTORATE     Corporate Services
Version Control

Version 1.2 | Approved by Council: 14 February 2017

Responsible Officer: Chief Executive Officer

Contact Officer: Troy Edwards, Director Corporate Services (Principal Conduct Officer)

Review

In accordance with Section 76(C)(2) of the Local Government Act 1989, Council must, within the period of 4 months after a general election

(a) call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and

(b) at that special meeting, approve any amendments determined by the Council to be necessary following the review of the Councillor Code of Conduct.

Revision History

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Summary of revisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>17/05/16</td>
<td>Councillor Code of Conduct adopted by Council.</td>
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<tr>
<td>1.1</td>
<td>08/11/16</td>
<td>In accordance with resolution 5.1(3), adopted at the Special Council Meeting on 17 May 2016, consequential amendments have been made to the Councillor Endorsement page (p.26) to reflect the composition of the Council following the October 2016 Council Election.</td>
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</tbody>
</table>
| 1.2     | 14/02/17  | Councillors determined that the following amendments be made as part of the review required under 76C(2) of the Act:

  - page 9, inserted paragraph 10.2.
  - page 10, correction of a typographical error at paragraph 11.4(d)
  - page 16, inserted paragraph 15.14 |
1. **Introduction**

1.1 The Councillors of the Yarra Ranges Shire Council have been elected to provide effective governance and leadership for its community.

1.2 In discharging these responsibilities, our Councillors recognise the importance of maintaining the highest levels of integrity and ethical behaviour. This includes ensuring that resources are managed in a responsible and accountable manner, fostering community cohesion and encouraging participation in civic life.

1.3 The Local Government Act 1989 (the Act) requires the Council to develop and maintain a Councillor Code of Conduct, with this to be periodically reviewed.

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

1.5 This Councillor Code of Conduct has been adopted by Council to comply with the requirements of the Act.

2. **Purpose of the Councillor Code of Conduct**

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

2.2 This Code:

   - sets out the standards of conduct expected of elected representatives;
   - endeavours to foster good working relations between councillors to enable Councillors to work constructively together in the best interests of the local community; and
   - mandates councillor conduct designed to build public confidence in the integrity of local government.
3. Background

3.1 The Council must, within 4 months after a general election:

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

3.2 A copy of this Code of Conduct (as amended from time to time) must be:

- given to each councillor
- available for inspection at the council office and any district offices
- published on the Council’s website

3.3 From the 2016 Council elections, a person elected to be a Councillor is not capable of acting as a Councillor until the person has read the Councillor Code of Conduct and made a declaration stating that they will abide by the Councillor Code of Conduct. It is the personal responsibility of councillors to ensure that they are conversant with, and comply with, the provisions of this Code.

4. Role of mayor and councillors

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

(a) to participate in the decision-making of the Council; and
(b) to represent the local community in that decision-making; and
(c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

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

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

4.3 The role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under section 94A of the Act.
4.4 Section 73AA of the Act describes the functions of the Mayor as including:

(a) providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65, and the observation of the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C; and
(b) acting as the principal spokesperson for the council; and
(c) supporting good working relations between councillors; and
(d) carrying out the civic and ceremonial duties of the office of Mayor.

5. Conduct Obligations

5.1 The Act places obligations on Councillors in relation to way they should act and also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions.

5.2 As Councillors of Yarra Ranges Shire Council, we undertake to comply with the various provisions of the Act and with this Code of Conduct.

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

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

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

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

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

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

(g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.”

5.5 Councillors are required to conduct themselves in observance of the primary principle and the general principles. We undertake to do this.

6. **Functions of the Chief Executive Officer**

6.1 The Chief Executive Officer is responsible for:

(a) establishing and maintaining an appropriate organisational structure for the Council; and

(b) ensuring that the decisions of the Council are implemented without undue delay; and

(c) the day to day management of the Council’s operations in accordance with the Council Plan; and

(d) developing, adopting and disseminating a code of conduct for Council staff; and

(e) providing timely advice to the Council; and

(f) ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act;

(g) supporting the Mayor in the performance of the Mayor’s role as Mayor;

(h) carrying out the Council’s responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013; and

(i) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.

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

6.3 We undertake to respect the functions of the Chief Executive Officer.

7. **Use of Council resources**

7.1 We commit to using Council resources effectively and economically. We will:

- maintain adequate security over Council property, facilities and resources provided to us to assist in performing our role and will comply with any Council policies applying to their use;

- ensure any expense claims that we submit are in compliance with the relevant legislative provisions and Council policy;
• not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate; and
• not use public funds or resources in a manner that is improper or unauthorised.

8. Gifts and benefits

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

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

8.3 Where a gift is received on behalf of the Council, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in the Councillors Gifts Register with a notation that it is the property of the Council.

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

8.5 We will record all campaign donations in our “campaign donation return”.

9. Communication

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

9.2 We undertake to comply with the Council’s media policy and respect the functions of the Mayor and Chief Executive Officer to be the spokespersons for the Council in accordance with our policy.

9.3 We acknowledge that individual Councillors are entitled to express their personal opinions through the media. Where we choose to do so, we will make it clear that such comment is a personal view and does not represent the position of Council. We undertake to ensure that any such comment is devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any person.
10. Personal dealings with Council

10.1 When we deal with our Council in our private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) we do not expect nor will we request preferential treatment in relation to any such private matter.

10.2 We will not seek advantage and nor will we be disadvantaged by our role.

10.3 We will avoid any action that could lead Council staff or members of the public to believe that we are seeking preferential treatment.

11. Prohibited Conduct

11.1 The Local Government Act 1989 has specific provisions that prohibit Councillors from certain conduct. This conduct relates to:

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

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

(Note: Serious misconduct by a Councillors means:

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

11.3 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.

11.4 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.

Improper direction and improper influence

11.5 A Councillor must not direct, or seek to direct, a member of Council staff:

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

Confidential information

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

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

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

Conflict of interest

11.8 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 any of the exemptions
apply).

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

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

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

Other legislative requirements

11.11 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.

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

12. Appointment to other bodies

12.1 Councillors may be appointed by the Council to represent it on external organisations. Appointments are made annually by the Council.

12.2 It is important that Councillors:

- clearly understand the basis of their appointment
- recognise the differences in their obligations as a delegate or member of the governing body of the external organisation
- provide regular and timely reports to the Council on the activities of the organisation they have been appointed to.

12.3 Councillors should be mindful that the provisions of this Code of Conduct apply when representing the Council on external organisations.

13. Councillor / officer relations

13.1 The first principle of councillor / officer relations is the commitment to the common aim of providing members of the community with the best possible quality of life through the provision of excellent services, leadership and advocacy.

13.2 An essential element of providing leadership is inspiring and increasing the confidence of local people in the Council as an organisation, its services and its councillors and officers.

13.3 Councillors and officers, therefore, should work in partnership and behave in a manner that does not diminish the reputation of the Council and thereby decrease public confidence in the organisation.

13.4 The primary role of both councillors and officers is to serve the public to the best of their abilities. To do this most effectively, councillors and officers need to work together in a manner which combines their essential skills, knowledge and experience in a way which produces the best outcomes for individuals and communities and which is fair, sustainable and responsive.
13.5 Although the roles of councillors and officers are complementary they are also distinct. The underlying principles which determine relationships between councillors and officers in Yarra Ranges are:

- the commitment to the common aim of providing residents with the best possible quality of life through the provision of excellent services, leadership and advocacy
- the acceptance of and overt demonstration of mutual courtesy and respect
- the awareness and acceptance of their different roles duties and responsibilities
- the acceptance for the need to ask for advice from officers and for that advice to be timely, accurate and impartial
- the acceptance of the principles of fairness, consistency, transparency in the conduct of business
- the need to comply with the laws and regulations relating to the conduct of Council business
- the need to demonstrate ethical decision making and implementation
- the need to avoid actual or perceived personal conflict of interest
- the need to maintain confidentiality
- a commitment to non adversarial working and dispute resolution

13.6 Councillors and officers can expect:

- mutual respect and courtesy at all times. There will be no inappropriate or public criticism, intimidating or threatening behaviour of any kind.
- a working partnership. There will be an understanding of and support for each others roles, workloads and pressures.
- appropriate relationships. Councillors and officers will not use their relationship to advance their personal interests or those of others or to influence decisions improperly.

13.7 Councillors and officers have specific roles. Councillors will:

- provide leadership and strategic direction
- maintain appropriate confidentiality
- comply with the Councillor Code of Conduct
- ensure that they seek and act upon advice on the law, Code of Conduct, declaration of interests, procedures relating to Council Meetings, conflict of interests and general propriety.

13.8 Councillors will not:

- direct individual staff or involve themselves in day to day management of staff or services
- seek to give unreasonable advantage on individual cases or matters or seek to substitute their judgment for the professional judgment of an officer
- engage in personal criticism of officers in a public meeting
• use the Council’s equipment or facilities or officer support for any electoral purpose.

13.9 Under section 94A of the Act the Chief Executive Officer is “responsible for appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff”.

13.10 Interaction with staff can be beneficial but Councillors should not abuse the relationship and attempt to take advantage of their position by directing or influencing a member of staff in exercising a delegated power or providing advice to Council, as outlined in section 76E of the Act. For example, Councillors cannot:

• direct a planning officer to issue a delegated planning decision in relation to a planning permit application.
• direct a parking enforcement officer to withdraw an infringement notice because they deem it unnecessary.
• direct an officer to change the advice they provide in a Council report. However Councillors can request that more information be provided or that the information provided be more specific.

13.11 Councillors should respect the professional opinions of Council staff and acknowledge that reports written by them are based on their professional expertise, knowledge and skills. Councillors may not always agree with a report but they cannot direct a staff member to change a report or a recommendation within this.

13.12 The Act contains a penalty of 120 units if a Councillor is found to have improperly directed or influenced a member of staff.

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

13.14 If Councillors have concerns that a staff member has acted contrary to a formal Council policy or decision, or other concerns about the actions or behaviour of a staff member, they should advise the Chief Executive Officer of their concerns. The Chief Executive Officer will take whatever action he considers appropriate in the exercise of his responsibilities under the Act.

14. Appointment or dismissal of officers

14.1 Other than the Chief Executive Officer, Councillors will take no part in the appointment or dismissal of an officer, nor should they seek to influence in any way the appointment or dismissal of a particular person to a post.
15. **Participating in Council Meetings**

15.1 Effective decision-making is essential to good governance. Informed decision making, and ultimately good governance, is achieved through the exchange of views and constructive debate by councillors in the forum of the Council Chamber.

15.2 When attending a Council Meeting, Councillors should adhere to the procedures set out in the Meeting Procedures and Use of Common Seal Local Law 2015.

15.3 Councillors should try to ensure that they actively and openly participate in the decision making process at Council Meetings, making all decisions impartially and in the best interests of the whole community.

15.4 While a Councillor may disagree with the views of their colleagues, good decision making will be enhanced if all views are heard and considered without unnecessary or inappropriate interruption.

15.5 All Councillors will be given an opportunity to state their views on any matter under consideration by Council and to respond to the views of others in an appropriate and responsible manner so as to promote constructive debate and good decision making.

15.6 All Councillors should treat and deal with each other with respect and dignity, avoiding abusive and derogatory language and intimidatory behaviour.

15.7 It is the role of the Mayor to work with the whole Council, and to assist and support individual councillors to work together constructively and effectively.

15.8 Formal Council decisions are the result of the vote of a majority of councillors in a Council meeting. Not all decisions are unanimous and individual councillors are entitled to their own opinions. However, unless subsequently revoked or amended, a decision of Council is legally binding and must, therefore, be implemented.

15.9 A Councillor cannot direct another councillor how to vote on any decision before the Council Meeting.

15.10 Without compromising the rights of individual councillors to maintain their opposition to a Council decision, the decision made by the majority of councillors through the democratic process should be accepted and respected.

### Expressing opinions

15.11 Although it is acceptable for Councillors to publicly state that they did or did not vote in favour of any Council decision, this should be done in a manner which is respectful of the Council’s decision and which does not undermine the
authority or public perception and standing of the Council or any other councillor.

15.12 The Mayor is the official spokesperson for Council. Any comment made by the Mayor will be deemed by the community to represent the views or position of Council on a particular matter.

15.13 Accordingly, any official public comment made by the Mayor has to reflect Council’s position, regardless of the Mayor’s personal views.

15.14 Notwithstanding paragraphs 15.12 and 15.13, individual Councillors are entitled to express their personal opinions through the media. Where they 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 will ensure that any such comment is not derogatory, offensive or insulting to any person and nor does it undermine the authority or public perception and standing of the Council.

Decisions under the Planning & Environment Act 1987

15.15 Councillors should ensure that decisions under the Planning and Environment Act 1987 are properly made and that all parties involved are dealt with fairly and reasonably.

15.16 When called upon to determine applications under this Act, no action, statement or communication between a Councillor and applicants or objectors should convey any suggestion of willingness to provide improper concessions or preferential treatment.

16. Use of email, internet and social media

16.1 When using email, the internet and social media in their capacity as a Councillor, Councillors will:

- maintain a civil and courteous tone
- take measures to ensure that personal comments cannot be mistaken for the official view of Council
- avoid making posts or sending content that may damage the reputation of the Council
- not use social media or other forms of electronic communication to harass or discriminate against others
- not seek to perform an administrative function outside their powers as a councillor
- not disclose confidential information
- not seek to inappropriately direct an officer, including framing any attempt at direction as a request
- not publish direct or indirect threats to other councillors, officers or members of the community
16.2 Councillors will not use the email account provided by the Council for electioneering purposes, including using an email signature to endorse their campaign or any other persons candidature in an election.

16.3 All emails from a Councillor’s official Council email account, together with posts to the internet or social media, will be deemed to be posts to the public.

16.4 We undertake to comply with the policies, practices and protocols covering the use of email, internet and social media that are put in place by the Chief Executive Officer.

17. Training

17.1 To assist Councillors in undertaking their role, the Council will identify suitable training that is considered to be beneficial to attend. Councillors may also identify training or development opportunities they may feel will benefit them.

17.2 It is important that Councillors understand their obligations under this Code of Conduct and appropriate training on this will be provided for all councillors as part of the Councillor Induction Program. Attendance at this session will be mandatory.

17.3 The Councillor Induction Program contains training and development opportunities on a range of topics. Given the importance of the information to be disseminated and the fact that this will assist Councillors in the performance of their role, attendance at some sessions will be mandatory.

17.4 If a Councillor is unable to attend any a training session that has been identified as mandatory, they should provide a reason for their non-attendance. A replacement session will then be arranged for you to attend.

18. Principal Conduct Officer

18.1 The Principal Conduct Officer is appointed by the Chief Executive Officer and must be either:

   (a) a senior council officer, or
   (b) the subject of a council resolution approving their qualifications for the role.

18.2 The role of the Principal Conduct Officer is to assist in the implementation of the Councillor Code of Conduct, including the conduct of the internal resolution procedure.

18.3 The Chief Executive Officer has appointed Troy Edwards, Director Corporate Services, as the Principal Conduct Officer.
19. **Dispute Resolution**

19.1 Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. 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.

19.2 The Council’s three phase dispute resolution process involves:

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

**Phase 1 – Direct negotiation**

19.3 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.

19.4 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.
- an alleged contravention of the Councillor Code of Conduct.

19.5 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
- be signed and dated by the requestor or the requestor’s representative.

19.6 The requestor is to notify the other party of the request and provide them 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.

19.7 The Mayor is to ascertain whether or not the other party is prepared to attend a “direct negotiation” meeting.
19.8 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.

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

19.10 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.

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

19.12 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.

19.13 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.

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

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

Phase 2 – External mediation

19.16 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”.

19.17 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.
- an alleged contravention of the Councillor Code of Conduct.
19.18 The applicant is to submit a written application to the Principal Conduct Officer setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an “external mediation”. Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must:

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

19.19 The applicant is to notify the other party of the request and provide them 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.

19.20 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, they must 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.

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

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

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

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

19.25 If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.
19.26 An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

19.27 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
- the application were made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application
- the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

19.28 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
- be signed and dated by the applicant or the applicant’s representative.

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

19.30 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.

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

- advise the Mayor and CEO of the application without undue delay
- provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application
- identify an arbiter to hear the application
- obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved
- notify the parties of the name of the proposed arbiter and provide them with the opportunity (2 working days) to object to the person proposed to be the arbiter
• consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter
• provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired
• after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing
• attend the hearing(s) and assist the arbiter in the administration of the process.

19.32 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.

19.33 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.

19.34 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 they consider necessary to properly consider the application. The arbiter may hold a directions hearing
• have discretion to conduct the hearings as they deem 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 their 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
• ensure that the hearings are closed to the public.

19.35 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.
19.36 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.

19.37 The arbiter is to give a copy of their 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, they 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.

19.38 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.

19.39 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:

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

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

20.1 If a Councillor breaches, or is considered to be in breach of the Councillor Code of Conduct, an application to establish a Councillor Conduct Panel may be made under section 81B of the Act by:

- a resolution of Council
- a councillor
- a group of councillors.

20.2 This is a very serious course of action and will only be used as the last resort to resolve behaviour that contravenes this Code of Conduct, or which constitutes ‘misconduct’, ‘serious misconduct’ or ‘gross misconduct’ as defined in the Act.

20.3 Applications must specify the grounds for the application and set out the circumstances, actions or inactions of the councillor that are alleged to constitute misconduct. The outcome of council dispute processes must also be specified.

20.4 Applications need to be made to the Principal Councillor Conduct Registrar (PCCR), who is part of, and appointed by, the Secretary of the Department of Environment, Land, Water and Planning.

21. Administrative and consequential amendments

21.1 There may be circumstances where administrative and consequential amendments need to be made to this Code of Conduct, for example, as a result of changes to the wording of legislation or any names and position titles quoted.

21.2 Where such an amendment does not materially alter this Code, the Code may be updated by the Chief Executive Officer. A record of the change will be documented and the version number updated.

21.3 Any change or update that may be required that materially alters this Code of Conduct can only be made by resolution of Council.

22. Relevant provisions of the Local Government Act 1989

- Section 76D - Misuse of Position
- Section 76E - Improper direction and improper influence
- Section 77 - Confidential Information
- Section 77A - Direct and Indirect Interests
- Section 77B - Direct interest
- Section 78 - Indirect interest by close association
- Section 78A - Indirect interest that is an indirect financial interest
- Section 78B - Indirect interest because of conflicting duties
• **Section 78C** - Indirect interest because of receipt of an applicable gift
• **Section 78D** - Indirect interest as a consequence of becoming an interested party
• **Section 78E** - Indirect interest because of impact on residential amenity
• **Section 79** - Disclosure of Conflict of Interest
• **Section 79B** - Conflicting Personal Interest

23. **Other relevant legislation and information**

23.1 The following will assist and support Councillors in their role and their understanding of their obligations under this Code of Conduct:

• **Charter of Human Rights and Responsibilities Act 2006**
• **Equal Opportunity Act 2010**
• **Privacy and Data Protection Act 2014**
• **Racial and Religious Tolerance Act 2001**
• **Disability Act 2006**
• **Protected Disclosure Act 2012**
• **Meeting Procedures and Use of Common Seal Local Law**
• **Councillor Expenditure Policy**
24. Councillors' endorsement

This Code of Conduct for Councillors was originally adopted by Council on 17 May 2016. The Code has been reviewed following the October 2016 Council Elections and adopted by Council on 14 February 2017. The Code is signed by the following Councillors as an expression of their commitment to uphold and abide by the Code:

Cr Terry Avery
Date: 14/2/17

Cr Jim Child
Date: 14/2/2017

Cr Mike Clarke
Date: 14/2/2017

Cr Noel Cliff
Date: 14/2/2017

Cr Len Cox
Date: 14/2/2017

Cr Tim Heenan
Date: 14/2/2017

Cr Richard Higgins
Date: 21/2/17

Cr Fiona McAllister
Date: 14/2/2017

Cr Tony Stevenson
Date: 14/2/17