

# Councillor Code of Conduct

**2021**



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**The City of Ballarat has established the Councillor Code of Conduct in accordance with section 139 of the *Local Government Act 2020*.**

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## **Commitment**

Good governance, integrity and accountability are central to the *Local Government Act 2020* (the Act), to underpin local government democracy, conduct and enable our community to hold the Council to account. Council is committed to embedding the principles of good governance throughout its decision making, corporate governance and democratic governance by establishing and adhering to the Governance Rules established.

Council decision making will be founded on good governance and conducted with transparency. The process by which decisions will be made is transparent and clearly articulated in these Governance Rules for the scrutiny of our community and accountability of Councillors, Members of Delegated Committees and Council officers. Council recognises that accountability, integrity and transparency are of fundamental importance to our community and are critical for enhancing good governance.

## CHAPTER 1 - INTRODUCTION

### 1.1 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:

- must include the Standards of Conduct prescribed by the *Local Government (Governance and Integrity) Regulations 2020* (**Regulations**) expected to be observed by Councillors;
- must include any provisions prescribed by the Regulations;
- must include provisions addressing any matters prescribed by the Regulations; and
- may include any other matters which 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 this Code.

### 1.2 Councillors' commitment

As Councillors, we are committed to the principles of good governance, working together in the best interests of the people within our municipality and to discharging our responsibilities to the best of our skill and judgment.

### 1.3 Purpose

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

- foster good working relationships between Councillors to enable Councillors to work constructively together in the best interests of the municipal community;
- lift the standard of behaviour of Councillors during Council meetings, Councillor briefings and any other meetings which Councillors participate in from time to time; and
- establish benchmarks for Councillor conduct designed to build public confidence in the integrity of local government.

## CHAPTER 2 - CONTEXT

### 2.1 Context

The role of Council, as set out in section 8 of the Act, is:

- To provide good governance in its municipal district for the benefit and wellbeing of the municipal community.

The City of Ballarat is governed by nine Councillors who are democratically elected to represent three wards.

### 2.2 Definitions and Notes

#### 2.2.1 In this Code of Conduct:

**Act** means the *Local Government Act 2020* (as amended from time to time).

**Chief Executive Officer** means the Chief Executive Officer of Council or the person acting in or performing the position of Chief Executive Officer.

**Council** means Ballarat City Council and/or City of Ballarat.

**Council Plan** is the four-year plan setting out the strategic directions of the Council.

**Councillor** means a Councillor of the Council.

**Deputy Mayor** means the Deputy Mayor of Council and any person appointed by Council to act as Deputy Mayor.

**Mayor** means the Mayor of Council and any person appointed by Council to be acting as Mayor.

**Misconduct** means any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct.

**Serious misconduct** means any of the following—

- the failure by a Councillor to comply with the Council's internal arbitration process;
- the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147;
- the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;
- the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;
- continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b);
- bullying by a Councillor of another Councillor or a member of Council staff;
- conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;
- the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;
- conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff; and
- the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with this Act.

**Officer** means an employed member of Council staff.

## CHAPTER 3 – PERFORMING THE ROLE OF THE COUNCILLOR

### Overview:

*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 the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and*
- (b) *diligently uses Council processes to become informed about matters which are subject to Council decisions; and*
- (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.*

### 3.1 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:

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

In performing its role, Council may:

- perform any duties or functions and exercise any powers conferred on it under the Act or any other Act; and
- perform any other functions that it considers 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.

### 3.2 Role of Councillors

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

- to participate in the decision-making of Council;
- to represent the interests of the municipal community in that decision-making; and
- 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:

- consider the diversity of interests and needs of the municipal community;
- support the role of Council;
- acknowledge and support the role of the Mayor;
- act lawfully and in accordance with the oath or affirmation of office;
- act in accordance with the Standards of Conduct; and
- comply with Council procedures required for good governance.

The role of a Councillor expressly excludes the performance of any responsibilities or functions of the Chief Executive Officer (**CEO**).

### 3.3 Role of the Mayor

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

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

### 3.4 Role of the CEO

Section 94A of the *Local Government Act 1989* sets out the functions of the CEO, which include:

- establishing and maintaining an appropriate organisational structure for Council;
- ensuring Council decisions are implemented without undue delay;
- day to day management of Council's operations in accordance with the Council Plan;
- developing, adopting and disseminating an Employee Code of Conduct;

- providing timely advice to Council;
- ensuring that Council receives timely and reliable advice about its legal obligations;
- supporting the Mayor in the performance of the Mayor's role; and
- carrying out Council's obligations as an employer with respect to Councillors as deemed employees under the workplace health and safety legislation.

From 1 July 2021, s 94A of the *Local Government Act 1989* will be replaced by s 46 of the Act. The CEO's functions will then include:

- supporting the Mayor and the Councillors in the performance of their roles;
- ensuring the effective and efficient management of the day to day operations of the Council;
- ensuring that Council receives timely and reliable advice about its legal obligations;
- supporting the Mayor in the performance of the Mayor's role;
- setting the agenda for Council meetings after consulting the Mayor;
- when requested by the Mayor, reporting to Council in respect of the implementation of a Council decision;
- carrying out Council's obligations as an employer with respect to Councillors as deemed employees under the workplace health and safety legislation;
- establishing and maintaining an organisational structure for Council;
- being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff; and
- managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between Council staff and Councillors.

The CEO will determine the extent to which Councillors will be informed of decisions made in pursuit of these functions. Councillors acknowledge that any information provided by the CEO is provided as a courtesy and in pursuit of maintaining good working relationships.

Councillors accept that they must not seek to direct the CEO with respect to the fulfilment of these functions.

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.

### **3.5    Role of Councillor Conduct Officer**

The CEO will from time to time appoint a member of Council staff as the Councillor Conduct Officer under s 150 of the Act.

The Councillor Conduct Officer must:

- assist Council in the implementation and conduct of the internal arbitration process;
- assist the Principal Councillor Conduct Registrar to perform his or her functions; and
- assist the Principal Councillor Conduct Registrar in relation to any request for information.

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.

### **3.6    Role of the Principal Councillor Conduct Registrar**

The Principal Councillor Conduct Registrar is appointed by the Secretary Department of Jobs, Precincts and Regions under s 148 of the Act and is employed by the State Government under Part 3 of the *Public Administration Act 2004*. The role of the Principal Councillor Conduct Registrar relevantly includes:

- receiving and examining applications for the appointment of an arbiter;
- appointing an arbiter from the panel list kept by the Secretary Department of Jobs, Precincts and Regions as required; and
- publishing guidelines in relation to processes and procedures relating to internal arbitration process applications as considered necessary.

## CHAPTER 4 – STANDARDS OF CONDUCT

### Overview:

*The Standards of Conduct to be observed by Councillors are set out in the Regulations. Failure to comply with the Standards of Conduct constitutes ‘misconduct’ for the purposes 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.*

### 4.1 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:

- takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010;
- supports Council in fulfilling its obligation to achieve and promote gender equality;
- does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- 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.

### 4.2 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:

- 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;
- diligently uses Council processes to become informed about matters which are subject to Council decisions;
- is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- consider the diversity of backgrounds, interests and needs of the local community and be inclusive of all communities in Ballarat including but not limited to the Aboriginal and Torres Strait Islander community, the Intercultural community and the LGBTIQ community.

#### **4.3 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:

- 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;
- the Council expenses policy adopted and maintained by Council under s 41 of the Act;
- the Governance Rules developed, adopted and kept in force by Council under s 60 of the Act; and
- any directions of the Minister for Local Government issued under s 175 of the Act (governance directions).

#### **4.4 Councillor must not discredit or mislead Council or public**

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

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

#### **4.5 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.

## CHAPTER 5 – PROHIBITED CONDUCT

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### Overview:

*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:*

- *misuse of position;*
- *improper direction and improper influence;*
- *confidential information;*
- *conflict of interest; and*
- *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 undertake to comply with them.*

*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.*

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### 5.1 Misuse of position

A Councillor must not misuse his or her position:

- to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- 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:

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

## 5.2 Directing a member of Council staff

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

- in the exercise of a delegated power, or the performance of a delegated duty or function of Council;
- 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;
- 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
- in relation to advice provided to Council or a delegated committee, including advice in a report to Council or delegated committee.

## 5.3 Confidential Information

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

For the purposes of the Act ‘confidential information’ means the following information:

- Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
- security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
- land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
- 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;
- legal privileged information, being information to which legal professional privilege or client legal privilege applies;
- personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
- 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;
- confidential meeting information, being the records of meetings closed to the public under the Act;
- internal arbitration information, being information specified in s 145 of the Act;

- Councillor Conduct Panel confidential information, being information specified in s 169 of the Act;
- information prescribed by regulations to be confidential information for the purposes of the Act; and
- information that was confidential information for the purposes of s 77 of the *Local Government Act 1989*.

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 he or she knows is confidential information in the following circumstances:

- for the purposes of any legal proceedings arising out of the Act;
- to a court or tribunal in the course of legal proceedings;
- pursuant to an order of a court or tribunal;
- in the course of an internal arbitration and for the purposes of the internal arbitration process;
- in the course of a Councillor Conduct Panel hearing and for the purposes of the hearing;
- to a Municipal Monitor to the extent reasonably required by the Municipal Monitor;
- to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry; and
- to the extent reasonably required for any other law enforcement purposes.

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.

## 5.4 Conflict of Interest

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of Council or a delegated committee, a meeting of a community asset committee, or any other meeting held under the auspices of Council, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the Governance Rules (unless any of the exemptions apply).

A Councillor may have a ‘general’ or a ‘material’ conflict of interest in a matter being considered at 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:

- ‘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
- ‘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:

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

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

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

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.

## 5.5 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 contravention of these provisions should be directed to the Victorian Electoral Commission or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

Councillors acknowledge that they are responsible for complying with the various provisions relating to these matters.

## CHAPTER 6 – GOOD GOVERNANCE MEASURES

### Overview:

*Nothing in this part of the Code is intended to impose a binding Standard of Conduct on Councillors. These matters are expressed as operating in addition to the Standards of Conduct. Further, nothing in this part of the Code is intended to modify or derogate from the Standards of Conduct.*

*This part of the Code sets out conduct that the Councillors agree will contribute to the good governance, integrity and responsible operation of Council.*

### 6.1 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:

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

### 6.2 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. 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.

Councillors acknowledge the role that reports prepared by members of Council staff provide professional advice which assists in informing Councillors about matters before Council for

decision. Councillors will pay respect and attention to the information provided by members of Council staff to assist Council's decision-making functions.

### **6.3 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:

- maintain adequate security over Council property, facilities and resources provided by Council to assist in performing their role;
- comply with any legislation and Council policies and procedures applying to the use of Council property, facilities and resources provided by Council to assist in performing their role;
- 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
- not use public funds or resources in a manner that is improper or unauthorised.

### **6.4 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.

Councillors will only accept gifts that exceed the gift disclosure threshold (currently, \$500) if:

- the name and address of the person making the gift are known to them; or
- 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 comply with the Councillor Gift Policy, once adopted, and any other policies and procedures adopted by Council from time to time relevant to the acceptance of gifts.

## **6.5 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 Communication Policy and any other relevant policies, as adopted from time to time, including recognition of and respect for the:

- role of the Mayor as the principal spokesperson of Council, including in communications with the media on behalf of Council;
- role of the CEO in communicating with the media on behalf of Council with respect to matters of an operational nature; and
- practice of directing media enquiries to Council's Communications Team at first instance.

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 and are factually accurate.

## **6.6 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 preferential treatment.

## **6.7 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 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 members of Council staff and visitors to Council premises and to minimise risks to them.

## **6.8 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.

## CHAPTER 7 – INTERPERSONAL DISPUTES BETWEEN COUNCILLORS

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### Overview:

*Councillors acknowledge that interpersonal differences and disputes (as distinct from allegations of contravention of the Standards of Conduct) may arise from time to time. Councillors commit to taking reasonable steps to resolve any interpersonal difference or dispute that arises without recourse to formal processes with a view to maintaining effective working relationships.*

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### 7.1 Informal Discussions between Councillors

Councillors will first consider discussing their interpersonal difference or dispute informally with a view to resolving it.

### 7.2 Facilitated discussion

If Councillors are unable to discuss their interpersonal difference or dispute informally, or their informal discussions are unsuccessful, they will consider approaching a fellow Councillor, chosen with the agreement of both Councillors, to facilitate a discussion with a view to resolving their interpersonal difference or dispute.

If the interpersonal difference or dispute cannot be resolved informally, the Councillors will consider whether any of the conduct giving rise to it constitutes a contravention of the Standards of Conduct. If they consider that it does, they may choose to pursue it as such under part 8 of this Code.

## CHAPTER 8 – CONTRAVENTION OF THE CODE

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### Overview:

*Allegations of contravention of the Standards of Conduct must be formally pursued and the internal arbitration process followed.*

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#### 8.1 Allegation

An allegation that the Standards of Conduct have been breached by a Councillor can be made by:

- Council, by resolution;
- a Councillor; or
- a group of Councillors.

Where an allegation is made by Council or by a group of Councillors, a single Councillor must be nominated to act as the representative of Council or the group of Councillors (as the case may be) in the internal resolution process. Only that Councillor will be entitled to participate in the internal resolution process.

When an allegation of a breach of the Standards of Conduct is alleged, the Councillors who are party to the allegation undertake to use their best endeavours to resolve the matter in a courteous and respectful manner without recourse to formal processes under this Code or under the Act. If, after these endeavours have been exhausted, the allegation remains unresolved, either or both of the Councillors may have recourse to any or all of the internal resolution processes set out in this Code.

Councillors accept the following three-phase internal resolution process:

- formal discussion between the Councillors, facilitated by the Mayor or, if the Mayor is involved in the allegation, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the allegation, the most recent past Mayor;
- formal mediation between the Councillors, facilitated by a qualified mediator; and
- formal internal arbitration process.

Councillors recognise that the first and second phases are voluntary and that they are not obliged to agree to either of them but will endeavour to resolve allegations without resorting to the mandatory internal arbitration process.

## 8.2 The Application

An application alleging a breach of the Standards of Conduct must:

### 8.2.1 *include the:*

- a) name of the Councillor alleged to have breached the Standards of Conduct;
- b) clause(s) of the Standards of Conduct that the Councillor is alleged to have breached;
- c) particular misconduct, or behaviour, that the Councillor is alleged to have engaged in that resulted in the breach; and
- d) phase of the internal resolution process being pursued by the Councillor making the allegation at the first instance; and

### 8.2.2 *be submitted to the Councillor Conduct Officer for:*

- a) action, if the application seeks engagement in the first or second phase of the internal resolution process; or
- b) referral to the Principal Councillor Conduct Registrar, if the application seeks a formal internal arbitration process.

If an application received by the Councillor Conduct Officer does not meet the requirements of this Part 8.2, the Councillor Conduct Officer will return it to the Councillor submitting it with a brief statement of the ways in which the application is deficient.

A Councillor may revise and resubmit to the Councillor Conduct Officer a deficient application, provided that the Councillor submits the revised application no later than 3 months after the alleged breach of the Standards of Conduct occurred (see s 143(3) of the Act).

An application for an internal resolution procedure cannot be made during a Council Election Period and any procedure in progress will be suspended for the duration of an Election Period.

## 8.3 Process on receiving an application

### 8.3.1 *Application for a facilitated discussion*

On receiving an application from a Councillor which meets the requirements of Part 8.2 of this Code and which seeks a facilitated discussion, the Councillor Conduct Officer will take the following steps:

- a) notify the Mayor or, if the Mayor is involved in the allegation, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the allegation, the most recent past Mayor (as the case may be) and the CEO (for the CEO's information only) and provide them with a copy of the application;
- b) notify the Councillor the subject of the allegation in the application and provide them with a copy of the application;
- c) request the Councillor the subject of the application to advise whether they will participate in the facilitated discussion within 5 days of receiving the application, noting that, if no advice is received, the Councillor will be taken to have declined;

- d) if the Councillor agrees to participate in the facilitated discussion:
  - (i) the Councillor Conduct Officer will, with the cooperation of the Councillors involved in the application and the Mayor or, if the Mayor is involved in the application, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the application, the most recent past Mayor (as the case may be), arrange a suitable time and place for the facilitated discussion, to be no later than 5 days from the date of the advice provided under paragraph c);
  - (ii) the facilitated discussion must be completed with the Mayor or, if the Mayor is involved in the application, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the application, the most recent past Mayor (as the case may be) providing a record of the outcome to the Councillors involved in the application and the CEO no later than 5 days after the discussion takes place; and
  - (iii) if the facilitated discussion is not complete within 5 days of the date nominated for it to take place, the Councillors will be taken as not having agreed to participate in a facilitated discussion, unless both Councillors agree to extend the time for completion;
- e) if the facilitated discussion is not completed in accordance with this Part 0 for whatever reason, or if the facilitated discussion does not resolve the allegation the subject of the application, the Councillor Conduct Officer will advise the:
  - (iv) Councillor making the application and ask the Councillor to advise whether they wish to escalate the matter to another phase of the internal resolution process and, if so, which phase;
  - (v) Councillor the subject of the application; and
  - (vi) CEO; and
- f) the Councillor Conduct Officer will make arrangements to close or to escalate the application, as the case may be, according to the advice of the Councillor making the application.

### **8.3.2 *Mediation***

On receiving an application from a Councillor which meets the requirements of Part 8.2 of this Code and which seeks a mediation, or on escalating an application where a facilitated discussion has not been completed or has not resolved the allegation, the Councillor Conduct Officer will take the following steps:

- a) notify the CEO and provide them with a copy of the application;
- b) notify the Councillor the subject of allegation in the application and provide them with a copy of the application;
- c) request the Councillor the subject of the application to advise whether they will participate in mediation within 5 days of receiving the application, noting that, if no advice is received, the Councillor will be taken to have declined;

- d) if the Councillor agrees to participate in mediation:
  - the CEO, or a member of Council staff nominated by the CEO for the purpose (**the CEO's nominee**), will engage a mediator, to be chosen by the CEO (or the CEO's nominee);
  - the CEO (or the CEO's nominee) will, with the cooperation of the Councillors involved in the application, arrange a suitable time and place for the mediation, to be no later than 5 business days from the date of the advice provided under paragraph c); and
  - if the mediation is not complete within 5 business days of the date nominated for it to take place, the Councillors will be taken as not having agreed to participate in the mediation, unless both Councillors agree to extend the time for completion;
- e) if the mediation resolves the application, the mediator will document the agreement reached by the Councillors involved and provide a copy of the agreement to both Councillors and to the CEO;
- f) if the mediation is not completed in accordance with this Part 0 for whatever reason, the CEO (or the CEO's nominee) will advise the:
  - Councillor making the application and ask the Councillor to advise whether they wish to escalate the matter to another phase of the internal resolution process and, if so, which phase; and
  - Councillor the subject of the application; and
- g) the CEO (or the CEO's nominee) will ask the Councillor Conduct Officer to make arrangements to close or to escalate the application, according to the advice of the Councillor making the application.

### *8.3.3 Internal arbitration*

A breach of the Standards of Conduct constitutes 'misconduct' for the purposes of the Act and may be referred to an arbiter for determination. The process for internal arbitration is prescribed by Part 6 of the Act and r 11 of the Regulations.

Internal arbitration may be commenced either after the first two phases of the internal resolution process prove unsuccessful in resolving the allegation, or as the first step in an application.

On receiving an application from a Councillor which meets the requirements of Part 8.2 of this Code and which seeks an internal arbitration process, or on escalating an application where a facilitated discussion and/or mediation has not been completed or has not resolved the allegation, the Councillor Conduct Officer will:

- a) refer the application to the Principal Councillor Conduct Registrar;
- b) notify the Councillors involved in the application of the referral;
- c) notify the CEO of the referral (for the CEO's information only);
- d) await advice from the Principal Councillor Conduct Registrar about the application; and
- e) take such steps as are necessary to give effect to the Principal Councillor Conduct Registrar's advice, in accordance with any instructions received.

Councillors recognise that an application for internal arbitration for an allegation of a breach of the Standards of Conduct will only be accepted by the Principal Councillor Conduct Registrar, and an arbiter will only be appointed, if the Principal Councillor Conduct Registrar is satisfied that:

- a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
- b) there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct.

It is for the Councillor or Councillors submitting an application to ensure that the application meets these requirements.

If the Principal Councillor Conduct Registrar is satisfied that an application for internal arbitration should be accepted, the Principal Councillor Conduct Registrar will appoint an arbiter from a panel list compiled by the Secretary to the Department of Jobs, Precincts and Regions.

In conducting an arbitration the arbiter must:

- a) ensure that the parties involved are given an opportunity to be heard;
- b) ensure that a Councillor who is a party does not have a right to representation, unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly;
- c) conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
- d) ensure that the hearing is not open to the public.

Additionally, in conducting an arbitration the arbiter:

- a) may hear each party to the matter in person or solely by written or electronic means of communication;
- b) is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit;
- c) may at any time discontinue the hearing if the arbiter considers that the:
  - application is vexatious, misconceived, frivolous or lacking in substance; or
  - Councillor making the application, or representing the group of Councillors making the application, has not responded, or has responded inadequately, to a request for further information.

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

If, at the completion of the internal arbitration process, the arbiter determines that a Councillor has breached the Standards of Conduct, the arbiter may make a finding of misconduct against the Councillor and impose any one or more of the following sanctions:

- a) direct the Councillor to make an apology;
- b) suspend the Councillor from the office of Councillor for a period specified by the arbiter (not exceeding one month);
- c) direct that the Councillor be removed from any position where the Councillor represents Council for a period determined by the arbiter;
- d) direct that the Councillor is removed from being the chair of a delegated committee for a period determined by the arbiter; and/or
- e) direct a Councillor to attend or undergo training or counselling specified by the arbiter.

The arbiter must provide a written copy of the arbiter's findings and statement of reasons to:

- a) Council;
- b) the applicant(s) and the respondent; and
- c) the Principal Councillor Conduct Registrar.

A copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the arbiter's findings and statement of reasons are provided. If the arbiter's decision and statement of reasons contain any confidential information, the confidential information must be redacted before it is tabled.

Councillors recognise that a failure to participate in and comply with the internal arbitration process or a direction given to the Councillor by an arbiter is 'serious misconduct' for the purposes of the Act. Allegations of 'serious misconduct' are heard by a Councillor Conduct Panel.

## **8.4 Responsibility of Councillors**

It is the responsibility of a Councillor or Councillors submitting an application to prepare the application, including identifying and collating the evidence which supports it.

While members of Council staff may provide some administrative support, that support will not extend to assisting Councillors with the preparation of the substance of an application.

## **8.5 Human Rights Charter**

This Code has been reviewed against and complies with section 13 of the *Charter of Human Rights and Responsibilities Act 2006*, as this Code aligns with and provides for the protection of an individual's right not to have their privacy unlawfully or arbitrarily interfered with. It is also in line with section 18 which recognises a person's right to participate in the conduct of public affairs.