



Agenda

Special Meeting of Council
Tuesday, 24 January 2017

To be held in the
Council Chambers
1 Merrijig Drive, Torquay

Commencing at 5.45pm

Council:

Cr Brian McKiterick (Mayor)
Cr David Bell
Cr Libby Coker
Cr Martin Duke
Cr Clive Goldsworthy
Cr Rose Hodge
Cr Carol McGregor
Cr Margot Smith
Cr Heather Wellington

AGENDA FOR THE SPECIAL COUNCIL MEETING OF SURF COAST SHIRE COUNCIL
TO BE HELD IN THE COUNCIL CHAMBERS, 1 MERRIJIG DRIVE, TORQUAY
ON TUESDAY 24 JANUARY 2017 COMMENCING AT 5.45PM

PRESENT:

OPENING:

Council acknowledge the traditional owners of the land where we meet today and pay respect to their elders past and present and Council acknowledges the citizens of the Surf Coast Shire.

PLEDGE:

As Councillors we carry out our responsibilities with diligence and integrity and make fair decisions of lasting value for the wellbeing of our community and environment.

APOLOGIES:

Cr Libby Coker

CONFLICTS OF INTEREST:

Note to Councillors and Officers

Declaration of Interest

Councillors and Officers please note that in accordance with Section 77A of the Local Government Act 1989, there is an obligation to declare a conflict of interest in a matter that could come before Council.

A conflict of interest can be a direct or indirect interest in a matter.

A person has a direct interest if:

There is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.

A person has an indirect interest if the person has:

- 1. A close association whereby a "family member" of the person has a direct or indirect interest or a "relative" or member of a person's household has a direct interest in a matter;*
- 2. An indirect financial interest in the matter;*
- 3. A conflicting duty;*
- 4. Received an "applicable" gift;*
- 5. Become an interested party in the matter by initiating civil proceedings or becoming a party to civil proceedings in relation to the matter; or*
- 6. A residential amenity affect.*

Disclosure of Interest

A Councillor or Officer must make full disclosure of a conflict of interest by advising the class and nature of the interest immediately before the matter is considered at the meeting. While the matter is being considered or any vote taken, the Councillor or Officer with the conflict of interest must leave the room and notify the Chairperson that he or she is doing so.

BUSINESS:

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1. GOVERNANCE & INFRASTRUCTURE

1.1 Review of Councillor Code of Conduct SCS-002

Author's Title: Manager Governance & Risk

General Manager: Anne Howard

Department: Governance & Risk

File No: F11/22

Division: Governance & Infrastructure

Trim No: IC16/1307

Appendix:

1. Review of Councillor Code of Conduct SCS-002 (D16/118674)

Officer Direct or Indirect Conflict of Interest:

Status:

In accordance with Local Government Act 1989 –
Section 80C:

Information classified confidential in accordance with
Local Government Act 1989 – Section 77(2)(c):

Yes

No

Yes

No

Reason: Nil

Reason: Nil

Purpose

The purpose of this report is to present the Code of Conduct for review and adoption in order to comply with the Local Government Act.

Summary

The Councillor Code of Conduct is required to be reviewed by 22 February 2017, being four months after the election, pursuant to section 76C of the Act by calling a special meeting solely for the purpose of reviewing the Code. At that special meeting Council is required to approve any amendments to be made to the Code following the review.

Within one month of any amendments to the Code being approved, each Councillor must make a further declaration stating that they will abide by the Code.

The Code was reviewed by the Audit and Risk Committee on 29 November 2016 and a minor edit to numbering was made as a result.

The Code is now ready for Council approval which will be followed by Councillors making a declaration that they have read and agreed to abide by it.

Recommendation

That Council approves the Councillor Code of Conduct SCS-002 as presented at Appendix 1.

1.1 Review of Councillor Code of Conduct SCS-002

Report

Background

In accordance with section 64 of the Local Government Act 1989 (the Act) Councillors previously signed the Code of Conduct and have taken the Oath of Office.

Discussion

Council is now required to review the Councillor Code of Conduct by 22 February 2017, being 4 months after the election, pursuant to section 76C of the Act, by calling a special meeting solely for the purpose of reviewing the Code. At that special meeting Council is required to approve any amendments to the Code.

Within one month of any amendments to the Code being approved, each Councillor must make a further declaration stating that they have read and will abide by the Code as per section 76C(6A) of the Act.

Accordingly the Code was initially reviewed by the Audit and Risk Committee on 29 November 2016 and a minor edit to correct the numbering was made as a result. No other changes were suggested.

The Code is now ready for Council's review and endorsement, followed by Councillors making a fresh declaration that they have read and agree to abide by it.

Financial Implications

Not applicable.

Council Plan

Theme 2 Governance
Objective 2.2 High performing accountable organisation
Strategy Nil

Policy/Legal Implications

The adoption of the Code of Conduct and signing by Councillors within one month will ensure Council's legal obligations have been met.

Officer Direct or Indirect Interest

No officer involved in the preparation of this report has any conflicts of interest.

Risk Assessment

Not applicable.

Social Considerations

Not applicable.

Community Engagement

Not applicable.

Environmental Implications

Not applicable.

Communication

The Code will be posted on Council's website and a copy provided to each Councillor.

Conclusion

By completing a review of the Councillor Code of Conduct and ensuring this is read and signed by Councillors within one month of this meeting, Council will ensure compliance with the Local Government Act 1989.

1.1 Review of Councillor Code of Conduct SCS-002

APPENDIX 1 REVIEW OF COUNCILLOR CODE OF CONDUCT SCS-002



Councillor Code Of Conduct SCS-002

<p>Declaration by Councillor</p> <p>I, Councillor, confirm that I have read this Councillor Code of Conduct for Surf Coast Shire Council adopted on 24 January 2017, and declare that I will abide by it.</p> <p>Signed (Cr) Dated</p> <p>Witnessed by: Keith Baillie, Chief Executive Officer</p> <p>Signed (CEO) Dated</p>
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DEFINITIONS

In this Code of Conduct, the following definitions apply:

“the Act	means the Local Government Act 1989.
“Arbiter”	means the independent person appointed to consider alleged contraventions of the Councillor Code of Conduct by a Councillor, and to make findings in relation to the allegations.
“Bullying”	means repeated unreasonable behaviour that creates a risk to the health and safety of another Councillor or member of Council staff.
“Code”	means the Council Policy – Councillor Code of Conduct.
“Councillor Conduct Panel”	means a panel selected by the Principal Conduct Registrar pursuant to the Act to hear applications of misconduct and serious misconduct.
“Dispute Resolution Procedure”	means the procedure for dealing with disputes between Councillors.
“Independent Appointee”	means a person suitably qualified in mediation or conciliation nominated by the President of the Law Institute of Victoria.
“Information”	includes letters, reports, documents, facsimiles, attachments, tapes or electronic media and/or other forms of information including verbal.
“Internal Resolution Procedure”	means the internal resolution procedure specified in the Code of Conduct that is developed and maintained by Council for dealing with an alleged contravention of the Councillor Code of Conduct
“Policy”	Means any policy adopted by Council from time to time.
“Principal Conduct Officer”	Means the person appointed by the CEO under section 81Y of the Act.
“VCAT”	means the Victorian Civil and Administrative Tribunal that has responsibility for hearing applications for findings of gross misconduct.

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1 INTRODUCTION

This Code of Conduct (Code) is a public declaration that Councillors of the Surf Coast Shire Council (Council) are committed to:

1. the principles of good governance;
2. discharging their responsibilities to the best of their skill and judgment; and
3. working together in the best interests of the Surf Coast Shire community.

In accordance with the Local Government Act (the Act), a Councillor must within one month of any amendments to the Code being approved, make a declaration stating they will abide by the Councillor Code of Conduct. The declaration must be completed in writing and witnessed by the Chief Executive Officer.

In accordance with section 63(1) a person elected as 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 it. Failure to sign the Code of Conduct is a ground for disqualification as a Councillor.

This Code:

1. has been developed in accordance with the Local Government Act 1989; and
2. applies to all Councillors of the Surf Coast Shire.

2 PURPOSE OF THE COUNCILLOR CODE OF CONDUCT

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.

This Code:

1. sets out the standards of conduct expected of elected representatives beyond those already contained in the Act;
2. endeavours to support good working relations between Councillors to enable Councillors to work constructively together in the best interests of the local community; and
3. mandates Councillor conduct designed to build public confidence in the integrity of local government.

3 ROLES AND RESPONSIBILITIES

All decisions are made at Council meetings or through delegations that are formally made by Council.

Councillors may exercise authority as a member of Council:

1. after they are formally sworn in;
2. have read and signed the Councillor Code of Conduct; and
3. when they meet formally as Council.

Councillors recognise the importance of constructive relationships and will strive to develop and maintain these relationships as they work cooperatively to achieve Council's vision.

3.1 The Mayor

The Mayor is elected by Council to represent the views and directions of Council in performing various roles and duties.

The Mayor provides leadership to Council and carries the respect and authority given by Council, the Councillors and the Act.

Further to the above, section 73AA of the Act describes the functions of the Mayor to be:

1. 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
2. acting as the principal spokesperson for the Council; and
3. supporting good working relations between Councillors; and
4. carrying out the civic and ceremonial duties of the office of Mayor.

The Mayor is deemed to be referred to at any time the word 'Councillor' is used within this document.

3.2 The Acting Mayor

If an Acting Mayor is appointed by Council, such as in the circumstances where the Mayor is absent for an extended period, the Acting Mayor shall perform the role of Mayor as outlined above.

The Acting Mayor is deemed to be referred to at any time the word 'Councillor' is used within this document.

3.3 The Deputy Mayor

The Deputy Mayor, if appointed, shall perform duties at the request of the Mayor during the Mayor's absence or where the Mayor is unable to fulfil their duties directly.

The Deputy Mayor is deemed to be referred to at any time the word 'Councillor' is used within this document.

3.4 Councillors

Section 65(1) of the Act states that the role of a Councillor is to:

- a) to participate in the decision-making of the council.
- b) to represent the local community in that decision-making.
- 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.

Further to the above, Section 65(2) of the Act states that 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.

Councillors commit to conduct that maintains good working relationships between Councillors in recognition that that this is integral to effectively fulfilling the role of Councillors and achieving the best outcomes for the community.

In accordance with this commitment, Councillors will:

1. strive to achieve the best outcomes for the Surf Coast Shire;
2. work with colleagues and staff in an atmosphere of mutual respect;
3. be honest and open with other Councillors;
4. recognise and respect the strengths and weaknesses of fellow Councillors and where possible offer encouragement and support;
5. ensure punctual attendance at meetings;
6. debate contentious issues without resorting to personal acrimony or insult; and
7. refrain from personal attacks on other Councillors and focus on the issue at hand.

3.5 Chief Executive Officer

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.

The Chief Executive Officer is responsible for:

1. establishing and maintaining an appropriate organisational structure for the Council;
2. ensuring that the decisions of the Council are implemented without undue delay;
3. the day to day management of the Council's operations in accordance with the Council Plan;
4. developing, adopting and disseminating a code of conduct for Council staff;
5. providing timely advice to the Council;
6. ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act;
7. supporting the Mayor in the performance of the Mayor's role as Mayor;
8. 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;
9. performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.
10. The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

The administration is accountable to Council through the Chief Executive Officer (CEO), who is responsible for the management and administration of the organisation.

Councillors commit to conduct that respect the functions of the Chief Executive Officer and to abide by the policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.

3.6 Staff

Councillors will:

1. act respectfully towards staff, dealing in a professional, courteous, fair, equitable and honest manner and avoiding using behaviour that may intimidate staff;
2. work co-operatively with staff to achieve Council's goals;

3. develop mature and constructive working relationships based on mutual trust, respect and recognition of common goals;
4. understand and respect the distinction in roles of Councillors and staff, acknowledging that the CEO is responsible for the operations of Council and management of staff;
5. not involve themselves, directly or indirectly, in any personnel matter relating to a Council officer;
6. not direct or instruct members of staff in the performance of their duties;
7. access staff in the Office of the Mayor & Councillors in accordance with approved protocols;
8. refrain from using their position as Councillors to improperly influence members of staff in their duties or functions or to seek preferential treatment or gain an advantage for themselves or others;
9. advise the CEO in a timely fashion of any concerns that a Council officer has acted contrary to a Council policy or decision, noting that any discussion pertaining to the performance of a Council officer must be held privately with the CEO and in a constructive manner; and
10. refrain from publicly criticising staff in a manner that casts aspersions on their professional competence or credibility.

Councillors commit to conduct that recognises that the relationship between Councillors and staff must be one of co-operation and support with a clear understanding of each other's roles and responsibilities

3.7 The Community

Consultation, representation, equity, openness and accountability are the key features of the relationships between Council and the Community.

Councillors will:

1. respectfully deal with members of the community in a courteous, fair, equitable and honest manner;
2. strive to understand and respect different points of view within the community;
3. be available to listen and respond to community concerns;
4. avoid promising things that cannot or may not be delivered;
5. make decisions in the best interests of the community after considering all relevant interests and points of view;
6. be cognisant of the principles of procedural fairness prior to making statements on issues upon which public submissions have been invited;
7. encourage partnerships with the community so that mutual strengths can be utilised to achieve common goals; and
8. encourage understanding and harmony and discourage divisiveness amongst citizens of the Surf Coast Shire.

Councillors are committed to representing constituents and the broader community effectively, working together to achieve outcomes that are in the best interests of the Surf Coast Shire community.

4 COUNCILLOR CONDUCT PRINCIPLES

The Act defines "Councillor conduct principles" as the principles set out in sections 76B and 76BA of the Act, which are standards of conduct that the community has a right to expect of all Councillors.

These are the "Primary Principle" and seven "General Principles". These principles must be observed by every Councillor.

4.1 Primary principle

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

1. act with integrity;
2. impartially exercise his or her responsibilities in the interests of the local community; and
3. not improperly seek to confer an advantage or disadvantage on any person.

4.2 General principles

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

1. avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
2. act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
3. treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other persons;
4. exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
5. endeavour to ensure that public resources are used prudently and solely in the public interest;
6. act lawfully and in accordance with the trust placed in him or her as an elected representative; and
7. 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.

Councillors commit to conduct themselves in observance of the primary principles and the general principles of conduct.

5 VALUES AND BEHAVIOURS

Councillors aim to foster a culture that embraces a consistent set of behaviours that reflect what they truly value and believe in to deliver effective and efficient outcomes for the community.

5.1 Integrity and honesty

Councillors will act with **integrity and honesty** in all dealings with the community, with other Councillors and with Council staff. This includes:

1. acting with impartiality and in the best interests of the community as a whole;
2. avoiding actions personal or otherwise that may damage the Council or its ability to exercise good government;
3. exercising reasonable care and diligence in performing the functions of Councillors; and
4. complying with all relevant Federal, State and Local Laws.

5.2 Courtesy and respect

Councillors will treat all people with **courtesy and respect**, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities. This includes:

1. treating members of the community with dignity and respect;
2. treating fellow Councillors with respect, even when disagreeing with their views or decisions;
3. debating contentious issues without resorting to personal acrimony or insult
4. ensuring punctual attendance at Council briefings, meeting and committee meetings;
5. recognising the personal impacts of the demands placed on each other through the obligations and responsibilities of carrying out our role as Councillors and as a Council providing appropriate support; and
6. acting with courtesy towards Council staff avoiding bullying or intimidatory behaviour and building positive relationships.

5.3 Trust

Councillors will act in a way that fosters **trust** amongst fellow Councillors, Council staff and the community. This includes:

1. recognising that Councillors hold a position of trust and must not misuse or derive undue benefit from it;
2. avoiding conflicts of interest and complying with the relevant provisions of the Act and this Code relating to interests and conflicts of interest;
3. refraining from exercising undue influence on other Councillors, members of Council staff or members of the public to gain or attempt to gain a personal advantage; and
4. complying with the applicable provisions of the Council's Gifts, Benefits and Hospitality Policy.

5.4 Innovation

Councillors will support and promote **innovation**, for community benefit. This includes:

1. looking for and implementing better ways of doing things;
2. being open to learning;
3. taking responsibility for problem solving; and
4. being responsive to the changing needs of the community.

Councillors commit to conduct that displays the agreed values and behaviours at all times.
--

6 DECISION-MAKING

Councillors will participate in Council's **decision-making** impartially and in the best interests of the whole community. This includes complying with obligations under section 77 of the Act in relation to confidential briefings or information (as defined in the Act) including not disclosing and ensuring the safekeeping of confidential information.

Councillors will contribute to the strategic direction of Council through the development and review of key strategic documents of the Council, including the Council Plan.

7 GIFT AND BENEFITS

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

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

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

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

Councillors will record all campaign donations in the "campaign donation return".

8 ADHERENCE TO CODE OF CONDUCT

Councillors recognise that conduct inconsistent with standards Council has set itself to through Sections 3 to 7 of the Code could result in:

1. implementation of internal resolution processes and initiation of sanctions; or
2. referral to external bodies where the conduct may be considered to be:
 - 2.1. prohibited conduct as defined in the Act; or
 - 2.2. a breach of other parts of the Act; or
 - 2.3. a breach of other legislation.

A summary of prohibited conduct that could be referred to external bodies for determination is provided at Appendix 1.

9 INTERNAL RESOLUTION PROCEDURES

Councillors understand that a complaint may be raised by other Councillors, staff or members of the community in relation to conduct by a Councillor that is inconsistent with the Code.

Councillors commit to:

1. Addressing allegations through agreed procedures that are founded on fairness, transparency and accountability; and
2. Participating in the resolution procedures outlined in the Code and the Act, including providing reasonable assistance to the Independent Arbiter if appointed, Councillor Conduct Panel or VCAT; and
3. Treating all aspects of a complaint and resolution procedure as matters that are confidential including the existence of an allegation or any action or outcome arising.

The Councillor conduct arrangements in the Act provide for three levels of resolution (as summarised in Appendices 2 and 3) and comprise the following:

1. Council's internal resolution procedure;
2. Councillor Conduct Panels (External); and
3. the Victorian Civil and Administrative Tribunal (External).

The three levels of resolution are summarised in Appendices 2 and 3 to the Code.

Councillors recognise that a dispute may arise between Councillors that has the capacity to undermine the effective operation of Council, even when conduct and behaviours are otherwise consistent with the Code. In such a dispute occurs, Councillors commit to attempt to restore effective operation through participation in the dispute resolution procedure outlined in Section 10.

9.1 Councillor dispute resolution procedure

In relation to a dispute between Councillors, where possible the Councillors who are parties to any disagreement will endeavour to resolve their differences informally in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

Councillors may seek assistance of any third party in resolving their differences.

In the event that a dispute is unable to be resolved and the situation is unduly affecting the operation of Council, one of the Councillors party to the dispute, or another Councillor, may initiate the dispute resolution procedure outlined herein.

If the Mayor, or Acting Mayor, is either a complainant or the subject of a complaint, the Deputy Mayor or immediate past Mayor shall assume the role of the Mayor for the purpose of the dispute resolution procedure.

The dispute resolution procedure is as follows:

1. A written complaint will be furnished to the Mayor.
2. Within five (5) working days of receipt of the complaint, the Mayor will:
 - 2.1. acknowledge receipt of the complaint in writing;
 - 2.2. provide a copy of the complaint to the Councillor(s) concerned; and
 - 2.3. attempt to facilitate a resolution.
3. The Mayor may call upon the Chief Executive Officer for advice and guidance.
4. The Mayor may appoint an independent expert to express an opinion in relation to the dispute.
5. If the matter is not able to be satisfactorily resolved, the Mayor will appoint an Independent Appointee conciliator, being a person suitably qualified in mediation or conciliation.
6. If an Independent Appointee conciliator is appointed Councillor must cooperate in the dispute resolution process and provide reasonable assistance to the Independent Appointee as requested.
7. Following mediation the Independent Appointee conciliator will prepare a report and submit this to the Mayor, setting out the outcome of the mediation and including, where relevant, any general recommendations that may be of assistance to Council. This report will be provided within 21 days of appointment of the Independent Appointee or such other reasonable time as agreed by the Mayor.
8. The Mayor will present the report to the Chief Executive Officer for the purpose of allowing Council to consider the matter at the next available Council meeting and at a meeting that is closed to the public. The Mayor will use their judgement regarding whether to provide the report in whole or part to the Chief Executive Officer.
9. The Chief Executive Officer may prepare an item of urgent business to present the matter to Council to ensure that the matter can be considered promptly.
10. Persons lodging complaints shall be provided with a response that sets out the outcome(s) of the complaint after the matter has been considered by Council.

If the above dispute resolution process fails to reach an outcome that restores effective operation of the Council then the conduct of Councillors involved may be viewed as conduct that is inconsistent with the Code because of the ongoing impact of the matter on Council's ability to achieving the best outcomes for the community. In this instance the Mayor may determine that the matter may be dealt with under the internal resolution procedure below.

9.2 Internal resolution procedure

The purpose of the internal resolution procedure is to give Council greater authority to shape and enforce acceptable standards of conduct by Councillors with minimal external participation.

Where a written complaint is received regarding conduct that is inconsistent with the Code, but the complaint does not imply misconduct, serious and gross misconduct as defined in the Act, the internal resolution procedure outlined herein will apply.

Where possible the complaint will specify the provisions of the Code of Conduct which it is alleged have been breached.

If the Mayor, or Acting Mayor, is either a complainant or the subject of a complaint, the Deputy Mayor or immediate past Mayor shall assume the role of the Mayor for the purpose of the internal resolution procedure.

The internal resolution procedure is as follows:

1. The written complaint will be forwarded to the Mayor.
2. Within five (5) working days of receipt of the complaint, the Mayor will:
 - 2.1. notify Council's Principal Conduct Officer; and
 - 2.2. acknowledge receipt of the complaint in writing; and
 - 2.3. provide details of the allegations to the Councillor(s) concerned in accordance with the principles of natural justice.
3. The Mayor may call upon the Chief Executive Officer or Council's Principal Conduct Officer for assistance, advice and guidance throughout the process.
4. The Mayor will make application through the Principal Conduct Officer for the appointment of an independent Arbiter, to consider the matter and make findings in relation to the allegations.
5. The Arbiter must provide an opportunity to any Councillor subject to an allegation to be heard as part of an investigation process.
6. The Arbiter will prepare a report upon completion of an investigation, setting out the method and findings of the investigation in addition to any general recommendations that may be of assistance to Council. This report will be provided to the Mayor within 21 days of appointment of the Arbiter or such other reasonable time as agreed by the Mayor.
7. The Mayor will provide written reasons for any findings and recommendations made by the Arbiter to the Councillor who is alleged to have breached the Code at least 48 hours prior to presenting the report to Council.
8. The Mayor will present the report to the Chief Executive Officer for the purpose of allowing Council to consider the matter at the next available Council meeting and at a meeting that is closed to the public. The Mayor will use their judgement regarding whether to provide the report in whole or part to the Chief Executive Officer.
9. The Chief Executive Officer may prepare an item of urgent business to present the matter to Council to ensure that the matter can be considered promptly.
10. Persons lodging complaints shall be provided with a response that sets out the outcome(s) of the complaint after the matter has been considered by Council.

A confidential register of complaints and outcomes will be maintained by the Principal Conduct Officer.

9.3 Sanctions that may be imposed by Council

If, after an internal resolution procedure has been completed, the conduct of a Councillor has been found to be inconsistent with the Code, the Council may impose sanctions that comprise any or all of the following:

1. direct the Councillor to make an apology in a form or manner specified by the Council;
2. direct the Councillor to not attend up to, but not exceeding, two meetings of the Council;
3. direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by the Council, the Councillor:
 - 3.1. be removed from any position where the Councillor represents the Council; and,
 - 3.2. 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.

If Council imposes sanctions they must be:

1. decided by Council through resolution at a meeting that is closed to the public; and
2. decided by Council at the first meeting of Council after the meeting at which the findings were considered; and
3. provided in writing by the Mayor.

If Council does not resolve to impose sanctions in accordance with the above, then the matter will be considered to be finalised.

A direction given in relation to not attending Council meetings must be in respect of the next scheduled meetings of the Council after the direction is made.

9.4 Failure to comply with the internal resolution procedure

A Councillor who does not participate in the internal resolution procedure or abide by sanctions imposed upon them may be guilty of misconduct.

The Act provides that misconduct by a Councillor means any of the following:

1. failure by a Councillor to comply with the Council's internal resolution procedure; or
2. failure by a Councillor to comply with a written direction given by the Council under section 81AB; or
3. repeated contravention of any of the Councillor conduct principles.

Misconduct as defined above will be referred to external resolution procedures as outlined in Section 10.

10 EXTERNAL RESOLUTION PROCEDURES

Referral to an external resolution procedure will occur in accordance with the Act and Section 8 of the Code. Procedures and processes outside of Council's internal resolution procedure are summarised in Appendix 2.

In accordance with the objectives of the Councillor Conduct Framework, Council will attempt to resolve matters through the internal resolution procedure in the first instance before referring the matter to a Councillor Conduct Panel.

A matter may be referred to a Councillor Conduct Panel through application to the Principal Councillor Conduct Registrar.

10.1 Matters of misconduct and serious misconduct

Section 81B(1A) of the Act allows application for a Councillor Conduct Panel to consider a matter relating to misconduct to be made by:

1. the Council, following a resolution of the Council to make an application to a Councillor Conduct Panel in respect of a Councillor's conduct; or
2. a Councillor or a group of Councillors.

Section 81B(1B) of the Act allows application for a Councillor Conduct Panel to consider a matter relating to serious misconduct to be made by:

1. the Council, following a resolution of the Council to make an application to a Councillor Conduct Panel in respect of a Councillor's conduct;
2. a Councillor or a group of Councillors; or
3. the Chief Municipal Inspector.

If a Councillor Conduct Panel makes a determination against a Councillor in relation to a finding of misconduct or serious misconduct, the Panel will provide a copy of the determination to Council.

If a Councillor Conduct Panel makes a finding of misconduct or serious misconduct against a Councillor, the Panel may determine whether a remedial action or sanctions are to be applied in accordance with Section 81J of the Act.

A copy of the determination by a Councillor Conduct Panel given to the Council under section 81M(1)(a) must be tabled at the next ordinary meeting of the Council and recorded in the minutes for that meeting.

Remedial actions or sanctions that may be imposed by a Panel in relation to a finding of misconduct or serious misconduct are summarised in Appendices 2 and 3.

10.2 Matters of Gross Misconduct

A matter relating to gross misconduct as defined in the Act, ie behaviour that demonstrates lack of character to be a Councillor, are heard by VCAT at the request of the Chief Municipal Inspector.

Directions by VCAT in relation to a finding of gross are summarised in Appendices 2 and 3.

11 RECORDS

Not applicable.

12 APPENDICES

- Appendix 1 Summary of Prohibited Conduct and Conflict of Interest
Appendix 2 Flowchart of External Councillor Conduct Framework
Appendix 3 Summary of Issue Resolution Processes and Sanctions (internal and external)

13 REFERENCES

- Councillors' Entitlements – SCS-001
- Gifts and Hospitality Policy – SCS-018
- Procurement Policy – SCS-019
- Election Caretaker Policy – SCS-023
- Local Government Act 1989.

- Freedom of Information Act 1982.
- Council Meeting Procedures Local Law No. 2
- Charter of Human Rights and Responsibilities Act 2006.
- "Conflict of Interest in Local Government – A Guide" – DPCD.
- "Guide to Councillor Conduct Arrangements" – DPCD.
- Register of Interests – Primary and Ordinary Return forms.
- Assembly of Councillors Guidance Material.
- Assembly of Councillors Record of Meeting Form.

APPENDIX 1 - SUMMARY OF PROHIBITED CONDUCT

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

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;

1. the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or
2. the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or
3. the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or
4. 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
5. bullying of another Councillor or member of Council staff by a Councillor; or
6. conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or
7. the release of confidential information by a Councillor.)

Misuse of position

A Councillor must not misuse his or her position:

1. to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
2. to cause, or attempt to cause, detriment to the Council or another person.

Circumstances involving the misuse of position by a Councillor include:

1. making improper use of information acquired as a result of the position he or she held or holds; or
2. disclosing information that is confidential information within the meaning of section 77(2); or
3. directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
4. 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
5. using public funds or resources in a manner that is improper or unauthorised; or
6. failing to disclose a conflict of interest as required under this Division.

Improper direction and improper influence

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

1. in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
2. 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
3. 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
4. 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

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

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

1. for the purposes of any legal proceedings arising out of this Act;
2. to a court or tribunal in the course of legal proceedings;
3. pursuant to an order of a court or tribunal;
4. to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
5. to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
6. to a municipal monitor to the extent reasonably required by the municipal monitor;
7. to the extent reasonably required for any other law enforcement purposes.

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 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).

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.

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

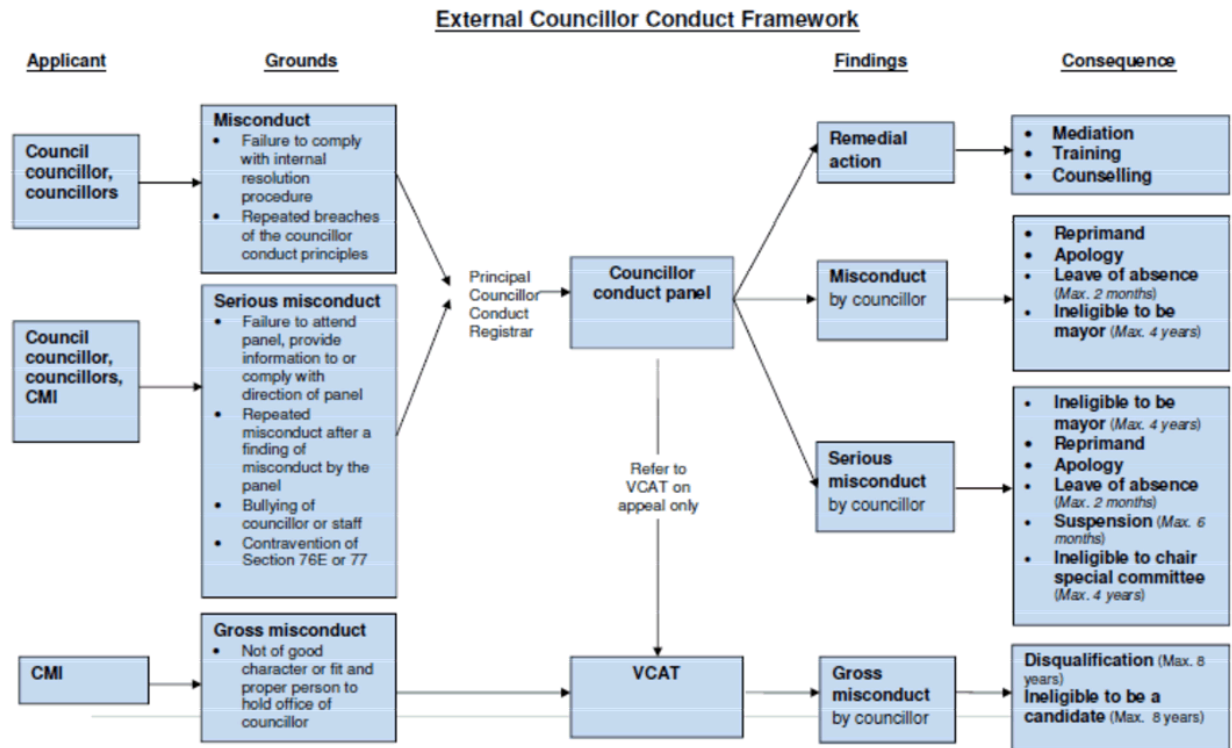
- Close association - an indirect interest because of a close association with a family member, relative or member of the household who has a direct interest
- Indirect financial interest - an indirect financial interest, including holding shares above a certain value in a company with a direct interest
- 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

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.

APPENDIX 2 - FLOWCHART - EXTERNAL COUNCILLOR CONDUCT FRAMEWORK



**APPENDIX 3 SUMMARY OF RESOLUTION PROCEDURES AND SANCTIONS
 (INTERNAL AND EXTERNAL)**

Degree of Seriousness	Definition	Responsible Authority	Sanctions Available
Conduct inconsistent with standards Council itself has set	Breaches of Councillor Code of Conduct	Council	Mediation, training and/or counselling Requiring an apology Suspension from up to two Council meetings Direction not to attend or chair an advisory or special meeting (Max. 2 months) Direction to be removed from a position representing Council (Max. 2 months)
Misconduct	Failing to comply with Council's internal resolution procedure, including failure to abide by any decision of Council in relation to a breach of the Code and repeated breaches of Councillor conduct principles.	Councillor Conduct Panel	<u>Remedial action</u> : mediation, training and/or counselling. Finding of Misconduct: Reprimand Requiring an apology Leave of absence (Max. 2 months) Ineligible to be Mayor (Max. 4 years)
Serious misconduct	Failing to comply with Panel processes or directions, bullying, improperly directing staff, releasing confidential information and repeated misconduct.	Councillor Conduct Panel	<u>Remedial action</u> : mediation, training and/or counselling. Finding of Serious Misconduct: Reprimand Requiring an apology Leave of absence (Max. 2 months) Ineligible to be Mayor (Max. 4 years) Suspension (Max. 6 months) Ineligible to chair special committee (Max. 4 years)
Gross Misconduct	Behaviour that demonstrates lack of character to be a Councillor.	VCAT	Finding of Gross Misconduct: Disqualification (Max. 8 years) Ineligible to be a candidate (Max. 8 years)

Close: There being no further items of business the meeting closed at pm.