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# ORDINARY COUNCIL MEETING

To be held on Wednesday 27 January 2021 at 6.00pm

## LATE REPORT

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**7.3 COUNCILLOR CODE OF CONDUCT 2021****Author:** Chief Executive Officer**Reviewed By:** Chief Executive Officer

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**EXECUTIVE SUMMARY**

The *Local Government Act 2020* (the Act) requires that a new Code be adopted within 4 months of a general election. This report recommends that Council adopt the new, revised Councillor Code of Conduct 2021 (**Attachment A**).

<b>Recommendation</b>
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**That** Council:

- (1) Adopts the Councillor Code of Conduct 2021 (**Attachment A**).
- 

**BACKGROUND / KEY INFORMATION**

The *Local Government Act 2020* (the Act) requires that a new Code be adopted within 4 months of a general election. With the recent Local Government elections and the commencement of a new term of Council, a Code must be adopted by 24 February 2021.

The Code is a public declaration by Councillors that they are committed to working together in the best interest of the Darebin community and to discharge their responsibilities to the best of their skills and judgement. The Code is also a commitment by Councillors to work together constructively, with respect and due regard for the opinions, beliefs, rights and responsibilities of others in the best interests of the Darebin community.

The aim of the Code is to encourage a culture that promotes constructive working relationships and communication and supports the timely, fair and respectful resolution of disputes and conflicts between Councillors as they arise.

A number of changes will be necessary for the new Code to incorporate updates and requirements of the Act including:

- Replacing the Councillor Conduct Principles with new Standards of Conduct
- Incorporating timeframes for dispute resolution processes
- Outline the dispute resolution processes including for internal arbitration and Councillor Conduct Panels

The current Code applies until a new Code is adopted.

**Previous Council Resolution**

This matter is not the subject of a previous Council resolution.

**COMMUNICATIONS AND ENGAGEMENT****Consultation**

The Councillor Code of Conduct applies to Councillors only. The draft Code has been the subject of discussions with Councillors. External consultation is not required or recommended.

**Communications**

Once adopted, the Councillor Code of Conduct 2021 will be publicly available on Councils website.

**ANALYSIS****Alignment to Council Plan / Council policy**

Goal 6 - A well governed Council

**Environmental Sustainability Considerations**

Nil

**Climate Emergency**

Nil

**Equity, Inclusion and Wellbeing Considerations**

Nil

**Cultural Considerations**

Nil

**Economic Development Considerations**

Nil

**Financial and Resource Implications**

Nil

**Legal and Risk Implications**

Pursuant to Section 139 of the Act, Council must adopt a Councillor Code of Conduct within 4 months of a general election. Therefore, a new Code must be adopted by 24 February 2021, by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors.

**Operational Impacts**

Nil

## DISCUSSION

In accordance with the *Local Government Act 2020* (the Act), Council must endorse a new Councillor Code of Conduct by 24 February 2021. The Code must incorporate the Standards of Conduct set out by the Act and outline dispute resolution processes including those for internal arbitration and Councillor Conduct Panels.

The attached new draft Code;

- Incorporates the agreed Councillor values
- Addresses identified gaps in the previous (current) Code
- Incorporates the *Local Government Act 2020*

## OPTIONS FOR CONSIDERATION

Council must adopt a new Councillor Code of Conduct by 24 February 2021. There are three main options available;

Option 1- Adopt the Councillor Code of Conduct 2021 (**Attachment A**)

**This is the recommended option.**

Option 2 - Adopt the Councillor Code of Conduct 2021 (**Attachment A**) with amendments.

**This option is not recommended.**

Option 3 - Defer adoption of the Councillor Code of Conduct 2021 until (**Attachment A**) the Council Meeting 22 February 2021.

**This option is not recommended.**

## IMPLEMENTATION STRATEGY

Once adopted, the Councillor Code of Conduct 2021 will be publicly available on Council's website.

## RELATED DOCUMENTS

- Nil

### Attachments

- Councillor Code of Conduct 2021 (**Attachment A**)

## DISCLOSURE OF INTEREST

Section 130 of the *Local Government Act 2020* requires members of Council staff and persons engaged under contract to provide advice to Council to disclose any general or material interest in a matter to which the advice relates.

The Officer reviewing this report, having made enquiries with relevant members of staff, reports that no disclosable interests have been raised in relation to this report.



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# **COUNCILLOR CODE OF CONDUCT 2021**

**January 2021**

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This policy, which incorporates the statutory requirements prescribed by the *Local Government Act 2020*, was adopted by resolution of Darebin City Council on **XXX**.

<b>Version</b>	<b>Date Adopted by Council</b>	<b>Amendment</b>
1.0	27 January 2021	

<b>Legislation/ Regulation</b>	Local Government Act 2020
<b>Date Effective</b>	January 2021
<b>Review Date</b>	2025
<b>Document ID</b>	<b>XXX</b>
<b>Content enquiries</b>	General Manager Governance and Engagement

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## Definitions

Act	<i>The Local Government Act 2020.</i>
Arbiter	An independent person appointed by the Principal Councillor Conduct Registrar pursuant to the Act to investigate and make findings in relation to allegations of misconduct by a Councillor.
CEO	The person appointed by Council as the Chief Executive Officer, including any person acting in the position of Chief Executive Officer from time to time.
Code	This <i>Councillor Code of Conduct 2021</i> established pursuant to the Act.
Corruption	Dishonest activity where a: <ul style="list-style-type: none"> <li>• public official, including Councillors, Council employees and contractors, uses, or tries to use, their position to gain an advantage for themselves or someone else, or to cause detriment to someone else; or</li> <li>• member of the public influences, or tries to influence, a public official to use their position in a way that is dishonest.</li> </ul>
Council	Darebin City Council.
Councillor	A person elected as a councillor for the City of Darebin.
Councillor Conduct Officer	The person appointed by the CEO under section 150 of the Act as the Councillor Conduct Officer.
Councillor Conduct Panel	A panel formed by the Principal Councillor Conduct Registrar pursuant the Act to hear applications of serious misconduct.
Dispute Resolution Procedure	The procedure for dealing with disputes between Councillors as outlined in the Code.
Fraud	Dishonest activity that causes actual or potential financial loss to any person or entity. Fraud includes theft of monies or other property by a public official, including Councillors, Council employees and contractors and involves deception at the time, immediately before or immediately following the activity.
Gross misconduct	As defined under section 3 of the Act, as behaviour that demonstrates a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature.
IBAC	The Independent Broad-based Anti-Corruption Commission.
Independent Mediator	A person suitably qualified in mediation or conciliation who is external to and independent of Council.
Misconduct	As defined under section 3 of the Act being a breach by a Councillor of the prescribed Standards of Conduct included in the Code.

Principal Councillor Conduct Registrar	The person appointed by the Secretary to the Department of Jobs, Precincts and Regions under section 148 of the Act.
Regulations	The <i>Local Government (Governance and Integrity) Regulations 2020</i> .
Serious Misconduct	As defined under section 3 of the Act as being: <ul style="list-style-type: none"> <li>• Failure of a Councillor to comply with the internal arbitration process or directions of an arbiter.</li> <li>• Failure of a Councillor to attend a Councillor Conduct Panel or comply with a direction of a Councillor Conduct Panel.</li> <li>• Continued or repeated misconduct by a Councillor after a finding of misconduct has been made against the Councillor.</li> <li>• Bullying by a Councillor of another Councillor or a member of Council staff.</li> <li>• Sexual harassment by a Councillor of another Councillor or a member of Council staff.</li> <li>• Disclosure of confidential information.</li> <li>• Conduct by a Councillor that directs, or seeks to direct, a member of Council staff.</li> <li>• Failure of a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process as required.</li> </ul>
Standards of Conduct	The standards of conduct prescribed by the Regulations from time to time.
VCAT	The Victorian Civil and Administrative Tribunal that has responsibility for hearing applications for findings of gross misconduct.

## 1. Introduction

The Councillor Code of Conduct 2021 outlines the expectations of behaviour and conduct for those elected to represent the community in the role of Councillor. This includes the values which underpin the way in which Councillors will work together, the Standards of Conduct as outlined in the Regulations, adherence to key policies that are relevant to the role of Councillors and the mechanisms through which interpersonal disputes between Councillors and allegations of misconduct will be addressed.

The Code is designed to foster a resilient and safe workplace culture by promoting constructive working relationships and communication, and by supporting timely, fair and respectful resolution of disputes and conflicts as they arise.

This Code is a public commitment and declaration that Councillors of Darebin City Council are committed to working together in the best interests of the people within the municipal community and to discharging their responsibilities to the best of their skill and judgement. Councillors are strongly committed to working together constructively as a team to achieve positive and future-focused outcomes for the benefit of the municipal community.

This Code outlines the expectations of Councillors ensuring they are accountable for their actions and decisions and that they act with integrity, transparency and good governance.

This Code has been developed in accordance with the Act and Council's commitment to good governance and applies to all Councillors.

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## 2. Values

Collectively Councillors have established shared values and actions that represent our commitment to ensuring respectful and productive working relationships throughout the Council term and the agreed behaviours that align with the Standards of Conduct our community expects of Councillors.

- **We value each other** and are committed to fostering a cohesive, respectful team and courteous and professional working relationships and raise any issues of concern with each other directly.
- **We value Council staff** and will be respectful in all of our dealings with them.
- **We value the Darebin community** and will work together to demonstrate leadership in the best interests of the whole of the City (not just wards), be inclusive, listen, respond and build trust.
- **We are committed to** maintaining high standards of personal and professional conduct where we respect differences and treat everyone with dignity and respect.
- **We will** be inclusive, open and transparent in our decisions and avoid creating false expectations.
- **We will work hard** to support each other to achieve our common goals and respect decisions made by Council.

### 3. Roles and Responsibilities

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

- Chair Council meetings
- Be the principal spokesperson for the Council
- Lead engagement with the Darebin community on the development of the Council Plan
- Report to the Darebin community on the implementation of the Council Plan
- Promote behaviour among Councillors that meets the Standards of Conduct set out in the Code
- 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 in the setting of the agenda for Council meetings
- Perform civic and ceremonial duties on behalf of the Council.

The Mayoral position is the most visible and high profile Councillor and the person viewed as responsible for the performance and leadership of the Council. The roles and responsibilities of the Mayor are defined both by statute and convention include leadership in the following key areas;

*Enhancing good governance, promoting a culture of teamwork, fostering good working relationships and encouraging positive / constructive / respectful behaviour among Councillors*

- The Mayor is the symbol of democratic leadership to the community and should govern for all the community.
- The Mayor has considerable influence in establishing standards of good governance behaviour and ethics. The Council's Values and Code of Conduct are key reference points for the Mayor and Councillors to maintain teamwork and behavioural standards.
- The Mayor plays a key part in promoting a culture of teamwork and co-operation and fostering good working relationships within the elected Council.
- Good relationships are 'the glue' for good governance. Councillors particularly rely on the cooperation and support of colleagues and the administration to achieve their goals. The Mayor is in a pivotal position to foster positive relationships between Councillors, Council and the administration and the Mayor and CEO.
- Promoting good conduct and managing poor conduct. The Mayor must assist Councillors to understand their role and should provide guidance to Councillors about behavioural expectations and standards. When relationships are tested and conflict between Councillors arises, the Mayor can be a critical player in resolving disputes and keeping the Council focused on shared outcomes and teamwork.
- The Mayor must put the interests and harmony of the Council before their own.

### *Framing and chairing Council meetings to enable good, inclusive decision making*

- The way in which the Mayor chairs Council meetings makes a significant contribution to good governance. A well-run Council meeting that is inclusive and has high standards of governance relies on the Mayor's approach to being chair.
- Mayors must have a good knowledge of meeting procedures and their Council's Governance Rules and Local Law and be confident in applying these processes in Council meetings. This will require due attention to understanding meeting procedures, applying these through the role of the chair and reviewing how the performance of Council's decision making.
- Effective chairing ensures that all Councillors have the opportunity to be heard. While not every Councillor can get his or her way on an issue, Councillors are more likely to accept a decision if they feel that they have been included in the process. More often than not, this will result in the Council, as a whole, accepting and supporting controversial and difficult decisions.
- It is important for the Mayor to remain impartial during the debate on a matter. If the Mayor takes sides in a Council meeting and actively supports one view and suppresses minority views, this will give dissenters the ammunition not only to attack the outcome, but also the process. The Mayor must ensure that all Councillors have had the opportunity to express their views, even if their proposals are defeated.
- Group facilitation concepts such as participation, communication, involvement, consensus, mutual respect and listening are all important in promoting the success of the Council team.

### *Building relationships and being Council's principal spokesperson*

- The Mayor is seen in the community as representing the Council as a whole and is regularly charged with speaking publicly on behalf of the Council both in the media and at key meetings and public events.
- The Mayor acts as the Council's public spokesperson to communicate its role, decisions and activities, and promote Council and community interests.
- The Mayor plays a key role in developing and maintaining relationships with stakeholders including other Councils, State and Federal Governments and local community and business groups.

## **3.2 The Deputy Mayor**

The Deputy Mayor performs the duties of the Mayor when the Mayor is unable to attend a Council meeting or part of a Council meeting, is incapable of performing the duties of the office of Mayor for any reason, including illness, or the office of Mayor is vacant. The Deputy Mayor may exercise any of the powers of the Mayor while performing the role.

### 3.3 Councillors

Councillors will demonstrate leadership by supporting the Mayor and working together to achieve shared goals consistent with the agreed values.

Section 28 of the Act describes the role of Councillors is to:

- Participate in the decision making of the Council
- Represent the interests of the municipal community in that decision making
- Contribute to the strategic direction of the Council through the development and review of key strategic documents, including the Council Plan.

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

- Consider the diversity of interests and needs of the Darebin 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 set out in the Code
- Comply with Council procedures required for good governance.

Councillors undertake to exhibit the capacity, skills and commitment required to meet the full functions of the role including:

- Working together to create a safe working environment in the best interests of Council and the municipal community
- Treating all people with courtesy and respect
- Considering the views of affected parties when making decisions
- Taking responsibility for managing positive working relationships and addressing issues as they arise in a timely, fair and respectful manner
- Engaging in training to improve communication and workplace culture
- Acting honestly, fairly and with reasonable care for the health and safety of others
- Being guided by the rules of natural justice
- Abiding by the Code
- Participating in the dispute resolution process outlined in the Code.

Councillors agree with and will support and promote the Standards of Conduct by their own example, and through individual and collective leadership to secure and preserve public confidence in the office of Councillor and the reputation of Council and the municipal community.

Councillors recognise that the conduct and behaviour of an individual Councillor reflects on Council as a whole and that, as community leaders, they should be role models, setting the standard for other people to follow. To this end, Councillors are committed to maintaining high standards of personal and professional conduct

This Code places an obligation on all Councillors to take responsibility for their own conduct. They accept that it is critical that their individual and collective conduct is exemplary at all times to ensure that Council functions properly.



All Councillors commit to building and maintaining a strong and respectful relationship to ensure the good governance of Council.

All Councillors commit to working collaboratively and professionally with each other, the organisation and the municipal community in a manner that is always consistent with the principles and requirements set out in this Code.

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 *Local Government Act 1989* until 1 July 2021 and, from that date, under section 46 of the Act.

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## **4 Standards of Conduct**

Councillors endorse and agree to observe the Standards of Conduct as prescribed by the Regulations and included in this Code in accordance with section 139(3)(a) of the Act. These standards are underpinned by the values set out in Part 2 of this Code.

Councillors acknowledge that a contravention of these Standards of Conduct constitutes 'misconduct' under the Act and may form the basis for commencement of Dispute Resolution Procedures set out in Part 13 of this Code.

### **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;

- 4.1.1 Takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010;
- 4.1.2 Supports Council in fulfilling its obligation to achieve and promote gender equality, and;
- 4.1.3 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:

- 4.2.1 Undertakes any training or professional development activities Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor;
- 4.2.2 Diligently uses Council processes to become informed about matters which are subject to Council decisions;
- 4.2.3 Is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- 4.2.4 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.

### **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:

- 4.3.1 Any policy, practice or protocol developed and implemented by the CEO in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;
- 4.3.2 The Council expenses policy adopted and maintained by Council under section 41 of the Act;
- 4.3.3 The Governance Rules developed, adopted and kept in force by Council under section 60 of the Act; and

4.3.4 Any directions of the Minister for Local Government issued under section 175 of the Act.

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

4.4.1 In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon Council.

4.4.2 In performing the role of a Councillor, a Councillor must 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**

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

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## 5 Working Together

Good governance in local government is underpinned by visionary leadership, teamwork, collaborative decision-making and a shared commitment to plan, work and advocate for and achieve the best possible outcomes for the entire community.

To this end each Councillor, when performing their role as a Councillor, will:

- foster and establish strong, respectful and professional working relationships between each other to perform their duties as a Councillor in the best interests of the Darebin community.
- work constructively with the Mayor
- treat fellow Councillors courteously and with dignity and respect and establish and maintain strong, courteous and positive working relationships
- not harm or attempt to harm, maliciously or recklessly, directly or indirectly, the reputations of others (including those of fellow Councillors and Council staff).
- raise any issues of concern related to the conduct or actions of a fellow Councillor directly with the Mayor and not with any member of Council staff or via the media (including social media) and
- raise any issues of concern related to the conduct or actions of the Mayor directly with the CEO or via the dispute resolution process set out in this Code and not with any other member of Council staff or via the media (including social media).

The expectations of Councillors established in this Part of the Code are to be read in conjunction with, and subject to, any policies, practices and protocols adopted by the CEO from time to time under section 46(3)(c) of the Act for the management of interactions between Councillors and Council staff.

### 5.1 Working with the CEO & Council Staff

Governance is the framework of structures, rules and processes by which an organisation is directed and controlled. Good governance requires strong vision, strategy, leadership, clear and timely decision-making processes and appropriate checks and balances.

A healthy, constructive and respectful relationship with the organisation provides Councillors with the ability to make high-quality decisions. Councillors support a collective commitment to the organisation with a strong, open and professional relationship between Council and the organisation to assist in achieving Council's strategic objectives.

Councillors are committed to building and maintaining positive, strong and respectful relationships with the CEO and Council staff and to demonstrating a public commitment to support the CEO by maintaining a professional relationship at all times. Further, each Councillor will:

- make every effort to resolve concerns, complaints or grievances concerning the organisation in good faith through reasonable direct communication and negotiation; and
- provide feedback and raise any issues of concern directly with the CEO and not with any member of Council staff or via the media (including social media). Issues of concern may include but are not restricted to:
  - conduct or actions of Council staff;
  - reports and publications prepared by the organisation;

- service delivery standards; and
- strategy or direction of the organisation.

Councillors commit to behaving courteously and respectfully in their dealings with Council staff, protecting their professional integrity and ensuring that neither offence nor embarrassment is caused when considering advice or recommendations. They will acknowledge and address Council staff appropriately at all Council meetings and events. Councillors will not be publicly critical of the organisation. When interacting with the CEO and Council staff, Councillors will:

- act respectfully, in a professional, courteous, fair, equitable and honest manner and avoid using behaviour that may intimidate staff;
- work co-operatively with staff to achieve Council's goals;
- develop mature and constructive working relationships based on mutual trust, respect and recognition of common goals;
- understand and respect the distinction in roles of Councillors and Council staff, acknowledging that the CEO is responsible for the operations of Council and management of staff;
- not involve themselves, directly or indirectly, in any personnel matter relating to Council staff;
- not direct or instruct members of Council staff in the performance of their duties;
- refrain from using their position as Councillors to improperly influence members of Council staff in the fulfilment of their duties or functions or to seek preferential treatment or gain an advantage for themselves or others and refrain from publicly criticising staff in a manner that casts aspersions on their professional competence or credibility; and
- 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.

Councillors acknowledge that:

- the CEO is solely responsible for the appointment, direction, management and dismissal of Council staff and that Councillors cannot interfere with the CEO's actions in this regard; and
- they are obliged to comply with and observe any protocols adopted by the CEO under section 46 of the Act for managing interactions between Councillors and members of Council staff.

## **5.2 Councillor requests for information**

All Councillors commit to promptly recording and submitting all correspondence received which relates to the function/role of Council, as well as any requests received for service, information, comments or enquiries, to the Executive Officer to the Mayor and Councillors, email address [ceoffice@darebin.vic.gov.au](mailto:ceoffice@darebin.vic.gov.au), for action to be taken as appropriate.

A request by a Councillor for information must be reasonable in the circumstances. For example, it must not impose an unreasonable burden on a member of Council staff or set an unrealistic or impracticable deadline for a response.

Information may be requested from the relevant General Manager or Manager in the first instance. If a Councillor requests information from a Manager, then the General Manager must be copied into any such requests.

Requests should not be designed to embarrass a member of Council staff or put them in a difficult position. If a Councillor intends to make public the information sought, that intention must be communicated to the relevant member of Council staff prior to disclosure to the public.

Councillors acknowledge and accept the following process for the management of, and responses to, Councillor requests for information, subject to such changes as may be made by the CEO from time to time.

#### 5.2.1 Responsiveness

Where a request for information by a Councillor is reasonable in the circumstances, Council staff must endeavour to provide the information sought in a considered, responsive and timely manner.

#### 5.2.2 Transfer of request

If a General Manager considers a request for information from a Councillor may appropriately be dealt with by a staff member, the General Manager may transfer the request to the staff member.

In that event, the General Manager who has transferred the request must inform the Councillor that the request has been transferred and advise the Councillor of the name of the staff member attending to the request.

#### 5.2.3 Reacting to the response

It is the role of the Council staff member to provide information which has been requested. The Councillor should not debate or attempt to debate aspects of the information, or anything arising out of the information, with the staff member. If a Councillor feels information received is inadequate or inappropriate, they may take this up with the CEO or the relevant General Manager.

#### 5.2.4 Notes

Except in exceptional circumstances (such as where a matter is minor in nature, specific to a particular Councillor or where privacy is relevant) staff will include all Councillors in all responses for information from a Councillor.

Council staff must copy all written communication to or from a Councillor to their General Manager and, if considered necessary, the communication should be brought to the attention of the CEO.

In addition, any other communication, including text messages and/or conversations between Councillors and Council staff, will be recorded by the Council staff member on a file note and forwarded to the relevant General Manager for endorsement and filing, within one working day of the communication occurring.

The CEO and Executive Management Team are exempt from recording every discussion with Councillors; however, this exemption does not apply in relation to the recording of discussions that are of a confidential nature.

### **5.3 Council Information**

Councillors recognise that information in the possession of Council, or provided to them to assist with decision making, must be managed with care and not used unlawfully or for personal benefit. Accordingly, Councillors undertake to:

- not release information that is confidential for the purposes of the Act;
- maintain the security of information that is “personal information” for the purposes of the *Privacy and Data Protection Act 2014*; and
- not seek access to information for any private purpose.

### **5.4 Working with the Community**

Consultation, representation, equity, openness and accountability are the key features of the relationships between Council and the municipal community. Councillors will:

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

### **5.5 Council Briefings, Meetings and Public Events**

Councillors are committed to good governance and making high quality, transparent decisions impartially and in the best interests of the whole community.

They recognise that, as elected representatives of the municipal community, they have an obligation to understand the legal framework established under the provisions of the Act and, in doing so, acknowledge that effective decision-making is vital to the democratic process and an essential component of good governance.

If a Councillor will be absent from any Meeting, Briefing or Workshop, he/she should inform the Mayor or relevant member of Council staff as soon as possible prior to the absence, unless the absence is due to an emergency or unforeseen circumstances, in which case the Mayor or relevant member of Council staff must be informed as soon as possible following the absence.

Councillors commit to regularly attend Councillor Briefings in accordance with good governance and community expectations to enable informed and considered decision-making in the best interests of the community.

Council’s Governance Rules regulate the proceedings at Council Meetings, Committee Meetings and other meetings conducted by Council and provides a mechanism for good

governance of Council through its meeting procedure to ensure effective and efficient decision-making. All Councillors must adhere to the requirements of the Governance Rules at all times.

In this context, each Councillor:

- acknowledges that Briefings and Workshops are not forums for debate or for Councillors to take a collective position on an issue;
- will accept and respect decisions of Council made at properly constituted Council Meetings by resolution of the majority of Councillors through the democratic process, without compromising his or her right to maintain their opposition to a Council decision;
- will fully participate in Council Meetings, Briefings and Workshops by listening while others are speaking, avoiding interrupting, and using reasonable, polite and temperate language in debates (irrespective of the issue);
- will show respect and observe all rulings of the Chairperson without comment; and
- will not make assertions of improper motives or personal reflections on Councillors, Council staff or members of the public.

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## 6 Conflicts of Interest

Decisions of Council must be made solely in the public interest. Councillors will ensure a clear separation between private and public interests, and:

- fully comply with the requirements of the Act and the Governance Rules to disclose all conflicts of interest in Council Meetings, Committee Meetings, Councillor Briefings and other meetings held under the auspices of Council;
- avoid situations that may give rise to a general conflict of interest or a material conflict of interest as defined in the Act, such as accepting gifts or favours from people with interests in matters to be considered by Council (in line with the Gifts and Hospitality Policy); and
- take careful note of forthcoming matters for Council consideration, identify situations where conflicts of interest may arise and give early notice of such conflicts to the Mayor/Chairperson and the CEO.

Councillors will encounter situations giving rise to potential conflicts of interest from time to time. A wrong only exists when the interest is not properly disclosed and managed. Councillors will support each other in this process but will not falsely assert the existence of a conflict of interest on the part of another Councillor in an effort to prevent them from participating in decision making.

It is a Councillor's individual responsibility to assess and identify conflicts of interest and to take the proper action when conflicts of interest are identified. Councillors cannot be directed by Council, other Councillors or Council staff in that assessment or to make a disclosure in accordance with section 130 of the Act and the Governance Rules.

### 6.1 Significant and/or intimate relationships

Conflict and bias can arise from situations where relatives or people with work together, and this can potentially lead or be seen to lead to decisions being made for reasons other than the public interest.

Councillors agree to disclose any relationship of a significant or intimate nature with another Councillor or an employee to the Mayor and the CEO.

## 7 Statutory decision-making and enforcement responsibilities

Councillors are required to consider and vote on a variety of matters, including in relation to applications for permits under different legislation including the *Planning and Environment Act 1987* and Council's Local Laws.

Councillors must ensure statutory decisions are considered properly and that all parties involved in the process are dealt with fairly. To reduce the risk of decisions being challenged legally, when dealing with permit applications and other matters, Councillors must avoid impropriety and circumstances that may give rise to a suspicion or the perception of improper conduct.

When proposing to meet with a known or proposed planning permit applicant (or property owner, or their representative) and/or objector(s), either for the purpose of discussing the application or where the application is likely to become a topic of discussion, Councillors must hold the meeting with a planning officer present.

A Councillor taking part in the consideration of applications and other matters should take all reasonable steps to avoid any action which might give rise to doubts about their impartiality and must not be seen to prejudge a matter to be considered and determined at a future meeting. A Councillor must not, for example, declare their voting intention before the Council Meeting at which an application or other matter is to be determined. Anyone seeking to influence a Councillor must be advised that the Councillor will not formulate an opinion on a proposal until all available information is given and has been duly considered.

Councillors making an application in relation to their own property, or otherwise dealing with Council in their personal capacity, must ensure that they do not seek any special treatment or other advantage by virtue of their position as Councillors. If possible, Councillors should have a third party manage the statutory process following submission of the application or other request to Council on their behalf. Councillors must not seek to pressure or influence Council officers regarding any application, agreement, proposed enforcement action or any other matter.

A Councillor with an interest, whether financial, non-financial, or personal, in the outcome of a decision on an application, agreement, proposed enforcement action or any other matter, must declare that interest in accordance with the Act and the Governance Rules and refrain from taking part in Council's consideration of the matter.

## 8 Fraud and Corruption

Collectively Councillors are committed to leading good governance, integrity and transparency through Council decision making and Council operations. Councillors strive to foster a culture of zero tolerance for fraud and corruption and one in which any suspected or known fraudulent or corrupt behaviour is reported.

Everyone at Council has responsibility to report suspected fraud or corruption. Possible fraudulent or corrupt conduct involving Council, a fellow Councillor or a member of Council staff, should be reported to the CEO, the Chief Integrity and Conduct Officer or the Public Interest Disclosure Coordinator/Officer. Fraud or corruption may also be reported directly to the IBAC or other appropriate integrity agencies.

Under the *Independent Broad-based Anti-Corruption Commission Act 2011*, Council's CEO has obligations to report suspected corrupt conduct. The CEO must notify IBAC where they suspect corrupt conduct by Council or a public officer, including Councillors and Council staff, has occurred or is likely to occur.

Councillors acknowledge that fraud or corruption may also be reported as a public interest disclosure in accordance with the *Public Interest Disclosures Act 2012* and that Council supports the reporting of improper conduct, including corruption, while ensuring that confidentiality of the identity of the person making the report and the information provided with it is maintained. Anyone can make a disclosure – Councillors, members of the public and Council staff. Disclosures are made in accordance with the *Public Interest Disclosures Act 2012* and Council's Public Interest Disclosure Policy.

## 9 Communications

While respecting the rights of each Councillor to hold and express opinions that differ from agreed Council policy, Councillors will adhere to the Councillor Media and Social Media Policy including by:

- not making any false statements about Council, Councillors, Council staff or members of the public and ensuring that all comments are polite and professional;
- not making any defamatory statements about Councillors, Council staff or members of the public;
- not misrepresenting the position of Council and ensuring that any expression of private views is not perceived to be the view of Council;
- recognising the role of the Mayor as the primary spokesperson for the Council; and
- acknowledging and complying with all internal procedures for dealing with media enquiries, including by referring them to the appropriate Manager for a response.

Councillors acknowledge that their behavior, conduct and any response or public comment will likely be perceived as being made as a Councillor of the City of Darebin, irrespective of whether they use the title “Councillor” in their communication or the media channel being used, including personal, professional or other social media channels. Councillors will take care to clearly identify that any public comments are an expression of their own views and not the views, or made on behalf, of Council.

## **10. Children and Young People**

Council prides itself on being a child safe organisation and has zero tolerance for child abuse. Council adheres to the Victorian Child Safe Standards and related legislation including Failure to Disclose, Failure to Protect and Grooming offences. Any allegation or incident of abuse will be treated very seriously and consistently with child protection legislation, regulations and guidelines and in accordance with Council policy and procedures.

Councillors will maintain the highest standards of professional conduct in attitude, behaviour and interactions with children and young people. As leaders, Councillors will uphold the rights and best interest of the child and take these matters into account in all decision making.

In line with Council's Child Safety Policy and due to the potential for Councillors to engage and/or come into contact with children as part of their role, Councillors agree to maintain a current Working with Children Check (WWCC) for the duration of the Council term. The WWCC is a screening process for assessing people who work with or care for children in Victoria, to assist in the protection of children from sexual or physical harm.

Where a Councillor does not hold a current WWCC, they will not participate in functions as a Councillor that may bring them into unsupervised contact with children. Councillors will refuse any such requests to attend or participate at a function in their official capacity that may involve interactions with children.

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## **11. Fitness for Duty**

Council is committed to providing and maintaining a work environment that is safe and without risks to health. Councillors acknowledge that certain conditions may develop which impact on their fitness to carry out their duty and, left unaddressed, may negatively affect the health and safety of themselves and others.

Councillors also acknowledge that a range of factors and circumstances can impact on the satisfactory performance of their duties, including the consumption of alcohol and other drugs, even if legal and prescribed.

Councillors will ensure when they perform official duties they are fit for duty and not impaired or under the influence of drugs or alcohol.

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## 12. Use of Council Resources

As outlined in the *Councillor Support and Expenses Policy 2020*, Councillors will be provided with information technology devices as appropriate, including an internet data plan.

Rather than being issued a Council provided mobile phone (only), a Councillor may elect to use their own personal mobile phone and claim reimbursement of call charges associated with performing their duties as a Councillor.

All equipment remains the property of Darebin City Council and must be returned at the end of a Councillor's term of office.

Usage of all ICT devices will be restricted to the Councillor to whom they have been assigned and the assigned Councillor shall be responsible for all usage incurred on the devices. Councillors will take care to safeguard any personal or Council information stored on devices so as it cannot be accessed by other persons. All devices must be kept in secure locations when not in use.

Substantial private use of resources and facilities by a Councillor must be declared by the Councillor and substantial private use must be reimbursed by the Councillor in accordance with the *Councillor Support and Expenses Policy 2020*.

Recognising that legal authority for the allocation of Council resources is vested in Council as a body, Councillors will not individually promise or otherwise commit Council resources to any purpose that has not been duly authorised by resolution of Council or by a member of Council staff with the appropriate delegated authority.

### **13. Gifts and hospitality**

Councillors will adhere to the Gifts and Hospitality Policy and must:

- At all times, be ethical, fair and honest in the conduct of official duties.
- Be aware that receiving a gift (including hospitality) in exchange for fulfilling their functions in a particular way is an offence under both common law and the Act.
- Not seek, solicit, or use their position with Council to obtain gifts or benefits from external organisations or individuals.
- Ensure that a person, company or organisation is not placed in a position in which they feel obliged to offer gifts or hospitality to secure or retain Council business.
- Report any incidences where a bribe and/or cash is offered immediately to the CEO or the relevant General Manager.

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## **14. Occupational Health and Safety**

Council is committed to providing and maintaining a safe workplace for all and recognises the provisions of the *Occupational Health and Safety Act 2004* (OHSA) apply to Council and Councillors.

The Chief Executive Officer has a clear accountability for OHS matters, given their mandate under the Act, and will put policies in place from time to time to ensure a safe workplace for Councillors to carry out their civic duties.

Councillors will adhere to Council's Occupational Health and Safety Policies and take reasonable care to protect their individual health and safety as well as the health and safety of others in the workplace.

### **14.1 Sexual harassment**

Sexual harassment is against the law and will not be tolerated under any circumstances. In performing their role Councillors must take positive action to eliminate sexual harassment in accordance with the *Equal Opportunity Act 2010*.

Councillors will not engage in any unwelcome conduct of a sexual nature towards another individual where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the individual harassed would be offended, humiliated or intimidated.

### **14.2 Bullying, vilification and victimisation**

Council is committed to maintaining a workplace that is free from bullying, vilification and victimisation, where all people are treated with dignity and respect. In performing their role Councillors must take positive action to eliminate victimisation in accordance with the *Equal Opportunity Act 2010*.

Councillors will uphold Council's obligations to support a safe workplace, and will not engage in repeated unreasonable behaviour toward another Councillor or member of Council staff that creates a risk to the health and safety of that other Councillor or member of Council staff.

## **15. Dispute Resolution Procedures for Alleged Contravention of the Standards of Conduct**

Councillors support a dispute and conflict resolution model that works with Councillors and enables Council to manage conflicts, resolve disputes and address formal complaints.

Recognising that Councillors have been elected to represent the best interests of the community, Councillors need to foster effective and respectful working relationships to achieve the best outcomes for the municipal community.

Councillors commit to:

1. addressing allegations through agreed procedures that are founded on fairness, transparency and accountability;
2. participating in the Dispute Resolution Procedures outlined in the Code and the Act, including providing reasonable assistance, where relevant, to an Internal Arbiter, Councillor Conduct Panel or VCAT; and
3. treating all aspects of the Dispute Resolution Procedures as confidential, including the existence of an allegation or any action or outcome arising from a complaint, except information which is required by the Act to be made public.

Councillors acknowledge that disputes (as distinct from allegations of breaches of the Standards of Conduct), and alleged breaches of provisions of this Code other than 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.

The Mayor will, consistent with their role, provide guidance to Councillors in the performance of their roles and functions and compliance with the Code, including by assisting in the resolution of disputes arising under the Code. Councillors agree to be guided by the Mayor in their behaviour and in the resolution of disputes arising under the Code.

An allegation that the Standards of Conduct or another part of this Code have been breached by a Councillor can be made by:

1. Council, by resolution;
2. A Councillor; or
3. 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.

These Dispute Resolution Procedures do not apply to, and are not intended to resolve:

- differences in policy or decision making, which are appropriately resolved through debate and voting at Council and Committee meetings; or
- any matter arising, whether under this Code or otherwise, that does not involve an alleged breach of the Standards of Conduct, unless otherwise indicated in this Code.

Issues arising during Council meetings that are addressed by the Chairperson during the meeting by way of seeking an apology or retraction from a Councillor/s will be considered

resolved and will not be a dispute that may be considered further as part of these Dispute Resolution Procedures, unless pursued as a breach of the Standards of Conduct.

The Dispute Resolution Procedures consist of three stages.

The emphasis of the first stage is to encourage the parties directly involved in an allegation of a breach of the Standards of Conduct to resolve the matter between themselves.

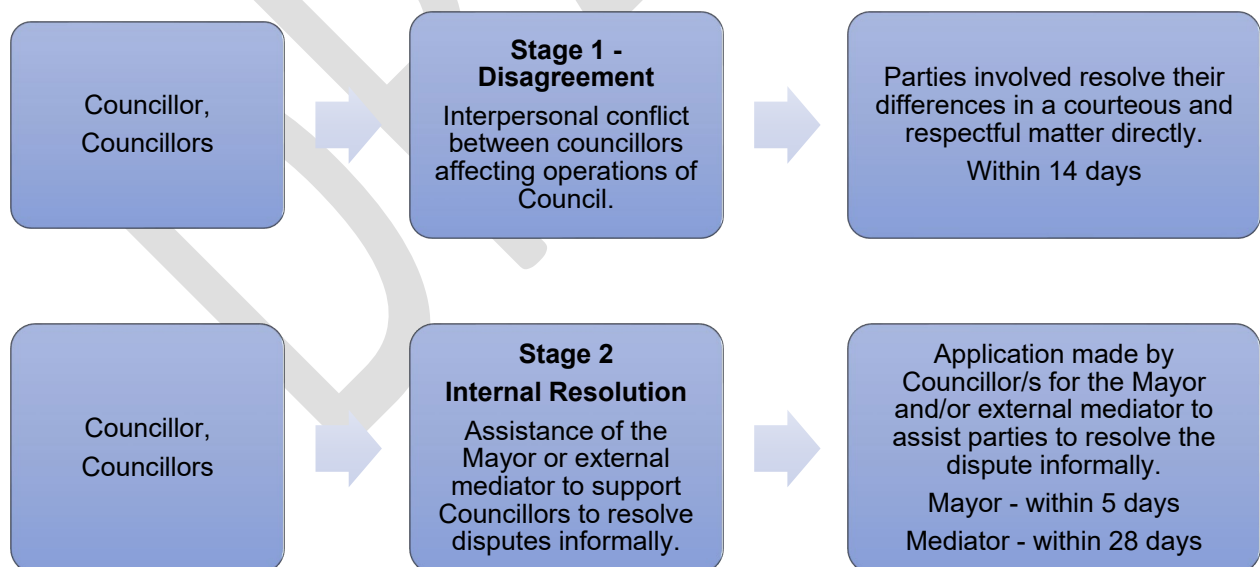
The second stage provides for parties to an allegation of a breach of the Standards of Conduct to be supported to resolve a dispute internally with the support of the Mayor and/or an independent mediator.

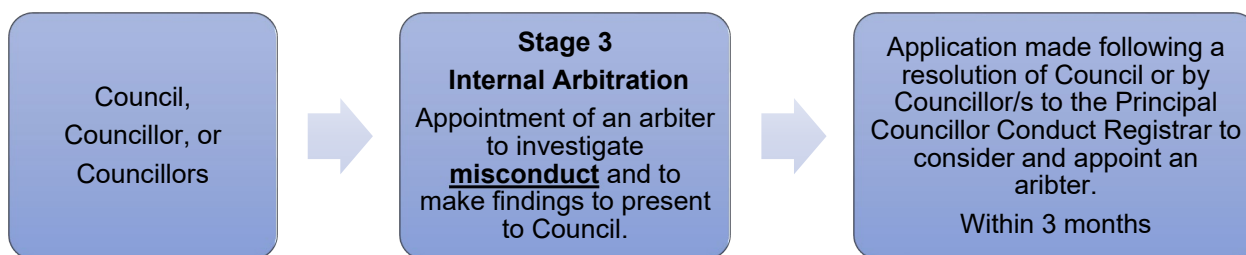
The third stage provides a process to formally address an allegation of a breach of the Standards of Conduct:

1. Disagreement (Stage 1)
2. Internal Resolution (Stage 2)
3. Internal Arbitration Process (Stage 3).

To enable allegations of a breach of the Standards of Conduct to be addressed in a timely manner, applications must be submitted within strict timeframes. Adherence to specified timeframes will also ensure, where appropriate, sufficient time for matters to progress to further stages of the Dispute Resolution Procedures in accordance with timeframes specified in the Act.

Applications for any Stage not submitted within the relevant timeframe specified below will be considered invalid and will not be actioned further.





**Misconduct** by a Councillor is defined under section 3 of the Act as being any breach by a Councillor of the prescribed Standards of Conduct included in this Code.

**Serious misconduct** is defined under section 3 of the Act and includes:

- the failure of a Councillor to comply with the Council's internal arbitration process or directions given to the Councillor by an arbiter under section 147 of the Act.
- the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor or 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
- 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
- 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.

**Gross misconduct** is defined under section 3 of the Act, as behaviour that demonstrates a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature.

Allegations of serious misconduct and gross misconduct are addressed by processes prescribed by the Act which are not the subject of this Code. Information about those processes can be obtained from the CEO.

Councillors acknowledge that Stages 1 and 2 of these Dispute Resolution Procedures are not compulsory and that no Councillor is obliged to participate in either of those Stages. In those circumstances, an allegation of misconduct will be escalated directly to Stage 3.

Councillors also acknowledge that a Councillor may not be comfortable pursuing any of the Dispute Resolution Procedures set out in this Code that are not mandatory, depending on the nature of the misconduct alleged, and what follows should be read in this light.

### **15.1 Disagreement – Stage 1**

Councillors acknowledge that they have a responsibility to try every avenue possible to resolve allegations of a breach of the Standards of Conduct informally and prevent them escalating further. Before commencing other Dispute Resolution Processes, Councillors who are party to an allegation of a breach of the Standards of Conduct will endeavour to resolve their differences in a courteous and respectful manner directly between themselves. This process is to be private and confidential.

Councillors who are party to an allegation of a breach of the Standards of Conduct should seek to resolve the matter within 14 days of the alleged misconduct occurring. Doing so provides sufficient time for an application for escalation of the matter through the remaining Stages 2 and, if necessary, 3 of these Dispute Resolution Procedures where it is not resolved directly between the Councillors involved.

### **15.2 Internal Resolution – Stage 2**

Internal resolution involves the Mayor and/or an Independent Mediator, being a person suitably qualified in mediation, to assist and support Councillors who are party to an allegation of a breach of the Standards of Conduct to work together to resolve the matter.

To commence an Internal Resolution process, a Councillor Dispute Resolution Application form must be completed and submitted to the Councillor Conduct Officer (see appendix A).

The Form will include:

- Name of the Councillor/s lodging the application (Applicant/s)
- Name the Councillor appointed to be their representative (where the application is made by Council resolution or by a group of Councillors)
- Name of the Councillor/s alleged to have breached the Standards of Conduct (Respondent/s)
- Details of attempts made to resolve the matter directly
- If no attempt has been made to resolve the matter directly, the reasons for that
- Details of the alleged breach/es of the Standards of Conduct, including dates
- The specific Standard/s of Conduct alleged to have been breached
- Evidence in support of the allegation/s
- Whether the Applicant wishes to nominate the Mayor or an Internal Mediator to assist with resolution of the matter.

The internal resolution process is as follows:

1. A Councillor Dispute Resolution Application Form (Form) will be submitted to the Councillor Conduct Officer within 14 days of the alleged misconduct occurring.
2. Within two (2) business days of receipt of the Form, the Councillor Conduct Officer will:
  - a. acknowledge receipt of the Form in writing;
  - b. assess the Form to ensure that it addresses each of the matters specified above;
  - c. if the Form does not address each of the matters specified above, notify the Applicant/s and request that they submit an updated Form;
  - d. upon receipt of a compliant Form, consult with the CEO and/or Mayor to ascertain the appropriate response; and

- e. allocate to the Mayor and/or an Independent Mediator, according to the nomination in the Form.
3. Where the Mayor is nominated to assist with resolution of the matter, within five (5) business days of receiving the Form from the Councillor Conduct Officer, the Mayor will attempt to facilitate a meeting with the Councillors involved and assist to resolve the matter.
4. The Mayor may call upon the CEO or the Councillor Conduct Officer for advice and guidance in conducting the meeting, noting that the Mayor at all times remains responsible for conducting the meeting.
5. Either or both the Applicant/s and/or Respondent/s may decline to participate in the meeting, in which case the process will proceed to paragraph 7. Declining to participate in the meeting with Mayor does not constitute a breach of this Code or of the Standards of Conduct.
6. The Mayor is to document any agreement reached at the meeting and a copy is to be retained by the Councillor Conduct Officer.
7. If the:
  - a. matter cannot be satisfactorily resolved at the meeting with the Mayor, either because the parties could not reach agreement or because one or both of them declined to participate, the Mayor will advise the Councillor Conduct Officer; or
  - b. Applicant nominates referral to an Independent Mediator,the Councillor Conduct Officer will notify the parties and ask them to advise within two (2) days whether they are prepared to participate in mediation facilitated by an Independent Mediator.
8. If one or both of the parties declines to participate in mediation, or fails to advise of their intention within two (2) days of being asked, no Independent Mediator will be appointed and the Councillor Conduct Officer will advise the parties that mediation will not occur. Declining to participate in the mediation does not constitute a breach of this Code or of the Standards of Conduct.
9. If both parties agree to participate in mediation, the Councillor Conduct Officer will, in consultation with the CEO, appoint an Independent Mediator.
10. Councillors will make themselves available to participate in the mediation when arranged by the Independent Mediator, which will be no later than 28 days after the Independent Mediator is appointed.
11. Failure by either party to agree to a date for conduct of the mediation within 14 days of the Independent Mediator being appointed will be taken as that party declining to participate. In that case, the Councillor Conduct Officer will ask the Applicant/s if they wish to progress the matter to Stage 3 of the Dispute Resolution Procedures. If the answer is no, or there is no response from the Applicant/s within a further 14 days, no further action will be taken in relation to the matter.
12. Where the mediation proceeds, the Independent Mediator will document any agreement reached and provide a copy to the Councillor Conduct Officer.

13. The Councillor Conduct Officer will provide the agreement to the CEO for the purpose of allowing Council to consider the matter at the next available Council Meeting when it is closed to the public.
14. If the mediation has not been completed within 28 days of the Independent Mediator being appointed, the process will lapse and the Councillor Conduct Officer will ask the Applicant/s whether they wish to make an application for Stage 3 (Internal Arbitration).

### **15.3 Internal Arbitration Process – Stage 3**

Internal Arbitration is available to Councillors alleging breaches of the Standards of Conduct (ie misconduct) by a fellow Councillor (see section 143 of the Act).

Misconduct is defined as a breach of the Standards of Conduct, reproduced in Part 4 of this Code.

An application for Internal Arbitration must be made within 3 months of the alleged breach of the Standards of Conduct occurring and must be provided to the Principal Councillor Conduct Registrar in the manner prescribed by the Act.

While an application for Internal Arbitration may be made without first pursuing an Internal Resolution Process, Councillors will endeavour, wherever possible, to resolve issues prior to an Independent Arbitration Process. In the event that an Internal Resolution Process was not undertaken, the application must include what, if any, action the Applicant has taken to resolve the matter, and/or reasons why an Internal Resolution Process was not first pursued.

The Internal Arbitration Process is as follows:

1. An application must be submitted to the Councillor Conduct Officer which specifies:
  - a. the Councillor/s alleged to have breached the Standards of Conduct;
  - b. the Standard/s of Conduct alleged to have been breached; and
  - c. the particular misconduct, or behaviour, of the Councillor/s that is alleged to have resulted in the breach.
2. The Councillor Conduct Officer will assess the application and, if the application:
  - a. does not comply with the requirements of paragraph 1 above, return the application to the Councillor submitting it:
    - advising of the manner in which it does not comply; and
    - providing an opportunity for the Councillor to resubmit a compliant 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 section 143(3) of the Act); or
  - b. complies with the requirements of paragraph 1 above:
    - refer it to the Principal Councillor Registrar;
    - notify the Councillor/s involved in the application of the referral;
    - provide a copy of the application to the Councillor/s the subject of the application;
    - notify the CEO of the referral (for the CEO's information only);
    - await advice from the Principal Councillor Conduct Registrar about the application; and
    - take such steps as are necessary to give effect to the Principal Councillor Conduct Registrar's advice, in accordance with any instructions received.
3. The Principal Councillor Conduct Registrar must appoint an arbiter to hear the matter if 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 Standards of Conduct as specified in the application.

Councillors acknowledge that it is the responsibility of the Councillor/s submitting an application to ensure that the application meets these requirements.
4. The Principal Councillor Conduct Registrar must reject an application if not satisfied of the matters in paragraph 3 above. The rejection of an application by the Principal Councillor Registrar does not prevent a further application being made in respect of the same conduct by a Councillor, provided that the revised application is submitted to the Councillor Conduct Officer no later than 3 months after the alleged breach of the Standards of Conduct occurred (see section 143(3) of the Act).
5. An arbiter appointed to hear a complaint:
  - a. must ensure that the parties involved are given an opportunity to be heard;
  - b. must 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. must conduct the hearing with as little formality and technicality as the proper consideration of the application permits;
  - d. must ensure that the hearing is not open to the public;
  - e. may hear from the parties to the application in person or by written or electronic means; and
  - f. is not bound by the rules of evidence and may inform themselves in any manner they see fit.
6. The arbiter may at any time discontinue a hearing if the arbiter considers that the:
  - a. application is vexatious, misconceived, frivolous or lacking in substance; or
  - b. 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.
7. Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information.
8. If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the Standards of Conduct, they may make a finding of misconduct against the Councillor.
9. If an arbiter has made a finding of misconduct against a Councillor, the arbiter may do any one or more of the following:
  - a. direct the Councillor to make an apology in a form or manner specified by the arbiter;
  - 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 the Council for the period determined by the arbiter;
  - d. direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter; and
  - e. direct a Councillor to attend or undergo training or counselling specified by the arbiter.
10. The arbiter must provide a written copy of their decision and statement of reasons, including any sanctions imposed, to:
  - a. Council;
  - b. the Councillor/s making the application;
  - c. the Councillor/s the subject of the application; and



- d. the Principal Councillor Conduct Registrar.
11. A copy of the arbiter's decision and statement of reasons must be tabled at the next Council Meeting after Council received the copy of the arbiter's decision and statement of reasons and be recorded in the minutes of the meeting. If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled.
  12. After Council has tabled a copy of an arbiter's decision and statement of reasons, Council must ensure that the report, with any required redactions to remove confidential information, is made publicly available.

If, at any time before, during or after the hearing of an application for Internal Arbitration, the arbiter believes that the conduct that is the subject of the application appears to involve serious misconduct and would more appropriately be dealt with as an application for a Councillor Conduct Panel, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.

If the Principal Councillor Conduct Registrar receives a referral from the arbiter, the Principal Councillor Conduct Registrar must notify the parties to the application that the matter has been referred.

#### **15.4 Responsibility of Councillors**

Councillors acknowledge that it is the responsibility of the Councillor or the Councillors submitting an application to prepare the application, including by 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.

## **16. Dispute Resolution Procedures for Alleged Contravention of the Code (other than the Standards of Conduct)**

Councillors commit to avoiding conduct which contravenes this Code, but which might not constitute a breach of the Standards of Conduct. Councillors acknowledge that engaging in such conduct may be raised by a fellow Councillor or Councillors and form the basis for an application for dispute resolution under this Part 16 of the Code.

Where an application for dispute resolution is made under this Part 16 of the Code, the following applies:

1. Disagreement (Stage 1) and Internal Resolution (Stage 2) apply to the application as if it was made under Part 16 of the Code, with any necessary modifications; and
2. If the application has not been satisfactorily resolved, it may be escalated by the Councillor/s making the application to Internal Inquiry (Stage 3A), as set out below.

Councillors acknowledge that participation in the dispute resolution processes set out in this Part 6 is not mandatory but understand that a failure to participate may, in some circumstances, constitute misconduct.

The processes set out in this Part 16 of the Code do not apply to alleged breaches of the Standards of Conduct.

### **16.1 Internal Inquiry Process – Stage 3A**

This Internal Inquiry Process is available to Councillors who:

1. Allege that a Councillor has breached a provision of this Code other than the Prescribed Standards of Conduct; and
2. Have been unable to resolve the allegation after pursuing Stages 1 and 2 of the Dispute Resolution Processes, through no fault of their own.

An application for Internal Inquiry must be made within 3 months of the alleged breach of the Code occurring and must be provided to the Councillor Conduct Officer in accordance with the process set out below.

Councillors acknowledge that a finding following an Internal Inquiry that a Councillor has breached the Code will not result in binding sanctions being imposed on the Councillor. The purpose of the Internal Inquiry Process is to:

1. objectively identify breaches of the Code; and
2. provide Councillors with a mechanism to address breaches of the Code with a view to maintaining effective working relationships.

The Internal Inquiry Process is as follows:

1. An application must be submitted to the Councillor Conduct Officer which specifies:
  - a. the Councillor/s alleged to have breached the Code;
  - b. the provisions of the Code alleged to have been breached;
  - c. the particular misconduct, or behaviour, of the Councillor/s that is alleged to have resulted in the breach; and
  - d. details of the steps taken to resolve the allegation before escalation to Internal Inquiry and the reasons that they were unsuccessful or, if no steps have been taken, the reasons that no steps were taken.

2. The Councillor Conduct Officer will assess the application and, if the application:
  - a. does not comply with the requirements of paragraph 1 above, return the application to the Councillor submitting it:
    - i. advising of the manner in which it does not comply; and
    - ii. providing an opportunity for the Councillor to resubmit a compliant application, provided that the Councillor submits the revised application no later than 3 months after the alleged breach of the Code occurred; or
  - b. complies with the requirements of paragraph 1 above:
    - i. refer it to the CEO for engagement of an appropriate external consultant to conduct the Internal Inquiry;
    - ii. notify the Councillor/s involved in the application of the referral;
    - iii. provide a copy of the application to the Councillor/s the subject of the application; and
    - iv. provide such assistance to the CEO as is necessary for conduct of the Internal Inquiry.
3. The Councillor Conduct Officer will, in consultation with the CEO:
  - a. engage an appropriate external consultant to conduct the Internal Inquiry;
  - b. prepare and provide to the external consultant a brief for conduct of the Internal Inquiry; and
  - c. make the arrangements necessary for the Internal Inquiry to be conducted.
4. The Internal Inquiry will be conducted in accordance with the process established by the external consultant engaged for the purpose and Councillors undertake to:
  - a. participate in the Internal Inquiry in good faith;
  - b. have due regard for the advice of the external consultant; and
  - c. provide such information and engagement as the external consultant reasonably requires.
5. If a Councillor declines to participate in an Internal Inquiry, the Internal Inquiry may proceed in their absence if the remaining Councillor(s) continues to participate and any findings of the external consultant will be:
  - a. provided to the Councillors concerned and to the CEO; and
  - b. treated as confidential information.
6. Information provided to the external consultant in connection with, and any findings made following, an Internal Inquiry will be treated by the Councillors concerned as confidential information.
7. Despite anything to the contrary in this Part 16 of the Code, Council may, by resolution, direct that the findings of an Internal Inquiry are provided to all Councillors.

## 17. Applications during Election Period

An application cannot be made under this Code in respect of an alleged breach of the Standards of Conduct during the election period for a general election. Any application in progress is to be suspended during the election period for a general election.

If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:

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

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## **18. Relevant Legislation and Policies**

### **Legislation**

*Equal Opportunity Act 2010*

*Independent Broad-based Anti-Corruption Commission Act 2011 (IBAC Act)*

*Privacy and Data Protection Act 2014*

*Local Government Act 2020*

*Local Government (Governance and Integrity) Regulations 2020*

*Planning and Environment Act 1987*

*Public Interest Disclosures Act 2012*

*Victorian Child Safe Standards*

### **Policies**

Council Gifts and Hospitality Policy

Councillor Media and Social Media Policy

Councillor Support and Expenses Policy 2020

Council Governance Rules

## 19. Review

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

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

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