

Dear Councillor

You are advised that a **SPECIAL MEETING OF CARDINIA SHIRE COUNCIL** will be held in the **COUNCIL CHAMBERS, 20 SIDING AVENUE, OFFICER** on **Monday, 20 February 2017** commencing at **7pm** .

GARRY McQUILLAN
CHIEF EXECUTIVE OFFICER

**** A G E N D A ****

Apologies

Declaration of any interest of Councillors

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1 COUNCILLOR CODE OF CONDUCT

FILE REFERENCE INT178898

RESPONSIBLE PERSON Garry McQuillan

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RECOMMENDATION

That Council adopt the revised Councillor Code of Conduct and each Councillor make a declaration stating that they will abide by the Code.

Attachments

- 1 Councillor's Code of Conduct with suggested amendments

EXECUTIVE SUMMARY

To review the Councillor's Code of Conduct and make amendments to the Code as required by Section 76C of the Local Government Act 1989.

BACKGROUND

Section 76C (2) of the Local Government Act 1989 requires the Council to review the Councillor Code of Conduct and make any amendments to the Code at a Special Meeting called solely for that purpose within 4 months of a general election, that is by 22 February 2017.

The Code has been reviewed and amendments have been made as a result of this review, the amended Code is now presented to the Council for formal adoption.

The suggested amendments are

- **Amendment 1, Clause 9.4**

A correction to clause 9.4 is suggested as this clause refers to the 'Merit' customer service system. As the 'Merit' system has been replaced this reference is no longer relevant and it is suggested that this clause be amended to remove this reference accordingly

Amendment 2, Clause 12

An amendment to Clause 12 to provide the CEO with a process to raise the matter of a potential breach of the Code by a Councillor.

This will require an amendment to Clause 12.1 to include reference to the Chief Executive Officer

And the inclusion of a new Clause 12.4 to read as follows:

12.4 Disputes between councillors and staff

If the Chief Executive Officer becomes aware of a complaint by a staff member in respect of a councillor the Chief Executive Officer must:

12.4.1 immediately advise the Mayor about the complaint; and

12.4.2 at the next meeting of the Council, advise the Council about the complaint when the meeting is closed to members of the public.

Where the Council deems that a breach of the Code may have occurred, the Mayor will progress the matter in accordance with the steps detailed in Clause 12.2

A minor correction to Clause 12.1 to reference the CEO will also be required to facilitate the addition of this suggested clause 12.4

This suggested process is similar to the procedure stipulated in Section 105 of the Local Government Act if a complaint is lodged in regard to the conduct of the Chief Executive Officer

Amendment 3, flow chart showing process for complaint of breach of code

As agreed at the briefing session on 23 January, a flow chart showing the various stages of a complaint of a breach of the Code of Conduct is suggested to be included as the final page of the Code

Section 76C (6A) and (6B) of the Act requires that a Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct and that this declaration must be in writing and witnessed by the Chief Executive Officer.

It is proposed that these declarations will be made at the meeting once the amended Code has been adopted.

POLICY IMPLICATIONS

Adopting the amended Code will establish the Code as Council policy in regard to the principles espoused in the document.

RELEVANCE TO COUNCIL PLAN

Complying with the legislative requirements surrounding the Councillor's Code of Conduct is consistent with the Council Plan goals to

- Embrace and demonstrate effective governance and transparency, notwithstanding that on occasions, matters under consideration will be confidential and
- Govern and make decisions in the best interests of the Cardinia Shire community.

CONSULTATION/COMMUNICATION

Councillors have discussed the Code at length and the amendments to the Code reflect the discussions and agreements reached at these discussions.

FINANCIAL AND RESOURCE IMPLICATIONS

Nil

CONCLUSION

To comply with the requirements of the Local Government Act Council is required to review and amend its Councillor's Code of Conduct. Adopting this revised Code as recommended will achieve compliance with this legislative requirement.



Councillors' Code of Conduct

February 2017

PART A – PURPOSE OF THE CODE

1. PURPOSE

- 1.1 This Code of Conduct has been adopted to assist Councillors in meeting their responsibilities. It sets out the standards of conduct for Councillors in the Shire of Cardinia, so as to ensure that the conduct of Councillors is legal, ethical and appropriate at all times.
- 1.2 As the performance of the Council and the wellbeing of the Cardinia community are directly affected by the conduct of the Shire's elected Councillors, the community is entitled to expect that:-
- 1.2.1 the business of the Council is conducted with efficiency, impartiality and integrity;
 - 1.2.2 Councillors obey the spirit and letter of the law in particular, the provisions of relevant statutes, regulations, local laws and other instruments; and
 - 1.2.3 responsibility to the community is always to be given absolute priority over the private interests of Councillors.
- 1.3 This Code is adopted by Council as required by section 76C of the *Local Government Act 1989* ("the Act"), and is binding on all Councillors.

PART B – FRAMEWORK FOR GOOD GOVERNANCE

2. INTRODUCTION TO GOVERNANCE AT CARDINIA

- 2.1 The Shire of Cardinia is governed by nine Councillors who are democratically elected in accordance with the Act. Collectively, they constitute the Council.
- 2.2 The primary objective of the Council, as set by section 3C(1) of the Act, is:
- to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.*
- 2.3 The role of the Council, as set out in section 3D(2) of the Act, is:
- a. *acting as a representative government by taking into account the diverse needs of the local community in decision making;*
 - b. *providing leadership by establishing strategic objectives and monitoring their achievement;*
 - c. *maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;*
 - d. *advocating for the interests of the local community to other communities and governments;*
 - e. *acting as a responsible partner in government by taking into account the needs of other communities; and*
 - f. *fostering community cohesion and encourage active participation in civic life.*
- 2.4 The role of a Councillor is contained in section 65(1) of the Act. It is:

- 2.4.1 to participate in the decision-making of the Council; and
- 2.4.2 to represent the local community in that decision-making; and
- 2.4.3 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.

Importantly this role does not include any functions of the Chief Executive Officer described in section 94A of the Act (and summarised in section 2.7 of this Code).

In performing this role, a Councillor must (according to section 65(2) of the Act):

- 2.4.4 consider the diversity of interests and needs of the local community; and
- 2.4.5 observe principles of good governance and act with integrity; and
- 2.4.6 provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts; and
- 2.4.7 participate in the responsible allocation of the resources of Council through the annual budget; and
- 2.4.8 facilitate effective communication between the Council and the community.

- 2.5 These roles and functions are supported by the following principles, many of which focus on Councillors working collaboratively.

It is agreed that:

- 2.5.1 the Council is elected to provide leadership for the good governance of the municipal district and the local community;
- 2.5.2 the Council is elected to act in the best interest of the whole Shire;
- 2.5.3 a council makes decisions on behalf of the community and a Councillor should have primary regard to the merits of each individual case rather than any ward loyalty, personal affiliations or interests;
- 2.5.4 the Council is a body corporate and a Councillor is part of the corporate team;
- 2.5.5 a Councillor can only act with the authority obtained from the Council exercising its decision-making powers at a Council meeting;
- 2.5.6 the Council is custodian for community assets and the community has entrusted it to make decisions on its behalf; and
- 2.5.7 a Councillor's primary role is to represent and translate the community's needs and aspirations into a strategy for the municipality which is articulated in the Council Plan.
- 2.5.8 every Councillor will respect the right of every other Councillor to speak and represent their views on the needs of citizens;
- 2.5.9 every Councillor will speak well of every other and Council in public;
- 2.5.10 every Councillor will demonstrate commitment to consult with other Councillors, within the decision making framework;
- 2.5.11 every Councillor will respect the diverse needs, views and nature of the Cardinia community;

- 2.5.12 every Councillor will support and have regard for the role of local government as an important level of government within Australia;
 - 2.5.13 every Councillor will commit to a consultative approach to solving problems, developing effective decisions and communicating outcomes that build teamwork and cooperation;
 - 2.5.14 every Councillor will demonstrate leadership by focusing on issues and refraining from personalising matters particularly in relation to making personal remarks regarding other Councillors; and
 - 2.5.15 every Councillor will respect every other Councillor's right to hold different views and engage in constructive debate on matters of difference, while being united in representing Council decisions.
- 2.6 Key governance responsibilities of the Council include:
- 2.6.1 developing and adopting a Council Plan which sets out the strategic objectives of the Council and strategies for achieving them over at least the next four years, a requirement under section 125 of the Act;
 - 2.6.2 approving the annual Budget;
 - 2.6.3 developing and adopting policies covering key programs and services (including home and community care, maternal and child health, waste management and planning);
 - 2.6.4 hosting and engaging in numerous community forums, activities and events; and
 - 2.6.5 making representations to the Federal and State Governments, Parliamentary inquiries, peak local government bodies and others in order to advocate for the interests of the Cardinia community.
- 2.7 Within this framework of strategic leadership, advocacy and representative government, sections 94 and 94A of the Act provide for the establishment of the position and duties of the Chief Executive Officer who is to be responsible for:
- 2.7.1 establishing and maintaining an appropriate organisational structure for the Council;
 - 2.7.2 ensuring that the decisions of the Council are implemented without undue delay;
 - 2.7.3 the day to day management of the Council's operations in accordance with the Council Plan;
 - 2.7.4 developing, adopting and disseminating a code of conduct for Council staff;
 - 2.7.5 providing timely advice to the Council;
 - 2.7.6 ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act;
 - 2.7.7 supporting the Mayor in the performance of the Mayor's role as Mayor;
 - 2.7.8 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*; and
 - 2.7.9 appointing and managing all Council staff and for all issues that relate to Council staff.

- 2.8 Councillors govern, and managers manage, within a framework which is made up of:
- 2.8.1 the Act and other statutory regulations and instruments;
 - 2.8.2 the Council's Local Laws;
 - 2.8.3 this Code of Conduct; and
 - 2.8.4 policies adopted by Council.
- 2.9 The aim is for those who govern and those who manage to work together in order to produce the best outcomes for the community.

PART C – COUNCILLOR CONDUCT

3. COUNCILLOR CONDUCT PRINCIPLES

3.1 Primary Conduct Principle

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

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

This is set out in section 76B of the Act.

3.2 General Conduct Principles

In addition to preserving the Primary Conduct Principle, a Councillor must act in accordance with the General Conduct Principles set out in section 76BA of the Act. These are reproduced below:

- 3.2.1 avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- 3.2.2 act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- 3.2.3 treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;
- 3.2.4 exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- 3.2.5 endeavour to ensure that public resources are used prudently and solely in the public interest;
- 3.2.6 act lawfully and in accordance with the trust placed in him or her as an elected representative; and
- 3.2.7 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.

4. ADDITIONAL COUNCILLOR CONDUCT PRINCIPLES

4.1 Cardinia-Specific Councillor Conduct Principles

Central to the Primary Councillor Conduct Principle and General Councillor Conduct Principles (see Section 3 above) are the concepts of:

- 4.1.1 integrity;
- 4.1.2 impartiality;
- 4.1.3 honesty;
- 4.1.4 respect for others;
- 4.1.5 diligence;
- 4.1.6 observance of legal obligations (including the obligations imposed under the *Equal Opportunity Act 2010* not to discriminate against or sexually harass another Councillor, and any relevant obligations under the *Occupational Health and Safety Act 2004* or other legislation prohibiting bullying); and
- 4.1.7 leadership by example.

Councillors are, as part of meeting the standards inherent in these and as a means of ensuring that the conduct of Councillors is legal, ethical and appropriate at all times, prepared to commit to some additional (Cardinia-specific) Councillor Conduct Principles. These are:

- 4.1.8 Objectivity;
- 4.1.9 Transparency;
- 4.1.10 Teamwork; and
- 4.1.11 Ethical Decision-Making.

4.2 Objectivity

Councillors are accountable to the public for their decisions and actions. Decisions must be made solely on merit. This includes decisions about awarding contracts, planning applications, funding proposals and whether particular individuals should be recommended for rewards, recognition or benefits.

4.3 Transparency

Councillors have a duty to be as transparent as possible about their decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands.

4.4 Teamwork

- 4.4.1 There are nine members of the Council. Councillors should contribute towards the Councillor group working its way towards a collective decision.
- 4.4.2 Councillors' decisions are made in Council meetings. In discussions leading up to such decisions, in Assemblies of Councillors not open to the public, Councillors may explore a range of positions and express a range of views. Those views must not be reported outside those meetings. To do so would discourage full discussion of developing issues and the ability for Councillors to firm up their views as questions are answered and information provided. Councillors' accountability is for

their vote and statements in support of their vote at the time that the matter is decided in the Council meeting.

4.5 Ethical Decision-Making

If Councillors are unsure about the ethical issues involving an action or decision, consideration should be given to the following:

- 4.5.1 Is the decision or conduct lawful?
- 4.5.2 Is the decision or conduct consistent with the Council's policies and objectives, and with this Code of Conduct?
- 4.5.3 What will the outcome be for the community, the Council, a Councillor(s) and any other parties?
- 4.5.4 Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- 4.5.5 Can the decision or conduct be justified in terms of the public interest?

Should there be any uncertainty about the ethical nature of any action or decision, Councillors should seek advice from appropriate people which may include the Chief Executive Officer, the independent members of the Audit Committee, the Municipal Association of Victoria, the Victorian Local Governance Association or Local Government Victoria.

5. CONFIDENTIAL INFORMATION

- 5.1 Councillors must ensure that they understand all of their legal obligations but particularly that obligation set out in section 77(1) of the Act.
- 5.2 Section 77(1) of the Act prohibits a Councillor from releasing information that the Councillor knows or should reasonably know is confidential information.
- 5.3 Information is confidential as provided under section 77 of the Act, where the information:
 - 5.3.1 was provided to the Council or Special Committee in relation to a matter considered in a meeting closed to members of the public in accordance with section 89(2) of the Act, and the Council or Special Committee has not passed a resolution that the information is not confidential; or
 - 5.3.2 has been designated as confidential information by a resolution of the Council or Special Committee which specifies the relevant grounds applying under section 89(2) of the Act and the Council has not passed a resolution that the information is not confidential; or
 - 5.3.3 has been designated in writing as confidential information by the Chief Executive Officer specifying the ground(s) applying under section 89(2) of the Act and the Council has not passed a resolution that the information is not confidential.

6. USE OF INFORMATION

- 6.1 Councillors acknowledge that information is provided and is available to enable them to adequately carry out their duties and functions and to enable informed decisions to be made. This means that there may be times when Councillors receive information that is sensitive, controversial or confidential or to which the *Privacy and Data Protection Act 2014* applies

- 6.2 In carrying out their role as Councillors, Councillors further acknowledge that:
- 6.2.1 they are aware of the restrictions in the Act on the use of information;
 - 6.2.2 they are only entitled to access information which is relevant to a matter before the Council;
 - 6.2.3 information that is confidential cannot be disclosed until it is no longer designated as confidential by the Council;
 - 6.2.4 information must not be used to cause detriment to others; and
 - 6.2.5 any policies that the Council has concerning the use of Council information will also be complied with
- 6.3 A Councillor who makes improper use of information acquired in his or her capacity as a Councillor risks committing an offence against section 76D of the Act. Significant penalties could attach to any such offence.

7. CONFLICTS OF INTEREST, GIFTS AND HOSPITALITY

- 7.1 Councillors acknowledge that it is their responsibility to be aware of the provisions of the Act relating to conflicts of interest and that the decision on whether a conflict of interest exists can only rest with the individual Councillor.
- 7.2 Councillors agree that they will avoid the potential for real or perceived conflicts of interest through the acceptance of gifts or hospitality if the acceptance could be perceived by a 'reasonable person', as intended to, or likely to, influence their fair, impartial, honest and efficient discharge of their duties as a Councillor.

Gifts include (but are not limited to) the provision or the promise of the provision of:

- 7.2.1 goods and services made available to the recipient for free or at heavily discounted prices; or
- 7.2.2 property purchased at a significant discount or extended use of real estate, vehicles or other significant assets; or
- 7.2.3 offer and/or loans of money or transfers of money; or
- 7.2.4 hospitality.

Gifts also include the above if received by a relative or someone else with whom the Councillor has a direct association.

- 7.3 For the purpose of this Code a gift does not include any gift that is offered but not accepted and any gift that has a retail value of \$25.00 or less.

Hospitality includes (but is not limited to) the provision or the promise of the provision of:

- 7.3.1 free or heavily discounted entertainment and/or use of facilities – (including accommodation, travel and entry to sporting/cultural/entertainment events); or
- 7.3.2 free or heavily discounted meals, drinks and the like.

In determining whether to accept a gift, consideration may be given to whether refusal of the gift could cause offence to the person offering the gift.

It is to be noted that reasonable hospitality provided to a Councillor at any function or event that is attended by the Councillor in an official capacity does not constitute an 'applicable gift' for the purposes of section 78C of the Act.

Councillors agree to advise the Manager Governance of any gifts or hospitality for recording in the Gifts Register.

8. COUNCIL RESOURCES

- 8.1 Councillors agree that if, in any month, a mobile phone account for the cost of calls or data use exceeds \$150 then the Councillor concerned will be provided with a copy of the account whereupon they will highlight any personal calls and reimburse the Council for such personal calls.
- 8.2 Additional constraints on the use of the Council resources apply during the election period. These are set out in Council's Election (Caretaker) Period Policy, which is incorporated into this Code by reference.

9. RELATIONS WITH COUNCIL STAFF

- 9.1 Councillors acknowledge that:
- 9.1.1 section 95 of the Act requires Council staff to:
- (a) act impartially;
 - (b) act with integrity including avoiding conflicts of interest;
 - (c) accept accountability for results; and
 - (d) provide responsive service;
- 9.1.2 all staff members are accountable to the Chief Executive Officer. Councillors respect that, pursuant to section 94A of the Act, the Chief Executive Officer is responsible for appointing, directing, managing and dismissing all Council staff and for all other issues that relate to Council staff;
- 9.1.3 a professional and well-managed team of managers and staff is essential to the wellbeing of the community; and
- 9.1.4 the Chief Executive Officer is under an obligation to provide timely advice to the Council and implement Council decisions without undue delay and that reports written by officers are based on their professional knowledge and skill. While Council may decide whether to accept the advice that is submitted, Councillors cannot direct officers to change the reports.
- 9.2 Where Councillors have concerns about the performance of any staff member or service unit, they acknowledge that such concerns should be directed to the Chief Executive Officer.
- 9.3 Councillors will, when interacting with Council staff, act:
- 9.3.1 respectfully;
- 9.3.2 with courtesy; and
- 9.3.3 in a manner that is not (or not likely to be) intimidatory.

Specific protocols for Councillor and staff interaction are set out in a separate “Councillor / staff relationship” policy, which is incorporated into this Code by reference.

- 9.4 Councillors will observe Council processes and systems that are established from time to time for receiving and responding to requests for service.

Requests for service from Councillors will be given appropriate priority for action depending on the circumstances involved and specific nature of the request.

A Customer Request Management (CRM) module has been established for Councillors to register service requests directly into the system. The module will ensure requests are actioned in the order they are received and allow Councillors to track the status of their request at any time.

PART D – THE MAYOR

10. OFFICE OF MAYOR

- 10.1 The governance of the Council is the responsibility of the Councillors collectively. The Mayor is “first-among-equals”. While the Mayor does not have executive authority, Councillors acknowledge and respect that the Mayor has been elected by Councillors to:

10.1.1 lead the Councillor group; and

10.1.2 represent the Council.

Accordingly Councillors agree to co-operate with the Mayor of the day in the fulfilment of the Mayoral leadership role.

- 10.2 Under section 73AA of the Act, the Mayor's functions include:

10.2.1 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

10.2.2 acting as the principal spokesperson for the Council; and

10.2.3 supporting good working relations between Councillors; and

10.2.4 carrying out the civic and ceremonial duties of the office of Mayor.

- 10.3 The Mayor is also responsible for chairing meetings (including Assemblies of Councillors) at which they are present, and in doing so will:

10.3.1 retain control of the meeting at all times;

10.3.2 be impartial;

10.3.3 preserve order; and

10.3.4 ensure that the business of the meeting is conducted in a proper and efficient manner, and in accordance with any applicable Local Law.

Councillors must respect the Chair at all times during a meeting (including an Assembly of Councillors), and must observe any lawful direction given by the Mayor.

PART E – EXTERNAL COMMUNICATION

11. EXTERNAL COMMUNICATIONS

- 11.1 Because the Mayor is the principal spokesperson of the Council, an individual Councillor must not, without the authority of Council or (where it is not practicable to seek the authority of the Council) the Mayor, purport to speak on behalf of the Council.
- 11.2 Although any Councillor is entitled to communicate his or her views to the media, constituents and others, they should not in doing so:
- 11.2.1 seek to actively undermine any decision or position already taken by the Council; or
 - 11.2.2 bring the Council into disrepute.
- 11.3 As a representative of the community, Councillors need to accurately communicate the attitudes and decisions of the Council even when the Councillor as an individual disagrees with a majority decision of the Council.
- 11.4 In presenting views or information to the community, Councillors acknowledge that as a member of the Council they:
- 11.4.1 need to respect that decisions are made by the majority of the Council;
 - 11.4.2 understand that they are not prevented from commenting or providing information concerning matters affecting their ward, but that the Mayor is the principal spokesperson for the Council (other than on operational matters or matters of administration) and except where any other person has been specifically authorised by the Mayor, is the principal person who can provide information about a Council position or decision to the media and others;
 - 11.4.3 should exercise care in the way in which information is provided or the way in which comments are made so that the Council is not exposed to risk;
 - 11.4.4 should understand that there may be occasions when a matter is to be treated as confidential and information should not be released; and
 - 11.4.5 the principal objective is to achieve an outcome that presents the Council as effective and cohesive.

Councillors will try, as far as possible, to provide information about adopted policies, procedures and decisions of the Council that is accurate.

PART F – BREACHES AND RESOLVING DISPUTES

12. DISPUTE RESOLUTION

12.1 Externally-Generated Complaints

If a person other than a Councillor or the Chief Executive Officer complains that a Councillor has breached this Code of Conduct, the complaint will not be entertained.

Rather, that person will be advised by the Mayor that:

- 12.1.1 this Code of Conduct is intended to be enforced internally; and
- 12.1.2 the complaint should instead be directed to any appropriate external agency, such as the Independent Broad-based Anti-corruption Commission, Local Government Investigations and Compliance Inspectorate or Victorian Ombudsman.

12.2 Internally-Generated Complaints

If a Councillor complains that another Councillor has breached this Code of Conduct, the following principles will apply:

- 12.2.1 the Mayor will oversee the dispute resolution process (unless the complaint is about the Mayor, in which case the Deputy Mayor or, if there is no Deputy Mayor, a Councillor elected by the Council for the purpose, will oversee the dispute resolution process);
- 12.2.2 any complaint must be in writing and give sufficient information or particulars to enable the Councillors complained about to understand why it is said this Code of Conduct has been breached, and in what respect;
- 12.2.3 the complaint must not be frivolous or vexatious or concern what is, in substance, a trivial matter; and
- 12.2.4 the complainant and the Councillor alleged to have breached this Code of Conduct must be treated fairly.

The following steps will be taken:

Step 1

The Mayor will, if it is practicable to do so, convene a meeting between the two Councillors to discuss the complaint and attempt to resolve the dispute to the mutual satisfaction of both Councillors.

Step 2

If it appears to the Mayor that the dispute is capable of being resolved through mediation and both Councillors agree to a mediation process and the appointment of a particular mediator, the Mayor will arrange for a mediation.

Step 3

If no mediation is held or the mediation is held but the dispute remains unresolved, the Mayor must decide what, if any, further steps should be taken. To this end, the Mayor is entitled to seek advice from the Chief Executive Officer and external advice (from the Municipal Association of Victoria, the Victorian Local Governance Association, Council's solicitors or others who are appropriately qualified to provide advice).

The Mayor might decide to:

- refer the dispute to Council; or
- advise the complainant that, in his or her opinion, there is insufficient evidence of a breach to justify the complaint being referred to Council but that the Complainant has the right to request Council to consider the complaint.

Step 4

If the dispute is referred to the Council by the Mayor or the Council agrees to a complainant's request to consider a complaint, the Council must, after hearing from the two Councillors,

decide whether there is sufficient evidence of a breach to appoint an arbiter to determine whether this Code has been breached.

If an arbiter is appointed and decides that this Code has been breached, it is for Council to decide whether to impose any (and, if so, what) sanction. Possible sanctions include:

- directing the Councillor to make an apology in a form or manner specified by the Council;
- directing the Councillor to not attend up to, but not exceeding, 2 meetings of the Council;
- directing that, for a period of up to, but not exceeding, 2 months commencing on a date specified by the Council, the Councillor:
 - be removed from any position where the Councillor represents the Council; and
 - to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

A Councillor who is sanctioned must observe the sanction which has been imposed, and do anything required to be done to give effect to the sanction (eg a Councillor who is required to apologise must issue the apology).

12.3 Interpersonal Differences

If there are interpersonal differences between two or more Councillors that:

- 12.3.1 are not of a policy character;
- 12.3.2 are impeding the effective governance of the Council; and
- 12.3.3 do not involve a complaint that this Code of Conduct has been breached,

the Mayor (or, if the Mayor is one of those Councillors, the Deputy Mayor or a Councillor elected by the Council for the purpose) will facilitate a meeting of those Councillors to see whether the differences can be resolved. If one or both Councillors do not participate in the meeting or the meeting is held but the differences remain, the Mayor (or, where relevant, Deputy Mayor or other Councillor elected for the purpose) may arrange for mediation.

12.4 Disputes between councillors and staff

If the Chief Executive Officer becomes aware of a complaint by a staff member in respect of a councillor the Chief Executive Officer must:

- 12.4.1 immediately advise the Mayor about the complaint; and
- 12.4.2 at the next meeting of the Council, advise the Council about the complaint when the meeting is closed to members of the public.

Where the Council deems that a breach of the Code may have occurred, the Mayor will progress the matter in accordance with the steps detailed in Clause 12.2.

PART G – MISCELLANEOUS

13. MISCELLANEOUS

13.1 As part of their representative role, Councillors may represent the Council on external organisations. Some appointments are made annually by the Council. It is important that Councillors:

13.1.1 clearly understand the basis of their appointment;

13.1.2 recognise the differences in their legal obligations as a delegate or member of the governing organ of the external organisation; and

13.1.3 provide regular reports to the Council on the activities of the organisation that they have been appointed to.

13.2 Once a Council decision is taken, a Councillor should accept the majority will and not seek to undermine or publicly criticise the decision.

A Councillor must not exercise his or her right to lodge a notice revoking or altering a resolution of the Council unless, since that resolution was made, there has occurred an event or development which justifies reconsideration of the decision embodied in the resolution.

It remains open to a Councillor to foreshadow lodging a notice revoking or altering a resolution. This can be done during the meeting at which the resolution was made.

Ultimately the Councillor will need to lodge the notice itself. This should be done as soon as is practicable after the resolution was made.



