

# Councillor Code of Conduct

February 2021



Interpreter service

**9840 9355**

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MANNINGHAM

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## 1. Introduction

The *Local Government Act 2020* (the Act) requires Council to develop a Councillor Code of Conduct (the Code). The purpose of the Code is to set out the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as well as guidance in the event of any breach of the Code.

This Code was adopted by Council on 23 February 2021 and replaces the previous Code adopted by Council on 17 February 2017. This Code will be reviewed in accordance with relevant legislative obligations. Additionally, every two years Councillors will review this Code to ensure that it meets and continues to reflect community standards and expectations.

## 2. Scope

This Code applies to a Councillor who is conducting the business of Council and/or acting as a representative of Council and is to be read alongside relevant legislation, Council policies, procedures and guidelines.

## 3. My Commitment

As a Councillor of Manningham Council I commit to:

- a) complying with the various provisions of the *Local Government Act 2020* (the Act) and with this Code;
- b) working together in the best interests of the Manningham municipal community;
- c) working together constructively to achieve our vision as set out in our Council Plan in a manner that is consistent with our values;
- d) embracing and demonstrating Manningham's corporate values;
- e) respecting the role of the Mayor, Deputy Mayor, my fellow Councillors, the Chief Executive Officer and Council staff as set out in the Act ; and
- f) discharging my responsibilities to the best of my skill and judgement.

## 4. Councillor Conduct Standards

Councillors must comply with the prescribed standards of conduct set out in Schedule 1 to the *Local Government (Governance and Integrity) Regulations 2020*. A breach of the conduct standards constitutes misconduct as defined under the Act.

### 4.1 Standard 1 – Treatment of others

In performing the role of a Councillor, I will 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 I -

- a) take positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010; and

- b) support the Council in fulfilling its obligation to achieve and promote gender equality; and
- c) do not engage in abusive, obscene or threatening behaviour in my dealings with members of the public, Council staff and Councillors; and
- d) consider the diversity of interests and needs of the municipal community, treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities.

#### **4.2 Standard 2 – Performing the role of Councillor**

In performing the role of a Councillor, I will do everything reasonably necessary to ensure that I perform the role of Councillor effectively and responsibly, including by ensuring that I -

- a) undertake any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and
- b) diligently use Council processes to become informed about matters which are subject to Council decisions; and
- c) am fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- d) represent 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 Standard 3 – Compliance with good governance measures**

In performing the role of a Councillor, to ensure the good governance of the Council, I will diligently and properly comply with the following -

- a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;
- b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- d) any directions of the Minister issued under section 175 of the Act.

#### **4.4 Standard 4 – Council Reputation**

In performing the role of a Councillor, I will:

- a) ensure that my behaviour does not bring discredit upon the Council.
- b) not deliberately mislead the Council or the public about any matter related to the performance of my public duties.

#### 4.5 Standard 5 – Political debate

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

### 5. Relationship with Council Staff (derived from s124)

- a) I will not seek to improperly direct or influence members of Council staff in the exercise of any power or in the performance of any duty or function.
- b) I acknowledge that there must be mutual respect and understanding between Councillors and Council staff in relation to their respective roles, functions and responsibilities and I will comply with any policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the CEO.
- c) Where practicable, I will direct my enquiries to the Administration through the CEO, Directors or Managers.
- d) I accept that decisions which modify, change or reject staff recommendations must only be made at formal Council meetings.
- e) I agree that workplace bullying and sexual harassment can and should be prevented. I will act with courtesy towards Council staff and avoid behaviour that is intimidating. I am aware of legislative obligations with respect to equal opportunity, harassment and bullying.
- f) I note that s3 of the Act also includes a definition of 'bullying by a Councillor' and that such action is classified as serious misconduct and if it occurs, may be referred to a Councillor Conduct Panel.

### 6. Misuse of position (derived from s123)

6.1 I will not misuse my position as a Councillor to:

- a) to gain or attempt to gain, directly or indirectly, an advantage for myself or for any other person; or
- b) to cause, or attempt to cause, detriment to the Council or another person (*this includes the manner in which I communicate with and/or about Councillors or others, whether verbally, by electronic or any other means*).

6.2 Misuse of my position includes:

- (a) making improper use of information acquired as a result of the position I held or hold; or
- (b) disclosing information that is confidential information within the meaning of s3 of the Act; or
- (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or
- (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that I am not authorised to exercise or perform; or
- (e) using public funds or resources in a manner that is improper or unauthorised; or
- (f) participating in a decision on a matter when I have a conflict of interest.

## 7. Public image and working relationships

7.1 I recognise that Councillors play a key role, both individually and collectively, in maintaining a positive public image and in preserving public confidence in the Council.

I will:

- a) use my best endeavours to build and maintain sound and productive working relationships with my Councillor colleagues;
- b) refrain from actions that may damage the image of the Council and my Councillor colleagues;
- c) ensure that my communications do not contain remarks of a personal, derogatory, insulting or offensive nature directed at current and former Councillors, Council staff or members of the community (*Communication mediums include but are not limited to verbal, letters, faxes, emails, SMS messages, and any social media*);
- d) ensure that any comments I make on social media are clearly identified as personal opinions that do not necessarily reflect the views of the Council;
- e) ensure that any media statements are factual and devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any person and that such comments are clearly identified as personal opinions that do not necessarily reflect the views of Council. No views or positions are to be attributed to other Councillors without their express consent;
- f) provide the Mayor, CEO and Manager Communications with a copy of all material that I provide to media outlets (*i.e. daily newspapers, Manningham circulation newspapers and electronic/online services*) within 24 hours of doing so; and
- g) conduct myself in public forums respectfully and with appropriate decorum.

7.2 To avoid any misunderstanding, I understand that nothing in this Code is intended to fetter or impede me from publicly expressing views or concerns on matters of policy or organisational performance where I believe that it is in the public interest to do so.

## 8. Council decision making

8.1 All Councillors are committed to making all decisions impartially and in the best interests of the municipal community.

I will:

- a) actively and openly participate in the decision making process, striving to be informed to achieve the best outcome for the community;
- b) respect the views of the individual in the debate. However, we also accept that decisions are based on a majority vote; and
- c) accept that no Councillor can direct another Councillor on how to vote on any decision.

- 8.2 Notwithstanding my broader policy positions, I will keep an 'open mind' when researching, hearing submissions, considering and finally, making a decision regarding a specific matter.
- 8.3 I agree to abide by the Governance Rules which set out the procedures for decision making by Council as amended from time to time.

## **9. Confidential information (derived from s3 and s125)**

In performing the role of Councillor I will:

- a) comply with any legislative provisions and Council policies concerning my access to, use of, or disclosure of Council information, whether confidential or otherwise;
- b) ensure all Council documents, but especially those containing confidential information, are properly safeguarded at all times – including materials stored at private or business premises;
- c) not release confidential information for any purpose to any person or organisation (other than those who are entitled to the information); and
- d) also ensure that when I am no longer a Councillor I will either return any confidential information to the CEO or dispose of it in a secure manner.

## **10. Use of Council resources (including funds and property)**

- 10.1 I will maintain adequate security over Council property, facilities and resources provided to me to assist in performing my role and will comply with any Council policies applying to their use.
- 10.2 I will ensure any expense claims that I submit are in compliance with the relevant legislative provisions and Council policy.
- 10.3 I will not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate.
- 10.4 I will not use public funds or resources in a manner that is improper or unauthorised.

## **11. Communication**

- 11.1 As a representative of the community, I have a primary responsibility to be responsive to community views and to adequately communicate the attitudes and decisions of Council.
- 11.2 I will endeavour to ensure that the messages communicated through the media are clear and consistent, and positively portray the Council as a decisive and responsible governing body.



- 11.3 I acknowledge that the Mayor will provide official comment to the media on behalf of Council. This includes:
- a) statewide political issues affecting Local Government;
  - b) contentious or sensitive local issues that impact the community that do not relate directly to the business of Council but to the representation of the community;
  - c) issues pertaining to policy and Council decisions;
  - d) issues relating to the strategic direction of the Council; and
  - e) the Mayor nominating another Councillor to make official comment on behalf of the Council, where appropriate.
- 11.4 I acknowledge that the CEO is the official spokesperson for all operational matters pertaining to Manningham Council as an organisation including:
- a) staffing and structure of the organisation
  - b) corporate issues relating to service provision or the day to day business of Council; and
  - c) that the CEO may nominate a member of Council staff or spokesperson if appropriate.
- 11.5 I acknowledge that I am entitled to express independent views through the media, however, I will make it clear that any unofficial comment is a personal view, and does not represent the position of the Council as a whole.

## **12. Gifts and hospitality (derived from s137 and s138)**

- 12.1 I commit to comply with my legislative and policy obligations in relation to gifts, donations and hospitality.
- 12.2 I will scrupulously avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from me as a Councillor or from the Council.
- 12.3 I will notify the CEO and Group Manager Governance and Risk if, in the conduct of my duties I receive an inappropriate offer or benefit of any kind.
- 12.4 I will take all reasonable steps to ensure that my immediate family members (parents, spouse, children and siblings) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.
- 12.5 Where I receive a gift on behalf of Council, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in the Councillors Gifts Register with a notation that it is the property of the Council.

### **13. Conflict of interest (derived from s126-131 and Chapter 5 of the Governance Rules)**

- 13.1 I acknowledge that if I have a conflict of interest in a matter which is to be considered or discussed at a Council meeting, I must, if attending the meeting, disclose the conflict of interest in accordance with the provisions of the Act and Manningham's Governance Rules (unless any of the exemptions apply).
- 13.2 I will seek advice from the CEO or other appropriate officer if I need assistance interpreting the relevant legislation. While I may seek advice, I recognise that the legal onus rests with me to identify, manage and disclose any conflicts of interest I may have. If I cannot confidently say that I do not have a conflict, I will declare a possible conflict and comply with the relevant requirements as if I do have a conflict of interest.

### **14. Personal dealings with Council**

When I deal with Council in my private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) I do not expect nor will I request preferential treatment in relation to any such private matter. I will avoid any action that could lead Council staff or members of the public to believe that I was seeking preferential treatment.

### **15. 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 my role as a Councillor I must take positive action to eliminate victimisation in accordance with the Equal Opportunity Act 2010.

I 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, whether in person or online, that creates a risk to the health and safety of that other Councillor or member of Council staff.

### **16. Sexual harassment**

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

I 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.

## 17. 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* apply to Council and Councillors.

The CEO has clear accountability for occupational health and safety 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. I will adhere to any policies established for this purpose.

I understand that occupational health and safety is a shared responsibility and I will take reasonable care to protect my own health and safety as well as the health and safety of others in the workplace.

## 18. Human rights and equal opportunity

In performing my role as a Councillor I must take positive action to eliminate discrimination in accordance with the *Equal Opportunity Act 2010* and support Council in fulfilling its obligation to achieve and promote gender equality.

I acknowledge that human rights are protected under the *Victorian Charter of Human Rights and Responsibilities Act 2006* and undertake to exercise my duties in a manner that is compatible with the rights set out in the Charter.

## 19. Child Safety

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 which governs the protection of children and young people.

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.

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

## 20. Reporting fraud and corruption

Ethical behaviour is an integral part of responsible, effective and accountable government. I acknowledge Council's obligations under the *Public Interest Disclosures Act 2012* to facilitate the making of disclosures or improper conduct by public officers and public bodies, including Council, its employees and Councillors.

I will immediately report to the Chief Executive Officer and/or appropriate integrity body, in line with Council's Public Interest Disclosure Procedures, any suspected, potential or actual fraudulent, criminal, unethical, corrupt or other unacceptable behaviour that comes to my knowledge. I will participate as required to the best of my ability in any subsequent investigation whether undertaken internally or externally.

## **21. Interactions with the community**

In performing my role as a Councillor I commit to treating all members of the community with dignity, fairness, objectivity, courtesy and respect.

Where a member of the community would like to raise a complaint against a Councillor for a possible breach of this Code or offence under the Act, this may be directed to the Chief Municipal Inspector of the Councillor Conduct Officer.

## **22. Meeting with planning applicants**

When proposing to meet with a known or proposed planning applicant (or property owner, or their representative), either for the purpose of discussing their application or where the application is likely to become a topic of discussion, Councillors should consider holding the meeting with a planning officer present.

Councillors should notify the CEO, Director City Planning and Community or their delegate of the meeting or any interactions with the applicant.

Where a Councillor chooses to hold a meeting without a planning officer present, they should notify the CEO, Director City Planning and Community or their delegate of the meeting.

## **23. Significant and/or intimate relationships**

I understand that conflict and bias can arise from situations where relatives or people with significant and/or intimate relationships work together, and this can potentially lead or be seen to lead to decisions I make as a Councillor being made for reasons other than the public interest.

If I am involved in a relationship of a significant or intimate nature with another Councillor, a member of Council staff, contractor or consultant, I undertake to disclose this relationship to the Mayor and the CEO.

## **24. Election Period Policy**

In order to ensure that general elections for Manningham Council are conducted in a manner that is fair and equitable, and publicly perceived as such, Council has adopted an Election Period Policy as part of Manningham's Governance Rules. I agree to abide by that policy.

## **25. Candidature of Councillors for State or Federal Elections**

The perception of the politicisation of local government resulting from Councillors running for office in State or Federal parliament is often a contentious issue. As a Councillor, I agree to follow the Guidelines prepared by the Municipal Association of Victoria in regard to candidature at State or Federal elections. The Guidelines are shown as Attachment 2 to this Code.

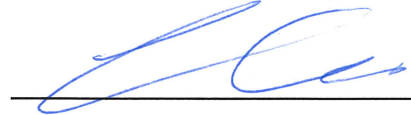
## 26. Dispute Resolution

- 17.1 Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. Where, after these endeavours have been exhausted, the matter still remains unresolved, the parties may resort to any or all of the Council's three phase dispute resolution process.
- 17.2 The Council's three phase dispute resolution process involves:
- a) a facilitated discussion between the parties in dispute with the Mayor in attendance to provide guidance
  - b) mediation by an independent mediator engaged by the Councillor Conduct Officer; and
  - c) an internal arbitration process involving an independent arbiter.
- 17.3 I agree to follow the dispute resolution process as detailed in Attachment 1 to this Code.

## 27. Signatories to the Code

In signing this document, we agree to comply with the principles established by this Councillor Code of Conduct in conjunction with all relevant legislation and policies.

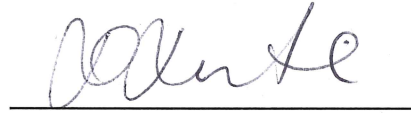
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Waldau Ward



Cr Andrew Conlon  
Currawong Ward



Cr Deirdre Diamante  
Tullamore Ward



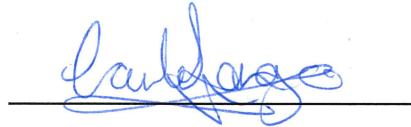
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Bolin Ward



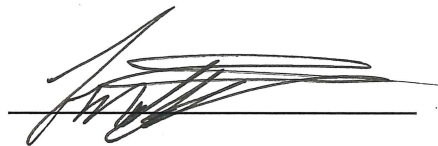
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Westerfolds Ward



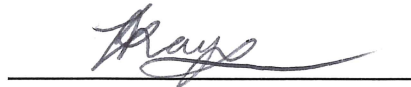
Cr Carli Lange  
Yarra Ward



Cr Tomas Lightbody  
Manna Ward



Cr Laura Mayne  
Schramm Ward



Cr Stephen Mayne  
Ruffey Ward



## ATTACHMENT 1: Dispute Resolution Procedure

The primary purpose of this dispute resolution procedure is to provide Councillors with the support and mechanisms to resolve conflicts and disputes in a manner that enables them to move forward and maintain effective working relationships.

Councillors recognise that they hold an individual and collective responsibility to resolve disputes in a proactive, positive and courteous manner before they are escalated.

This procedure:

- a) is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in Council meetings.
- b) does not include a complaint made against a Councillor or Councillors by a member or members of Council staff, or by any other person, or a disclosure in accordance with the *Public Interest Disclosures Act 2012*.

This process operates alongside, and does not displace, any external avenues provided for by legislation for the reporting and resolution of issues and disputes. It should be read in conjunction with the Act which sets out avenues for reporting matters of Councillor misconduct and establishes external authorities to hear, investigate, prosecute and make findings of Councillor misconduct, serious misconduct and gross misconduct.

Nothing *is this procedure prevents an* individual Councillor with a specific issue or dispute from pursuing other avenues available to them under the law.

### **Responsibilities**

#### **Mayor**

The Mayor has a responsibility to:

- establish and promote appropriate standards of conduct
- support good working relations between Councillors
- support Councillors in dispute resolution.

#### **Councillor Conduct Officer**

The Councillor Conduct Officer has a responsibility to:

- assist Council in the implementation and conduct of the internal resolution procedure
- assist the Principal Councillor Conduct Registrar to perform the functions specified in section 149 of the Act.

#### **Chief Executive Officer (CEO)**

The CEO has a responsibility to:

- ensure that support and assistance is available to all Councillors where it is required
- take all reasonable steps to ensure the consistent and accountable application of this policy across Council
- comply with all relevant legislation as the senior officer within Council administration.

## Councillors

Councillors as defined in this section have a responsibility to

- co-operate with any investigation into, or arbitration of, a complaint made under this procedure
- maintain confidentiality regarding any complaint.

### Phase 1 – Facilitated Discussion

Any party to the dispute may request the Mayor to convene a meeting of the parties.

1. A dispute referred for facilitated discussion may relate to:
  - an interpersonal conflict between Councillors where the conflict is or is likely to affect the functioning of the Council; or
  - an alleged breach of the Councillor Code of Conduct.
2. The party requesting the facilitated discussion (requestor) is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a “facilitated discussion” dispute resolution process. Where the request relates to an alleged breach of the Councillor Code of Conduct, the request must:
  - specify the name of the Councillor alleged to have breached the Code;
  - specify the provision(s) of the Code that is alleged to have been breached;
  - include evidence in support of the allegation;
  - name the Councillor appointed to be their representative where the request is made by a group of Councillors; and
  - be signed and dated by the requestor or the requestor’s representative.
3. The requestor is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Mayor or as soon as practicable thereafter.
4. The Mayor is to ascertain whether or not the other party is prepared to attend a “facilitated discussion” meeting.
5. If the other party is not prepared to attend a meeting, the Mayor is to advise the requestor forthwith. No further action is required of the Mayor.
6. If the other party declines to participate in a meeting, this does not constitute a breach of this Councillor Code of Conduct.
7. If the other party consents to attend a facilitated discussion, the Mayor is to convene a meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within 5 working days of receiving the consent of the other party.
8. The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the discussion.
9. The role of the Mayor at the meeting is to provide guidance to Councillors about the conducted expected of a Councillor including in relation to the role of a Councillor under section 28 of the Act, and the observation of the prescribed conduct standards and the Councillor Code of Conduct.



10. The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to mediation or, in the case of alleged misconduct, the internal arbitration process.
11. If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, either or both of the parties have recourse to mediation or, in the case of alleged misconduct, the internal arbitration process.
12. Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor (if any) or the immediate past Mayor. The Deputy Mayor or the immediate past Mayor will perform the functions ascribed to the Mayor.

## Phase 2 – Mediation

1. A Councillor or a group of Councillors may make an application for a dispute to be referred for mediation whether or not the dispute has been the subject of an application for a “facilitated discussion”.
2. An application made for a dispute to be referred for mediation may relate to:
  - an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
  - an alleged breach of the Councillor Code of Conduct.
3. The applicant is to submit a written application to the Councillor Conduct Officer setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for mediation. Where the application relates to an alleged breach of the Councillor Code of Conduct, the application must:
  - specify the name of the Councillor alleged to have breached the Code
  - specify the provision(s) of the Code that is alleged to have been breached
  - include evidence in support of the allegation
  - name the Councillor appointed to be their representative where the application is made by a group of Councillors; and
  - be signed and dated by the applicant or the applicant’s representative.
4. The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time that it is submitted to the Councillor Conduct Officer or as soon as practical thereafter.
5. The Councillor Conduct Officer is to ascertain (in writing) whether or not the other party is prepared to attend mediation. If the other party declines to participate in mediation, he or she is to provide their reasons for doing so in writing to the Councillor Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.
6. When the other party declines to participate in mediation, this does not constitute a breach of this Councillor Code of Conduct.
7. If the other party agrees to participate in mediation, the Councillor Conduct Officer is to advise the applicant, the Mayor and CEO forthwith.

8. The Councillor Conduct Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.
9. The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal arbitration process where the matter relates to alleged misconduct.
10. If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal arbitration process where the matter relates to alleged misconduct .

### Phase 3 – Internal Arbitration Process

An internal arbitration involves a party (the applicant) to a dispute requesting the Principal Councillor Conduct Registrar to appoint an impartial third party (the Arbiter) to make findings in relation to allegations concerning another Councillor or Councillors and whether they have engaged in misconduct under the Act.

1. An application for an internal arbitration process to make a finding of misconduct against a Councillor can be made by a Councillor or a group of Councillors.
2. The application must:
  - specify the name of the Councillor alleged to have breached the conduct standards;
  - specify the clause of the standards in the *Local Government (Governance and Integrity) Regulations 2020* that the Councillor is alleged to have breached;
  - specify the misconduct that the Councillor is alleged to have engaged in that resulted in the breach of the conduct standards;
  - include evidence in support of the allegation;
  - name the Councillor appointed to be their representative where the application is made by a group of Councillors;
  - be signed and dated by the applicant or the applicant's representative;
  - be made within three months of the alleged misconduct occurring; and
  - be given to the Principal Councillor Conduct Registrar in the manner specified by Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(c) of the Act.
3. An applicant may withdraw an application for arbitration at any time. Once an application has been withdrawn, the same or a similar application relating to the same issues or dispute in relation to the respondent Councillor cannot be resubmitted by the applicant.
4. On receiving an application, the Principal Councillor Conduct Registrar will:
  - advise the Mayor and CEO of the application without undue delay
  - identify an arbiter to hear the application
  - obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved
  - notify the parties of the name of the proposed arbiter and provide them with the opportunity (2 working days) to object to the person proposed to be the arbiter
  - consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter
  - provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired

- after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
  - attend the hearing(s) and assist the arbiter in the administration of the process.
5. The Principal Councillor Conduct Registrar, after examining an application, will appoint an arbiter to hear the matter if satisfied that:
- The application is not frivolous, vexatious, misconceived or lacking in substance; and
  - There is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application.
6. In identifying an arbiter to hear the application, the Principal Councillor Conduct Registrar will select an arbiter who is suitably independent and able to carry out the role of arbiter fairly. The arbiter must be selected from a panel of eligible persons established by the Secretary to conduct an internal arbitration process.
7. The role of the arbiter is to:
- consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor;
  - make findings in relation to any application;
  - give a written statement of reasons supporting the findings to the parties at the same time as it gives its findings to the Council; and
  - recommend an appropriate sanction or sanctions where the arbiter makes a finding of misconduct against a Councillor.
8. In considering an application alleging a breach of the Councillor Code of Conduct, an arbiter will:
- in consultation with the Councillor Conduct Officer, fix a time and place to hear the application;
  - authorise the Councillor Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing;
  - hold as many meetings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing;
  - have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the application allows;
  - ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
  - hearing ensure that the rules of natural justice are observed and applied in the hearing of the application;
  - ensure that the hearings are closed to the public and held in confidence;
  - ensure that a Councillor who is a party to an internal arbitration process does not have a right to representation unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly; and
  - consider an application by a respondent to have legal representation.
9. Where an application to have legal representation is granted by an arbiter, the costs of the Councillor's legal representation are to be borne by the Councillor in their entirety.
10. An arbiter:
- may find that a Councillor who is a respondent to an internal resolution procedure application has not engaged in misconduct
  - may find that a Councillor has engaged in misconduct

- may hear each party to the matter in person or by written or electronic means of communication
  - is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit
  - may at any time discontinue the hearing if the arbiter considers that the application is vexatious, misconceived, frivolous or lacking in substance or the applicant has not responded, or has responded inadequately, to a request for further information
  - must refer the matter in writing to the Principal Councillor Conduct Registrar if the arbiter believes that the conduct that is the subject of the application for an internal arbitration process appears to involve serious misconduct and would more appropriately be dealt with as an application to a Councillor Conduct Panel under section 154 of the Act.
11. The arbiter is to give a copy of his or her findings and the statement of reasons to the Council, the applicant, the respondent and the Principal Councillor Conduct Registrar. At the same time, the arbiter provides the findings and statement of reasons, he or she shall, where a Councillor has been found to have engaged in misconduct, recommend an appropriate sanction or sanctions.
12. A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next Council meeting after Council has received a copy of the arbiter's decision and statement of reasons and 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 before submission to the Council meeting..
13. If an arbiter has made a finding of misconduct the arbiter may do one or more of the following:
- direct the Councillor to make an apology in a form or manner specified by the arbiter
  - suspend the Councillor from office of Councillor for a period specified by the arbiter not exceeding one month
  - direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter
  - direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter
  - direct a Councillor to attend or undergo training or counselling specified by the arbiter.
14. A Councillor who does not participate in the internal arbitration process may be guilty of serious misconduct. The Act provides that serious misconduct by a Councillor means any of the following:
- failure by a Councillor to comply with the Council's internal arbitration process
  - failure by a councillor to comply with a direction given to the Councillor by an arbiter under section 147
  - the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor
  - failure of a Councillor to comply with a direction of a Councillor Conduct Panel
  - continued or repeated misconduct by a Councillor after a finding or misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b)
  - bullying by a Councillor of another Councillor or a member of Council staff
  - conduct by a Councillor that is conduct of a 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 the Act.

15. Allegations of serious misconduct are heard on application by a Councillor Conduct Panel.

16. An application cannot be made for an internal arbitration process during the election period for a general election. Any internal arbitration process that is in progress is to be suspended during the election period for a general election.

17. If the respondent to an application for an internal arbitration process 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 made against the Councillor may resume, whether or not the applicant was returned to the office Councillor as a result of the general election if:

- the application was made by the Council and the Council so resolves to resume the application
- 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.

## **ATTACHMENT 2: Guidelines Candidature of Councillors State or Federal Elections**

- a) A Councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as an independent candidate for a State or federal election (a Prospective Candidate), should provide written advice to the CEO, as soon as practicable, who should then advise all Councillors.
- b) A Councillor who is a Prospective Candidate, should declare his/her intended candidacy at a meeting of the Council as soon as practicable after notifying the CEO pursuant to Guideline 1.
- c) A Councillor who nominates as a candidate for a State or federal election (a Nominated Candidate), should apply for leave of absence from the Council and this leave of absence should commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election (Nomination Date) and conclude no earlier than the close of voting for the election. During this period, a Councillor who is on a leave of absence should not attend meetings of the Council or otherwise act as a Councillor.
- d) Any Councillor / staff relationship protocol which the Council has in place in respect of the caretaker period prior to a Council election, should be observed by a Nominated Candidate and this should apply from their Nomination Date until the close of voting for the election.
- e) A Council, upon receiving an application for a leave of absence from a Councillor who is a Nominated Candidate or who intends to become a Nominated Candidate, should approve that application.
- f) A Councillor who is a Prospective Candidate or a Nominated Candidate, should take care to differentiate between his/her role as a State or federal election candidate and role as a Councillor when making public comment.
- g) A Councillor who is a Prospective Candidate or a Nominated Candidate, should not use Council resources, including Council equipment and facilities in relation to his/her candidacy.
- h) A Councillor who is a Prospective Candidate or a Nominated Candidate, should not use Council activities, including committee meetings and Council-related external activities in relation to his/her candidacy.

The guidelines draws a distinction between Prospective Candidates and Nominated Candidates because, as with Council elections, candidates for State and federal elections only become actual nominated candidates a few weeks prior to the relevant election date. Accordingly, the guidelines recommends different treatment for Prospective Candidates and Nominated Candidates on the basis that some requirements are recommended as appropriate for Nominated Candidates during a formal election period which are not considered to be necessary prior to the formal election period.

## ATTACHMENT 3: Definitions

<i>Bullying by a Councillor</i>	means the Councillor repeatedly behaves unreasonably towards another Councillor or member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff;
<i>Chief Municipal Inspector</i>	means the person appointed under section 182 of the Act
<i>Conflict of Interest</i>	A Councillor has; <ul style="list-style-type: none"> <li>• a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.</li> <li>• a material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.</li> </ul>
<i>Conduct Standards</i>	the standards of Councillor conduct prescribed under Schedule 1 to the <i>Local Government (Governance and Integrity) Regulations 2020</i> .
<i>Council Meeting</i>	means Meeting of Council, an Advisory Committee, the Audit Committee, an informal meeting or a Section 223 Committee.
<i>Councillor Conduct Officer</i>	<i>a person appointed by the Chief Executive Officer to assist Council in implementing its internal arbitration process.</i>
<i>Councillor Conduct Panel</i>	A panel established under the <i>Local Government Act 2020</i> to hear applications and make findings of alleged misconduct or serious misconduct by a Councillor.
<i>Gross misconduct by a Councillor</i>	means behaviour that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor;
<i>Improper conduct</i>	<i>includes a failure to disclose a conflict of interest, a breach of confidentiality, the improper direction or influence of staff and the improper use of Council resources</i>
<i>Internal arbitration process</i>	means the procedure - <ol style="list-style-type: none"> <li>(a) specified in the Councillor Code of Conduct; and</li> <li>(b) developed and maintained by a Council in accordance with section 141 of the Act to address the matters specified in that section;</li> </ol>
<i>Misconduct by a Councillor</i>	means any of the following - <p>means any breach by a councillor of the prescribed conduct standards included in this Councillor Code of Conduct</p>

*Principal Councillor Conduct Registrar* receives applications for the establishment of Councillor Conduct Panels in accordance with the *Local Government Act 2020*.

*Serious Misconduct*

- failure by a Councillor to comply with the Council's internal arbitration process
- failure by a councillor to comply with a direction given to the Councillor by an arbiter under section 147
- the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor
- failure of a Councillor to comply with a direction of a Councillor Conduct Panel
- continued or repeated misconduct by a Councillor after a finding or misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b)
- bullying by a Councillor of another Councillor or a member of Council staff
- conduct by a Councillor that is conduct of a 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 the Act.

*The Act*

means the *Local Government Act 2020*

*Serious misconduct by a Councillor*

means -

- (a) the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or
- (b) the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or
- (c) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or
- (d) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or
- (e) bullying of another Councillor or member of Council staff by a Councillor; or



- (f) conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or
- (g) the release of confidential information by a Councillor in contravention of section 77.