

Councillor Code of Conduct

This Code, which incorporates the statutory requirements specified for a Code of Conduct in accordance with section 139 of the Local Government Act 2020, was adopted by the Yarriambiack Shire Council on 27 February 2021.

In accordance with the Local Government Act, a copy of the Code has been provided to each Councillor and is available to the community for inspection on our Website or at the Yarriambiack Shire Office

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Yarriambiack Shire Council encourages a working environment which promotes gender equality and models non-violent and respectful relationships.

1 Objective

To adopt a Councillor Code of Conduct to use as guidelines, pursuant to the Local Government Act 2020 and *Local Government Regulations 2020*.

2 Responsibility

The Chief Executive Officer is responsible for the implementing the Councillor Code of Conduct. Councillors are responsible for adhering to the code.

3 Policy Statement and Scope

The Councillor Code of Conduct sets the minimum standards of conduct to be observed by Councillors in the course of performing their duties and functions, including prohibiting discrimination, harassment (including sexual harassment) and vilification.

It is prescribed by the regulation to assist councillors:

- a) In understanding and complying with the standards of conduct that are expected of them,
- b) To enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence in a way that enhances public confidence in Local Government.

4 Definitions

Chief Executive Officer	The Chief Executive Officer of Council of the Yarriambiack Shire Council
Conflict of Interest	A Councillor has a conflict of interest where a reasonable and informed person would perceive they could be influenced by a private interest when carrying out their public duty.
Councillor	All references to 'Councillor' include the Mayor, Deputy Mayor and elected members of Yarriambiack Shire Council.
Councillor Conduct Panel	means a panel formed by the Principal Councillor Conduct Registrar under section 156
Employee	An employee of Council includes all members of staff, contractors and volunteers under the direct control or supervision of the Yarriambiack Shire Council.
Misconduct	Misconduct by a Councillor means any of the following: <ul style="list-style-type: none"> • failure by a Councillor to comply with Council's internal resolution procedure, • failure by a Councillor to comply with a written direction given by Council following a finding the Councillor has contravened the Code of Conduct, • repeated contravention of any of the Councillor conduct principles.
Gross misconduct	'Gross misconduct' by a Councillor 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.
Serious conduct	Serious misconduct by a Councillor means;

	<ul style="list-style-type: none"> the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor, the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give, the failure of a Councillor to comply with a direction of a Councillor Conduct Panel, continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel, bullying of another Councillor or member of Council staff by a Councillor, improper direction or influence by a Councillor in respect of a member of Council staff, the release of confidential information by a Councillor.
Principal Conduct Officer	A person appointed by the Chief Executive Officer to assist Council in implementing its internal resolution procedure.
Natural Justice	The hearing rule of natural justice requires that a person be told 'the case to be met' and have an opportunity to comment in reply
Arbiter	An arbiter is a person or institution that judges and settles a quarrel between two other people or groups
The Act	All references to the 'Act' are to the <i>Local Government Act 2020</i>

5 Standards of Conduct

5.1 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. This includes ensuring the Councillor;

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

5.1.1 General Conduct

Good conduct or behaviour is an important part of a civil society, it's also the basis for good relationships which are vital for the success of the Council.

Good conduct in Local Government means that Councillors should act with integrity and impartiality. Councillors should;

- be honest and diligent
- avoid conflicts of interest
- treat people with respect
- act lawfully
- show leadership

Source: Good Governance Guide (www.goodgovernance.org.au)

5.1.2 Bully, Harassment & Discrimination

Councillors are committed to providing a safe and productive working environment free from discrimination, harassment, bullying and occupational violence. Councillors are responsible for treating others with respect and are not to participate in, condone or fail to act on inappropriate behaviour of any kind.

Discrimination is defined as treating someone unfairly or unfavourably because of a personal characteristic they have or are assumed to have. Any breaches should be reported immediately to your Manager or the Chief Executive Officer.

No one will be victimised for identifying discrimination in our workplace.

5.1.3 Work Health and Safety

All Councillors, owe statutory duties under the *Work Health and Safety Act 2004*. Councillors must comply with duties under the Act and their responsibilities under any policies or procedures adopted by the Council to ensure workplace health and safety.

Councillors will aim to promote awareness within the community about issues that impact on health and wellbeing, including the health benefits of physical activity and healthy eating.

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5.1.4 Cultural Awareness

The traditional owners on the land in which Yarriambiack covers is the Wotjobaluk Nation. Council currently incorporates an Acknowledgement of Country at the start of each Ordinary Council meeting as follows:

'I would like to acknowledge that this meeting is being held on the traditional lands of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk people, and I pay respects to their Elders, both past, present and emerging'

Council does not currently have a Reconciliation Action Plan in place, however the legislated Registered Aboriginal Party Barengi Gadjin Land Council has developed:

Country Plan: Growing what is Good

which includes; re-engaging with Community, creating strategies to better manage their land and water, looking after historical cultural sites, such as Ebenezer, The Ranch, and maintaining their cultural practices.

5.1.5 Teamwork

Local Government is a form of democracy in which individuals are elected as Councillors on the basis of individual or group platforms that they have put to the community. Once elected, Councillors require ways of working together in the interests of the whole community, while remaining accountable to all stakeholders.

Councillors need each other to achieve their individual and collective goals. Effective relationships between Councillors help to promote a successful Council, a pleasant working environment and a Council with public credibility. Some features of an effective relationship are;

- while they may have different views, Councillors should treat each other with respect and courtesy
- disagreements, if they must be aired, should be expressed in a way that cause no detriment to individual Councillors or the Council as a whole

Councillors should not undermine each other, either within Council or in public; and Councillors must have effective working relationships in order to succeed individually and collectively.

5.1.6 Relationship between the Mayor and Councillors

An effective relationship between the Mayor and Councillors will help to promote the successful delivery of the Council Plan and a credible Local Government. The relationship needs to be based on mutual respect and understanding of the different roles. Some important aspects of this relationship are;

- the Mayor is the leader of the Council and this role should be respected by all Councillors
- the Mayor should facilitate an inclusive approach to decision-making and involvement in Council activities
- the Mayor is able to help Councillors and should facilitate the resolution of any disputes between Councillors.

5.1.7 Relationship between the Mayor and the Chief Executive Officer (CEO)

The relationship between the Mayor and the CEO assists in the smooth running of the Council, through good communication and anticipation of issues. It should be outward looking. That is, it should be focused on ways in which the Councillors and the organisation can be supported to best achieve the Councils goals. Some important aspects of this relationship are;

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- both parties work regularly together and put energy into achieving a good working relationship
- the relationship is characterised by consistency, openness and good communication. Each has the responsibility to keep the other informed about important and relevant issues. Open communication ensures that both parties understand what is important; and
- the relationship between the Mayor and the CEO promotes involvement and inclusion amongst the Councillors and management. It does not seek to concentrate power in the relationship.

5.1.8 **Relationship between the Councillors and the Chief Executive Officer (CEO)**

Effective relationships between the Councillors and the CEO can improve liaison between the Councillors and management. The CEO is often able to assist Councillors in addressing community issues. Councillors can keep the CEO informed about issues. The CEO is accountable to Councillors when they sit as Council. Councillors, sitting as Council, are responsible for the performance management of the CEO. Important aspects of this relationship are;

- each has a good understanding of each others' roles
- Councillors understand that the CEO can be a source of advice and support and that honest and open communication between Councillors and the CEO can assist the CEO's role
- Councillors are a source of information to the CEO about what is happening in the community.

5.2 **Performing the Role of the Councillor**

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor;

- *undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor*
- *undertake Councillor Induction Training as per s 32 of the Act and must be conducted in person or by electronic means. Councillor must also make a written declaration before the CEO after completing Councillor induction training*
- *diligently uses Council processes to become informed about matters which are subject to Council decisions*
- *is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity*
- *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.*

5.2.1 **Values**

In a time of accountability and transparent decision making, the conduct of Councillors and employees must be above reproach. To achieve this, we must have shared values and a clear understanding of what is expected of you as Councillors.

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Council Plan Values

Treat our customers with courtesy and respect;

- Lead and develop leadership within our community
- Constantly strive to improve our services
- Forge closer relationships with customers
- Investigate matters thoroughly and objectively
- Keep our customers informed, in plain language, about the process and outcome
- Treat people fairly, with respect and have proper regard for their rights
- Make decisions lawfully, fairly, impartially, and in the public interest
- Be honest, trustworthy, reliable, transparent and accountable in our dealings
- Be careful, conscientious and diligent
- Use public resources economically and efficiently
- Actively pursue positive outcomes for the community.

5.2.2 Councillors Working Together

Our primary role as Councillors is to set the vision and directions for the Yarriambiack Shire and to advocate on behalf of the whole community. We recognise that, as Councillors we should represent and promote the interests of the Yarriambiack Shire community as a whole, whilst recognising our special relationship with our constituents.

5.2.3 Role of a Council

The role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.

The new *Act* is a principles based act with the overarching principles centred on governance;

5.2.3.1 Overarching governance principles and supporting principles

- 1) A Council must in the performance of its role give effect to the overarching governance principles.
- 2) The following are the overarching governance principles:-
 - a) Council decisions are to be made and actions taken in accordance with the relevant law
 Priority is to be given to achieving the best outcomes for the municipal community, including future generations
 - b) The economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted
 - c) The municipal community is to be engaged in strategic planning and strategic decision making
 - d) Innovation and continuous improvement is to be pursued
 - e) Collaboration with other Councils and Governments and statutory bodies is to be sought
 - f) The ongoing financial viability of the Council is to be ensured
 - g) Regional, state and national plans and policies are to be taken into account in strategic planning and decision making
 - h) The transparency of Council decisions, actions and information is to be ensured.

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- 3) In giving effect to the overarching governance principles, a Council must take into account the following supporting principles:-
 - a) The community engagement principles
 - b) The public transparency principles
 - c) The strategic planning principles
 - d) The financial management principles
 - e) The service performance principles.

5.2.4 Role of a Councillor

The role of a Councillor is set out at Section 28 of the *Act* and is:

- 1) The role of every Councillor is;
 - a) To participate in the decision making of the Council
 - b) To represent the interests of the municipal community in that decision making
 - c) To contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.
- 2) In performing the role of a Councillor, a Councillor must;
 - a) Consider the diversity of interests and needs of the municipal community
 - b) Support the role of the Council
 - c) Acknowledge and support the role of the Mayor
 - d) Act lawfully and in accordance with the oath or affirmation of office
 - e) Act in accordance with the standards of conduct
 - f) Comply with Council procedures required for good governance.
- 3) The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer

5.2.5 Role of a Mayor

The Act defines the role and powers of the Mayor at Division 3 of Part 2. As with many other aspects of Government, tradition, convention and practice broaden and better define the role and authority of the Mayor.

- 1) The Act outlines the role of the Mayor as being to;
 - a) Chair Council meetings
 - b) Be the principal spokesperson for the Council
 - c) Lead engagement with the municipal community on the development of the Council Plan
 - d) Report to the municipal community, at least once each year, on the implementation of the Council Plan
 - e) Promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct
 - f) Assist Councillors to understand their role
 - g) Take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer
 - h) Provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings
 - i) Perform civic and ceremonial duties on behalf of the Council.

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2) The Mayor is not eligible to be elected to the office of Deputy Mayor.

In addition to these statutory obligations, the Mayor exercises political leadership and aims to;

- a) Create and maintain political stability within the Council
- b) Articulate aspirations of the community and promote collective endeavours
- c) Lead, inspire and support the team of elected Councillors
- d) Defend the interests of the community and the Local Government of the community
- e) Set the tone and style of local government and set standards for behaviour and practice
- f) Speak publicly about the role of local government and about developments in the community
- g) Generate community cohesion and inclusiveness
- h) Govern for all members of the community
- i) Be a mentor for other Councillors.

As chairperson of Council, the Mayor presides firmly and fairly over all Council meetings.

5.2.6 Acting Mayor

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

5.2.7 Deputy Mayor

Section 20A of the *Act*, a Council may establish an office of Deputy Mayor.

Section 21 sets out the role and powers of the Deputy Mayor, who may exercise any of the powers of the Mayor if;

- a) The Mayor is unable for any reason to attend a Council meeting or part of a Council meeting
- b) The Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness
- c) The office of Mayor is vacant

5.2.8 Role of the Chief Executive Officer

Section 44 of the *Act* outlines the statutory functions of the CEO, it's the CEO's role to;

- 1) A Chief Executive Officer is responsible for;
 - a) Supporting the Mayor and the Councillors in the performance of their roles;
 - b) Ensuring the effective and efficient management of the day to day operations of the Council
- 2) Without limiting the generality of subsection (1)(a), this responsibility includes the following;
 - a) Ensuring that the decisions of the Council are implemented without undue delay
 - b) Ensuring that the Council receives timely and reliable advice about its obligations under this Act or any other Act
 - c) Supporting the Mayor in the performance of the Mayor's role as Mayor
 - d) Setting the agenda for Council meetings after consulting the Mayor

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- e) When requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;
 - f) 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 **Workplace Injury Rehabilitation and Compensation Act 2013**.
- 3) Without limiting the generality of subsection (1)(b), this responsibility includes the following;
- a) Establishing and maintaining an organisational structure for the Council
 - b) Being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff
 - c) Managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between members of Council staff and Councillors are developed and implemented;
 - d) Performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.
- 4) For the purposes of subsection (3)(a), a Chief Executive Officer must;
- a) develop and maintain a workforce plan that;
 - i. describes the organisational structure of the Council
 - ii. specifies the projected staffing requirements for a period of at least 4 years
 - iii. sets out measures to seek to ensure gender equality, diversity and inclusiveness
 - b) inform the Council before implementing an organisational restructure that will affect the capacity of the Council to deliver the Council Plan; and
 - c) consult members of Council staff affected by a proposed organisational restructure, before implementing the organisational restructure.
- 5) A Council and the Chief Executive Officer must, in giving effect to gender equality, diversity and inclusiveness, comply with any processes and requirements prescribed by the regulations for the purposes of this section.
- 6) A Chief Executive Officer must ensure that the Mayor, Deputy Mayor, Councillors and members of Council staff have access to the workforce plan.
- 7) A Chief Executive Officer must develop the first workforce plan under this section within 6 months of the commencement of this section.

The CEO leads a diverse and complex organisation and manages the functions and activities of Council in a democratic environment.

Understanding and responding effectively to the wide range of competing demands of stakeholders is critical, as is the ability to anticipate the changing strategic position of Council and the municipality.

The CEO must ensure that the calibre, responsiveness and efficiency of management, staff and contractors serving Council is of the highest quality and that service providers are chosen only after rigorous tendering or examination and against demanding performance criteria.

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5.2.9 Commitment to fair and transparent decision making

As per Councillors adherence to YSC Governance Rules 2020 (including conduct at meetings) any matter in which a decision needs to be made, Councillors must consider the matter and make a decision fairly;

- by giving consideration and making a decision which is balanced, ethical, impartial and on merit
- free from favouritism or self-interest and without regard to irrelevant or unauthorised considerations.

When making any decision to which the principles of natural justice apply, ensuring that any person whose rights will be directly affected by a decision of Council, is entitled to communicate their views and have their interests considered with this recorded in any Council report.

5.2.10 Natural Justice

Natural justice refers to the principles set in place to protect those affected against arbitrary exercise of power by ensuring fair play. This principle is especially relevant to decisions which clearly affect an individuals' rights, for example planning permit applications.

There are two fundamental rules for natural justice:

- a) all sides of an argument should be given a fair opportunity to be heard before a decision is made; and
- b) the decision maker must not have predetermined the matter or be perceived as having predetermined the matter.

The principles of natural justice have implications for all Councillors. Regardless of their political views, Councillors must ensure that they consider all the available arguments and information before finally making up their minds on an issue.

Councillors must be able to demonstrate that they are "capable of being persuaded" by the advice they receive. However, this does not mean that they have to follow the advice. Instead they must, at the very least, be able to demonstrate that they have considered it.

5.2.11 Personal Opinions

Natural justice does not prevent Councillors from having opinions on upcoming matters and stating their views during election campaigns. Having a view on something doesn't mean that a Councillor is incapable of delivering on natural justice principles. They just need to ensure that they will impartially consider the evidence and advice, which may or may not support their view, during the formal decision-making process.

When Councillors give the impression that they will never change their views on an issue regardless of the evidence or advice, they are at severe risk of breaching the natural justice principles. In such cases, the Council decision is then at risk of being set aside by a court or tribunal.

5.2.12 Relationship with the community

The community's expectations of us, their elected representatives, are high. The business of Council will be conducted in a professional manner with efficiency and impartiality, whilst demonstrating compassion and sensitivity towards the needs of the community.

We acknowledge our obligations as Councillors to carry out our duties in the best interests of the community, and in accordance with the *Local Government Act 2020*.

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5.2.13 Media

Council media resources and support will only be provided to an authorised Council spokesperson. Councillors are entitled to speak to the media on any topic but are not acting as an authorised official spokesperson for Yarriambiack Shire Council except when permitted under Council's media policy. When a Councillor is acting as an authorised spokesperson for Council, they will avoid expressing any personal views.

The Mayor is the primary spokesperson for Council and may speak on any issue other than administrative and management issues. However, the Mayor may ask another Councillor to act as spokesperson and, in allocating the role, will base the decision on Councillor Delegation committee responsibilities. They will be the primary spokesperson on major issues such as major Government announcement, significant Council projects, and highly controversial and high profile issues.

All enquiries from media representatives must be referred immediately to Council's Chief Executive Officer who will help determine the appropriate spokesperson(s). Depending on the subject matter, the Chief Executive Officer is available to help Councillors source information, set up briefings prior to interviews, write statements and to help Councillors prepare for interviews if required.

The media can be demanding at times, however, it is in the best interest of Council to maintain an open and honest relationship with all media to defer misinformation.

5.2.14 Support and resources for Councillors in delivery of their role

Council's facilities and equipment are available to carry out Councillor activities and business.

Councillors are required to use Council ICT resources in accordance with Information, Communication, Technology Acceptable Use Policy.

Under no circumstances are Council resources to be used for personal use.

5.2.15 Confidential Information

Councillors may be exposed to information that must be treated confidentially. Except in the proper course of your duties, any unauthorised use or disclosure of information relating to the conduct of the Council is prohibited.

In general this includes;

- a) Ensuring that you do not disclose information relating to proceedings at closed Council meetings
- b) Ensuring that you do not use or attempt to use confidential information gained by virtue of an official position for the purpose of securing a private benefit, whether directly or indirectly, for yourself or for the benefit of any other person
- c) Not without lawful authority, disclose otherwise than to the Council, a Councillor, or a member of staff entitled to know, information concerning any of the following personnel matters concerning particular individuals
- d) The personal hardship of any resident or ratepayer
- e) Commercial information the disclosure of which would be likely to prejudice the commercial position of Council and/or any entity engaged with Council
- f) To confer a commercial advantage on a competitor of Council
- g) To reveal a trade secret
- h) Proposals for the sale or purchase of land or the rezoning of land. Entering into contracts of any kind, if prior knowledge of those proposals could confer an unfair financial advantage on any person
- i) Information that is subject to legal obligations of confidence

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- j) Information including the consideration of legal advice concerning litigation or which would otherwise be privileged from production in legal proceedings on the ground of a legal professional privilege
- k) The disclosure of information of which would prejudice the maintenance of the law
- l) Matters affecting the security of Council, Councillors, Council staff or Council property.

5.2.16 Refusal of Access to Information

Where the Director or CEO determine to refuse access to information requested by a councillor, they must act reasonably. In reaching this decision, they must take into account whether or not the information requested is necessary for the councillor to perform their official functions and whether they have disclosed a conflict of interest in the matter the information relates to, that would preclude their participation in consideration of the matter. The Director or CEO must state the reasons for the decision if access is refused.

5.2.17 Access to Records

Mayor and Councillors do not have direct access to records. In the event that access is required a written request must be submitted by the Mayor or Councillor to the CEO.

Councillors should only seek information from our records management systems or files about matters that inform their duties, i.e. on a need to know basis

Councillors can maintain privacy by;

- a) Taking care not to discuss Council matters with anyone not entitled to know such information
- b) Taking responsibility to safeguard confidential documents and information
- c) Referring all media enquiries to their CEO.

5.2.18 Councillor and Staff Interaction

An effective Council will work as part of the Council team with the CEO and senior members of staff. As with all other relations, that team work will only occur if Councillors and staff have a mutual respect and co-operate with each other to achieve the Councils corporate goals and implement the Councils strategies.

To achieve this, Councillors need to;

- a) Accept that their role is that of leadership, not a management or administrative one
- b) Acknowledge that the CEO is responsible for all staffing matters
- c) Acknowledge that they have no capacity to individually direct members of staff to carry out particular functions
- d) Refrain from using their position to improperly influence members of staff in their duties or functions or to gain an advantage for themselves or others
- e) Refrain from publicly criticising staff in a way that casts aspersions on their professional competence and credibility.

5.2.19 Relationship between Councillors and Management

The fundamental role differences between the Council and Management underpin the relationship. The focus of Council and Councillors should be on **Strategy, Policy and Outcomes** i.e they should focus on who is to benefit from the Councils activities and in what way.

The role of Management is to focus on advice, implementation, operations and acting upon Council resolutions. Some of the features of an effective relationship include;

- a) There is a mutual understanding, acceptance and respect for each others' roles

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- b) There is a preparedness to identify, discuss and resolve issues and problems if they arise
- c) The administration has respect for and is committed to democratic governance and the important role of the Council in the Local Government structure
- d) There are policies in place that inform and guide Councillors and staff communication.

Councillors need to be aware that they are required to abide by the *Councillor and Staff Interaction Protocols* which outlines the approved communication channels when dealing with all staff.

5.2.20 Councillor – Staff Contact Protocols

5.2.20.1 Background

The following protocols are provided as guidelines to ensure that contact by all Councillors with Council staff is undertaken in a consistent and orderly fashion.

As Councillors would be aware, providing direction to staff is prohibited under the *Local Government Act 2020*. It is the responsibility of the Chief Executive Officer to manage the staff resources of the organisation and inappropriate direction is in breach of the Act.

The following protocols are not designed to prevent contact between staff and Councillors, but rather are designed to provide the staff with the confidence that their conversations will not be used to form an argument in a debate.

It will also assist Councillors in avoiding the accusation that they are inappropriately involving themselves in operational activities.

5.2.20.2 Reasons for Councillor / Staff Contact

There are many reasons that direct contact with staff will assist Councillors in undertaking their civic duties, these may include but are not limited to the following;

- a) Questions around planning permit reports prior to making a decision
- b) Finding information to answer questions from residents
- c) Financial information
- d) Status reports on various programs
- e) Assistance with diary commitments and travel arrangements
- f) Discussions on meeting minutes etc

5.2.20.3 Process for Receiving Information

The process for Councillors to follow when seeking information that a staff member may be able to assist with is as follows;

- a) Submit a request via text, phone or in person to the Chief Executive Officer or relevant Director to provide the information
- b) Submit a request via text, phone or in person to the Chief Executive Officer or relevant Director to meet with the staff member.

5.2.20.4 Working with the Executive Assistant

The Executive Assistant provide administrative support for Councillors. Councillors are permitted to contact the staff member directly regarding any of the following;

- a) Diary management including RSVPs
- b) Travel arrangements
- c) Accommodation arrangements
- d) Itinerary preparation
- e) Arranging meetings as required.

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5.2.21 Access to Council Buildings

Councillors are entitled to have access to the council chamber (subject to availability) and public areas of council's buildings during normal business hours and for meetings. Councillors needing access to these facilities at other times must obtain authority from the CEO.

Councillors must not enter staff-only areas of council buildings without the approval of the CEO or as provided for in the procedures governing the interaction of Councillors and Council staff.

Councillors must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence Council staff decisions.

Councillors will have access to Council Chambers and Public Meeting rooms for the following;

- a) Forums
- b) Council Meetings
- c) Official Ceremonies

**Councillors do not have direct access to any other council buildings including council owned depots.*

5.2.22 Privacy

Councillors are also reminded that the Council complies with the YSC Information Privacy Policy, *Privacy and Data Protection Act 2014, Health Records Act 2001* and other relevant legislation. These documents regulate to the management, collection, use and disclosure of 'personal information'. If a recognised agency or Government body lawfully approaches you for any of the above information you should refer them to your CEO.

5.2.23 Conflict resolution

As required by the Act, the Councillor Code of Conduct must outline the processes to be followed should a conflict arise between Councillors.

It's expected that prior to any formal dispute resolution processes commencing, Councillors will endeavour to resolve their differences between themselves.

If Councillors cannot resolve disputes amongst themselves, the Act creates several levels for the management of Councillor Conduct issues, being;

Degree of Seriousness	Responsible Authority
Misconduct: Any breach of a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct.	Internal Arbitration with an arbiter who is from the Secretary panel list.
Serious Misconduct: Any of the following: The failure by a Councillor to comply with the Councils Internal Arbitration process; The failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147 The failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor The failure of a Councillor to comply with a direction of a Councillor Conduct Panel	Councillor Conduct Panel

<p>Continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167 (1)(b)</p> <p>Bullying by a Councillor of another Councillor or a member of Council Staff</p> <p>Conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff</p> <p>The disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information</p> <p>Conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff</p> <p>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</p>	
<p>Gross Misconduct:</p> <p>Behaviour by a Councillor that demonstrates:</p> <p>Is not of good character; or</p> <p>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.</p>	<p>VCAT</p>

If a complaint is made that a Councillor had breached the Councillor Code of Conduct Councils internal resolution procedure will be followed. The Councillor Code of Conduct sets out the process that will be followed and the sanctions that can be applied against a Councillor should the complaint be upheld.

To ensure a fair process is undertaken, complaints under the internal resolution procedure are investigated by an independent mediator or arbiter.

Allegations of Misconduct, Serious Misconduct and Gross Misconduct are dealt with externally and independently from Council by either an Arbiter, Councillor Conduct Panel or VCAT

APPENDIX 1: Internal Resolution Procedure

5.2.24 **Commitment to online/electronic communications**

Part 12 Amendment of the Local Government Act 2020 enables meetings to be conducted by electronic means.

5.3 Compliance with good governance measures

A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following—

- *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;*
- *The Council expenses policy adopted and maintained by the Council under section 41 of the Ac*

- *The Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act*
- *Any directions of the Minister issued under section 175 of the Act.*

5.3.1 Personal Interest Returns

A Councillor will find, on occasions, that there is a conflict or incompatibility between personal interests and their declaration to “..... faithfully and impartially” fulfil their public duties. The Act provides a mechanism to deal with these situations.

Within thirty days of making the oath of office, a Councillor must complete a written Initial Personal Interests Return to disclose any matters which might conflict with their public duty. These returns are then completed twice yearly.

These forms are held in a register which is maintained by the CEO. The register may be inspected by any person following a written application to do so.

Councillors will be reminded when Personal Interest Returns are due and this will be discussed in more detail during the Councillor Induction program.

Source: Register of Interests Guide – Primary and Ordinary Returns

5.3.2 Councillor Expenses

Council adopted the Council Expenses Policy at the June 2020 Ordinary Council meeting, the purpose of this policy is to establish the basis by which Councillors will be reimbursed for expenses while undertaking their role as Councillor. These include;

5.3.2.1 Administrative Support

An appropriate level of administrative support will be made available to assist the Mayor and Councillors in performing their roles. Administrative support may include, but not be limited to, the preparation of correspondence, responding to invitations, press release research, and constituent/community contact activities.

5.3.2.2 Communication and Internet Expenses

Council will pay a maximum monthly amount of \$15 inclusive of usage and service provision charges from a recognised telecommunications provider, increased annually by CPI/rates increase if Councillors wish to use their own phone or a phone will be provided. Councillors will also be provided with internet access for their tablet computer and Council will pay all associated connection fees and rental charges.

Councillors are required to read and comply with Council’s corporate policies in relation to the use of telecommunication and information technology equipment. Data usage and support requests will be monitored by the Manager Organisational Performance with any concerns reported to the CEO for discussion as deemed appropriate.

5.3.2.3 Travel Expenses

Councillors may have the opportunity of attending conferences, seminars and training courses or participate or present as an official Council representative.

The Councillor Support and Expenses Policy outlines the processes to be followed in relation to associated travel expenses and arrangements.

5.3.2.4 Councillor Allowances

Councils are divided into three categories based on the income and population of each Council. Yarriambiack Shire Council is classified as a Category 1 Council, the current allowances ranges are available on the Know Your Council Website <http://knowyourcouncil.vic.gov.au/guide-to-councils/how-councils-work/the-system-of-government>.

In addition to these allowances, Councillors also receive an amount the equivalent of the superannuation guarantee. Councillors can choose whether this extra amount contributes to superannuation or not.

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Councillor allowances are paid monthly in.

The Act specifies that that a Council does not have to pay an allowance to a Councillor who does not wish to receive it.

5.3.2.5 Remote Factor Allowance

Council will also provide compensation to Councillors living in remote areas for the time spent on long distances. This allowance is set at a maximum limit of \$2,000 per annum (a daily rate of \$40).

5.3.2.6 Reimbursement of Expenses

Council will reimburse Councillors for expenses made in accordance with their role.

Examples of these expenses are;

- a) Child care services
- b) Private vehicles used on Council business, based on the ATO reimbursement rate of 66 cents per kilometre and index annually
- c) Travel on Council business
- d) Sustenance and hospitality
- e) Conferences and training

Councillors should familiarise themselves with the Council Policy on Council Expenses prior to expending their own funds.

All expense payments and reimbursements in relation to Councillors will be subject to approval by the CEO. Councillors must provide appropriate evidence with an explanation of the reason for the expense.

The Executive Assistant will be able to assist Councillors with expense reimbursements.

5.3.3 Councillor Facilities

In addition, each Councillors will be entitled to the following home/workplace facilities;

- a) A tablet, Laptop and specified accessories
- b) Access to internal, email, Council Forum and Meeting minutes and agendas.
- c) Each Councillor will be entitled to post, through the Council mailing system and utilising Council supplied stationery, standard mail items, which relate to Council business only. The Executive Assistant will assist Councillors in the provision of mail services.
- d) Council shall, upon request, supply Councillors with standard stationery held for the organisations requirements. Stationery may include paper, pens, envelopes, writing pads, business cards and stationery.

5.3.4 Governance Rules and Local Law 2020 – Common Seal & Conduct at Meetings

The detail of how Council's formal meetings are to be conducted is outlined in Councils Governance Rules and the some elements within the Local Law No 6. The Governance Rules and Local Law includes details such as notice requirements, quorum, agenda and minutes, use of the Council seal and the conduct of business.

The Governance Rules also provides Councillors with the rules of debate and how a decision of Council is made. There are a number of ways in which a Councillor can voice their opinion on a matter but it must be in accordance with the Local Law and with the approval of the Chairperson (normally the Mayor) who controls the meeting.

To assist Councillors, the process of debate and a motions guide are presented here for ease of use, however Councillors should read and understand the Governance Rules which are available online.

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5.3.4.1 Meeting Agenda

The Agenda for the Ordinary Council Meeting will be made up of reports on matters which require formal Council resolution such as development applications, awarding of contracts and adopting policies and strategies. These reports contain sufficient information and are set out in a logical, concise and clear style, to enable a well informed decision to be made.

Ideally the report will be no more than two pages in length. Detailed technical and administrative information, such as plans, may be included as attachments to the report.

Currently, the Agenda is available on the Friday prior to the Council Meeting. The media will receive a link to the Agenda on Councils website on the Friday night prior to the Council Meeting.

5.3.4.2 Minutes

The Minutes of both Ordinary and Special Council Meetings will be available by the Friday week following the Council Meeting.

The Minutes contain the summary of the report presented and the resolution passed by Council. The Minutes from the previous months Council Meeting are confirmed at the next Ordinary Council Meeting.

5.3.5 Gifts, Benefits & Hospitality

Transparent and accountable practices are vital to maintaining the community's trust and its confidence that public resources are being used responsibly and appropriately.

As public officials, our management of any gifts, benefits and hospitality is a practical demonstration of our integrity, impartiality and accountability. It allows our community, business associates and Government to be confident that we make decisions and provide advice free of favouritism, influence and conflicts of interest.

Therefore, as a guiding principle, Councillors should not accept a gift if it is likely to be perceived by a 'reasonable person', as intended to, or likely to, influence him or her in the fair, impartial and efficient discharge of their duties as a member of Council. Refer to Council's Gifts. Benefits & Hospitality Policy.

The following process must be followed for all accepted gifts, Benefits and hospitalities.

Value	Roles and Responsibility
Any Value	<p>Councillor</p> <p>Complete Councillor Gifts, Benefits & Hospitality Declaration Form and submit to the Mayor or Chief Executive Officer</p> <p>Mayor and Councillor Support – Executive Assistant (EA)</p> <p>Formally acknowledge the giver on behalf of the Councillor</p> <p>Finalise form and submit to the Councillor Support Officer (EA) or Manager of Organisational Performance.</p> <p>Department of Organisation Performance and/or Councillor Support Officer (EA) to complete and update Councillor Register and Website</p>

Yarriambiack Shire Councillors will record all campaign donations in their Election Campaign Donation Return as per section 307 of the Local Government Act 2020.

5.3.6 **Land use planning, development assessment and other regulatory functions.**

Councillors should be aware that there are circumstances in which staff have independent authority which is conferred by other legislation. For example, Environmental Health Officers have a range of powers and responsibilities under the Health Act and are not formally accountable to the Council for actions taken under this authority. This is of particular note in Local Laws, Fire Management, Animal Control, Land Use Planning, Building and Emergency Management.

Councillors and staff need to be sensitive to tensions which can arise in these circumstances. Good communication can to a large degree address any issues that may arise.

5.3.7 **Council Record Keeping**

Councillors are to treat all electronic communication as discoverables. Any document read or created as a council document should be treated as a council record, including such documents housed on personal devices or with a person internet service provider. The destroying, alter, share or disposal of council records can only be in accordance with Councils Record Management Policy and Procedures.

5.4 **Councillors must not discredit or mislead council or public standard**

- *In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.*
- *In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.*

5.4.1 **Misuse of Position**

In performing the role, the Councillors must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

Councillors must ensure they do not misuse their position to gain, or attempt to gain, directly or indirectly an advantage for themselves or for another person, or to cause, or attempt to cause detriment to the Council or another person.

Councillors must not direct or improperly influence, or seek to direct or improperly influence, a member of Council staff or members of the public.

5.4.2 **Internet Access**

Yarriambiack Shire Council's Information, Communication and Technology (ICT) resources are to be used in an ethical and efficient manner within a sound governance framework, thereby enabling Council's assets to be appropriately managed within acceptable risk tolerances. A key underpinning goal of this approach is to ensure users of ICT resources behave in ways that support the business activities and objectives of Council.

Official use of Council owned or provided ICT resources means usage undertaken for a business need to assist in carrying out the work of Council. Refer to YSC ICT Policy.

5.4.3 **Conflict of Interest**

Disclosure of conflict of interest at a Council Meeting, Delegated or Community Asset Committee Meeting

A Councillor who has a conflict of interest in a matter which is to be considered or discussed at a Meeting at which he or she

- 1) Is present must disclose that conflict of interest by explaining the nature of the conflict of interest to those present at the Meeting immediately before the matter is considered

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- 2) Intends to be present must disclose that conflict of interest by providing to the Chief Executive Officer before the Meeting commences a written notice;
 - a) Advising of the conflict of interest
 - b) Explaining the nature of the conflict of interest
 - c) Detailing, if the nature of the conflict of interest involves a Councillor's or Member's relationship with or a gift from another person, the;
 - i. Name of the other person
 - ii. Nature of the relationship with the that other person or the date of receipt, value and type of gift received from the other person
 - iii. Nature of that other person's interest in the matter
 - iv. And then immediately before the matter is considered at the Meeting announcing to those present that he or she has a conflict of interest and that a written notice has been given to the Chief Executive Officer under this rule.

The Councillor must, in either event, leave the Meeting immediately after giving the explanation or making the announcement (as the case may be) and not return to the Meeting until after the matter has been disposed of.

The definitions of general and material conflict of interests are located at Section 127 and 128 of the Act. Councillors should read this section of the Act carefully as it will be the individual Councillors' decision on whether to declare or not. The CEO and staff are not able to advise Councillors on this issue.

5.4.4 Gifts, Benefits and Hospitality & Bribery

No Councillor shall, either directly or indirectly, solicit or accept gifts or presents from any member of the public involved with any matter that is connected with the duties of the officer, or in which the Council is interested.

Councillors must exercise the utmost discretion in accepting hospitality from contractors or their representatives, or from organisations, firms or individuals with whom they have official dealings. Councillors should also make attempts to avoid the ambiguous situation created by visiting the premises of a contractor, organisation, firm or individual uninvited and/or not on official business.

Offers of bribes, commissions or other irregular approaches from organisations or individuals (no matter how flimsy the evidence available), must be promptly brought to the attention of the CEO or the Mayor.

5.4.5 Fraud & Corruption – breaches of Code of Conduct

Misconduct by a Councillor means any beach by a Councillor of the prescribed standards of Conduct included in the Councillor Code of Conduct.

If a complaint is made that a Councillor had breached the Councillor Code of Conduct, Council's internal resolution procedure will be followed. The Councillor Code of Conduct sets out the process that will be followed and the sanctions that can be applied against a Councillor should the complaint be upheld.

To ensure a fair process is undertaken, complaints under the internal resolution procedure are investigated by an independent mediator or arbiter.

Allegations of Misconduct, Serious Misconduct and Gross Misconduct are dealt with externally and independently from Council by either an Arbiter, Councillor Conduct Panel or VCAT.

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5.4.6 Elections

The election Period Policy contained in the Governance Rules 2020 provides Councillors an outline of expected behaviours for the conduct of Council business during the lead-up to a General Election. Refer to Chapter 7 of the Governance Rules 2020.

A Councillor who nominates as a candidate for a state or federal election (a Nominated Candidate), must apply for leave of absence from the Council and this leave of absence must 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 must not attend meetings of the Council or otherwise act as a Councillor.

5.4.7 Values & Behaviours

Values are ideals that guide or qualify our personal conduct. Like morals, they help us distinguish right from wrong and tell us how we can conduct our lives (both work and personal) in a meaningful way. Values provide the perspective in the best and the worst of times.

Our values and behaviours impact on our organisation in the following ways;

- 1) How we feel, our morale, our enjoyment and fulfilment levels
- 2) Our ability to function efficiently and effectively
- 3) Our colleagues, customers and our team performance
- 4) The community's perception of our organisation
- 5) Our ability to achieve the Council Plan and ultimately fulfil the Yarriambiack Shire Council objectives.

5.4.8 Complaint Handling

Complaints or disclosures other than protected disclosures will be handled in accordance with Council's Complaints Handling Policy.

If a Councillor receives a complaint from a resident it should be immediately referred to the Executive Assistant to determine if it needs to be managed under Council's Customer Complaints Policy.

Customer complaints are managed through the Operational Performance Department with the complainant receiving acknowledgement of their complaint within 10 business days with the aim to resolve all complaints within 28 days.

An internal review process has been established if the customer is not satisfied that their complaint has been resolved or was handled incorrectly.

The Yarriambiack Shire Council is committed to ensuring that personal information collected, stored and used by Council is handled in a responsible manner and in accordance with the Privacy and Data Protection Act 2014.

Personal Information is information that can be used on its own or with other information to identify, contact, or locate a person, or whose identity can be ascertained from the information.

Information provided will be retained for Council use only and will not be disclosed except as required by law or with consent.

Council is required to collect and use personal, confidential and sensitive information from individuals and therefore, abides by the Information Privacy Principles identified in the Privacy and Data Protection Act 2014.

The objective of Council's Public Transparency Policy is to formalise its support for transparency in its decision-making processes (including complaints handling) and to promote public awareness of the availability of Council information.

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5.4.8.1 Public Transparency Principles

Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act.

- 1) Council information must be publicly available unless;
 - a) The information is confidential by virtue of this Act or any other Act
 - b) Public availability of the information would be contrary to the public interest
- 2) Council information must be understandable and accessible to members of the municipal community
- 3) Public awareness of the availability of Council information must be facilitated.

Source: Yarriambiack Complaints Handling Policy, Information Privacy Policy & Public Transparency Policy

5.5 Standards do not limit robust political debate Standard

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

5.6 Review of Councillor Code of Conduct

Council may review or amend the Code of Conduct at any time.

5.7 References

YSC Governance Rules 2020

YSC Common Seal & Conduct Meetings Policy

Occupational Health and Safety policy

Information Privacy Policy

Complaints Handling Policy

Public Transparency Policy

Human Rights Charter

Occupational Health and Safety Act (2004)

Workplace Injury Rehabilitation and Compensation Act (2013)

Crimes Act (1958)

Equal Opportunity Act (2010)

Local Government Act 2020

Local Government(Governance and Integrity) Regulations 2020

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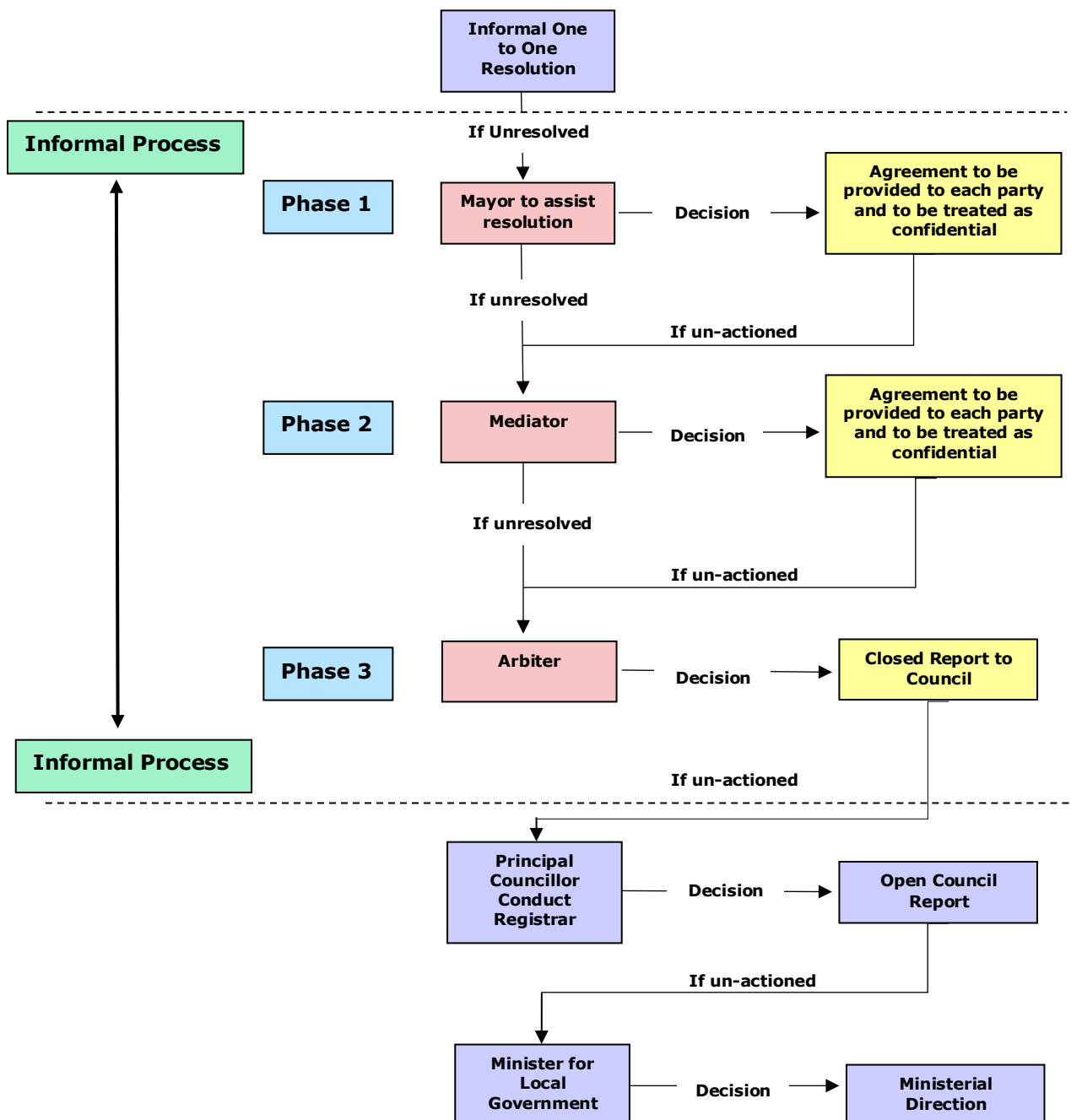
APPENDIX 1: Internal Resolution Procedure

Before commencing the formal internal resolution procedure outlined below, the Councillors who are parties to an alleged contravention of this Code will endeavour to resolve the matter informally in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

The Council’s three phase dispute resolution process involves;

- direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance
- external mediation by an independent mediator engaged by the CEO
- an internal resolution procedure involving an independent arbiter.

Dispute Resolution Process Flowchart



PHASE 1 – Direct Negotiation

Where Councillors who are in dispute have not been able to resolve the dispute between them, either (or both) party (parties) may request the Mayor to convene a meeting of the parties.

A dispute referred for direct negotiation may relate to;

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council
- an alleged contravention of the Councillor Code of Conduct.

The party requesting the direct negotiation meeting 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 “direct negotiation” dispute resolution process.

Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must;

- specify the name of the Councillor alleged to have contravened the Code
- specify the provision(s) of the Code that is alleged to have been contravened
- 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
- be signed and dated by the requestor or the requestor’s representative.

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.

The Mayor is to ascertain whether or not the other party is prepared to attend a “direct negotiation” meeting.

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.

If the other party declines to participate in a meeting, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party consents to a meeting, 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.

The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act, and the observation of the councillor conduct principles and the Councillor Code of Conduct.

The Mayor is to document any agreement reached at the meeting and the parties are required to sign the agreement. Copies of the agreement are to be provided to both parties and are to be treated as confidential.

Where one party does not comply with the agreement, the other party has recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

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 external mediation or the internal resolution

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procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

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 – External Mediation

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for “direct negotiation”.

An application made for a dispute to be referred for external mediation may relate to;

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council
- an alleged contravention of the Councillor Code of Conduct.

The applicant is to submit a written application to the Principal 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 an “external mediation”.

Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must;

- specify the name of the Councillor alleged to have contravened the Code
- specify the provision(s) of the Code that is alleged to have been contravened
- 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.

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 Principal Conduct Officer or as soon as practical thereafter.

The Principal Conduct Officer is to ascertain (in writing) whether or not the other party is prepared to attend an “external mediation”. If the other party declines to participate in an external mediation, he or she is to provide their reasons for doing so in writing to the Principal Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

When the other party declines to participate in an external mediation, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party agrees to participate in an external mediation, the Principal Conduct Officer is to advise the applicant, the Mayor and CEO forthwith.

The CEO is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The mediator is to document any agreement reached at the meeting and both parties are required to sign the agreement. Copies of the agreement are to be provided to both parties and are to be treated as confidential.

Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

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

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applicant has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

PHASE 3 – Internal Resolution Procedure – Arbiter

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is 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 the Council and the Council so resolves
- the application were 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
- the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

A councillor or a group of Councillors may make an application alleging that a Councillor has contravened this Councillor Code of Conduct. The application must;

- specify the name of the Councillor alleged to have contravened the Code
- specify the provision(s) of the Code that is alleged to have been contravened
- 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.

The application must be submitted to the Council’s Principal Conduct Officer.

An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

On receiving an application, the Principal Conduct Officer will;

- advise the Mayor and CEO of the application without undue delay
- provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application
- 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

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- attend the hearing(s) and assist the arbiter in the administration of the process

In identifying an arbiter to hear the application, the Principal Conduct Officer must select an arbiter who is suitably independent and able to carry out the role of arbiter fairly.

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 alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council
- give a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council
- recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct.

In considering an application alleging a contravention of the Councillor Code of Conduct, an arbiter will;

- in consultation with the Principal Conduct Officer, fix a time and place to hear the application
- authorise the Principal 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
- consider an application by an applicant or a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application
- 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.

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

An arbiter;

- may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened the Code;
- may find that a Councillor who is a respondent to an internal resolution procedure has contravened the Code
- will suspend consideration of an internal resolution procedure during the election period for a general election.

The arbiter is to give a copy of his or her findings and the statement of reasons to the Council, the applicant and the respondent. 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 contravened the Code, recommend an appropriate sanction or sanctions for the contravention for consideration by the Council.

A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next ordinary meeting of the Council for its consideration.

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If an arbiter has found that a contravention of the Code has occurred, the Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor;

- direct the Councillor to make an apology in a form or manner specified by the Council
- direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (in respect of the next scheduled meetings of the Council)
- direct that, for a period of up to, but not exceeding, 2 months on a date specified by the Council the Councillor:
 - be removed from any position where the Councillor represents the Council
 - 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 does not participate in the internal resolution procedure may be guilty of misconduct. The Act provides that misconduct by a Councillor means any of the following;

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

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

Council Approved Policy

Policy Adopted:	11 July 2006	Minute Page 31	Version 1
Policy Reviewed:	11 November 2009	Minute Page 34	Version 1
	12 December 2012	Minute Page 26	Version 1
	13 March 2013	Minutes Page 28	Version 1
	22 October 2014	Minute Page 34	Version 1
	13 July 2016 Special Meeting	Minute Page 2	Version 2
	22 February 2017 Special Meeting	Minute Page 2	Version 3
	26 June 2019	Minute Page 152	Version 4
	27 February 2021	Minute Page 34	Version 5