

# **MINUTES**

## **Statutory Meeting of Council**

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**9:30am Wednesday 18 November 2020**

**VENUE:**  
**Council Chambers**  
**Yarriambiack Shire Council**  
**34 Lyle Street, Warracknabeal Vic 3393**

**NEXT MEETING:**  
**Wednesday 25 November 2020**

Copies of the Yarriambiack Shire Council's Agendas & Minutes  
can be obtained online at <http://www.yarriambiack.vic.gov.au>

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## ***OUR VISION:***

In consultation with our community, Yarriambiack Shire Council aims to provide a viable, sustainable and vibrant future.

## ***OUR VALUES:***

### Customer Service

- 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 and 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;
- we are honest, trustworthy, reliable, transparent and accountable in our dealings;
- we are careful, conscientious and diligent;
- use public resources economically and efficiently; and
- actively pursue positive outcomes for the community.

## ***CONTINUOUS IMPROVEMENT:***

Continuous Improvement We drive continuous and sustainable improvement in service provision, operational efficiency and stakeholder relations to create a leading organisation.

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**1 WELCOME**

**2 ACKNOWLEDGEMENT & PRAYER**

Chief Executive Officer Ms Jessie Holmes opened the meeting at 9:30am by acknowledging the Indigenous Community and offering the opening prayer.

**Acknowledging Traditional Owners**

'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'

**Prayer**

*Almighty God, without whom no Council can stand nor anything prosper we ask that you be present and guide us in our deliberations today. We pray that we will be fair in our judgements and wise in our actions and that decisions will be made with goodwill and a clear conscience for the betterment and welfare of the people of Yarriambiack Shire.*

*Amen*

**3 PRESENT**

Tom Hamilton- Cllr elect  
Corrine Heintze – Cllr elect  
Graeme Massey – Cllr elect  
Kylie Zanker – Cllr elect  
Karli Kirk – Cllr elect  
Chris Lehmann – Cllr elect  
Andrew McLean – Cllr elect  
Jessie Holmes - CEO  
Tammy Smith - Director  
Michael Evans - Director  
Gavin Blinman -Director

**4 APOLOGIES**

**5 MAYORAL REPORT 2019/20 - Presented by Cr G Massey**

## 6 OATH OF OFFICE / AFFIRMATION

Under Section 30 of the Local Government Act 2020 each Councillor to individually take the Oath of Office/Affirmation before the Chief Executive Officer.

**The following order:-**

Cr T Hamilton	Affirmation
Cr C Heintze	Oath
Cr G Massey	Oath
Cr K Kirk	Affirmation
Cr C Lehmann	Oath
Cr K Zanker	Oath
Cr A McLean	Affirmation

## 7 DECLARATION TO ABIDE BY THE CODE OF CONDUCT

Councillors sign a personal declaration to declare they have read the Councillor Code of Conduct for Yarriambiack Shire Council adopted on the 26 June 2019 and declare they will abide by this Code.

Signed declarations will be attached to the Minutes of the Meeting.

## 8 FIXING OF THE MAYORAL TERM

As per Section 26 (3) of the Local Government Act 2020, prior to the election of a Mayor, Council must determine if the Mayor is to be elected for one or two years

***Motion:***

That Council determine the Mayor be elected for a one year term

**Resolution**

Moved Cr T Hamilton Seconded Cr C Heintze

That the recommendation be adopted

**Carried**

## 9 DETERMINING UPON A DEPUTY MAYOR ROLE

As per Section 20A of the Local Government Act 2020, Council must determine to establish an office of the Deputy Mayor by resolution.

***Motion:***

That Council determine to establish an office of the Deputy Mayor.

**Resolution**

Moved Cr K Kirk Seconded Cr G Massey

That the recommendation be adopted

**Carried**

## 10 FIXING OF ANNUAL COUNCILLOR REMUNERATION

Allowances paid to Councillors for performing their duties have been set at the range of Category One (\$21,046) and have not been adjusted from the 2019 range, as the independent tribunal to determine Councillor allowance is yet to be established.

***Motion:***

That Council allowance be paid at \$21,046.68 to Councillors for performing their duties.

**Resolution**

Moved Cr K Zanker Seconded Cr T Hamilton

That the recommendation be adopted

**Carried**

## 11 FIXING OF MAYOR'S REMUNERATION

Allowances paid to the Mayor for performing their duties have been set at the range of Category One (\$63,141.06) and have not been adjusted from the 2019 range, as the independent tribunal to determine Councillor allowance is yet to be established.

***Motion:***

That an allowance be paid at \$63,141.06 to the Mayor for performing their duties.

**Resolution**

Moved Cr K Kirk Seconded Cr C Heintze

That the recommendation be adopted

**Carried**

## **12 ELECTION OF MAYOR**

Nominations will be invited for office of Mayor for 2020/21.

Cr C Lehmann nominated Cr A McLean Seconded Cr A McLean as Mayor for 2020/2021

Cr A McLean accepted the nomination.

Cr K Zanker nominated Cr G Massey Seconded Cr C Heintze as Mayor for 2020/2021

Cr G Massey accepted the nomination.

A Vote as show of hands was undertaken to determine the role of Mayor for 2020/2021

As determined by the Yarriambiack Shire Council Governance Rules 2020 .....

A show of hands was asked for Cr A McLean as Mayor  
Cr C Lehmann  
Cr A McLean

A show of hands was asked for Cr G Massey as Mayor  
Cr K Kirk  
Cr C Heintze  
Cr T Hamilton  
Cr K Zanker  
G Massey

Cr G Massey was declared Mayor for 2020/2021

## **13 ELECTION OF DEPUTY MAYOR – if determined**

Nominations will be invited for office of Deputy Mayor for 2020/21

Cr T Hamilton nominated Cr K Zanker seconded Cr C Heintze as Deputy Mayor for 2020/2021

No further nominations

Cr K Zanker declared as Deputy Mayor for 2020/2021

## **14 CONGRATULATORY REMARKS TO THE MAYOR**

Councillors may wish to offer their congratulations to the newly elected Mayor followed by the Chief Executive Officer.

**15 MAYORAL RESPONSE**

Mayor to acknowledge congratulations and to address meeting

**16 DEPUTY MAYOR RESPONSE**

Deputy Mayor to acknowledge congratulations and to address meeting



**17 PROPOSED COUNCIL DELEGATIONS FOR 2020/21 -**

<b>Delegation</b>	<b>Councillor</b>
GWM Water Regional Recreation Water Users Group	Corinne Heintze
Grampians Central West Waste & Resource Recovery Group	Andrew McLean
Henty Highway Action Group	Chris Lehmann
Internal Audit Committee	Kylie Zanker & Graeme Massey
Municipal Association of Victoria	Mayor
North West Municipalities Association	Mayor
Rail Freight Alliance	Tom Hamilton
Seasonal Conditions Committee	Corinne Heintze
Sunraysia Highway Improvement Committee	Andrew McLean
Warracknabeal Saleyards Committee	Kylie Zanker
Wimmera Development Association	Karly Kirk
Wimmera Mallee Tourism Association	Kylie Zanker
Wimmera Southern Mallee Regional Transport Group	Karly Kirk
Western Highway Action Committee	Kylie Zanker
BY5 Steering Committee	Karly Kirk
Yarrilinks – Yarriambiack Landcare Group	Corinne Heintze
Yarriambiack Tourism Association	Graeme Massey / Tom Hamilton / Chris Lehmann
Council Youth Action Committee	Kylie Zanker

**18 MEETING CLOSE**

The next meeting of Council will be held on Wednesday, 25 November 2020 at 9:30am at Warracknabeal.

\_\_\_\_\_  
**Mayor**

## Affirmation of Office

*I, **Karly Deanne Kirk** solemnly and sincerely declare and affirm that I will undertake the duties of the office of Councillor in the best interests of the municipal community.*

*I will abide by the Councillor Code of Conduct and uphold the standards of conduct set out in the Councillor Code of Conduct.*

*I will faithfully and impartially carry out and exercise the functions, powers, authorities and discretions vested in me under the Local Government Act 2020 and any other Act to the best of my skill and judgement.*

Signature:



Date:

**18<sup>th</sup> November 2020**

Chief Executive Office:

**Ms Jessie Holmes**

Signature:



Date:

**18<sup>th</sup> November 2020**



## Oath of Office

*I, **Corinne Marjorie Heintze** swear by Almighty God that I will undertake the duties of the office of Councillor in the best interests of the municipal community.*

*I will abide by the Councillor Code of Conduct and uphold the standards of conduct set out in the Councillor Code of Conduct.*

*I will faithfully and impartially carry out and exercise the functions, powers, authorities and discretions vested in me under the Local Government Act 2020 and any other Act to the best of my skill and judgement*

Signature:



Date:

**18<sup>th</sup> November 2020**

Chief Executive Office:

**Ms Jessie Holmes**

Signature:



Date:

**18<sup>th</sup> November 2020**



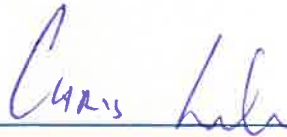
## Oath of Office

*I, **Christopher Keith Lehmann** swear by Almighty God that I will undertake the duties of the office of Councillor in the best interests of the municipal community.*

*I will abide by the Councillor Code of Conduct and uphold the standards of conduct set out in the Councillor Code of Conduct.*

*I will faithfully and impartially carry out and exercise the functions, powers, authorities and discretions vested in me under the Local Government Act 2020 and any other Act to the best of my skill and judgement*

Signature:



Date:

**18<sup>th</sup> November 2020**

Chief Executive Office:

**Ms Jessie Holmes**

Signature:



Date:

**18<sup>th</sup> November 2020**



## Oath of Office

*I, **Kylie Louise Zanker** swear by Almighty God that I will undertake the duties of the office of Councillor in the best interests of the municipal community.*

*I will abide by the Councillor Code of Conduct and uphold the standards of conduct set out in the Councillor Code of Conduct.*

*I will faithfully and impartially carry out and exercise the functions, powers, authorities and discretions vested in me under the Local Government Act 2020 and any other Act to the best of my skill and judgement*

Signature:



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Date:

**18<sup>th</sup> November 2020**

Chief Executive Office:

**Ms Jessie Holmes**

Signature:



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Date:

**18<sup>th</sup> November 2020**



## Affirmation of Office

*I, **Thomas Edwin Hamilton** solemnly and sincerely declare and affirm that I will undertake the duties of the office of Councillor in the best interests of the municipal community.*

*I will abide by the Councillor Code of Conduct and uphold the standards of conduct set out in the Councillor Code of Conduct.*

*I will faithfully and impartially carry out and exercise the functions, powers, authorities and discretions vested in me under the Local Government Act 2020 and any other Act to the best of my skill and judgement*

Signature:



Date:

**18<sup>th</sup> November 2020**

Chief Executive Office:

**Ms Jessie Holmes**

Signature:



Date:

**18<sup>th</sup> November 2020**



## Affirmation of Office

*I, **Andrew Robert McLean** solemnly and sincerely declare and affirm that I will undertake the duties of the office of Councillor in the best interests of the municipal community.*

*I will abide by the Councillor Code of Conduct and uphold the standards of conduct set out in the Councillor Code of Conduct.*

*I will faithfully and impartially carry out and exercise the functions, powers, authorities and discretions vested in me under the Local Government Act 2020 and any other Act to the best of my skill and judgement*

Signature:



Date:

**18<sup>th</sup> November 2020**

Chief Executive Office:

**Ms Jessie Holmes**

Signature:



Date:

**18<sup>th</sup> November 2020**





## Oath of Office

*I, **William Graeme Massey** swear by Almighty God that I will undertake the duties of the office of Councillor in the best interests of the municipal community.*

*I will abide by the Councillor Code of Conduct and uphold the standards of conduct set out in the Councillor Code of Conduct.*

*I will faithfully and impartially carry out and exercise the functions, powers, authorities and discretions vested in me under the Local Government Act 2020 and any other Act to the best of my skill and judgement*

Signature:



Date:

**18<sup>th</sup> November 2020**

Chief Executive Office:

**Ms Jessie Holmes**

Signature:



Date:

**18<sup>th</sup> November 2020**







# **COUNCILLOR CODE OF CONDUCT**

**This Code, which incorporates the statutory requirements specified for a Code of Conduct in accordance with section 76C of the Local Government Act 1989, was adopted by the Yarriambiack Shire Council on 26 June 2019.**

**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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## Policy Objective

To adopt a Code of Conduct for Councillors to use as guidelines, pursuant to the Local Government Act 1989.

## Introduction

As Yarriambiack Shire Councillors, we are committed to working together in the best interests of the people within our municipality and in discharging our responsibilities to the best of our skills and judgement.

Our commitment to working together constructively will enable us to work with and empower the community by taking a strategic and forward thinking approach to our future. One that is mindful of our heritage, enhances our environment, creates economic growth and fosters a strong community spirit.

This Code of Conduct is part of Council's commitment to governing our Shire effectively and adhering to the principles of good governance.

Good governance is the complex set of processes, protocols and behaviours which lead to good decisions.

Good decisions are those which are informed by evidence and good advice, contributed to and understood by communities, underpinned by integrity and make sense in the long term interests of the community.

We also recognise that good governance means ensuring that the diversity of views and opinions in our community are given proper weight in the decision making process. However, Good Governance is also about **accountable leadership**. When we meet as a Council and take decisions, those decisions must be made in the long term best interests of the whole Municipality.

This Code of Conduct does not apply to Council Staff. Council Staff are bound by the Yarriambiack Employee Code of Conduct.

## Primary Role of Council

The primary role of Council is to provide leadership for the good governance of Yarriambiack. The role of Council also includes:

- Acting as a representative government by taking into account the diverse needs of the local community in decision making;
- Providing leadership by establishing strategic objectives and monitoring their achievements;
- Maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;
- Advocating the interests of the local community to other communities and governments;
- Acting as a responsible partner in government by taking into account the needs of other communities; and
- Fostering community cohesion and encouraging active participation in civic life.

## Roles and Responsibilities

All decisions are made at Council meetings or through delegations that are formally made by Council. Councillors may exercise authority as a member of Council:

- After they are formally sworn in;
- Have read and signed the Councillor Code of Conduct; and
- When they met formally as Council.

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

### Mayor

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

The Mayor provides leadership to Council and carries the respect and authority given by Council, the Councillors and the Local Government Act 1989.

Section 73AA of Act describes the functions of the Mayor to be:

- Providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65, and the observation of the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C; and
- Acting as the principle spokesperson for the Council; and
- Supporting good working relations between Councillors; and
- Carrying out the civic and ceremonial duties of the office of Mayor.

### 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.

### Deputy Mayor

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

### Councillors

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

- Participate in the decision making of the council;
- To represent the local community in that decision making;
- 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.

Section 65(2) of the Act states that in performing the role of a Councillor, a Councillor must

- Consider the diversity of interests and needs of the local community; and
- Observe principles of good governance and act with integrity;

- Provide civic leadership in relation to the exercise of various functions and responsibilities of the Council;
- Participate in the responsibility allocation of the resources of Council through the annual budget; and
- Facilitate effective communication between the Council and the community.

In accordance with this commitment, Councillors will:

- Strive to achieve the best outcomes for the Yarriambiack Shire Council;
- Work with colleagues and staff in an atmosphere of mutual respect;
- Be honest and open with other Councillors;
- Recognise and respect the strengths and weaknesses of fellow Councillors and where possible offer encouragement and support;
- Ensure punctual attendance at meetings;
- Debate contentious issues without resorting to personal acrimony or insult; and
- Refrain from personal attacks on other Councillors and focus on the issue at hand.

### **Chief Executive Officer**

Within this framework of strategic leadership, advocacy and representative government, sections 94 and 94A of the Act provide for the establishment of the position and duties of the Chief Executive Officer who is to be responsible for:

- Establishing and maintaining an appropriate organisational structure for Council;
- Ensuring that the decisions of Council are implemented without undue delay;
- The day to day management of Council's operations in accordance with the Council Plan;
- Developing, adopting and disseminating a Code of Conduct for Council staff
- Providing timely advice to Council; and
- Appointing and managing all Council staff and managing all issues that relate to Council staff.

### **Councillor and Staff Interaction**

Councillors will generally interact with staff for the following reasons:

- Request for information;
- Requests for service (generally on behalf of others); and
- General discussion about Council matters.

Interaction can be written or verbal and may occur at a range of events such as Councillor briefings, forums, committee meetings, civic receptions, workshops, informal meetings or other formal and informal opportunities.

If any Councillor or staff member has concerns in regard to interaction between councillors and staff, the matter will be referred to the CEO who is responsible for the management of such interactions.

As per the section 76E(1) of the Local Government Act 1989 a Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member.

When Councillors interact with staff, they must:-

- Act respectfully towards staff, dealing in a professional, courteous, fair equitable and honest manner and avoid using behaviour that may intimidate staff;
- Work co-operatively with staff to achieve Council goals;
- Develop mature and constructive working relationships based on mutual trust, respect and recognition of common goals;
- Understand and respect the distinction in roles of Councillors and staff, acknowledging that the CEO is responsible for the operations of Council and management of staff;
- Not involve themselves directly or indirectly in any personnel matter relating to a Council officer;
- Not direct or instruct members of staff in the performance of their duties;
- Refrain from using their position as Councillors to improperly influence member of staff in their duties or functions or to seek preferential treatment or gain an advantage for themselves or others;
- Advise the CEO in a timely manner of any concerns that a Council officer has acted contrary to a Council policy or decision, noting that a discussion pertaining to the performance of a Council officer must be held privately with the CEO in a constructive manner; and
- Refrain from publicly criticising staff in a manner that casts aspersions on their professional competence or credibility.

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

### **Community Expectations**

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:

- (a) In the best interests of the community, and
- (b) In accordance with the Local Government Act 1989.

### **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.

### **Councillor Conduct Principles**

#### **Primary Principles**

In carrying out our role as Councillors, we will;

- Act with integrity;
- Exercise our responsibilities impartially in the interests of the local community;
- Not make improper use of our position to advantage or disadvantage any person.

**Councillor General Conduct Principles**

- Adhere to the conflict of interest requirements of the Local Government Act and avoid any other conflicts between our public duties as Councillors and our personal interests and obligations;
- Act honestly and avoid making oral or written statements and avoid actions that may mislead a person;
- Treat all persons with respect and we show due respect for the opinions, beliefs, rights and responsibilities of other Councillors, Council Officers and members of the community;
- Avoid behaviour that constitutes discrimination and harassment, including sexual harassment or vilification;
- Exercise reasonable care and diligence and submit to lawful scrutiny that is appropriate to our office;
- Try to ensure that public resources are used prudently and solely in the public interest;
- Act lawfully and in accordance with the trust placed in us as elected representatives of our community; and
- We will support and promote these principles by leadership and example, so as to ensure the public has confidence in the office of Councillor.

**Adherence to Code of Conduct**

We confirm that we will adhere to these principles in our general conduct as councillors and specifically by;

Treating all people with **courtesy and respect**; respecting differences in opinions, race, culture, religion, language, gender and abilities. This includes:

- Treating members of the community with dignity and ensuring that neither offence nor embarrassment are caused;
- Treating fellow Councillors with respect, even when disagreeing with their views or decisions;
- Debating contentious issues without resorting to personal acrimony or insult;
- Ensuring punctual attendance at Council and committee meetings;
- Acting with courtesy toward Council staff.

Always acting with **integrity and honesty**:

- Being honest in all dealings with the community, with other Councillors and with Council staff;
- Always acting with impartiality and in the best interests of the community as a whole;



- Not acting in ways that may damage the Council or its ability to exercise good government;
- Exercising reasonable care and diligence in performing our functions as Councillors;
- Complying with all relevant laws, be they Federal, State or Local Laws.

Recognising that we hold a **position of trust** and will not misuse or derive inappropriate benefit from our position:

- We will avoid conflicts of interest and comply with the relevant provisions of the Act and this Code of Governance relating to interests and conflicts of interest;
- We will not exercise undue influence on other Councillors, members of the Council staff or members of the public to gain or attempt to gain an advantage for ourselves;
- We will not accept gifts in our role as Councillors where it could be perceived to influence

Exercising appropriate prudence in the use of **Council Resources**. This includes:

- Not using Council resources, including staff, equipment and intellectual property for electoral or other personal purposes;
- Ensuring that Council resources are always used effectively and economically and for the purposes for which they are provided;
- Ensuring that Council's letterhead or logo is not inappropriately used or not used in a way that creates an impression of Council endorsement;
- Ensuring that claims for out of pocket expenses are accurate and relate strictly to Council business.

### **Gifts, Benefits & Hospitality**

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

Councillors will take all reasonable steps to ensure that immediate family members (as per section 78 of the Local Government Act 1989) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

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

Councillors recognise that gifts equal to or above the gift threshold from a person or body that has direct interest in a matter may give rise to an indirect interest because of receipt of an applicable gift (refer to Council's Gifts, Benefits and Hospitality Policy).

Yarriambiack Shire Councillors will record all campaign donations in their Election Campaign Donation Return as per section 62 of the Local Government Act 1989.



## Confidential Information

Councillors acknowledge that we will comply with our obligations under Section 77 in relation to confidential briefings or information (as defined under the Act) and recognise that this obligation extends to ensuring the safekeeping of 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:

- Ensuring that you do not disclose information relating to proceedings at closed meetings;
- 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;
- Not without lawful authority, disclose otherwise than to the Council, councillor, or a member of staff entitled to know, information concerning any of the following personnel matters concerning particular individuals:
  - The personal hardship of any resident or ratepayer
  - Commercial information the disclosure of which would be likely to prejudice the commercial position of Council and/or any entity engaged with Council
  - To confer a commercial advantage on a competitor of Council
  - To reveal a trade secret
- 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;
- Information that is subject to legal obligations of confidence;
- 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;
- The disclosure of information of which would prejudice the maintenance of the law;
- Matters affecting the security of Council, Councillors, Council staff or Council property

If you are uncertain about what information should be kept confidential, you should discuss this with the CEO.

## Privacy

Councillors are also reminded that the Council complies with the *Privacy and Data Protection Act 2014*, *Health Records Act 2001* and other relevant legislation. This Act regulates 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.

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:

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

### Conflict of Interest Procedures

The Council is committed to making all decisions impartially and in the best interests of the whole community. It therefore recognises the importance of fully observing the requirements of the Act in regard to the disclosure of conflicts of interest.

For the purpose of this Code, “direct interest”, “indirect interest” and “conflicts of interest” have the meanings specified in the Act.

Councillors will comply with all the provisions of the Act in regard to Conflicts of Interest:

- If a Councillor considers that they have a **direct or indirect interest** in a matter before the Council, a special committee of Council or an assembly of Councillors, they have a conflict of interest;
- If a Councillor has a **conflict of interest** in a matter, they will comply with the requirements of the Act and ensure they disclose the class and nature of the interest, leave the room in which the meeting or assembly is being held during any discussion, debate and vote on the matter;
- If a Councillor has a personal interest in a matter to be considered by the Council or special committee that is not a conflict of interest, and the Councillor considers that their personal interest **may be in conflict** with their public duty to act impartially and in the interest of the whole community, the Councillor will declare a **conflicting personal interest** under section 79B of the Act immediately before the matter is considered at the relevant meeting and apply to the Council or special committee to be exempted from voting on the matter.

In addition to the requirements of the Act:

- Councillors will give early consideration to each matter to be considered by the Council, special committee of which the Councillor is a member, or assembly of Councillors, to ascertain if they have a conflict of interest;
- Councillors recognise that the legal onus to determine whether a conflict of interest exists rests entirely with the individual Councillor and that Council Officers cannot offer legal advice in relation to potential conflicts.

## **Pecuniary Interest**

A pecuniary interest is an interest that a person has in a matter because of the likelihood or expectation of financial gain or loss to them, or to another, associated person.

If the interest is remote or insignificant and unlikely to influence a decision, there is no pecuniary interest.

In addition to having a direct interest themselves, a person is believed to have a pecuniary interest if:

- (i) The person's spouse, de facto or relative has a pecuniary interest;
- (ii) The person, a nominee, partner or employer is a member of a company or other body which has a pecuniary interest.

A person is not taken to have a pecuniary interest if they are unaware of the financial interests of their spouse, de facto, relative or other body, or if the person derives no benefit from any shares in the company.

It is the responsibility of individual persons to identify possible areas of conflict and disclosure should be made in accordance with the Local Government Act.

## **Non - Pecuniary Interest**

A non-pecuniary interest is any private or personal interest which does not pertain or relate to money, for example, kinship, friendship, membership of an association, society or trade union or involvement or interest in an activity.

Where the interest is a non-pecuniary one, the person with the interest should not do anything which they could not justify to the public. A person should avoid any occasion for reasonable suspicion or the appearance of improper conduct or partial performance of duty.

## **Dispute Resolution**

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 and the matter still remains unresolved, the parties may resort to any or all of the Council's three phase dispute resolution process.

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 Chief Executive Officer; and
- An internal resolution procedure involving an independent arbiter.

### **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; or
- 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; and
- 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. 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 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 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; or
- 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; and
- 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. A panel comprising of two people established by the Municipal Association of Victoria; one panel member having legal qualifications and the other sector expertise.

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 Chief Executive Officer forthwith.

The Chief Executive Officer 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. 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 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 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; or
- 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; or
- 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; and
- 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 by 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 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;
- 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 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 fairly.

### **Role of Arbiter**

The role of the arbiter is to:

- Consider applications alleging a contravention of the Councillor Code of Conduct;
- Make findings in relation to a application alleging a contravention;
- Recommend an appropriate sanction or sanctions where the arbiter has found a Councillor has contravened the Code of Conduct.

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

- In conjunction with the Principal Conduct Officer, organise 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 necessary to properly consider the application. The arbiter may hold a hearing in front of a judge or commissioner;
- Have discretion in the hearings, conducting them with as little formality and technicality as the arbiter sees fit;
- Ensure that all parties are given an opportunity to be heard;
- Consider an application by 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; and
- Ensure that the hearing(s) are closed to the public.

Where an application to have legal representation is granted by an arbiter, the costs of the respondent's legal representation are to be borne by 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 contrived 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 Council, the applicant and the respondent. The arbiter provides the findings and statement of reasons her 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 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 Council for its consideration. If an arbiter has found that a contravention of the Code has occurred, Council may, after consideration of the arbiters findings, may impose sanctions that comprise any or all the following:

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

If Council imposes sanctions they must be:

- Decided by Council through resolution at a meeting that is closed to the public; and
- Decided by Council at the first meeting of Council after the meeting at which the findings were considered;
- Provided in writing by the Mayor.

### **Failure to Comply with the Internal Resolution Process**

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

### **Hierarchy for Management of Various Levels of Councillor Behaviour**

<b>Seriousness of Misconduct</b>	<b>Responsible Agent</b>
Breach of Councillor Code	Council
Misconduct	Panel
Serious Misconduct	Panel
Gross misconduct	VCAT



**Misconduct**

- failure by a Councillor to comply with the Councillor Code of Conduct and failing to comply with a Council's internal processes; or
- failure by a Councillor to comply with a written direction given by the Councillor Conduct Panel, where the Panel has not made a finding of misconduct against the Councillor.

**Serious Misconduct**

- the failure of a Councillor to comply with a direction of a Councillor Conduct Panel following a finding of misconduct made by the Councillor Conduct Panel in respect of the Councillor; or
- the failure of a Councillor to cease conduct that contravenes the Councillor Code of Conduct after a Councillor Conduct Panel or VCAT has made a finding of misconduct or serious misconduct against the Councillor in respect of that behaviour; or
- conduct by a Councillor that contravenes the Councillor Conduct Principles after the Councillor has had a previous finding of misconduct, serious misconduct, or gross misconduct made against them by a Councillor Conduct Panel or VCAT in the last 4 years; or
- conduct by a Councillor that contravenes section 76E of the Act – Improper direction and Influence and section 77 contravenes Confidential Information.

Misconduct as defined above will be referred to external resolution procedures.

**Gross Misconduct**

- Councillor Conduct contravening the principles and being a contravention of the Local Government Act. Behaviour that demonstrates that a councillor is not good character or is otherwise not a fit and proper person to be a councillor.

Directions by VCAT in relation to a finding of Gross Misconduct are summarised in Appendices 1 & 2.

**External Resolution Procedures**

Referral to an external resolution procedure will occur in accordance with the Act. Procedures and processes outside of Council's internal resolution procedure are summarised in Appendix 1.

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

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

**Caretaker Period**

The Local Government Act 1989 prescribes an 'election period' in the lead up to Council elections being the period that starts on the last day on which nominations for that election can be received and ends at 6pm on election day.

Councillors must comply with the provisions of sections 55D and 93A of the Act and Councillors Caretake Procedure Policy.

### **Signing Code of Conduct**

All incoming councillors following an election are to sign the existing Council Code of Conduct prior to taking the oath of office. Thereafter councillors would be required to sign any revised code to remain qualified to be a Councillor.

### **References and Related Policies**

*Local Government Act 1989*

*Local Government (General) Regulations 2015*

*Chapter 8: Councillor Conduct, Offences and Enforcement Review Paper*

*Employee Code of Conduct*

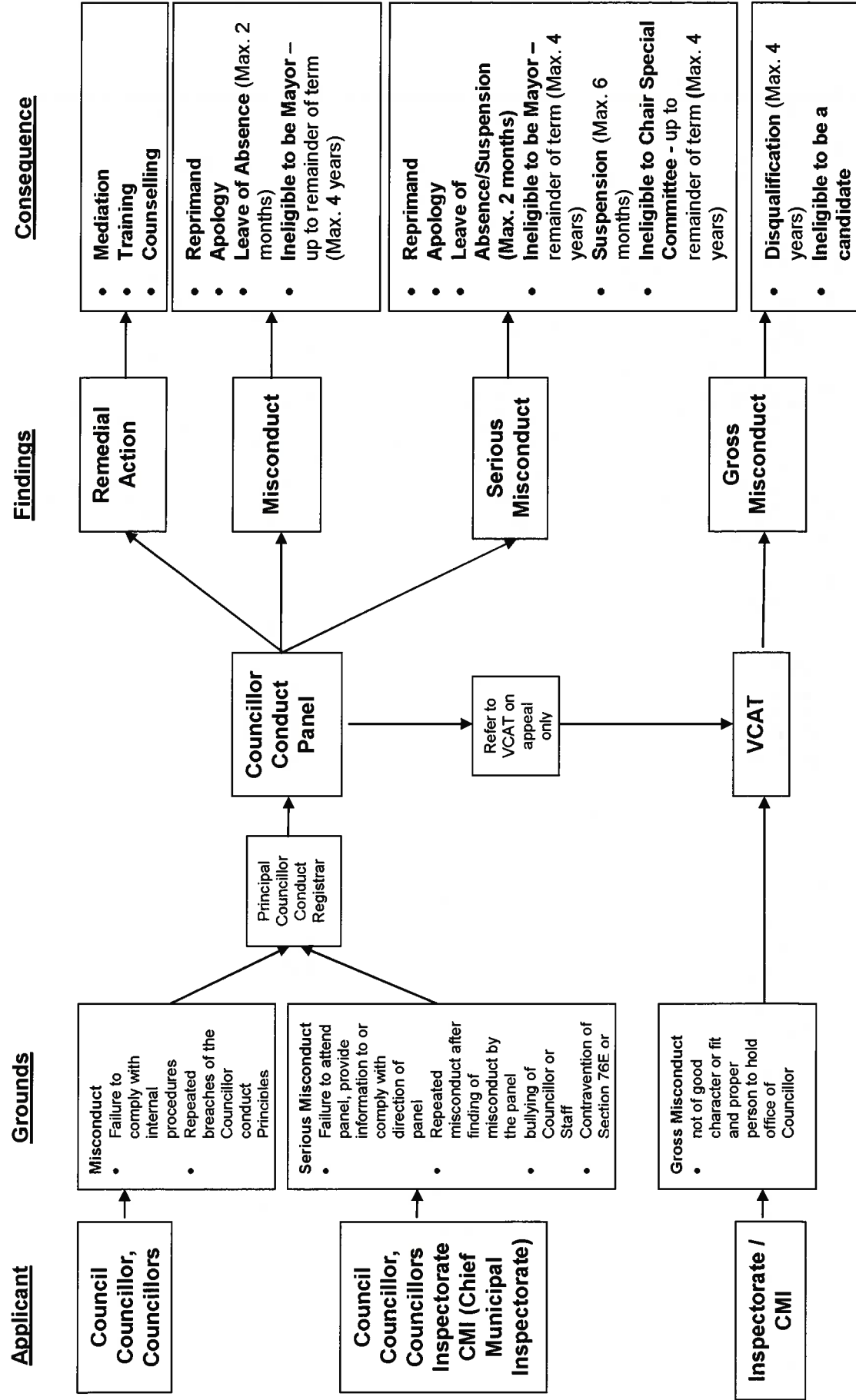
*Councillor Caretaker*

*Council's Gifts, Benefits & Hospitality Policy*

<b>Council Adoption Date</b>	<b>26 June 2019</b>
<b>Minute No</b>	<b>13.7</b>
<b>Review Date</b>	<b>26 June 2020</b>
<b>Officer Responsible</b>	<b>Chief Executive Officer</b>

## APPENDIX 1 (FLOWCHART)

## EXTERNAL COUNCILLOR CONDUCT FRAMEWORK



## APPENDIX 2 SUMMARY OF RESOLUTION PROCEDURES AND SANCTIONS (INTERNAL &amp; EXTERNAL)

Degree of Seriousness	Definition	Responsible Authority	Sanctions
<b>Conduct inconsistent with Council's standards</b>	Breaches of Councillor Code of Conduct	Council	<ul style="list-style-type: none"> <li>Mediation, training and/or counselling</li> <li>Requiring an apology</li> <li>Suspension from up to two Council meetings</li> <li>Direction not to attend or chair an advisory or special meeting (max. 2 months)</li> <li>Direction to be removed from a position representing Council (Max 2 months)</li> </ul>
<b>Misconduct</b>	Failing to comply with council's internal resolution process, including failure to abide by any decision of Council in relation to a breach of the Code and repeated breaches of Councillor Conduct Principles	Councillor Conduct Panel	<ul style="list-style-type: none"> <li>Remedial action: mediation, training and/or counselling</li> </ul> <p><b>Finding of Misconduct</b></p> <ul style="list-style-type: none"> <li>Reprimand</li> <li>Requiring an apology</li> <li>Leave of absence (Max. 2 months)</li> <li>Ineligible to be Mayor (Max. 4 years)</li> </ul>
<b>Serious Misconduct</b>	Failing to comply with Councillor Conduct Panel processes or directions, bullying, improperly directing staff, releasing confidential information and repeated misconduct	Councillor Conduct Panel	<ul style="list-style-type: none"> <li>Remedial action: mediation, training and/or counselling</li> </ul> <p><b>Finding of Serious Misconduct</b></p> <ul style="list-style-type: none"> <li>Reprimand</li> <li>Requiring an apology</li> <li>Leave of absence/Suspension (Max. 2 months)</li> <li>Ineligible to be Mayor (Max. 4 years)</li> <li>Suspension (Max. 6 months)</li> <li>Ineligible to chair special committee (Max. 4 years)</li> </ul>
<b>Gross Misconduct</b>	Behaviour that demonstrates lack of character to be a Councillor	VCAT	<ul style="list-style-type: none"> <li>Finding of Gross Misconduct: disqualification (Max. 4 years)</li> <li>Ineligible to be candidate</li> <li>His or her office is vacated</li> </ul>



**Yarriambiack**  
SHIRE COUNCIL

## COUNCILLOR CODE OF CONDUCT

"I hereby declare that I have read the Councillor Code of Conduct for Yarriambiack Shire Council adopted on 26 June 2019 and declare that I will abide by this Code"

Cr Graeme Massey..... CEO, Jessie Holmes.....

Date 18/11/2020

Date 18/11/2020

Cr Andrew McLean..... CEO, Jessie Holmes.....

Date 18/11/2020

Date 18/11/2020

Cr Karly Kirk..... CEO, Jessie Holmes.....

Date 18/11/2020

Date 18/11/2020

Cr Corinne Heintze..... CEO, Jessie Holmes.....

Date 18/11/2020

Date 18/11/2020

Cr Tom Hamilton..... CEO, Jessie Holmes.....

Date 18/11/2020

Date 18/11/2020

Cr Chris Lehmann..... CEO, Jessie Holmes.....

Date 18/11/2020

Date 18/11/2020

Cr Kylie Zanker..... CEO, Jessie Holmes.....

Date 18/11/2020

Date 18/11/2020