



City of
Whittlesea

COUNCILLOR CODE OF CONDUCT 2017

Adopted: 14 February 2017

Version 4.08

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1. Introduction

This Councillor Code of Conduct ('the Code') has been prepared to meet the requirements of Section 76C of the *Local Government Act 1989* ('the Act') and was adopted by resolution of the Whittlesea City Council ('Council') on 14 February 2017 in accordance with the Act.

The Code includes an internal resolution procedure for dealing with any alleged contraventions of the Code. Parties to a dispute will use their best endeavours to resolve any dispute within the timelines set out in the Code and otherwise in a reasonable time.

A failure by a Councillor to comply with the internal resolution procedure prescribed by this Code or to comply with a written direction given by Council under section 81AB of the Act constitutes misconduct by a Councillor for the purposes of the Act.

2. Purpose of the Code

The purpose of local government is to provide a system under which a Council performs the functions and exercise the powers conferred by or under the *Local Government Act 1989* and any other Act for the peace, order and good government of its municipal district.

Good governance is fundamental to a Council being able to perform its purpose and relies on good working relations between Councillors.

The Code promotes good governance by:

- setting out the standards of conduct expected of Councillors;
- endeavouring to foster good working relations between Councillors to enable Councillors to work constructively together in the best interests of the local community;
- mandating Councillor conduct designed to build public confidence in the integrity of local government;
- providing a process for the purpose of resolving an internal dispute between Councillors; and
- specifying an internal resolution procedure for dealing with an alleged contravention of the Code.

3. Definitions

In this Code:

'Arbiter' means an independent arbiter appointed by the Principal Conduct Officer to consider an application alleging a contravention of the Code by a Councillor and make findings in relation to the alleged contravention;

'Misconduct' by a Councillor means any of the following—

- (a) failure by a Councillor to comply with the Council's internal resolution procedure; or
- (b) failure by a Councillor to comply with a written direction given by the Council under section 81AB of the Act; or
- (c) repeated contravention of any of the Councillor conduct principles;

'Principal Conduct Officer' means the person appointed in writing by the Chief Executive Officer to be the Principal Conduct Officer for Council under section 81Y of the Act.

4. Role of Councillors

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

- to participate in the decision-making of Council; and
- to represent the local community in that decision-making; and
- to contribute to the strategic direction of Council through the development and review of key strategic documents of 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; and
- provide civic leadership in relation to the exercise of the various functions and responsibilities of Council under the Act and other Acts; and
- participate in the responsible allocation of the resources of Council through the annual budget; and
- facilitate effective communication between Council and the community.

Section 65(2) of the Act states that the role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under section 94A of the Act.

5. Functions of the Mayor

Section 73AA of the Act describes the functions of the Mayor as including:

- providing 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 Code by Councillors under sections 76B, 76BA and 76C of the Act; and
- acting as the principal spokesperson for Council; and
- supporting good working relations between Councillors; and
- carrying out the civic and ceremonial duties of the office of Mayor.

6. Conduct Principles

The Act places obligations on Councillors in relation to the way they should act. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions.

Councillors will comply with the relevant provisions of the Act and with this Code.

Section 76B of the Act sets out the primary principle of Councillor conduct as follows:

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

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and

- (c) not improperly seek to confer an advantage or disadvantage on any person.”

Section 76BA of the Act sets out the general Councillor conduct principles as follows:

“In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must -

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;
- (d) exercise reasonable care and diligence and submit himself or herself themselves to the lawful scrutiny that it is appropriate to his or her office;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;
- (g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.”

Councillors should comply with both the primary principle of Councillor conduct and the general Councillor conduct principles.

7. Functions of the Chief Executive Officer

Under section 94A of the Act, the Chief Executive Officer is responsible for:

- establishing and maintaining an appropriate organisational structure for the Council; and
- ensuring that the decisions of the Council are implemented without undue delay; and
- the day to day management of the Council’s operations in accordance with the Council Plan; and
- developing, adopting and disseminating a code of conduct for Council staff; and
- providing timely advice to the Council; and
- ensuring that the Council receives timely and reliable advice about its legal obligations under the Act and any other Act;
- supporting the Mayor in the performance of the Mayor’s role as Mayor;
- carrying out the Council’s responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the *Accident Compensation Act 1985* or the *Workplace Injury Rehabilitation and Compensation Act 2013*; and

- performing any other function or duty of the Chief Executive Officer specified in the Act or any other Act.

The Chief Executive Officer is responsible for appointing, directing, managing and dismissing Council staff and for all issues that relate to Council staff.

The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

Councillors should respect the functions and responsibilities of the Chief Executive Officer and comply with any policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors put in place by the Chief Executive Officer.

8. Use of Council Resources

Councillors commit to using Council resources effectively and economically by:

- maintaining adequate security over Council property, facilities and resources provided to us to assist in performing our role and will comply with any Council policies applying to their use;
- ensuring that any expense claims submitted are in compliance with the relevant legislative provisions and the Councillor Resources and Facilities Policy and Guidelines;
- not using Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate; and
- not use public funds or resources in a manner that is improper or unauthorised.

9. Gifts, Benefits and Hospitality

Councillors should not accept gifts, benefits or hospitality in their role as Councillor or where it could be perceived to influence the Councillor, except reasonable hospitality received at an event or function the person attended in an official capacity as a Councillor.

Councillors should take all reasonable steps to ensure that ~~our~~ immediate family members (parents, spouse, children and siblings) do not receive gifts or benefits that could give rise to the appearance of being an attempt to gain favourable treatment.

The Councillors Gift Policy provides guidance on the acceptance or otherwise of gifts or other benefits by Councillors.

Where non-acceptance of a gift may cause offence or embarrassment, the gift may be accepted on behalf of Council and becomes the property of Council.

For transparency and accountability purposes, all gifts offered to or accepted by Councillors will be recorded in a Councillor Gifts, Benefits and Hospitality Register.

Councillors recognise that gifts equal to or above the gift disclosure threshold (currently \$500) received by a person prior to becoming a Councillor in the twelve months prior to a Council election from a person or body that has a direct interest in a matter (or on behalf

of a person or body that has a direct interest in a matter) may give rise to an indirect interest because of receipt of an applicable gift.

Councillors will record all election campaign donations in Council's Election Campaign Donation Register.

10. Communication

Councillors recognise that as representatives of the local community, they have a primary responsibility to be responsive to community views and to adequately communicate the position and decisions of Council.

Councillors respect the functions of the Mayor and Chief Executive Officer as the official spokespersons for Council in accordance with Section 73AA of the Act and the Council's Media and Public Comment Policy.

Councillors understand that they are entitled to present their own views but in doing so acknowledge that:

- they must respect the decision making processes of Council, which are based on a decision of the majority of the Council;
- an overriding concern ought to be achieving a balance in the matters that are communicated and they will strive to achieve an outcome that presents Council as effective and cohesive;
- information that is confidential and that Council wishes to keep confidential must not be communicated;
- information relating to decisions of Council should only be communicated in an official capacity by a designated officer of the Council; and
- they must convey information concerning adopted policies, procedures and decisions of Council accurately.

Councillors undertake to ensure that any public comment they make could not be reasonably construed as being derogatory, offensive or insulting to any person.

11. Personal Dealings with Council

When Councillors deal with Council in a private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) they will not expect nor request preferential treatment in relation to any such private matters.

Councillors will avoid any action that could lead Council staff or members of the public to believe that they are seeking preferential treatment.

12. Misuse of Position

Councillors undertake not to misuse their positions as Councillors:

- to gain or attempt to gain, directly or indirectly, an advantage for ourselves or for any other person; or
- to cause, or attempt to cause, detriment to Council or another person.

Circumstances involving the misuse of position by a Councillor include:

- making improper use of information acquired as a result of the position he or she held or holds; or
- disclosing information that is confidential information within the meaning of section 77(2) of the Act; or
- directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E of the Act; or
- exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
- using public funds or resources in a manner that is improper or unauthorised; or
- failing to disclose a conflict of interest as required by the Act.

13. Improper Direction and Improper Influence

In accordance with section 76E of the Act, a Councillor must not direct, or seek to direct, a member of Council staff:

- in the exercise of a delegated power, or the performance of a delegated duty or function of Council; or
- in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under the Act or any other Act; or
- in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
- in relation to advice provided to Council or a special committee, including advice in a report to Council or a special committee.

14. Confidential Information

A Councillor must not disclose information that they know, or should reasonably know, is confidential information in accordance with the provisions of the Act.

A Councillor may disclose information that they know is confidential information in the following circumstances:

- for the purposes of any legal proceedings arising out of the Act;
- to a court or tribunal in the course of legal proceedings;
- pursuant to an order of a court or tribunal;
- to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
- to a municipal monitor
- to the extent reasonably required by the municipal monitor; or
- to the extent reasonably required for any other law enforcement purposes.

15. Conflict of Interest

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or special committee, an assembly of councillors, an audit committee or a section 223 committee, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the provisions of the Act (unless any of the exemptions apply).

16. Dispute Resolution

Before commencing any formal dispute resolution process, Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves.

Where, after these endeavours have been exhausted, the matter still remains unresolved, this Code provides for a three phase dispute resolution process.

The three phases of the dispute resolution process involve:

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

It is acknowledged that where a Councillor has alleged that a Councillor has contravened the Code, the Councillor making the allegation or the Councillor against whom the allegation is made, are not obliged to participate in the first two phases of the dispute resolution process and either may elect that the allegation be addressed under Phase 3 of the dispute resolution process.

It is further acknowledged that the first two phases of the dispute resolution process are only intended to apply with respect to complaints or allegations solely involving Councillors and that any allegation of a contravention of the Code by a Councillor which is made by a person who is not a Councillor will be addressed under the Phase 3 of the dispute resolution process.

Phase 1 – Direct Negotiation - Mayor

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 Code.

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 Code, the requestor 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 them 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. This agreement should be received within five (5) working days of the request.

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, either party will have recourse to external mediation or, where the matter relates to an alleged contravention of the Code, to the internal resolution procedure.

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 five (5) working days of receiving the consent of the other party.

The Mayor, with the assistance of the Principal Conduct Officer, may provide the parties with guidelines in advance of the meeting or at the meeting to facilitate the meeting.

When the other party declines to participate in direct negotiations, this does not constitute a contravention of this Code.

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 Code.

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 may have recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Code.

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 may have recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Code.

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 - Mediator

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation provided that 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 Council; or
- an alleged contravention of the Code.

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 Code, 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 them 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'. This agreement should be received within five (5) working days of the request.

When the other party declines to participate in an external mediation, this does not constitute a contravention of this Code. If the other party agrees to participate in an external mediation, the Principal Conduct Officer must inform the applicant, the Mayor and Chief Executive Officer.

The Principal Conduct Officer must engage the services of an appropriately qualified external mediator to conduct the mediation as soon as practicable and not later than 10 working days after the parties agree to participate in external mediation.

The terms of engagement of the mediator must require the mediator to document any agreement reached at the meeting and provide copies of the agreement to both parties. Where one party does not comply with the agreement, the other party may have recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Code.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties within 7 working days. Where the dispute remains unresolved, the applicant may have recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Code.

Phase 3 - Internal Resolution Procedure – Arbiter

A Councillor or a group of Councillors may make an application under the internal resolution procedure in relation to an alleged contravention of the Code by a Councillor.

The application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision 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.

Role of Principal Conduct Officer

An application for an internal resolution procedure must be submitted to the Council's Principal Conduct Officer.

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and Chief Executive Officer 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 within 7 working days;
- 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 which should be held within fifteen (15) working days of the appointment of the arbiter; and
- 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 Principal Conduct Officer must ensure that the terms of engagement of an arbiter require the arbiter to perform the role of the arbiter in accordance with the requirements set out below.

Role of the Arbiter

The role of the arbiter is to:

- consider applications alleging a contravention of the Code by a Councillor;
- make findings in relation to any application alleging a contravention of the Code;

- give a written statement of the arbiter's findings and the reasons supporting the findings to the Council; and
- recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Code.

In considering an application alleging a contravention of the Code, 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;
- ensure that the rules of natural justice and procedural fairness are observed and applied in the hearing of the application (Refer to Appendix 1);
- consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in their absolute discretion, grant the application or deny the application;
- ensure that the hearings are closed to the public; and
- conduct such other secondary investigations (including interviewing any witnesses associated with such other investigations) as the arbiter considers necessary, subject to the approval of the Principal Conduct Officer.

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.

Findings of the Arbiter

An arbiter:

- must provide Council and the Councillor who is a respondent to an internal resolution procedure application with written reasons for any findings made by the 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;
- must suspend consideration of an internal resolution procedure during the election period for a general election.

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.

Role of the Council

If an arbiter has found that a contravention of the Code has occurred, 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 Council;
- direct the Councillor to not attend up to, but not exceeding, two (2) scheduled meetings of Council (commencing from the next scheduled meeting of the Council);
- direct that, for a period of up to, but not exceeding, two (2) months, commencing from a date specified by Council, the Councillor:
 - be removed from any position where the Councillor represents the Council; and
 - not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

Failure by a Councillor to comply with the internal resolution procedure or with a direction given by Council at the conclusion of the internal resolution process will constitute misconduct. Allegations of misconduct are heard on application by a Councillor Conduct Panel.

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APPENDIX 1

PRINCIPLES OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS

An arbiter appointed to consider applications alleging a contravention of the Code must ensure that the following Principles of Natural Justice and Procedural Fairness are observed and applied in the hearing of the application:

- The person has a right to have access to as much detail as possible about the allegations against him/her and the factual basis for those allegations and be given the opportunity to respond. All relevant information to be provided in order that a response can be prepared.
- It is important that any negative information the arbiter has about the person is disclosed to that person. A summary of the information is sufficient, original documents and the identity of confidential sources does not have to be provided.
- Reply from the person to be received and considered before any recommendation made or conclusions reached.
- As early as practicable, inform those involved in the complaint of the main points of any allegations or grounds for negative comment against them.
- Provide people with a reasonable opportunity to put their case whether in writing, at a hearing or otherwise.
- Make reasonable enquiries or investigations before making a decision. A decision or conclusion that will negatively affect a person should not be based merely on suspicion, gossip or rumours. There must be facts or information to support conclusions.
- Act fairly and without bias. Proper examination of all credible, relevant and disputed issues is important.
- Conduct any investigation or process without unnecessary delay and ensure that a full record of the investigation is made.
- Where, as part of an investigation, an interview has been undertaken, the person who has been interviewed must be provided with the opportunity to review the transcript prepared or meeting/interview notes.
- Allow the individual a fair hearing that is neither too early or too late in the decision making process.