

Wodonga Council

Councillor Code of Conduct

As adopted by the council on February 20, 2017.

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1. Introduction

The *Local Government Act 1989* (the LGA) requires councils to develop and maintain a Councillor Code of Conduct. The Councillor Code of Conduct is required to be periodically reviewed. This Councillor Code of Conduct (Code) has been adopted by the Wodonga Council (the council) to comply with the requirements of the LGA.

A Councillor Code of Conduct must include an internal resolution procedure for dealing with any alleged contraventions of the Code. A council can apply sanctions to a councillor who has been found to have contravened its Code.

Failure by a councillor to comply with an internal resolution procedure or to comply with a written direction given by a council under section 81AB of the LGA (sanctions for contravention of the Code) constitutes misconduct by a councillor.

If a Councillor Conduct Panel makes a finding of misconduct against a councillor, the Panel may apply further sanctions against that councillor.

2. Purpose of the Councillor Code of Conduct

The purpose of local government is to provide a system under which councils perform the functions and exercise the powers conferred by or under the LGA and any other Act for the peace, order and good government of their municipal districts. Good governance is fundamental to a council being able to perform its purpose. Good governance relies on good working relations between councillors.

This Code:

- sets out the standards of conduct expected of Wodonga councillors;
- endeavours to foster good working relations between councillors to enable councillors to work constructively together in the best interests of the Wodonga community; and
- mandates councillor conduct designed to build public confidence in the integrity of the council.

3. Background

A council must, within four months after a general election:

- a) call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
- b) at that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by the council to be necessary following the review of the Councillor Code of Conduct.

A copy of this Code (as amended from time to time) must be:

- given to each councillor
- available for inspection at the council office in Hovell Street, Wodonga

- published on the council's internet website, www.wodonga.vic.gov.au.

A person elected to be a councillor is not capable of acting as a councillor until the person has read the Councillor Code of Conduct and made a declaration stating that they will abide by the Councillor Code of Conduct. It is the personal responsibility of councillors to ensure that they are conversant with, and comply with, the provisions of this Code.

3.1 Role of mayor and councillors

Section 65 of the LGA provides that the role of a councillor is:

- a) to participate in the decision-making of the council; and
- b) to represent the local community in that decision-making; and
- 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.

In performing the role of a councillor, a councillor must:

- a) consider the diversity of interests and needs of the local community; and
- b) observe principles of good governance and act with integrity; and
- c) provide civic leadership in relation to the exercise of the various functions and responsibilities of the council under this Act and other Acts; and
- d) participate in the responsible allocation of the resources of council through the annual budget; and
- e) facilitate effective communication between the council and the community.

The role of a councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer (CEO) under section 94A of the LGA.

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

- a) 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
- b) acting as the principal spokesperson for the council; and
- c) supporting good working relations between councillors; and
- d) carrying out the civic and ceremonial duties of the office of Mayor.

A Code:

- a) must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct;
- b) may set out processes for the purpose of resolving an internal dispute between councillors;
- c) must include any provisions prescribed for the purpose of this section;
- d) must include provisions addressing any matters prescribed for the purpose of this section;
- e) may include any other matters relating to the conduct of councillors which the council considers appropriate.

4. Conduct Obligations

4.1 Legislated conduct principles

The LGA places obligations on councillors in relation to the way they should act. The LGA also prohibits certain conduct by councillors and prescribes penalties for councillors who contravene these provisions. As councillors of the council, we undertake to comply with the various provisions of the LGA and with this Code.

Section 76B of the LGA 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 LGA sets out the general principles of councillor conduct 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 orally 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 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 are required to conduct themselves in observance of the primary principle and the general principles. We undertake to do this.

4.2 Additional conduct principles

In addition to the legislated conduct principles councillors commit to observe the following conduct principles:

- a. Objectivity

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

b. Transparency

Councillors have a duty to be as transparent as possible about their decisions and actions, giving reasons for their decision and restricting public availability of information only when the wider public interest clearly demands in accordance with confidentiality provisions under the LGA.

c. Teamwork

There are seven members of the council. Whilst recognising that council decisions must be made on merit as determined by each councillor, every endeavor should be made by councillors to reach consensus and to contribute towards a collective decision where practically possible.

Council decisions are made in council meetings. In discussions leading up to such decisions, in Assemblies of Councillors not open to the public, councillors may explore a range of positions and express a range of views.

The views of another councillor as expressed in Committee or Assembly of Council discussions must not be reported as attributed to another councillor outside of those meetings. To do so would discourage full discussion of developing issues and the ability for councillors to firm up their views as questions are answered and information obtained.

Councillors are accountable for their decision and are free to vote in accord with their individual decision and to make statements in support of their vote at the time that the matter is decided in the council meeting. This is irrespective as to whether or not such statement reveals matters discussed in an Assembly of Councillors, provided that statements or comments made by other councillors are not attributed to other councillors and must not reveal any specific matters formally identified as confidential in accord with the provisions of the LGA.

It is important that third parties have confidence in their dealings with the council and that officers are unfettered in advising and reporting to councillors. In order to achieve this, councillors should not distribute or disclose the contents of correspondence to or from council or internal council working documents unless those documents have been distributed in the public arena or have not been designated as confidential.

d. Ethical Decision-Making

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

- Is the decision or conduct lawful?

- Is the decision or conduct consistent with the council’s policies and objectives?
- What will the outcome be for the community, the council, a councillor(s) and any other parties?
- Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?
- Is the decision or conduct consistent with the principles of natural justice?

Should there be any uncertainty about the ethical nature of any action or decision, councillors should seek advice from appropriate people which may include the Chief Executive Officer, the independent members of the Audit Committee, the Municipal Association of Victoria, Victorian Local Governance Association, Local Government Victoria, members of community groups associated with the matter, members of the community or ask the Chief Executive Officer to seek legal advice as may be appropriate in the circumstances.

4.3 Functions of the Chief Executive Officer

The CEO is responsible for:

- a) establishing and maintaining an appropriate organisational structure for the council; and
- b) ensuring that the decisions of the council are implemented without undue delay; and
- c) the day to day management of the council’s operations in accordance with the Council Plan and resolutions of the Council made from time to time; and
- d) developing, adopting and disseminating a code of conduct for council staff; and
- e) providing the best available, accurate and timely advice to the council; and
- f) ensuring that the council receives timely and reliable advice about its legal obligations under the LGA and any other Act;
- g) supporting the Mayor in the performance of the Mayor’s role as Mayor;
- h) 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
- i) performing any other function or duty of the CEO specified in the LGA or any other Act.

The CEO is responsible for managing interactions between council staff and councillors including by ensuring that appropriate and reasonable policies, practices and protocols are in place defining appropriate arrangements for interaction between council staff and councillors.

The mayor is the leader of the elected council and the CEO is the leader of the council organisation and staff. For a council to be effective, these two leaders must work together in a complementary way, providing mutual support and ensuring productive interaction between the elected council and its administration.

We undertake to respect the functions of the CEO and to comply with the reasonable policies, practices and protocols defining appropriate arrangements for interaction between council staff and councillors that are put in place by the CEO.

4.4 Interaction with staff

We recognise that it is the role of the CEO to direct staff on all council matters. The protocols which apply to councillor and officer communication are:

- Council employs the CEO, and the CEO is responsible for the organisation, and therefore councillors' primary point of communication should be with the CEO.
- Councillors seeking information or wishing to make comment on a specific matter should do so either via the CEO, or if the matter specifically relates to a particular directorate, in which case the councillor should contact the relevant Director.
- Councillors do not have the authority to direct staff members.
- Any information that is provided to an individual councillor should be such that it is, or could be, copied to all councillors
- Senior managers may be requested to provide information to councillors by their director or the CEO in some situations.
- Contact with managers is appropriate where councillors are seeking clarification or further specific information on matters sent to councillors for their information by that manager.
- Staff should inform their director/manager of any contact made directly to them by councillors if the contact is outside of this protocol.
- Contact by councillors with directors is appropriate for matters specific to the director's area of individual responsibility. The CEO should be copied in on all communication between councillors and directors or managers.
- Where a manager, or one of their staff, services a committee or a forum attended by a councillor it is appropriate for the councillor to seek information directly from that manager or staff member, provided the relevant director is copied in.
- Given the above protocols telephone, verbal or email contact between councillors and staff should not occur.
- Where councillors interact with staff in a social setting, their interactions should be marked by trust and respect.
- In regard to governance, media, and IT Support, councillors may deal directly with the Governance Officer, Manager Communications and Marketing and support staff, and relevant IT staff, where needed.
- Irrespective of the above in those circumstances generally in accord with Clause 4.9 of this Code where a councillor has business to conduct with council staff in the ordinary conduct of their personal life or employment outside of their role as a councillor the councillor may have direct contact

with relevant staff. In such circumstances the councillor should make it clear to the staff member at the outset that he or she is acting in his or her private capacity and not as a councillor.

Improper councillor direction to, or influence on, council staff in relation to advice (oral or written) is prohibited under S76E of the LGA. This provision also applies in respect of officer reports presented to council and on directing staff acting under delegation, as an authorised officer, in a position held under another Act.

4.5 Use of Council resources

We commit to using council resources effectively and economically. We will:

- maintain 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;
- ensure any expense claims that we submit are in compliance with the relevant legislative provisions and council policy;
- not use council resources, including services of council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate; and
- not use public funds or resources in a manner that is improper or unauthorised.

4.6 Gifts and benefits

We will scrupulously avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from an individual councillor or from the council.

We will take all reasonable steps to ensure that our family members (as per the definition in section 78) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

Hospitality should only be accepted where:

- There is clear value to the work of the council (for example, building relationships with community groups); and
- The hospitality is at an event or function attended in an official capacity (ie: it directly relates to your public duty); and
- It is reasonable hospitality (that is, a reasonable person would consider it appropriate and not excessive) and as such does not advantage the donor in their dealings with the council.

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

We recognise that gifts equal to or above the gift disclosure threshold from 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.

We will record all campaign donations in our “campaign donation return”.

4.7 Communication

We recognise that as representatives of the local community, we have a primary responsibility to be responsive to community views and to adequately communicate the position and decisions of council. We recognise that community views as for councillor views may result in divergent positions and that individual councillors may vote in concurrence with divergent views to the majority decision of the council. In these circumstances councillors are free to state publicly that they voted in a particular way and why they voted in that way but in so doing must also state what the council decision on the matter was and must not deride or undermine the majority decision nor pass derogatory comment on the position of other councillors in respect to the matter or decision.

We undertake to comply with the council’s Media Directive and respect the functions of the Mayor and CEO to be the principal spokespersons for the council in accordance with section 73AA of the LGA and policy.

We acknowledge that individual councillors are entitled to express their personal opinions through the media. Where we choose to do so, we will make it clear that such comment is a personal view and does not represent the position of council. We undertake to ensure that any such comment is devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any person.

4.8 Council policies

We agree to abide by all council policies, directives, protocols and / or guidelines that may be adopted by the council from time to time. We acknowledge that a breach of any of these documents will be deemed to be a breach of this Code.

4.9 Personal dealings with the council

When we deal with our council in our private capacity or employment (e.g. as a ratepayer, recipient of a council service or applicant for a permit) we do not expect nor will we request preferential treatment in relation to any such private matter. We will avoid any action that could lead council staff or members of the public to believe that we are seeking preferential treatment. Councillors will at all such times inform the staff member that the councillor is acting in a private capacity.

4.10 Decision-making process

We recognise that good decisions are more likely to be made if good decision-making processes are used. The key features of council's decision-making process are:

Agenda setting

- The main way of having issues considered by the council is through the Council Plan and budget processes together with the development and review of policies and strategies.
- If issues arise or are brought to an individual councillor's attention during the year which councillors believe require a Council decision, a request should be made to the CEO to put them forward for the council's consideration.
- If we wish to put items onto the Agenda as notices of motion, the procedures of the *Meeting Procedures Local Law* should be followed.
- Councillor briefings provide an opportunity for councillors to be proactive in canvassing issues with fellow councillors.

Information gathering

- We acknowledge that decisions must be based on the best possible data and as such expect the CEO to provide high quality reports.
- We acknowledge that at times we may use other sources of information to assist in our deliberations with a matter that comes before the council for a decision.
- We accept that the views of those affected by the council's decisions are an important source of information and to that end should engage with the community. Generally such community engagement should be in accordance with the principles and practices established in the Community Engagement Policy or in appropriate and specific circumstances through councillor contact and feedback.
- We will value the information provided by Advisory Committees and use that information to help in the decision making process.

Opinion formation

- Councillor briefing sessions offer the opportunity to ask questions, seek further information and float issues and options which are necessary for determining views on issues.
- Briefing sessions should provide each councillor with relevant information as may be required to make a decision when a matter comes before council.
- Appropriate use of briefing sessions should result in "no surprises" occurring at council meetings or other public forums.
- Briefing sessions are presently closed to the public and can be used as brainstorming opportunities with all views being canvassed. Councillors and staff should therefore participate equally in briefing sessions. It is each councillor's responsibility to raise all information requests and any other matters which are necessary for making an informed decision.
- Briefing sessions are "Assemblies of councillors" and under the conflict of interest provisions of the LGA councillors are required to make appropriate conflict of interest disclosures.

Decision-making

- Council's decision-making should be transparent and Councillors accountable for their vote. The community is entitled to understand how council reaches a decision. Therefore, despite that discussion may have occurred at a closed to the public councillor briefing session councillors should debate matters and present their unfettered views and reasons for deciding to vote as they have chosen to do when they come before council at the formal open to the public council meeting.
- Councillors should respect differences of opinion and should treat each other with courtesy at council meetings.
- Council decisions should be made in such a way that councillors are as participative as possible. Chairing and meeting procedures should recognise and encourage participation by all councillors.

Implementation

- Once council has made a decision, it becomes the collective decision of council. While it is recognised that some councillors may not have supported the decisions and whilst Councillors have a right to publicly state how they voted and to give reasons why, councillors should not undermine, deride or publicly denigrate the decision.
- If a councillor believes that his or her accountability to constituents requires him or her to express dissent this should be done carefully and with respect.

Bias

- Notwithstanding broader policy positions, councillors, whilst listening and taking community opinion on board, will keep an 'open mind' with respect to making a decision regarding a specific matter.

If a councillor is in fact unwilling to move from his or her predisposed position despite anything that may be put to them as part of the council's administrative decision making process, then that councillor should not take part in that process.

- In the event that a councillor has a conflicting personal interest, the councillor may apply to be exempted from voting on the matter in accordance with s79B of the LGA.

5. Prohibited Conduct

The LGA has specific provisions that prohibit councillors from certain conduct. This conduct relates to:

- Misuse of position
- Improper direction and improper influence
- Confidential information
- Conflict of interest
- Electoral conduct

These matters are set out below in order to provide a complete picture of the obligations on councillors. While these matters are not of a nature to be addressed as a contravention of the Councillor Code of Conduct, we undertake

to comply with the prohibitions on councillor conduct set out below. These matters should more properly be the subject of an application to a Councillor Conduct Panel for a finding of serious misconduct or a complaint to the Local Government Inspectorate or the Independent Broad-based Anti-corruption Commission depending on the nature of the allegation.

(Note: Section 3(1) of the LGA defines serious misconduct by a councillor to mean:

- a) the failure of a councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that councillor; or*
- b) the failure of a councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the councillor to give; or*
- c) the failure of a councillor to comply with a direction of a Councillor Conduct Panel; or*
- d) continued or repeated misconduct by a councillor after a finding of misconduct has already been made in respect of the councillor by a Councillor Conduct Panel; or*
- e) bullying of another councillor or member of Council staff by a councillor; or*
- f) conduct by a councillor in respect of a member of council staff in contravention of section 76E; or*
- g) the release of confidential information by a councillor.)*

5.1 Misuse of position

Section 76D(1) of the LGA stipulates that a councillor must not misuse his or her position:

- a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- b) to cause, or attempt to cause, detriment to the council or another person.

Section 76D(2) of the LGA states that the circumstances involving the misuse of position by a councillor include:

- a) making improper use of information acquired as a result of the position he or she held or holds; or
- b) disclosing information that is confidential information within the meaning of section 77(2); or
- c) directing, or improperly influencing, or seeking to direct or improperly influence, a member of council staff in contravention of section 76E; or
- d) 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
- e) using public funds or resources in a manner that is improper or unauthorised; or
- f) failing to disclose a conflict of interest as required under this Division.

5.2 Improper direction and improper influence

Section 76E(2) of the LGA provides that a councillor must not direct, or seek to direct, a member of council staff:

- a) in the exercise of a delegated power, or the performance of a delegated duty or function of the council; or
- b) in the exercise of a power or the performance of a duty or function exercise or performed by the member as an authorised officer under this Act or any other Act; or
- c) 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
- d) in relation to advice provided to the council or a special committee, including advice in a report to the council or special committee.

5.3 Confidential information

Section 77 of the LGA declares that a councillor must not disclose information that he or she knows, or should reasonably know, is confidential information.

A councillor may disclose information that he or she knows is confidential information in the following circumstances:

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

Notwithstanding section 77 of the LGA we acknowledge and respect that all material prepared under the direction of the CEO and issued to councillors for consideration at relevant internal briefings involving councillors, shall be deemed and remain as confidential material, unless resolved otherwise by the council or the CEO has informed all councillors in writing or the material is no longer confidential by virtue of being in the public domain (other than as a consequence of a disclosure by a councillor in contravention of the LGA or this section).

5.4 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 LGA (unless any of the exemptions apply).

A councillor has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the councillor would be directly altered if the matter is decided in a particular way. This

includes where there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms and where the councillor, or together with a member or members of the person's family have a controlling interest in a company or other body that has a direct interest in the matter.

A conflict of interest also exists where a councillor has any of the six types of indirect interest. These indirect interests are

- Close association - an indirect interest because of a close association with a family member, relative or member of the household who has a direct interest
- Indirect financial interest - an indirect financial interest, including holding shares above a certain value in a company with a direct interest
- Conflicting duty - a conflicting duty arising from having particular responsibilities to a person or organisation with a direct interest
- Applicable gift - receipt of an applicable gift or gifts from a person or organisation with a direct interest
- Interested party - a party to the matter by having become involved in civil proceedings in relation to the matter
- Residential amenity – this occurs where there is a reasonable likelihood that the person's residential amenity will be altered if the matter is decided in a particular way.

5.5 Other legislative requirements

The LGA includes requirements in relation to councillor eligibility, electoral conduct and the election period (caretaker period). Alleged contraventions of these provisions are not to be dealt with by the council using the internal resolution procedure in this Code of Conduct. Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

We undertake to comply with the various provisions relating to these matters.

6. Dispute resolution, including internal resolution procedure

This section of the Code outlines the options for resolving disputes. It acknowledges that disputes will have varying degrees of seriousness, which in turn determines the responsible authority and the options to resolve matters. The following table shows the hierarchy of complaint handling, and the role the Council has, as provided in this Code, for resolving level one [76C(3)(b)] or level two disputes [s.76C(3)(a)].

	Degree of seriousness	Definition	Responsible authority
1.	Interpersonal dispute	Non-code of conduct dispute between councillors	Wodonga Council
2.	Conduct inconsistent with standards council has set itself.	Breaches of council code of conduct (sections 76C(3) and 81AA of the LGA)	
3.	Misconduct (as defined under the LGA)	Failing to comply with a council’s internal resolution procedure, 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
4.	Serious misconduct	Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct.	Councillor Conduct Panel
5.	Gross misconduct	Behaviour that demonstrates lack of character to be a councillor.	VCAT

In the event of a dispute between two or more councillors, prior to initiating formal dispute resolution processes, each councillor who is a party to the dispute is expected to initiate personal contact with the other party(s) in a courteous and respectful manner and to apply their best endeavours to resolve the matter in dispute. Where, after these endeavours have been exhausted, the matter still remains unresolved, the parties may resort to any or all of the council’s three phase dispute resolution process.

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; and
- an internal resolution procedure involving an independent arbiter.

6.1 Phase 1 – Direct negotiation (optional)

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.

The involvement of the Mayor at this phase assumes that the parties to the dispute have exhausted their best endeavours to resolve the matter by informal face-to-face discussions.

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 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 a short summary of the circumstances and events in which the alleged contravention is supposed to have occurred;
- 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 applicant 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 Code.

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 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. All parties to the process should commit to conducting the negotiation in good faith.

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

If a councillor dispute involves the Mayor, either an interpersonal dispute or an allegation of a breach of the Councillor Code of Conduct, the Deputy Mayor will act in place of the Mayor, for the purpose of this procedure. If Council has not resolved to have the position of a Deputy Mayor, or the Deputy Mayor is not willing to act, then the Chief Executive Officer will determine the appropriate action, in accordance with this procedure.

6.2 Phase 2 – External mediation (optional)

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 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 a short summary of the circumstances and events in which the alleged contravention is supposed to have occurred;
- 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.

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 is to advise the applicant, the Mayor and CEO forthwith.

The CEO is to engage the services of an independent external mediator, acceptable to all parties, to conduct the mediation at the earliest practicable opportunity. All parties to the process should commit to conducting the mediation in good faith.

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

6.3 Phase 3 - Internal resolution procedure – Arbiter (mandatory)

Throughout any internal resolution procedure, all councillors must refrain from speaking to the media and must not disclose the nature of the dispute to any third parties.

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 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 a short summary of the circumstances and events in which the alleged contravention is supposed to have occurred;
- 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 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 (two 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;
- inform all other councillors of the alleged contravention of the Code once the appointment of the arbiter has been finalised;
- after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
- attend the hearing(s) and assist the arbiter in the administration of the process.

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 Code by a councillor;
- make findings in relation to any application alleging a contravention of the Code 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 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;
- 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 hearings 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 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. 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, two 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, two months on a date specified by the council the councillor:
 - be removed from any position where the councillor represents the council; and
 - to not chair or attend any advisory committee or special committee meeting or an Assembly of Councillors or any other meeting specified in the direction.

A councillor who does not participate in the internal resolution procedure may be guilty of misconduct. The LGA provides that 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; or
- c) repeated contravention of any of the councillor conduct principles.

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