Agenda

Special Meeting of Council

Monday, 13th February 2017

Commencing at 7.00pm

Council Chamber
1230 Nepean Highway, Cheltenham

kingston.vic.gov.au

John Nevins
Chief Executive Officer
Kingston City Council
Notice is given that a Special Meeting of Kingston City Council will be held at 7.00pm at Council Chamber, 1230 Nepean Highway, Cheltenham, on Monday, 13 February 2017.

1. Apologies

2. Foreshadowed Declaration by Councillors, Officers or Contractors of any Conflict of Interest
   Note that any Conflicts of Interest need to be formally declared at the start of the meeting and immediately prior to the item being considered – type and nature of interest is required to be disclosed – if disclosed in writing to the CEO prior to the meeting only the type of interest needs to be disclosed prior to the item being considered.

3. Corporate Services Reports
   3.1 Councillor Code of Conduct Review ................................................................. 5

4. Confidential Items
   Nil
3. Corporate Services Reports
COUNCILLOR CODE OF CONDUCT REVIEW

Contact Officer: Stephanie O'Gorman, Governance Officer

Purpose of Report
The purpose of this report is to present an amended Councillor Code of Conduct for Council’s review and approval.

Disclosure of Officer / Contractor Direct or Indirect Interest
No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

OFFICER RECOMMENDATION
That Council having reviewed and approved amendments to the Councillor Code of Conduct adopt the Councillor Code of Conduct presented in Appendix 1.

1. Executive Summary
The Councillor Code of Conduct must be reviewed and adopted by Council no later than 22 February 2017 to comply with the legislative timeframe of within four months after a general election. This legislative requirement provides an opportunity for Councillors to consider the existing Councillor Code of Conduct and identify any areas where it can be improved or strengthened.

Officers have received feedback from Councillors on the Councillor Code of Conduct during discussions at the Councillor Induction Program, the Planning Councillor Information Session on 5 December 2016 and the Strategic Councillor Information Session on 30 January 2017.

Based on feedback received from Councillors, a revised Councillor Code of Conduct for Council’s review and approval is attached in Appendix 1.

2. Background
Section 76C(2) of the Local Government Act 1989 (the Act) provides that Council must within the period of 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 to be necessary following the review of the Councillor Code of Conduct.
Section 76C(3) provides that a Councillor Code of Conduct must include an internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct. Section 76C(3) further provides that a Councillor Code of Conduct may include processes for resolving an internal dispute between Councillors and any other matters relating to the conduct of Councillors which the Council considers appropriate.

Section 76C(6A) requires Councillors to make a written declaration stating that they will abide by the Councillor Code of Conduct within one month of amendments to the Councillor Code of Conduct being approved.

The amended Councillor Code of Conduct presented for Council’s review and approval is compliant with the content requirements in the Act.

3. Discussion

3.1 Council Plan Alignment
Goal 6 - A Well Managed and Effective Organisation
Outcome 6.1 - A well-governed, efficient and responsive organisation

The Councillor Code of Conduct provides standards of conduct and mechanisms for resolving Councillors’ disputes to ensure Councillors can work effectively together in the best interests of the community.

3.2 Consultation/Internal Review
Officers have undertaken discussions with Councillors at the Councillor Induction Program and at Councillor Information Sessions. The amended Councillor Code of Conduct reflects the issues identified by Councillors and officers with the existing Councillor Code of Conduct.

Officers have also considered the Councillor Code of Conduct for the following Councils:

- City of Bayside
- City of Greater Dandenong
- City of Melbourne
- City of La Trobe
- City of Casey
- City of Darebin
- City of Port Phillip
- City of Hobson’s Bay
- City of Monash
- City of Frankston
- City of Glen Eira
- City of Stonnington

3.3 Operation and Strategic Issues

3.3.1 Scope
The existing Councillor Code of Conduct did not contain a general ‘Scope’ clause, which left matters such as the application of the Councillor Code of Conduct uncertain.

The Councillor Code of Conduct is in place to outline expected standards of Councillor behaviour and provide guidance on how interpersonal issues that may arise can be managed and the scope clause in Appendix 1 seeks to reflect this.
Officers have included a general scope clause to specify the application of the Councillor Code of Conduct is to Councillors of the City of Kingston and notes that the Councillor Code of Conduct does not apply to members of staff of the City of Kingston, which is covered by the Councillor/Staff Interaction Protocol.

It was queried by Councillors whether the Councillor Code of Conduct could provide a mechanism for breaches of the Act to be investigated. Officers have considered this suggestion and comment that as Council is not a judicial or investigative body and does not have any power to compel third parties to participate in an investigation, it would be inappropriate for the Councillor Code of Conduct to provide for such investigations. Therefore, the scope clause specifies that such investigations of alleged breaches of the Local Government Act remain the responsibility of the Local Government Investigations and Compliance Inspectorate and other relevant integrity bodies.

3.3.2 Councillor Dispute Resolution Procedures

The dispute resolution procedures contained in the Councillor Code of Conduct have been applied to a number of alleged breaches arising during the previous and current Council terms. The application of these procedures highlighted the following issues for officers:

- **Selection of Mediator/Arbiter**
  The existing Councillor Code of Conduct required the Principal Conduct Officer (PCO) to request three external mediators/arbiters from a legal firm on Council’s legal services provider panel and to approach a different firm per dispute. Officers have identified that the current clause creates difficulties when there are multiple matters running concurrently and the PCO is required to obtain three recommendations per dispute when it would be more practical and efficient if the PCO could exhaust all recommended mediators/arbiters prior to seeking further recommendations from legal service providers.

  Therefore, officers are recommending altering the resolution procedures by removing the requirement that the PCO approach a different firm for recommendations per dispute.

- **Availability of Councillors to attend Arbitration**
  A further difficulty that has arisen in the application of the internal dispute resolution procedures is securing a date and time for all parties to attend a hearing with the arbiter. This issue is significant as the recommended arbiters are likely to be solicitors and barristers who already have quite full schedules and cannot be left on hold for extended periods. To address this issue, officers have proposed the inclusion of clause 5.3.8, which requires Councillors to endeavour to be available to participate in the arbitration process within thirty days of the arbiter’s appointment by the PCO.
• **Re-election of Parties to a Dispute**
  The existing Councillor Code of Conduct provides that internal resolution procedures that are in progress are to be suspended for the duration of the election period and may only resume if all parties to the matter are re-elected. This clause was found to lack clarity when applied following the recent election period. Therefore, officers have amended the Councillor Code of Conduct to specify that the existing application cannot be resumed if not all parties are re-elected and if the complainant still wishes to pursue the matter a new complaint must be submitted to the PCO against only those parties who have been re-elected.

• **Arbiter’s Report**
  The existing Councillor Code of Conduct did not detail how the arbiter’s report should be presented to Council.

  Officers are recommending an amendment to the Councillor Code of Conduct to provide that a public Council report will be prepared by officers, which will include the name of the complainants, the respondent/s, the arbiter’s findings and the arbiter’s costs. The arbiter’s report will be designated confidential by the CEO except for the arbiter’s findings and the report will be a confidential attachment to the Council report.

3.3.3 **Complaints from the Public**
  Councillors provided feedback that the clause regarding complaints from the public was inadequate to appropriately address such complaints. Officers have therefore expanded the existing section to include a procedure for the Mayor to follow when a complaint is received. This process ensures that the complainant is provided with a response and advised of their right to escalate their complaint to external integrity bodies.

3.3.4 **Election Period**
  The existing Councillor Code of Conduct references the ‘Councillor Support and Reimbursement of Expenses Policy’ and the ‘Councillor Gift and Hospitality Policy’, however, it does not reference the ‘Election Period Policy’, which is an equally important policy for Councillors. Therefore, officers have now made reference to the Election Period Policy to reinforce the importance of compliance with election period requirements to ensure the election process is conducted in a responsible and transparent manner.

3.3.5 **Conflict of Interest**
  Councillors raised issues with the conflict of interest principles and disclosure protocols in the existing Councillor Code of Conduct as these went beyond the disclosure requirements in the Act.

  In considering the concerns raised by Councillors, officers have amended the Councillor Code of Conduct to reinforce Councillors’ commitment to abiding by the existing legislative requirements pertaining to conflicts of interest.
3.3.6 **Guidelines for Councillor Candidates in State and Federal Elections**
Councillors provided feedback that the clause relating to Councillor Candidates in State and Federal Elections should be removed and placed in a separate policy. In response to this feedback officers have removed this clause and suggest its inclusion in the Council Office and Nomination for a State or Federal Election Policy, which is due for review in December 2017.

3.3.7 **Use of Social Media, Media Releases and other Electronic Communication by Councillors**
Councillors have provided feedback that the demonstrations of principles of Councillor Conduct contained in clause 4.2 of the Councillor Code of Conduct should include parameters regarding use of social media, distribution of media releases and electronic communication by Councillors. Officers have therefore incorporated the suggested parameters into clause 4.2 of the Councillor Code of Conduct contained in Appendix 1.

4. **Conclusion**

4.1 **Environmental Implications**
Not applicable.

4.2 **Social Implications**
Not applicable.

4.3 **Resource Implications**
Not applicable.

4.4 **Legal / Risk Implications**
Failure of Council to review and adopt the Councillor Code of Conduct within the required timeframes is a breach of the Act.

**Appendices**

Appendix 1 - Revised Councillor Code of Conduct - Marked Up Version - 2017 Review (Trim No 16/161811) ¶

Appendix 2 - Revised Councillor Code of Conduct - Clean Copy - 2017 Review (Trim No 17/14549) ¶

Author/s: Stephanie O'Gorman, Governance Officer
Reviewed and Approved By: Phil De Losa, Manager Governance
                        Paul Franklin, General Manager Corporate Services
3.1

COUNCILLOR CODE OF CONDUCT REVIEW

1 Revised Councillor Code of Conduct - Marked Up Version -
   2017 Review .................................................................................................................. 13

2 Revised Councillor Code of Conduct - Clean Copy - 2017
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Appendix 1


Councillor Code of Conduct

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1. **Purpose**

This Councillor Code of Conduct documents Councillors' commitment to each other and meets all legislative requirements.

2. **Scope**

This Councillor Code of Conduct sets expected standards of Councillor behaviour and provides guidance on how interpersonal issues and alleged breaches of this Councillor Code of Conduct may be managed.

This Councillor Code of Conduct applies to all Councillors of the City of Kingston.

This Councillor Code of Conduct does not apply to staff members of the City of Kingston.

This Councillor Code of Conduct reflects Councillors' commitment to conduct requirements contained in the Local Government Act 1989 (the Act).

This Councillor Code of Conduct does not extend to investigating breaches of the Local Government Act, which remain the responsibility of the Local Government Investigations and Compliance Inspectorate and other relevant integrity bodies.

3. **Commitment Statement**

As Councillors, we are committed to undertaking the duties of the office of Councillor in the best interests of the people of the municipal district of Kingston City Council as we pledged in the oath/affirmation of office.

For us this means:

- Working together in the best interests of the people of our municipality;
- Applying the principles of good governance to our actions and decisions; and
- Discharging our responsibilities to the best of our skill and judgement.

We will endeavour to achieve these objectives whilst observing the conduct requirements and dispute resolution procedures contained in the Councillor Code of Conduct.

4. **Legislation**

Division 1A of Part 4 of the Act stipulates the requirement for a Councillor Code of Conduct. As Councillors, we are committed to the Councillor Conduct Principles contained in the Act.

4.1 **Primary Principle of Councillor Conduct (S76B)**

In carrying out the role as Councillors, we will:

4.1.1 Act with integrity;

4.1.2 Impartially exercise our responsibilities in the interests of the local community; and

4.1.3 Not improperly seek to confer an advantage or disadvantage on any person.
4.2 Additional Principles of Councillor Conduct (S76BA)\(^1\)

In addition, in performing our role as Councillors we will:

4.2.1 Avoid conflicts between our public duties as a Councillor and our personal interests and obligations.

<table>
<thead>
<tr>
<th>Principle is demonstrated by:</th>
</tr>
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<tbody>
<tr>
<td>• Being transparent by encouraging public scrutiny of decisions</td>
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<tr>
<td>• Taking responsibility for assessing whether there are conflicts of interest in any matter relating to our Council roles.</td>
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</tbody>
</table>

4.2.2 Act honestly and avoid statements (whether oral, or in writing, or when engaging via social media, media releases or other electronic communication) or actions that will or are likely to mislead or deceive a person.

<table>
<thead>
<tr>
<th>Principle is demonstrated by:</th>
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</thead>
<tbody>
<tr>
<td>• Explaining our decisions openly and without obscurity</td>
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<tr>
<td>• Endevouring to not misrepresent Council's position on matters when engaging with the community via all methods of communication.</td>
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<tr>
<td>• Not implying that the Councillor is authorised to speak as a representative of the Council, nor give the impression that the views they express are those of the Council.</td>
</tr>
<tr>
<td>• Not using Council email addresses, Council provided technology or any Council logos or insignia that may give the impression of official support or endorsement of a Councillor's personal comment.</td>
</tr>
<tr>
<td>• Seeking to provide a fair and accurate account of the issue.</td>
</tr>
</tbody>
</table>

4.2.3 Treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, council officers and other persons.

<table>
<thead>
<tr>
<th>Principle is demonstrated by:</th>
</tr>
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<tbody>
<tr>
<td>• Not speaking over the top of each other</td>
</tr>
<tr>
<td>• Debate the issue not the person</td>
</tr>
<tr>
<td>• Focus on feedback and not criticism in all communication</td>
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<tr>
<td>• Recognise that Councillors do not have parliamentary privilege and therefore should be very careful, especially in the heat of Council debate, not to make defamatory and misleading statements</td>
</tr>
<tr>
<td>• Be prepared for meetings by reading reports prior and thereby reduce the need for long presentations</td>
</tr>
<tr>
<td>• Seeking to promote civility and fact in spoken conversations or when engaging via social media, media releases or other electronic communication.</td>
</tr>
<tr>
<td>• Not posting or causing to be posted or distributing material that is offensive, obscene, defamatory, misleading, threatening, harassing, bullying, discriminatory, hateful, racist, sexist, homophobic, infringes copyright, constitutes a contempt of the Council or the Mayor or is otherwise unlawful when engaging via social media, media releases or other electronic communication.</td>
</tr>
<tr>
<td>• Not using the identity or likeness of another employee, contractor or other Councillor in a disparaging manner when engaging via social media, media releases or other</td>
</tr>
</tbody>
</table>

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\(^1\) The examples given in the boxes in section 3 are exemplary only of how the principles operate, and do not limit the interpretation of the principles.
4.2.4 Exercise reasonable care and diligence and submit ourselves to the lawful scrutiny that is appropriate to our office.

Principle is demonstrated by:
- We will always endeavour to consider ‘public perception’, not only compliance
- Respecting the sometimes sensitive nature of information provided to us in our capacity as Councillors
- Not making any comments verbally, in writing, via social media, media releases or other electronic communication that might otherwise cause damage to the Council’s reputation or bring it into disrepute.

4.2.5 Endeavour to ensure that public resources are used prudently and solely in the public interest.

Principle is demonstrated by:
- We will not use Council resources or facilities for any purpose other than our Council role
- We will not use our role to obtain advantage for ourselves or others

4.2.6 Act lawfully and in accordance with the trust placed in him or her as an elected representative.

Principle is demonstrated by:
- Reflecting on whether we are obscuring or being “economical with the truth”
- Not using or disclosing any confidential information obtained in our capacity as Councillors, especially information from confidential meetings, briefings or reports when engaging via social media, media releases or other electronic communication.

4.2.7 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.

Principle is demonstrated by:
- Showing through our own actions that we understand the impact we have on others
- Ward Councillors will work together
- Considering the impact on Council’s reputation and each other of what we say and do as individual Councillors

The Act requires that the Councillor Code of Conduct include an internal resolution procedure. As Councillors we are committed to abiding by the resolution procedures contained in this document to ensure that we can resolve differences respectfully and expeditiously.

5. Councillors Dispute Resolution Procedures

5.1 Scope

The Act requires that the Councillor Code of Conduct include an internal resolution procedure. As Councillors we are committed to abiding by the resolution procedures.
This section refers to disputes between Councillors. For the purposes of this section disputes are categorised as follows:

a) Interpersonal disputes: where personal differences between Councillors arise, that adversely affect the operation of the Council, but which do not constitute an alleged breach of this Councillor Code of Conduct; or

b) Alleged contravention of the Councillor Code of Conduct disputes: where a dispute is caused by an alleged breach of the Code of Conduct by a Councillor.

Each of these categories of dispute carries its own resolution procedure set out below.

This section does not apply to disputes relating to apparent offences under the Act, which should be referred to the Minister for Local Government or a relevant investigative body.

This section does not intend to resolve differences in policy or decision making, which are appropriately resolved through debate and voting at Council and Special Committee meetings.

Nor does this section apply to disputes between Councillors and Council staff (Refer to the Councillor and Senior Officer Agreed Meeting Practice and Councillor and Staff Interaction Protocols).

Finally, this section does not apply to disputes between Councillors and members of the public. (Refer to clause 8.)

5.2. Interpersonal Dispute Resolution Procedure

5.2.1. Where an interpersonal dispute arises between Councillors, at first instance Councillors will endeavour to informally resolve the dispute between or among themselves or, if mutually agreed, with the assistance of the Mayor.

5.2.2. Where an interpersonal dispute cannot be resolved informally by the parties concerned, a request may be made for the dispute to be referred to external mediation. Requests should be made in writing to the Principal Conduct Officer (PCO) and must specify:

a) the parties involved in the dispute;
b) the particulars of the dispute; and
c) whether an attempt has been made to informally resolve the dispute.

5.2.3 Upon receipt of the request for external mediation the PCO must, in confidence, notify the other party to the dispute, the Chief Executive Officer and the Mayor.

The PCO must ascertain whether the other party to the interpersonal dispute is willing to attend an external mediation. If the other party declines to participate, he/she must provide reasons in writing to the PCO who will provide a copy to the party who requested the mediation. Once received, the PCO is not required to take any further action.

If the other party to the interpersonal dispute agrees to attend external mediation, the PCO must select an external mediator by seeking recommendations of mediators from a legal firm on Council's legal service provider panel, commence the process of selecting an external mediator. On a case by case basis, the PCO will request a list of three external mediators nominated by a legal firm on Council's legal service provider panel. The PCO will alternate the firm approached per dispute.
5.2.4 The PCO will select a mediator based on his/her satisfaction that the mediator meets the following criteria:

a) The mediator is suitably independent;
b) The mediator is suitably qualified; and
c) The mediator has relevant experience.

The PCO will notify the parties involved in writing of the name of the selected mediator.

5.2.5 Where resolution is reached by mediation, the mediator is to document any agreement reached and provide copies to both parties. Upon receipt of this agreement, the matter is considered closed and cannot be the subject of a further complaint.

5.2.6 Where a resolution cannot be reached by mediation, the parties have the option of undertaking one further mediation process on the matter and the process contained in clause 4.2.2 must be followed again. In the event that a resolution is still not reached and the grievance does not also constitute an alleged breach of this Councillor Code of Conduct, the matter is considered closed and Councillors will endeavour to continue to undertake their role in accordance with this Councillor Code of Conduct and legislative requirements in a professional manner and in the best interests of the community.

5.2.7 If a party to the interpersonal dispute believes that the dispute is also the result of an alleged breach of this Councillor Code of Conduct, the party may utilise the procedure contained in clause 4.3.

5.3. Alleged Contravention of the Code of Conduct Disputes

5.3.1 Where a dispute between Councillors arises as the result of an alleged contravention of this Councillor Code of Conduct, an application may be made to have the matter resolved by the internal resolution procedure contained in this clause.

5.3.2 An application to address an alleged contravention of this Councillor Code of Conduct cannot be made during the election period for a general election. Internal resolution procedures which are in progress are to be suspended for the duration of the election period and may only resume if all parties to the matter are re-elected. An application cannot be resubmitted if there are multiple parties involved and not all of the parties have been re-elected. However, if the applicant still wishes to pursue the matter, a new application must be submitted to the PCO against only those respondents that have been re-elected.

5.3.3 An applicant may withdraw an application at any time, however, once withdrawn a further application relating to the same instance in relation to the respondent cannot be resubmitted.

5.3.4 A Councillor or Councillors may make an application in writing to the PCO to have an alleged contravention of this Councillor Code of Conduct by another Councillor addressed. The application must specify:

a) the name of the Councillor alleged to have contravened the Councillor Code of Conduct;
b) the provision/s of this Councillor Code of Conduct that is alleged to have been contravened;
c) evidence in support of the allegation; and
d) the name of the Councillor appointed to be their representative where the application is made by more than one Councillor.

The application must be signed and dated by the applicant or the applicants’ representative.
5.3.6 Upon receipt of an application, the PCO must, in confidence, provide a copy of the application to the Councillor who is the subject of the allegation, the Chief Executive Officer and the Mayor unless the Mayor is a party to the dispute.

5.3.6 The PCO must then select commence the process of identifying a suitably independent arbiter to hear the matter by seeking recommendations of arbiters from a legal firm on Council’s legal service provider panel. On a case by case basis, the PCO will request a minimum of three recommended arbiters nominated by a legal firm on Council’s legal service provider panel. The PCO will alternate the firm approached per matter.

5.3.7 The PCO will select an arbiter based on his/her satisfaction that the arbiter meets the following criteria:

   a) The arbiter is suitably independent;
   b) The arbiter is suitably qualified; and
   c) The arbiter has relevant experience.

The PCO will notify the parties involved in writing of the name of the selected arbiter. The PCO must assist the arbiter in administration of the resolution process.

5.3.8 In order to ensure complaints alleging breaches of the Councillor Code of Conduct are addressed as efficiently as possible, all Councillors who are parties to the complaint will endeavour to be available to participate in the arbitration process within 30 days of the arbiter’s appointment by the PCO.

5.3.9 In accordance with the Act, the role of the arbiter is to:

   a) consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor; and
   b) make findings in relation to any application alleging a contravention of the Councillor Code of Conduct.

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

   a) liaise with the PCO to arrange an appropriate date, time and location to hear the application and ensure the PCO advises the parties to the dispute of this information;
   b) hold as many hearings as required to properly consider the application, including, if appropriate, a directions hearing;
   c) conduct hearings in a manner 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;
   d) ensure all parties to the matter are given the opportunity to be heard by the arbiter;
   e) ensure that the rules of natural justice are observed and applied in the hearing of the application;
   f) ensure that hearings are closed to the public;
   g) consider any application from the parties to have legal representation present at hearings;
   h) provide a written report of his or her findings and reasons for his or her findings to the parties to the dispute; and
   i) provide his or her findings in writing to Council.

5.3.11 The arbiter’s findings will be presented in a public Council report presented to the next Ordinary Meeting of Council. In order to provide transparency to the community, the report will also include the names of the complainant(s) and the respondent(s) and all costs.
Appendix 1


associated with the engagement of the arbiter. The arbiter’s full report will be designated confidential by the CEO except for the arbiter’s findings and will be attached as a confidential appendix.

5.3.12 Where the arbiter finds that there has been a contravention of the Councillor Code of Conduct, he or she may recommend an appropriate sanction/s to Council. Ultimately, however, whether any (and if so, what) sanction is to be handed down is a matter for Council.

5.3.13 In accordance with the Act, failure of a Councillor to comply with this internal resolution procedure or to comply with Council’s written directions under section 81AB constitutes misconduct under the Act and could give rise to an application for a Councillor Conduct Panel.

5.3.14 The findings of the arbiter are final and not subject to any appeals process under the Act.

5.3.15 A dispute is considered closed when:

a) the arbiter makes a finding that this Councillor Code of Conduct has not been contravened; or
b) the arbiter makes a finding that this Councillor Code of Conduct has been contravened and Council does not impose any sanctions on the Councillor; or
c) the arbiter makes a finding that this Councillor Code of Conduct has been contravened and Council imposes a sanction on the Councillor.

5.3.16 Despite it being considered closed in accordance with clause 4.3.13(b) and (c), the dispute could still be referenced in an allegation of misconduct against a Councillor for repeated contravention of any of the Councillor Conduct Principles, which could give rise to an application for a Councillor Conduct Panel.

6. Complaints from the Public

6.1 Where a complaint is received from the public in respect of a Councillor, the complaint will be conveyed to the Mayor and the named Councillor for their consideration.

6.2 Where the Mayor believes the complaint relates to a breach of the Councillor Code of Conduct, the Mayor can progress the matter his/herself via the internal resolution procedure for interpersonal disputes contained in clause 5.2.

6.3 Members of the public and the Councillor’s concerned will be notified in writing of the process followed and the outcome of their complaint by the Mayor.

6.4 The outcome communicated by the Mayor is final and is not subject to an appeals process. However, members of the public will be advised of their right to escalate complaints to external integrity bodies such as:

- The Local Government Investigations and Compliance Inspectorate
- The Independent Broad-Based Anti-Corruption Commission (IBAC)
- The Victorian Ombudsman
- The Minister for Local Government

6.5 Council staff will not assess or investigate any such complaint. If the complaint involves a potential protected disclosure, it will be dealt in accordance with the Protected Disclosure Act 2012 (Vic).

7. Use of Council Provided Resources

7.1 Council’s policy ‘Councillor Support and Reimbursement of Expenses Policy’ details the basis on which Councillors will be reimbursed for expenses in relation to their role as Councillor, the
support provided to Councillors and levels of reimbursement which may be claimed by Councillors.

7.2 Council resources should be used exclusively for normal Council business during the election period and not be used in connection with an election campaign. It should be noted that the prohibition on the use of Council resources for electoral purposes is not restricted to the election period.

8. Gifts and Hospitality

8.1 Council’s ‘Councillors Gift and Hospitality Policy’ sets out the protocols for accepting gifts and hospitality. The Policy identifies specific gifts / circumstances where a gift cannot be accepted by Councillors, even where not prohibited by the Act. This list includes gifts that are ‘perceived’ to either influence a Councillor’s discharge of duties or ‘perceived’ to give rise to a conflict of interest.

8.2 The Policy also identifies certain gifts that can be accepted, such as culturally sensitive gifts and gifts of token value.

8.3 The Policy obliges Councillors to declare all gifts and applicable gifts with details included on the Councillors Gifts and Hospitality Register, which the Governance Unit administers. The Policy also stipulates that declined gifts must be declared except where declined in the presence of the gift giver.

9. Election Period

9.1 Council’s ‘Election Period Policy’ details the actions and procedures the organisation will implement in observance of statutory requirements and established election period conventions in the interests of a fair election generally, during the election period.

9.2 Compliance with legislative and policy requirements during the Election Period is paramount to ensure that the election process is conducted in a responsible and transparent manner.

10. Conflict of Interest

Under the Act (S76BA) Councillors are required to avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations.

To further strengthen Councillors’ commitment to integrity in the disclosure and management of conflicts of interest the following conflict of interest principles will also apply to Councillors.

The principles adopted by Council raise the level of diligence required in managing issues related to conflicts of interest.

8.1—Conflict of Interest Principles and Disclosure Protocol

The Act contains specific requirements pertaining to conflicts of interest. We as Councillors commit to abide by these requirements and acknowledge that ultimate responsibility for appropriate disclosure and management of conflicts of interest rests with each individual Councillor.

In relation to conflict of interest:
- Councillor briefings are to be used to advise Councillors of new matters or the progress of existing matters under development.
- Any questions or concerns about meeting papers should be directed to the CEO (and/or officers with knowledge about conflict of interest) and any response or clarification provided to all Councillors or committee members.
- Councillors are encouraged to seek information through the CEO or, in relation to specific matters, through senior managers or others whom the CEO authorises to liaise with Councillors.

Councillor Code of Conduct | 18/161811

Page 9
11. Councillor and Staff Interaction

To achieve good governance, the Council must work as a team with the Chief Executive Officer and other Council staff. For this teamwork to be successful Councillors need to respect the:

a) Councillor and Senior Officer Agreed Meeting Practice (attachment 1);

b) Councillor and Staff Interaction Protocols (attachment 2); and

c) Preliminary Conference, Advisory Committees and Community Forum Protocols (attachment 3).


Refer to the Council Office and Nomination for a State or Federal Election Policy.

13.1 When a Councillor becomes an endorsed candidate for a State or Federal election he/she should advise the Chief Executive Officer, in writing, as soon as practicable.

13.2 Any Councillor who is a candidate for State or Federal election should declare this at a meeting of the council as soon as practicable after the nomination date.

13.3 Any Councillor / staff relationship protocol should apply from the nomination date, with additional provisions if necessary e.g. Council information requested by a Councillor candidate should be directed to the Chief Executive Officer; all contact with Council officers should be through the Chief Executive Officer or his/her nominee(s).

13.4 Media protocols should be enforced. A Councillor speaking on Council issues as a candidate in an election should clearly identify this fact; where a Councillor misrepresents the Council position in election commentary, the Mayor should make a public comment clarifying the position of the Council.

13.5 The Councillor must not use Council resources, including Council equipment and facilities in relation to his/her candidacy.

13. Review Period

Council will review this Councillor Code of Conduct in accordance with statutory requirements to review a Councillor Code of Conduct after each General Election, to ensure this Councillor Code of Conduct remains current and relevant to the operations of Council.

14. Declaration

Following adoption of this Councillor Code of Conduct by Council, each Councillor is required pursuant to section 76C of the Act, to make a written declaration stating that they will abide by this Councillor Code of Conduct and this declaration must be witnessed by the Chief Executive Officer.
This Code of Conduct was adopted by the Council on [insert date] and I declare that pursuant to Section 76C (8A) I will abide by this Councillor Code of Conduct.

<table>
<thead>
<tr>
<th>Councillor Name</th>
<th>Date</th>
<th>Witness</th>
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</thead>
<tbody>
<tr>
<td>Cr Tamara Barth</td>
<td>Date</td>
<td>John Nevins, CEO, Witness</td>
</tr>
<tr>
<td>Cr Tamain Bearsley</td>
<td>Date</td>
<td>John Nevins, CEO, Witness</td>
</tr>
<tr>
<td>Cr Ron Brownlee OAM</td>
<td>Date</td>
<td>John Nevins, CEO, Witness</td>
</tr>
<tr>
<td>Cr David Eden</td>
<td>Date</td>
<td>John Nevins, CEO, Witness</td>
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<tr>
<td>Cr Geoff Gledhill</td>
<td>Date</td>
<td>John Nevins, CEO, Witness</td>
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<tr>
<td>Cr George Hua</td>
<td>Date</td>
<td>John Nevins, CEO, Witness</td>
</tr>
<tr>
<td>Cr Georgina Oxley</td>
<td>Date</td>
<td>John Nevins, CEO, Witness</td>
</tr>
<tr>
<td>Cr Steve Staikos</td>
<td>Date</td>
<td>John Nevins, CEO, Witness</td>
</tr>
<tr>
<td>Cr Rosemary West OAM</td>
<td>Date</td>
<td>John Nevins, CEO, Witness</td>
</tr>
</tbody>
</table>
13. Attachments
   a. Councillor and Senior Officer Agreed Meeting Practice
   b. Councillor and Staff Interaction Protocols
   c. Preliminary Conference, Advisory Committees and Community Forum Protocols
Attachment A

Councillor and Senior Officer
Agreed Meeting Practice

The following guideline identifies how Councillors and Officers will work together.
The guideline will apply whenever there is a Council meeting or Assembly of Councillors.

1. Each person will show respect to others by:
   
   1.1. listening while another person is speaking;
   
   1.2. not belittling or denigrating other individuals; and
   
   1.3. focusing on the issues and not the person.

   In particular, Councillors will:
   
   1.4. accept and manage differences of opinion courteously and honestly, and not adopt a tone which is hostile or patronising;
   
   1.5. not personalise issues;
   
   1.6. refrain from attempting to debate issues with Council staff;
   
   1.7. not use Assemblies of Councillors as forums for debate or discussions designed to persuade other Councillors of particular positions (such debate and discussion being reserved for Council meetings, at which Councillors can vote and a decision can be made); and
   
   1.8. not focus on minor issues of management.

2. The Chairperson of any meeting will ensure that:

   2.1. each person has a chance to contribute during a discussion or debate;
   
   2.2. no one person “dominates” discussions by being repetitive or unreasonably aggressive;
   
   2.3. all comments/questions are put through the Chair; and
   
   2.4. the agreed conclusion is summarised prior to consideration of the next agenda item.

3. The Chairperson has the group’s permission to intervene to guide the group and individuals back from any behaviour which is not consistent with 1. above. This includes stopping the meeting.

4. The group will strive for credibility and consistency in decision making including:

   4.1. when a decision is made, it is made unless there are new reasons/grounds for opening the debate (or if appropriate the original decision is rescinded);
   
   4.2. consistency with policy; and
   
   4.3. seeking specific clarification from each other when a policy is not clear.
Attachment B

Councillor and Staff
Interaction Protocols

The following Protocols apply whenever Councillors request information from members of Council staff. Councillors have a right to access information in Council’s possession if the information is relevant to an issue to be deliberated upon by Council.

The Protocols cover requests made verbally and in writing (including by email).

1. Respect

1.1 The Councillor and member of Council staff will treat each other respectfully. The respect should help build and maintain a constructive relationship between Councillors and Council staff.

1.2 In addition, the Councillor will, in accordance with section 76E(1) of the Local Government Act 1989, refrain from improperly directing or improperly influencing, or seeking to improperly direct or improperly influence, the member of Council staff.

2. Reasonableness of Request

2.1 The Councillor’s request for information must be reasonable in the circumstances.

2.2 It must not, for example, impose an unreasonable burden on the member of Council staff or set an unrealistic or impracticable deadline for a response.

2.3 The request should not be designed to embarrass the member of Council staff or put him or her in a difficult position. If the Councillor intends to make public the information sought, this must be communicated to the staff member prior to disclosure to the public.

3. Responsiveness

3.1 The member of Council staff must, in respect of any request for information which is reasonable in the circumstances, endeavour to provide the information sought in a considered, responsive and timely way.

4. Transfer of Request

4.1 If the member of Council staff considers that the request for information can or should more appropriately be dealt with by another staff member, that member of Council staff may transfer the request to the other staff member.

4.2 In that event, the member of Council staff who has transferred the request must inform the Councillor that the request has been transferred and advise of the name of the staff member now processing the request.
5. **Copying Response**

5.1 Unless the member of Council staff considers that it is inappropriate to do so, he or she will copy any written communication to or from the Councillor to all other Councillors.

5.2 The member of Council staff may also copy the written communication to or from the Councillor to another member of Council staff. For instance, the member of Council staff may copy an email sent to or from a Councillor to a General Manager or the Chief Executive Officer (or both) if he or she considers that the contents of the communication should be brought to their attention.

5.3 If the written communication is copied under 5.1 and/or 5.2 of these Protocols, the Councillor will be advised by being copied into the email (or other communication).

6. **Reacting to the Response**

6.1 The member of Council staff’s role is to provide the information which has been requested.

6.2 The Councillor should not, therefore, debate or attempt to debate any aspect of the information, or anything arising out of the information with the staff member.

6.3 If the Councillor feels the information is inadequate or inappropriate, they may take this up with the Chief Executive Officer or relevant General Manager.

7. **Complaints**

7.1 If the member of Council staff considers that a Councillor has breached any of these Protocols, he or she:

7.1.1 may immediately terminate the interaction with the Councillor; and

7.1.2 must report what has occurred to the Chief Executive Officer who must inform the Councillor and the Mayor of the nature of the complaint.

7.2 The Chief Executive Officer must then investigate the alleged breach, in conjunction with the Mayor (or if the Mayor is the subject of the alleged breach, the Deputy Mayor or a Councillor chosen by Council for this purpose). The Chief Executive Officer must afford procedural fairness to the Councillor, and report the outcome of his or her investigation to the Mayor (or, if the Mayor is the subject of the alleged breach, the Deputy Mayor or a Councillor chosen by Council for this purpose). Ultimately, the member of Council staff must be advised of what, if any, action has been taken in respect of any breach which has been established.

7.3 If the Councillor considers that a member of Council staff has breached these Protocols, he or she:

7.3.1 may immediately terminate the interaction with the member of Council staff; and

7.3.2 may report what has occurred to the Chief Executive Officer.

7.4 The Chief Executive Officer must then investigate the alleged breach, in conjunction with the Mayor. The Chief Executive Officer must afford procedural fairness to the member of Council staff, and report the outcome of his or her investigation, and any disciplinary action taken in respect of the member of Council staff, to the Mayor and the Councillor who has reported the alleged breach.
Attachment C

Preliminary Conference, Advisory Committees and Community Forum Protocols

The following Protocols apply whenever Councillors and members of Council staff are present together at a Preliminary Conference, Advisory Committee meeting or Community Forum.

They should be read in conjunction with any relevant policy adopted by Council (eg Council’s Preliminary Conference Policy).

1. Respecting the Purpose of the Occasion

1.1 Councillors should respect the purpose of the occasion, and not attempt to convert the occasion into something that it is not.

1.2 For example, the purpose of a Preliminary Conference is to enable submitters and applicants to better understand their respective positions and concerns with a view to encouraging mediation and compromise. Councillors and officers may encourage and assist this mediation process by providing information and asking questions. It is not intended to be a forum in which the Councillor speaks in favour or against a proposal or critically analyses the processing of a planning application.

2. Interaction between Councillors and Others

2.1 During the course of the Preliminary Conference, Advisory Committee meeting or Community Forum, a Councillor:

2.1.1 must not embarrass, denigrate or criticise any member of Council staff; and

2.1.2 must treat all persons present with respect and courtesy.
Councillor Code of Conduct

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1. Purpose
This Councillor Code of Conduct documents Councillors commitment to each other and meets all legislative requirements.

2. Scope
This Councillor Code of Conduct sets expected standards of Councillor behaviour and provides guidance on how interpersonal issues and alleged breaches of this Councillor Code of Conduct may be managed.

This Councillor Code of Conduct applies to all Councillors of the City of Kingston.

This Councillor Code of Conduct does not apply to staff members of the City of Kingston.

This Councillor Code of Conduct reflects Councillors' commitment to conduct requirements contained in the Local Government Act 1989 (the Act).

This Councillor Code of Conduct does not extend to investigating breaches of the Local Government Act, which remain the responsibility of the Local Government Investigations and Compliance Inspectorate and other relevant integrity bodies.

3. Commitment Statement
As Councillors, we are committed to undertaking the duties of the office of Councillor in the best interests of the people of the municipal district of Kingston City Council as we pledged in the oath / affirmation of office.

For us this means:
- Working together in the best interests of the people of our municipality;
- Applying the principles of good governance to our actions and decisions; and
- Discharging our responsibilities to the best of our skill and judgement.

We will endeavour to achieve these objectives whilst observing the conduct requirements and dispute resolution procedures contained in the Councillor Code of Conduct.

4. Legislation
Division 1A of Part 4 of the Act stipulates the requirement for a Councillor Code of Conduct. As Councillors we are committed to the Councillor Conduct Principles contained in the Act.

4.1 Primary Principle of Councillor Conduct (S76B)
In carrying out the role as Councillors, we will:

4.1.1 Act with integrity;
4.1.2 Impartially exercise our responsibilities in the interests of the local community; and
4.1.3 Not improperly seek to confer an advantage or disadvantage on any person.
4.2 Additional Principles of Councillor Conduct (S78BA)\(^1\)

In addition, in performing our role as Councillors we will:

4.2.1 Avoid conflicts between our public duties as a Councillor and our personal interests and obligations.

<table>
<thead>
<tr>
<th>Principle is demonstrated by:</th>
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<tbody>
<tr>
<td>- Being transparent by encouraging public scrutiny of decisions</td>
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<tr>
<td>- Taking responsibility for assessing whether there are conflicts of interest in any matter relating to our Council roles.</td>
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</table>

4.2.2 Act honestly and avoid statements (whether oral, in writing, or when engaging via social media, media releases or other electronic communication) or actions that will or are likely to mislead or deceive a person.

<table>
<thead>
<tr>
<th>Principle is demonstrated by:</th>
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<tr>
<td>- Explaining our decisions openly and without obscurity</td>
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<tr>
<td>- Endeavouring to not misrepresent Council’s position on matters when engaging with the community via all methods of communication.</td>
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<tr>
<td>- Not implying that the Councillor is authorised to speak as a representative of the Council, nor give the impression that the views they express are those of the Council.</td>
</tr>
<tr>
<td>- Not using Council email addresses, Council provided technology or any Council logos or insignia that may give the impression of official support or endorsement of a Councillor’s personal comment.</td>
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<tr>
<td>- Seeking to provide a fair and accurate account of the issue.</td>
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</table>

4.2.3 Treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, council officers and other persons.

<table>
<thead>
<tr>
<th>Principle is demonstrated by:</th>
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<tbody>
<tr>
<td>- Not speaking over the top of each other</td>
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<tr>
<td>- Debate the issue not the person</td>
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<tr>
<td>- Focus on feedback and not criticism in all communication</td>
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<tr>
<td>- Recognise that Councillors do not have parliamentary privilege and therefore should be very careful, especially in the heat of Council debate, not to make defamatory and misleading statements</td>
</tr>
<tr>
<td>- Be prepared for meetings by reading reports prior and thereby reduce the need for long presentations</td>
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<tr>
<td>- Seeking to promote civility and fact in spoken conversations or when engaging via social media, media releases or other electronic communication.</td>
</tr>
<tr>
<td>- Not posting or causing to be posted or distributing material that is offensive, obscene, defamatory, misleading, threatening, harassing, bullying, discriminatory, hateful, racist, sexist, homophobic, infringes copyright, constitutes a contempt of the Council or the Mayor or is otherwise unlawful when engaging via social media, media releases or other electronic communication.</td>
</tr>
<tr>
<td>- Not using the identity or likeness of another employee, contractor or other Councillor in a disparaging manner when engaging via social media, media</td>
</tr>
</tbody>
</table>

\(^1\) The statements used in the boxes in section 3 are examples only of how the principles operate, and do not limit the interpretation of the principles.
4.2.4 Exercise reasonable care and diligence and submit ourselves to the lawful scrutiny that is appropriate to our office.

Principle is demonstrated by:
- We will always endeavour to consider ‘public perception’; not only compliance
- Respecting the sometimes sensitive nature of information provided to us in our capacity as Councillors
- Not making any comments verbally, in writing, via social media, media releases or other electronic communication that might otherwise cause damage to the Council’s reputation or bring it into disrepute.

4.2.5 Endeavour to ensure that public resources are used prudently and solely in the public interest.

Principle is demonstrated by:
- We will not use Council resources or facilities for any purpose other than our Council role
- We will not use our role to obtain advantage for ourselves or others

4.2.6 Act lawfully and in accordance with the trust placed in him or her as an elected representative.

Principle is demonstrated by:
- Reflecting on whether we are obscuring or being “economical with the truth”
- Not using or disclosing any confidential information obtained in our capacity as Councillors, especially information from confidential meetings, briefings or reports when engaging via social media, media releases or other electronic communication.

4.2.7 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.

Principle is demonstrated by:
- Showing through our own actions that we understand the impact we have on others
- Ward Councillors will work together
- Considering the impact on Council’s reputation and each other of what we say and do as individual Councillors

5. Councillors Dispute Resolution Procedures

5.1 Scope

The Act requires that the Councillor Code of Conduct include an internal resolution procedure. As Councillors we are committed to abiding by the resolution procedures contained in this document to ensure that we can resolve differences respectfully and expeditiously.
This section refers to disputes between Councillors. For the purposes of this section disputes are categorised as follows:

a) **Interpersonal disputes:** where personal differences between Councillors arise, that adversely affect the operation of the Council, but which do not constitute an alleged breach of this Councillor Code of Conduct; or

b) **Alleged contravention of the Councillor Code of Conduct disputes:** where a dispute is caused by an alleged breach of the Code of Conduct by a Councillor.

Each of these categories of dispute carries its own resolution procedure set out below.

This section does not apply to disputes relating to apparent offences under the Act, which should be referred to the Minister for Local Government or a relevant investigative body.

This section does not intend to resolve differences in policy or decision making, which are appropriately resolved through debate and voting at Council and Special Committee meetings.

Nor does this section apply to disputes between Councillors and Council staff (Refer to the Councillor and Senior Officer Agreed Meeting Practice and Councillor and Staff Interaction Protocols).

Finally, this section does not apply to disputes between Councillors and members of the public. (Refer to clause 5.)

### 5.2. Interpersonal Dispute Resolution Procedure

**5.2.1.** Where an interpersonal dispute arises between Councillors, at first instance Councillors will endeavour to informally resolve the dispute between or among themselves or, if mutually agreed, with the assistance of the Mayor.

**5.2.2.** Where an interpersonal dispute cannot be resolved informally by the parties concerned, a request may be made for the dispute to be referred to external mediation. Requests should be made in writing to the Principal Conduct Officer (PCO) and must specify:

a) the parties involved in the dispute;

b) the particulars of the dispute; and

c) whether an attempt has been made to informally resolve the dispute.

**5.2.3** Upon receipt of the request for external mediation the PCO must, in confidence, notify the other party to the dispute, the Chief Executive Officer and the Mayor.

The PCO must ascertain whether the other party to the interpersonal dispute is willing to attend an external mediation. If the other party declines to participate, he/she must provide reasons in writing to the PCO who will provide a copy to the party who requested the mediation. Once received, the PCO is not required to take any further action.

If the other party to the interpersonal dispute agrees to attend external mediation, the PCO must select an external mediator by seeking recommendations of mediators from a legal firm on Council’s legal service provider panel.

**5.2.4** The PCO will select a mediator based on his/her satisfaction that the mediator meets the following criteria:

a) The mediator is suitably independent;
b) The mediator is suitably qualified; and

c) The mediator has relevant experience.

The PCO will notify the parties involved in writing of the name of the selected mediator.

5.2.5 Where resolution is reached by mediation, the mediator is to document any agreement reached and provide copies to both parties. Upon receipt of this agreement, the matter is considered closed and cannot be the subject of a further complaint.

5.2.6 Where a resolution cannot be reached by mediation, the parties have the option of undertaking one further mediation process on the matter and the process contained in clause 4.2.2 must be followed again. In the event that a resolution is still not reached and the grievance does not also constitute an alleged breach of this Councillor Code of Conduct, the matter is considered closed and Councillors will endeavour to continue to undertake their role in accordance with this Councillor Code of Conduct and legislative requirements in a professional manner and in the best interests of the community.

5.2.7 If a party to the interpersonal dispute believes that the dispute is also the result of an alleged breach of this Councillor Code of Conduct, the party may utilise the procedure contained in clause 4.3.

5.3. Alleged Contravention of the Code of Conduct Disputes

5.3.1 Where a dispute between Councillors arises as the result of an alleged contravention of this Councillor Code of Conduct, an application may be made to have the matter resolved by the internal resolution procedure contained in this clause.

5.3.2 An application to address an alleged contravention of this Councillor Code of Conduct cannot be made during the election period for a general election. Internal resolution procedures which are in progress are to be suspended for the duration of the election period and may only resume if all parties to the matter are re-elected. An application cannot be resumed if there are multiple parties involved and not all of the parties have been re-elected. However, if the applicant still wishes to pursue the matter, a new application must be submitted to the PCO against only those respondents that have been re-elected.

5.3.3 An applicant may withdraw an application at any time, however, once withdrawn a further application relating to the same instance in relation to the respondent cannot be resubmitted.

5.3.4 A Councillor or Councillors may make an application in writing to the PCO to have an alleged contravention of this Councillor Code of Conduct by another Councillor addressed. The application must specify:

a) the name of the Councillor alleged to have contravened the Councillor Code of Conduct;

b) the provision/s of this Councillor Code of Conduct that is alleged to have been contravened;

c) evidence in support of the allegation; and

d) the name of the Councillor appointed to be their representative where the application is made by more than one Councillor.

The application must be signed and dated by the applicant or the applicants’ representative.

5.3.6 Upon receipt of an application, the PCO must, in confidence, provide a copy of the application to the Councillor who is the subject of the allegation, the Chief Executive Officer and the Mayor unless the Mayor is a party to the dispute.
5.3.6 The PCO must then select a suitably independent arbiter to hear the matter by seeking recommendations of arbitrators from a legal firm on Council's legal service provider panel.

5.3.7 The PCO will select an arbiter based on his/her satisfaction that the arbiter meets the following criteria:
   a) The arbiter is suitably independent;
   b) The arbiter is suitably qualified; and
   c) The arbiter has relevant experience.

The PCO must notify the parties involved in writing of the name of the selected arbiter. The PCO must assist the arbiter in administration of the resolution process.

5.3.8 In order to ensure complaints alleging breaches of the Councillor Code of Conduct are addressed as efficiently as possible, all Councillors who are parties to the complaint will endeavour to be available to participate in the arbitration process within 30 days of the arbiter's appointment by the PCO.

5.3.9 In accordance with the Act, the role of the arbiter is to:
   a) consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor; and
   b) make findings in relation to any application alleging a contravention of the Councillor Code of Conduct.

5.3.10 In considering an application alleging a contravention of the Councillor Code of Conduct, the arbiter will:
   a) liaise with the PCO to arrange an appropriate date, time and location to hear the application and ensure the PCO advises the parties to the dispute of this information;
   b) hold as many hearings as required to properly consider the application, including, if appropriate, a directions hearing;
   c) conduct hearings in a manner 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;
   d) ensure all parties to the matter are given the opportunity to be heard by the arbiter;
   e) ensure that the rules of natural justice are observed and applied in the hearing of the application;
   f) ensure that hearings are closed to the public;
   g) consider any application from the parties to have legal representation present at hearings;
   h) provide a written report of his or her findings and reasons for his or her findings to the parties to the dispute; and
   i) provide his or her findings in writing to Council.

5.3.11 The arbiter's findings will be presented in a public Council report presented to the next Ordinary Meeting of Council. In order to provide transparency to the community, the report will also include the names of the complainant/s and the respondent/s and all costs associated with the engagement of the arbiter. The arbiter’s full report will be designated confidential by the CEO except for the arbiter’s findings and will be attached as a confidential appendix.

5.3.12 Where the arbiter finds that there has been a contravention of the Councillor Code of Conduct, he or she may recommend an appropriate sanction/s to Council. Ultimately, however, whether any (and if so, what) sanction is to be handed down is a matter for Council.
5.3.13 In accordance with the Act, failure of a Councillor to comply with this internal resolution procedure or to comply with Council's written directions under section 81AB constitutes misconduct under the Act and could give rise to an application for a Councillor Conduct Panel.

5.3.14 The findings of the arbiter are final and not subject to any appeals process under the Act.

5.3.15 A dispute is considered closed when:
   a) the arbiter makes a finding that this Councillor Code of Conduct has not been contravened; or
   b) the arbiter makes a finding that this Councillor Code of Conduct has been contravened and Council does not impose any sanctions on the Councillor; or
   c) the arbiter makes a finding that this Councillor Code of Conduct has been contravened and Council imposes a sanction on the Councillor.

5.3.16 Despite it being considered closed in accordance with clause 4.3.13(b) and (c), the dispute could still be referenced in an allegation of misconduct against a Councillor for repeated contravention of any of the Councillor Conduct Principles, which could give rise to an application for a Councillor Conduct Panel.

6. Complaints from the Public

6.1 Where a complaint is received from the public in respect of a Councillor, the complaint will be conveyed to the Mayor and the named Councillor for their consideration.

6.2 Where the Mayor believes the complaint relates to a breach of the Councillor Code of Conduct, the Mayor can progress the matter his/herself via the internal resolution procedure for interpersonal disputes contained in clause 5.2.

6.3 Members of the public and the Councillors concerned will be notified in writing of the process followed and the outcome of their complaint by the Mayor.

6.4 The outcome communicated by the Mayor is final and is not subject to an appeals process. However, members of the public will be advised of their right to escalate complaints to external integrity bodies such as:
   - The Local Government Investigations and Compliance Inspectorate
   - The Independent Broad-Based Anti-Corruption Commission (IBAC)
   - The Victorian Ombudsman
   - The Minister for Local Government

6.5 Council staff will not assess or investigate any such complaint. If the complaint involves a potential protected disclosure, it will be dealt in accordance with the Protected Disclosure Act 2012 (Vic).

7. Use of Council Provided Resources

7.1 Council's policy 'Councillor Support and Reimbursement of Expenses Policy' details the basis on which Councillors will be reimbursed for expenses in relation to their role as Councillor, the support provided to Councillors and levels of reimbursement which may be claimed by Councillors.

7.2 Council resources should be used exclusively for normal Council business during the election period and not be used in connection with an election campaign. It should be noted that the prohibition on the use of Council resources for electoral purposes is not restricted to the election period.
8. Gifts and Hospitality

8.1 Council's 'Councillors Gift and Hospitality Policy' sets out the protocols for accepting gifts and hospitality. The Policy identifies specific gifts / circumstances where a gift cannot be accepted by Councillors, even where not prohibited by the Act. This list includes gifts that are ‘perceived’ to either influence a Councillor’s discharge of duties or ‘perceived’ to give rise to a conflict of interest.

8.2 The Policy also identifies certain gifts that can be accepted, such as culturally sensitive gifts and gifts of token value.

8.3 The Policy obliges Councillors to declare all gifts and applicable gifts with details included on the Councillors Gifts and Hospitality Register, which the Governance Unit administers. The Policy also stipulates that declined gifts must be declared except where declined in the presence of the gift giver.

9. Election Period

9.1 Council’s ‘Election Period Policy’ details the actions and procedures the organisation will implement in observance of statutory requirements and established election period conventions in the interests of a fair election generally, during the election period.

9.2 Compliance with legislative and policy requirements during the Election Period is paramount to ensure that the election process is conducted in a responsible and transparent manner.

10. Conflict of Interest

Under the Act (S76BA) Councillors are required to avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations.

The Act contains specific requirements pertaining to conflicts of interest. We as Councillors commit to abide by these requirements and acknowledge that ultimate responsibility for appropriate disclosure and management of conflicts of interest rests with each individual Councillor.

11. Councillor and Staff Interaction

To achieve good governance, the Council must work as a team with the Chief Executive Officer and other Council staff. For this teamwork to be successful Councillors need to respect the:

a) Councillor and Senior Officer Agreed Meeting Practice (attachment 1);
b) Councillor and Staff Interaction Protocols (attachment 2); and
c) Preliminary Conference, Advisory Committees and Community Forum Protocols (attachment 3).


Refer to the Council Office and Nomination for a State or Federal Election Policy.

13. Review Period

Council will review this Councillor Code of Conduct in accordance with statutory requirements to ensure this Councillor Code of Conduct remains current and relevant to the operations of Council.

14. Declaration

Following adoption of this Councillor Code of Conduct by Council, each Councillor is required pursuant to section 76C of the Act, to make a written declaration stating that they will abide by this Councillor Code of Conduct and this declaration must be witnessed by the Chief Executive Officer.
This Code of Conduct was adopted by the Council on [insert date] and I declare that pursuant to Section 76C (8A) I will abide by this Councillor Code of Conduct.

……………………………………… ………………………………………… …………………………………………
Cr Tamara Barth Date John Nevins, CEO, Witness

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Cr Tamzin Bearsley Date John Nevins, CEO, Witness

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Cr Ron Brownlee OAM Date John Nevins, CEO, Witness

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Cr David Eden Date John Nevins, CEO, Witness

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Cr Geoff Gledhill Date John Nevins, CEO, Witness

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Cr George Hua Date John Nevins, CEO, Witness

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Cr Georgina Oxley Date John Nevins, CEO, Witness

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Cr Steve Staikos Date John Nevins, CEO, Witness

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Cr Rosemary West OAM Date John Nevins, CEO, Witness
13. Attachments
   a. Councillor and Senior Officer Agreed Meeting Practice
   b. Councillor and Staff Interaction Protocols
   c. Preliminary Conference, Advisory Committees and Community Forum Protocols
Attachment A

Councillor and Senior Officer Agreed Meeting Practice

The following guideline identifies how Councillors and Officers will work together. The guideline will apply whenever there is a Council meeting or Assembly of Councillors.

1. Each person will show respect to others by:
   1.1. listening while another person is speaking;
   1.2. not belittling or denigrating other individuals; and
   1.3. focusing on the issues and not the person.

In particular, Councillors will:

   1.4. accept and manage differences of opinion courteously and honestly, and not adopt a tone which is hostile or patronising;
   1.5. not personalise issues;
   1.6. refrain from attempting to debate issues with Council staff;
   1.7. not use Assemblies of Councillors as forums for debate or discussions designed to persuade other Councillors of particular positions (such debate and discussion being reserved for Council meetings, at which Councillors can vote and a decision can be made); and
   1.8. not focus on minor issues of management.

2. The Chairperson of any meeting will ensure that:

   2.1. each person has a chance to contribute during a discussion or debate;
   2.2. no one person “dominates” discussions by being repetitive or unreasonably aggressive;
   2.3. all comments/questions are put through the Chair; and
   2.4. the agreed conclusion is summarised prior to consideration of the next agenda item.

3. The Chairperson has the group’s permission to intervene to guide the group and individuals back from any behaviour which is not consistent with 1. above. This includes stopping the meeting.

4. The group will strive for credibility and consistency in decision making including:

   4.1. when a decision is made, it is made unless there are new reasons/grounds for opening the debate (or if appropriate the original decision is rescinded);
   4.2. consistency with policy; and
   4.3. seeking specific clarification from each other when a policy is not clear.

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Attachment B

Councillor and Staff Interaction Protocols

The following Protocols apply whenever Councillors request information from members of Council staff. Councillors have a right to access information in Council’s possession if the information is relevant to an issue to be deliberated upon by Council.

The Protocols cover requests made verbally and in writing (including by email).

1. Respect

1.1 The Councillor and member of Council staff will treat each other respectfully. The respect should help build and maintain a constructive relationship between Councillors and Council staff.

1.2 In addition, the Councillor will, in accordance with section 76E(1) of the Local Government Act 1989, refrain from improperly directing or improperly influencing, or seeking to improperly direct or improperly influence, the member of Council staff.

2. Reasonableness of Request

2.1 The Councillor’s request for information must be reasonable in the circumstances.

2.2 It must not, for example, impose an unreasonable burden on the member of Council staff or set an unrealistic or impracticable deadline for a response.

2.3 The request should not be designed to embarrass the member of Council staff or put him or her in a difficult position. If the Councillor intends to make public the information sought, this must be communicated to the staff member prior to disclosure to the public.

3. Responsiveness

3.1 The member of Council staff must, in respect of any request for information which is reasonable in the circumstances, endeavour to provide the information sought in a considered, responsive and timely way.

4. Transfer of Request

4.1 If the member of Council staff considers that the request for information can or should more appropriately be dealt with by another staff member, that member of Council staff may transfer the request to the other staff member.

4.2 In that event, the member of Council staff who has transferred the request must inform the Councillor that the request has been transferred and advise of the name of the staff member now processing the request.
5. Copying Response

5.1 Unless the member of Council staff considers that it is inappropriate to do so, he or she will copy any written communication to or from the Councillor to all other Councillors.

5.2 The member of Council staff may also copy the written communication to or from the Councillor to another member of Council staff. For instance, the member of Council staff may copy an email sent to or from a Councillor to a General Manager or the Chief Executive Officer (or both) if he or she considers that the contents of the communication should be brought to their attention.

5.3 If the written communication is copied under 5.1 and/or 5.2 of these Protocols, the Councillor will be advised by being copied into the email (or other communication).

6. Reacting to the Response

6.1 The member of Council staff's role is to provide the information which has been requested.

6.2 The Councillor should not, therefore, debate or attempt to debate any aspect of the information, or anything arising out of the information with the staff member.

6.3 If the Councillor feels the information is inadequate or inappropriate, they may take this up with the Chief Executive Officer or relevant General Manager.

7. Complaints

7.1 If the member of Council staff considers that a Councillor has breached any of these Protocols, he or she:

7.1.1 may immediately terminate the interaction with the Councillor; and

7.1.2 must report what has occurred to the Chief Executive Officer who must inform the Councillor and the Mayor of the nature of the complaint.

7.2 The Chief Executive Officer must then investigate the alleged breach, in conjunction with the Mayor (or if the Mayor is the subject of the alleged breach, the Deputy Mayor or a Councillor chosen by Council for this purpose). The Chief Executive Officer must afford procedural fairness to the Councillor, and report the outcome of his or her investigation to the Mayor (or, if the Mayor is the subject of the alleged breach, the Deputy Mayor or a Councillor chosen by Council for this purpose). Ultimately, the member of Council staff must be advised of what, if any, action has been taken in respect of any breach which has been established.

7.3 If the Councillor considers that a member of Council staff has breached these Protocols, he or she:

7.3.1 may immediately terminate the interaction with the member of Council staff; and

7.3.2 may report what has occurred to the Chief Executive Officer.

7.4 The Chief Executive Officer must then investigate the alleged breach, in conjunction with the Mayor. The Chief Executive Officer must afford procedural fairness to the member of Council staff, and report the outcome of his or her investigation, and any disciplinary action taken in respect of the member of Council staff, to the Mayor and the Councillor who has reported the alleged breach.
Attachment C

Preliminary Conference, Advisory Committees and Community Forum Protocols

The following Protocols apply whenever Councillors and members of Council staff are present together at a Preliminary Conference, Advisory Committee meeting or Community Forum.

They should be read in conjunction with any relevant policy adopted by Council (eg Council’s Preliminary Conference Policy).

1. Respecting the Purpose of the Occasion

1.1 Councillors should respect the purpose of the occasion, and not attempt to convert the occasion into something that it is not.

1.2 For example, the purpose of a Preliminary Conference is to enable submitters and applicants to better understand their respective positions and concerns with a view to encouraging mediation and compromise. Councillors and officers may encourage and assist the mediation process by providing information and asking questions. It is not intended to be a forum in which the Councillor speaks in favour or against a proposal or critically analyses the processing of a planning application.

2. Interaction between Councillors and Others

2.1 During the course of the Preliminary Conference, Advisory Committee meeting or Community Forum, a Councillor:

2.1.1 must not embarrass, denigrate or criticise any member of Council staff; and

2.1.2 must treat all persons present with respect and courtesy.