**Wangaratta Rural City Council**  
**Councillor Code of Conduct**  
**2017**  
**TABLE OF PROVISIONS**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PART 1 – INTRODUCTION</strong></td>
<td>1</td>
</tr>
<tr>
<td>1 Title</td>
<td>1</td>
</tr>
<tr>
<td>2 Objectives</td>
<td>1</td>
</tr>
<tr>
<td>3 Authorising Provision</td>
<td>1</td>
</tr>
<tr>
<td>4 Adoption</td>
<td>2</td>
</tr>
<tr>
<td>5 Commencement and Review Dates</td>
<td>2</td>
</tr>
<tr>
<td>6 Revocation of Previous Codes</td>
<td>2</td>
</tr>
<tr>
<td>7 Application and Scope</td>
<td>2</td>
</tr>
<tr>
<td>8 Definitions and Notes</td>
<td>2</td>
</tr>
<tr>
<td><strong>PART 2 – CONDUCT</strong></td>
<td>4</td>
</tr>
<tr>
<td><strong>DIVISION 1 – COMMITMENT</strong></td>
<td>4</td>
</tr>
<tr>
<td>9 Statement of Commitment</td>
<td>4</td>
</tr>
<tr>
<td>10 Conduct Principles</td>
<td>5</td>
</tr>
<tr>
<td>11 Values and Behaviours</td>
<td>5</td>
</tr>
<tr>
<td>12 Community Expectations</td>
<td>8</td>
</tr>
<tr>
<td><strong>DIVISION 2 - ROLES</strong></td>
<td>8</td>
</tr>
<tr>
<td>13 Councillor</td>
<td>8</td>
</tr>
<tr>
<td>14 Mayor</td>
<td>8</td>
</tr>
<tr>
<td>15 Other Roles</td>
<td>9</td>
</tr>
<tr>
<td>16 Council Representative on Committees</td>
<td>9</td>
</tr>
</tbody>
</table>
## TABLE OF PROVISIONS

<table>
<thead>
<tr>
<th>Division</th>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>DIVISION 3 – RESOURCES</td>
<td>Use of Council Resources</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Access to Information</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Confidentiality</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Councillor Interaction with Council Officers</td>
<td>10</td>
</tr>
<tr>
<td>DIVISION 4 – DECISION MAKING</td>
<td>Council Meeting Conduct</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Unbiased Administrative Decision Making</td>
<td>11</td>
</tr>
<tr>
<td>DIVISION 5 – INTERESTS</td>
<td>Interests</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Register of Interests</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Gifts, Benefits and Hospitality</td>
<td>12</td>
</tr>
<tr>
<td>DIVISION 6 – ELECTIONS</td>
<td>Maintaining Separation of Roles</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>State and Federal Elections</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Election Period Policy</td>
<td>14</td>
</tr>
<tr>
<td>DIVISION 7 - CIVIC REPRESENTATION</td>
<td>Representations by Members of Parliament</td>
<td>15</td>
</tr>
<tr>
<td>DIVISION 8 – MEDIA</td>
<td>Council Communications</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Media Releases</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Media Briefings</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Council Publications and Advertising</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Councillors’ Own Media Relations</td>
<td>17</td>
</tr>
</tbody>
</table>
DIVISION 9 – EVENTS 19

35 Event Roles 19
36 Council Events 19
37 Ministerial Events 20
38 Community / External Events 20
39 Speeches 21
40 Councillors’ Own Events 21

PART 3 – CONDUCT MANAGEMENT 21

DIVISION 1 - CONDUCT MANAGEMENT FRAMEWORK 21

41 Conduct Management Hierarchy 21
42 Breaches and Sanctions under the Act 21

DIVISION 2 - MANAGING DISPUTATION 22

43 Prevention, Negotiation and Mediation 22

DIVISION 3 - INTERNAL RESOLUTION PROCEDURE 22

44 Conduct Complaints 22
45 Conduct Complaints Made for an Improper Purpose 23
46 Detrimental Action 24
47 Compliance with Requirements 25
48 Disclosure of Information 25
49 Arbitration 26
50 Establishing a Panel of Arbiters 26
51 Principal Conduct Officer Duties 28
52 Making a Conduct Complaint 30
53 Withdrawing a Conduct Complaint 31
54 Establishing an Arbiter 31
<table>
<thead>
<tr>
<th>Page</th>
<th>Provision</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>55</td>
<td>Arbiter Costs</td>
<td>33</td>
</tr>
<tr>
<td>56</td>
<td>Arbiter Must Reject Certain Conduct Complaints</td>
<td>33</td>
</tr>
<tr>
<td>57</td>
<td>Arbiter Must Refer Certain Conduct Complaints</td>
<td>34</td>
</tr>
<tr>
<td>58</td>
<td>Breach of Act by Councillor</td>
<td>36</td>
</tr>
<tr>
<td>59</td>
<td>Suspension of Arbitration during Elections</td>
<td>36</td>
</tr>
<tr>
<td>60</td>
<td>Notice of Arbitration</td>
<td>37</td>
</tr>
<tr>
<td>61</td>
<td>Conduct of Arbitration</td>
<td>38</td>
</tr>
<tr>
<td>62</td>
<td>Determinations by an Arbiter</td>
<td>39</td>
</tr>
<tr>
<td>63</td>
<td>Dissolution of Arbitration</td>
<td>40</td>
</tr>
<tr>
<td>64</td>
<td>Tabling Determinations and Council Sanctions</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td><strong>CERTIFICATION</strong></td>
<td>42</td>
</tr>
<tr>
<td></td>
<td><strong>APPENDICES</strong></td>
<td>43</td>
</tr>
<tr>
<td></td>
<td><strong>APPENDIX 1 - AUTHORIZING PROVISION</strong></td>
<td>44</td>
</tr>
<tr>
<td></td>
<td><strong>APPENDIX 2 - COUNCIL DUTIES</strong></td>
<td>46</td>
</tr>
<tr>
<td></td>
<td><strong>APPENDIX 3 - CONDUCT PRINCIPLES</strong></td>
<td>47</td>
</tr>
<tr>
<td></td>
<td><strong>APPENDIX 4 - ROLES</strong></td>
<td>48</td>
</tr>
<tr>
<td></td>
<td>Councillor</td>
<td>48</td>
</tr>
<tr>
<td></td>
<td>Mayor</td>
<td>48</td>
</tr>
<tr>
<td></td>
<td>Council</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>Chief Executive Officer</td>
<td>51</td>
</tr>
<tr>
<td></td>
<td>Principal Conduct Officer</td>
<td>52</td>
</tr>
<tr>
<td></td>
<td><strong>APPENDIX 5 - COUNCILLOR INTERACTION WITH COUNCIL STAFF POLICY</strong></td>
<td>54</td>
</tr>
<tr>
<td></td>
<td><strong>APPENDIX 6 - CONFIDENTIAL INFORMATION</strong></td>
<td>70</td>
</tr>
<tr>
<td>APPENDIX 7 - MISUSE OF POSITION</td>
<td>72</td>
<td></td>
</tr>
<tr>
<td>APPENDIX 8 - IMPROPER DIRECTION AND IMPROPER INFLUENCE</td>
<td>73</td>
<td></td>
</tr>
<tr>
<td>APPENDIX 9 - EQUAL OPPORTUNITY POLICY</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>APPENDIX 10 - PREVENTION OF BULLYING AND/OR OCCUPATIONAL VIOLENCE POLICY AND PROCEDURE</td>
<td>80</td>
<td></td>
</tr>
<tr>
<td>APPENDIX 11 - INTERESTS</td>
<td>84</td>
<td></td>
</tr>
</tbody>
</table>

77A Direct and indirect interests 84
77B Direct interest 85
78 Indirect interest by close association 85
78A Indirect interest that is an indirect financial interest 86
78B Indirect interest because of conflicting duties 87
78C Indirect interest because of receipt of an applicable gift 88
78D Indirect interest as a consequence of becoming an interested party 89
78E Indirect interest because of impact on residential amenity 89
79 Disclosure of conflict of interest 89
79B Conflicting personal interest 90
79C Certain situations where Councillor taken to not have a conflict of interest 91
79D Person may make submission despite conflict of interest 92
80 Exemption by Minister 92
<table>
<thead>
<tr>
<th>Provision</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>80A</td>
<td>Requirements to be observed by an assembly of Councillors</td>
<td>93</td>
</tr>
<tr>
<td>80B</td>
<td>Members of Council staff to disclose conflicts of interest in respect of delegated functions</td>
<td>94</td>
</tr>
<tr>
<td>80C</td>
<td>Persons to disclose interests to Council when providing advice</td>
<td>95</td>
</tr>
<tr>
<td>81</td>
<td>Register of interests</td>
<td>95</td>
</tr>
</tbody>
</table>

**APPENDIX 12 - REGISTER OF INTERESTS RETURNS POLICY**

**APPENDIX 13 - GIFTS, BENEFITS AND HOSPITALITY POLICY**

**APPENDIX 14 - ELECTION PERIOD POLICY**

**APPENDIX 15 - CONDUCT MANAGEMENT HIERARCHY**

**APPENDIX 16 - BREACHES AND SANCTIONS UNDER THE ACT**

**APPENDIX 17 - PREVENTION, NEGOTIATION AND MEDIATION**
Wangaratta Rural City Council
Councillor Code of Conduct
2017

PART 1 – INTRODUCTION

1 Title

This Code will be known as the "Councillor Code of Conduct 2017".

2 Objectives

The purpose of this Code is to—

(a) Establish how Councillors will behave and work with the community, other Councillors and Council officers;

(b) Establish a commitment by Councillors to governing the municipal district effectively, and in adherence with the principles of good governance;

(c) Provide an internal resolution procedure for dealing with a Conduct Complaint against a Councillor as required by section 76C of the Act.

3 Authorising Provision

This Code has been developed and approved in accordance with section 76C of the Act (refer Appendix 1 - Authorising Provision) and Council's Major Council Policy Consultation Local Law No. 4 of 2015.
4 Adoption

This Code has been approved by Council at the special meeting called solely for the purpose of reviewing the Councillor Code of Conduct held on 6 February 2017.

5 Commencement and Review Dates

This Code commences on 6 February 2017.

6 Revocation of Previous Codes

On the commencement of this Code, Council's Councillor Code of Conduct 2016 adopted by resolution of the Wangaratta Rural City Council on 31 May 2016 is revoked.

7 Application and Scope

(1) This Code is for Councillors. It is part of Council's Governance Framework and goes beyond what is required by legislation.

(2) Section 76C of the Act requires councils to develop and approve a Councillor Code of Conduct that includes an internal resolution procedure for dealing with Conduct Complaints.

(3) This Code is a Major Council Policy as defined by the Major Council Policy Consultation Local Law No. 4 of 2015.

8 Definitions and Notes

In this Code, unless the context or subject-matter indicates otherwise—

"Act" means the Local Government Act 1989;
“Advisory Committee” means any committee established by Council, other than a special committee, that provides advice to Council or a Special Committee of Council or a member of Council staff who has been delegated a power, duty or function of Council under section 98 of the Act;

“Applicant” means an person who submits a Conduct Complaint;

“Chief Executive Officer” means the Chief Executive Officer of Council or anyone appointed to act in that position;

“Code” means this Councillor Code of Conduct;

“Conduct Complaint” means a complaint made under clause 52 alleging a contravention of a provision of this Code by a Councillor;

“Council” means Wangaratta Rural City Council;

“Council duties” means any duties performed by a Councillor, either inside or outside of the municipal district that are necessary or appropriate for the purposes of achieving the objectives of Council, as defined in section 3C of the Act. (Refer to Appendix 2 - Council Duties for more detail)

“Council Meeting” includes an Ordinary Meeting and a Special Meeting of Council;

“Councillor Code of Conduct” means the code of conduct developed by Council under section 76C of the Act;

“Deputy Mayor” means the Councillor elected to hold the position of Deputy Mayor, if Council has resolved to establish the position;
“Leave of absence” means formal leave taken by a Councillor who is not available, or unable to perform their Council duties for a specified period of time;

“Mayor” means the Mayor of Council;

“Media” includes all forms of media such as print, television, film, video and on-line applications etc;

“Municipal district” means the municipal district of Council;

“Ordinary Meeting” means any meeting of Council which is not a Special Meeting;

“Principal Conduct Officer” means a person appointed by The Chief Executive Officer in accordance with section 81Y of the Act;

“Respondent” means a person who is the subject of a Conduct Complaint;

“Special Committee” means a Special Committee established by Council under section 86(1) of the Act; and

“Written” includes duplicated, lithographed, photocopied, printed and typed, and extends to both hard copy and soft copy form.

PART 2 – CONDUCT

DIVISION 1 – COMMITMENT

9 Statement of Commitment

Councillors commit to carry out their role to the highest standard of conduct and behaviour and to discharge
their responsibilities to the best of their skill and judgement.

10 Conduct Principles

Councillors must comply with the primary conduct principle and general conduct principles provided by sections 76B and 76BA of the Act. (Refer to Appendix 3 - Conduct Principles)

11 Values and Behaviours

(1) Councillors will demonstrate community leadership by exercising courage in decision-making and by accepting responsibility for the consequences of their actions. In doing so, Councillors will—

(a) Make decisions based on the best interests of the entire municipality;

(b) Demonstrate, through their words and actions, that Council is functioning effectively;

(c) Raise issues openly, constructively and in an appropriate forum;

(d) Be willing to explore new ideas and ways of doing things;

(e) Speak for themselves rather than relying on others; and

(f) Act without fear or favour.

(2) Councillors will demonstrate accountability by actively and openly participating in Council decision-making processes and striving to achieve effective governance and the best outcome for the community. In doing so, Councillors will—
DIVISION 1 – COMMITMENT

(a) Keep an open mind and consider all information before determining on a matter;

(b) Treat all matters on their individual merits and aim for consistency in decision making;

(c) Abide by relevant laws, codes, policies and procedures;

(d) Ensure effective use of resources;

(e) Be responsive and act in a timely manner;

(f) Be prudent in the use of information that has been acquired in their role as a Councillor; and

(g) Act and work in an open and transparent manner and report results.

(3) Councillors will demonstrate integrity by practicing high standards of professionalism and by exercising due care and diligence in their actions. In doing so, Councillors will—

(a) Treat others honestly, fairly and consistently;

(b) Follow through on commitments;

(c) Represent their views truthfully;

(d) Support fellow Councillors and staff if they are treated unfairly or without respect; and

(e) Be open to constructive feedback.

(4) Councillors will demonstrate respect by valuing the contribution and individuality of others and by
striving to achieve healthy working relationships. In doing so, Councillors will—

(a) Be open, responsive and courteous in dealing with each other;

(b) Recognise the achievement of others and celebrate success;

(c) Show respect when speaking to and about others;

(d) Listen and consider other ideas which may be different to their own; and

(e) Not make comments which are personally offensive, derogatory or defamatory.

(5) Councillors will demonstrate trust by taking individual responsibility for fostering a culture of respect and by having consideration for their fellow Councillors, Council staff and the community and by striving for harmonious working relationships. In doing so, Councillors will—

(a) Demonstrate mutual respect and understanding of the respective roles, functions and responsibilities of Councillors and Council Officers;

(b) Commit to early advice and “no surprises”;

(c) Freely share information and knowledge with one another;

(d) Cooperate with, collaborate with and encourage others; and

(e) Be objective and flexible and willing to compromise.
Councillors will demonstrate **excellence** in what they do by aiming to achieve continuous improvement in their performance and through seeking the highest standards and outcomes for the municipality. In doing so, Councillors will—

(a) Be result and outcome focused at all times;
(b) Provide the community with value for money;
(c) Strive for ongoing improvement; and
(d) Encourage a culture of best practice and innovation.

**12 Community Expectations**

Councillors recognise that community expectations of them are high and understand their obligation to meet community expectations by—

(a) Setting the vision and direction for the whole community; and
(b) Advocating on behalf of the whole community;

**13 Councillor**

The role of a Councillor is set out in section 65 of the Act. (Refer to Appendix 4 Councillor)

**14 Mayor**

The role of the Mayor is set out in section 73AA of the Act. (Refer to Appendix 4 Mayor)
15 Other Roles

(1) For details regarding the role of Council refer to Appendix 4 Council.

(2) For details regarding the role of the CEO refer to Appendix 4 Chief Executive Officer.

(3) For details regarding the role of Council's Principal Conduct Officer refer to Appendix 4 Principal Conduct Officer.

16 Council Representative on Committees

A Councillor appointed as a representative to a committee by Council (including local specific issues committees established by Council, peak body or sector associations, and local and regional forums) will represent the position of Council, and report back to Council at an Ordinary Council Meeting on the issues or progress of the committee, and any recommendations made by the committee for Council to consider.

DIVISION 3 – RESOURCES

17 Use of Council Resources

Councillors will endeavour to ensure that public resources are used prudently in the public interest to enable them to undertake their Council duties.

18 Access to Information

Councillors will act in accordance with the Councillor Interaction with Council Staff Policy in relation to access to information. (Refer to Appendix 5 - Councillor Interaction with Council Staff Policy)
19 Confidentiality

Section 77 of the Act establishes the provisions that must be observed in relation to confidential information. (Refer to Appendix 6 - Confidential Information)

20 Councillor Interaction with Council Officers

(1) Councillors will act in accordance with the Act when interacting with Council Officers. In particular, Councillors must observe the provisions of sections 76D and 76E of the Act. (Refer to Appendix 7 - Misuse of Position and Appendix 8 - Improper Direction and Improper Influence)

(2) Councillors will act in accordance with the Councillor Interaction with Council Staff Policy. (Refer to Appendix 5 - Councillor Interaction with Council Staff Policy)

(3) Councillors will act in accordance with the Equal Opportunity Policy and Prevention of Bullying and/or Occupational Violence Policy and Procedure. (Refer to Appendix 9 - Equal Opportunity Policy and Appendix 10 - Prevention of Bullying and/or Occupational Violence Policy and Procedure)

(4) Councillors must comply with Council’s Occupational Health and Safety policies and procedures

21 Council Meeting Conduct

Council’s Governance and Meeting Conduct Local Law No. 2 of 2016 governs the conduct of Council Meetings, Special Committee meetings and Advisory Committee meetings.
22 Unbiased Administrative Decision Making

(1) Councillors must, when considering matters that may adversely affect others’ rights, interests or legitimate expectations, bring an open mind to those matters free from the apprehension of bias, and such that they are open to persuasion notwithstanding their previously held and expressed views on the subject.

(2) Councillors must be scrupulous in the way they make decisions in a way that ensures public confidence that our laws are not only administered justly but that their administration is seen to be just by—

(a) Acting impartially, reasonably, fairly and in good faith;

(b) Listening to both sides of any argument;

(c) Applying the principle of natural justice; and

(d) Ensuring procedural fairness applies.

DIVISION 5 – INTERESTS

23 Interests

(1) Councillors must comply with sections 77A, 77B, 78, 78A, 78B, 78C, 78D, 78E, 79, 79B, 79C, 80, 80A and 81 of the Act. (Refer to Appendix 11 - Interests)

(2) A decision about whether a conflict of interest exists can only be made by the individual Councillor to whom the potential conflict of interest relates.

(3) Council Officers cannot offer any advice in relation to potential conflicts of interest.
24 Register of Interests

Councillors must comply Council’s Register of Interests Returns Policy. (Refer to Appendix 12 - Register of Interests Returns Policy)

25 Gifts, Benefits and Hospitality

Councillors must comply with the requirements of Council’s Gifts, Benefits and Hospitality Policy. (Refer to Appendix 13 - Gifts, Benefits and Hospitality Policy)

DIVISION 6 – ELECTIONS

26 Maintaining Separation of Roles

(1) Councillors will ensure there is a demonstrable distinction between their obligations to Council and their personal interests as a candidate, or member of a political party, in an election period prior to any election.

(2) Councillors will continue to fulfil their Council duties during an election period unless they are granted a leave of absence.

27 State and Federal Elections

(1) A Councillor who becomes an endorsed candidate of a registered political party or otherwise publicly expresses an intention to run as a candidate in a state or federal election, is a Prospective Candidate.

(2) Prospective Candidates will disclose their candidacy in written advice to the Chief Executive Officer as soon as practicable after becoming a Prospective Candidate.

(3) The Chief Executive Officer will advise all Councillors of a Prospective Candidate’s candidacy as
soon as practicable after receiving a Councillor’s Prospective Candidate disclosure.

(4) A Councillor who is a Prospective Candidate should declare their intended candidacy at a meeting of Council as soon as practicable after notifying the Chief Executive Officer.

(5) A Councillor who nominates as a candidate for a state or federal election is a Nominated Candidate.

(6) Nominated candidates should apply for leave of absence from their Council duties for at least the period from the date of their nomination as a candidate and conclude no earlier than the close of voting for the respective election. During this leave of absence a councillor who is on a leave of absence should not attend meetings of Council or otherwise act as a councillor.

(7) Council will approve all requests for leave of absence by a Prospective Candidate or Nominated Candidate.

(8) A councillor who is a Prospective Candidate or a Nominated Candidate—

(a) Must observe the provisions of Council’s Election Period Policy as if that policy has effect for the period that commences on the day that they declare themselves to be a Prospective Candidate or commences on the day that they become a Nominated Candidate, as the case may be, and concludes on the day of the close of voting for the respective state or federal election;

(b) Must not use Council resources, including Council staff, hospitality services,
information, equipment, photographs taken at or for official Council business and stationery, in connection with any state or federal election campaign;

(c) Must not seek media advice or assistance from Council staff or contractors in relation to election issues or in regard to publicity involving their candidacy in a state or federal election;

(d) Must not be referred to in their capacity as a Prospective Candidate or a Nominated Candidate in any Council media releases;

(e) Are not eligible to be Council’s official spokesperson;

(f) Must differentiate between his or her role as a state or federal election candidate and his or her role as a councillor when making public comment; and

(g) Must not use council activities, including Council meetings and committee meetings and council-related external activities in relation to his or her candidacy for a state or federal election.

28 Election Period Policy

Councillors must comply with Council’s Election Period Policy. (Refer to Appendix 14 - Election Period Policy)
DIVISION 7 - CIVIC REPRESENTATION

29 Representations by Members of Parliament

(1) Councillors must declare and record any representations made to a Councillor, whether written or verbal, by a Member of Parliament or a Member of Parliament's staff.

(2) Councillors must advise Members of Parliament making representations to a Councillor that their representation will be reported to Council.

(3) The declaration made under clause 29(1) must include details of any perception of influence on a decision of Council, or pressure exerted on a Councillor.

(4) The declaration made under clause 29(1) must be made to the Chief Executive Officer in writing, and also to a Council Meeting or Special Committee meeting, prior to voting on any related matter.

DIVISION 8 – MEDIA

30 Council Communications

(1) As representatives of the community, Councillors have a primary responsibility to be responsive to community views and to adequately communicate the attitudes and decisions of Council.

(2) Councillors will endeavour to ensure that the messages communicated are clear, honest and consistent and positively portray Council as a decisive and responsible governing body.

(3) All official Council media relations will be organised through the Council business unit responsible for media relations and communication.
(4) The Mayor will provide official comment to the media on behalf of Council where the matter is of a strategic, political, controversial or sensitive nature including—

(a) Issues relating to the strategic direction of Council or the municipality;
(b) Issues pertaining to policy and Council decisions;
(c) Statewide or Federal political issues affecting Local Government; and
(d) Local issues that impact the community that do not relate directly to Council services and functions.

(5) If the Mayor is unavailable as spokesperson, the Deputy Mayor or Acting Mayor will become the primary spokesperson, as the case may be.

(6) The Mayor may request another Councillor to make official comment regarding matters defined in clause 30(4) on behalf of Council, where appropriate.

(7) The Chief Executive Officer is the official spokesperson for all operational matters pertaining to Council as an organisation including—

(a) Staffing and structure of the organisation;
(b) Corporate issues relating to service provision; and
(c) The day-to-day business of Council.

(8) The Chief Executive Officer may nominate another Council Officer as spokesperson on matters defined in clause 30(7) if appropriate.
(9) Councillor committee representatives will be notified of any Council media activity relating to their particular committee’s interests and activities.

31 Media Releases

All media releases issued by Council will be issued by the Council business unit responsible for media relations and communication and authorised by the primary spokesperson for the issue.

32 Media Briefings

All media briefings will be organised through the Council business unit responsible for media relations and communication and will be approved on an as needs basis by the primary spokesperson for the issue.

33 Council Publications and Advertising

All official Council publications and advertising will be coordinated and approved by the Council business unit responsible for media relations and communication, who will retain editorial control and control of content and design.

34 Councillors' Own Media Relations

(1) There may be times when a Councillor as an individual disagrees with a majority decision of Council and wants the community to know that. The appropriate time and place for communicating diverging views is when an item is being debated in the Council Chamber. This provides the best opportunity for informed decision-making and for both the community and the media to better understand the diversity of views and perspectives in context.
(2) Although Council supports transparency and accountability in decision making, including free speech and the use of appropriate robust processes to debate policy, pursue political objectives and resolve differences, Council does not and will not condone personal and public criticisms of Councillors, Council staff, the organisation and any other person or organisation. Any Councillor who engages in such conduct will be doing so without the sanction and authority of Council.

(3) Councillors can express their independent views through the media. However, Councillors must—

(a) Make it clear any comment is their own personal view which does not represent the position of Council;

(b) Demonstrate respect for the decision-making processes of Council which are based on a decision of the majority of Council;

(c) Strive to achieve balance in the matters that are communicated;

(d) Not communicate information of a confidential nature;

(e) Not communicate information relating to decisions of Council on approvals, permits and specific technical matters. This must only be communicated by a designated officer of Council in an official capacity.

(4) Councillors must not pre-empt official Council communications.

(5) When a Councillor undertakes their own media activity, they should notify their fellow Councillors, the
Chief Executive Officer and the business unit responsible for media relations and communication.

(6) A Councillor’s own media activities must not contain Council material or branding.

DIVISION 9 – EVENTS

35 Event Roles

(1) The Mayor is the primary Council representative for events.

(2) If the Mayor is unavailable, the Acting Mayor, if any, will become the primary representative.

(3) If there is no Acting Mayor available then the Mayor will delegate the role to another Councillor.

(4) Councillor committee representatives will be notified of any Council event activity relating to their particular committee’s interests and activities.

(5) Where an event is significantly linked to a Councillor as a committee representative, the Mayor may choose to delegate the primary Council representative role to that Councillor.

36 Council Events

(1) Council events are managed and overseen by the business unit responsible for events management.

(2) The Mayor will undertake any official role required and the Chief Executive Officer or delegate will act as master of ceremonies if required.

(3) Invitations for Council events will be issued from the Mayor. All Councillors will receive an invitation to Council organised or sponsored events.
(4) Wording for plaques commemorating the opening of Council facilities will be approved by the Chief Executive Officer.

37 Ministerial Events

(1) If Council has received significant State or Federal funding for a project, event or facility, the responsible Minister will be invited by the Mayor to officially launch the project.

(2) The event will be coordinated by the business unit responsible for events management.

(3) The letter of invitation to the Minister from the Mayor will be issued through the office of the Chief Executive Officer.

(4) The Mayor will host the visiting Minister, including conducting the official welcome, and appropriate acknowledgements.

(5) If a Minister advises Council of their intention to visit the municipality or host a media opportunity, the Chief Executive Officer will notify Councillors of the event in accordance with the Minister’s embargo protocols.

38 Community / External Events

(1) A Councillor must not accept a speaking role at an event without notifying the Mayor.

(2) A Councillor must not offer Council resources, including advertising, to a community member, group or organisation in relation to any event.
39 Speeches

Speeches reflecting Council's position will be prepared by the business unit responsible for media relations and communication for the official Councillor role at Council and external events.

40 Councillors' Own Events

Councillors are able to conduct their own events and in doing so must—

(a) Make it clear to attendees, and otherwise generally, that the event is not a Council endorsed or organised event.

(b) Not use Council resources in the promotion or conduct of the event, including speech preparation.

PART 3 – CONDUCT MANAGEMENT

DIVISION 1 - CONDUCT MANAGEMENT FRAMEWORK

41 Conduct Management Hierarchy

A hierarchy for management of councillor conduct issues has been established in this Code and in the Act. (Refer to Appendix 15 - Conduct Management Hierarchy)

42 Breaches and Sanctions under the Act

There are a number of conduct related sanctions established under the Act. (Refer to Appendix 16 = Breaches and Sanctions under the Act for a summary)
DIVISION 2 - MANAGING DISPUTATION

43 Prevention, Negotiation and Mediation

Councillors should use prevention, negotiation or mediation processes to avoid disputes or escalation of disputes. (Refer to Appendix 17 - Prevention, Negotiation and Mediation for guidance)

DIVISION 3 - INTERNAL RESOLUTION PROCEDURE

44 Conduct Complaints

(1) For the purposes of this Division, a Conduct Complaint is a complaint that alleges conduct on the part of a Councillor acting in their official capacity that on its face, if proven, would constitute a breach of a provision of this Code.

(2) Only Conduct Complaints are to be dealt with under the procedures provided by this Division—

(a) Complaints that relate to differences in policy or decision making are not Conduct Complaints, unless they involve a breach of this Code. They are appropriately resolved through discussion, debate and voting in a meeting of Council.

(b) Complaints that otherwise do not satisfy the definition of a Conduct Complaint are to be dealt with under Council’s Complaints Handling Policy and Procedures or by negotiation or mediation as the case may be.

(3) The procedures provided by this Division must be applied to, or attempted to be applied to, a Conduct Complaint before an application for a Councillor Conduct
Panel can be made under section 81B of the Act, except for an application made by the Chief Municipal Inspector under section 81B(1B)(c) of the Act.

45 Conduct Complaints Made for an Improper Purpose

(1) Councillors must not make a Conduct Complaint or cause a Conduct Complaint to be made under this code for an improper purpose.

(2) For the purposes of clause 45(1), a Conduct Complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes—

(a) To intimidate or harass another Council official;

(b) To damage another Council official’s reputation;

(c) To obtain a political advantage;

(d) To influence a Council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions;

(e) To influence Council in the exercise of its functions or to prevent or disrupt the exercise of those functions;

(f) To avoid disciplinary action under this Code;

(g) To take reprisal action against a person for making a Conduct Complaint under this Code except as may be otherwise specifically permitted under this Code;
DIVISION 3 - INTERNAL RESOLUTION PROCEDURE

(h) To take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this Code except as may be otherwise specifically permitted under this Code; and

(i) To prevent or disrupt the effective administration of this Code.

46 Detrimental Action

(1) Councillors must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a Conduct Complaint they have made under this Code.

(2) Councillors must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this Code.

(3) For the purposes of clauses 46(1) and 46(2) detrimental action is an action causing, comprising or involving any of the following—

(a) Injury, damage or loss;

(b) Intimidation or harassment;

(c) Discrimination, disadvantage or adverse treatment in relation to employment;

(d) Dismissal from, or prejudice in, employment; or

(e) Disciplinary proceedings.
47 Compliance with Requirements

(1) Councillors must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this Code.

(2) Councillors must comply with a reasonable and lawful request made by a person exercising a function under this Code.

(3) Councillors must comply with any Council resolution requiring them to take action as a result of a breach of this Code.

48 Disclosure of Information

(1) Councillors must report breaches of this Code in accordance with the reporting requirements under this Code.

(2) Councillors must not make allegations of suspected breaches of this Code at Council meetings or in other public forums.

(3) Councillors must not disclose information about the consideration of a Conduct Complaint under this Code except for the purposes of seeking legal advice unless the disclosure is otherwise permitted under this Code.

(4) All documents relating to a Conduct Complaint are designated as confidential information by the Chief Executive Officer under section 77(2)(c) of the Act, because they are matters which Council considers would prejudice Council or any person, except where it is provided to be otherwise in this Division.
49 Arbitration

(1) Arbitration will be used where a Conduct Complaint has been made. It is a process where—

(a) The parties to a Conduct Complaint present their points of view and facts to an independent person (the Arbiter);

(b) The Arbiter then makes findings based on this information and presents the findings, reasons for the findings, determination and recommendations to Council and the respondent;

(c) Council, after reviewing the Arbiter’s determination and recommendations, resolves the sanctions, if any, to be applied to the respondent.

(2) Arbitration will be conducted in accordance with the requirements of this Division.

50 Establishing a Panel of Arbiters

(1) Council must by resolution establish a panel of Arbiters.

(2) Council may by resolution enter into an arrangement with one or more other councils to share a panel of Arbiters.

(3) A Panel of Arbiters is to be established following a public expression of interest process.

(4) To be eligible to be a member of a panel of Arbiters, a person must—

(a) Be independent of Council and meet the eligibility requirements for membership of
DIVISION 3 - INTERNAL RESOLUTION PROCEDURE

(5) Skills and experience that will be considered in relation to persons who apply to be on the list are—

(a) Experience serving on or appearing before tribunals and panels;

(b) Experience relating to mediation and dispute resolution;

(c) Comprehensive understanding of the rules of natural justice and procedural fairness that apply to decision making processes;

(d) Knowledge and understanding of the local government sector;

(e) Experience relating to the application of and compliance with good governance principles;

(f) Experience relating to ethics and probity.

(6) A person is not eligible to be a member of a Panel of Arbiters if they are—

(a) A councillor or a family member, relative or household member of a councillor; or

(b) A nominee for election as a councillor or a family member, relative or household member of a nominee for election as a councillor; or

(c) An administrator or a family member, relative or household member of an administrator; or
DIVISION 3 - INTERNAL RESOLUTION PROCEDURE

(d) An employee of a council or a family member, relative or household member of an employee of a council, or

(e) A member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or

(f) A nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or

(g) A person who has a conviction for an indictable offence that is not an expired conviction.

(7) A person is not precluded from being a member of Council’s Panel of Arbiters if they are a member of another council’s panel of arbiters.

(8) Members of Council’s Panel of Arbiters will be appointed for a term of up to four years.

(9) Council may terminate a Panel of Arbiters at any time by resolution.

(10) When the term of a Panel of Arbiters concludes or is terminated, Council must establish a new panel of Arbiters in accordance with the requirements of this Division.

(11) A person who was a member of a previous Panel of Arbiters established by Council may be a member of subsequent Panels of Arbiters established by Council.

51 Principal Conduct Officer Duties

The duties of the Principal Conduct Officer in relation to Panels of Arbiters, applications for arbitration of Conduct Complaints and arbitration proceedings include—
DIVISION 3 - INTERNAL RESOLUTION PROCEDURE

(a) Conducting the public expression of interest process to establish a Panel of Arbiters;

(b) Recommending the selection of a Panel of Arbiters to Council;

(c) Receiving Conduct Complaints;

(d) Selecting, from Council's Panel of Arbiters, an Arbiter to arbitrate a Conduct Complaint;

(e) Coordinating the conduct of Council's internal resolution procedure in accordance with the requirements of this Division;

(f) Liaising with and providing administrative support to an Arbiter who is arbitrating a Conduct Complaint;

(g) Attending Conduct Complaint arbitration hearings;

(h) Keeping a written summary of Conduct Complaint arbitration hearings;

(i) Keeping copies of all documents requested by, and given to, an Arbiter;

(j) Ensuring that venues and resources are made available for Conduct Complaint arbitration hearings conducted by an Arbiter;

(k) Sealing the records of the Arbiter at the conclusion of the arbitration process and giving those records to the Chief Executive Officer; and
DIVISION 3 - INTERNAL RESOLUTION PROCEDURE

(i) Ensuring that copies of a Conduct Complaint application or referral or any other document relevant to a Conduct Complaint are not provided to any person, other than in accordance with the Act and this Code, unless instructed by an Arbiter to do so.

52 Making a Conduct Complaint

(1) A Councillor is able to make a Conduct Complaint.

(2) Any group of Councillors is able to make a Conduct Complaint which must include the name of the Councillor whom that group of Councillors has appointed as its representative for the purposes of arbitration. This Councillor will have the responsibility of representing that group of Councillors in the arbitration hearing.

(3) Council as a whole can make a Conduct Complaint by Council resolution which must include the name of the Councillor whom Council has appointed as its representative for the purposes of arbitration. This Councillor will have the responsibility of representing Council in the arbitration hearing.

(4) Conduct Complaints must be made to Council's Principal Conduct Officer.

(5) Any person, who is not the Principal Conduct Officer, who receives a Conduct Complaint must refer that Conduct Complaint to the Principal Conduct Officer.

(6) Conduct Complaints must be made in writing—

(a) Specifying the name of the respondent;
(b) Specifying the provision or provisions of the Code that it is alleged have been contravened;

(c) Including evidence in support of the Conduct Complaint;

(d) Naming the applicant Councillor appointed to be the representative where the application is made by a group of councillors or by Council; and

(e) Signed and dated by the applicant.

(7) The Principal Conduct Officer must, without undue delay, ensure that a copy of the Conduct Complaint is provided to the respondent, Mayor and Chief Executive Officer.

53 Withdrawing a Conduct Complaint

(1) An applicant may withdraw a Conduct Complaint application.

(2) Once a Conduct Complaint 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.

54 Establishing an Arbiter

(1) When the Principal Conduct Officer receives a Conduct Complaint he or she must, without undue delay, select a person from the Panel of Arbiters list (the list) to arbitrate the Conduct Complaint.

(2) On the first occasion that an Arbiter is required, the Principal Conduct Officer must select the person at the beginning of the list to arbitrate the Conduct Complaint.
DIVISION 3 - INTERNAL RESOLUTION PROCEDURE

(3) On the second or subsequent occasion, the Principal Conduct Officer must select the next person, after the person who has most recently been selected, on the list.

(4) A person selected to be an Arbiter of a Conduct Complaint must excuse himself or herself if he or she—

(a) Ceases to meet the eligibility requirements of clause 50(4); or

(b) Has a conflict of interest of any kind.

(5) A person selected to be an Arbiter of a Conduct Complaint may excuse himself or herself if he or she is unavailable at the time they must hear and deliberate the matter.

(6) If a list member excuses himself or herself for any of the reasons set out above, he or she must provide written reasons to the Principal Conduct Officer.

(7) If a person selected to be an Arbiter of a Conduct Complaint excuses himself or herself the Principal Conduct Officer must select the next person that appears on the list after the excused member.

(8) If it is not possible to establish an Arbiter using the persons on the list, the Principal Conduct Officer may recommend to Council a person the Principal Conduct Officer considers to be suitable to be the proposed Arbiter of the Conduct Complaint. Council may approve the person, so recommended, by resolution.

(9) The Principal Conduct Officer must provide the applicant and respondent with the name of the proposed Arbiter.

(10) The applicant and respondent will have two business days from the date of the advice provided under clause 54(9) to lodge an objection to the proposed
Div 3 - Internal Resolution Procedure

Arbiter on the basis of the proposed Arbiter having a conflict of interest in the Conduct Complaint, including evidence for the objection, with the Principal Conduct Officer.

(11) The Principal Conduct Officer, if no objection has been received under clause 54(10), must appoint the proposed Arbiter to arbitrate the Conduct Complaint.

(12) The Principal Conduct Officer, if an objection has been received under clause 54(10), will consider the objection received and either—

   (a) Appoint the proposed Arbiter; or
   (b) Find that the proposed Arbiter does have a conflict of interest in the Conduct Complaint and repeat the process of selecting an Arbiter under clause 54.

(13) The Principal Conduct Officer must provide an Arbiter with a copy of the Conduct Complaint as soon as the Arbiter is appointed.

55 Arbiter Costs

(1) It is the responsibility of Council to pay the costs of Conduct Complaint arbitration hearings, including paying the Arbiter in accordance with the schedule of fees set for this purpose.

(2) Council will provide administrative support for Conduct Complaint arbitration hearings through the Principal Conduct Officer.

56 Arbiter Must Reject Certain Conduct Complaints

(1) An Arbiter, after examining a Conduct Complaint, must not hear, or continue to hear, the matter if the Arbiter is satisfied that—
DIVISION 3 - INTERNAL RESOLUTION PROCEDURE

(a) On the balance of probabilities, the Conduct Complaint has been made for an improper purpose as defined in clause 45; or

(b) There is insufficient evidence to support an allegation of a breach or breaches of this Code as specified in the Conduct Complaint.

(2) The Arbiter must determine to reject a Conduct Complaint if the Arbiter is satisfied that any of the conditions in clause 56(1) exist. Such a determination must be given to Council by the Arbiter together with written reasons for that determination.

(3) The rejection of a Conduct Complaint by the Arbiter under clause 56(1)(b) does not prevent a further application being made under clause 52, with further supporting evidence, in respect of the same conduct by a Councillor that was the subject of the rejected Conduct Complaint.

57 Arbiter Must Refer Certain Conduct Complaints

(1) An Arbiter, after examining a Conduct Complaint, must not hear, or continue to hear, the matter if the Arbiter is satisfied, on the balance of probabilities, that the Conduct Complaint constitutes misconduct or serious misconduct involving—

(a) Failure by a Councillor to comply with Council's internal resolution procedure; or

(b) Failure by a Councillor to comply with a written direction given by Council under section 81AB of the Act; or

(c) Repeated contravention of any of the Councillor conduct principles.
(d) The failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or

(e) The failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or

(f) The failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or

(g) 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

(h) Bullying of another Councillor or member of Council staff by a Councillor; or

(i) Conduct by a Councillor in respect of a member of Council staff in contravention of section 76E of the Act; or

(j) The release of confidential information by a Councillor in contravention of section 77 of the Act.

(2) The Arbiter must determine to refer a Conduct Complaint to Council recommending that Council resolve to make an application to the Principal Councillor Conduct Registrar for a Councillor Conduct Panel, if the Arbiter has determined that the Conduct Complaint constitutes misconduct or serious misconduct as defined in clause 57(1). Such a determination must be given to Council by the Arbiter together with written reasons for that determination.
58 Breach of Act by Councillor

(1) This clause applies if it appears to an Arbiter that a Councillor has committed an offence under the Act.

(2) The Arbiter must by notice in writing notify the Chief Municipal Inspector that a Councillor appears to have committed an offence under the Act as soon as an Arbiter becomes aware of the apparent offence.

(3) An Arbiter must not hear, or continue to hear, a Conduct Complaint if the Chief Municipal Inspector has been notified of an apparent breach of the Act under clause 58(2).

(4) The Arbiter must by notice in writing notify Council that the Chief Municipal Inspector has been notified of an apparent breach of the Act under clause 58(2) and that arbitration of the Conduct Complaint is suspended.

59 Suspension of Arbitration during Elections

(1) Conduct Complaint applications and hearings made and conducted under this Division must be suspended during the election period for a general election.

(2) If an application is made for a Conduct Complaint arbitration hearing against a person who is a Councillor before a general election, and that person is not returned to the office of Councillor as a result of the general election, the application made against that person who was a Councillor before the election lapses.

(3) If an application is made for a Conduct Complaint arbitration hearing against a person who is a Councillor before a general election, and that person is returned to the office of Councillor as a result of the
general election, the application made against the Councillor may resume, whether or not the applicant or applicants were returned as a result of the general election.

60 Notice of Arbitration

(1) An Arbiter must—

(a) Invite by written notice the respondent to make a written submission in relation to the matter within 14 days or such other reasonable period specified in the notice; and

(b) Fix a time and, subject to clause 60(2), a place that is within the municipal district, for the hearing of a Conduct Complaint to be conducted; and

(c) Serve by post a notice of the time and place of the hearing of a Conduct Complaint on the applicant, respondent and Council.

(2) For the purposes of clause 60(1)(a), an Arbiter may fix a place for the hearing that is not within the municipal district if the Arbiter considers it necessary or appropriate in the circumstances.

(3) The respondent may within seven days of receipt of the notice issued under clause 60(1)(a) request in writing that the Arbiter provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them.

(4) The Arbiter in response to a request made under clause 60(3) will only be obliged to provide such information that the Arbiter considers reasonably
necessary for the respondent to identify the substance of the allegation against them.

61 Conduct of Arbitration

(1) An Arbiter must not make a determination of a Conduct Complaint unless that Arbiter has conducted a hearing of that Conduct Complaint.

(2) An Arbiter, in the process of conducting arbitration of a Conduct Complaint, may—

   (a) Request a person to attend a Conduct Complaint hearing and answer questions;

   (b) Request information from the applicant, the respondent or Council, including confidential information held by Council.

(3) An Arbiter who is provided with confidential information must ensure that the information is not released to the public.

(4) The following applies to a hearing of a Conduct Complaint by an Arbiter—

   (a) The proceedings must be conducted with as little formality and technicality as the proper consideration of the matter permit;

   (b) There is no right to representation at the hearing except if the Arbiter considers that a party requires representation to ensure that the hearing is conducted fairly;

   (c) The proceedings must not be open to the public;

   (d) The proceedings must be held in confidence;
(e) If the hearing is based on a Conduct Complaint made by Council or group of Councillors, the appointed representative must represent Council or group of Councillors at the hearing;

(f) The Arbiter is not bound by rules of evidence but may inform himself or herself in any way he or she thinks fit;

(g) The Arbiter is bound by the rules of natural justice;

(h) The procedure of an Arbiter is otherwise at his or her discretion.

(5) At the hearing of a Conduct Complaint, the Arbiter must provide the applicant and the respondent with an opportunity to be heard.

62 Determinations by an Arbiter

(1) After an Arbiter has conducted a hearing into a Conduct Complaint, the Arbiter must make a finding—

(a) That the respondent has contravened a provision or provisions of this Code; or

(b) That the Conduct Complaint is dismissed.

(2) The Arbiter—

(a) Must provide the findings and written reasons for the findings made under clause 62(1)(a) to Council together with any recommendations regarding a sanction or sanctions if a contravention of this Code is found; and
DIVISION 3 - INTERNAL RESOLUTION PROCEDURE

(b) Provide the applicant and respondent with the findings and written reasons for the findings.

63 Dissolution of Arbitration

An Arbiter’s duties cease in respect of a Conduct Complaint upon the Arbiter giving to Council the findings of the arbitration and the reasons for those findings.

64 Tabling Determinations and Council Sanctions

(1) Where a Conduct Complaint has been rejected by an Arbiter on the grounds that the Conduct Complaint was made for an improper purpose, a copy of that determination and the reasons for that determination given to Council under clause 56(2) must be—

(a) Tabled at the next Ordinary Meeting of Council; and

(b) Recorded in the minutes for that meeting.

(2) Council may, by resolution, or a group of Councillors may, or a Councillor may make a Conduct Complaint against a Councillor who has made, or is party to, a Conduct Complaint which is the subject of a determination made under clause 56(1)(a).

(3) Where it is found that a respondent has contravened a provision or provisions of this Code, a copy of that determination, the reasons for that determination and any recommendations regarding sanctions given to Council under clause 62(2) must be—

(a) Tabled at the next Ordinary Meeting of Council; and

(b) Recorded in the minutes for that meeting.
(4) Council may, by resolution, give any or all of the following written directions to the Councillor who has contravened this Code—

(a) Direct the Councillor to make an apology in a form or manner specified by Council;

(b) Direct the Councillor to not attend up to, but not exceeding, two meetings of Council in respect of the next scheduled meetings of Council after the direction is made;

(c) Direct that, for a period of up to, but not exceeding, two months commencing on a date specified by Council, the Councillor—

(i) Be removed from any position where the Councillor represents Council; and

(ii) Not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.
Wangaratta Rural City Council
Councillor Code of Conduct
2017

CERTIFICATION

CERTIFICATION

The Common Seal of Wangaratta Rural City Council was
affixed to this Code by the Mayor, Mr Ken Clarke, and the Chief
Executive Officer, Mr Brendan McGrath.

This Code became operational on 6 February 2017.

The Common Seal of
WANGARATTA RURAL CITY
COUNCIL was hereunto
affixed in the presence of:

....................................................... Mayor

....................................................... Chief Executive Officer
Appendix 1 - Authorising Provision

This Code is authorised by section 76C of the Act.

The version of this section incorporating amendments as at 1 December 2016 is set out below.

76C Councillor Code of Conduct

(2) A Council must, within the period of 4 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.

(3) A Councillor Code of Conduct—

(a) must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor;

Note

Section 81AA provides for matters to be addressed by the internal resolution procedure of a Council.

(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.

(5) A Councillor Code of Conduct must not be inconsistent with any Act or regulation.

(5A) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act or regulation.

(6) A copy of the current Councillor Code of Conduct must be—

(a) given to each Councillor;

(b) available for inspection by the public at the Council office and any district offices;

(c) published on the Council's Internet website maintained under section 82A.
(6A) Within one month of amendments to a Councillor Code of Conduct being approved in accordance with subsection (2), a Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct.

(6B) A declaration by a Councillor under subsection (6A) must be—

(a) in writing; and

(b) witnessed by the Chief Executive Officer.
APPENDIX 2 - COUNCIL DUTIES

“Council duties” means any duties performed by a Councillor, either inside or outside of the municipal district that are necessary or appropriate for the purposes of achieving the objectives of Council, as defined in section 3C of the Act. Such duties would generally include, but are not limited to, the following when performed or undertaken by a Councillor in that capacity—

(a) Attending an ordinary, a special or a committee meeting of Council;
(b) Attending a meeting with the Chief Executive Officer of Council, or any other member of staff of Council, at Council premises;
(c) Attending or participating in a scheduled activity of a business, community or other organisation as a representative of Council;
(d) Attending a scheduled meeting with a representative of a local, State or Federal Government entity as a representative of Council;
(e) Inspecting, for a purpose associated with a Council approval process, a development or other site that is the subject of a Council approval process;
(f) Visiting any other site as a representative of Council;
(g) Attending a pre-approved training or professional development activity for Councillors;
(h) Responding to communications from constituents concerning Council business.

The circumstances, which take precedence over the foregoing, in which a Councillor will generally not be taken to be performing his or her duties as a Councillor include, but are not limited to, the following—

(i) Where the Councillor’s conduct contravenes this Code;
(j) Where the Councillor’s conduct contravenes the Councillor conduct principles referred to in sections 76B and 76BA of the Act;
(k) Where the Councillor is otherwise contravening a provision of the Act or is otherwise acting unlawfully;
(l) Where the Councillor is acting solely in his or her capacity as a private member of the community; and
(m) Where the Councillor is carrying out work in his or her capacity as a worker or deemed worker of another individual, company, organisation or other body, or as a self-employed person.
APPENDIX 3 - CONDUCT PRINCIPLES

The primary conduct principle and general conduct principles are provided by sections 76B and 76BA of the Act respectively.

The versions of these sections incorporating amendments as at 1 December 2016 are set out below.

76B Primary principle of Councillor conduct

It is a 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.

76BA General Councillor conduct principles

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

(a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;

(b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;

(c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;

(d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that 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.
APPENDIX 4 - ROLES

Councillor

The role of a Councillor is provided by section 65 of the Act.

The version of this section incorporating amendments as at 1 December 2016 is set out below.

65 What is the role of a Councillor?

(1) 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.

(2) 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.

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

Note

See Part 1A which sets out the local government charter and in particular section 3D which specifies the role of a Council.

Mayor

The role of the Mayor is provided by section 73AA of the Act.

The version of this section incorporating amendments as at 1 December 2016 is set out below.
73AA  Functions of Mayor

The functions of the Mayor of a Council include—

(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.

Council

The role of Council is established by Part 1A of the Act — Local government charter.

The version of this Part incorporating amendments as at 1 December 2016 is set out below.

Part 1A—Local government charter

3A  What is the purpose of local government?

The purpose of local government is to provide a system under which Councils perform the functions and exercise the powers conferred by or under this Act and any other Act for the peace, order and good government of their municipal districts.

3B  How is a Council constituted?

A Council consists of its Councillors who are democratically elected in accordance with this Act.

3C  Objectives of a Council

(1)  The primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.

(2)  In seeking to achieve its primary objective, a Council must have regard to the following facilitating objectives—

(a)  to promote the social, economic and environmental viability and sustainability of the municipal district;

(b)  to ensure that resources are used efficiently and effectively and services are provided in accordance with the Best Value Principles to best meet the needs of the local community;

(c)  to improve the overall quality of life of people in the local community;
(d) to promote appropriate business and employment opportunities;

(e) to ensure that services and facilities provided by the Council are accessible and equitable;

(f) to ensure the equitable imposition of rates and charges;

(g) to ensure transparency and accountability in Council decision making.

3D What is the role of a Council?

(1) A Council is elected to provide leadership for the good governance of the municipal district and the local community.

(2) The role of a Council includes—

(a) acting as a representative government by taking into account the diverse needs of the local community in decision making;

(b) providing leadership by establishing strategic objectives and monitoring their achievement;

(c) maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;

(d) advocating the interests of the local community to other communities and governments;

(e) acting as a responsible partner in government by taking into account the needs of other communities;

(f) fostering community cohesion and encouraging active participation in civic life.

3E What are the functions of a Council?

(1) The functions of a Council include—

(a) advocating and promoting proposals which are in the best interests of the local community;

(b) planning for and providing services and facilities for the local community;

(c) providing and maintaining community infrastructure in the municipal district;

(d) undertaking strategic and land use planning for the municipal district;

(e) raising revenue to enable the Council to perform its functions;

(f) making and enforcing local laws;

(g) exercising, performing and discharging the duties, functions and powers of Councils under this Act and other Acts;

(h) any other function relating to the peace, order and good government of the municipal district.
(2) For the purpose of achieving its objectives, a Council may perform its functions inside and outside its municipal district.

3F What are the powers of Councils?

(1) Subject to any limitations or restrictions imposed by or under this Act or any other Act, a Council has the power to do all things necessary or convenient to be done in connection with the achievement of its objectives and the performance of its functions.

(2) The generality of this section is not limited by the conferring of specific powers by or under this or any other Act.

Chief Executive Officer

The role of the CEO is provided by section 94A of the Act.

The version of this section incorporating amendments as at 1 December 2016 is set out below.

94A Functions of the Chief Executive Officer

(1) A Chief Executive Officer 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

(ca) developing, adopting and disseminating a code of conduct for Council staff; and

(d) providing timely advice to the Council; and

(da) ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act; and

(db) supporting the Mayor in the performance of the Mayor's role as Mayor; and

(e) 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

(f) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.

(2) The Chief Executive Officer may appoint as many members of Council staff as are required to enable the functions of the Council under this Act or any other Act
to be carried out and to enable the Chief Executive Officer to carry out her or his functions.

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

(3A) The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

(4) A reference to Council staff in this section does not include a reference to the Chief Executive Officer.

Principal Conduct Officer

The establishment of a Principal Conduct officer is provided by section 81Y of the Act. The functions of that role are provided by sections 81X and 81T of the Act.

The versions of these sections incorporating amendments as at 1 December 2016 are set out below.

81Y Duties of the Chief Executive Officer in relation to Councillor Conduct Panels

(1) The Chief Executive Officer must appoint, in writing, an eligible person to be the Principal Conduct Officer.

(2) For the purposes of subsection (1), a person is an eligible person if—

(a) the person is a senior officer (other than the Chief Executive Officer); or

(b) the Council resolves that the person is suitably qualified to perform the functions of the Principal Conduct Officer.

81X Functions of a Principal Conduct Officer

A Principal Conduct Officer must—

(a) assist the Council in the implementation of, and conduct of, the internal resolution procedure of a Council; and

(b) assist the Principal Councillor Conduct Registrar to perform the functions specified in section 81T.

81T Functions and powers of the Principal Councillor Conduct Registrar

(1) The functions of the Principal Councillor Conduct Registrar are to—

(a) receive applications for the establishment of Councillor Conduct Panels; and

(b) form Councillor Conduct Panels by appointing members of the panel list to sit on Councillor Conduct Panels; and
(c) provide general advice and assistance to members of the Councillor Conduct Panel in relation to their functions; and

(d) publish any determination made by a Councillor Conduct Panel and any reasons given for that determination; and

(e) keep copies of all documents requested by, and given to, a Councillor Conduct Panel; and

(f) comply with any request made by the Chief Municipal Inspector or VCAT for copies of any documents given to or made by a Councillor Conduct Panel; and

(g) set and publish a schedule of fees specifying the fees to be paid to members of a Councillor Conduct Panel; and

(h) send notice to a Council specifying the fees payable by the Council following any Councillor Conduct Panel hearing conducted for, or on behalf of, the Council; and

(i) publish any guidelines in relation to Councillor Conduct Panel procedures and processes that the Principal Councillor Conduct Registrar has determined to be necessary.

(2) The Principal Councillor Conduct Registrar has power to do all things necessary or convenient to be done for or in connection with the performance of the Principal Councillor Conduct Registrar’s functions under this Act.
APPENDIX 5 - COUNCILLOR INTERACTION WITH COUNCIL STAFF POLICY

The version of this policy as at 1 December 2016 is set out below.

<table>
<thead>
<tr>
<th>Responsible Officer: Manager Business and Governance</th>
<th>Adoption Date: 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorising Officer: Chief Executive Officer</td>
<td>Approved By: CEO</td>
</tr>
<tr>
<td></td>
<td>Review Date: 2020</td>
</tr>
<tr>
<td></td>
<td>Policy Type: Corporate</td>
</tr>
</tbody>
</table>

INTRODUCTION

We are driven by the desire to work with our elected Councillors to build an exciting, prosperous and sustainable future for the community. These great outcomes will need to be founded on developing and maintaining positive and strong relationships with our Councillors and delivering great support to them.

Generally, we will undertake almost all of our interactions with Councillors through members of our Corporate Management Team so that we can provide the best support possible. However, there will be some day to day standard types of support that will need to be given by other Council officers. All of these situations are specifically provided for in this policy.

CONTEXT

The environment that we operate in is very complex and we need to understand that there are often competing influences that have a bearing on the provision of effective support to our Councillors.

Under the Local Government Act 1989 (the Act), the Council, through decisions made in Council meetings, is responsible for strategic direction and for determining the policy framework of Council. The Council also has a statutory role as the consent authority under the law for development applications and other approvals. In contrast, the Chief Executive Officer (CEO) is responsible for the effective management of the organisation and the carrying out of Council’s policies and strategic objectives. The distinction between these two roles, however, may be unclear. There often needs to be personal interaction between Councillors and Council staff, particularly regarding access to and provision of information to effectively integrate policy making and service delivery.

Councillors’ accountabilities also come into play as not only are they accountable to the entire community, they are also accountable to their own constituents. As members of Council, where the focus is necessarily on governing in the best interests of the entire municipality, Councillors are accountable in multiple ways including acting in their roles as legislators, policy makers, strategists and financial overseers. On the other hand, Councillors also have to represent their constituents on a wide range of issues. In doing so, Councillors must obey the law, including the principle of natural justice. Councillors must also deal with a range of requests and complaints from their constituents which they need to find ways to deal with, preferably in conjunction with Council staff.
It is a complex political environment in which elected members operate and it is also a highly complex task to prepare information and provide quality advice on a very wide range of issues.

It is a breach of the Act for a Councillor to improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member. Consequently, guidelines will also help protect Councillors and Council staff from situations that may be in breach of the Act.

**SCOPE**

This policy applies to all Councillors, Council employees and agents of Council.

Agents of Council extend to include contractors working in-house, staff on exchange, members of Special Committees, members of Advisory Committees, volunteers, work experience students or graduate placements who perform work for Council as well as external suppliers and other contractors and subcontractors.

**PURPOSE**

The purpose of this policy is to provide guidelines for the interaction between Councillors and Council staff and in particular requests from Councillors relating to the provision of support.

The aims of the guidelines are:

- To help to develop and maintain a positive and strong working relationship between Councillors as elected representatives of the community and the Council staff employed to administer the operations of Council;
- To ensure that Councillors receive the support required to assist them to perform their Council duties effectively;
- To maintain transparent decision making and governance arrangements;
- To support compliance with the provisions of the Act, in particular Part 4 Division 1A - Conduct and Interests; and
- To recognise the responsibilities of the Council in ensuring that it meets the responsibilities of the *Occupational Health and Safety Act 2004* and the *Equal Opportunity Act 2010* to protect people from risks to their health and safety including harassment, bullying, violence and discrimination.

**POLICY**

**DEFINITION**

“Complaint” means an expression of dissatisfaction with—

(a) The quality of an action taken, decision made, or service provided; or
(b) A delay or failure in providing a service, taking an action, or making a decision.

A complaint is not—

(a) A request for service;
Appendix 5 - Councillor Interaction with Council Staff Policy

(b) A matter that is, has been or is scheduled to be before a court, panel, coroner or tribunal;
(c) Anything that relates to the appointment or dismissal of any staff member or an industrial issue or an internal staff disciplinary issue;
(d) Reports of damaged or faulty infrastructure;
(e) Reports concerning neighbours or neighbouring property e.g. noise or unauthorised building works;
(f) The lodging of an appeal or a submission in accordance with council procedure or policy;
(g) Reports of hazards e.g. fallen tree branch or road pot hole.
(h) Matters where statutory submission, hearing, review or appeal processes exist.

“Conduct Complaint” means a complaint made under clause 52 of the Councillor Code of Conduct alleging a contravention of a provision of the Councillor Code of Conduct by a Councillor;

“Council” means Wangaratta Rural City Council;

“Council duties” means any duties performed by a Councillor, either inside or outside of the municipal district that are necessary or appropriate for the purposes of achieving the objectives of Council, as defined in section 3C of the Act. Such duties would generally include, but are not limited to, the following when performed or undertaken by a Councillor in that capacity—

(a) Attending an ordinary, a special or a committee meeting of Council;
(b) Attending a meeting with the Chief Executive Officer of Council, or any other member of staff of Council, at Council premises;
(c) Attending or participating in a scheduled activity of a business, community or other organisation as a representative of Council;
(d) Attending a scheduled meeting with a representative of a local, State or Federal Government entity as a representative of Council;
(e) Inspecting, for a purpose associated with a Council approval process, a development or other site that is the subject of a Council approval process;
(f) Visiting any other site as a representative of Council;
(g) Attending a pre-approved training or professional development activity for Councillors;
(h) Responding to communications from constituents concerning Council business.

The circumstances, which take precedence over the foregoing, in which a Councillor will generally not be taken to be performing his or her duties as a Councillor include, but are not limited to, the following—

(a) Where the Councillor’s conduct contravenes the Councillor Code of Conduct;
(b) Where the Councillor’s conduct contravenes the Councillor conduct principles referred to in sections 76B and 76BA of the Act;
(c) Where the Councillor is otherwise contravening a provision of the Act or is otherwise acting unlawfully;
(d) Where the Councillor is acting solely in his or her capacity as a private member of the community; and
(e) Where the Councillor is carrying out work in his or her capacity as a worker or deemed worker of another individual, company, organisation or other body, or as a self-employed person.

“Councillor Code of Conduct” means the code of conduct developed by Council under section 76C of the Act;

“Emergency” means a serious, unexpected, and often dangerous situation requiring immediate action.

“Improper or undue influence or direction” means behaviour that extracts a result that would be of benefit or gain to the perpetrator, which would not otherwise occur. Benefit or gain can be in the form of information, financial or material gain. Improper or undue influence or direction can include:

(a) Using rank or position to seek information outside the formal briefing or reporting processes of Council;
(b) Pressuring staff to make a decision outside the formal Council decision making processes;
(c) Pressuring staff to provide information, services or assistance to one person, group or part of the community over another, outside a formal decision of Council or outside normal Council prioritisation processes;
(d) Pressuring staff to make a decision under delegated authority outside the formal reporting and decision making processes of Council; and
(e) Pressuring staff to make a decision or take action outside normal business process timeframes.

“Inappropriate interactions” means dealings of any sort between a Councillor, or Councillors, and a member, or members, of Council staff that may at the very least give an impression of improper or undue influence or direction. Inappropriate interactions can include:

(a) Individual staffing matters or anything that relates to the appointment or dismissal of any staff member or an industrial issue or an internal staff disciplinary issue;
(b) Staff refusing to give information that is available to other councillors to a particular councillor;
(c) Members of staff approaching Councillors directly on issues before Council;
(d) Council staff providing ad hoc advice without recording or documenting the interaction;
(e) Requests that impose an unreasonable burden on Council staff members;
(f) Providing constituents with a staff member’s direct contact details;
(g) Requests that seek advice on conflicts of interest;
(h) Councillors directing a planning mediation or conciliation matter. Councillors may only act as observers in these processes;
(i) Requests regarding a matter that is, has been or is scheduled to be before an infringement appeal process, a court, a panel, the coroner or a tribunal.

“Mayor” means the Mayor of Council;

“Municipal district” means the municipal district of Council;
“Request for service” means contact with Council to seek assistance, access to a new service, advice, information or to make a report about something for which Council has responsibility.

COMMITMENT

Our primary role is to provide support to Council. This means implementing Council’s goals and strategies, managing the delivery of Council services, providing advice and support and helping Councillors to deal with concerns raised by constituents. In doing this we will set very high standards for ourselves and how we go about it.

We will also seek to improve what we do by encouraging, and being responsive to, feedback. We will actively ask for ways that we can better support Councillors and Council. To do this well, we will be clear in our ‘non-negotiables’ which are the things we need to do, the decisions we need to make and the boundaries and guidelines we have to work within. We will get better at making sure our elected Councillors understand what these are.

At the same time we have expectations of the people we work with. We will be respectful and positive and we will work hard to develop relationships but we will not tolerate situations where people are deliberately mean, derogatory or cruel. We will not engage in conversations that are disrespectful to people in our organisation or our community. We believe that as a community the best way we can achieve an exciting future is to support, encourage and celebrate each other.

Generally, we will undertake almost all of our interactions with Councillors through members of our Corporate Management Team so that we can provide the best support possible. However, there will be some day to day standard types of support that will need to be given by other Council officers as provided for in this policy.

All interactions between Councillors and Council staff must be conducted to avoid any actual or perceived improper direction or improper influence being exercised by a Councillor over a member of Council staff in the exercise of any power or in the performance of any duty or function by that member of Council staff. Inappropriate interactions are to be avoided.

RESPONSIBILITIES

Councillors, Council employees and agents of Council are required to comply with the provisions of this policy.

Councillors need to be aware that:

- Accountable advice needs to go through an organisational process which usually involves approval by a Director or the CEO. Speaking directly to lower-level staff may result in councillors not being fully informed or receiving advice that hasn’t been formally endorsed by the CEO or a Director;
- Staff are not accountable to Councillors individually, and that it is illegal in most situations for a councillor to try and direct council staff; and
- Uncontrolled access to staff by Councillors carries clear dangers. Councillors are more influential than most members of the public. They may in effect be giving directions to officers, whether explicitly or implicitly, as to how certain matters should be determined. In addition, officer time and effort may be diverted to answer questions from Councillors rather than to work on the tasks set by line managers.
Council officers need to be aware that:

- They are not accountable to individual councillors and are not required to take direction from them. They are accountable to the whole council, through the management structure; and
- They should not provide advice to councillors unless it has been approved by the CEO or a Director.

**PROCESS**

Given the complex relationship that exists between the elected Council and Council staff the approach taken in this policy is to provide appropriate protocols (*refer Appendix 1 Interactions Protocols*) to guide interactions.

It is impractical to channel all communications between Councillors and the organisation through the CEO or Directors and so the protocols provide for appropriate channels of communication based on the type of interaction involved.

**Councillors Contacting Council Staff**

Councillors are to comply with the following requirements when contacting Council staff:

- Contact must follow the requirements of Appendix 1 Interactions Protocols;
- Contact must not be made outside office hours unless the matter relates to an emergency however it is recognised, that some events are conducted outside of normal office hours and phone calls or messages regarding these specific events may be appropriate.

**Council Staff Contacting Councillors**

It is acknowledged that Council staff will be required, on occasion to contact Councillors. In these circumstances, staff will follow these protocols:

- Contact must follow the requirements of Appendix 1 Interactions Protocols;
- Calls to Councillors will be made in response to a request where an email response is considered inappropriate;
- Council staff will not call Councillors outside office hours unless the matter relates to an emergency however it is recognised, that some events are conducted outside of normal office hours and phone calls or messages regarding these specific events may be appropriate.

**BREACHES OF THIS POLICY**

A breach of this policy will be taken to be a breach of the relevant Code of Conduct and complaints alleging a breach of this policy may be made in accordance with the relevant Code of Conduct and subsequently dealt with in accordance with the procedures for such complaints.

**REFERENCES**

*Local Government Act 1989*
Local Government Association of South Australia 2014 Council Members’ Guide - YOUR guide to serving YOUR community on Council

Municipal Association of Victoria (MAV), Victorian Local Governance Association (VLGA), Local Government Victoria (LGV) and Local Government Professionals (LGPro) 2012 Good Governance Guide

Victorian Ombudsman 2008 Conflict of interest in local government

Victorian Ombudsman 2009 Investigation into Corporate Governance at Moorabool Shire Council

Victorian Ombudsman 2015 Councils and complaints – A report on current practice and issues

**REVIEW**

Any change or update which materially impacts and alters this policy must be by CEO approval following review by the Corporate Management Team. This policy will be reviewed in the 12 months preceding a Wangaratta Rural City Council general election or if there has been a material change to any relevant laws.
## APPENDIX 1 INTERACTIONS PROTOCOLS

<table>
<thead>
<tr>
<th>Interaction</th>
<th>Method</th>
<th>Officer Receiving</th>
<th>Officer Responsible</th>
<th>Register</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council meeting</td>
<td>Formal council meeting and associated agenda</td>
<td>NA</td>
<td>CEO</td>
<td>Records Management System</td>
<td>Councillors' legal authority only exists when they are participating, as a member of the council, in a formal council meeting. Outside of the council meeting individual councillors have no such authority. Council reports, prepared for council meetings, provide Councillors with professional, frank and fearless advice and information. They are prepared by the organisation and contain relevant data, issues and options which genuinely and impartially evaluate the effectiveness of the proposed recommendations and help councillors to consider the matter at hand and make a decision. Council’s Governance and Meeting Conduct Local Law applies.</td>
</tr>
<tr>
<td>Briefing forum</td>
<td>Briefing forum meeting and associated presentations by council officers</td>
<td>NA</td>
<td>CEO</td>
<td>Records Management System</td>
<td>Councillors are briefed by the organisation on council business including policy development, significant development proposals and other matters that are likely to affect the community or come before council in the future. Councillors are able to discuss the matters with the relevant council officers, ask questions and make suggestions. These meetings are not a forum for debate on recommendations formulated for council meetings. All decisions to in any way modify, change or reject Council staff recommendations must be made at formal Council meetings.</td>
</tr>
</tbody>
</table>
**APPENDIX 1 INTERACTIONS PROTOCOLS**

<table>
<thead>
<tr>
<th>Interaction</th>
<th>Method</th>
<th>Officer Receiving</th>
<th>Officer Responsible</th>
<th>Register</th>
<th>Description</th>
</tr>
</thead>
</table>
| Special Committee            | Special Committee meeting and associated agenda and presentations by council officers | Council allocated committee support staff member       | Relevant Director     | Records Management System | Councillors and independent committee members are briefed by the organisation on committee business as defined in the committee charter. Councillors and independent committee members are able to discuss the matters with the relevant council officers, ask questions and make suggestions.  

These meetings are not a forum for debate on recommendations formulated for council meetings. All decisions to in any way modify, change or reject Council staff recommendations must be made at formal Council meetings.  

Special committee charters apply.  

Council’s Governance and Meeting Conduct Local Law applies if the special committee consists entirely of councillors or as referenced by the committee charter or as otherwise provided for in committee charters. |
| Advisory committee           | Advisory committee meeting and associated agenda and presentations by council officers | Council allocated committee support staff member       | Relevant Director     | Records Management System | Councillors and independent committee members are briefed by the organisation on committee business as defined in the committee charter. Councillors and independent committee members are able to discuss the matters with the relevant council officers, ask questions and make suggestions.  

These meetings are not a forum for debate on recommendations formulated for council meetings. All decisions to in any way modify, change or reject Council staff recommendations must be made at formal Council meetings.  

Advisory committee charters apply.  

Council’s Governance and Meeting Conduct Local Law applies if referenced by the committee charter. |
| Service request for a private purpose | [council@wangaratta.vic.gov.au](mailto:council@wangaratta.vic.gov.au) [http://www.wangaratta.vic.gov.au/council/contact/customer-request.asp](http://www.wangaratta.vic.gov.au/council/contact/customer-request.asp) | Customer Service team                                   | Relevant Council staff member | Customer Request Management System | A Councillor, on their own behalf or for a constituent, seeking assistance, access to a new service, advice, information or to make a report about something for which Council has responsibility such as damaged or faulty infrastructure and hazards e.g. fallen tree branch or road pot hole.  

Council’s normal customer service standards apply. |
### APPENDIX 1 INTERACTIONS PROTOCOLS

<table>
<thead>
<tr>
<th>Interaction</th>
<th>Method</th>
<th>Officer Receiving</th>
<th>Officer Responsible</th>
<th>Register</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information Services request related to standard Council provided information technology (IT) resources</td>
<td><a href="http://isservicedesk.wangaratta.vic.gov.au/HomePage.do">http://isservicedesk.wangaratta.vic.gov.au/HomePage.do</a></td>
<td>Information Services service desk</td>
<td>Information Services Staff</td>
<td>Information Services service desk software</td>
<td>A request from a Councillor for information about, or advice on, or for a standard change to or for access to a standard IT Service that has been provided by Council in accordance with the Councillor Support Policy. For example to reset a password, or to provide standard IT Services or on the phone training or a password reset or a restoration of service. Requests for the provision of non-standard IT equipment or other IT advice must be submitted in writing to the Executive Services Coordinator or the Executive Assistant Corporate Services. Council’s normal information services request service standards apply. Council’s Councillor Support Policy applies.</td>
</tr>
<tr>
<td>Safety incident</td>
<td>Verbally or in writing: Phone 03 5722 0888 From the Mayor to: Executive Services Coordinator From Councillors to: Executive Assistant Corporate Services</td>
<td>Executive Services Coordinator or Executive Assistant Corporate Services</td>
<td>Health and Risk Officer</td>
<td>Records Management System</td>
<td>Using Council’s Initial Register of Injuries, Incidents and Near Hits Form. Participate in the incident investigation. Council’s OH&amp;S policies and procedures apply. <a href="https://www.legislation.vic.gov.au">Occupational Health and Safety Act 2004</a> applies.</td>
</tr>
<tr>
<td>Workcover claim</td>
<td>In writing, marked to the attention of Executive Services: Delivered by hand Postal address PO Box 238 Wangaratta, Vic 3676</td>
<td>Executive Services Coordinator or Executive Assistant Corporate Services</td>
<td>Health Safety and Risk Officer</td>
<td>Records Management System</td>
<td>Obtain a ‘Certificate of Capacity’ from a medical practitioner submit a completed Worksafe Victoria ‘Worker’s Injury Claim Form’. Participate in planning for return to work, participate and cooperate in assessments of work capacity and rehabilitation progress. Council’s OH&amp;S policies and procedures apply. <a href="https://www.legislation.vic.gov.au">Workplace Injury Rehabilitation and Compensation Act 2013</a> applies.</td>
</tr>
</tbody>
</table>
## APPENDIX 1 INTERACTIONS PROTOCOLS

<table>
<thead>
<tr>
<th>Interaction</th>
<th>Method</th>
<th>Officer Receiving</th>
<th>Officer Responsible</th>
<th>Register</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Councillor request for non-standard equipment or facilities</td>
<td>In writing:</td>
<td>From the Mayor to:</td>
<td>Executive Services Coordinator</td>
<td>Customer Request Management System</td>
<td>Requests for the provision of non-standard equipment or facilities.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>From Councillors to:</td>
<td>or Executive Assistant Corporate</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Councillor request for advice relating to the Councilor’s Council duties</td>
<td>In writing:</td>
<td>From the Mayor to:</td>
<td>Executive Services Coordinator</td>
<td>Customer Request Management System</td>
<td>Councillors have both a right and a need to obtain information from the organisation, and it is equally important that the organisation be informed about the concerns and requirements of councillors. Accountable advice needs to go through an organisational process which involves approval by the CEO or a Director. Speaking directly to staff may result in councillors not being fully informed or receiving advice that hasn’t been formally endorsed by the CEO or Directors. Requests will be actioned provided the advice is related to Councillors’ Council duties and not subject to privacy, confidentiality or legal restraint. If refused, reasons for the refusal must be provided. Responses to requests for advice will be provided in writing.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>From Councillors to:</td>
<td>or Executive Assistant Corporate</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### APPENDIX 1 INTERACTIONS PROTOCOLS

<table>
<thead>
<tr>
<th>Interaction</th>
<th>Method</th>
<th>Officer Receiving</th>
<th>Officer Responsible</th>
<th>Register</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Councillor request for access to information relating to the Councillor’s Council duties</td>
<td><strong>In writing:</strong> From the Mayor to: Executive Services Coordinator From Councillors to: Executive Assistant Corporate Services</td>
<td>Executive Services Coordinator or Executive Assistant Corporate Services</td>
<td>Director Corporate Services</td>
<td>Customer Request Management System</td>
<td>The request should clearly describe the document(s) being sought and the reason for seeking access. Councillors have a right to access council information that is reasonably necessary for exercising their Council duties that are necessary or appropriate for the purposes of achieving the objectives of Council, as defined in section 3C of the Local Government Act 1989 provided the information is related to Councillors’ Council duties and is not subject to privacy, confidentiality or legal restraint. If refused, reasons for the refusal must be provided. Responses to requests for information will be provided in writing. Councillors can also request access to other documents of Council either by a Notice of Motion to the Council or a Freedom of Information application.</td>
</tr>
<tr>
<td>Councillor request for access to information for a private purpose</td>
<td><strong>In writing to the Freedom of Information Officer</strong> on Council’s Request for Access to Documents form: <a href="mailto:council@wangaratta.vic.gov.au">council@wangaratta.vic.gov.au</a> Fax: 03 5721 9526 Postal address PO Box 238 Wangaratta, Vic 3676</td>
<td>Customer Service team</td>
<td>Freedom of Information Officer</td>
<td>Customer Request Management System</td>
<td>The request must clearly describe the document(s) being sought and must include the applicant’s name, address, contact number(s) and in what form the documents are required (e.g. copy or inspection). The written request must be accompanied by payment of the FOI application fee. Freedom of Information Act 1982 applies.</td>
</tr>
<tr>
<td>Media requests</td>
<td>Mayor or Mayor’s delegate verbally or in writing: Media and Communications Coordinator Media and Communications Coordinator verbally or in writing to the Mayor or Mayor’s delegate</td>
<td>Media and Communications Coordinator</td>
<td>Media and Communications Coordinator</td>
<td>Records Management System</td>
<td>Weekly Mayor, CEO and Media and Communications Coordinator media planning meeting to share information concerning media activities. The Mayor must authorise the media activity involvement of other Councillors. Verbal requests will be confirmed in writing. Council’s Councillor Code of Conduct applies.</td>
</tr>
</tbody>
</table>
### APPENDIX 1 INTERACTIONS PROTOCOLS

<table>
<thead>
<tr>
<th>Interaction</th>
<th>Method</th>
<th>Officer Receiving</th>
<th>Officer Responsible</th>
<th>Register</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mayor standard support request</td>
<td>Verbally or in writing: Executive Services Coordinator</td>
<td>Executive Services Coordinator</td>
<td>Executive Services Coordinator</td>
<td>Customer Request Management System</td>
<td>Administrative support for work directly related to the Mayor’s mayoral duties including diary management, general follow up and preparation of correspondence, constituent and community contact activities, relevant bookings on behalf of councillors including meeting rooms, civic events and conferences, responding to invitations, issue research, speech notes, resource requests in accordance with the Councillor Code of Conduct (stationery, vehicle booking, meeting room booking, equipment), and processing requests for reimbursement of expenditure. Council’s Councillor Code of Conduct applies.</td>
</tr>
<tr>
<td>Councillor standard support request</td>
<td>Verbally or in writing: Executive Assistant Corporate Services</td>
<td>Executive Assistant Corporate Services</td>
<td>Executive Assistant Corporate Services</td>
<td>Customer Request Management System</td>
<td>Administrative support for work directly related to a Councillor’s Council duties including diary management, general follow up and preparation of correspondence, constituent and community contact activities, relevant bookings on behalf of councillors including meeting rooms, civic events and conferences, responding to invitations, issue research, speech notes, resource requests in accordance with the Councillor Code of Conduct (stationery, vehicle booking, meeting room booking, equipment), and processing requests for reimbursement of expenditure. Council’s Councillor Code of Conduct applies.</td>
</tr>
<tr>
<td>Complaint</td>
<td>From the Mayor to: Executive Services Coordinator From Councillors to: Executive Assistant Corporate Services</td>
<td>Executive Services Coordinator or Executive Assistant Corporate Services</td>
<td>Director Corporate Services</td>
<td>Customer Request Management System</td>
<td>An expression of dissatisfaction with the quality of an action taken, decision made, or service provided; or an expression of dissatisfaction with a delay or failure in providing a service, taking an action, or making a decision. Council’s Complaints Handling Policy and procedures apply.</td>
</tr>
</tbody>
</table>
## APPENDIX 1 INTERACTIONS PROTOCOLS

<table>
<thead>
<tr>
<th>Interaction</th>
<th>Method</th>
<th>Officer Receiving</th>
<th>Officer Responsible</th>
<th>Register</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unreasonable Complainant Conduct report</td>
<td>From the Mayor to: Executive Services Coordinator&lt;br&gt;From Councillors to: Executive Assistant Corporate Services</td>
<td>Executive Services Coordinator or Executive Assistant Corporate Services</td>
<td>Director Corporate Services</td>
<td>Records Management System</td>
<td>Reports of any behaviour by a person which, because of its nature or frequency raises substantial health, safety, resource or equity issues for our organisation, Councillors, our staff, other service users and people making complaints to us including the person themselves. Council’s Unreasonable Complainant Conduct Policy and procedures apply.</td>
</tr>
<tr>
<td>Conduct Complaint</td>
<td>In writing to Principal Conduct Officer: <a href="mailto:pcco@wangaratta.vic.gov.au">pcco@wangaratta.vic.gov.au</a></td>
<td>Principal Conduct Officer</td>
<td>Principal Conduct Officer</td>
<td>Records Management System</td>
<td>A complaint made under clause 52 of the Councillor Code of Conduct alleging a contravention of a provision of the Code by a Councillor. Council’s Councillor Code of Conduct applies.</td>
</tr>
<tr>
<td>Councillor Conduct Panel application</td>
<td>In writing to Principal Councillor Conduct Registrar: <a href="mailto:pcc.registrar@delwp.vic.gov.au">pcc.registrar@delwp.vic.gov.au</a></td>
<td>Principal Councillor Conduct Registrar</td>
<td>Principal Councillor Conduct Registrar</td>
<td>Records Management System</td>
<td>An application under section 81B of the Local Government Act 1989 alleging misconduct or serious misconduct by a Councillor. Local Government Act 1989 applies.</td>
</tr>
<tr>
<td>Protected disclosure about Council or a council staff member</td>
<td>Verbally or in writing to Protected Disclosure Coordinator&lt;br&gt;Phone 03 5722 0888&lt;br&gt;Postal address PO Box 238 Wangaratta, Vic 3676 <a href="mailto:pdc@wangaratta.vic.gov.au">pdc@wangaratta.vic.gov.au</a></td>
<td>Protected Disclosure Coordinator</td>
<td>Protected Disclosure Coordinator</td>
<td>Records Management System</td>
<td>A disclosure made in accordance with Part 2 of the Protected Disclosure Act 2012 alleging improper conduct of Council or a council officer or detrimental action against a person by Council or a council officer in reprisal for the making of a protected disclosure. Council’s Protected Disclosure Policy and procedures apply. Protected Disclosure Act 2012 applies.</td>
</tr>
</tbody>
</table>
## APPENDIX 1 INTERACTIONS PROTOCOLS

<table>
<thead>
<tr>
<th>Interaction</th>
<th>Method</th>
<th>Officer Receiving</th>
<th>Officer Responsible</th>
<th>Register</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbally or in writing to Independent Broad-based Anti-corruption Commission</td>
<td>Independent Broad-based Anti-corruption Commission</td>
<td>Independent Broad-based Anti-corruption Commission</td>
<td>Independent Broad-based Anti-corruption Commission</td>
<td>A disclosure made in accordance with Part 2 of the Protected Disclosure Act 2012 alleging improper conduct of Council or a council officer or detrimental action against a person by Council or a council officer in reprisal for the making of a protected disclosure. <em>Protected Disclosure Act 2012</em> applies.</td>
<td></td>
</tr>
</tbody>
</table>

Phone 1300 735 135
Level 1, North Tower, 459 Collins Street Melbourne
Office hours Monday to Friday - 9.00am to 5.00pm
Postal address GPO Box 24234, Melbourne, VIC 3001
### APPENDIX 1 INTERACTIONS PROTOCOLS

<table>
<thead>
<tr>
<th>Interaction</th>
<th>Method</th>
<th>Officer Receiving</th>
<th>Officer Responsible</th>
<th>Register</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbally or in writing to Victorian Ombudsman</td>
<td></td>
<td>Victorian Ombudsman</td>
<td>Victorian Ombudsman</td>
<td>Victorian Ombudsman</td>
<td>A disclosure made in accordance with Part 2 of the Protected Disclosure Act 2012 alleging improper conduct of a Councillor or detrimental action against a person by a Councillor in reprisal for the making of a protected disclosure. <strong>Protected Disclosure Act 2012 applies.</strong></td>
</tr>
</tbody>
</table>

Phone 03 9613 6222, 1300 735 135
Toll Free (regional only): 1800 806 314
Interpreter services: via telephone - 131 450
Level 9, North Tower 459 Collins Street Melbourne
Office hours Monday to Friday - 9.00am to 5.00pm
Postal address DX 210174 Melbourne
Email ombudvic@ombudsman.vic.gov.au
APPENDIX 6 - CONFIDENTIAL INFORMATION

The requirements concerning confidential information are provided by section 77 of the Act.

The version of this section incorporating amendments as at 1 December 2016 is set out below.

77 Confidential information

(1) A person who is, or has been, a Councillor or a member of a special committee, must not disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: 120 penalty units.

(1A) A person who is, or has been, a Councillor or a member of a special committee, may disclose information that the person 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.

(1B) If an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of conduct in contravention of subsection (1), the Councillor must not be charged with an offence against that subsection in respect of the same conduct unless—

(a) the Councillor Conduct Panel application is withdrawn; or
(b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter under section 81P; or
(c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or
(d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.

(1C) If a Councillor is charged with an offence against subsection (1), an application for a Councillor Conduct Panel to make a finding of serious misconduct by the Councillor must not be made for the same conduct in respect of which the Councillor has been charged.

(2) For the purposes of this section, information is confidential information if—

(a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or

(b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or

(c) the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.
APPENDIX 7 - MISUSE OF POSITION

The requirements concerning a Councillor’s misuse of their position are provided by section 76D of the Act.

The version of this section incorporating amendments as at 1 December 2016 is set out below.

76D Misuse of position

(1) A person who is, or has been, a Councillor or member of a special committee 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.

Penalty: 600 penalty units or imprisonment for 5 years or both.

(2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee 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.

(3) This section—
   (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and
   (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.
APPENDIX 8 - IMPROPER DIRECTION AND IMPROPER INFLUENCE

The requirements concerning improper direction and improper influence are provided by section 76E of the Act.

The version of this section incorporating amendments as at 1 December 2016 is set out below.

76E Improper direction and improper influence

(2) 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 exercised 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.

Penalty: 120 penalty units.

(2A) If an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of conduct in contravention of subsection (2), the Councillor must not be charged with an offence against that subsection in respect of the same conduct unless—

(a) the Councillor Conduct Panel application is withdrawn; or

(b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter under section 81P; or

(c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or

(d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.

(2B) If a Councillor is charged with an offence against subsection (2), an application for a Councillor Conduct Panel to make a finding of serious misconduct by the Councillor must not be made for the same conduct in respect of which the Councillor has been charged.
(3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.
APPENDIX 9 - EQUAL OPPORTUNITY POLICY

The version of this policy as at 1 December 2016 is set out below.

<table>
<thead>
<tr>
<th>Responsible Officer:</th>
<th>Document No:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manager People &amp; Culture</td>
<td>61</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Authorising Officer:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Executive Officer</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption Date:</td>
<td>2012</td>
</tr>
<tr>
<td>Approved By:</td>
<td>CMT</td>
</tr>
<tr>
<td>Review Date:</td>
<td>2015</td>
</tr>
<tr>
<td>Policy Type</td>
<td>Corporate</td>
</tr>
</tbody>
</table>

PURPOSE

The aim of this policy is to ensure all Council employees, contractors, volunteers and councillors are aware of the Council’s commitment to each person receiving equality of treatment and the opportunity to progress to their full potential.

It has been developed to ensure all parties have a clear understanding of Council’s culture and standards in dealing with others in an equal, open and transparent manner, with freedom from discrimination, harassment and bullying.

STATEMENT

Discrimination, Harassment and Bullying is not only unacceptable it is unlawful in accordance with State and Federal legislation.

It is the responsibility of management to provide a working environment free from discrimination, harassment and bullying. All complaints are to be treated confidentially, seriously and sympathetically.

All employees of Council have a legal and moral responsibility to treat each other and members of the public fairly, and are expected to fulfil these responsibilities as a condition of employment.

Relevant disciplinary action will be taken against anyone found to have breached this policy. No employee will be penalised or disadvantaged as a result of raising concerns or complaints relating to discrimination, harassment or bullying.

Equal Opportunity (EO)

As an Equal Opportunity employer, the Council is committed to providing a work environment free of discrimination for all Council representatives including Councillors, employees, volunteers, contract workers, visitors and members of the public. In all policies and practices of the Council there shall be no discrimination relating to sex, gender identity, age, marital status, parental status, carer status or family responsibilities, lawful sexual activity or orientation, race, irrelevant criminal conviction, disability, religious or political belief or activity, employment activity, physical features, industrial activity, pregnancy, breast feeding and personal association.

In addition the Council will take into account all circumstances and give serious consideration to accommodating requests for flexible working arrangements from employees with family responsibilities.
Discrimination, Harassment and Bullying

Everyone has the right to work in an environment free from harassment, bullying and discrimination and, in turn, has a responsibility not to discriminate, harass or bully another in the workplace or while representing the Council (this may include functions, conferences, social gatherings and other workplace related activities). Furthermore, anyone representing Council is required to provide services in a non-discriminatory manner.

Discrimination, harassment or bullying in the workplace will not be tolerated and Council will provide a confidential process for anyone to be heard who feels they have been discriminated against, harassed or bullied. This does not remove the right of any individual to consult or complain to the Victorian Human Rights and Equal Opportunity Commission, or other appropriate external body.

Human Rights Charter

The Council is required to act in a way that is compatible with the Victorian Charter of Human Rights and Responsibilities Act 2006 and to give consideration to the charter when formulating a local law or policy, or in planning service delivery. The Charter sets out 20 basic human rights that are protected under the Act which relate to Freedom, Respect, Equality and Dignity.

The Charter requires Council to ensure that all Local Laws and Council policies protect the political, civil and cultural rights of people in Victoria. The Charter does not over-ride existing Local Laws or Policies however Council and all Council employees must still make decisions and undertake actions in compliance with the Charter.

RESPONSIBILITIES

The Manager People & Culture is responsible for implementation of this Policy.

DEFINITIONS

The term "employee/s" for the purpose of this policy will include unpaid staff such as volunteers.

Discrimination

To treat someone unfairly on the basis of one or more of the following grounds:

- Gender (male/female)
- Age
- Race (includes colour, nationality, descent, ethnicity, ethno-religious background)
- Religious belief/activity
- Impairment or disability (includes past, current and future disability such as physical, neurological, psychiatric, intellectual disability and the presence in the body of disease causing organisms)
- Marital status
- Family responsibilities - parental or carer status (includes step-parent, adoptive parent, foster parent, guardian)
- Pregnancy or potential pregnancy
- Breast feeding
- Physical features (a person’s height, weight, size or other bodily characteristics)
- Political belief/activity
- Industrial activity
- Sexual orientation and/or lawful sexual activity (gay men, lesbians, bisexual or heterosexual persons)
- Personal association with someone who is identified by reference to any of the above attributes
- Employment activity
- Irrelevant criminal conviction

**Harassment**

Harassment is any unwelcome, uninvited practice or behaviour that can reasonably make a person feel offended, humiliated, intimidated or uncomfortable. A situation is deemed to constitute harassment on the basis of:

- the nature of the behaviour or conduct
- the behaviour being unwelcome and unsolicited
- the response to the behaviour, that is, if the 'recipient' was offended, humiliated or intimidated by the behaviour in question and that it was reasonable to feel that way.

**Sexual Harassment**

A person sexually harasses another person if he or she:

- Makes an unwelcome sexual advance, or unwelcome request for sexual favours, or
- Engages in any other unwelcome conduct of a sexual nature in relation to the other person – in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

Sexual harassment under that Act defines ‘conduct’ of a sexual nature to include:

- Subjecting a person to any act of physical intimacy,
- Making any remark or statement with sexual connotations to a person or about a person in his/her presence whether orally or written,
- Making any gesture, action or comment of a sexual nature in a person’s presence.

Sexual harassment can be physical, verbal or visual and may include statements or transmissions by phone, fax, video conference, internet and e-mail.

**Workplace Bullying**

Workplace bullying is repeated, unreasonable behaviour directed to an employee, or group of employees that creates a risk to health and safety.

Unreasonable behaviour: means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the other person.

Behaviour: includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining, punishing or threatening.

Risk to health and safety: includes risk to the mental or physical health of the employee.

Because bullying at work is an occupational health and safety hazard, intent is not relevant to the definition.

A broad range of behaviours can be bullying, and this behaviour can be direct or indirect. Examples of direct forms of bullying include:

- verbal abuse
• putting someone down
• spreading rumours or innuendo about someone
• interfering with someone’s personal property or work equipment.

Examples of indirect bullying include:
• unjustified criticism or complaints
• deliberately excluding someone from workplace activities
• deliberately denying access to information or other resources
• withholding information that is vital for effective work performance
• setting tasks that are unreasonably above or below an employee’s ability
• deliberately changing work arrangements, such as rosters and leave to inconvenience a particular employee or employees
• setting timelines that are very difficult to achieve
• excessive scrutiny at work.

What is not Bullying
Reasonable actions performed in a reasonable way are not bullying; examples include:
• setting performance goals, standards and deadlines
• allocating work to an employee
• transferring an employee
• deciding not to select an employee for promotion
• informing an employee about unsatisfactory work performance
• informing an employee about inappropriate behaviour
• implementing organisational changes
• performance management processes;
• downsizing
• constructively delivered feedback or counselling which is intended to assist employees to improve their work performance or the standard of their behaviour (for example, objective comments about a person’s failure to satisfy performance requirements or targets, adjust attitude or behavioural issues ), or
• a manager or supervisor directing and controlling the way someone does his or her work.

Victimisation
Victimisation occurs if someone is treated badly or suffers a disadvantage, because they have (or propose, intend or are believed to have):
• made a complaint,
• appeared as a witness,
• raised a concern or issue,
• asserted their rights, or
• helped someone else to raise a concern, complaint or assert their rights, under this Policy, equal opportunity legislation or occupational health and safety legislation.

Internal Complaint Resolution
Council has a clear procedure to enable complainants to raise allegations in a manner that provides for the matter to be dealt with as quickly as possible and not be disadvantaged in any way as a result of having to take such action. The Internal Complaint Resolution procedure provides a method for dealing with the complaints and allegations in such a way as to provide protection for both parties.
REFERENCES

2.1 Equal Opportunity - Internal Complaint Resolution Procedure

APPENDIX 10 - PREVENTION OF BULLYING AND/OR OCCUPATIONAL VIOLENCE POLICY AND PROCEDURE

The version of this policy as at 1 December 2016 is set out below.

<table>
<thead>
<tr>
<th>Responsible Officer:</th>
<th>Document No:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manager People &amp; Culture</td>
<td>Adoption Date: 2007</td>
</tr>
<tr>
<td>Authorising Officer:</td>
<td>Approved By: CEO</td>
</tr>
<tr>
<td>Chief Executive Officer</td>
<td>Review Date:</td>
</tr>
<tr>
<td></td>
<td>Policy Type: Corporate</td>
</tr>
</tbody>
</table>

STATEMENT

The Wangaratta Rural City Council is committed to providing its employees with a healthy and safe work environment that is free from bullying and/or occupational violence.

Human Resources policies and procedures shall reflect the Council's commitment to the prevention of bullying and violence in the workplace.

All Management must treat any reports of bullying or violence seriously, sensitively and confidentially and investigate it in accordance with the procedure below.

The Manager People & Culture will be responsible for providing all new employees (including casuals) with induction on Council's Prevention of Bullying Policy and/or Occupational Violence Policy.

Contract managers are responsible for informing contractors and agents of their responsibilities under Council's Prevention of Bullying and/or Occupational Violence Policy.

Unit managers who utilise the services of volunteers are responsible for ensuring that those volunteers are aware of their responsibilities under Council's Prevention of Bullying and/or Occupational Violence Policy.

Employees are responsible for behaving in a professional manner and treating each other with dignity and respect when they are at work. They are not to ignore such behaviour and are encouraged to report any experiences of bullying or violence to their manager, contact officer or Manager People & Culture as quickly as possible.

Council's Occupational Health & Safety Committee will be responsible for monitoring this policy in accordance with the terms of the Occupational Health & Safety Act 2004.

All Council employees must respect the individuality of all work colleagues in accordance with Council’s Values and Behaviours; Refrain from demonstrating any bullying behaviour as detailed in this policy and maintain confidentiality in cases of alleged bullying of which they become aware.

PROCEDURE

Response Procedure for Managers, Supervisors and Contractors

Managers, supervisors and contractors have set procedures to follow to ensure employees are not bullied by ensuring that they and their staff uphold the principles contained in this policy. They must:
Wangaratta Rural City Council
Councillor Code of Conduct
2017

Appendix 10 - Prevention of Bullying and/or Occupational Violence Policy and Procedure

1. Advise the Manager People & Culture of any instances of bullying or occupational violence of which they become aware and seek advice from them before taking any action;
2. In consultation with the Manager People & Culture, take immediate action to stop any instances of bullying or occupational violence. This may involve counselling an employee or group of employees about their behaviour;
3. Treat reports of possible bullying and occupational violence seriously and sympathetically and, with the Manager People & Culture, investigate them thoroughly;
4. Ensure that no one suffers actual or potential disadvantage, or is victimised, as a result of a bullying complaint being made or investigated;
5. Ensure complete confidentiality in the handling of any matter relating to bullying and occupational violence.

Complaints procedure for employees, contract workers, agents and volunteers

1. To attempt to resolve the matter at the lowest possible level if the individual feels comfortable he/she should calmly advise the alleged offender informally that they object to their behaviour and that they want it to stop.
2. Where individuals feel they can not communicate with the alleged offender and believe they may have been the recipient of bullying and/or occupational violence on any of the grounds listed Definition Section, they are encouraged, to raise the matter with their manager/coordinator or with the Manager People & Culture as the designated Contact Officer.
3. Depending on the seriousness of the alleged complaint and on the determination of the Manager People & Culture, the wishes of the complainant will be respected if they choose not to have the matter taken up with the individual(s) concerned.
4. Employees are assured that no element of victimisation will be permitted against either the person making a complaint or any other person who assists in the investigation of the matter.
5. Complainants are encouraged to place the matter in the hands of the Manager People & Culture for investigation and resolution. However, should the complainant feel reluctant to initiate a complaint under the above procedure, they are entitled to invoke Council’s grievance procedure under the Enterprise Agreement and Award. In the case of a potential criminal action, employees also have the option of reporting the matter to the police.

Counselling assistance

Counselling services for staff and management are available on a completely confidential basis through Council’s Employee Assistance Program.

Consequences

The Wangaratta Rural City Council will not tolerate any bullying and/or violent behaviour. Established breaches of this policy and procedure will be taken very seriously and will result in counselling, disciplinary action or dismissal depending on the circumstances of each case. In the case of a contractor or agent, this could result in the termination of the contract by Council.

Any person found to have victimised another or to have breached the confidentiality of the process will be subject to disciplinary action.
DEFINITIONS

"Bullying" is repeated unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety. Examples of bullying include:

- verbal abuse and yelling
- humiliating someone through sarcasm, criticism, or insults
- constant criticism
- exclusion of a person from workplace activities
- giving someone the majority of unpleasant tasks

Within this definition:

"unreasonable behaviour" means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten.

"behaviour" includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining or threatening.

"risk to health and safety" includes risk to mental or physical health of the employee.

"Customer and client" includes:

- people in a commercial relationship with an organisation, including contractors
- people in the care of an organisation
- people who must legally submit to inspection by an organisation and
- people who use or are seeking the services of the organisation

"Employee" means a person employed by the Rural City of Wangaratta or working for the Rural City of Wangaratta under a traineeship; including employees of a business contracted to Council to carry out works under contract.

"Employer" means a person who employs one or more persons under contracts of employment and under traineeships.

"Occupational violence" is any incident where an employee is physically attacked or threatened in the workplace.

Within this definition:

"threat" means a statement or behaviour that causes a person to believe they are in danger of being physically attacked.

"physical attack" means the direct or indirect application of force by a person to the body of, or to clothing or equipment worn by, another person, where that application creates a risk to health and safety.

"OHS Act" means the Occupational Health and Safety Act 2004

"practicable" means practical having regard to the:

- severity of the hazard in question;
- state of knowledge about the hazard or risk and any ways of removing or mitigating that hazard or risk;
- the availability and suitability of ways to remove or mitigate that hazard or risk; and
- the cost of removing or mitigating that hazard or risk.

"WorkCover" means the Victorian WorkCover Authority

"Workplace" is any place, whether or not in a building or structure, where employees or self-employed persons work.

REFERENCES
Victorian Occupational Health & Safety Act 2004
Federal Human Rights & Equal Opportunity Act 1986
Federal Racial Discrimination Act 1975
Federal Sex Discrimination Act 1984
Federal Disability Discrimination Act 1992
Victorian Crimes Act 1958
Federal Workplace Relations Act 1996
APPENDIX 11 - INTERESTS

The requirements concerning Councillor interests are provided by sections 77A, 77B, 78, 78A, 78B, 78C, 78D, 78E, 79, 79B, 79C, 80, 80A and 81 of the Act.

The versions of these sections incorporating amendments as at 1 December 2016 are set out below.

77A Direct and indirect interests

(1) A relevant person has a conflict of interest in respect of a matter if the relevant person has a direct interest or indirect interest in the matter.

(2) A relevant person has a direct interest in a matter if the relevant person has an interest of a kind described in section 77B.

(3) A relevant person has an indirect interest in a matter if the relevant person has—
   (a) a close association as specified in section 78; or
   (b) an indirect financial interest as specified in section 78A; or
   (c) a conflicting duty as specified in section 78B; or
   (d) received an applicable gift as specified in section 78C; or
   (e) become an interested party as specified in section 78D; or
   (f) a residential amenity that may be altered as specified in section 78E.

(4) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.

(5) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest the relevant person holds—
   (a) is held as a resident, ratepayer or voter and does not exceed the interests generally held by other residents, ratepayers or voters; or
   (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.

(6) A relevant person does not have a conflict of interest in a matter if the relevant person—
   (a) does not know the circumstances that give rise to the conflict of interest; and
   (b) would not reasonably be expected to know the circumstances that give rise to the conflict of interest.
77B Direct interest

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

(2) Without limiting subsection (1), a person has a direct interest in a matter if—

   (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;

   (b) the person has, or the person 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.

(3) A person who has a membership in a club or organisation that has a direct interest in a matter—

   (a) does not, by reason of that membership, have a direct interest in the matter under subsection (1); and

   (b) does not have an indirect interest in the matter, by reason of that membership, unless the person has an indirect interest in the matter under section 78A, 78B or 78C.

(4) In subsection (2), controlling interest has the same meaning as it has in section 72(2) of the Payroll Tax Act 2007.

78 Indirect interest by close association

(1) In this section—

daughter means a biological daughter, step-daughter, adopted daughter, or female child for whom the person has custodial responsibilities;

direct relative means the spouse, domestic partner, son, daughter, mother, father, brother or sister of the person;

domestic partner of a person means—

   (a) a person who is in a registered relationship with the person; or

   (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—

   (i) for fee or reward; or
(ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

family member means—

(a) a spouse or domestic partner of the person; or
(b) a son, daughter, mother, father, brother or sister that regularly resides with the person;

relative means—

(a) a direct relative of the person;
(b) a direct relative of a person who is the direct relative of the person;

son means a biological son, step son, adopted son or male child for which the person has custodial responsibilities.

(2) A person has an indirect interest by close association in a matter if—

(a) a family member of the person has a direct interest or an indirect interest in a matter; or
(b) a relative of the person has a direct interest in a matter; or
(c) a member of the person's household has a direct interest in a matter.

(3) For the purposes of the definition of domestic partner in subsection (1)—

(a) registered relationship has the same meaning as in the Relationships Act 2008; and
(b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the Relationships Act 2008 as may be relevant in a particular case; and
(c) a person is not a domestic partner of another person only because they are co-tenants.

78A Indirect interest that is an indirect financial interest

(1) A person has an indirect financial interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.

(2) Without limiting subsection (1), a person has an indirect financial interest that is a conflict of interest if—
Appendix 11 - Interests

(a) the person has a beneficial interest in shares of a company or other body that has a direct interest in the matter, except in the circumstances specified in subsection (3);

(b) the person is owed money from another person and that other person has a direct interest in the matter.

(3) If a person, and family members of the person, hold shares in a company or body that has a direct or indirect interest in a matter with a combined total value that does not exceed $10 000 and the total value of issued shares of the company or body exceeds $10 million, the person’s indirect financial interest is not a conflict of interest.

(4) Subsection (2)(b) does not apply if the other person is an authorised deposit-taking institution.

(5) For the purposes of determining the value of shares under this section, the share value is to be taken from—

(a) the close of business on the most recent of 30 June or 31 December; or

(b) if the person has lodged an ordinary return since the most recent of 30 June or 31 December, the close of business on the date the return was submitted.

78B Indirect interest because of conflicting duties

(1) A person has an indirect interest in a matter because of a conflicting duty if the person—

(a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter;

(b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter;

(c) is a trustee for a person who has a direct interest in a matter.

(2) A person has an indirect interest in a matter because of a conflicting duty if the person held a position or role specified in subsection (1) and, in that position or role, dealt with the matter.

(3) A person does not have an indirect interest because of a conflicting duty if—

(a) the person is, or has been, only an employee in the service of the Crown or of a body established by or under any Act for a public purpose and the person has no current or expected responsibilities as that employee in relation to a matter;

(b) the person only holds a position in a not-for-profit organisation for which the person receives no remuneration and the person was appointed to the relevant special committee of the Council to be a representative of the non-for-profit organisation;
Appendix 11 - Interests

(ba) the person only holds a position, with the Council's approval as a representative of the Council, in an organisation for which the person receives no remuneration;

(c) the person is only a Councillor who holds a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;

(ca) the person is only a member of the Planning Application Committee established under Part 4AA of the Planning and Environment Act 1987 or a member or co-opted member of a subcommittee of that Committee;

(d) the person only holds a position that has been prescribed for the purposes of this section.

78C Indirect interest because of receipt of an applicable gift

(1) In this section, applicable gift means one or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person or persons specified in subsection (2) in the 5 years preceding the decision or the exercise of the power, duty or function but does not include—

(a) reasonable hospitality received by the person at an event or function the person attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee; or

(b) a gift, other than an election campaign donation, that was received by the person more than 12 months before the person became a Councillor, a member of Council staff or a member of a special committee.

(2) A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from—

(a) a person who has a direct interest in the matter; or

(b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or

(c) a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.

(3) For the purposes of determining when a person became a Councillor or member of a special committee under subsection (1)(b), if the person is re-elected or reappointed as a Councillor or a member of a special committee, on completion of his or her term of office, the previous term of office served by that person as a Councillor or member of a special committee must be counted as continuous service with any service completed by the person after the person's re-election or reappointment.
78D Indirect interest as a consequence of becoming an interested party

A person has an indirect interest in a matter if the person has become an interested party in the matter by initiating civil proceedings in relation to the matter or becoming a party to civil proceedings in relation to the matter.

78E Indirect interest because of impact on residential amenity

A person has an indirect interest in a matter if there is a reasonable likelihood that the residential amenity of the person will be altered if the matter is decided in a particular way.

79 Disclosure of conflict of interest

(1) If a Councillor or member of a special committee has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or the special committee, the Councillor or member must, if he or she is attending the meeting, disclose the conflict of interest in accordance with subsection (2).

(2) A Councillor or member of a special committee who has a conflict of interest and is attending the meeting of the Council or special committee must make a full disclosure of that interest—

(a) by either—

(i) advising the Council or special committee at the meeting of the details required under paragraphs (b) and (c) immediately before the matter is considered at the meeting; or

(ii) advising the Chief Executive Officer in writing of the details required under paragraphs (b) and (c) before the meeting; and

(b) classifying the type of interest that has given rise to the conflict as either—

(i) a direct interest; or

(ii) an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, 78D or 78E; and

(c) describing the nature of the interest; and

(d) if the Councillor or member advised the Chief Executive Officer of the details under paragraph (a)(ii), the Councillor or member must make a disclosure of the class of interest only to the meeting immediately before the matter is considered at the meeting.

(3) For the purposes of section 79(2)(a)(i), if a Councillor or member of a special committee has a conflict of interest in two or more matters which are to be considered or discussed consecutively at a meeting of the Council or the special
committee, the Councillor or member may make a full disclosure of each of those interests immediately before the first matter is considered at the meeting.

(5) The Chief Executive Officer must—

(a) keep written disclosures given to him or her under this section in a secure place for 3 years after the date the Councillor or member of a special committee who made the disclosure ceases to be Councillor or member of a committee; and

(b) destroy the written disclosure when the 3 year period referred to in paragraph (a) has expired.

(6) While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must—

(a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and

(b) remain outside the room and any gallery or other area in view or hearing of the room.

(7) The Mayor or the Chairperson of the special committee must cause the Councillor or member of a special committee to be notified that he or she may return to the room after—

(a) consideration of the matter; and

(b) all votes on the matter.

(8) If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson must record in the minutes of the meeting—

(a) the declaration of the conflict of interest; and

(b) the classification of the interest that has given rise to the conflict, and if the Councillor or member has disclosed the nature of the interest to the meeting, the nature of the interest.

(9) Unless section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence and liable to a fine not exceeding 120 penalty units.

79B Conflicting personal interest

(1) This section does not apply to a Councillor or member of a special committee who has a conflict of interest in the matter.

(2) If a Councillor or a member of a special committee considers that he or she has a personal interest in relation to a matter that is in conflict with his or her public duty in relation to the matter, the Councillor or member may, immediately before the
matter is considered at the relevant meeting, apply to the Council or special committee to be exempted from voting on the matter.

(3) If a Councillor or member of a special committee makes an application under subsection (2), he or she must give reasons in support of the application.

(4) A Council or special committee may consent to an application made under subsection (2) and must not unreasonably withhold consent.

(5) If a Council or special committee consents to an application under subsection (4), sections 79(6), 79(7), 79(8) and 79(9) apply as if the personal interest that is the subject of an application under subsection (2) were a conflict of interest specified under this Act.

79C Certain situations where Councillor taken to not have a conflict of interest

(1) A Councillor is taken to not have a conflict of interest for the purposes of this Division if the matter only relates to—

(a) the nomination or appointment by the Council of the Councillor to a position for which the Councillor will not be remunerated;

(b) the election of the Mayor under section 71 or the appointment of an acting Mayor under section 73(3);

(c) a decision in relation to the payment of allowances to the Mayor or Councillors under section 74 or 74C(2);

(d) the adoption of a policy under section 75B in relation to the reimbursement of expenses;

(e) the adoption of a Councillor Code of Conduct under section 76C;

(f) an application to a Councillor Conduct Panel or VCAT under Division 1B;

(g) an application for an exemption under section 80;

(h) the appointment of members and Chairpersons of special committees;

(i) a resolution that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under taxation legislation;

(j) the conduct of a Councillor with respect to—

(1) an internal dispute that involves the Councillor;

(ii) an allegation of misconduct or serious misconduct (as defined in section 81A) by the Councillor;

(k) a submission provided to an electoral representation review under section 219F;

(l) a submission provided for the purposes of a subdivision review conducted under section 219N.
(2) If a budget or revised budget to be approved by a Council includes funding for a matter in respect of which a Councillor has a conflict of interest the Councillor is taken to not have a conflict of interest for the purposes of approving the budget or revised budget if—

(a) the Council previously approved the matter and the proposed funding for the matter for inclusion in the budget or revised budget; and

(b) the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter and the proposed funding for the matter was previously considered and made.

(3) If a Council Plan to be approved by a Council includes a matter in respect of which a Councillor has a conflict of interest, the Councillor is taken to not have a conflict of interest for the purposes of approving the Council Plan if—

(a) the Council previously approved the matter for inclusion in the Council Plan; and

(b) the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter was previously considered and made.

(4) If a Councillor with a conflict of interest referred to in subsection (2) or (3) notifies the Mayor or Chairperson prior to the consideration of the budget, revised budget or Council Plan of the conflict of interest, the Mayor or Chairperson must allow a prior motion to be put that the matter or funding be considered for inclusion in the budget, revised budget or Council Plan.

79D Person may make submission despite conflict of interest

(1) Subject to subsection (2), a relevant person who has a conflict of interest in a matter and who has made a written submission under section 223 in respect of the matter, may present his or her submission under section 223(1)(b) to the Council or committee of the Council.

(2) The relevant person who has a conflict of interest in a matter must not be at the meeting of the Council or committee of the Council any longer than is required for the person to be heard in support of the person’s written submission.

80 Exemption by Minister

(1AA) Despite section 79, the Minister may, of his or her own motion, exempt in writing a person, other than a Councillor, from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit if the Minister is satisfied that—

(a) extraordinary circumstances exist that justify the exemption of the person; and

(b) it is in the public interest to exempt the person.
(1AB) In exempting a person under subsection (1AA), the Minister must have regard to the extent of the conflict of interest of the person.

(1) Despite section 79—
   (a) a Council may apply, in writing, to the Minister for an exemption of any Councillor from any or all of the provisions of section 79 if the Council is of the opinion that the transaction of any Council or special committee business would be impeded because of the number of Councillors affected by section 79;
   (b) a Chief Executive Officer of a Council may apply, in writing, to the Minister, after receiving written declarations of conflicts of interest from a majority of Councillors, for an exemption of those Councillors from any or all of the provisions of section 79.

(1A) After reviewing an application received from a Council or a Chief Executive Officer, the Minister may require the Council or Chief Executive Officer to provide additional information in respect of the application, including copies of the written declarations of conflicts of interests made by Councillors under section 79.

(1B) In considering an application made by a Council or Chief Executive Officer, the Minister must have regard to—
   (a) the extent of the conflicts of interest of the Councillors; and
   (b) the public interest.

(2) The Minister may, after considering an application under subsection (1B), exempt in writing a Councillor from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit.

(3) The Minister may revoke an exemption.

80A Requirements to be observed by an assembly of Councillors

(1) At an assembly of Councillors, the Chief Executive Officer must ensure that a written record is kept of—
   (a) the names of all Councillors and members of Council staff attending;
   (b) the matters considered;
   (c) any conflict of interest disclosures made by a Councillor attending under subsection (3);
   (d) whether a Councillor who has disclosed a conflict of interest as required by subsection (3) leaves the assembly.

(2) The Chief Executive Officer must ensure that the written record of an assembly of Councillors is, as soon as practicable—
   (a) reported at an ordinary meeting of the Council; and
(b) incorporated in the minutes of that Council meeting.

(3) If a Councillor attending an assembly of Councillors knows, or would reasonably be expected to know, that a matter being considered by the assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a conflict of interest under section 79, the Councillor must, at the time set out in subsection (4), disclose to the assembly that he or she has a conflict of interest and leave the assembly whilst the matter is being considered by the assembly.

Penalty: 120 penalty units.

(4) A Councillor must disclose the conflict of interest either—

(a) immediately before the matter in relation to which the Councillor has a conflict of interest is considered; or

(b) if the Councillor realises that he or she has a conflict of interest after consideration of the matter has begun, as soon as the Councillor becomes aware that he or she has a conflict of interest.

80B Members of Council staff to disclose conflicts of interest in respect of delegated functions

(1) This section applies to—

(a) a member of Council staff who has been delegated a power, duty or function of the Council under section 98(1) or 98(3) or under another Act;

(b) the Chief Executive Officer who has been given a power, duty or function under this Act or another Act;

(c) any other member of Council staff who has been delegated a power, duty or function of the Chief Executive Officer under section 98(2).

(2) A member of Council staff who has a conflict of interest in a matter in which they also have delegated power, duty or function must—

(a) not exercise the power or discharge the duty or function; and

(b) in the case of the Chief Executive Officer, disclose the type of interest and the nature of the interest to—

(i) the Mayor, in writing, as soon as he or she becomes aware of the conflict of interest in the matter; and

(ii) the Council by no later than the next ordinary meeting of the Council.

(c) in the case of any other member of staff, disclose the type of interest and the nature of the interest to the Chief Executive Officer, in writing,
as soon as he or she becomes aware of the conflict of interest in the matter.

Penalty: 120 penalty units.

(1) The Chief Executive Officer does not have a conflict of interest in a matter if the matter only relates to—

(a) the adoption or amendment of a policy relating to Council staff generally;

(b) the adoption of a code of conduct for Council staff under section 95AA;

(c) a decision to delegate a power, duty or function to a member of Council staff;

(d) a decision to request the appointment of a probity auditor under Division 4.

80C Persons to disclose interests to Council when providing advice

(1) This section applies to Council staff and persons engaged under a contract to provide advice or services to the Council or a special committee.

(2) A person who is providing advice or a report to a meeting of the Council or a special committee, and who has a conflict of interest in a matter to which the advice or report relates, must disclose the type of interest constituting the conflict of interest when providing the advice or report and before the advice or report is considered by the Council or the committee.

Penalty: 60 penalty units.

(1) A disclosure made by a person under subsection (2) must be recorded in the minutes of the meeting.

(2) A person who has made a disclosure under subsection (2) must disclose the nature of the interest if required to make that disclosure by the Council or committee.

(3) Sections 77A to 78E apply to a person to whom this section applies as if the person were a relevant person under this Division.

81 Register of interests

(1) In this section—

nominated officer means the senior officers of the Council and any other member of the Council staff nominated by the Chief Executive Officer;

relative has the same meaning as relative has in section 78;

return period in relation to the ordinary return of a Councillor, member of a special committee or nominated officer means—
(a) if the last return of the Councillor, member of a special committee or nominated officer was a primary return, the period between the date of the primary return and the date the ordinary return is submitted; or

(b) if the last return of the Councillor, member of a special committee or nominated officer was an ordinary return, the period between the date of that return and the date the current ordinary return is submitted.

(2) A person who becomes a Councillor or a member of a special committee must submit a primary return in the prescribed form to the Chief Executive Officer within—

(a) in the case of a Councillor—

(i) 30 days of election day; or

(ii) 7 days of making the oath of office of a Councillor; or

(b) 30 days of becoming a member of a special committee.

Penalty: 60 penalty units.

(2A) A Council may exempt a member of a special committee who is not a Councillor from being required to submit a primary return or an ordinary return.

(2B) The Council must review any exemptions in force under subsection (2A) within the period of 12 months after a general election.

(3) If a person is re-elected or reappointed upon completion of his or her term of office as a Councillor or member of a special committee, the Councillor or member of a special committee does not have to submit a new primary return.

(4) Any person who becomes a nominated officer must within 30 days of becoming a nominated officer submit a primary return in the prescribed form to the Chief Executive Officer.

Penalty: 60 penalty units.

(4A) Any person who becomes a nominated officer solely because of the amendment made to this Act by section 8 of the Local Government (Amendment) Act 1994 is deemed for the purposes of subsection (4) to have become a nominated officer on the date section 8 of that Act came into operation.

(5) A Councillor, a member of a special committee or a nominated officer must submit an ordinary return in the prescribed form to the Chief Executive Officer on—

(a) 30 June or within 40 days after 30 June; and

(b) 31 December or within 40 days after 31 December.

Penalty: 60 penalty units.
(6) A Councillor, a member of a special committee or a nominated officer must disclose the following information in the primary return as at the date of the primary return—

(a) the name of any company or other body in which he or she holds any office whether as a director or otherwise;

(b) the name or description of any company or body in which he or she holds a beneficial interest unless the total value of the interest does not exceed $10,000 and the total value of issued shares of the company or body exceeds $10 million;

(c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she has any beneficial interest other than by way of security for any debt;

(d) a concise description of any trust in which he or she holds a beneficial interest or of which he or she is a trustee and a member of his or her family holds a beneficial interest;

(e) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, a member of a special committee or nominated officer.

Penalty: 60 penalty units.

(7) A Councillor, a member of a special committee or a nominated officer must disclose in an ordinary return the following information in relation to the return period—

(a) if he or she has held an office whether as director or otherwise in any company or body, corporate or unincorporate—the name of the company or body;

(b) the name or description of any company or body in which he or she holds or has held a beneficial interest unless the total value of the interest does or did not exceed $10,000 and the total value of issued shares of the company or body exceeds $10 million;

(c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she had any beneficial interest other than by way of security for any debt;

(d) a concise description of any trust in which he or she held a beneficial interest or of which he or she is a trustee and a member of his or her family held a beneficial interest;
(e) particulars of any gift of or above the amount or value of the gift disclosure threshold received by him or her, either directly or indirectly, other than a gift received—

(i) from a person who is a relative of him or her; or

(ii) as hospitality at an event or function he or she attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee;

(f) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, member of a special committee or nominated officer.

Penalty: 60 penalty units.

(9) The Chief Executive Officer must maintain a register of the interests of Councillors, members of special committees and nominated officers consisting of the last 3 returns that those Councillors, members and officers were required to submit under this section.

(10) The Chief Executive Officer must allow a person to inspect the register if that person has previously made written application to the Chief Executive Officer to do so and the application meets the requirements of the regulations.

(11) The register may be inspected at the office of the Council during normal office hours.

(12) The Chief Executive Officer must take all reasonable steps to ensure that no person other than a person who has made application has access to or is permitted to inspect the register or any return.

(13) A person must not publish any information derived from the register unless that information is a fair and accurate summary or copy of the information derived from the register.

(13A) The Chief Executive Officer must maintain a record of the names of persons who have inspected the register of interests under subsection (10).

(13B) A Councillor, a member of a special committee or a nominated officer, whose interests are recorded in the register may inspect the recorded names of people kept under subsection (13A) who have inspected his or her personal records.

(14) A member of Council staff must not, whether before or after he or she ceases to be so employed, make a record of, divulge or communicate to any person any information in relation to a matter dealt with by this section that is gained by or conveyed to him or her during his or her employment with the Council or make use of that information for any purpose other than the discharge of his or her official duties under this section.
Penalty: 60 penalty units.

(16) As soon as practicable after a person ceases to be a Councillor or a member of a special committee or a nominated officer, the Chief Executive Officer must remove all the returns submitted by that person from the register.
APPENDIX 12 - REGISTER OF INTERESTS RETURNS POLICY

The version of this policy as at 1 December 2016 is set out below.

<table>
<thead>
<tr>
<th>Responsible Officer:</th>
<th>Document No:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance and Risk Advisor</td>
<td>Adoption Date: 2014</td>
</tr>
<tr>
<td>Authorising Officer:</td>
<td>Approved By: Council</td>
</tr>
<tr>
<td>Director Corporate Services</td>
<td>Review Date: 2017</td>
</tr>
<tr>
<td></td>
<td>Policy Type: Council</td>
</tr>
</tbody>
</table>

BACKGROUND

Council's operations are founded on values of community leadership, accountability, integrity, respect, trust and excellence. These ideals underpin Council's behaviours and therefore service delivery. To support this, on all occasions, all actions of Councillors, members of Council's special committees and Council employees shall be undertaken in line with the highest ethical standards and probity.

PURPOSE

The purpose of this policy is to establish the requirements for the lodgement of Primary and Ordinary Returns as required by section 81 of the Local Government Act 1989 (the Act).

The reason for having to lodge interest returns is to ensure public transparency. It is also serves as a reminder about obligations to avoid conflicts of interest.

SCOPE

This policy applies to:

a) Councillors;
b) Audit Advisory Committee members who are not Councillors, unless exempted by Council; and
c) Nominated officers of Council comprising Senior Officers of Council and any other staff member of Council nominated by the CEO. The CEO must ensure that any staff member who is authorised to exercise a significant delegation is made a nominated officer for the purpose of lodging returns.

This policy does not apply to non-Councillor members of Special Committees established by Council under Section 86 of the Act, unless otherwise determined by Council.

Council should consider the level of authority granted to the relevant committee when deciding whether to grant or maintain exemptions. Committees with significant powers or where there is scope for significant conflicts of interest in terms of money or property should not be granted exemptions.

An exemption from the duty to lodge a return is not an exemption from the responsibility to disclose a conflict of interest.

Council must review any special committee exemptions in force within the period of 12 months after a general election, including non-Councillor members of the Audit Advisory Committee.
A register of persons to whom this policy applies will be maintained by the CEO.

**LEGISLATIVE COMPLIANCE**

Legislative requirements are established in:

- Section 81 (Register of interests) of the Act;
- Section 3 (Definitions) of the Act;
- Section 97B (Definition of senior officer remuneration threshold) of the Act; and
- Regulations 6, 7 and 8 of the *Local Government (General) Regulations 2004* (the Regulations).

This policy and supporting processes will ensure adherence to these provisions.

**POLICY**

Council acknowledges that people who are Councillors, Council officers or members of Council’s special committees must lodge interest returns in which they disclose information about their personal circumstances unless exempted by this policy. This particularly includes information that may give rise to conflicts of interest in certain circumstances.

These requirements will assist with the demonstration of accountability whilst undertaking Council business and will ensure transparency to the community and as a result enhance community trust and confidence in Council.

**Primary and Ordinary Returns**

Two types of interest returns are required to be lodged under the Act. These are:

- **Primary returns**, which must be lodged after taking office or commencing in a specified role; and
- **Ordinary returns**, which must be lodged twice yearly while holding office or occupying the role.

**Primary return – disclosures**

Section 81(6) of the Act describes the information that must be disclosed in a Primary Return. This is information that is current on the date that the return is lodged.

The return must be provided on the prescribed form shown at Appendix 1.

All questions on the form must be answered. If there is nothing to disclose, indicate that fact by writing “nil” or “nothing to disclose” in the relevant space.

**a) Offices**

The name of any company or other body in which any office as a director or otherwise is held must be disclosed. This includes:

- Directorships of corporations;
- Positions on boards or committees of charitable or community organisations, and sporting or social organisations;
- Positions on boards or committees to which the person was appointed by the Council; and
- Offices held as an employee of a company, government agency or other body.
For each of the offices held, the name of the company or body must be disclosed.

b) Shares
The name of any company or body in which a beneficial interest, in shares or in any other form, is held must be disclosed:

- It does not include shareholdings not exceeding $10,000 in value where the total value of the shares issued by the company exceeds $10 million;
- It does include interests of any value held in a company or body that has not issued shares or whose total share issue is valued at $10 million or less, including proprietary companies;
- It does not include shares held by members of the family of the unless they are held in trust and you are the beneficiary; and
- Only the name of the company or body must be disclosed, not the value of the interest.

c) Land
The address or description of any land in which a beneficial interest is held that is in the municipal district or in an adjoining municipal district:

- This includes land owned by the person;
- It also includes land owned by the person together with anyone else;
- It includes land owned by the person that is mortgaged; and
- It includes land in neighbouring Council areas; but
- It does not include land held as security for a debt.

d) Trusts
A concise description of any trust where:

- A beneficial interest is held; or
- The person is the trustee for a member of their family who has a beneficial interest (see Definitions).

e) Other interests
Any other substantial interests, of the person or the person’s family (see Definitions) which the person thinks may appear to raise a material conflict between their private interest and their public duty. This may include:

- A recent gift or donation valued at $200 or more that the person or a member of the person’s family has received from a person or organisation that has, or is likely to have, significant dealings with the Council;
- Responsibilities as a partner, agent, consultant, contractor or employee for a person or organisation that has, or is likely to have, significant dealings with the Council; or
- Civil proceedings in which the person is, or has recently been, a party which relates to a matter that is likely to require a Council decision.

f) Signature and Witness
A primary return must be signed by the person lodging the return and their signature must be witnessed. It should be noted that the witness is witnessing the signature, not attesting to the accuracy of the return.

**Ordinary return – disclosures**

Section 81(7) of the Act describes the information that must be disclosed in an ordinary return. It includes information about personal interests during the "return period", which is the period since the last primary or ordinary return. It is important that all relevant interests held during the return period are disclosed, even if they are no longer held.

The return must be provided on the prescribed form shown at Appendix 2.

All questions on the form must be answered. If there is nothing to disclose, indicate that fact by writing “nil” or “nothing to disclose” in the relevant space.

**a) Offices**

The name of any company or other body in which any office as a director or otherwise is held must be disclosed. This includes:

- Directorships of corporations;
- Positions on boards or committees of charitable or community organisations, and sporting or social organisations;
- Positions on boards or committees to which the person was appointed by the Council; and
- Offices held as an employee of a company, government agency or other body.

For each of the offices held, the name of the company or body must be disclosed.

**b) Shares**

The name of any company or body in which a beneficial interest, in shares or in any other form, is held must be disclosed:

- It does not include shareholdings not exceeding $10,000 in value where the total value of the shares issued by the company exceeds $10 million;
- It does include interests of any value held in a company or body that has not issued shares or whose total share issue is valued at $10 million or less, including proprietary companies;
- It does not include shares held by members of the family of the unless they are held in trust and you are the beneficiary; and
- Only the name of the company or body must be disclosed, not the value of the interest.

**c) Land**

The address or description of any land in which a beneficial interest is held that is in the municipal district or in an adjoining municipal district:

- This includes land owned by the person;
- It also includes land owned by the person together with anyone else;
• It includes land owned by the person that is mortgaged; and
• It includes land in neighbouring Council areas; but
• It does not include land held as security for a debt.

d) Trusts

A concise description of any trust where:

• A beneficial interest is held; or
• The person is the trustee for a member of their family who has a beneficial interest (see Definitions).

e) Gifts

An ordinary return must include a record of all gifts valued at $200 or more received directly or indirectly during the disclosure period, but does not include gifts from relatives (see Definitions).

Gifts will include any election campaign donations that have been received during the disclosure period. This is in addition to disclosures of campaign donation returns under section 62 of the Act.

f) Other interests

Any other substantial interests, of the person or the person’s family (see Definitions) which the person thinks may appear to raise a material conflict between their private interest and their public duty. This may include:

• Responsibilities as a partner, agent, consultant, contractor or employee for a person or organisation that has, or is likely to have, significant dealings with the Council; or
• Civil proceedings in which the person is, or has recently been, a party which relates to a matter that is likely to require a Council decision.

g) Signature and Witness

An ordinary return must be signed by the person lodging the return and their signature must be witnessed. It should be noted that the witness is witnessing the signature, not attesting to the accuracy of the return.

Lodging Returns

All returns must be lodged at the proper times. A return must not be lodged before the due date or after the end of the specified period.

The legal responsibility to lodge an accurate return always rests with the relevant Councillor, committee member or nominated officer and not with staff administering the process.

Councillors Lodging Returns

For a Councillor, a primary return must be lodged within 30 days after the Election Day.

• If the taking of the oath of office is delayed, a primary return may be lodged within seven days after taking the Oath.
- It is not necessary for a Councillor to lodge a primary return if re-elected for a following term of office, but it is required in the event that a Councillor’s terms of office are not contiguous.

An **ordinary return** must be lodged with the CEO two times each year for as long as a person remains a Councillor.

An ordinary return must be lodged each year:

- Between 30 June and 9 August; and
- Between 31 December and 9 February.

**Audit Advisory Committee Members Lodging Returns**

For an Audit Advisory Committee member, unless exempted by Council, a **primary return** must be lodged within 30 days of becoming a member.

- This will normally be within 30 days of the Council decision to establish the Audit Advisory committee or to appoint the person to the committee.
- A primary return is not required when a person is reappointed to the Audit Advisory committee and where the memberships are contiguous.

An **ordinary return** must be lodged with the CEO two times each year for as long as a person remains a member of the Audit Advisory Committee, unless exempted by Council.

An ordinary return must be lodged each year:

- Between 30 June and 9 August; and
- Between 31 December and 9 February.

**Special Committee Members Lodging Returns**

For a special committee member, unless exempted by Council, a **primary return** must be lodged within 30 days after becoming a member of the relevant committee.

- This will normally be within 30 days of the Council decision to establish the committee or to appoint the person to the committee.
- A primary return is not required when a person is reappointed to a special committee and where the memberships are contiguous.

An **ordinary return** must be lodged with the CEO two times each year for as long as a person remains a member of a special committee, unless exempted by Council.

An ordinary return must be lodged each year:

- Between 30 June and 9 August; and
- Between 31 December and 9 February.

**Nominated Members of Council Staff Lodging Returns**

For a nominated member of Council staff, a **primary return** must be lodged within 30 days of becoming a nominated officer. This will be within 30 days of whichever of the following applies:
• An appointment or promotion to a senior officer position;
• Becoming a senior officer as a result of a reclassification or increase in remuneration; or
• When the CEO designates the staff member as a “nominated officer” for the purpose of lodging returns.

An ordinary return must be lodged with the CEO two times each year for as long as a person remains a nominated officer for the purpose of returns.

An ordinary return must be lodged each year:

• Between 30 June and 9 August; and
• Between 31 December and 9 February.

Receipt of returns
The following arrangements for the receipt and recording of returns apply.

Officer Delegated to Receive Returns
The CEO has delegated the authority to receive returns and undertake the administrative tasks of this policy to the Executive Assistant reporting to the Director allocated responsibility for Council governance matters.

Councillors, committee members (unless exempted) and nominated officers will be advised of this delegation.

Register of Persons Required to Lodge Returns
An up to date register of everyone who is required to lodge returns will be maintained.

All Councillors, committee members (unless exempted) and nominated officers will be sent reminders when returns are due.

Dealing with Lodged Returns
Each return will be dated and initialled upon receipt.

A written record of every return as it is lodged will be kept.

A written receipt will be provided to each person who lodges a return.

Managing records
Records of interest returns must be managed responsibly and in accordance with section 81 of the Act. This involves three stages:

• Including them in the register of interests;
• Retaining them for a designated period; and
• Finally destroying them.

Register of Interests
The CEO must maintain a register of interests. This includes the last three returns lodged by each person.
When a person ceases to be a Councillor, special committee member or nominated officer, their returns are removed from the register.

**Retention of Returns**

After returns are removed from the register:

- They must be retained for as long as the person remains a Councillor, special committee member or a nominated officer;
- After the person ceases to be a Councillor, special committee member or a nominated officer, the returns must still be retained for a period of three years; and
- After that period of three years has expired the returns must be destroyed.

**Failure to Lodge Returns**

A failure to lodge a primary or ordinary return, or to make the required disclosures in a return, is an offence that can lead to an investigation by an inspector of municipal administration and possibly to Court action. This may apply to a Councillor, a nominated officer or a member of a special committee.

In addition:

- A Councillor who fails to lodge a correct return may be required to defend his or her actions at a Councillor Conduct Panel or VCAT and may be disqualified or suspended; and
- A member of Council staff who fails to lodge a correct return may be subject to disciplinary action as an employee.

**Public Access**

The Act provides a process whereby anyone can inspect the register of interests.

A person who wishes to inspect the register must apply to do so, in writing to the CEO indicating which person’s records they wish to inspect. The request must be provided on the prescribed form shown at Appendix 3.

The CEO cannot refuse a person who has made a request in the required manner.

An inspection may be made at the Council office during normal office hours and, for practical reasons, may require a prior appointment. A person who inspects the record may make a written record of the details in a return, but there is no entitlement for a person to take a photocopy of a return.

The CEO must keep a record of the names of people who inspect the register and a Councillor, committee member or nominated officer is entitled to inspect the list of names of people who have inspected their personal records.

A person must not publish information derived from the register unless the information is a fair and accurate summary or copy of the information.

A Council employee may not make a record of, divulge or communicate information gained in relation to anyone’s interest returns other than in the proper discharge of his or her duties. Failure to comply can result in prosecution.
DEFINITIONS

Chief Executive Officer (CEO)  Chief Executive Officer of the Rural City of Wangaratta.

Conflict of Interest  Means any private or personal interest, which could prejudicially influence, or be perceived to influence, a person in the performance of his or her public or professional duties (refer Local Government Act, 1989 for a comprehensive definition).

Council  Section 5(1) of the Local Government Act 1989 defines a council in the following way: “A Council consists of its Councillors, who are the representatives, elected in accordance with this Act, of persons who are residents in the Council’s municipal district or ratepayers of the Council.” In this case Council refers to the Rural City of Wangaratta.

Council employee  Any person employed directly by Council, including the Chief Executive Officer, and any person engaged as a short term employee or a contractor undertaking duties on behalf of Council.

Councillor  Means an elected person who holds the office of member of the Council.

Family  For the purpose of primary and ordinary returns, a member or the person’s “family” is defined to include:
- The person’s spouse or domestic partner; and
- Any child of the person under 18 years of age who normally resides with the person.

Gift  Means any disposition of property otherwise than by will made by a person to another person without consideration in money or money’s worth or with inadequate consideration, including:
- The provision of a service (other than volunteer labour); and
- The payment of an amount in respect of a guarantee; and
- The making of a payment or contribution at a fundraising function.

For the purposes of this policy, this definition includes:
- Generally all goods or services intended for a specific person;
- Hospitality, including meals, entertainment and accommodation other than attendance in an official capacity on behalf of Council;
- Travel;
- Items which can be regarded as mementoes, such as ties, cuff-links, pens, stationery and the like;
- Campaign donations;
- Tickets to functions or events that invite a named person;
- ‘Season’ tickets or a book of tickets that may or may not be used in full;
- Transfer or gift of money or vouchers;
- The transfer of property of a presentational or charitable nature or otherwise;
- The provision of services or goods free of charge or at a reduced or discounted rate not generally publicly available;
- Loans of money in capacity of Council employee or Councillor; and
- The sale of virtual property with a sale price below proper valuation.
Hospitality

The provision of food or beverages, travel, accommodation or entertainment offered to convey goodwill on behalf of the giver.

Register of Interest Returns

These are completed by nominated officers, Councillors, and members of special committees to declare any interests they may have (e.g. property owned, gifts over $500 received) as required by the Local Government Act 1989. The Primary return is completed initially, followed by Ordinary returns twice yearly.

Relative

Relative” is defined in the Act for conflict of interest purposes. It includes a person who is a direct relative or a person who is a direct relative of a direct relative.

A “direct relative”, is defined to be a person who is a person’s:

- Mother or father;
- Brother or sister;
- Son or daughter; or
- Spouse or domestic partner.

In very broad terms, a person is a “relative” for the purpose of an ordinary return if they are once or twice removed from a person by blood or marriage.

Senior Officer

Means:

a) The Chief Executive Officer;
b) A member of Council Staff who has management responsibilities and reports directly to the Chief Executive Officer; and
c) Any other member of Council staff whose total remuneration exceeds $130,000 or a higher threshold amount specified by the Minister in accordance with section 97B of the Act.

Special Committee

A special committee of the Council with delegated Council powers, duties or functions under the Local Government Act or any other Act, including the Planning and Environment Act 1987.

REFERENCES

Local Government Act 1989

Local Government (General) Regulations 2004

Register of Interests Guide - Primary and Ordinary Returns - Local Government Victoria 2009
APPENDIX 13 - GIFTS, BENEFITS AND HOSPITALITY POLICY

The version of this policy as at 1 December 2016 is set out below.

<table>
<thead>
<tr>
<th>Responsible Officer:</th>
<th>Document No:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance and Risk Advisor</td>
<td>Adoption Date: 2014</td>
</tr>
<tr>
<td>Authorising Officer:</td>
<td>Approved By: Council</td>
</tr>
<tr>
<td>Director Corporate Services</td>
<td>Review Date: 2017</td>
</tr>
<tr>
<td></td>
<td>Policy Type: Council</td>
</tr>
</tbody>
</table>

BACKGROUND

Council’s operations are founded on values of community leadership, accountability, integrity, respect, trust and excellence. These ideals underpin Council’s behaviours and therefore service delivery. To support this, on all occasions, all actions of Councillors and Council employees shall be undertaken in line with the highest ethical standards and probity.

PURPOSE

The purpose of this policy is to establish guidelines for the receiving of gifts, benefits and hospitality by Councillors and Council employees to avoid any potential conflicts of interest or breaches of the Local Government Act 1989 (the Act).

SCOPE

This policy applies in relation to all gifts, benefits or hospitality offered to or received by Councillors and Council employees from sources external to Council subject to the following exclusions.

This policy does not relate to donations of cash received by Council for specific purposes such as appeals. These will be recorded in the Council accounts and used for the purposes of the appeal.

If the gift is offered to Council or to a Councillor or Council employee in their capacity as Council’s agent, purely for redistribution by Council, this does not constitute a gift under this policy. When the gift is redistributed to another person(s) this does not fall under this policy or the conflict of interest rules. The gift to the final recipient(s) is classed as coming from Council rather than the original donor.

Reasonable hospitality provided and paid by a party external to Council and received by a Councillor or Council employee at an event or function they have attended in an official capacity is excluded from this policy.

Reasonable hospitality provided by a party external to Council, paid by Council and received by a Councillor or Council employee at an event or function they have attended in an official capacity is excluded from this policy provided all relevant function, travel and accommodation approvals are obtained.

LEGISLATIVE COMPLIANCE

Legislative requirements of the Act include:
**Councillors:**

- Section 59 (Bribery, treating and undue influence);
- Division 9 Election campaign donations Section 62 (Return by candidate);
- Division 9 Election campaign donations Section 62B (Certain gifts not to be accepted);
- Section 76B (Primary principle of Councillor conduct);
- Section 76BA (General Councillor conduct principles);
- Section 76D (Misuse of position);
- Section 77A (Direct and indirect interests);
- Section 77B (Direct interest);
- Section 78 (Indirect interest by close association);
- Section 78A (Indirect interest that is an indirect financial interest);
- Section 78B (Indirect interest because of conflicting duties);
- Section 78C (Indirect interest because of receipt of an applicable gift);
- Section 79 (Disclosure of conflict of interest);
- Section 79B (Conflicting personal interest);
- Section 79C (Certain situations where Councillor taken to not have a conflict of interest);
- Section 80A (Requirements to be observed by an assembly of Councillors);
- Section 81 (Register of interests);
- Section 188 (Power to accept gifts);
- Section 239 (Persons who are liable for offences);

**Council employees:**

- Section 80B (Members of Council employees to disclose conflicts of interest in respect of delegated functions);
- Section 80C (Persons to disclose interests to Council when providing advice);
- Section 81 (Register of interests);
- Section 95 (Conduct principles);
- Section 186A (Procurement policy);
- Section 188 (Power to accept gifts);
- Section 239 (Persons who are liable for offences);

This policy and supporting processes will ensure adherence to all these provisions.

**POLICY**

Council acknowledges that as part of business or cultural practices, at times, Councillors and Council employees will be presented with gifts as a form of appreciation. While Council is appreciative of such acts of generosity it is Council policy that gifts should not be accepted and be politely refused unless that refusal has the potential to offend the giver and potentially damage critical Council relationships or because of cultural sensitivities around gift giving and receiving.

Gifts, benefits or hospitality could be offered innocently in good faith or could be an attempt to influence. Feelings of obligation can arise if Councillors or Council employees accept a gift, benefit or hospitality. Once it has been accepted, their official position may be
compromised as often persons attempting to corrupt Councillors or Council employees start with small inducements that appear to have no improper motive behind them.

By politely refusing such gifts, benefits or hospitality, Councillors or Council employees can avoid feeling compromised and contributing to a public perception of bias either at the time of receiving the gift or potentially in any future dealings. Before accepting any gift, benefit or hospitality, Councillors and Council employees must consider the ramifications and perceptions that may arise from any such offer and ask themselves whether a conflict of interest may arise.

In some circumstances, gifts, benefits or hospitality must never be accepted. These circumstances are described below.

Should any gifts be received they will be recorded in Council’s Register of Gifts, Benefits and Hospitality.

**Soliciting & Influence**

A Councillor or Council employee must not seek or accept a bribe or other improper inducement by virtue of their position, or acquire a personal profit or advantage, which has a monetary value.

Councillors must not take advantage of their position to improperly influence Council employees in the performance of their public or professional duties to secure a private benefit for themselves, or for somebody else.

Councillors or Council employees, must not take advantage (or seek to take advantage) of their status or position with, or functions performed for, Council in order to obtain unauthorised or unfair benefit by seeking or accepting any payment, gift or benefit intended or likely to influence, or that can be reasonably perceived by an impartial observer as intended or likely to influence them to:

- Act in a particular way (including making a particular decision);
- Fail to act in a particular circumstance; or
- Otherwise deviate from the proper exercise of their duties.

**When Gifts, Benefits or Hospitality Should Never Be Accepted**

The following gifts, benefits or hospitality are considered inappropriate and must never be accepted:

- In any circumstances, the transfer of money regardless of value, by cash, vouchers or loan, other than as part of an assistance program approved by Council;
- Where there is or may be, the perception of a conflict of interest with past, present or future duties or where the object of the gift is to maintain or return a favour;
- Where full disclosure of the gift would be embarrassing or damaging to Council;
- It is not appropriate in any circumstances that Councillors or Council employees accept gifts from persons or bodies engaged in any procurement process;
- Where a planning or building permit application or any other regulatory process is underway, a Councillor or Council employee involved in such instances, must not accept any gifts from any individual or group that may be involved with the permit application or regulatory activity;
- Access to confidential information;
• Promise of a new job;
• Preferential treatment which may include reciprocal favours;
• Disposition of property or bequest, not necessarily land but can include goods and chattels (e.g. furniture, vehicles etc.), by one person to another without payment. Arrangements may be made to donate the bequest to a charitable institution in the name of the person or returned to the immediate family; or
• Goods or services at heavily discounted prices that are not generally publicly available.

In each of the preceding circumstances it is possible that corrupt or improper conduct is in play. If Councillors or Council employees refuse a gift for any of the foregoing reasons or on the basis that they believe that the gift was a deliberate attempt to receive ‘special treatment’, then they must report such instances to the Chief Executive Officer, relevant Director or Council’s Protected Disclosure Coordinator.

Awards and Prizes Won at Conferences and Seminars

Prizes or awards valued at over $500 that are won at functions attended at Council’s expense, must immediately become the property of Council. The Supreme Court has ruled that such prizes or awards are owned by the person or organisation providing ‘consideration’ for the attendance. Councillors and Council employees attending functions as Council representatives, and who make no financial contribution to the attendance, lose entitlement to any award or prize won as a result of attending the function.

Circumstances in which a person may be entitled to keep a prize or award over $500 are where personal payment has been made for the attendance, or the person pays for a raffle ticket that wins a prize. In each case the recipient has provided consideration for the prize/award and may lay legal claim to its title.

From an ethics point-of-view, recipients of such prizes could potentially be seen as being influenced by the sponsor of the prize. Prizes and awards valued at over $500 must therefore be reported as soon as possible to the Chief Executive Officer, who must determine the ownership of the item and the appropriate action to be taken.

Campaign Donations

Division 9 of the Act outlines the requirements in relation to Campaign Donation Returns Section 62B – Certain gifts not to be accepted.

It is unlawful for a Councillor or Candidate or a person acting on behalf of a Councillor or Candidate to receive during the donation period a gift made to or for the benefit of the Councillor, being a gift the amount or value of which is equal to or exceeds the gift disclosure threshold unless:

a) The name and address of the person making the gift are known to the person receiving the gift; or
b) At the time when the gift is made:
   (i) The person making the gift gives to the person receiving the gift the person’s name and address; and
(ii) The person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

Conflict of Interest Arising from Receipt of an Applicable Gift

A conflict of interest arises where a Councillor or Council employee has an interest that is in conflict with his or her official duty. It is wholly the responsibility of the individual to decide if he or she has an interest. The penalties for failing to disclose a conflict of interest are significant. A Councillor who fails to disclose a conflict of interest is guilty of an offence and liable to a considerable fine. If convicted, he or she would be disqualified from continuing to be a Councillor for a period of seven years after the conviction.

Interests can be direct or indirect. One class of indirect interests concerns the receipt of an applicable gift. An indirect interest having received an applicable gift arises when a Councillor or Council employee has received one or more gifts with a total value of, or more than, the gift disclosure threshold (currently $500), from a single source in the five years preceding the decision or the exercise of the power, duty or function but excludes:

- Reasonable hospitality received by the person at an event or function the person attended in an official capacity; or
- A gift, other than an election campaign donation, that was received more than 12 months before he or she assumed official duties.

A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from

a) A person who has a direct interest in the matter; or
b) A director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
c) A person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.

The offer of a gift to a specific person has the same implications for the purposes of Primary and Ordinary Returns, Conflict of Interest rules and this policy, even if the gift is not accepted, or is passed to the CEO for disposal. It should be noted that it is the intention of the person giving the gift that is the critical factor, regardless of what is done with it by the Council employee or Councillor. Therefore if the gift is intended for that particular person it should be declared, even if not retained, and recorded on the appropriate return(s).

PROCEDURES

Where a gift, benefit or hospitality is offered and it is appropriate for a Councillor or Council employee to accept the gift, benefit or hospitality because a refusal may potentially damage Council’s relationship with the giver, the intent of this policy and the following procedures must be observed.

Property of Council

Any gift, benefit or offer of hospitality received by Councillors or Council employees immediately becomes the property of the Council.
Human Services Exemption

Gifts of home-made items or home grown produce with a value of up to $20 given by Human Services clients may be accepted and kept by the Councillor or Council employee receiving the gift where a refusal is likely to offend the giver. Human Services clients include Children’s Services, HACC or Packaged Care clients. The requirements for declaration of the gift are to be adhered to.

Hospitality Exemption

Councillors and Council employees, in the normal course of their duties will from time to time receive invitations of hospitality to attend various functions and events.

Where such hospitality is reasonable in nature and provides an opportunity to network or undertake business of a common purpose, it may be appropriate to accept such invitations. Where practical, approval should be obtained prior to attendance. Examples include:

- A business meeting to discuss matters of Council interest at which a meal or refreshments are served;
- Attendance as a representative of the Council at promotional events, site inspections, meetings or activities where there is value to Council in its Councillors or employees gaining or providing information of benefit to Council operations;

The requirements for declaration of the gift are to be adhered to.

If, however, acceptance of the hospitality is likely to create the impression that an attempt is being made to compromise the impartiality of the Councillor or Council employee, or could be perceived as a conflict of interest, then the offer of hospitality should be politely declined.

Disposition

Gifts, benefits and offers of hospitality given as a sign of gratitude recognise outcomes collectively achieved by Council, Councillors or a group of Council employees. Therefore, as far as is reasonably practical, such gifts are to be ‘pooled’ to be shared by Council and/or employee work group(s) concerned. Otherwise the disposition of the gift, benefit or offer of hospitality will be decided by the CEO.

The Chief Executive Officer may dispose of gifts by any of the following methods:

- Return to the original recipient;
- Return to sender;
- Disposal by resolution of Council;
- Transfer to other public agencies or authorities;
- Transfer as a gift to a recognised charitable, aid or not-for-profit organisation;
- Archival action by the Victorian Museum or State Library;
- Reduction to scrap; or
- Destruction.

Declaration

All gifts, benefits and offers of hospitality are to be declared, by

1. Completing a ‘Gifts, Benefits & Hospitality Declaration’;
2. Advising the appropriate supervisor or manager; and
3. Recording it in Council’s ‘Gifts, Benefits & Hospitality Register’.

Declarations must be made within 14 days of receiving the gift or, 14 days of the date of returning to Australia, if the gift was received overseas.

**Acknowledgement**

As soon as is practicable, all gifts, once properly declared, are to be formally acknowledged to the giver, with a note from the recipient, stating that (as applicable):

1. The goodwill sentiment conveyed by the giving of the gift is appreciated;
2. Where practical, the gift has been pooled for the appreciation of the Council or Council employees of a designated work area; or
3. The gift has been retained by Council and is on display; or
4. The gift has been otherwise dealt with (other public agency, recognised charitable, aid or not-for-profit organisation, archived with the Victorian Museum or the State Library); and
5. Council is an organisation committed to the highest ethical standards of openness, probity and equity.

**Declaration & Disposition Guide**

The following table can be used to guide declaration and disposition decisions based on the provider, receiver, and type of gift and dollar value scale.

<table>
<thead>
<tr>
<th>Provider</th>
<th>Receiver</th>
<th>Type &amp; Value</th>
<th>Declare to</th>
<th>Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Services</td>
<td>Council’s Human Services employees</td>
<td>Home-made gifts or home grown produce</td>
<td>Supervisor</td>
<td>Receiver retains</td>
</tr>
<tr>
<td>clients</td>
<td>or Councillors</td>
<td>Value up to $20</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All providers</td>
<td>Council employees or Councillors</td>
<td>Reasonable hospitality</td>
<td>Manager (Council employees) or Director with governance responsibility (Councillors)</td>
<td>Receiver retains (prior approval where practical)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Value up to $50</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All providers</td>
<td>Council employees</td>
<td>All gifts &amp; benefits other than reasonable hospitality</td>
<td>Manager</td>
<td>Work team ‘pool’ where practical and/or CEO disposition decision</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Value up to $50</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All providers</td>
<td>Council employees</td>
<td>All gifts &amp; benefits other than reasonable hospitality</td>
<td>Director</td>
<td>Work team ‘pool’ where practical and/or CEO disposition decision</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Value over $50</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All providers</td>
<td>Councillor</td>
<td>All gifts &amp; benefits other than reasonable hospitality</td>
<td>Director with governance responsibility</td>
<td>Director with governance responsibility disposition decision</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Value up to $50</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


GIFTS, BENEFITS & HOSPITALITY REGISTER

A Register will be maintained by the manager with responsibility for governance matters and reported to the Audit Advisory Committee and the Chief Executive Officer every six months. The Register contains the following information:

- Date gift, benefit or hospitality received;
- Description of the gift, benefit or hospitality;
- Estimated value;
- Recipient;
- Provider Name (Individual or Company); and
- Disposition of the gift, benefit or hospitality.

RESPONSIBILITIES

Councillors
Resolve to formally adopt this policy as a policy of Council.
Provide oversight and review of this policy as advised by the Audit Advisory Committee.
Comply with the requirements of the policy related to Councillors.

Audit Advisory Committee
Monitor this policy and the gifts, benefits and hospitality register on a six monthly basis.
Report on the adequacy of this policy to Council.

Chief Executive Officer
Lead the establishment and maintenance of an appropriate culture of ethics and probity throughout the organisation.
Maintain ultimate responsibility for the organisation’s treatment of gifts, benefits and hospitality.
Monitor this policy and the gifts, benefits and hospitality register on a six monthly basis.

Corporate Management Team
Lead, coordinate and monitor implementation of this policy.
Review the status of gifts, benefits and hospitality received. In particular, address any arising situation where gifts, benefits and hospitality received by Councillors or Council employees is forecast to approach or exceed the gift disclosure threshold of the conflict of interest provisions of the Act.
Receive declarations of gifts as provided for in this policy.
Endorse this policy.

**Manager with governance responsibilities**
Facilitate implementation and review of this policy.

Maintain the gifts, benefits and hospitality register.

Report on gifts, benefits and hospitality received by Councillors and Council employees to the CEO and the Audit Advisory Committee on a six monthly basis.

**Management**
Receive declarations of gifts as provided for in this policy.

Comply with this policy.

Ensure that Council employees adhere to this policy.

**Council employees and Contractors**
Comply with this policy.

**DEFINITIONS**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit Advisory Committee</td>
<td>Advisory Committee appointed by Council under section 86 of the <em>Local Government Act 1989</em> with responsibility to oversee and monitor audit processes, including internal control activities.</td>
</tr>
<tr>
<td>Bequest</td>
<td>The act of giving or leaving personal property by a will or something that is bequeathed; a legacy.</td>
</tr>
<tr>
<td>Bribe</td>
<td>Means money, reward or service offered to procure action, decision, or preferential treatment in favour of the giver or another person.</td>
</tr>
<tr>
<td>Cash</td>
<td>Means money or vouchers which are readily convertible.</td>
</tr>
<tr>
<td>Chief Executive Officer (CEO)</td>
<td>Chief Executive Officer of the Rural City of Wangaratta.</td>
</tr>
<tr>
<td>Conflict of Interest</td>
<td>Means any private or personal interest, which could prejudicially influence, or be perceived to influence, a person in the performance of his or her public or professional duties (refer <em>Local Government Act, 1989</em> for a comprehensive definition).</td>
</tr>
<tr>
<td>Corporate Management Team (CMT)</td>
<td>Executive committee of Council comprising the CEO, Directors and Executive Managers.</td>
</tr>
<tr>
<td>Council</td>
<td>Section 5(1) of the <em>Local Government Act 1989</em> defines a council in the following way: “A Council consists of its Councillors, who are the representatives, elected in accordance with this Act, of persons who are residents in the Council’s municipal district or ratepayers of the Council.” In this case Council refers to the Rural City of Wangaratta.</td>
</tr>
<tr>
<td>Council employee</td>
<td>Any person employed directly by Council, including the Chief Executive Officer, and any person engaged as a short term employee or a contractor undertaking duties on behalf of Council.</td>
</tr>
<tr>
<td>Councillor</td>
<td>Means an elected person who holds the office of member of the Council.</td>
</tr>
</tbody>
</table>
Gift, benefit or hospitality

Means any disposition of property otherwise than by will made by a person to another person without consideration in money or money’s worth or with inadequate consideration, including:

- The provision of a service (other than volunteer labour); and
- The payment of an amount in respect of a guarantee; and
- The making of a payment or contribution at a fundraising function.

For the purposes of this policy, this definition includes:

- Generally all goods or services intended for a specific person;
- Hospitality, including meals, entertainment and accommodation other than attendance in an official capacity on behalf of Council;
- Travel;
- Items which can be regarded as mementoes, such as ties, cuff-links, pens, stationery and the like;
- Campaign donations;
- Tickets to functions or events that invite a named person;
- ‘Season’ tickets or a book of tickets that may or may not be used in full;
- Transfer or gift of money or vouchers;
- The transfer of property of a presentational or charitable nature or otherwise;
- The provision of services or goods free of charge or at a reduced or discounted rate not generally publicly available;
- Loans of money in capacity of Council employee or Councillor; and
- The sale of virtual property with a sale price below proper valuation.

Gift disclosure threshold

Means $500 or a higher amount or value prescribed by the Regulations.

Hospitality

The provision of food or beverages, travel, accommodation or entertainment offered to convey goodwill on behalf of the giver.

Register of Interest Returns

These are completed by nominated officers, Councillors, and members of special committees to declare any interests they may have (e.g. property owned, gifts over $500 received) as required by the Local Government Act 1989. The Primary return is completed initially, followed by Ordinary returns twice yearly.

the Regulations

Local Government (General) Regulations 2004

Soliciting

The seeking or requesting of undue reward in order to influence the decision or provision of service.

REFERENCES

Local Government Act 1989

Local Government (General) Regulations 2004

Protected Disclosure Act 2012

Conflict of Interest in Local Government – A Guide - Local Government Victoria 2010

Register of Interests Guide - Primary and Ordinary Returns - Local Government Victoria 2009
Rural City of Wangaratta Audit Advisory Committee Charter

Council Policy – Councillor Code of Conduct

Council Policy – Employee Code of Conduct

**REVIEW**

This policy will be reviewed every three years.
APPENDIX 14 - ELECTION PERIOD POLICY

The version of this policy as at 1 December 2016 is set out below.

<table>
<thead>
<tr>
<th>Responsible Officer:</th>
<th>Approval Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manager Business and Governance</td>
<td>2016</td>
</tr>
<tr>
<td>Authorising Officer:</td>
<td>Approved By:</td>
</tr>
<tr>
<td>Director Corporate Services</td>
<td>Council</td>
</tr>
<tr>
<td>Review Date:</td>
<td>August 2019</td>
</tr>
<tr>
<td>Policy Type:</td>
<td>Council</td>
</tr>
</tbody>
</table>

INTRODUCTION

Council, Councillors and candidates need to understand the requirements and their obligations in the lead up period to an election. This policy provides that information and demonstrates Council’s commitment to probity in its elections thereby boosting community confidence and trust in Council.

CONTEXT

The Local Government Act 1989 (the Act) provides that during the election period certain prohibitions apply to the general functions and powers of Council.

Section 3(1) of the Act defines the election period to be the 32 day period that starts on the last day of nominations and ends at 6:00 pm on election day.

Section 55D of the Act imposes limitations on Council publications during the election period.

Section 76D of the Act imposes serious penalties for the misuse of the position of Councillor.

Section 93A of the Act defines decisions as major policy decisions that must not be made during an election period.

Section 93B requires Council to prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.

The policy must provide details on procedures that will prevent inappropriate decisions being taken during the election period. Inappropriate decisions are those that would affect voting at an election or decisions that may unreasonably bind an incoming council and could reasonably be deferred until after the election.

The policy must outline procedures Council will undertake to limit public consultation and the scheduling of council events during the election period.

The policy should document how applications for access to council information by all parties will be processed. The policy should make it clear to the community that Councillor candidates will be treated in the same way as other candidates with respect to access to council held information.

SCOPE

This policy applies to all Councillors, Council employees and agents of Council as well as candidates in the 2016 general election.
Agents of Council extend to include contractors working in-house, staff on exchange, members of Special Committees, members of Advisory Committees, volunteers, work experience students or graduate placements who perform work for Council as well as external suppliers and other contractors and subcontractors.

This policy applies to the election period for the 2016 local government elections which commences at midnight on 20 September 2016 and ends at 6pm on 22 October 2016.

This policy replaces and overrides any previous policy or document that refers to the caretaker period or to the election period.

**PURPOSE**

The purpose of this policy is to ensure that:

- The ordinary business of local government in the Rural City of Wangaratta continues throughout the election period in a responsible and transparent manner, and in accordance with statutory requirements and established ‘caretaker’ conventions.
- The general elections for the Wangaratta Rural City Council on Saturday 22 October 2016 and any subsequent elections are conducted in a manner that is ethical, fair and equitable and is publicly perceived as such.

The Policy addresses:

- Commitment;
- Election Period Notification;
- Major Policy Decisions Prohibition;
- Significant Decisions Prohibition;
- Use of Council Resources;
- Provision of Information;
- Public Consultation;
- Council Communications and Publications;
- Public Statements;
- Improper Use of Position;
- Annual Report;
- Social Media;
- Functions and Events;
- Travel and Accommodation;
- Councillor Expenditure;
- Advice to Candidates About the Election Process; and
- Monitoring and Enforcing the Policy.

This policy is meant to supplement rather than replace the legislative and commonsense approach to fair and equitable Council elections.

**POLICY**

**DEFINITIONS**
Some of the terms used in this policy are defined in the Act and their use in this Policy is consistent with the Act.

**Council Branding** includes that branding related to the Wangaratta Performing Arts Centre, Wangaratta Art Gallery and the Wangaratta Visitor Information Centre.

**Council resources** include:
- Staff;
- Property;
- Equipment;
- Stationery; and
- Finances.

**Council social media site** refers to:
- Council’s twitter and facebook accounts;
- Visit Wangaratta on Twitter;
- Wangaratta Art Gallery on Facebook;
- Wangaratta Performing Arts Centre on Facebook;
- Wangaratta Visitor Information Centre on Facebook; and
- Wangaratta Youth Council on Facebook.

**Council website** refers to Council’s:
- Corporate website at www.wangaratta.vic.gov.au;
- Corporate mobile website at m.wangaratta.vic.gov.au;
- Wangaratta Community Directory website at community.wangaratta.vic.gov.au/;
- Wangaratta Performing Arts Centre website at www.wangarattapac.com.au/; and

**Electoral advertisement, handbill, pamphlet or notice** has the same meaning as section 3(1) of the Act, and means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.

**Electoral matter** has the same meaning as electoral matter in section 3(1A) of the Act and means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election.

Section 3(1B) of the Act further qualifies “electoral matter”

“3(1B) Without limiting the generality of the definition of “electoral matter” matter is to be taken or be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

a) The election; or
b) A candidate in the election; or
c) An issue submitted to, or otherwise before the voters connection with the election.”

Electoral matter includes material which:


• publicises the strengths or weaknesses of a candidate;
• Advocates the policies of the Council or of a candidate;
• Responds to claims made by a candidate; and
• Publicises the achievements of the Council.

**Election period**, also known as the caretaker period, means the 32 day statutory time period prior to, and including, the election day.

**Public consultation** is not defined in the Act, but in this context means a process which involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy.

**Publish** has the same meaning in section 3(1) of the Act, and means publish by any means including publication on the internet and includes but is not limited to paper based media including mass mail outs or identical letters send to a large number of people by or on behalf of Council, publications on any Council website, social media site, blog site or any emails with multiple addressees, used for broad communication with the community.

**COMMITMENT**

This policy commits Council during the election period to:

• Avoid making significant new policies or decisions that could unreasonably bind a future Council; and
• Ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Councillors as candidates in the elections.

**ELECTION PERIOD NOTIFICATION**

In addition to the Chief Executive Officer’s (CEO) statutory responsibilities, the CEO or the CEO delegate will ensure as far as possible, that:

• All Councillors and officers are informed of the application of this policy 30 days prior to the commencement of the election period;
• Matters of Council business requiring major policy or significant decisions are scheduled for Council to enable resolution prior to the commencement of the election period, or deferred where appropriate for determination by the incoming Council; and
• Guidelines to staff on the role and responsibilities of staff in the implementation of this policy are issued if needed.

**MAJOR POLICY DECISIONS PROHIBITION**

Section 93A of the Local Government Act prohibits Council from making major policy decisions during the election period, including decisions involving:

• The remuneration, appointment or dismissal of the CEO;
• Entering into any major contracts worth more than $150,000 for goods and services or $200,000 for works, or 1% of the Council's rates revenue for the previous financial year (whichever is greater); and
- The exercise of any entrepreneurial power under section 193 if the amount assessed under section 193(5A) exceeds $100,000 or 1% of the Council's rates revenue for the previous financial year (whichever is greater).

In the event of exceptional circumstances requiring a Council decision, an application may be made to the Minister in accordance with Section 93A of the Act.

In order to facilitate compliance with section 93 of the Act relating to major policies a statement will be published on the front of each agenda indicating that the agenda has been prepared in accordance with section 93A of the Act.

In circumstances where an exemption has been granted by the Minister a statement indicating that the exemption has been granted will be included in the report.

**SIGNIFICANT DECISIONS PROHIBITION**

In addition to the decisions specified in section 93A of the Act, Council will avoid making other decisions during the election period that are of a significant nature and which would affect voting at an election, may unreasonably bind an incoming council, and could reasonably be deferred until after the election.

Significant decisions include irrevocable decisions that either commit Council to substantial expenditure or significant actions or that have a significant impact on the municipality or the community. These decisions include:

- Allocating community grants or other direct funding to community organisations;
- Major planning scheme amendments; and
- Changes to strategic objectives and strategies in the council plan.

**USE OF COUNCIL RESOURCES**

It is essential that due propriety is observed in the use of all Council resources. In order to ensure the proper use of Council resources during the election period, the following will apply:

- Council resources will be used exclusively for normal Council business and will not be used in connection with election campaigning; and
- Council logos, letterhead, or other Wangaratta Rural City Council branding must not be used for, or linked in any way to, a candidate’s election campaign.

As Councillors must continue to perform their role during the election period, they will, as a matter of course have access to Council resources including, but not limited to, council vehicles, email services and mobile phones. Such resources must not be used for electioneering purposes. Usage of these resources may be monitored and their use may be required to be substantiated.

The Customer Request Management System will be responded to in a business as normal manner. Usage of this service may be monitored to ensure compliance with the Act and this Policy.

Council staff will not be asked to undertake any tasks connected with a candidate’s election campaign.

**PROVISION OF INFORMATION**
As Councillors must continue to perform their role during the election period, they will, as a matter of course, receive all necessary information for them to fulfil that role.

Information to be provided to Councillors will include:

- Information that is publicly and freely available such as Council Agendas, Council Plans, Annual Reports, strategies, policies and the like. Such information will not be printed or published for a wider distribution than normal; and
- Information and advice, including briefing papers, provided by Council’s management in relation to matters to be decided upon at forthcoming Council and Committee meetings.

All election related enquiries from candidates, or prospective candidates during the election period, will be directed to the Returning Officer, or where the matter is outside the responsibilities of the Returning Officer, to the CEO or CEO delegate.

All requests received by Council staff for information about Council projects, programs or services during the election period will be responded to in a business as normal manner.

- Up to date responses will be provided about progress on Council projects or services to Councillors, candidates or citizens;
- Council staff will provide accurate and complete information. However, a business as normal approach does not include extensive research or analysis involving significant Council resources, or providing a level of information which would not normally be available;
- Council recognises that all election candidates have certain rights to information from the Council administration subject to the Privacy and Data Protection Act 2014 which may prevent the disclosure of certain information. However, it is important that current Councillors continue to receive information that is necessary to fulfil their roles. Councillors shall not request or receive information or advice from Council staff to support election campaigns, and there shall be complete transparency in the provision of all information and advice during the Election Period. Applications for information under the Freedom Of Information Act 1982 will be dealt with as required by law; and
- Requests for clarification relating to the provision of information should be directed to the CEO.

PUBLIC CONSULTATION

Public consultation may be undertaken during the election period to facilitate the day to day business of Council, to ensure that matters continue to be proactively managed.

Consultations will avoid express or implicit links to the election. In view of the potential for a matter or issue to become contentious or politically sensitive in the course of the election period, Council reserves the right to postpone a matter if the issue is likely to affect voting.

Council will not continue or commence consultation on any contentious or politically sensitive matter after the date on which nominations close.

COUNCIL COMMUNICATIONS AND PUBLICATIONS
Council communications are a legitimate way to promote Council activities and services. It is important that all Councillors have access to Council’s communication resources to enable them to fulfil their roles.

Council’s communication resources will not be developed or used in support of a candidate’s election campaign.

Council publicity and communications will be restricted to promoting normal Council activities and services and for informing residents about the conduct of the election.

**Prior to the election period** a number of tasks will be undertaken, including:

- Council’s website will be reviewed to identify anything that might be construed as electoral matter. Such items will be removed prior to the election period.
- Material to be issued in the election period will be vetted to determine if it requires certification.
- A statement will be posted on all Council social media sites informing the general public that posting a notice during the election period cannot be responded to, or published, should the posting be political in nature. Council’s social media sites will be monitored for electioneering material and any inappropriate posts will be removed, as soon as practicable.
- Material published on Council’s website in advance of the election period is not subject to certification, however existing material that is prominently displayed will be reviewed and consideration given to the removal of any such material that would be considered electoral matter, were it to be published during the election period.

**During the election period** Council will not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the CEO, in accordance with the following provisions:

- The CEO must not certify a publication that contains electoral matter, unless that material is only about the election process;
- This power to approve cannot be delegated to another staff member.
- Any advertisement, handbill, pamphlet or notice proposed for print, publish or distribution during the election period must be vetted by the Manager Communications and Marketing prior to submission to the CEO for certification.
- The certification by the Chief Executive Officer will be in writing on or affixed to a copy of the publication and be in the following from:

  ‘Certified by the Chief Executive officer in accordance with section 55D of the Local Government Act 1989’

- Copies of all certified documents will be retained as Council records;
- Publications which require certification include:
  - Brochures, pamphlets, handbills, flyers, magazines and books;
  - Reports (other than agenda papers and minutes);
  - Advertisements and notices (Rural City Connection) except newspaper notices of meetings;
  - New website material;
Social media publications (which includes Facebook, Twitter, Instagram and Pinterest);
- Emails with multiple addresses, used for broad communication with the community;
- Mass mail outs or identical letters sent to a large number of people by or on behalf of Council;
- Media releases;
- Material to publicise a function or event; and
- Any publication or distribution of Councillors’ speeches.

PUBLIC STATEMENTS

Council staff must not make any public statement that could be construed as influencing the election.

Statements of clarification may be required from time to time and these are to be approved by the CEO.

The CEO will be the spokesperson in situations where a Councillor would normally have fulfilled that role.

No media advice or assistance will be provided to Councillors in relation to election campaign matters.

IMPROPER USE OF POSITION

Councillors will not use their position as an appointed representative, or their access to Council staff and other Council resources, to gain media attention specifically in support of an election campaign. Sections 76D and 76E of the Act prohibit Councillors from misusing or inappropriately making use of their position. A breach of section 76D attracts serious penalties, including possible imprisonment.

Councillor profiles on the Council website will be limited to photograph, portfolio title and contact details. Any other communication from a Councillor via the Council website will be removed.

ANNUAL REPORT

Council is required by the Act to produce and put on public display a copy of its Annual Report. The 2015/16 Annual Report will be published during the election period. The Annual Report will not contain any material that could be regarded as overt electioneering or that inappropriately promotes individual Councillors.

The Annual report does not require certification by the CEO; however any publication of an extract or summary of the Annual Report will require certification.

SOCIAL MEDIA

Any publication on social media sites including Facebook, Twitter, Pinterest and Instagram during the election period must be certified by the CEO. Staff responsible for administering individual social media sites will monitor their respective sites during the election period and use moderation features where available to ensure no electoral matter is posted.
FUNCTIONS AND EVENTS

Any event or function held during the election period shall relate only to legitimate Council business and shall not be used, or be capable of being construed as being used, in connection with any election activity.

All speeches prepared for use at events or functions shall be reviewed by the Chief Executive Officer to ensure the content does not breach this Policy or the Act.

Councillors may make a speech during any event or function. The speech must not have any political reference which may be construed as providing a current Councillor any advantage during the election period.

TRAVEL AND ACCOMMODATION

Councillors, during the election period, shall not participate in any interstate or overseas travel in their capacity as a Councillor. In circumstances where it is imperative that the Chair of Councillors (or nominee) represent Council on a delegation or forum, Council may, by resolution, approve such attendance. If consideration by Council is impractical, the CEO may determine the issue.

COUNCILLOR EXPENDITURE

Claims for the reimbursement of expenses shall conform to requirements set out in the Reimbursement of Expenses Councillors and Council Committees Policy 2014.

Reimbursements of Councillors’ out-of-pocket expenses during the election period will not apply to costs that could be perceived as supporting or being connected with a candidate’s election campaign.

ADVICE TO CANDIDATES ABOUT THE ELECTION PROCESS

All candidates for the Council election will be treated equally. Any advice to be provided to candidates as part of the conduct of the Council election should be provided equally to all candidates.

All election related enquiries from candidates, whether current Councillors or not, will be directed to the Returning Officer, or where the matter is outside of the responsibilities of the Returning Officer, to the Chief Executive Officer (or relevant Director).

MONITORING AND ENFORCING THE POLICY

Where an issue arises in relation to this policy, the CEO is responsible for determining any issues that arise in the implementation of this policy.

Staff and the CEO are subject to penalties as defined by Section 55 of the Act.

REFERENCES

Councillors Code of Conduct 2016
Freedom of Information Act 1982
Local Government Act 1989 (see Appendix 1 for relevant sections of the Act)
Local Government Victoria, Governance Practice Note No. 5 - “Election Caretaker Arrangements”

Local Government Victoria, Reforms arising from the Local Government Amendment (Improved Governance) Act 2015

Privacy and Data Protection Act 2014

Victorian Electoral Act 2002

Wangaratta Rural City Council Policy - Reimbursement of Expenses Councillors and Council Committees Policy 2014

**REVIEW**

This policy is created to provide guidance during the 2016 municipal elections, and will be reviewed for subsequent municipal elections. If required, the policy will be amended not later than 12 months before the commencement of each subsequent general election period.
APPENDIX 15 - CONDUCT MANAGEMENT HIERARCHY

(1) Having and expressing differing viewpoints is a normal function of the process of democratic local government. Sharing and expressing these different views leads to informed and well considered decisions. All Councillors have the right to influence the decisions made by Council through debate.

(2) A hierarchy for management of councillor conduct issues has been established in this Code and in the Act and is set out below.

(3) Councillors should always aim for prevention of disputes and complaints.

(4) If a dispute arises, Councillors should try to resolve the matter through—

(a) Negotiation, where the parties involved talk to each other and work together to try to resolve the issue; or

(b) Mediation, where the parties involved are assisted by a third person to try to reach agreement;

(5) Where a Conduct Complaint is made internal resolution procedures will be used to determine the matter through arbitration.

(6) Where internal resolution procedures have been exhausted and have failed to resolve a Conduct Complaint, or where the issue is having a serious impact on Council or any of the parties, legislative provision has been made to externally manage councillor conduct which may involve—

(a) Councillor Conduct Panel, where a panel established by the Principal Councillor Conduct Registrar, consisting of two suitably qualified members, hears allegations of misconduct and serious misconduct, makes findings in relation to applications and imposes sanctions if required;

(b) Victorian Civil and Administrative Tribunal, which hears—

(i) Allegations of gross misconduct; and

(ii) Appeals against decisions of Councillor Conduct Panels.

(c) Ministerial governance direction, where the Chief Municipal Inspector or a municipal monitor has recommended that governance processes and policies require improvement;

(d) Ministerial power to stand down a councillor, where the minister is empowered to recommend an Order in Council to stand down a councillor against whom a complaint of serious or gross misconduct is made and a municipal monitor confirms that such a councillor’s conduct threatens someone’s health and safety, is obstructing Council business, or is not in accordance with the role expected of a councillor;
(e) **Ministerial power to suspend all councillors**, where the minister is empowered to recommend an Order in Council to stand down all councillors if the Minister is satisfied on reasonable grounds that there has been a serious failure to provide good government or that Council has acted unlawfully in a serious respect or that Council has repeatedly and substantially failed to comply with a general Order and any special Order; and

(f) **Magistrates’ Court of Victoria**, for alleged breaches of the Act investigated and prosecuted by the Chief Municipal Inspector.

These processes are summarised in the following table.

<table>
<thead>
<tr>
<th>Degree of Seriousness</th>
<th>Definition</th>
<th>Applicant</th>
<th>Responsible Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>No dispute or complaint</td>
<td>Prevention. Communicating respectfully and with an open mind.</td>
<td>Not applicable.</td>
<td>Councillors</td>
</tr>
<tr>
<td>Dispute</td>
<td>Negotiation and/or Mediation</td>
<td>No formal applicant</td>
<td>Councillors</td>
</tr>
<tr>
<td>Misconduct</td>
<td>Panel proceedings. 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.</td>
<td>Council, councillor, councillors</td>
<td>Councillor Conduct Panel</td>
</tr>
<tr>
<td>Serious misconduct</td>
<td>Panel proceedings. Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct.</td>
<td>Council, councillor, councillors, Chief Municipal Inspector</td>
<td>Councillor Conduct Panel</td>
</tr>
<tr>
<td>Gross misconduct</td>
<td>Tribunal proceedings. Behaviour that demonstrates lack of character to be a councillor.</td>
<td>Chief Municipal Inspector</td>
<td>VCAT</td>
</tr>
<tr>
<td>Statutory offences</td>
<td>Prosecution. Breaches of the Act.</td>
<td>Chief Municipal Inspector</td>
<td>Court system</td>
</tr>
</tbody>
</table>
### APPENDIX 16 = BREACHES AND SANCTIONS UNDER THE ACT

There are a number of conduct related sanctions established under the Act.

This is summarised incorporating amendments as at 1 December 2016 in the following table.

<table>
<thead>
<tr>
<th>Section</th>
<th>Breach</th>
<th>Sanction</th>
</tr>
</thead>
<tbody>
<tr>
<td>64</td>
<td>Failure to take oath of office or make Code of Conduct declaration within three months after the day on which the person was declared elected.</td>
<td>The office of a Councillor becomes vacant.</td>
</tr>
<tr>
<td>66</td>
<td>Acting as Councillor if incapable.</td>
<td>A term of imprisonment not exceeding one year or a fine not exceeding 120 penalty units.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Return to the Council any allowances, reimbursements, equipment or materials received.</td>
</tr>
<tr>
<td>66AB</td>
<td>Offences committed by person acting as Councillor.</td>
<td>A term of imprisonment not exceeding one year or a fine not exceeding 120 penalty units.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Return to the Council any allowances, reimbursements, equipment or materials received.</td>
</tr>
<tr>
<td>76D</td>
<td>Misuse of position.</td>
<td>600 penalty units or imprisonment for five years or both.</td>
</tr>
<tr>
<td></td>
<td>Gaining or attempting to gain, directly or indirectly, an advantage for themselves or for any other person.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Causing, or attempting to cause, detriment to the Council or another person.</td>
<td></td>
</tr>
<tr>
<td>76E</td>
<td>Directing, or seeking to direct, a member of Council staff</td>
<td>120 penalty units.</td>
</tr>
<tr>
<td>77</td>
<td>Disclosing confidential information</td>
<td>120 penalty units.</td>
</tr>
<tr>
<td>79</td>
<td>Failure to disclose a conflict of interest at a meeting of the Council or special committee</td>
<td>A fine not exceeding 120 penalty units.</td>
</tr>
<tr>
<td>80A</td>
<td>Failure to disclose a conflict of interest at an assembly of councillors</td>
<td>120 penalty units.</td>
</tr>
<tr>
<td>81</td>
<td>Failure to submit a primary or ordinary return in the prescribed form within the prescribed time which discloses the prescribed information</td>
<td>60 penalty units.</td>
</tr>
<tr>
<td>218A</td>
<td>Chief Municipal Inspector or a municipal monitor has advised the Minister that governance processes and policies require improvement and the Minister agrees.</td>
<td>Minister may in writing direct the Council to amend, discontinue or replace its governance processes and policies.</td>
</tr>
<tr>
<td>Section</td>
<td>Breach</td>
<td>Sanction</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>219</td>
<td>Serious failure to provide good government; or Council has acted unlawfully in a serious respect; or Council has repeatedly and substantially failed to comply with a general Order and any special Order.</td>
<td>Minister may recommend to the Governor in Council that all the Councillors of a Council be suspended.</td>
</tr>
<tr>
<td>219AF</td>
<td>An application has been made to a Councillor Conduct Panel or VCAT alleging serious misconduct or gross misconduct; and A municipal monitor has advised the Minister, and the Minister agrees, that a Councillor—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Is creating a serious risk to the health and safety of a Councillor or a member of Council staff; or Is preventing the Council from performing its functions; or Is behaving in a manner that does not accord with the role of Councillor</td>
<td>On the recommendation of the Minister, the Governor in Council may, by Order in Council, stand down the Councillor.</td>
</tr>
<tr>
<td>223C</td>
<td>Investigations by Chief Municipal Inspector where there is— Failure to comply with investigation requirement. Giving false or misleading information. Refusal to take an oath or affirmation or making a false or misleading statement when appearing. Non-compliance with a Supreme Court order.</td>
<td>240 penalty units or imprisonment for 2 years or both. Supreme Court order.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contempt of court – arrest, committal to prison or fine or both as well as costs.</td>
</tr>
<tr>
<td>238</td>
<td>Obstructing Council</td>
<td>A fine not exceeding 60 penalty units.</td>
</tr>
<tr>
<td>238A</td>
<td>False written declaration</td>
<td>120 penalty units</td>
</tr>
<tr>
<td>239</td>
<td>Persons who aid, abet, counsel or procure or are knowingly concerned in the commission of an offence under the Act, Regulations or local laws</td>
<td>Guilty of that offence and liable to the penalty for that offence.</td>
</tr>
</tbody>
</table>
APPENDIX 17 - PREVENTION, NEGOTIATION AND MEDIATION

This appendix describes the processes that should be considered for use by Councillors to avoid disputes or avoid the escalation of disputes.

Prevention

(1) Councillors should seek to prevent disputes and breaches of this Code.

(2) In seeking to prevent disputes, Councillors should—

(a) Be open to other points of view;
(b) Communicate to manage differences;
(c) Give everyone the chance to respectfully communicate their points of view;
(d) Listen and try to understand other points of view;
(e) Find out what the other people involved want, for example by asking them;
(f) Think of the other people involved as ‘equal and different’; and
(g) Accept some or all of the needs of the other people involved.

(3) In communicating to manage differences Councillors should endeavour to—

(a) Listen—

(i) For what they have in common with other parties. This is a good place to start looking for an outcome;
(ii) For what other parties need or are concerned about, responding reasonably to what they are saying;
(iii) Then checking with the other parties involved to make sure they have been understood.

(b) Ask questions—

(i) That start with ‘How can we’ or ‘What possibilities are there for’;
(ii) To try to find out what is important to the other parties involved, for example by asking ‘How is that important to you?’
(iii) About how the other parties involved would like to move forward.

(c) Respond—

(i) After listening well;
(ii) Using ‘I think’, ‘I’d prefer’ or ‘I wonder whether’, instead of ‘I want’ or ‘I have decided’;

(iii) Making suggestions for an outcome that meets the other parties’ needs and that can be accepted;

(iv) Speaking for themselves and listening to the other parties.

(d) Avoid—

(i) Reacting to demands or threats;

(ii) Asking questions that accuse, such as ‘You did’ or ‘You told me that’;

(iii) Saying ‘You did’ or ‘You are’, which can lead to blaming;

(iv) Saying ‘Obviously’, which can seem demeaning;

(v) Making conclusions about what the other parties involved said without confirming that those conclusions are valid.

Negotiation

(4) Councillors who are parties to a dispute, have an individual and collective responsibility to try every avenue possible to resolve such issues themselves in a courteous and respectful manner.

(5) Councillors should attempt to achieve a resolution to a dispute themselves in the first instance through negotiation where the parties—

(a) Listen to and are heard by each other;

(b) Work out what the disputed issues are;

(c) Work out what is agreed;

(d) Work out what is important to each other;

(e) Aim to reach a workable agreement;

(f) Develop options to resolve each issue; and

(g) Consider what can be done next if an agreement cannot be reached through negotiation.

(6) To facilitate resolution of disputes through negotiation, Councillors should—

(a) Talk to the other people before making decisions (talk first, decide last);

(b) Think about what is behind the disputed issues for themselves and each of the other people involved;

(c) Try to think of options for outcomes that address what each party wants;
(d) Think about what they will do if you do not reach an agreement at the
   negotiation;
(e) Commit to finding an outcome that benefits everyone;
(f) Choose a time and place for the negotiation that suits all of the parties;
(g) Being hard on the problem by talking about all the issues completely;
(h) Being soft on the person by avoiding blaming the other people
   involved;
(i) Focussing on the issues in dispute, not the personalities of the other
   people involved;
(j) Emphasising any common ground the parties involved share to help to
   understand each other;
(k) Think creatively about options that could resolve the dispute;
(l) Not using unfair tactics;
(m) Manage their emotions;
(n) Making sure that the parties involved understand what each other is
   saying;
(o) Communicating well;
(p) Looking for an outcome that will work for everybody;
(q) Being clear that an agreement has been reached by writing the
   agreement down at the end of the negotiation.

(7) Direct negotiation, where the parties talk about the dispute and seek a
    resolution themselves, can be used where the parties—
   (a) Can have a discussion and make decisions without the assistance of
       another person;
   (b) Want to make the decision themselves;
   (c) Want to maintain the best possible ongoing relationship;
   (d) Want to control the outcome, rather than ask someone else to decide;
   (e) Want to keep discussions confidential;
   (f) Want to find innovative ways to resolve the dispute, such as an
       outcome where everybody benefits.

Mediation

(8) Councillors should consider using mediation to assist to achieve a negotiated
    outcome.

(9) Mediation is where the parties are assisted to achieve a negotiated resolution
    by an independent person and can be used where the parties—
    (a) Think a mediator can set up a respectful discussion on the issues;
(b) Feel safe in the presence of each other;
(c) Want a third person to assist the discussion;
(d) Want to control the outcome, rather than ask someone else to decide the outcome;
(e) Want to make the decision themselves;
(f) Want to maintain an ongoing relationship;
(g) Want to keep discussions confidential;
(h) Want to find innovative ways to resolve the dispute, such as an outcome where everybody benefits.

(10) A mediator can—

(a) Design a mediation to suit the circumstances;
(b) Help decide whether mediation is suitable for the situation;
(c) Use their specialist knowledge and provide some information;
(d) Bring the appropriate people together;
(e) Explain how the mediation process will work;
(f) Provide a supportive environment;
(g) Set the guidelines or ground rules for how the mediation will work;
(h) Help the parties to understand each point of view;
(i) Help the parties to stay focused on resolving the dispute;
(j) Make sure the parties know and understand what issues have been agreed;
(k) Help the parties to keep communication going;
(l) Manage interactions so that they are fair;
(m) Help the parties to decide whether possible solutions are realistic;
(n) Support the parties to try to reach a final agreement that is agreed to be appropriate.

(11) A mediator will not—

(a) Take sides;
(b) Make decisions;
(c) Tell the parties what to agree to;
(d) Decide which party is right or wrong;
(e) Give legal, financial or other expert advice;
(f) Provide counselling.
(12) The Principal Conduct Officer can engage the services of a mediator upon receiving such a request from all of the parties to a dispute. Council will only meet the reasonable costs of a mediator engaged in this way.