

MINUTES



Special Meeting of the Council

MEETING DETAILS:

MEETING NO: 7
MEETING DATE: 28 June 2016
TIME: 6:45 PM
LOCATION: Council Chamber, Civic Centre
699 Doncaster Road, Doncaster

MINUTES

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MANNINGHAM CITY COUNCIL
MINUTES OF THE SPECIAL COUNCIL MEETING
HELD AT COUNCIL CHAMBER, CIVIC CENTRE
ON
28 JUNE 2016

The meeting commenced at 6:45 PM.

Present: Councillor Paul McLeish (Mayor)
Councillor Dot Haynes (Deputy Mayor)
Councillor Meg Downie
Councillor Sophy Galbally
Councillor Geoff Gough
Councillor Jim Grivokostopoulos
Councillor Michelle Kleinert
Councillor Stephen O'Brien

Officers Present: Chief Executive Officer, Mr Warwick Winn
Director Assets & Engineering, Mr Leigh Harrison
Acting Director Community Programs, Mr Greg Cleave
Director Planning & Environment, Ms Teresa Dominik
Director Shared Services, Mr Philip Lee
Executive Manager People & Governance, Ms Jill Colson

1. OPENING PRAYER & STATEMENT OF ACKNOWLEDGEMENT

The Mayor read the Opening Prayer & Statement of Acknowledgement.

2. APOLOGIES

There were no apologies for this meeting.

3. PRIOR NOTIFICATION CONFLICTS OF INTEREST

There were no Notifications of Conflicts of Interest.

4. COUNCILLOR CODE OF CONDUCT REVIEW JUNE 2016

Responsible Manager: Executive Manager People & Governance

File No. T16/120

The ultimate destination for this report is: SPECIAL MEETING COUNCIL AGENDA

Neither the responsible Manager nor the Officer authoring this report has a conflict of interest in this matter.

SUMMARY

On 1 March 2016, the Government passed a number of amendments to the Local Government Act 1989. The amendments introduced a requirement for Council to review and adopt its Councillor Code of Conduct within four months of the introduction of the amendments and to have Councillors sign-off on the new Code. The revised Act attempts to more clearly define the content required in a Code in an endeavour to support Councils in the better management of Councillor behaviour. Councils now have a clear role in doing this by establishing and creating a compliance mechanism within the Code to achieve adherence to the Code.

The purpose of this report is to present to Council and have adopted, a revised new Councillor Code of Conduct in compliance with Section 76C of the Local Government Act 1989.

1 BACKGROUND

1.1 Review of Code

1.1.1 Recent amendments to the Act introduced substantial reforms to the councillor conduct framework and the governance requirements of councils. Amongst these reforms was the requirement for each council to review and incorporate the statutory changes into their existing Code of Conduct.

1.1.2 The Local Government Act 1989 also contains a requirement for Council to review the Code within four months of a general election. Thus, Council will need to carry out two reviews of the Code before 22 February 2017. The first of these reviews needs to be finalised at a Special Meeting of Council held no later than 4 July, 2016.

1.2 Statutory Changes

The statutory changes that are now required to be incorporated into a new Code are:-

1.2.1 Councillor Declaration

- a) It is now a requirement that after the next general elections each Councillor must read the councillor code of conduct and make a written declaration, to be signed and witnessed by the CEO, that they will abide by the code. This must be done before the Councillor can commence office. If the councillor fails to do so

within three months of being elected their position will be declared vacated. This means that failure to make a declaration to abide by the councillor code of conduct will after the general elections be a ground for disqualification as a councillor.

- b) Within one month of any amendment being made to a Councillor Code of Conduct, all councillors must make a declaration stating that they will abide by the revised new code which also needs to be signed and witnessed by the CEO. This review constitutes an amendment to the Code.
- c) Both reviews of the Code are to be made at a special meeting of Council.

1.2.2 Internal Resolution Procedure

- a) It is now mandatory for the Code to include an internal resolution procedure for dealing with any alleged contraventions of the Code. Council will also need to include any processes prescribed by statute, there are none at this stage.
- b) The Internal resolution procedure must provide for the selection of a suitably independent arbiter and specify the role of the arbiter such as consider applications and make findings which must be provided to Council.
- c) Failure to comply with the Council's internal resolution procedure or to comply with a written direction given by the Council constitutes misconduct by a Councillor and can lead to a Councillor Conduct Panel.
- d) In addition to the internal resolution procedure, the Code may retain informal dispute resolution procedures such as informal discussion and mediation.

1.2.3 Conduct Panels

- a) New processes for Councillor Conduct Panels are also required to be prepared and introduced, and are detailed in the Act.
- b) A Panel can be established to consider allegations of misconduct or serious misconduct but only after the application for a Panel has been referred to and approved by the Principal Councillor Conduct Registrar, a State Government employee.
- c) Applications may be made by the Council, a Councillor or a group of Councillors and be in accordance with section 81B of the Act. The Chief Municipal Inspector can also make application in respect to alleged serious misconduct. Allegations of gross misconduct are referred directly to VCAT by the Chief Municipal Inspector.
- d) There is no longer the power of parties to a Panel hearing to refer the matter directly to VCAT before the Panel has made a determination.
- e) If the arbiter makes a finding that a Councillor has contravened the Code, the Council can apply sanctions to that Councillor.

1.3 Other Updates and Changes

- 1.3.1 Other matters that have been included in the new Code are:-
- a) Definitions for bullying, misconduct, serious misconduct and gross misconduct.
 - b) It now is an offence under the Act to engage in improper direction or influence by a councillor of a member of council staff; and disclosure of confidential information by a councillor. Both have new penalties applying to the offence being 120 penalty units (\$18,200.40 in 2015).
 - c) The Local Government Act has been expanded to give the CEO responsibility for managing interactions between councillors and staff by developing, implementing and enforcing policies and protocols for this purpose.
 - d) The role of the Council, the role of a Councillor, the functions of the Mayor and the role of the CEO in supporting the Mayor have also been included.

2 PROPOSAL/ISSUE

- 2.1 This report outlines recent changes to the Councillors Code of Conduct and allows Council to review its Code in accordance with the Act. The new Code:
- 2.1.1 Sets out the standards of conduct expected of elected representatives;
 - 2.1.2 Endeavours to foster good working relations between Councillors to enable Councillors to work constructively together in the best interests of the local community; and
 - 2.1.3 Mandates councillor conduct designed to build confidence in the integrity of the Manningham City Council.
- 2.2 This new Code will be:
- a) given to each Councillor;
 - b) made available for public inspection at the City Offices; and
 - c) published on the Council's website.

3 PRIORITY/TIMING

- 3.1 In accordance with the recent amending legislation, Council must review and make any necessary changes to the Code within four months of the legislation coming into effect (4 July 2016) and within four months after a general election (22 February 2017).
- 3.2 These reviews must be done by calling a special meeting solely for the purpose of reviewing the Code.

4 CUSTOMER/COMMUNITY IMPACT

- 4.1 The new Code must be made publicly available on the Council's website as soon as practicable after it is reviewed and adopted.

5 HUMAN RIGHTS CHARTER

- 5.1 The implications of this report and of the new Code have been assessed and are not considered likely to breach or infringe upon the human rights

contained in the Victorian Charter of Human Rights and Responsibilities Act 2006.

6 CONSULTATION

- 6.1 Councillors have been briefed on councillor conduct and the legislative changes by senior officers and Mr Terry Bramham of Macquarie Lawyers and engaged in the review and preparation of this new Code.

7 CONCLUSION

- 7.1 The Code has been reviewed taking into account the recent legislative changes required to be included into the new Code and several recommended improvements contained within the Municipal Association of Victoria's code of conduct.
- 7.2 Adopting this new Code will achieve compliance with the legislative requirement to review the previous Code by the 4 July.

OFFICER'S RECOMMENDATION

That Council;

- A. Notes that it has reviewed the Councillor Code of Conduct;
- B. Endorses the changes included in the new Code that were required by the Local Government (Improved Governance) Act 2015;
- C. Adopts the new Councillor Code of Conduct dated June 2016, as attached.
- D. Notes that Councillors are to indicate their commitment to the new Code by jointly signing the new Code;
- E. Approve the publishing of the jointly signed new Code on Council's website; and
- F. Notes that Councillors are to make an individual declaration that they will abide by the new Code in accordance with the Section 63 and 76C of the Local Government (Improved Governance) Act 2015.

MOVED: DOWNIE
SECONDED: GALBALLY

That the Recommendation be adopted.

CARRIED

DIVISION

A Division having been demanded the Council divided as follows:

FOR (8): Councillors Haynes, O'Brien, Grivokostopoulos, Downie, Gough, Kleinert,
Galbally and McLeish.

AGAINST (0): Nil.

THE MOTION WAS DECLARED CARRIED UNANIMOUSLY

"Refer Attachment"

* * * * *



Councillor Code of Conduct

This Code incorporates the statutory requirements specified for a Code of Conduct in accordance with section 76C(1) of the *Local Government Act 1989*

As adopted by Council: 28 June 2016

Due for Review: February 2017

Responsible Officer: Executive Manager, People and Governance

TRIM Ref: D16/33836

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1. *Dispute Resolution Process*
2. *Candidature of Councillors State or Federal Elections*
3. *Definitions*

1. Preamble

As a Councillor of the Manningham City Council I commit to:

- a) complying with the various provisions of the *Local Government Act 1989* and with this Code
- b) working together in the best interests of the Manningham local community and to discharging my responsibilities to the best of my skill and judgment
- c) working together constructively to achieve our vision as set out in our Council Plan in a manner that is consistent with our values as documented in the same Plan; and
- d) discharging my responsibilities to the best of my skill and judgement.

2. Primary Principles of Councillor Conduct (derived from s76B)

I will:

- a) act with integrity
- b) impartially exercise my responsibilities in the interests of the local community; and
- c) not improperly seek to confer an advantage or disadvantage on any person.

3. General Principles of Councillor Conduct (derived from s76BA)

I will:

- a) avoid conflicts between my public duties as a Councillor and our personal interests and obligations
- b) act honestly and avoid statements (whether orally or in writing) or actions that will or are likely to mislead or deceive a person (*this includes the manner in which I communicate with and/or others, whether verbally, by electronic or any other medium*)
- 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 (*this includes the manner in which I communicate with and/or others, whether verbally, by electronic or any other medium*)
- d) exercise reasonable care and diligence and submit myself to the lawful scrutiny that is appropriate to my 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 me as an elected representative; and
- 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.

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4. Functions of Mayor *(derived from s73AA)*

I acknowledge that the functions of the Mayor include:

- a) providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under s65, and the observation of the Councillor conduct principles and the Code under ss76B, 76BA and 76C
 - b) acting as the principal spokesperson for the Council
 - c) supporting good working relations between Councillors; and
 - d) carrying out the civic and ceremonial duties of the office of Mayor.
-

5. Role of Councillors *(derived from s65)*

5.1 I acknowledge that the role of a Councillor is:

- a) to participate in the decision-making of the Council
- 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.

5.2 In performing the role of a Councillor, I must:

- a) consider the diversity of interests and needs of the local community
 - b) observe principles of good governance and act with integrity
 - c) provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under the Act and other Acts
 - 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.
-

6. Role of the Chief Executive Officer *(derived from s94A)*

6.1 I acknowledge that the functions of the Chief Executive Officer (CEO) are:

- a) establishing and maintaining an appropriate organisational structure for the Council
- b) ensuring that the decisions of the Council are implemented without undue delay
- c) the day to day management of the Council's operations in accordance with the Council Plan
- d) developing, adopting and disseminating a Code of Conduct for Council staff
- e) providing timely advice to the Council
- f) ensuring that the Council receives timely and reliable advice about its legal obligations under the Act and any other Act
- g) supporting the Mayor in the performance of the Mayor's role as Mayor
- h) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013; and
- i) performing any other function or duty of the CEO specified in this Act or any other Act.

6.2 I also acknowledge that the CEO:

- a) may appoint as many members of Council staff as are required to enable the functions of the Council under the Act or any other Act to be carried out to enable the CEO to carry out his or her functions
 - b) is responsible for appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff; and
 - c) 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.
-

7. Relationship with Council Staff (derived from s76E)

7.1 I will not seek to improperly direct or influence members of Council staff in the exercise of any power or in the performance of any duty or function.

7.2 I acknowledge that there must be mutual respect and understanding between Councillors and Council staff in relation to their respective roles, functions and responsibilities and I will comply with any policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the CEO.

7.3 I agree that workplace bullying and sexual harassment can and should be prevented. I will act with courtesy towards Council staff and avoid behaviour that is intimidating. I am aware of legislative obligations with respect to equal opportunity, harassment and bullying.

7.4 I note that s3 of the Act also includes a definition of 'bullying by a Councillor' and that such action is classified as serious misconduct and if it occurs, may be referred to a Councillor Conduct Panel.

8. Misuse of position (derived from s76D)

8.1 I will not misuse my position as a Councillor to:

- 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 (*this includes the manner in which I communicate with and/or about Councillors or others, whether verbally, by electronic or any other means*).

8.2 Misuse of my position includes:

- (a) making improper use of information acquired as a result of the position I held or hold
 - (b) disclosing information that is confidential information within the meaning of s77(2)
 - (c) directing, or seeking to direct influence, a member of Council staff in contravention of s76E
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that I am not authorised to exercise or perform
 - (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 s79 of the Act..
-

9. Public image and working relationships

9.1 I recognise that Councillors play a key role, both individually and collectively, in maintaining a positive public image and in preserving public confidence in the Council.

I will:

- a) use my best endeavours to build and maintain sound and productive working relationships with my Councillor colleagues
 - b) refrain from actions that may damage the image of the Council and my Councillor colleagues
 - c) ensure that my communications do not contain remarks of a personal, derogatory, insulting or offensive nature directed at current and former Councillors or Council staff. (*Communication mediums include but are not limited to verbal, letters, faxes, emails, SMS messages, and any social media*)
 - d) ensure that any comments I make on social media are clearly identified as personal opinions that do not necessarily reflect the views of the Council
 - e) ensure that any media statements are factual and devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any person and that such comments are clearly identified as personal opinions that do not necessarily reflect the views of Council. No views or positions are to be attributed to other Councillors without their express consent
 - f) provide the Mayor, CEO and Manager Community Relations and Marketing with a copy of all material that I provide to media outlets (*i.e. daily newspapers, Manningham circulation newspapers and electronic/online services*) within 24 hours of doing so; and
 - g) conduct myself in public forums respectfully and with appropriate decorum.
- 9.2 To avoid any misunderstanding, I understand that nothing in this Code is intended to fetter or impede me from publicly expressing views or concerns on matters of policy or organisational performance where I believe that it is in the public interest to do so.
-

10. Council decision making

10.1 All Councillors are committed to making all decisions impartially and in the best interests of the local community.

I will:

- a) actively and openly participate in the decision making process, striving to be informed to achieve the best outcome for the community
 - b) respect the views of the individual in the debate. However, we also accept that decisions are based on a majority vote; and
 - c) accept that no Councillor can direct another Councillor on how to vote on any decision.
- 10.2 Notwithstanding my broader policy positions, I will keep an 'open mind' when researching, hearing submissions on, considering and finally, making a decision regarding a specific matter.
- 10.3 In the event that I am not capable of being persuaded from a pre-determined viewpoint, I will apply to be exempted from voting on the matter in accordance with s79B of the Act..
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11. Confidential information (derived from s77)

. I will:

- a) ensure all Council documents, but especially those containing confidential information, are properly safeguarded at all times – including materials stored at private or business premises
 - b) not release confidential information for any purpose to any person or organisation (other than those who are entitled to the information); and
 - c) also ensure that when I am no longer a Councillor I will either return any confidential information to the CEO or dispose of it in a secure manner.
-

12. Use of Council resources (including funds and property)

- 12.1 I will maintain adequate security over Council property, facilities and resources provided to me to assist in performing my role and will comply with any Council policies applying to their use.
 - 12.2 I will ensure any expense claims that I submit are in compliance with the relevant legislative provisions and Council policy.
 - 12.3 I will not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate.
 - 12.4 I will not use public funds or resources in a manner that is improper or unauthorised.
-

13. Communication

- 13.1 As a representative of the community, I have a primary responsibility to be responsive to community views and to adequately communicate the attitudes and decisions of Council.
- 13.2 I will endeavour to ensure that the messages communicated through the media are clear and consistent, and positively portray the Council as a decisive and responsible governing body.
- 13.3 I acknowledge that the Mayor will provide official comment to the media on behalf of Council
This includes:
 - a) Statewide political issues affecting Local Government
 - b) Contentious or sensitive local issues that impact the community that do not relate directly to the business of Council but to the representation of the community
 - c) Issues pertaining to policy and Council decisions
 - d) Issues relating to the strategic direction of the Council
 - e) The Mayor nominating another Councillor to make official comment on behalf of, or the Council, where appropriate.
- 13.4 I acknowledge that the CEO is the official spokesperson for all operational matters pertaining to the Manningham Council as an organisation including:
 - a) staffing and structure of the organisation
 - b) corporate issues relating to service provision or the day to day business of Council; and
 - c) that the CEO may nominate a Council officer or spokesperson if appropriate.

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- 13.5 I acknowledge that I am entitled to express independent views through the media, however, I will make it clear that any unofficial comment is a personal view, and does not represent the position of the Council as a whole.
-

14. Gifts and hospitality (derived from s78C)

- 14.1 I will scrupulously avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from me as a Councillor or from the Council.
- 14.2 I will take all reasonable steps to ensure that my immediate family members (parents, spouse, children and siblings) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.
- 14.3 Where I receive a gift on behalf of Council, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in the Councillors Gifts Register with a notation that it is the property of the Council.
- 14.4 I recognise that gifts equal to or above the gift disclosure threshold received in the twelve months prior to election from a person or body that has a direct interest in a matter may give rise to an indirect interest because of receipt of an applicable gift.
- 14.5 I will record all campaign donations in Council's "campaign donation return".
-

15. Conflict of interest (derived from s77A-80A)

- 15.1 I acknowledge that if I have a conflict of interest in a matter which is to be considered or discussed at a Council meeting, I must, if attending the meeting, disclose the conflict of interest in accordance with the provisions of the Act (unless any of the exemptions apply).
- 15.2 I acknowledge that a Councillor has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the Councillor would be directly altered if the matter is decided in a particular way. This includes where there is a reasonable likelihood that the Councillor will receive a direct benefit or loss that can be measured in financial terms and where the Councillor, or together with a member or members of the Councillor's family have a controlling interest in a company or other body that has a direct interest in the matter.
- 15.3 I acknowledge that a conflict of interest also exists where a Councillor has any of the six types of indirect interest. These indirect interests are:
- a) Close association - an indirect interest because of a close association with a family member, relative or member of the household who has a direct interest (or indirect interest if a family member)
 - b) Indirect financial interest - an indirect financial interest, including holding shares above a certain value in a company with a direct interest
 - c) Conflicting duty - a conflicting duty arising from having particular responsibilities to a person or organisation with a direct interest
 - d) Applicable gift - receipt of an applicable gift or gifts from a person or organisation with a direct interest

- e) Interested party - a party to the matter by having become involved in civil proceedings in relation to the matter; and
- f) Residential amenity – this occurs where there is a reasonable likelihood that a Councillor’s residential amenity will be altered if the matter is decided in a particular way.

While I may seek advice, I recognise that the legal onus rests with me. If I cannot confidently say that I do not have a conflict, I will declare a possible conflict and comply with the relevant requirements as if I do have a conflict of interest.

16. Personal dealings with Council

When I deal with Council in my private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) I do not expect nor will I request preferential treatment in relation to any such private matter. I will avoid any action that could lead Council staff or members of the public to believe that I was seeking preferential treatment.

17. Election Period Policy

In order to ensure that general elections for the City of Manningham are conducted in a manner that is fair and equitable, and is publicly perceived as such, Council adopted an Election Period Policy. I agree to abide by that policy.

18. Candidature of Councillors State or Federal Elections

The perception of the politicisation of local government resulting from Councillors running for office in State or federal parliament is often a contentious issue. As a Councillor, I agree to follow the Guidelines, prepared by the Municipal Association of Victoria, in regard to candidature at State or federal elections. The Guidelines are shown as Attachment 2 to this Code.

19. Dispute Resolution

- 19.1 Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. Where, after these endeavours have been exhausted, the matter still remains unresolved, the parties may resort to any or all of the Council’s three phase dispute resolution process.
- 19.2 The Council’s three phase dispute resolution process involves:
- a) direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance
 - b) external mediation by an independent mediator engaged by the Principal Conduct Officer; and
 - c) an internal resolution procedure involving an independent arbiter.
- 19.3 I agree to follow the dispute resolution process as detailed in the Attachment 1 to this Code.
-

This Councillor Code of Conduct was adopted by resolution of Council on 28 June 2016.

**Councillor Code of Conduct Declaration**

In signing below, I declare that I will abide by the Councillor Code of Conduct. This declaration is made in accordance with section 76C(1) of the *Local Government Act 1989t (the Act)*.

Name	Signature	Witness	Date
Cr Meg Downie			
Cr Sophy Galbally			
Cr Geoff Gough			
Cr Jim Grivokostopoulos			
Cr Dot Haynes			
Cr Michelle Kleinert			
Cr Paul McLeish			
Cr Stephen O'Brien			

*Attachment 1***DISPUTE RESOLUTION PROCESS*****Phase 1 – Direct negotiation***

Any party to the dispute may request the Mayor to convene a meeting of the parties.

1. A dispute referred for direct negotiation may relate to:
 - an interpersonal conflict between Councillors where the conflict is or is likely to affect the functioning of the Council; or
 - an alleged contravention of the Councillor Code of Conduct.
2. The party requesting the direct negotiation meeting (requestor) is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a "direct negotiation" dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:
 - specify the name of the Councillor alleged to have contravened the Code;
 - specify the provision(s) of the Code that is alleged to have been contravened;
 - include evidence in support of the allegation;
 - name the Councillor appointed to be their representative where the request is made by a group of Councillors; and
 - be signed and dated by the requestor or the requestor's representative.
3. The requestor is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Mayor or as soon as practicable thereafter.
4. The Mayor is to ascertain whether or not the other party is prepared to attend a "direct negotiation" meeting.
5. If the other party is not prepared to attend a meeting, the Mayor is to advise the requestor forthwith. No further action is required of the Mayor.
6. If the other party declines to participate in a meeting, this does not constitute a contravention of this Councillor Code of Conduct.
7. If the other party consents to a meeting, the Mayor is to convene a meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within 5 working days of receiving the consent of the other party.
8. The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.

9. The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act, and the observation of the Councillor conduct principles and the Councillor Code of Conduct.
10. The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.
11. If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, either or both of the parties have recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.
12. Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor (if any) or the immediate past Mayor. The Deputy Mayor or the immediate past Mayor will perform the functions ascribed to the Mayor.

Phase 2 – External mediation

1. A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for "direct negotiation".
2. An application made for a dispute to be referred for external mediation may relate to:
 - an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
 - an alleged contravention of the Councillor Code of Conduct.
3. The applicant is to submit a written application to the Principal Conduct Officer setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an "external mediation". Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must:
 - specify the name of the Councillor alleged to have contravened the Code
 - specify the provision(s) of the Code that is alleged to have been contravened
 - include evidence in support of the allegation
 - name the Councillor appointed to be their representative where the application is made by a group of Councillors; and
 - be signed and dated by the applicant or the applicant's representative.
4. The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time that it is submitted to the Principal Conduct Officer or as soon as practical thereafter.

5. The Principal Conduct Officer is to ascertain (in writing) whether or not the other party is prepared to attend an "external mediation". If the other party declines to participate in an external mediation, he or she is to provide their reasons for doing so in writing to the Principal Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.
6. When the other party declines to participate in an external mediation, this does not constitute a contravention of this Councillor Code of Conduct.
7. If the other party agrees to participate in an external mediation, the Principal Conduct Officer is to advise the applicant, the Mayor and CEO forthwith.
8. The Principal Conduct Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.
9. The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.
10. If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Phase 3 – Internal resolution procedure - Arbiter

1. An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.
2. If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:
 - the application was made by the Council and the Council so resolves
 - the application were made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application; or
 - the applicant (individual Councillor) is returned to office and wishes to proceed with the application.
3. A Councillor or a group of Councillors may make an application alleging that a Councillor has contravened this Councillor Code of Conduct. The application must:
 - specify the name of the Councillor alleged to have contravened the Code
 - specify the provision(s) of the Code that is alleged to have been contravened
 - include evidence in support of the allegation

- name the Councillor appointed to be their representative where the application is made by a group of Councillors; and
 - be signed and dated by the applicant or the applicant's representative.
4. The application must be submitted to the Council's Principal Conduct Officer.
 5. An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.
 6. On receiving an application, the Principal Conduct Officer will:
 - advise the Mayor and CEO of the application without undue delay
 - provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application
 - identify an arbiter to hear the application
 - obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved
 - notify the parties of the name of the proposed arbiter and provide them with the opportunity (2 working days) to object to the person proposed to be the arbiter
 - consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter
 - provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired
 - after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
 - attend the hearing(s) and assist the arbiter in the administration of the process.
 7. In identifying an arbiter to hear the application, the Principal Conduct Officer must select an arbiter who is suitably independent and able to carry out the role of arbiter fairly.
 8. The role of the arbiter is to:
 - consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor
 - make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council
 - give a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council; and
 - recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct.

9. In considering an application alleging a contravention of the Councillor Code of Conduct, an arbiter will:
- in consultation with the Principal Conduct Officer, fix a time and place to hear the application
 - authorise the Principal Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing
 - hold as many meetings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing
 - have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the application allows
 - ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter
 - consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application
 - ensure that the rules of natural justice are observed and applied in the hearing of the application; and
 - ensure that the hearings are closed to the public.
10. Where an application to have legal representation is granted by an arbiter, the costs of the respondent's legal representation are to be borne by the respondent in their entirety.
11. An arbiter:
- may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened the Code
 - may find that a Councillor who is a respondent to an internal resolution procedure has contravened the Code; and
 - will suspend consideration of an internal resolution procedure during the election period for a general election.
12. The arbiter is to give a copy of his or her findings and the statement of reasons to the Council, the applicant and the respondent. At the same time, the arbiter provides the findings and statement of reasons, he or she shall, where a Councillor has been found to have contravened the Code, recommend an appropriate sanction or sanctions for the contravention for consideration by the Council.
13. A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next ordinary meeting of the Council for its consideration. If an arbiter has found that a contravention of the Code has occurred, the Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor:
- direct the Councillor to make an apology in a form or manner specified by the Council

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

14. A Councillor who does not participate in the internal resolution procedure may be guilty of misconduct. The Act provides that misconduct by a Councillor means any of the following:

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

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

*Attachment 2***Guidelines Candidature of Councillors State or Federal Elections**

- a) A Councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as an independent candidate for a State or federal election (a Prospective Candidate), should provide written advice to the CEO, as soon as practicable, who should then advise all Councillors.
- b) A Councillor who is a Prospective Candidate, should declare his/her intended candidacy at a meeting of the Council as soon as practicable after notifying the CEO pursuant to Guideline 1.
- c) A Councillor who nominates as a candidate for a State or federal election (a Nominated Candidate), should apply for leave of absence from the Council and this leave of absence should commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election (Nomination Date) and conclude no earlier than the close of voting for the election. During this period, a Councillor who is on a leave of absence should not attend meetings of the Council or otherwise act as a Councillor.
- d) Any Councillor / staff relationship protocol which the Council has in place in respect of the caretaker period prior to a Council election, should be observed by a Nominated Candidate and this should apply from their Nomination Date until the close of voting for the election.
- e) A Council, upon receiving an application for a leave of absence from a Councillor who is a Nominated Candidate or who intends to become a Nominated Candidate, should approve that application.
- f) A Councillor who is a Prospective Candidate or a Nominated Candidate, should take care to differentiate between his/her role as a State or federal election candidate and role as a Councillor when making public comment.
- g) A Councillor who is a Prospective Candidate or a Nominated Candidate, should not use Council resources, including Council equipment and facilities in relation to his/her candidacy.
- h) A Councillor who is a Prospective Candidate or a Nominated Candidate, should not use Council activities, including committee meetings and Council-related external activities in relation to his/her candidacy.

The guidelines draws a distinction between Prospective Candidates and Nominated Candidates because, as with Council elections, candidates for State and federal elections only become actual nominated candidates a few weeks prior to the relevant election date. Accordingly, the guidelines recommends different treatment for Prospective Candidates and Nominated Candidates on the basis that some requirements are recommended as appropriate for Nominated Candidates during a formal election period which are not considered to be necessary prior to the formal election period.

*Attachment 3***DEFINITIONS**

<i>Bullying by a Councillor</i>	means the Councillor repeatedly behaves unreasonably towards another Councillor or member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff;
<i>Council Meeting</i>	means any Ordinary or Special meeting of Council, a Special Committee, an Advisory Committee, the Audit Committee, an Assembly of Councillors or a Section 223 Committee.
<i>Councillor Conduct Panel</i>	means a panel of 2 people selected by the Principal Councillor Conduct Registrar;
<i>Gross misconduct by a Councillor</i>	means behaviour that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor;
<i>Internal resolution procedure</i>	means the procedure - (a) specified in the Councillor Code of Conduct; and (b) developed and maintained by a Council in accordance with section 81AA to address the matters specified in that section;
<i>Misconduct by a Councillor</i>	means any of the following - (a) failure by a Councillor to comply with the Council's internal resolution procedure; or (b) failure by a Councillor to comply with a written direction given by the Council under section 81AB; or (c) repeated contravention of any of the Councillor conduct principles;
<i>Panel list</i>	means the panel list established by the Minister under section 81U for the purposes of forming Councillor Conduct Panels;
<i>Principal Conduct Officer</i>	means the person appointed in writing by the Chief Executive Officer to be the Principal Conduct Officer for the Council;
<i>Principal Councillor Conduct Registrar</i>	means the person appointed by the Secretary to be the Principal Councillor Conduct Registrar;

Serious misconduct by a Councillor

means -

- (a) the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or
- (b) the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or
- (c) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or
- (d) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or
- (e) bullying of another Councillor or member of Council staff by a Councillor; or
- (f) conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or
- (g) the release of confidential information by a Councillor in contravention of section 77.

The meeting concluded at 6:50pm.

CONFIRMED THIS 26 JULY 2016

Chairman

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