



Southern Grampians

SHIRE COUNCIL

Councillor Code of Conduct

February 2021

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COUNCILLOR CODE OF CONDUCT

This Code, which incorporates the statutory requirements specified for a Code of Conduct in accordance with section 139 of the *Local Government Act 2020* and the *Local Government (Governance and Integrity) Regulations 2020*, was adopted by resolution of the Southern Grampians Shire Council on 10 February 2021.

1. INTRODUCTION

As custodians of the Southern Grampians Shire Council, Councillors hold a unique and important role within Victoria. This role is recognised in the *Local Government Act 2020* (the Act) which describes the role and responsibilities of the Council, Mayor, Deputy Mayor, Councillors and Chief Executive Officer.

As Councillors we commit to carrying out our role to the highest standards of conduct and behaviour. As part of this commitment all Councillors will adhere to the conduct standards, values and processes outlined in the Act, the *Local Government (Governance and Integrity) Regulations 2020* and this Councillor Code of Conduct.

As Councillors of the Southern Grampians Shire Council we are committed to working together in the best interests of the people within our municipality and to discharging our responsibilities to the best of our skill and judgment.

This Code:

- sets out the standards of conduct required and expected of elected representatives;
- endeavours to foster good working relations between Councillors to enable Councillors to work constructively together in the best interests of the local community; and
- mandates councillor conduct designed to build public confidence in the integrity of local government.

2. APPLICATION OF THE CODE OF CONDUCT

A Councillor must observe the Code of Conduct whenever he or she:

- a) Conducts the business of Council;
- b) Conducts the business of the office to which he or she has been elected or appointed;
- c) Acts as a representative of Council; and
- d) Is in any dealings with the public and/or generally in the public arena.

This Code of Conduct does not apply to Council Staff. Council Staff are bound by the Staff Code of Conduct.

3. ROLES AND RESPONSIBILITIES

The primary role of the Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. Council must perform its role in accordance with the overarching governance principles:

- 3.1. Council decisions are to be made and actions taken in accordance with the relevant law;
- 3.2. Priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- 3.3. The economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;

- 3.4. The municipal community is to be engaged in strategic planning and strategic decision making;
- 3.5. Innovation and continuous improvement is to be pursued;
- 3.6. Collaboration with other Councils and Governments and statutory bodies is to be sought;
- 3.7. The ongoing financial viability of the Council is to be ensured;
- 3.8. Regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
- 3.9. The transparency of Council decisions actions and information is to be ensured.

In giving effect to the overarching governance principles, a Council must take into account the following supporting principles:

- a) The community engagement principles;
- b) The public transparency principles;
- c) The strategic planning principles;
- d) The financial management principles;
- e) The service performance principles.

3.1 ROLE OF MAYOR, DEPUTY MAYOR AND COUNCILLORS

Mayor

Section 18 of the Act outlines the role of the Mayor including:

- a) Chair Council meetings;
- b) Be the principal spokesperson for the Council;
- c) Lead engagement with the municipal community on the development of the Council Plan
- d) Report to the municipal community, at least once each year on the implementation of the Council Plan;
- e) Promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct;
- f) Assist Councillors to understand their role;
- g) Take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer;
- h) Provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council Meeting;
- i) Perform civic and ceremonial duties on behalf on the Council.

Deputy Mayor

Section 21 of the Act states the Deputy Mayor must perform the role of the Mayor and may exercise any of the powers of the Mayor if –

- a) The Mayor is unable for any reason to attend a Council meeting or part of a Council meeting;
- b) The Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness;
- c) The Office of Mayor is vacant.

Councillor

Section 28 of the Act provides that the role of a Councillor is:

- a) to participate in the decision-making of the Council; and
- b) to represent the interests of the municipal community in that decision-making; and
- c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

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

- a) consider the diversity of interests and needs of the municipal community; and
- b) Support the role of the Council;
- c) Acknowledge and support the role of the Mayor;
- d) Act lawfully and in accordance with the oath or affirmation of office;
- e) Comply with Council procedures required for good governance.

The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer under section 46 of the Act.

3.2 FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER

The Chief Executive Officer is responsible for:

- a) Supporting the Mayor and Councillors in the performance of their role;
- b) Ensuring the effective and efficient management of the day to day operations of the Council;
- c) Ensuring the decisions of the Council are implemented without undue delay;
- d) Ensuring that the Council receives timely and reliable advice about its obligations under this Act or any other Act;
- e) Supporting the Mayor in the performance of the Mayor's role as Mayor;
- f) Setting the agenda for Council meetings after consulting with the Mayor;
- g) When requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;
- h) Carrying out the Council's responsibilities as a deemed employer with respect to the Councillors, as deemed workers, which arise under or with respect to the *Workplace Injury Rehabilitation and Compensation Act 2013*.
- i) Establishing and maintaining an organisational structure for the Council;
- j) Being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff;
- k) Managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between members of Council staff and Councillors are developed and implemented;
- l) Performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.

3.3 RELATIONSHIPS WITH STAFF

As Councillors we will work as part of the Council team with the Chief Executive Officer and other members of staff. There must be mutual respect and understanding between Councillors and officers in relation to their respective roles, functions and responsibilities.

Our role is one of advocacy and leadership rather than management and administration. The Chief Executive Officer is responsible for all staff and operational matters.

As Councillors, we will be aware of the requirements of Section 124 of the *Local Government Act 2020* and the Councillor and Staff Interactions Policy and must not seek to direct or improperly influence members of Council staff in the exercise of their duties.

4. LEGISLATIVE REQUIREMENT

The purpose of the Councillor Code of Conduct is to include the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discriminations, harassment (including sexual harassment) and vilification.

The Act Requires that:

1. A Councillor Code of Conduct:
 - a) Must include the standards of conduct prescribed by the regulations expected to be observed by Councillors;
 - b) Must include any provisions prescribed by the regulations for the purpose of this section;
 - c) Must include provisions addressing any matters prescribed by the regulations for the purpose of this section;
 - d) May include any other matters which the Council considers appropriate, other than any other standards of conduct.
2. A Council must, within 4 months after a general election:
 - a) Review and adopt the Councillor Code of Conduct;
 - b) Adopt the Councillor Code of Conduct by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council.

A person elected to be a Councillor is not capable of acting as a Councillor until the person has taken the oath or affirmation of office in the manner prescribed by the regulations.

5. STANDARDS OF CONDUCT

The Act and the Local Government (Governance and Integrity) Regulations 2020 place obligations on Councillors in relation to way they should act. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions. As Councillors, we undertake to comply with the various provisions of the Act, Regulations and with this Code of Conduct.

Councillors are required to conduct themselves in observance of the conduct standards. We undertake to do this.

We undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.

We endorse and agree to the following Standards of Conduct specified in Schedule 1 of the Regulations:

1. Treatment of Others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with

dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor

- 5.1. Takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010;
- 5.2. Supports the Council in fulfilling its obligation to achieve and promote gender equality;
- 5.3. Does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- 5.4. In considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

2. Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonable necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor –

- c) Undertakes any training or professional development activities the Council decides is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor;
- d) Diligently uses Council processes to become informed about matters which are subject to Council decisions;
- e) Is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity;
- f) Represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

3. Compliance with good governance measures

A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following –

- a) Any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;
- b) The Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- c) The Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- d) Any directions of the Minister issued under section 175 of the Act

4. Councillor must not discredit or mislead Council or public

- (i) In performing the role of Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.
- (ii) In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

5. Standards do not limit robust political debate

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

6. COUNCILLOR BEHAVIOURS

We confirm that we will adhere to the following principles of behaviour in our general conduct as Councillors:

1. Treating all people with **courtesy and respect**, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities. This includes:
 - a) Treating members of the community with dignity and ensuring that neither offence nor embarrassment are caused
 - b) Treating fellow Councillors with respect, even when disagreeing with their views or decisions
 - c) Debating contentious issues without resorting to personal acrimony or insult
 - d) Ensuring punctual attendance at Council and committee meetings
 - e) Acting with courtesy towards Council staff and avoiding intimidatory behaviour.
2. Always acting with **integrity and honesty**:
 - a) Being honest in all dealings with the community, with other Councillors and with Council staff
 - b) Always acting with impartiality and in the best interests of the community as a whole
 - c) Not acting in ways that may damage the Council or its ability to exercise good government
 - d) Exercising reasonable care and diligence in performing our functions as Councillors
 - e) Complying with all relevant laws, be they Federal, State or Local Laws.
3. Recognising that we hold a **position of trust** which we will not misuse or derive undue benefit from our positions:
 - a) We will avoid conflicts of interest and comply with the relevant provisions of the Act and this Code of Conduct relating to interests and conflicts of interest
 - b) We will not exercise undue influence on other Councillors, members of Council staff or members of the public to gain or attempt to gain an advantage for ourselves
4. Refraining from bullying, intimidating and harassing behaviours including, but not limited to, verbal abuse, offensive language, bad mouthing subordinates, finding fault when inappropriate to do so, disparaging or snide, yelling, shouting or unnecessarily loud comments, exhibiting contempt as a substitute for soundly based disagreement, using position to interfere in lines of managerial responsibility by insisting on the supply of information outside the managerial line of responsibility, aggressive expression of opinion and berating colleagues or subordinates.

7. IMPROPER CONDUCT

The Local Government Act 2020 has specific provisions that prohibit Councillors from certain conduct. In many cases a breach of a specific provision in the Act may be subject to prosecution in court. Improper conduct relates to:

- Misuse of position
- Directing a member of Council staff

- Confidential information

7.1 MISUSE OF POSITION

A person who is, or has been, a Councillor or member of a delegated committee must not intentionally misuse their 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.

Circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a delegated committee include –

- (a) making improper use of information acquired as a result of the position the person held or holds; or
- (b) disclosing information that is confidential information; or
- (c) directing or improperly influencing , or seeking to direct or improperly influence, a member of Council staff; or
- (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or
- (e) using public funds or resources in a manner that is improper or unauthorised; or
- (f) participating in a decision on a matter in which the person has a conflict of interest.

7.2 DIRECTING A MEMBER OF COUNCIL STAFF

A Councillor must not intentionally direct, or seek to direct, a member of Council staff -

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

7.3 CONFIDENTIAL INFORMATION

A Councillor must not intentionally or recklessly disclose information that he or she knows, or should reasonably know, is confidential information.

This does not apply if the information that is disclosed is information that the Council has determined should be publicly available.

A Councillor may disclose information that he or she knows, or should reasonably know, 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) in the course of an internal arbitration and for the purpose of the internal arbitration process;
- (e) in the course of a Councillor Conduct Panel 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 Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- (h) to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry;
- (i) to the extent reasonably required by a law enforcement agency.

We acknowledge that we will comply with our obligations under s125 in relation to confidential information (as defined under the Act) and recognise that this obligation extends to ensuring the safekeeping of confidential information.

As Councillors we will treat Council Information appropriately by:

- a) not using information gained by virtue of being a Councillor for any purpose other than to exercise our role as Councillors;
- b) Respecting Council's policies in relation to public comments and communications with the media;
- c) Not releasing information deemed "Confidential Information" in accordance with Section 125 of the Act;
- d) Recognising the requirements of the Privacy and Data Protection Act 2014 regarding the access, use and release of personal information;

8. ELECTORAL CONDUCT

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

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

9. CONFLICT OF INTEREST

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a Council meeting, delegated committee meeting, community asset committee meeting, or whilst exercising a statutory function under the Local Government Act 2020 or any other Act, the Councillor must, disclose the conflict of interest in the manner required by Council's Governance Rules and exclude themselves from the decision making process in relation to that matter, including any discussion or vote on the matter at any Council meeting or delegated committee, and any action in relation to the matter (unless any exemptions apply as per section 129 of the Act).

As Councillors, we will comply with all provisions of the Act in regard to interests and conflicts of interest (section 126 to 131).

We agree to comply with the requirements of s132 to 136 of the Act in relation to the submission of register of Personal Interests Returns.

A Councillor has a general interest in a matter if an impartial, fair-minded person would consider that the Councillor's private interests could result in that person acting in a manner that is contrary to their public duty.

Private interests means any direct or indirect interest that does not derive from public duty and does not include an interest that is only a matter of personal opinion or belief. Public duty

means the responsibilities and obligations that a relevant person has to members of the public in their role as a relevant person.

A Councillor has a material conflict of interest in respect of a matter if a Councillor would gain a benefit or suffer a loss depending on the outcome of the matter. The benefit may arise or the loss incurred directly or indirectly, or in a pecuniary or non-pecuniary form.

Any of the following is an affected person –

- (a) The relevant person;
- (b) The family member of the relevant person;
- (c) A body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of the governing body;
- (d) An employer of the relevant person, unless the employer is a public body;
- (e) A business partner of a relevant person;
- (f) A person for whom the relevant person is a consultant, contractor or agent;
- (g) A beneficiary under a trust or an object of a discretionary trust;
- (h) A person from whom the relevant person has received a disclosable gift.

A disclosable gift means one or more gifts with a total value of, or more than, \$500 or if an amount is prescribed, the prescribed amount, received from a person in the 5 years preceding the decision on the matter –

- (a) If you held the office of Councillor at the time the gift was received; or
- (b) If the gift, or gifts were, or will be, required to be disclosed as an election campaign donation –

But does not include the value of any reasonable hospitality received at an event or function that was attended in an official capacity as a Councillor.

10. CONFLICT OF INTEREST PROCEDURES

The Council is committed to making all decisions impartially and in the best interests of the whole community. It therefore recognises the importance of fully observing the requirements of the Act in regard to the disclosure of conflicts of interest.

For the purpose of this Code, “general conflict of interest”, “material conflicts of interest” and “conflicts of interest”, have the meanings specified in the Act.

We will comply with all the provisions of the Act in regard to Conflicts of Interest:

- a) If a councillor considers that they have a general or material interest in a matter before the Council, a Council committee or an assembly of Councillors, they have a conflict of interest
- b) If a councillor has a conflict of interest in a matter they will comply with the requirements of the Act and the Governance Rules and ensure they disclose the interest and leave the room in which the meeting is being held during any discussion, debate and vote on the matter.

In addition to the requirements of the Act:

- a) We will give early consideration to each matter to be considered by the Council, and Council committees to which we belong, or assembly of Councillors, to ascertain if we have a conflict of interest.
- b) We recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each individual councillor and that Council officers cannot offer any advice

in relation to potential conflicts. If we cannot confidently say that we do not have a conflict of interest, we will declare a conflict of interest and comply with the relevant requirements as if we had a conflict of interest.

If we consider that we may be unable to vote on a matter because of a conflict of interest, we will notify, as soon as possible, the Mayor or the Committee Chair, depending on whether the matter is to be considered by the Council, a committee, or an assembly of Councillors, as well as the Chief Executive Officer.

11. CHILD SAFE STANDARDS

Victorian organisations that provide services to children are required under the Child Safety and Wellbeing Act 2005 to ensure that they protect children from harm. This Code aims to protect children and reduce any opportunities for abuse or harm to occur. It also helps Councillors by providing them with guidance on how to best support children and how to avoid or better manage difficult situations. As a Councillor you are responsible for promoting the safety and wellbeing of children and young people who engage with Council by:

- Adhering to all relevant Australian and Victorian legislation and Council policies;
- Raise concerns with the CEO if risks to child safety are identified in any of the activities, facilities, structures, procedures or staffing practices at Council;
- Take all reasonable steps to protect children from abuse;
- Treating children with respect and being a positive role model in your conduct with them;
- Communicating with the children in an age appropriate and realistic manner;
- Listen to and value children and your people's ideas and opinions;
- Setting clear boundaries about appropriate behaviour between yourself and a child;
- Observe professional boundaries with children at all times.

Councillors must not:

- Condone or participate in behaviour with children that is illegal, unsafe or abusive;
- Ignore or disregard any concerns, suspicions or disclosures of child abuse;
- Communicate with a child in ways that are likely to humiliate, frighten or distress the child;
- Use hurtful, discriminatory or offensive behaviour or language with children;
- Subject a child to any form of corporal punishment, social isolation, immobilisation, sexual suggestion, offence or misconduct;
- Direct a child to perform in a sexually provocative or unsafe manner;
- Develop any 'special' relationships with children that could be seen as grooming/favouritism such as the offering of gifts or special treatment;
- Have unauthorised contact with children and young people online, on social media or by phone.

12. COUNCIL DECISION MAKING

We are committed to making all decisions impartially and in the best interests of the whole community and acknowledge that effective decision making is vital to the democratic process and an essential component of good governance. Accordingly:

1. We will actively and openly participate in the decision making process, striving to be informed to achieve the best outcome for the community;
2. We will respect the views of the individual in the debate. However, we also accept that decisions are based on a majority vote; and
3. We accept that no councillor can direct another councillor on how to vote on any decision.

13. ACCESS TO AND USE OF COUNCIL INFORMATION

1. We will treat Council information appropriately, by:
 - a) Not using information gained by virtue of our position as a councillor for any purpose than to exercise our role as a councillor
 - b) Respecting the Council's policies in relation to public comments and communications with the media
 - c) Not releasing information deemed 'confidential information' in accordance with section 125 of the Act
 - d) Recognising the requirements of the Privacy and Data Protection Act 2014 regarding the access, use and release of personal information.
2. Councillors acknowledge that all requests made by Councillors for briefings from council officers or access to information on council files should be registered and reported. This obligation does not apply to requests for clarification/ explanation of items on a forthcoming council agenda. Councillors seeking information /explanation or wishing to provide feedback on a matter should do so by using the Councillor Requests Systems by emailing CouncillorRequests@sthgrampians.vic.gov.au

14. USE OF COUNCIL RESOURCES

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

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

Not using Council resources, including staff, equipment and intellectual property for electoral or other personal purposes.

Ensuring that Council resources are always used effectively and economically and for the purposes for which they are provided.

Ensuring that Council's letterhead or logo are only used with the approval of the CEO to ensure that the letterhead or logo is not used in a way that creates an impression of Council endorsement.

Ensuring that claims for out of pocket expenses are accurate and related strictly to Council business.

15. GIFTS

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

We will take all reasonable steps to ensure that our 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.

We will not accept gifts either in our role as councillor or where it could be perceived to influence us in our role as a councillor except:

- a) Where the gift would generally be regarded as only having a token value and could not be perceived to influence our actions as a councillor.
- b) Where refusal may cause offence or embarrassment, in which case we will accept the gift on behalf of the Council and the gift becomes the property of the Council.

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

We 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 a conflict of interest because of receipt of an applicable gift.

We will record all campaign donations in our "campaign donation return" and a summary will be made publicly available.

16. COMMUNICATION

We recognise that as representatives of the community, we have a primary responsibility to be responsive to community views and to adequately communicate the attitudes and decisions of Council.

We undertake to comply with the Council's media policy and respect the functions of the Mayor and Chief Executive Officer to be the spokespersons for the Council in accordance with the Act and our policy.

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

We 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.

The Mayor will provide official comment to the media on behalf of Council where the matter is of a political, controversial or sensitive nature. This includes:

1. State-wide political issues affecting Local Government
2. Contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community
3. Issues pertaining to policy and Council decisions
4. Issues relating to the strategic direction of the Council.

The Mayor may nominate a Councillor Delegate or another councillor to make official comment on behalf of the Council, where appropriate.

The CEO is the official spokesperson for all operational matters pertaining to the Southern Grampians Shire Council as an organisation including:

1. Staffing and structure of the organisation
2. Corporate issues relating to service provision or the day-to-day business of Council.

The CEO may nominate a Council officer spokesperson if appropriate.

As individual Councillors we are entitled to express independent views through the media, however we will make it clear that any unofficial comment is a personal view, and does not represent the position of the Council as a whole.

17. PERSONAL DEALINGS WITH COUNCIL

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

18. DISPUTE RESOLUTION

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 dispute resolution process.

The Council's three phase dispute resolution process involves:

- Self-resolution;
- Direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance; and
- External mediation by an independent mediator engaged by the Chief Executive Officer.

PHASE 1 – SELF-RESOLUTION

Councillors must take personal responsibility and endeavour to resolve their differences in an informal, but at all times, courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

PHASE 2 – DIRECT NEGOTIATION

Where Councillors who are in dispute have not been able to resolve the dispute between them, either (or both) party (parties) may request the Mayor to convene a meeting of the parties.

A dispute referred for direct negotiation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of the Councillor Code of Conduct.

The party requesting the direct negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a "direct negotiation" dispute resolution process. Where the request relates to an alleged contravention of the 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.

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.

The Mayor is to ascertain whether or not the other party is prepared to attend a "direct negotiation" meeting.

If the other party is not prepared to attend a meeting, the Mayor is to advise the requestor forthwith. No further action is required of the Mayor.

If the other party declines to participate in a meeting, this does not constitute a contravention of this Councillor Code of Conduct.

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.

The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.

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.

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.

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.

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 3 – EXTERNAL MEDIATION

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for "direct negotiation".

An application made for a dispute to be referred for external mediation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of the Councillor Code of Conduct. The applicant is to submit a written application to the Councillor 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.

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 Councillor Conduct Officer or as soon as practical thereafter.

The Councillor 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 Councillor Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

When the other party declines to participate in an external mediation, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party agrees to participate in an external mediation, the Principal Conduct Officer is to advise the applicant, the Mayor and Chief Executive Officer forthwith.

The Councillor Conduct Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

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.

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.

19. BREACHES OF THE PRESCRIBED STANDARDS OF CONDUCT

19.1 Internal Arbitration Process

Section 141 – Internal Arbitration Process

- (1) The internal arbitration process applies to any breach of the prescribed standards of conduct.
- (2) The following applies to an internal arbitration process—
 - (a) any processes prescribed by the regulations, including any application process;
 - (b) the arbiter must ensure that parties involved in internal arbitration process are given an opportunity to be heard by the arbiter;
 - (c) the arbiter must ensure that a Councillor who is a party to an internal arbitration process does not have a right to representation unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly;
 - (d) any requirements prescribed by the regulation

19.2 Making an Application

An application for an internal arbitration process to make a finding of misconduct against a Councillor may be made by—

- the Council following a resolution of the Council; or
- a Councillor or a group of Councillors.

An application under section 143 of the Act must be made within 3 months of the alleged misconduct occurring.

An application under section 143 must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(c).

The prescribed process for an application for internal arbitration must include:

- the name of the Councillor alleged to have breached the standards of conduct; and
- the clause of the standards of conduct that the Councillor is alleged to have breached; and
- the misconduct that the Councillor is alleged to have engaged in that resulted in the breach; and
- after receiving an application under section 143 of the Act, the Councillor Conduct Officer provides the application to the Councillor who is the subject of the application.

An arbiter appointed to hear a matter subject to an application must:

- (a) conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
- (b) ensure that the hearing is not open to the public.

An arbiter—

- (a) may hear each party to the matter in person or solely by written or electronic means of communication; and
- (b) is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit; and
- (c) may at any time discontinue the hearing if the arbiter considers that
 - (i) the application is vexatious, misconceived, frivolous or lacking in substance; or
 - (ii) the applicant has not responded, or has responded inadequately, to a request for further information.

19.3 Principal Councillor Conduct Registrar must examine application

- (1) The Principal Councillor Conduct Registrar, after examining an application under section 143, must appoint an arbiter to the Council to hear the matter if the Principal Councillor Conduct Registrar is satisfied that—
 - (a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
 - (b) there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application.
- (2) The Principal Councillor Conduct Registrar must reject an application if the Principal Councillor Conduct Registrar is not satisfied under subsection (1)(a) or (b).

- (3) The rejection of an application by the Principal Councillor Conduct Registrar under this section does not prevent a further application being made under section 143 in respect of the same conduct by a Councillor that was the subject of the rejected application.
- (4) Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information.

19.4 Arbiter must refer certain applications

- (1) If, at any time before, during or after the hearing of an application for an internal arbitration process, the arbiter believes that the conduct that is the subject of the application for an internal arbitration process appears to involve serious misconduct and would more appropriately be dealt with as an application under section 154, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.
- (2) If the Principal Councillor Conduct Registrar receives a referral under subsection (1), the Principal Councillor Conduct Registrar must notify the parties to the application for an internal arbitration process that the matter has been referred by the arbiter.

19.5 Sanctions that may be imposed by an arbiter on finding of misconduct

- (1) If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the prescribed standards of conduct, the arbiter may make a finding of misconduct against the Councillor.
- (2) If an arbiter has made a finding of misconduct against a Councillor, the arbiter may do any one or more of the following
 - (a) direct the Councillor to make an apology in a form or manner specified by the arbiter;
 - (b) suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month;
 - (c) direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter;
 - (d) direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
 - (e) direct a Councillor to attend or undergo training or counselling specified by the arbiter.
- (3) The arbiter must provide a written copy of the arbiter's decision and statement of reasons to
 - (a) the Council; and
 - (b) the applicant or applicants; and
 - (c) the respondent; and
 - (d) the Principal Councillor Conduct Registrar.
- (4) Subject to subsection (5), a copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the Council received the copy of the arbiter's decision and statement of reasons and recorded in the minutes of the meeting.
- (5) If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled under subsection (4).

19.6 No Applications during Election Period

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:

- the application was made by the Council and the Council so resolves; or
- the application were made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application; or
- the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

20. REQUEST FOR COUNCILLOR CONDUCT PANEL

The Principal Councillor Conduct Registrar¹ manages the establishment of Councillor Conduct Panels.

All applications (supported with evidence) to establish a panel to hear allegations of misconduct or serious misconduct must go to the registrar. The panel must be established if the registrar is satisfied that the application is not frivolous or misconceived or lacking in substance, is supported by evidence and council processes have been fully exhausted or are not appropriate.

Section 154 Application to Councillor Conduct Panel

- (1) A Councillor Conduct Panel may hear an application that alleges serious misconduct by a Councillor.
- (2) Subject to subsection (4), an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by—
 - (a) the Council following a resolution of the Council to make an application to a Councillor Conduct Panel under this subsection in respect of a Councillor's conduct; or
 - (b) a Councillor or a group of Councillors; or
 - (c) the Chief Municipal Inspector.
- (3) An application under subsection (2) must be made within 12 months of the alleged serious misconduct occurring.
- (4) An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor that alleges that the Councillor has failed to disclose a conflict of interest may only be made by the Chief Municipal Inspector.
- (5) An application made under this section must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(n).
- (6) An application made under this section must—
 - (a) specify the ground or grounds for the application; and
 - (b) set out—

¹ The registrar is appointed by the Secretary to the Department

- (i) the circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting serious misconduct; and
- (ii) the particulars of any evidence of those circumstances, actions or inactions of the Councillor that are alleged as constituting the serious misconduct; and
- (c) specify—
 - (i) any steps taken by Council to resolve the matter that is the subject of the application and the reason why the matter was not resolved by the taking of those steps; or
 - (ii) if the Council did not take any steps to resolve the matter that is the subject of the application, the reason why the Council did not take any steps to resolve the matter.
- (7) If an application is made under this section by the Council or a group of Councillors, the application must state the name and address of the Councillor whom the Council or the group of Councillors has appointed as representative of the Council or the group of Councillors.

21. ADDITIONAL CONDUCT PROVISIONS

Further to the above statutory requirements, Councillors will obey the law, relevant regulations, policies and procedures including the following:

- a) **Equal Opportunity Act 2010** - refrain from discriminating, harassing or bullying other people and using offensive language in their capacity as a Councillor.
- b) **The Charter of Human Rights and Responsibilities 2006** - to act compatibly, give proper consideration and take human rights into account when making decisions
- c) **Occupational Health and Safety Act 2004** - have regard to the principles of health and safety. Councillors have the status of employees under the OH&S Act and should ensure that they contribute to a healthy and safe workplace. Councillors should be particularly mindful of this in their interactions with Council Officers.
- d) **Privacy & Data Protection Act 2014** - recognise the requirements of the regarding access, use and release of personal information which also applies to Councillors as individuals and the **Banyule Privacy Policy**
- e) **Meeting Procedure Local Law No. 10 (2013)** regulates proceedings at Council Meetings and Committee Meetings; regulate the use of the common seal; and prohibit unauthorised use of the common seal or any device resembling the common seal.
- f) **Governance Rules (incorporating Election period Policy)** – provides guidelines for the election of the Mayor, the role of the Mayor, the procedures governing the conduct of Council Meetings and set the rules of behaviour for those participating in or present at Council Meetings, provides for Conflict of Interest declaration processes and conduct during an election period.
- g) **Councillor and Staff Interaction Policy** provides clarity surrounding Councillor and staff obligations and responsibilities in dealings with each other, and supports the Chief Executive Officer in the discharge of obligations and responsibilities pursuant to *Local Government Act 2020*
- h) **Council Expense Policy** - providing guidelines in respect of administrative procedures and reimbursement of necessary out of pocket expenses incurred while performing duties as a Councillor or delegated committee member.
- i) **Councillor Gift Policy provides** clear guidelines to ensure that Councillors are not compromised in the performance of their duties by accepting gifts or benefits which may result in a sense of obligation or could be interpreted as an attempt to influence.

Charter of Human Rights Assessment

This Code is compatible with the human rights protected by the Charter of Human Rights and Responsibilities 2006.

22. ENDORSEMENT

We, the undersigned, declare that we will abide by this Councillor Code of Conduct which was adopted by the Council at its meeting on 10 February 2021.

Councillor Signatures

Cr Mary Ann Brown 

Cr Albert Calvano 

Cr Bruach Colliton 

Cr Helen Henry 

Cr Greg McAdam 

Cr Katrina Rainsford 

Cr David Robertson 

