

ATTACHMENT 1



**Yarra City Council
Councillors Code of Conduct**

This Councillors Code of Conduct was adopted by resolution of the Yarra City Council onand in accordance with section 76C of the *Local Government Act 1989*.

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Code of Conduct

1.1 Preamble

Section 76C of the *Local Government Act* 1989 (**the Act**) requires each Council to adopt a Code of Conduct for its Councillors. This Code of Conduct (**the Code**) has been prepared by Yarra City Council (**the Council**) for its Councillors.

The Council comprises nine democratically elected Councillors.

As elected representatives, Councillors have a responsibility to their local and wider Yarra community, to ensure that good decisions are made, and good decision-making processes are in place, for the benefit of all Yarra's citizens.

Integral to maintaining good governance practices is the need to recognise the importance of respectful relationships. Relationships between the Mayor, Councillors, the Chief Executive Officer and the administration will largely determine the quality of the municipality's governance. The Councillors Code of Conduct, together with the Code of Conduct for Staff, the Complaints Management Policy and complimentary provisions in the Act, each serve to strengthen the foundations of the working relationship between elected representatives and appointed staff. The above stated documents provide guidance to the parties to:

- * understand the standards of conduct that are expected of them,
- * enable them to fulfil their statutory duty, to act honestly and exercise a reasonable degree of care and diligence,
- * act in a way that enhances public confidence in the integrity of local government..

The relevant legislative provisions and penalties for breaches of obligations are provided in Appendix 1.

1.2 Definitions

The following definitions apply in the Code:

- Council means the Yarra City Council.
- Councillor means Councillor of Yarra City Council.
- Council official means Councillors and delegates of Council.
- Delegate of Council means a person or body to whom a function of Council is delegated.

- the Act means the *Local Government Act 1989*
- references to sections are references to sections in the *Local Government Act 1989*.

2. Key Principles

The Code is based on the following key principles:

2.1 Accountability

Councillors are accountable to the public for their decisions and actions and must consider issues on their merits, taking into account the diversity in community needs and the views of others. *This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails.*

2.2 Honesty

Councillors have a duty to act honestly. They must declare any private interests relating to their public duties and take steps to resolve any conflicts arising in such a way that protects the public interest. *This means obeying the law; following the letter and spirit of policies and procedures; observing the code of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.*

2.3 Integrity

Councillors must not place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

2.4 Leadership

Councillors have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the Council. *This means promoting public duty to others in the Council and outside, by your own ethical behaviour.*

2.5 Objectivity

Councillors must make decisions solely on merit and in accordance with their statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals or organisations for rewards or benefits. *This means fairness to all; impartial*

assessment; merit selection in recruitment and in purchase and any business transactions by Council; considering only relevant matters.

2.6 Openness

They have a duty to be as open as possible about their decisions and actions, giving reasons for decisions and restricting information only when legally required to do so. *This means recording, giving and revealing reasons for decisions; outlining other avenues available, offering all information; communicating clearly.*

2.7 Respect

They must treat others with respect at all times. *This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.*

2.8 Selflessness

They have a duty to make decisions solely in the public interest. They must not act in order to gain financial or other benefits for themselves, their family, friends or business interests. *This means making decisions because they benefit the public, not because they benefit the decision maker.*

2.9 Legislation and Obligation

That under the Victorian Occupational Health and Safety Act 1985 all employees have a right to work in an environment that is safe and without risks to health. In this regard Council:

- acknowledges the Australian Services Union and other staff Unions and Associations position that staff have a right to work without being subjected to bullying, physical or psychological violence or aggression,

- acknowledges that the human and financial cost of bullying, occupational violence and aggression (physical or psychological) is unacceptable and can be prevented.

- notes that a Culture of “Accepting Bullying or Violence” will not be tolerated and Councillors will actively support a policy of zero tolerance towards bullying, physical or psychological violence and aggression in the Council workplace,

- will adopt and utilise Complaints Management policies and procedures in each workplace,

- notes the effective prevention and management of bullying, occupational violence and aggression (physical or psychological) shall comprise a collaborative approach between all parties- Council, Councillors, staff and unions.

3. Role of Council:

- 3.1 The role of the Council is to provide leadership for the good governance of its municipal district. It includes:
 - 3.1.1 acting as a representative government by taking into account the diverse needs of the local community in decision making;
 - 3.1.2 providing leadership by establishing strategic objectives and monitoring their achievement;
 - 3.1.3 maintaining the viability of the Council by ensuring that resources (including staff) are managed in a safe, responsible and accountable manner;
 - 3.1.4 advocating the interests of the local community to other communities and governments;
 - 3.1.5 acting as a responsible partner in government by taking into account the needs of other communities; and
 - 3.1.6 fostering community cohesion and encouraging active participation in civic life.

4. Councillor Behaviour

A Councillor's primary role is to represent the community, and effectively translate the community's needs and aspirations into a direction and future for the municipal district.

In this context, the following principles of behaviour apply.

- 4.1 Each Councillor is aware of their responsibility and shall undertake to comply with the rules of conduct specified in section 76B of the Act stating that Councillors must:
 - 4.1.1 act honestly;
 - 4.1.2 exercise reasonable care and diligence;
 - 4.1.3 not make improper use of their position, or information acquired because of their position to:
 - 4.1.3.1 gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person, or
 - 4.1.3.2 cause, or attempt to cause, damage to the Council;
- 4.2 Councillors will treat all people with courtesy and respect, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender, sexuality and abilities. This includes:

- 4.2.1 treating members of the community and staff with dignity and ensuring that neither offence nor embarrassment are caused;
 - 4.2.2 treating fellow Councillors with respect, including when disagreeing with their views; and
 - 4.2.3 treating Council staff with courtesy, avoiding intimidatory behaviour, discrimination, disadvantage or adverse treatment or verbal abuse (including bullying, physical or psychological violence or aggression).
- 4.3 Councillors will always act with integrity and honesty. This includes:
- 4.3.1 being honest in all dealings with the community, with other Councillors and with Council staff;
 - 4.3.2 acting with impartiality and in the best interests of the community as a whole;
 - 4.3.3 not acting in ways that may damage the Council or its ability to exercise good government;
 - 4.3.4 exercising reasonable care and diligence in performing their functions as Councillors; and
 - 4.3.5 complying with all relevant federal and state legislation and regulations, the Council's local laws, codes, and policies.

The above principles mean Councillors:

- have an obligation to consider issues impartially, consistently, promptly and fairly, dealing with matters in accordance with established procedures, in a non discriminatory fashion;

- must take all relevant facts known, or which should reasonably be known to you, into consideration and have regard to the particular merits of each case;

- 4.4 Councillors recognise that they hold a position of trust and will not misuse or derive undue benefit from their positions.
- 4.4.1 Councillors will comply with the relevant sections of the Act relating to interests and conflicts of interest.
 - 4.4.2 Councillors 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 themselves or individual constituents.
 - 4.4.3 Councillors will not accept gifts either in their roles as Councillor or where it could be perceived to influence the Councillor except:

- where the gift would generally be regarded as only having a token value and could not be perceived to influence a Councillor's actions; and/or
- where refusal of the gift may cause offence or embarrassment, in which case the gift may be accepted on behalf of the Council and become the property of the Council.

(Refer also "Gifts received by Councillors Policy")

The above principles mean:

- Councillors must ensure that no action, statement or communication conveys any suggestion of willingness to provide benefits or preferential treatment.

- 4.5 Councillors will exercise appropriate prudence in the use of public resources. This includes:
- 4.5.1 maintaining appropriate separation between their personal property and public property in the care of the Council;
 - 4.5.2 acting in accordance with Council policies in relation to the use of Council provided equipment and resources; and
 - 4.5.3 ensuring that claims for out of pocket expenses are accurate and submitted in accordance with Council policy.
- 4.6 Councillors will treat Council information appropriately, by:
- 4.6.1 not using information gained only by virtue of being a Councillor for any purpose than to exercise their role as a Councillor;
 - 4.6.2 respecting the Council's protocols in relation to public comments and communications with the media;
 - 4.6.3 not releasing information deemed "confidential information" in accordance with section 77 of the Act; and
 - 4.6.4 recognising the requirements of the *Information Privacy Act 2000* and the *Health Records Act 2001* regarding the access, use and release of personal information and health information.

(Refer also to Council's "Confidential Information - Access Policy")

Guide to ethical decision-making

- 4.7 If Councillors are unsure about the ethical issues around an action or decision they are about to take, they should consider the following points:
- Is the decision or conduct lawful?

- Is the decision or conduct consistent with Council's policy and with Council's objectives and the code of conduct?
- What will the outcome be for the Council, Councillor, Council staff or community?
- Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

This means Councillors have the right to question any advice given which they think may be unethical or unlawful. If they are uncertain about an action or decision, they may need to seek advice from other people. These may include the Chief Executive Officer or a Director, the office of Local Government Victoria or the State Ombudsman.

5. Relationship Between Councillors and Council Officials

Additional to the relevant sections of this Code, the Staff Code of Conduct document sets out the relationship between Councillors and Council staff, defines the roles of the Chief Executive Officer, management and staff and importantly, sets out the manner in which those parties and their respective roles require to interact.

5.1 Obligations of Councillors

- 5.1.1 Each Council is a statutory corporation. The Councillors are the governing body of the corporation. Councillors have the responsibility of directing and controlling the affairs of the Council in accordance with the Act.
- 5.1.2 Councillors are encouraged to maintain communication with staff, however Councillors should:
 - refrain from directing Council staff other than by giving appropriate direction to the Chief Executive Officer in the performance of Council's functions by way of Council or committee resolution.
 - not issue instructions to any of Council's contractors or tenderers, including Council's legal advisers.

This means the following interactions are inappropriate:

- *Councillors approaching staff directly on individual staffing matters.*
- *Councillors directing or pressuring Council staff in the performance of their work, or recommendations they should make.*

- Councillors approaching outside organisations; for example unions and associations; in relation to staffing matters that relate to individual staff members rather than broader industrial policy issues.

6. 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 relating to the disclosure of interests and conflicts of interest.

For the purpose of the Code, “Interests”, “Conflicts of Interest” and “Pecuniary Interests” have the meanings specified in the Act.

- 6.1 Councillors will comply with all the provisions of the Act in regard to Interests and Conflicts of Interest: see ss 77A and 77B.
 - 6.1.1 A Councillor who has an Interest in a matter before the Council or a special committee of the Council, will disclose the Interest and clearly state the nature of that Interest at the meeting immediately and before the matter is considered. This will be done on every occasion the matter is considered by the Council or special committee.
 - 6.1.2 A Councillor who has an Interest in a matter to be considered by the Council or special committee that is a Pecuniary Interest, will also disclose a Conflict of Interest.
 - 6.1.3 A Councillor who has an interest in a matter to be considered by the Council or special committee that is not a Pecuniary Interest, and that Councillor considers that their personal interest may be in conflict with the public duty to act impartially and in the interest of the whole community, will disclose a Conflict of Interest.
 - 6.1.4 A Councillor who has a Conflict of Interest in a matter will comply with the requirements of the Act. A Councillor after disclosing a Conflict of Interest may remain in the room and participate in the consideration or discussion of the matter, but cannot move or second a motion on the matter. The Councillor must leave the room prior to a vote being taken on the matter and remain outside the room from viewing or hearing of the room.
 - 6.1.5 A Councillor who has a Conflict of Interest in a matter, will disclose the interest and the nature of the interest either at the beginning of the meeting, or immediately prior to the matter being discussed. If a Councillor has a Conflict of Interest in a matter and does not intend to be present at a

meeting where the matter is discussed, they will disclose the Interest and the nature of the interest to the Chief Executive Officer prior to the commencement of the meeting, in writing (i.e. by letter, fax or email). The opportunity for a Councillor to disclose Interests or disclose Conflicts of Interest at a meeting is provided at the beginning of each meeting, as a listed agenda item.

7. REPORTING BREACHES, COMPLAINT HANDLING PROCEDURES & SANCTIONS

7.1 Councillors have an obligation to act honestly. Councillors should report any instances of suspected inappropriate or corrupt conduct, maladministration and/or serious and substantial waste of public resources to the Chief Executive Officer.

Complaint handling procedures –

7.2 The Chief Executive Officer will make enquiries, or cause enquiries to be made, regarding complaints submitted or referred to the Council.

(Refer also to Council's "Council Values and Staff Conduct Policy" and "Complaints Management Policy")

Breach of the Code of Conduct-

7.4 For the purposes of the Act, failure by a Councillor to comply with an applicable requirement of this code of conduct constitutes a breach.

(Refer Appendix 1 for Penalties for Breach of the Code).

8. Dispute Resolution Procedures

8.1 Before commencing any formal dispute resolution process, the Councillors who are parties to any disagreement will endeavour to resolve their differences in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community. Councillors may seek assistance in resolving their differences.

8.2 This dispute resolution procedure is intended to be used when Councillors have been unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Council. It is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in Council and committee meetings.

8.3 A "Dispute" will be considered to be declared if the Council resolves that its operation is being impeded because of a dispute between

some or all of the Councillors. The resolution will state the reasons why public resources should be allocated to resolve the dispute.

- 8.4 If the Chief Executive Officer receives advice in writing from one or more Councillors that they are unable to effectively perform their role because of a dispute between Councillors and that attempts to resolve the dispute have not been effective, the Chief Executive Officer will bring the matter to the Council's attention as an item of confidential business and the Council may resolve that a Dispute be declared.
- 8.5 If a Dispute is declared, the Council will, as soon as practicable:
 - 85.1 approve the appointment of an independent and suitably qualified mediator or conciliator who is acceptable to the Councillors who are the parties to the Dispute; or
 - 8.5.2 decide that a mediator or conciliator will not be appointed.
- 8.6 The Council may only decide that a mediator or conciliator will not be appointed if one of the following applies:
 - 8.6.1 the Dispute is limited to matters of policy and decision making; or
 - 8.6.2 an alternative approach, which is demonstrated to be more appropriate to the particular circumstance, is endorsed by the Council.
- 8.7 If a mediator or conciliator is appointed, all Councillors will cooperate with the dispute resolution process and provide reasonable assistance to the mediator or conciliator when requested.
- 8.8 At the conclusion of the dispute resolution process, the Council will consider a report in a confidential session which includes:
 - 88.1 an independent report from the mediator or conciliator;
 - 8.8.2 the recommendations of the mediator or conciliator;
 - 8.8.3 the actions being taken as a consequence of the dispute resolution process;
 - 88.4 an estimate of the full cost to the Council of conducting the mediation or conciliation process; and
 - 8.8.5 Council making a determination on whether or not the outcomes of the report are to be made public in an open session of the Council.
- 8.9 In the case of any serious breach of this Code or where circumstances become apparent that call into question a Councillor's capability of continuing to be a Councillor pursuant to section 29 of the Act, the matter shall be the subject of a confidential report to the Council.

9. Statement of Caretaker Procedures

- 9.1 Irrespective of the above dispute resolution procedures, the Council will not undertake a dispute resolution procedure if it appears that the procedure is likely to overlap with an election period for the Council.

The Council is committed to fair and democratic elections and will comply with the relevant legislative requirements.

Council Decision Making

- 9.2. Council acknowledges its obligation and commitment to comply with the requirements of section 93A of the Act.

Major Policy Decisions

- 9.2.1 Section 93A of the Act prohibits the making of “Major Policy Decisions” during the election period, which is from Entitlement Day until 6:00 pm on Election Day. (Note: This is the statutory definition of the “election period”)

- 9.2.2 Major Policy decisions are defined by the Act to be decisions:

9.2.2.1 relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;

9.2.2.2 to terminate the appointment of a Chief Executive Officer under section 94;

9.2.2.3 to enter into a contract the total value of which exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates in the preceding financial year; and

9.2.2.4 to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates in the preceding financial year.

- 9.2.3 If the Council considers that there are extraordinary circumstances where the municipality or the local community would be significantly disadvantaged by the Council not making a particular Major Policy Decision, the Council will, by resolution, request an exemption from the Minister for Local Government, in accordance with section 93A(2) of the Act.

Use of Council Resources

- 9.3. It is an established democratic principle that public resources should not be used to influence the way people vote in elections, except in regard to supporting the actual election process. The Council therefore commits to the principle that it will ensure that Council

resources are not used inappropriately during a Council election period. This includes a commitment to comply with the following procedures in addition to the requirements of section 55D of the Act.

Electoral Matter

9.3.1 The Council will ensure that it complies with section 55D of the Act which requires that a Council does not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

The Council will review all publications prior to the commencement of the caretaker period, and during the caretaker period, prior to publication, to ensure that any such publications comply with the requirements of section 55D.

The following definitions from the Act are noted:

Section 3(1) "electoral advertisement, handbill, pamphlet or notice" means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

"publish" means publish by any means including by publication on the Internet;

Section 3(1A) "electoral matter" means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election.

Section 3 (1B) Without limiting the generality of the definition of "electoral matter", matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on –

- (a) the election; or*
- (b) a candidate in the election; or*
- (c) an issue submitted to, or otherwise before, the voters in connection with the election.*

Other Resources

- 9.3.2 The Council will also ensure other Council resources are not used inappropriately in ways that may influence voting in an election or provide an undue advantage for a candidate. This includes financial, human and material resources.
- 9.3.3 Prior to the election period for any election the Chief Executive Officer will ensure that all members of Council staff are advised in regard to the application of the caretaker procedures.
 - 9.3.3.1 Council staff will not undertake an activity that may affect voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer.
 - 9.3.3.2 Council staff will not authorise, use or allocate a Council resource for any purpose that may influence voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer.
- 9.3.4 Any staff member who considers that a particular use of Council resources may influence voting in an election or provide an undue advantage for a candidate must advise their Manager or Director before authorising, using or allocating the resource. The Manager or Director will seek appropriate advice in order to ascertain whether the use of Council resources is in accordance with this Code.
- 9.3.5 In applying these principles, the Council acknowledges that:
 - 9.3.5.1 Councillors may still make public statements and speak to the media during the election period; and
 - 9.3.5.2 Councillors are fully entitled to the same rights of public speech that apply to any other person and in particular, any person who is likely to become a candidate or who becomes a candidate in a Council election.
- 9.3.6 Additionally, in applying these principles, the Council understands that the following arrangements will be normal practice during an election period:
 - 9.3.6.1 civic functions and events will only be organised and run by the Council administration if they are part of the normal services or operation of the Council in accordance with the Council Plan or other Council policies or strategic plans;
 - 9.3.6.2 invitations for civic functions and events will continue to be issued under the name of the Mayor

- and Councillors and, the Mayor will continue to preside over these events;
- 9.3.6.3 in acknowledgement of the Mayor and Councillors' role as spokespersons for the Council and the Chief Executive Officer's role as the primary spokesperson for the organisation, media services, including media releases and speeches, will be provided for the Mayor and Councillors by the administration during the election period provided these services are a part of normal services or operations of the Council;
- 9.3.6.4 speech notes for Councillors will only be prepared by Council staff in relation to civic functions and events that are a part of the normal services or operation of the Council;
- 9.3.6.5 ward meetings will not be resourced by the Council during the election period;
- 9.3.6.6 publication of Councillor biographical profiles on the Council's website and other mediums will be limited to a photograph and contact details. Councillor information content will not be altered during the election period unless information is erroneous;
- 9.3.6.7 bulk mail outs may be distributed by the administration during the election period if they are a part of normal services or operation of the Council. All such mail outs will be authorised and signed by the Chief Executive Officer;
- 9.3.6.8 databases and mailing lists held by the organisation remain the property of the Council and are not to be made available to and used by Councillors for electoral purposes; and
- 9.3.6.9 neither the Council logo nor Council stationery shall be used by Councillors in any way that relates to the election.
- 9.3.7 Where Councillors have use of equipment and facilities provided by the Council (such as computers, email and internet services, telephones, facsimiles, and photocopiers) and it is impractical for Councillors to discontinue the use of these during the election period, Councillors will reimburse the Council for usage of those services during the election period that exceeds normal usage levels.

Appendix 1

RELEVANT LEGISLATIVE PROVISIONS AND PENALTIES FOR BREACHES OF THE CODE OF CONDUCT

Section 55D. Prohibition on Council

A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

Section 76B Rules of Conduct

- (1) In performing the role of a Councillor or a member of a Special Committee, a person:
 - (a) must act honestly;
 - (b) must exercise reasonable care and diligence.
- (2) A person who fails to comply with sub-section (1) is guilty of an offence against this Act.
- (3) A person who is, or has been, a Councillor or member of a Special Committee:
 - (a) must not make improper use of their position:
 - (i) to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person;
 - (ii) to cause, or attempt to cause, detriment to the Council;
 - (b) must not make improper use of information acquired because of their position:
 - (i) to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person;
 - (ii) to cause, or attempt to cause, detriment to the Council.
- (4) A person who fails to comply with sub-section (3) is guilty of an offence.

Penalty: 100 penalty units

Section 76C Code of Conduct

- (1) A Council must develop and approve a Code of Conduct for the Council within the period of 6 months after the commencement of Section 57 of the Local Government (Democratic Reform) Act 2003.

Yarra Code of Conduct

- (2) A Council must review the Code of Conduct within the period of 6 months after a General Election.
- (3) A Code of Conduct:
 - (a) must include the provisions of Section 76B;
 - (b) must set out processes for the purpose of resolving an internal dispute between Councillors;
 - (c) must specify procedures applying in relation to disclosure of interests and conflict of interests;
 - (d) must include provisions in respect of any matter prescribed for the purpose of this Section;
 - (e) may include any other matters relating to the conduct of Councillors, which the Council considers appropriate.
- (4) Without limiting sub-section (3), a Code of Conduct must contain a statement of the caretaker procedures, which are to apply during an Election period including procedures:
 - (a) consistent with Section 93A to ensure that inappropriate decisions are not made during the Election period;
 - (b) consistent with Section 55D to ensure the Council does not inappropriately publish or distribute electoral matter during an election;
 - (c) to ensure that resources of the Council are not inappropriately applied during an Election period.
- (5) A Code of Conduct must not be inconsistent with any Act or regulation.
- (6) A copy of the current Code of Conduct must be:
 - (a) given to each Councillor;
 - (b) be available for inspection by the public at the Council office and any district offices.

77. Confidential information

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

Penalty: 100 penalty units.

- (2) For the purposes of this section, information is "confidential information" if—
 - (a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special

committee has not passed a resolution that the information is not confidential; or

- (b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (c) subject to sub-section (3), the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in sub-section (2)(c) ceases to be confidential at the expiry of the period of 50 days after the designation is made unless sub-section (2)(a) or (2)(b) applies to the information.

77A. Disclosure of interests

- (1) Subject to sub-section (3), a Councillor or a member of a special committee has an interest in a matter in which the Council is concerned and is, or is likely to be, considered or discussed at a meeting of the Council or a special committee, if sub-section (2) applies.
- (2) This sub-section applies if, were the matter to be decided in a particular manner, the Councillor or member, or a person with whom the Councillor or member is closely associated—
 - (a) would receive or have a reasonable expectation of receiving, a direct or indirect pecuniary or non-pecuniary benefit; or
 - (b) would suffer or have a reasonable expectation of suffering, a direct or indirect pecuniary or non-pecuniary detriment; or
 - (c) could be reasonably perceived as—
 - (i) receiving a direct or indirect pecuniary or non-pecuniary benefit; or
 - (ii) suffering a direct or indirect pecuniary or non-pecuniary detriment.
- (3) A Councillor or a member of a special committee is not to be taken to have an interest in a matter for the purposes of this section if the interest arises solely by being a voter, resident or ratepayer and is held in common with other voters, residents or ratepayers.
- (4) If sub-section (2) applies, the Councillor or the member of the special committee must disclose the interest to the Council or the special committee before the matter is considered or discussed at the meeting.
- (5) A disclosure under sub-section (4) must—
 - (a) include the nature of the relevant interest; and

- (b) be recorded in the minutes of the meeting.

77B. Conflict of interest

- (1) For the purposes of section 79, a Councillor or a member of a special committee has a conflict of interest in respect of a contract, proposed contract or other matter if the Councillor or member—
 - (a) has a direct or indirect pecuniary interest in the matter; or
 - (b) is of the opinion that the nature of his or her interest in the contract, proposed contract or other matter is such that it may conflict with the proper performance of his or her public duties in respect of the contract, proposed contract or other matter.

78. Pecuniary interests

- (1) Section 79 does not apply to a direct or indirect pecuniary interest in a contract, proposed contract or other matter which a Councillor or a member of a special committee has—
 - (a) only as a voter or ratepayer and in common with other voters or ratepayers; or
 - (b) only because the contract, proposed contract or other matter involves expenditure from money belonging to or held by the Council and the Councillor or member of a special committee is as a ratepayer a contributor to the money; or
 - (c) in relation to the declaration of rates and charges or the fixing of a fee by the Council; or
 - (d) in relation to the terms and conditions on which the right to participate in the supply of goods and services is offered to members of the public; or
 - (e) only as a person to whom goods or services are supplied in the like manner and subject to the same terms and conditions as apply to members of the public; or
 - (f) only by reason of receiving an allowance or travelling allowances as permitted by this Act; or
 - (g) only by reason of the Councillor or member of a special committee or his or her spouse or domestic partner being insured by the Council; or
 - (h) only as a member of a local community body, club, union or other organisation which is a non-profit organisation if no personal gain to the Councillor or member of a special committee or his or her spouse or domestic partner is involved; or
 - (i) only in planning and development matters which have a general application throughout the municipal district or a ward; or
 - (j) in relation to the consideration of an application or request for a consent, permission, approval, authorisation, licence, permit, exemption or other

right or privilege under this or any other Act, if the extent of the interest of the Councillor or member of a special committee or his or her spouse or domestic partner is the same as other members of the public; or

- (k) only as an employee in the service of the Crown or of a body established by or under any Act for a public purpose; or
 - (l) only by reason of being a candidate for election as Mayor; or
 - (m) only as a member of a body (whether or not incorporated) who is appointed or nominated by the Council and whether or not any remuneration or allowances are received.
- (2) For the purposes of section 79, a person is to be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter if—
- (a) the Councillor or member of a special committee or a nominee of the Councillor or member of a special committee is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct or indirect pecuniary interest in the matter under consideration; or
 - (b) the Councillor or member of a special committee is a partner, agent, consultant or employee of a person with whom the contract is made or is proposed to be made or who has a direct or indirect pecuniary interest in the matter under consideration; or
 - (c) the Councillor or member of a special committee is a director, manager, employee or agent of a company which has a direct or indirect pecuniary interest in the matter under consideration; or
 - (d) the spouse or domestic partner of the Councillor or member of a special committee has an interest of a kind referred to in paragraph (a), (b) or (c); or
 - (e) the spouse or domestic partner of the Councillor or member of a special committee has a direct or indirect pecuniary interest in the contract, proposed contract or other matter.
- (3) If a Councillor or a member of a special committee has an indirect pecuniary interest in any contract or proposed contract with the Council or in any other matter referred to in section 79(1) only because he or she, or his or her spouse or domestic partner, has a beneficial interest in shares of a company or other body and the total nominal value of those shares does not exceed \$2000 or 1% of the total nominal value of the issued share capital of the company or body (whichever is the less), section 79(1) does not preclude him or her from taking part in the consideration or discussion of, or voting on any question with respect to the contract, proposed contract or other matter.
- (4) In this section, "**domestic partner**" of a person means an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the

same roof, but does not include a person who provides domestic support and personal care to the person—

- (a) for fee or reward; or
 - (b) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation).
- (5) For the purposes of the definition of "domestic partner" in sub-section (4)—
- (a) in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case;
 - (b) a person is not a domestic partner of another person only because they are co-tenants.

79. Disclosure of conflict of interest

- (1) If a Councillor or member of a special committee has a conflict of interest in any contract or proposed contract with the Council, or in any other matter in which the Council is concerned which is to be, or is likely to be, considered or discussed at a meeting of the Council or a special committee, the Councillor or member of the special committee must—
- (a) if he or she intends to be present at the meeting, disclose the nature of the conflict of interest immediately before the consideration or discussion; or
 - (b) if he or she does not intend to be present at the meeting, disclose the nature of the conflict of interest to the Chief Executive Officer or the Chairperson of the special committee at any time before the meeting is held.
- (2) The Councillor or member of the special committee may choose to remain in the room in which the meeting is being held during any consideration or discussion of the contract, proposed contract or other matter.
- (3) The Councillor or member of the special committee may take part in the consideration or discussion but cannot move or second a motion on any question relating to the contract, proposed contract or other matter.
- (4) While any vote is taken on a question relating to the contract, proposed contract or other matter, the Councillor or member of the special committee must—
- (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
 - (b) remain outside the room and any gallery or other area in view or hearing of the room.
- (5) After the result on the vote on the question relating to the contract, proposed contract or other matter has been declared, the Mayor or the Chairperson of the

special committee must cause the Councillor or member of the special committee to be notified that he or she may return to the room.

- (6) If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson of the special committee must record the declaration and the nature of the conflict of interest in the minutes of the meeting at which the consideration or discussion took place.
- (7) Unless sub-section (8) or section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence.

Penalty: 100 penalty units

- (8) It is a defence to a prosecution if the Councillor or member of the special committee proves that he or she did not know—
 - (a) that he or she had a conflict of interest in respect of the contract, proposed contract or other matter; or
 - (b) that a contract, proposed contract or other matter in respect of which he or she had a conflict of interest was considered or discussed at the meeting.
- (9) This section does not prevent any person from taking part in the consideration or discussion of, or voting on—
 - (a) any question whether the amount payable for goods or services previously supplied or provided under any contract should be paid from money held by the Council; or
 - (b) the election of a Councillor to be the Mayor; or
 - (c) any question whether an application should be made to the Minister for the exercise of the powers conferred by section 80.

80. Exemption by Minister

- (1) Despite section 79, if the Council is of the opinion that the transaction of any Council or special committee business would be impeded because of the number of Councillors or members of a special committee affected by section 79, the Minister may upon application by the Council in writing exempt any Councillor or member of a special committee from any or all of the provisions of section 79 subject to any conditions the Minister thinks fit.
- (2) An exemption may be for an unlimited or a specified period.
- (3) The Minister may revoke an exemption.

Section 81 Register of Interests

- (1) A Councillor, or member of a Special Committee or a nominated officer must disclose in an ordinary return the following information in relation to the return period:

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- (a) if he or she has held an office whether as director or otherwise in any company or body, corporate or unincorporate – the name of the company or body;
- (b) the name or description of any company, partnership, association or other body in which he or she held a beneficial interest which exceeded in value \$2000;
- (c) the address or description of any land in the municipal district of the Council or in the municipal district which adjoins that municipal district in which he or she had any beneficial interest other than by way of security for any debt;
- (d) a concise description of any trust in which he or she held a beneficial interest or of which he or she is a trustee and a member of his or her family held a beneficial interest;
- (e) particulars of any gift of or above the amount or value of \$500 received by him or her from a person other than a person related to him or her by blood or marriage; and
- (f) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, a member of a Special Committee or nominated officer.

Penalty: 50 penalty units

Section 93A. Conduct of Council during election period

- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.

- (6) In this section, a **"major policy decision"** means any decision—
- (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
 - (b) to terminate the appointment of a Chief Executive Officer under section 94;
 - (c) to enter into a contract the total value of which exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates in the preceding financial year;
 - (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates in the preceding financial year.

Companion Documents:

1. Councillors Code of Conduct
2. Staff Code of Conduct
3. Service Charter/s
4. Complaints Management Policy
5. Integrated Communications Strategy