



# Special Meeting of Council Agenda

**to be held on Monday 23 May 2016 at 6.50pm  
Richmond Town Hall**

## **Disability - Access and Inclusion to Committee and Council Meetings:**

### **Facilities/services provided at the Richmond and Fitzroy Town Halls:**

- Entrance ramps and lifts (off Moor Street at Fitzroy, entry foyer at Richmond)
- Hearing loop (Richmond only), the receiver accessory may be accessed by request to either the Chairperson or the Governance Officer at the commencement of the meeting, proposed resolutions are displayed on large screen and Auslan interpreting (*by arrangement, tel. 9205 5110*)
- Electronic sound system amplifies Councillors' debate
- Interpreting assistance (*by arrangement, tel. 9205 5110*)
- Disability accessible toilet facilities

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## **Order of business**

- 1. Statement of recognition of Wurundjeri Land**
- 2. Attendance, apologies and requests for leave of absence**
- 3. Declarations of conflict of interest (Councillors and staff)**
- 4. Council business reports**

## 1. Statement of Recognition of Wurundjeri Land

*“Welcome to the City of Yarra.”*

*“Yarra City Council acknowledges the Wurundjeri as the Traditional Owners of this country, pays tribute to all Aboriginal and Torres Strait Islander people in Yarra and gives respect to the Elders past and present.”*

## 2. Attendance, apologies and requests for leave of absence

Anticipated attendees:

### Councillors

- Cr Roberto Colanzi (Mayor)
- Cr Geoff Barbour
- Cr Misha Coleman
- Cr Jackie Fristacky
- Cr Sam Gaylard
- Cr Simon Huggins
- Cr Stephen Jolly
- Cr Amanda Stone
- Cr Phillip Vlahogiannis

### Council officers

- Vijaya Vaidyanath (Chief Executive Officer)
- Ivan Gilbert (Group Manager – CEO’s Office)
- Andrew Day (Director - Corporate, Business and Finance)
- Chris Leivers (Director - Community Welling)
- Bruce Phillips (Director - Planning and Place Making)
- Guy Wilson-Browne (Director – City Works and Assets)
- Mel Nikou (Governance Officer)

## 3. Declarations of conflict of interest (Councillors and staff)

## 4. Council business reports

Item	Page	Rec. Page	Report Presenter
4.1 Review of the Councillor Code of Conduct	5	8	Ivan Gilbert – Group Manager – Chief Executive’s Office

Public submissions procedure

The public submission period is an opportunity to provide information to Council, not to ask questions or engage in debate.

When the chairperson invites verbal submissions from the gallery, members of the public who wish to participate are to:

- (a) state their name clearly for the record;
- (b) direct their submission to the chairperson;
- (c) speak for a maximum of five minutes;
- (d) confine their remarks to the matter under consideration;
- (e) refrain from repeating information already provided by previous submitters; and
- (f) remain silent following their submission unless called upon by the chairperson to make further comment.

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## 4.1 Review of the Councillor Code of Conduct

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Trim Record Number: D16/75495

Responsible Officer: Group Manager Chief Executive's Office

### Purpose

1. To review the Councillor Code of Conduct as required by section 76C (1) of the Local Government Act 1989 and to formally incorporate the Councillors Grievance Resolution Procedure into the document.

### Background

#### Legislative Framework

2. The passage of the Local Government Amendment (Improved Governance) Act 2015 in October 2015 triggered a series changes to the Local Government Act 1989 that were considered too important to wait until the completion of the comprehensive review of the Local Government Act that is currently underway.
3. One of the changes made was to codify the requirements of the Councillor Code of Conduct in a more detailed manner than had been in place in the past.
4. In summary, the Local Government Act now requires that:
  - (a) Councils review the Code of Conduct following the passage of the Local Government Amendment (Improved Governance) Act 2015 and formally adopt the Code of Conduct;
  - (b) the Councillor Code of Conduct include an internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor;
  - (c) the internal resolution procedure must, among other matters, provide for the selection of an arbiter who is suitably independent and able to carry out the role of arbiter fairly; and specify the role an arbiter is expected to undertake in the conduct of any internal resolution procedure;
  - (d) following its adoption, a copy of the Code of Conduct be given to each Councillor, made available for inspection by the public and published on Council's website;
  - (e) within one month of its adoption, each Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct; and
  - (f) the Code of Conduct be reviewed again within four months of each quadrennial council election.

#### Reviewing the Code of Conduct

5. Given the existing Councillor Code of Conduct has served Council well, and there is a legislative requirement to conduct a comprehensive review of the policy within four months of the 22 October 2016 Council election, a desktop review has been conducted to identify just those changes that are required to Council's existing policy framework to ensure compliance with the changes to the Local Government Act.
6. The review of the Councillor Code of Conduct (adopted by Council on 17 September 2013) confirms that the Code complies with all requirements of the Local Government Act, with the exception of the inclusion of the internal resolution procedure required by section 76C(3)(a). The reason for this is because Council's procedure is set out in a separate document, the Councillors Grievance Resolution Procedure.
7. This existing Councillor Code of Conduct is provided for reference as **Attachment One** to this report.

8. It is recommended that rather than modify this document, Council resolve to incorporate its Councillors Grievance Resolution Procedure into the existing Councillor Code of Conduct, thus satisfying the requirement of the Local Government Act.
9. The review of the Councillors Grievance Resolution Procedure confirms that it complies with all requirements of the Local Government Act, with the exception of the provisions relating to the appointment and role of an independent arbiter to assist Council with addressing an alleged contravention of the Councillor Code of Conduct by a Councillor as required by sections 81AA (2) (c) to (f).
10. The review has suggested a number of modifications to 'Step 3' of the existing procedure to provide for the appointment of an independent arbiter to conduct a review and provide a report to Council as envisaged in the Local Government Act. This process builds on the provision in the existing procedure which provides for a dispute to be brought to a confidential Council meeting for a formal resolution.
11. A revised Councillors Grievance Resolution Procedure, incorporating these changes to 'Step 3' can be found at **Attachment Two** to this report.
12. It is important to distinguish between the role of an independent mediator (who can be brought in early in the process to assist in the informal resolution of disputes between parties) and the independent arbiter (who is brought in later in the process to provide a structured and formal report with recommendations for a full meeting of Council). The revised Grievance Resolution Procedure provides for both roles.

#### Next Steps

13. Following Council's consideration of the review and adoption of a revised Councillor Code of Conduct, copies of the document will be made available in accordance with the requirements of the Local Government Act.
14. Section 76C(6A) requires that within one month of the adoption of the revised Councillor Code of Conduct, Councillors are required to sign a declaration that they will abide by the Councillor Code of Conduct. It is recommended that standing orders be suspended to enable this declaration to be signed immediately following the adoption of the Councillor Code of Conduct. The proposed declaration is provided as **Attachment Three** to this report.
15. The Councillor Code of Conduct will be subject to a further review following the October 2016 Council election, with the deadline for that review being Wednesday 22 February 2017.

#### **External Consultation**

16. The Municipal Association of Victoria has produced a draft Model Councillor Code of Conduct for the Local Government Sector. While this Councillor Code of Conduct provides a useful comparison and an opportunity to double check that no matters have been overlooked, the MAV model is designed as a minimalist policy that covers no more than the basic legislative requirements. A comparison of the model MAV policy with the Yarra City Council policies did not reveal any shortcomings in Council's policy framework.

#### **Internal Consultation (One Yarra)**

17. A draft of the changes to the Councillors Grievance Resolution Procedure was presented to Councillors at a Councillor Briefing, and feedback from that briefing was considered in developing the final recommendation in this report.

#### **Financial Implications**

18. If it were required, the engagement of an independent arbiter would result in an unbudgeted cost to Council. It is not possible to determine the likely cost, but it could be expected to be in the range of \$5,000 to \$10,000, depending on the degree of complexity.

#### **Economic Implications**

19. There are no economic implications arising from this report.

### **Sustainability Implications**

20. There are no sustainability implications arising from this report.

### **Social Implications**

21. There are no social implications arising from this report.

### **Human Rights Implications**

22. The Councillor Code of Conduct establishes a process which could ultimately trigger the suspension of a Councillor from their elected role. While this action would limit the enumerated right to *taking part in public life* (which includes the right to be elected at municipal elections), the Councillor Code of Conduct does not extend the provisions in the Local Government Act.
23. These provisions were the subject of a statement of compatibility in accordance with Charter of Human Rights and Responsibilities Act 2006 and found to be compatible with human rights as set out in the charter.
24. No further human rights implications have been identified in the preparation of this report.

### **Communications with CALD Communities Implications**

25. There are no implications for communication with CALD communities directly arising from this report. In the event that a Councillor is elected that speaks little or no English, arrangements would be made to ensure they had appropriate access to the document.

### **Council Plan, Strategy and Policy Implications**

26. The City of Yarra Council Plan 2013-2017 includes the Strategic Objective of "Leading Local Government". This objective requires leadership across a range of areas, and by ensuring that its governance policy framework complies with the requirements of the Local Government Act as well as providing an example of best practice for the sector, Council demonstrates its commitment to the achievement of this objective.

### **Legal Implications**

27. A failure by Council to conduct a review of the Councillor Code of Conduct or to adopt a revised Councillor Code of Conduct that includes an internal dispute resolution procedure with provision for the appointment of an independent arbiter would place Council in breach of the provisions of the Local Government Act.

### **Other Issues**

28. No other issues have been identified in the preparation of this report.

### **Options**

29. In order to satisfy the requirements of the Local Government Act, Council must review and adopt a revised Councillor Code of Conduct.
30. It is open to Council to depart from the officer's recommendation and make amendments to the Councillor Code of Conduct or Councillors Grievance Resolution Procedure by alternate resolution.

### **Conclusion**

31. The Councillor Code of Conduct and Councillors Grievance Resolution Procedure are presented for Council's consideration for adoption together as the Councillor Code of Conduct required by section 76C(1) of the Local Government Act.

## RECOMMENDATION

1. That:
  - (a) Council note the completion of the review of Council's Councillor Code of Conduct as required by section 76C(1) of the Local Government Act 1989;
  - (b) Council adopt the Councillor Code of Conduct (**Attachment One**) and Councillors Grievance Resolution Procedure (**Attachment Two**) together, as the Councillor Code of Conduct required by section 76C(1) of the Local Government Act 1989;
  - (c) the Chief Executive Officer arrange for a copy of the Councillor Code of Conduct to be given to each Councillor, made available for inspection by the public at the Council offices and published on Council's website.

## FURTHER RECOMMENDATION

1. That in accordance with the Yarra City Council Meeting Procedures Local Law 2011, standing orders be suspended to enable Councillors to sign a declaration that they will abide by the Councillor Code of Conduct as required by section 76C(6A) of the Local Government Act 1989 (**Attachment Three**).

**CONTACT OFFICER:** Rhys Thomas  
**TITLE:** Senior Governance Advisor  
**TEL:** 9205 5302

### Attachments

- 1 Councillor Code of Conduct
- 2 Proposed Councillors Grievance Resolution Procedure
- 3 Councillor Code of Conduct Declaration

**Attachment 1 - Councillor Code of Conduct**



**Governance – Councillor Code of Conduct  
POLICY**

Approval Date: 17 Sept 2013 Last Revised: 17 Sept 2013 Next Review Date: 30 Sept 2017



# **Councillor Code of Conduct**

(In accordance with provisions of Section 76C of the *Local Government Act 1989*)

**As adopted by Council – 17 September 2013**

**Due for Review – 30 September 2017**

**Responsible Officer – Executive Manager Governance**

Trim Ref D13/83056

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**Responsible Officer:** Executive Manager Governance  
**Document Name:** Governance – Councillor Code of Conduct TRIM Ref No D13/83056

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**Attachment 1 - Councillor Code of Conduct**



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**1. References**

- Local Government Act 1989*
- Information Privacy Act 2000*
- Protected Disclosure Act 2012*
- Independent Broad-based Anti-corruption Commission Act 2011*
- Winky Pop Supreme Court decision of 2007
- Council's Gifts Received By Councillors Policy
- Councillor Grievance Resolution Procedure
- Council's Caretaker Period Policy
- Council's Councillor Expense Entitlements Policy

**2. Preamble**

As Councillors of the City of Yarra we commit to:

- (a) working together and being accountable to achieving the aspirations and best interests of our community;
- (b) effective good governance and to ensuring the diversity of community views and opinions are

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<p>properly balanced in the decision making process;</p> <p>(c) working constructively with our community and to take a strategic forward thinking approach to their long term aspirations, having always, a high regard for our environment, our heritage and the liveability of our city, whilst fostering employment opportunity; and</p> <p>(d) discharging our responsibilities to the best of our skill and judgement.</p>	
<p><b>3. Primary Principles of Conduct</b></p> <p>I will:</p> <p>(a) act with integrity;</p> <p>(b) impartially exercise my responsibilities in the interests of the whole local community; and</p> <p>(c) not improperly seek to confer an advantage or disadvantage on any person.</p>	<p><i>Derived from s.76B of the Local Government Act 1989</i></p>
<p><b>4. General Principles of Conduct</b></p> <p>I will:</p> <p>(a) avoid conflicts between my public duties as a Councillor and my personal interests and obligations;</p> <p>(b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person; <i>(this includes the manner in which I communicate with and/or about Councillors or others, whether verbally, by electronic or any other medium)</i></p> <p>(c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, council officers and other persons; <i>(this includes the manner in which I communicate with and/or about Councillors or others, whether verbally, by electronic or any other medium)</i></p> <p>(d) exercise reasonable care and diligence and submit myself to the lawful scrutiny that is appropriate to my office;</p>	<p><i>Derived from s.76BA of the Local Government Act 1989</i></p>

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<ul style="list-style-type: none"> <li>(e) endeavour to ensure that public resources are used prudently and solely in the public interest;</li> <li>(f) act lawfully and in accordance with the trust placed in me as an elected representative; and</li> <li>(g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.</li> </ul>	
<p><b>5. Misuse of Position</b></p> <p>I will not misuse my position:</p> <ul style="list-style-type: none"> <li>(a) to gain or attempt to gain, directly or indirectly, an advantage for myself or another person; or</li> <li>(b) to cause, or attempt to cause, detriment to the Council or another person. <i>(this includes the manner in which I communicate with and/or about Councillors or others, whether verbally, by electronic or any other medium)</i></li> </ul> <p>Misuse of position includes:</p> <ul style="list-style-type: none"> <li>(a) making improper use of information acquired as a result of the position he or she held or holds; or</li> <li>(b) disclosing information that is confidential information within the meaning of section 77(2); or</li> <li>(c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or</li> <li>(d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or</li> <li>(e) using public funds or resources in a manner that is improper or unauthorised; or</li> <li>(f) failing to disclose a conflict of interest as required under this Division.</li> </ul>	<p><i>Derived from s.76D of the Local Government Act 1989</i></p>
<p><b>6. Relationship With Staff</b></p>	<p><i>Derived from s.76E of the Local Government Act</i></p>

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<ol style="list-style-type: none"> <li>1. I will not seek to improperly direct or influence a member of Council staff in the exercise of any power or in the performance of any duty or function.</li> <li>2. As a collective, Councillors appoint and instruct the Chief Executive Officer, who in turn is responsible for the day to day operations of the organisation. I acknowledge that as an individual Councillor, I cannot direct staff members to undertake specific duties.</li> <li>3. I recognise that a resolution of Council is the appropriate mechanism to establish or amend Council policy. In the case of routine inquiries, however, I may contact the relevant member of the Executive Team (or the appropriate Executive Assistant) for clarification.</li> <li>4. I agree that workplace bullying can and should be prevented. As a collective, Council will collaborate with staff and unions to institute and uphold policies to facilitate an environment free from physical and psychological violence.</li> </ol>	<p>1989</p>
<p><b>7. Access to Files</b></p> <p>If I wish to inspect a Council file, I will lodge a request with the Executive Manager Governance. I acknowledge that:</p> <ol style="list-style-type: none"> <li>(a) I will only be able to view the material in the presence of a Council officer;</li> <li>(b) I will not be permitted to take the file 'off-site'; and</li> <li>(c) I will not be permitted to copy any part of the file.</li> </ol>	
<p><b>8. Conflict of Interest</b></p> <ol style="list-style-type: none"> <li>1. When I have (or may be perceived to have) an interest that prevents me from acting impartially, I will as soon as possible inform the Chief Executive Officer and my fellow Councillors that I am declaring a conflict of interest and state the nature of the interest.</li> <li>2. When I have a conflict, I will ensure that I neither move nor second a motion at a Council or Special Committee meeting and exit the room prior to and remain outside during any discussion of the issue in question and for any vote on the matter. In the case of Assemblies of</li> </ol>	<p><i>Derived from s.77A-80A of the Local Government Act 1989</i></p>

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<p>Councillors, I will vacate the room prior to and during any discussion of the issue in question.</p> <p>3. While I may seek advice, I recognise that the legal onus rests with me. If I cannot confidently say that I do not have a conflict, I will declare a possible conflict and comply with the relevant requirements as if I do have a conflict.</p>	
<p><b>9. An Open Mind</b></p> <p>1. Notwithstanding my broader policy positions, I will keep an 'open mind' when researching, hearing submissions on, considering and finally, making a decision regarding a specific matter.</p> <p>2. In the event that I am not capable of being persuaded from a pre-determined viewpoint, I will declare a conflict of interest and excuse myself from consideration of the matter.</p>	<p>Refer: Winky Pop Supreme Court decision of 2007</p>
<p><b>10. Gifts and Hospitality</b></p> <p>1. I will not accept any gifts or hospitality (including loans or discounts) where there may be a real or perceived conflict of interest with my past, present or future duties as a Councillor.</p> <p>2. In particular, I will not accept gifts from individuals or bodies:</p> <ul style="list-style-type: none"> <li>(a) participating in a competitive tendering processes conducted by Council;</li> <li>(b) engaged in seeking an approval from Council in respect to planning, building, local laws, health registration or any statutory or other process; and</li> <li>(c) with any party responding to Council in undertaking its statutory enforcement responsibilities in respect to planning, building, health registration or any statutory or other process.</li> </ul> <p>3. Under no circumstances will I accept cash or other money as a gift.</p> <p>4. Council recognises the cultural sensitivities around gift</p>	<p><i>Derived from s.78C of the Local Government Act 1989</i></p> <p><i>and</i></p> <p><i>Council's Gifts Received by Councillors Policy</i></p>

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<p>giving. In circumstances where:</p> <ul style="list-style-type: none"> <li>(a) there is no potential for a real or perceived conflict of interest; and</li> <li>(b) refusal of the gift is likely to cause offence;</li> </ul> <p>I may, pending the approval of the Executive Manager Governance, accept the gift on behalf of Council.</p> <p>5. If I do accept a gift, I will declare it by submitting both a Gifts and Hospitality Form and the item itself to the Executive Manager Governance.</p> <p>6. The Executive Manager Governance will in accordance with any Council policy then applicable, determine the manner in which accepted gifts will be employed for the benefit of Council as a whole. If the gift is valued at over \$500, the Executive Manager Governance will make the decision in consultation with the Chief Executive Officer.</p>	
<p><b>11. Grievance Resolution Procedure</b></p> <p>1. In response to grievances raised, whether by another Councillor/s or by a Council officer or another person, against a Councillor or Councillors, Council will follow the process set out in the <b>Governance – Councillor Grievance Resolution Procedure</b> document.</p> <p><b>Special Note:</b></p> <p>Pursuant to the provisions of the <i>Protected Disclosure Act 2012</i> which came into operation on 10 February 2013, <b>“disclosures” relating to a Councillor</b> (as defined in that Act) must now be made to the Independent Broad-based Anti-corruption Commission (IBAC) or the Ombudsman. <i>The practical application of this requirement now is that a Council cannot investigate “disclosures” (as defined in that Act), made about a Councillor.</i></p>	<p><i>Refer also to Councillor Grievance Resolution Procedure</i></p> <p><i>Protected Disclosure Act 2012</i></p> <p><i>Independent Broad-based Anti-corruption Commission Act 2011</i></p>
<p><b>12. Confidentiality and privacy</b></p> <p>I will:</p> <ul style="list-style-type: none"> <li>(a) ensure that I do not release information that has been declared confidential by the Chief Executive Officer;</li> <li>(b) exercise due diligence in my management of private and/or personal information provided to Council by</li> </ul>	<p><i>Derived from s.77 of the Local Government Act 1989</i></p> <p><i>and</i></p> <p><i>Information Privacy Act 2000</i></p>

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<p>third parties; and</p> <p>(c) refrain from using information gained by virtue of being a Councillor for any purpose other than to exercise my role as Councillor.</p>	
<p><b>13. Council Resources</b></p> <p>I will:</p> <p>(a) exercise prudence in the use of public resources and maintain separation between Council property and my own;</p> <p>(b) ensure that I do not use Council resources (including staff time) for personal purposes; and</p> <p>(c) ensure that claims for out of pocket expenses are accurate and relate strictly to Council business.</p>	<p><i>Refer also to Council's Councillor Expense Entitlements Policy</i></p>
<p><b>14. Caretaker Period</b></p> <p>1. Council is committed to upholding the highest standards of governance during election periods. I therefore agree:</p> <p>(a) to refrain from using Council resources (including facilities and staff) to promote any candidate or position;</p> <p>(b) to ensure that my electoral material is not present at any Council location or Council sponsored event;</p> <p>(c) refrain from seeking access to Council's databases and mailing lists for electoral purposes;</p> <p>(d) to ensure that my electoral material does not feature Council's logo or imply Council's endorsement in any way whatsoever;</p> <p>(e) to avoid unfairly binding the incoming Council by making significant decisions or major policy decisions unnecessarily;</p> <p>(f) that ward meetings will not be conducted during the caretaker period;</p> <p>(g) that civic functions will only be organised if they are part of the normal services of the Council; and</p>	<p><i>Derived from s.93A-93A2 of the Local Government Act 1989</i></p> <p><i>and</i></p> <p><i>Council's Caretaker Period Policy</i></p> <p><i>and</i></p> <p><i>Council's Councillor Expense Entitlements Policy</i></p>

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<p>(h) that no information other than my photograph and contact details will appear in Council publications (including Council's public website) during the caretaker period.</p> <p>2. Where it is impractical for me to cease using a Council funded service (e.g. mobile telephone, fax machine, laptop computer, internet connection), I agree to reimburse the Council for election related expenditure.</p>	
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## Attachment 1 - Councillor Code of Conduct

This Councillor Code of Conduct was adopted by resolution of Council on 17 September 2013.

### 15. Councillor Signatures:

We the undersigned Councillors agree with and consent to be bound by the principles and standards outlined in this Code.

.....  
Cr Jackie Fristacky (Mayor)

.....  
Cr Geoff Barbour

.....  
Cr Roberto Colanzi

.....  
Cr Misha Coleman

.....  
Cr Sam Gaylard

.....  
Cr Simon Huggins

.....  
Cr Stephen Jolly

.....  
Cr Amanda Stone

.....  
Cr Phillip Vlahogiannis

## Attachment 2 - Proposed Councillors Grievance Resolution Procedure

*Policy is compliant with the Charter of Human Rights legislation*

### Purpose

To note the framework and record the procedure for managing the resolution of grievances directed at and/or relating to a Councillor/s, whether by a Councillor/s, an Officer/s or any other person/s, in a constructive manner.

### Special Notes:

- A. Subject to section 16 of the *Protected Disclosure Act* 2012, “**disclosures**” relating to a Councillor/s, must now be made to the Independent Broad-based Anti-corruption Commission (IBAC) or the Ombudsman.

*The practical application of this requirement is that:*

- *Council may not be aware (nor become aware for some time) if a disclosure has been made to the IBAC or Ombudsman; and*
- *IBAC or the Ombudsman (not Council) now determines if/how/by whom, such “disclosures” are to be investigated.*

- B. Such disclosures must be assessed and defined as **improper conduct** as stated in the *Protected Disclosure Act*.

- C. Such disclosures must be made by a “**natural person**” (eg. Councillor, officer or any other person).

- D. “Disclosures” as defined in the *Protected Disclosure Act* will be managed by IBAC or the Ombudsman, as distinct from grievances about other types of conduct which are lodged with Council.

### Scope

This procedure is premised around the principles of Councillor Conduct as noted in *the Local Government Act* 1989 (“the Act”) and the Councillor’s Code of Conduct.

### Primary principle

It is a primary principle of Councillor Conduct (refer Section 76B of the Act) that, in performing the role of a Councillor, a Councillor must:

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

### General principles

In performing the role of a Councillor (refer Section 76BA of the Act), a Councillor must also:

## Attachment 2 - Proposed Councillors Grievance Resolution Procedure

- a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other persons;
- d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- f) act lawfully and in accordance with the trust placed in him or her as an elected representative; and
- g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

These principles are reflected in the Yarra City Council Values:

**Teamwork // Innovation // Accountability // Integrity // Respect.**

This procedure applies to all Councillors and prescribes the manner of dealing with grievances (i.e. not being “disclosures” under *the Protected Disclosure Act 2012*) directed at or relating to a Councillor/s, whether by a Councillor/s, an Officer/s or any other person/s. The procedure shall take into account, the following principles:

- (a) prior to commencing any formal grievance resolution process, a Councillor/s who are parties to any grievance/s, together with any other aggrieved party/ies, will endeavour to resolve the issues at the local level, in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.
- (b) the grievance/s should be dealt with expeditiously so as to avoid the potential for escalation and to maximise control and resolution of the matter at the local level.
- (c) that satisfactory resolution of any grievance will principally arise from:
  - (i) establishing timely and effective communication between the relevant parties;
  - (ii) identifying what the basis of the concerns which give rise to the grievance/s are, the symptoms, the most likely cause(s);
  - (iii) implementing an agreed or a preferred and realistic action plan;
  - (iv) engaging in a genuine attempt at resolution of the grievance/s raised in accordance with the principles of natural justice, equity and fair treatment for all parties; and
  - (v) the procedure being mutual and that Councillor/s must make a genuine and constructive attempt at resolution of the particular grievance issue.

### Definitions

\*Grievance **means** a complaint against the conduct of a Councillor or Councillors lodged by other Councillor/s; or Council officer/s or Other person/s.

## Attachment 2 - Proposed Councillors Grievance Resolution Procedure

Dispute **means** a grievance which has not been able to be resolved and is referred to an independent body for review.

\*(Not being a “disclosure” under the Protected Disclosure Act 2012).

### Procedure

In response to grievances raised, whether by another Councillor/s or by a Council officer or another person, against a Councillor or Councillors, the stepped procedure below shall be followed.

To assist in management of the grievance, the Councillor raising the matter shall set out the circumstances giving rise to the grievance in writing and provide it to the Mayor in the first instance.

### Step 1:

The Mayor will raise the grievance/s issue/s with the Councillor/s which are subject of the grievance/s (*unless the Mayor is the subject of the grievance, in which case the grievance shall be first discussed with a sub-committee of three Councillors, such sub-Committee to be appointed annually by Council at its statutory meeting when council delegates are appointed*).

This step is premised on the principle that before commencing any formal dispute resolution process, a Councillor/s who is/are party/ies to any grievance, together with any other aggrieved party/ies, will exhaustively endeavour to resolve the issue in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

In this regard, a Councillor/s may obtain assistance (e.g. an independent mediator) in resolving the grievance. This grievance resolution procedure is intended to be used when a Councillor/s and any other aggrieved party/ies, have been unable to resolve a grievance and where the situation is unduly affecting the operation of the Council.

#### **Note:**

*This procedure is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in Council and Committee meetings.*

- a) If the parties are able to achieve a resolution to the grievance/s, whether by means of an apology or any other agreed action, the matter will be deemed to have been addressed and completed.
- b) If after exhaustive effort, the grievance is not able to be resolved, the matter will proceed to Step 2.

## Attachment 2 - Proposed Councillors Grievance Resolution Procedure

### Step 2:

The Councillors will convene an *informal confidential meeting of Councillors only*, to discuss the grievance/s and exhaustively endeavour to resolve the issue/s, in a courteous and respectful manner.

This step is premised on the principle that before commencing any formal dispute resolution process, the Councillor/s who is/are parties, together with any other aggrieved party/ies, to any grievance will endeavour to resolve the issue/s in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

In this regard, a Councillor/s may obtain assistance (e.g. an independent mediator) in resolving the grievance/s issue/s. This grievance resolution procedure is intended to be used when a Councillor/s have been unable to resolve a grievance/s and where the situation is unduly affecting the operation of the Council.

- a) If the parties are able to achieve a resolution to the grievance, whether by means of an apology or other agreed action, the matter will be deemed to have been addressed and completed.
- b) If after exhaustive effort, the grievance is not able to be resolved, the matter will proceed to Step 3.

### Step 3:

The Group Manager, Chief Executive's Office will nominate three external arbiters (at least one of whom will be a member of the MAV panel of appointed arbiters) to assist in the resolution of the grievances. Each of these nominees will be suitably independent and able to carry out the role of arbiter fairly.

The arbiter to be appointed will be the nominee agreed on by all parties to the grievances or, failing agreement, the nominee selected by the Chief Executive Officer.

The arbiter will have responsibility for the oversight of a confidential dispute resolution process which shall include:

- a) Consideration of applications alleging a contravention of the Councillor Code of Conduct by a Councillor;
- b) Making findings in relation to any application alleging a contravention of the Councillor Code of Conduct and the submission of those findings in writing to the Council.

The findings of the arbiter will be presented to a formal Council Meeting (in confidential session), to discuss the grievance/s and exhaustively endeavour to formally resolve on the issue/s.

- a) If Council finds that a Councillor has contravened the Councillor Code of Conduct, the Council may give any or all of the following written directions to the Councillor:
  - a. direct the direct the Councillor to make an apology in a form or manner specified by the Council;
  - b. direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (beginning with the next scheduled meeting);
  - c. direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by the Council, the Councillor be removed from any position where the Councillor represents the Council and to not chair or

## Attachment 2 - Proposed Councillors Grievance Resolution Procedure

attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

- b) If Council determines that the grievance has been resolved, whether by means of an apology or other agreed action, the matter will be deemed to have been addressed and completed.
- c) If after exhaustive effort, the grievance/s is/are not able to be resolved, it will proceed to Step 4. Therefore, a “dispute” will be considered to be declared and Council shall formally resolve that its operation is being impeded because of a dispute between a Councillor/s, and/or any other aggrieved party/ies. Council will further formally resolve to take one of the following options, depending on the nature of the grievance/s issue/s:
- i) to make an application for a Councillor Conduct Panel under Section 81B of the Local Government Act 1989, in respect of a Councillor’s conduct; *and noting that:*
    - *Such an application can also be made by a Councillor, or a group of Councillor;*
    - *Such an application must comply with section 81B of the Act;*
    - *Applications and proceedings made and conducted under this part of the Act must be suspended during the election period for a general election). **OR***
  - ii) to refer the matter to the Local Government Inspectorate; **OR**
  - iii) to refer the matter to the Ombudsman; **OR**
  - iv) to refer the matter to the Independent Broad-based Anti-Corruption Commission (IBAC).

**Note:**

Option (i) would generally apply where the grievance existed between Councillors only; Options (ii) to (iv) would general apply where the grievance involves another party/ies.

### Step 4:

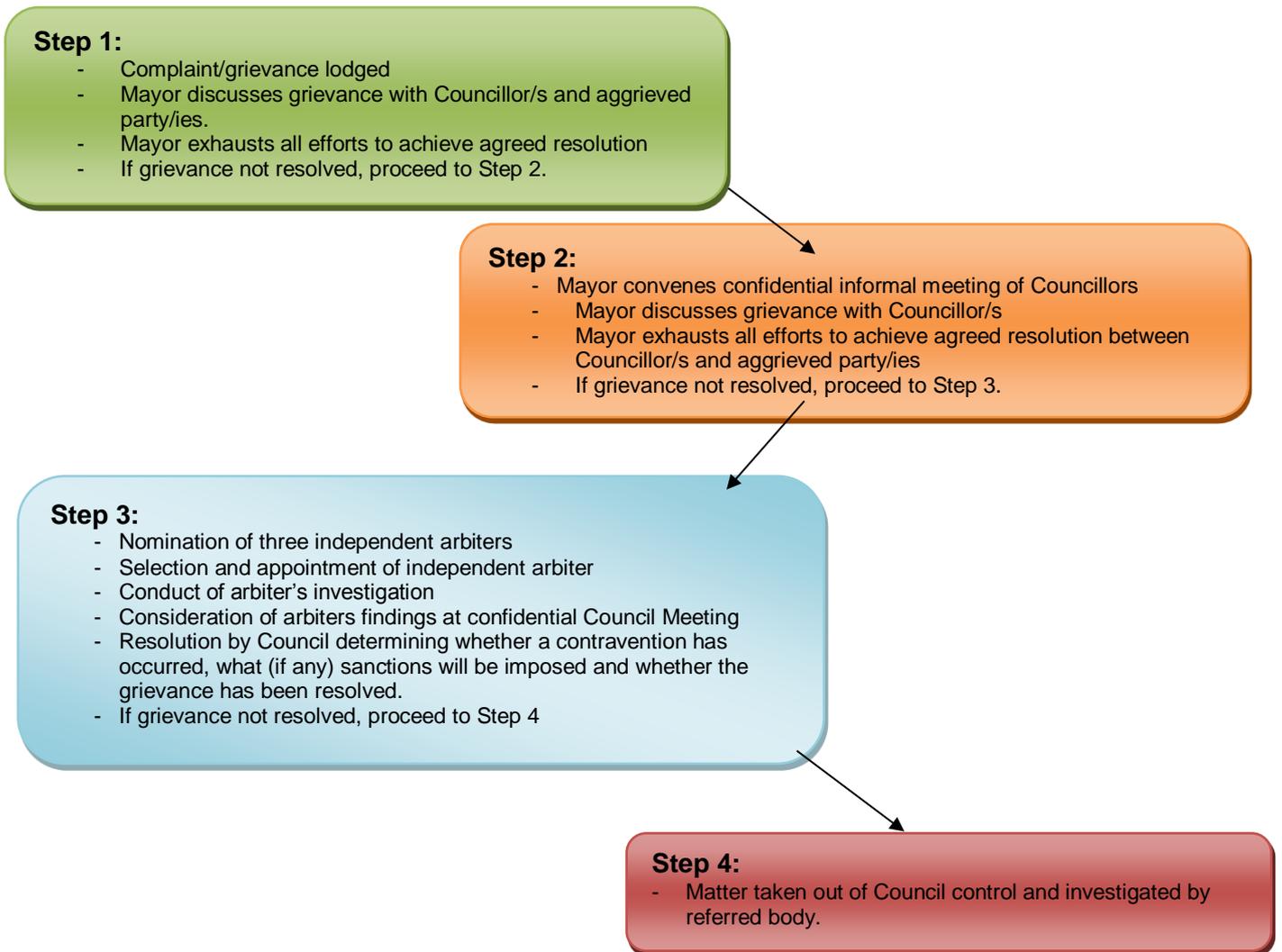
Matter is then taken up by one of the following:

- (i) Councillor Conduct Panel; or
- (ii) The Local Government Inspectorate; or
- (iii) The Ombudsman; or
- (iv) Independent Broad-based Anti-Corruption Commission (IBAC).

**Note:**

*Upon referral to one of the above bodies, the process is effectively out of the control of the Council and Councillors and becomes subject to a more formal action by the respective body. It is clearly more desirable for a Council to exhaust all efforts to address and resolve any grievance/s at the level of Steps 1 to 3.*

## Attachment 2 - Proposed Councillors Grievance Resolution Procedure



### Formal procedure

Throughout the process, details of all the steps taken including the relevant facts, referrals and dates, must be recorded by the parties, in order that the Council can inform any Authority, to which the dispute matter may be referred, comprehensive details of steps taken to that point and of the status of the dispute.

### Consultation

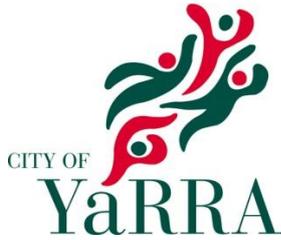
This policy has been prepared in consultation with Councillors and the Executive.

### Related documents and attachments

This Policy should be read in conjunction with:

- a) The *Local Government Act* 1989;
- b) The Councillors Code of Conduct;
- c) The *Protected Disclosure Act* 2012; and
- d) The *Independent Broad-based Anti-corruption Commission Act* 2011.

**Attachment 3 - Councillor Code of Conduct Declaration**



**Councillor Code of Conduct Declaration**

The Yarra City Council Code of Conduct required by section 76C(1) of the Local Government Act 1989 is made up of the following two documents:

- **Councillor Code of Conduct**  
(adopted 17 September 2013, reviewed 17 May 2016)
- **Councillors Grievance Resolution Procedure**  
(adopted 11 February 2013, reviewed 17 May 2016)

In signing below, I declare that I will abide by the Councillor Code of Conduct. This declaration is made in accordance with Section 76C(6A) of the Local Government Act 1989.

Name	Signature	Witness	Date
Cr Geoff Barbour			
Cr Roberto Colanzi			
Cr Misha Coleman			
Cr Jackie Fristacky			
Cr Sam Gaylard			
Cr Simon Huggins			
Cr Stephen Jolly			
Cr Amanda Stone			

**Attachment 3 - Councillor Code of Conduct Declaration**

Cr Phillip Vlahogiannis			
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