



Special Meeting of Council Agenda

**Tuesday 7 February 2017
Commencing at 7.00pm**

**Council Chamber
Functions Centre
45 Princes Highway
Werribee**

**Kelly Grigsby
Chief Executive Officer**

Date: 3 February 2017



AGENDA

SPECIAL MEETING OF COUNCIL TUESDAY 7 FEBRUARY 2017

PLEASE NOTE: This meeting will start at 7.00pm in the Council Chamber, Civic Centre, 45 Princes Highway, Werribee to deal with matters pursuant to Section 83(a) of the Local Government Act 1989

Recording of Council Meeting

Councillors and others present should note that, in accordance with Clause 10(1) of Wyndham's Governance Local Law 2013, this meeting will be recorded for the purposes of producing accurate minutes of the meeting. Some members of the media and public may also record these meetings, so long as they have been permitted to do so by the CEO prior to the meeting, and they abide by the CEO's set of Guidelines available on Council's website.

BUSINESS

"In the spirit of reconciliation, before we begin this meeting, I acknowledge the peoples of the Kulin Nation as the Traditional Owners of the land on which Wyndham is being built. We pay our respects to their elders, past and present."

1. OPENING PRAYER & WELCOME

"We pray for guidance in the Council's decision making to achieve the best outcome for the people of Wyndham."

2. APOLOGIES & REQUESTS FOR LEAVE

3. COUNCILLOR CODE OF CONDUCT 2017

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4. CLOSE OF MEETING

FILE NO: -

ITEM NO: 3.
CHIEF EXECUTIVE OFFICER -
KELLY GRIGSBY**COUNCILLOR CODE OF CONDUCT 2017****Summary**

According to Section 76C of the *Local Government Act 1989* (the Act), a Council must, within four months of a general election call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct. At the meeting, the Council must approve any amendments to the Councillor Code of Conduct determined by the Council to be necessary following a review of the Code of Conduct.

Furthermore, the Act requires that within one month of the Council endorsing the amendments to the Councillor Code of Conduct, Councillors must make a declaration stating that they will abide by the Code of Conduct for the duration of their term.

This report outlines the amendments made to the Councillor Code of Conduct and recommends that the Code be approved according to the requirements outlined in the Act.

Attachments

1. [View](#) Councillor Code of Conduct 2017

Officers' Declaration of Interests

Under Section 80C of the *Local Government Act 1989* (as amended), officers providing advice to Council must disclose any interests, including the type of interest.

Chief Executive Officer - Kelly Grigsby

In providing this advice as the CEO, I have no disclosable interests in this report.

Manager Council and Community Relations - Emily Keogh

In providing this advice as the Manager and Author, I have no disclosable interests in this report.

Key Issues

- The role of the Councillor Code of Conduct
- Summary of amendments to the Councillor Code of Conduct
- Further statutory requirements relating to the Councillor Code of Conduct

RECOMMENDATION

That Council:

1. having reviewed the Code of Conduct, endorse its contents;
2. agree to abide by the Code of Conduct 2017, by signing and dating the declaration at this meeting; and
3. Publish a copy of the signed Code of Conduct for 2017 on Council's website, in accordance with the *Local Government Act 1989* and as a statement of assurance of their accountability to the Code for this Council term, 2016-2020.

FILE NO: -

ITEM NO: 3.
CHIEF EXECUTIVE OFFICER - KELLY
GRIGSBY**COUNCILLOR CODE OF CONDUCT 2017 (cont'd)****1. Background**

The Councillor Code of Conduct is the Code developed in accordance with Section 76C which outlines general conduct principles and dispute resolution processes as well as any other matters deemed appropriate by Council. It is important to note however, that whilst all Victorian Councils are required to endorse and abide by a Councillor Code of Conduct, the Code cannot be inconsistent with the *Local Government Act* 1989 or any other Act. Therefore the Councillor Code of Conduct should be read in the broader context of the provisions outlined in the *Local Government Act* 1989 as there are no powers that can be introduced via a Code of Conduct that aren't already contained in the Act.

The purpose of the Councillor Code of Conduct is to provide Councillors with a clear point of reference for all matters relating to their conduct as a Councillor and to provide clarity to the community on the role and expectations for elected representatives.

The importance of the Councillor Code of Conduct is reinforced by the need for Councillors to endorse the Code at a Special Meeting of Council and sign a document that states their declaration to abide by the Code.

2. Discussion*Review of Councillor Code of Conduct*

When first elected in 2016, the new team of Wyndham Councillors swore an oath to abide by the Councillor Code of Conduct. In keeping with statutory requirements, the Councillors have participated in a formal review of that Code to ensure that it meets the requirements of Council. This has involved a workshop where each section was discussed with opportunity for each Councillor to provide direct input into what should be retained or changed. A draft Code of Conduct was circulated to Councillors in mid-January 2017 and a further review/discussion took place in late January which provided Councillors with the opportunity to make further refinements.

The involvement from Councillors in the review process is viewed as being critical to the good governance of the Council given that the Councillor Code of Conduct provides the blue print for how Councillors should perform their role to meet statutory and community expectations.

Overview of Key Changes

- Re-written to provide a user friendly guide that provides clarity around key sections;
- Inclusion of the 'Deputy Mayor' role in the Roles and Responsibilities section to emphasise that the role is a non-statutory role and duties are at the discretion of the Mayor;
- Inclusion of general conduct principles that will apply across all areas of the Councillor role;
- Emphasis on the 'Civic Representation' role which outlines key protocols and leadership responsibilities;
- Expansion of 'Communication Protocols' to include all forms of communication such as email and social media rather than just mainstream/print media;
- Refinement of the dispute resolution process.

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GRIGSBY**COUNCILLOR CODE OF CONDUCT 2017 (cont'd)**

Overall, Councillors were keen to see greater emphasis on accountability and transparency. The Code of Conduct has therefore been adjusted to provide greater clarity about where a breach of the Code occurs and the process for dealing with that breach, albeit that sanctions cannot occur that are beyond the scope of the powers provided within the Local Government Act 1989.

3. City Plan

5.1 Good Governance - To maintain community confidence in the integrity and efficiency of the organisation. To continue to ensure there is a focus and commitment to transparency and accountability in Council decision making processes.

4. Community Consultation

Formal community consultation is not required as part of the review of the Councillor Code of Conduct. Whilst the views of the community are important in terms of how they would like to see their Council function, the statutory process requires input from the Councillors - who represent the community and will be required to abide by the Code. It is not practice within the sector for community consultation to occur as part of the review of a Councillor Code of Conduct.

5. Communication Strategy

According to Section 76C of the Act, Councillors must be provided with a copy of their Code of conduct. The Councillor Code of Conduct must also be published on the Council's website and intranet site and must be available for viewing at Council offices if requested.



Councillor Code of Conduct 2017

Adopted: February 2017



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Purpose and Definition

Purpose

The Local Government Act 1989 (the Act) sets out the standards of conduct for Councillors. Section 76C of the Act requires councils to adopt a Councillor Code of Conduct that includes Councillor conduct principles. A Councillor Code of Conduct may also include any other matters relating to the conduct of Councillors the Council considers appropriate.

While the Act prescribes that Council develop a code of conduct, in all instances, this Code of Conduct is subordinate to all other legislation relating to local government and Councillors must not act inconsistently with any other Act or regulation.

This Code of Conduct has been adopted to assist Councillors in meeting their responsibilities under the Act, by setting down the standards of conduct for Councillors in Wyndham City so as to ensure that the conduct of Councillors is legal, ethical and at all times appropriate and in-keeping with representing the best interests of the people of Wyndham. This Code also stipulates the processes to be followed, including for the management of internal disputes and, as a last resort, the use of sanctions.

As the performance of Council and the wellbeing of the Wyndham community are directly affected by the conduct of the City's elected Councillors, the community is entitled to expect that:

- the business of Council is conducted with efficiency, impartiality, transparency and integrity;
- Councillors obey the spirit and letter of the law in particular, the provisions of relevant statutes, regulations, local laws and instruments; and
- responsibility to the community is always to be given absolute priority over the private interests of Councillors.

This Code is adopted by Council as required by the Act and is binding on all Councillors. In accordance with section 63 of the Act, a person elected to be a Councillor is not capable of acting as a Councillor until the person has taken the Oath of Office specified in the Act and read this Code and made a declaration stating that they will abide by the Code. The Councillor Code of Conduct does not apply to Council officers, who are bound by an Employees' Code of Conduct, which is also prescribed by the Act.



Definitions

Throughout this Code, there are key terms that are defined in the Act. While this Code does not override the provisions in the Act, standard definitions are helpful to provide guidance to Councillors:

Arbiter is an independent party appointed by Council to consider alleged violations of this Code by a Councillor and someone who is able to make a final determination on such violations.

Bullying by a Councillor means the Councillor repeatedly behaves unreasonably towards another person and that behaviour creates a risk to the health and safety of that person.

Chief Municipal Inspector (CMI) is the head of the Local Government Investigations and Compliance Inspectorate.

Principal Conduct Officer is the person appointed by the CEO to be the Principal Conduct Officer for the Council under section 81Y of the Act. At Wyndham City this role is performed by the Manager Corporate Affairs.

Councillor Conduct Panel means a panel of two people selected by the Principal Councillor Conduct Registrar to hear applications of misconduct and serious misconduct under section 81V of the Act.

Local community includes people who live in the municipal district and people and bodies who are ratepayers and people and bodies who conduct activities or have an interest in the municipal district.

Misconduct by a Councillor means—

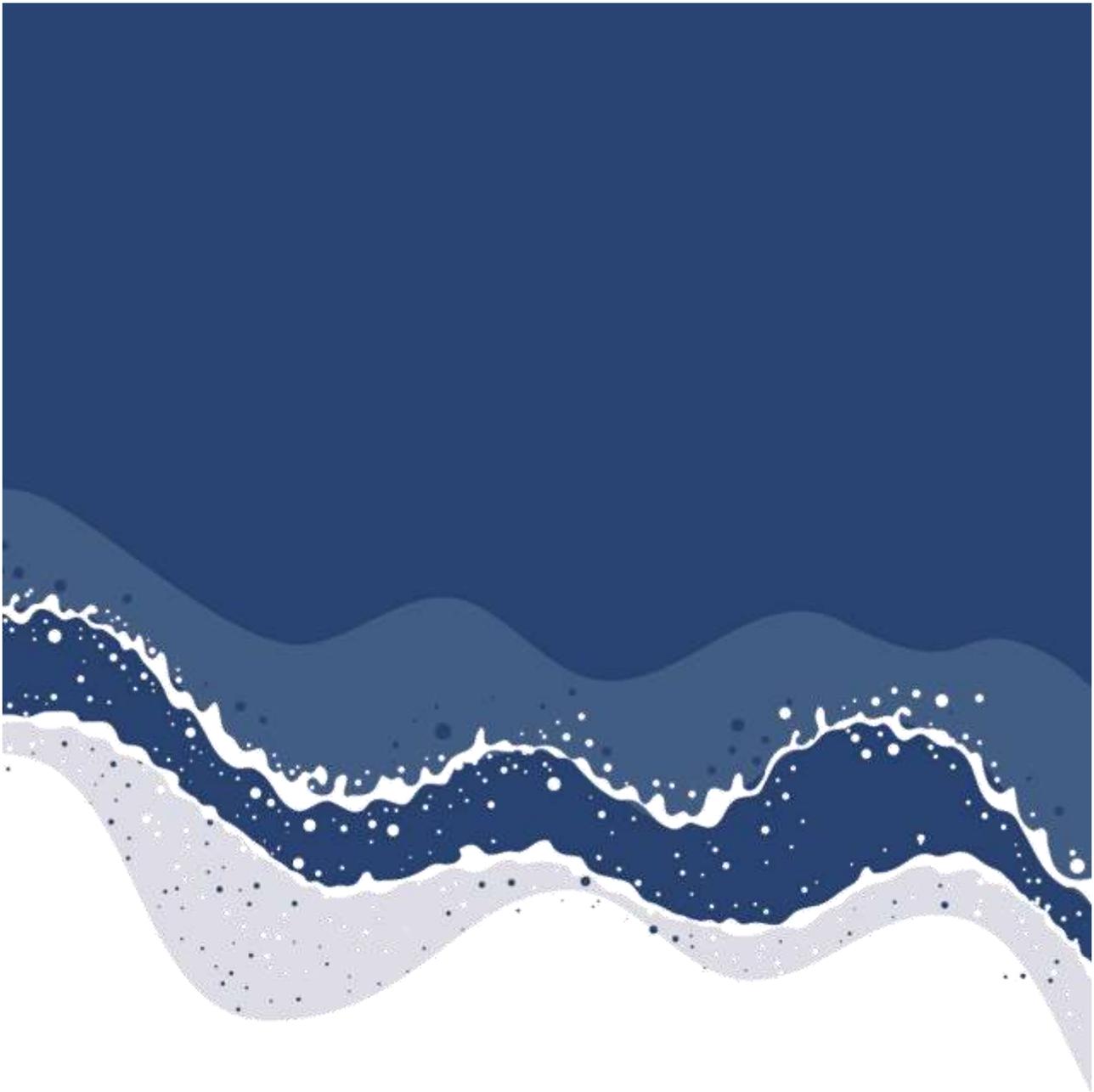
- (a) failure by a Councillor to comply with the Council's internal resolution procedure, or
- (b) failure by a Councillor to comply with a written direction given by the Council under section 81AB, or
- (c) repeated contraventions of the Councillor conduct principles.

Gross misconduct by a Councillor means behaviour that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor.

Serious misconduct by a Councillor means—

- (a) The failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor, or
- (b) The failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give, or
- (c) The failure of a Councillor to comply with a direction of a Councillor Conduct Panel, or

- (d) Continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel, or
- (e) Bullying of another Councillor or member of Council staff by a Councillor, or
- (f) Conduct by a Councillor in respect of a member of Council staff in contravention of section 76E, or
- (g) The release of confidential information by a Councillor in contravention of section 77 of the Act.



Section 1: Roles and Responsibilities



1. Roles and Responsibilities

1.1 The Council.

The primary objective of Council, as set by section 3C(1) of the Act, is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.

The role of Council, as set out in section 3D(2) of the Act, is:

- a) acting as a representative government by taking into account the diverse needs of the local community in decision making;
- b) providing leadership by establishing strategic objectives and monitoring their achievement;
- c) maintaining the viability of Council by ensuring that resources are managed in a responsible and accountable manner;
- d) advocating for the interests of the local community to other communities and governments;
- e) acting as a responsible partner in government by taking into account the needs of other communities; and
- f) fostering community cohesion and encouraging active participation in civic life.

1.2 Councillors

Wyndham City is governed by 11 democratically elected Councillors who collectively constitute the Council. Section 65(1) of the Act states that the role of a Councillor is:

- to participate in the decision-making of the Council;
- to represent the local community in that decision-making; and
- 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.

Section 65(2) of the Act states that in performing the role of a Councillor, a Councillor must:

- a) consider the diversity of interests and needs of the local community;
- b) observe principles of good governance and act with integrity;
- c) provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts;
- d) participate in the responsible allocation of the resources of Council through the annual budget; and
- e) facilitate effective communication between the Council and the community.

The role of a Councillor is to act for the community and advocate on their behalf. A Councillor plays a key role in facilitating communication with the community and encouraging engagement with the activities of Council. Councillors collectively constitute the 'Council'. As an individual, a Councillor cannot direct or bind the organisation to any actions or decisions.



In their decision-making roles, Councillors will consider the diversity of the community, the strategic direction set by the Council, and responsible resource allocation, demonstrating civic leadership and good governance. Councillors will advocate for the needs of their constituents, but will make all decisions to benefit, and be in the best long-term interests of, the whole of Wyndham City.

The role of Councillor must also be considered in the broader context of section 65(3) of the Act that states that the role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under section 94A of the Act.

1.3 The Mayor

Section 73AA of the Act states that the functions of the Mayor include:

- a) providing guidance to Councillors about what is expected of a Councillor including the role of a Councillor under section 65, and the observation of the Councillor conduct principles and the Councillor Code of Conduct;
- b) acting as the principal spokesperson for the Council;
- c) supporting good working relations between Councillors; and
- d) carrying out the civic and ceremonial duties of the office of Mayor.

While having no additional statutory power, other than as specified in the Act, the following duties are carried out by the Mayor by convention:

- Being a leader and advocate for the community;
- Encouraging participation of Councillors in the decision-making process;
- Maintaining a close working relationship with the Chief Executive Officer;
- Leading and providing guidance to Councillors in relation to their role;
- Sustaining partnerships and advocating for Council's interests, and pursuing opportunities for the City in line with adopted policies, strategies and plans; and
- Acting as a representative of the City where required, particularly in areas relating to portfolios.

1.4 The Deputy Mayor

Whilst the role of a Deputy Mayor is not recognised under the Act, Council may, by resolution, create the role of a Deputy Mayor. The purpose of this role would be to support the Mayor in the fulfilment of his or her duties at the discretion of the Mayor.

1.5 Councillor Portfolio Holders

Councillors also perform the role of Councillor Portfolio Holders, in line with the Council Advisory Committee Framework adopted in 2013. The role of a Portfolio Holder includes:

- To Act as Chair to their nominated Portfolio Committee;
- Present Delegates Reports of these Committees to Ordinary Council Meetings; and
- Liaise with the relevant Director/s and/or Manager to ensure that each of these Committees retains a focus on their adopted work-plan which should be closely linked with priorities included in the City Plan.

While Councillor Portfolio Holders are unable to allocate resources (other than by resolution of Council), or determine policy as individual Councillors, the Councillor Portfolio system will provide the opportunity for Councillors to:

- Become more engaged at the policy end of Council business;
- Take on advocacy and leadership roles in accordance with Council's key strategic directions; and
- Engage with the community in relation to priority areas for Council.

In some circumstances the Councillor Portfolio Holder may preside at Council or public events where this has been pre-arranged, requested by external parties and with the agreement of the Mayor.

In addition, the Councillor Portfolio Holder may also act as a Media Spokesperson (as agreed with the Mayor and as facilitated by the Communications Unit). This will generally be on matters that are included in the work-plan of the Committees, and this is subject to whether developments and issues involve major whole-of-Council implications which would require the Mayor to be spokesperson.

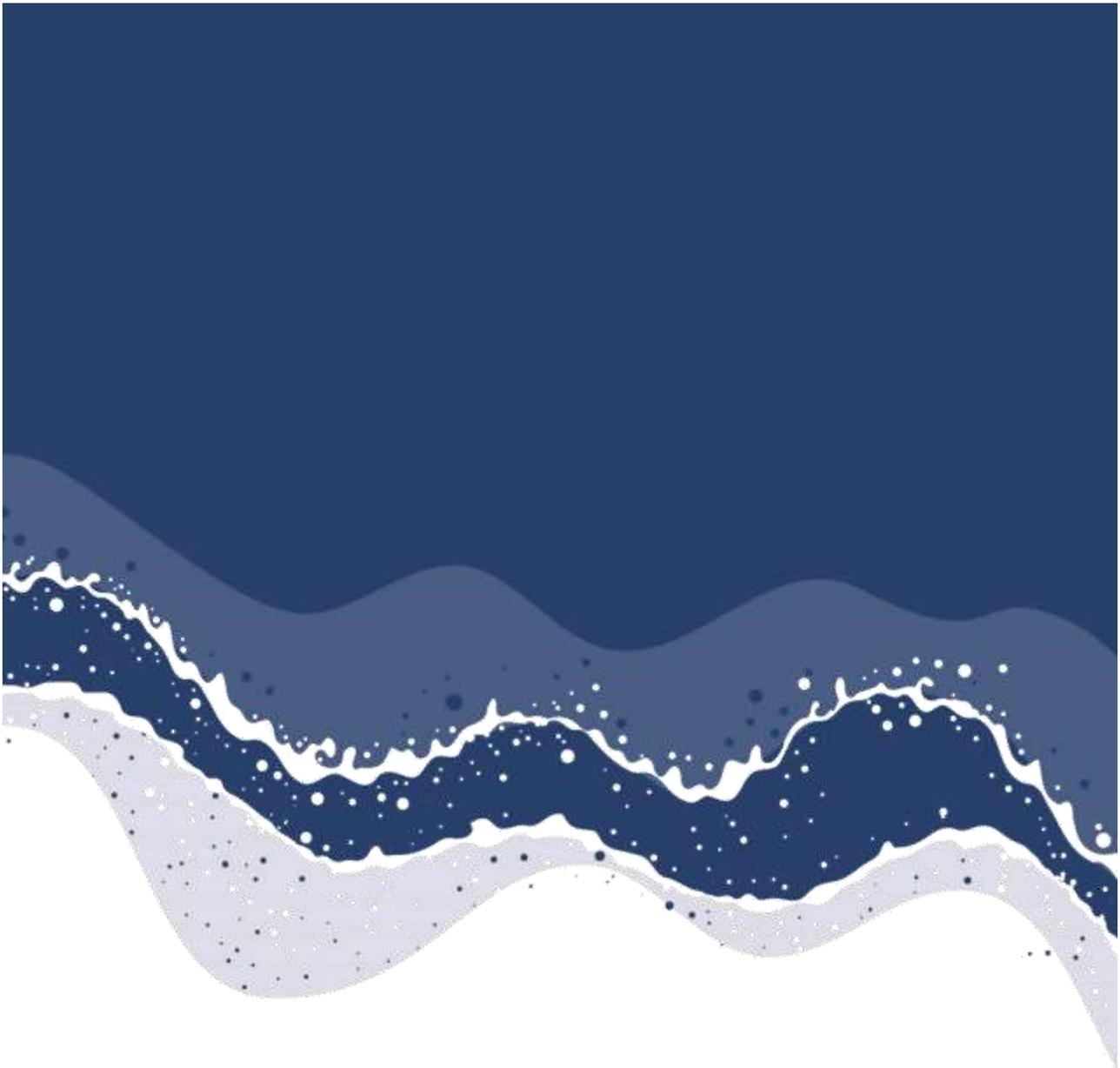
1.6 Function of the CEO and Councillor Interaction with Staff

The Chief Executive Officer is the head of the organisation. Under section 94A of the Act, the CEO is responsible for the operation of the organisation, all staffing related matters, the implementation of Council policy and decisions, operational policy and procedures, service delivery and providing professional advice to Council. The Chief Executive Officer will provide professional, relevant and timely information to the Council, and maintain a close working relationship that supports the Mayor.

This Code supports the aforementioned legislated powers of the CEO to manage all staffing matters and Councillors will at all times:

- Respect the role of Council staff and treat them in a way that builds mutual respect (as also required by the Council Staff Code of Conduct);
- Observe the *Councillor-Staff Interaction and Email Policy* and other relevant protocols and policies. These protocols and policies aim to provide clear and effective communication guidelines between Councillors and Council staff;
- Respect and support the role of the CEO to provide Council with timely and reliable advice about its legal obligations under the Act or any other Act;

- 
- Understand that there is no capacity to individually direct members of staff to carry out particular functions, or exercise powers or discretions in any particular way; and
 - Refrain from using positions as Councillors to improperly influence members of staff in their duties or functions (including the preparation of Council reports or recommendations to Council) or seek to gain an advantage for themselves or others.



Section 2: Councillor Conduct Principles





2. Councillor Conduct

Councillors acknowledge that Wyndham City's Vision, Mission and Values (see below) provide important context and guidance in relation to ethical decision-making and Councillor behaviour.

<p style="text-align: center;"><u>Wyndham's Vision</u> Diverse people, one community, our future.</p> <p style="text-align: center;"><u>Wyndham's Mission</u> We strive to serve the best interests of the Wyndham community by providing quality services; managing growth; and supporting residents to lead healthy, safe, vibrant and productive lives, while protecting our local environment.</p> <p style="text-align: center;"><u>Wyndham's Values</u></p> <p style="text-align: center;">Community Focus Working for and with the community in the best interests of Wyndham.</p> <p style="text-align: center;">Integrity The consistent commitment to apply moral and ethical behaviour, encompassing honesty, openness and respect.</p> <p style="text-align: center;">Respect Being conscious and aware of others values, beliefs and opinions, appreciating that they could be different from our own and treating them accordingly.</p> <p style="text-align: center;">Commitment To consistently adhere to our core values through our commitment to achieving our vision and mission.</p> <p style="text-align: center;">Leadership Creating an environment that empowers individuals, the organisation and the community to achieve our vision and mission.</p> <p style="text-align: center;">Teamwork The ability of a group of individuals to work collaboratively and collegially to achieve agreed outcomes by the team.</p>

2.1 Principles for Councillor Conduct

2.1.1 Honesty

Councillors have a duty to act honestly. This involves:

- making decisions solely in the public interest;
- avoiding statements (whether oral or in writing) or actions that will or are likely to mislead or deceive; and
- acting lawfully and in accordance with the trust placed in them as elected representatives.

2.1.2 Integrity

Councillors must:

- act with integrity;
- impartially exercise their responsibilities in the interests of the Wyndham community;
- not place themselves under any financial or other obligation to any individual, interest group or organisation that might reasonably be thought to influence them in the performance of their duties as Councillor;
- avoid conflicts between their public duties as a Councillor and their personal interests and obligations; and
- declare any private interests or conflicts of interest as required by the Act relating to their public duties and take steps to resolve any conflicts arising in such a way that protects the public interest; and
- endeavour to ensure that public resources are used prudently and solely in the public interest.

2.1.3 Objectivity

Councillors are accountable to the public for their decisions and actions. Decisions must be made solely on merit and in accordance with their statutory obligations when carrying out Council business. Importantly, Councillors must pay particular attention to section 3D(a) of the Act that requires Councillors to take into consideration the diverse needs of the local community in decision making.

2.1.4 Diligence

Councillors must:

- exercise reasonable care and diligence with regard to ensuring they have the information required to make an informed decision. This includes attending Briefings and reading and familiarising themselves with papers for consideration at Council Meetings and Assemblies of Councillors;
- take all reasonable steps to ensure they are being kept up to date with Council related matters through regular monitoring of the Councillor Dashboard and their Wyndham Council email account; and
- ensure that they are responsive to communication from members of the local community as well as from the Council organisation to enable the efficient and effective operation of Council business.

2.1.5 Respect

Councillors must:

- treat each other and all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other persons;
- treat all persons fairly and with dignity and in a way which does not cause offence;
- be punctual and responsive in recognition of the needs of others;

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- as a member of Council, respect the decision making processes of Council which are based on decisions of the majority of Councillors.

2.1.5 Community Engagement

As representatives of the community, Councillors must listen to community views, be responsive to them and adequately communicate the positions and decisions of Council. Councillors should also ensure that they participate in formal and informal community engagement initiatives to assist them in understanding the needs of the community. The statutory obligation to represent the diverse views of the community reflects the need for Councillors to seek to understand community sentiment beyond existing networks or their own personal views.

There may be times when a Councillor, as an individual, disagrees with a majority decision of Council and wants the community to know that. Although Councillors are entitled to present their own views, in doing so, each Councillor should nevertheless acknowledge that:

- as a member of Council, they respect the decision making process of Council which is based on a decision by the majority of Councillors; and
- the opinion expressed is the personal view of that particular Councillor and not an endorsed position of Council. It is the responsibility of the individual Councillor to ensure that the community could not be confused or misled as a result of their communication. This extends to formal and informal communication (i.e. on social media, the print media or in dialogue/email to residents.)

2.1.6 Teamwork

Councillors should work constructively together to contribute towards the Council group working its way towards decisions. Conduct that negatively impacts on the collective group's ability to receive information and share opinions and ideas is not in-keeping with Council values and the spirit of this Code of Conduct.

Councillors' decisions are made in properly constituted Council Meetings. In discussions leading up to such decisions, for example, in Assemblies of Councillors not open to the public, Councillors may explore a range of positions and express a range of views however they are not permitted to engage in debate or make decisions. Those views must not be reported outside those meetings. To do so would discourage full discussion of developing issues and the ability for Councillors to establish their views as questions are answered and information provided. Councillors' accountability is based on their vote and statements in support of their vote at the time that the matter is decided in the properly constituted Council Meeting.

Councillors should feel supported by their colleagues and the organisation when exploring issues and ultimately making a decision whether it is in the minority or majority view.

2.1.7 Leadership

Councillors have a duty to promote and support Councillor Conduct principles through leading by example. Councillors should at all times demonstrate leadership for both the community and Council through conducting themselves in a manner that best represents Wyndham City and instils confidence in the office of Council. Conduct that denigrates confidence in Council and the organisation is strongly discouraged.

2.1.8 Failure to Comply with Conduct Principles

Councillors who display conduct that is in contravention of the principles outlined above will be considered in breach of this Code of Conduct. The process for handling allegations of a possible breach or other complaints is found in Section 5 of this Code.

2.2 Statutory Conduct Requirements

In addition to the general conduct principles outlined above, there are four key conduct matters governed by *the Act*, where a breach can result in significant consequences:

2.2.1 Misuse of Position

According to s76 of the Act, Councillors will not use their position, or knowledge gained in their role, to disadvantage Council or someone else, or advantage themselves or someone else.

Therefore, Councillors must not misuse their position:

- To gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; to cause, or attempt to cause detriment to the Council or another person;
- By directing or improperly influencing a Council officer (or seeking to);
- By exercising or performing, or purporting to, a power, duty or function that they are not authorised to perform;
- By using public funds or resources in a manner that is improper or unauthorised;
- By failing to disclose a conflict of interest;
- By making improper use of information acquired as a Councillor; or
- By disclosing information that is confidential information as designated by the CEO.

2.2.2 Improper Direction

Councillors will not use their position to direct or influence Council officers in any of their power, duties or functions. Under Section 76E of the Act, a Councillor must not direct, or seek to direct Council officers:

- In the exercise of a delegated power, duty or function;
- In the exercise of a power, duty or function as an authorised officer;
- In the exercise of a power, duty or function the officers exercises under the Act or any other Act; or
- In relation to advice provided to the Council including advice contained in a report to Council.

2.2.3 Breach of Confidentiality

Councillors must observe the confidentiality of the information they receive in the course of performing their duties and responsibilities, and must not convey (electronically, verbally, or in writing) information they know, or should reasonably know, is confidential.



Information is confidential as provided under section 77 of the Act, where the information:

- Was provided to Council in relation to a matter considered in a meeting closed to members of the public in accordance with section 89(2) of the Act, and Council has not passed a resolution that the information is not confidential; or
- Has been designated as confidential information by a resolution of Council which specifies the relevant grounds applying under section 89(2) of the Act and Council has not passed a resolution that the information is not confidential; or
- Has been designated in writing as confidential information by the Chief Executive Officer specifying the ground(s) applying under section 89(2) of the Act and Council has not passed a resolution that the information is not confidential.

If Councillors are uncertain whether something is 'confidential', Councillors should presume that it is and seek advice prior to its release.

2.2.4 Disclosure of Interests and Conflicts of Interest

Councillors must be aware and mindful of actual, and possible perceptions of, conflicts of interest. For the purposes of this Code, 'conflict of interest' has the meaning specified in the Act. The decision about whether a conflict of interest exists can only rest with the individual Councillor, therefore Councillors are responsible for ensuring they familiarise themselves with issues and meeting agendas to determine whether a conflict of interest exists.

The Council organisation can provide general advice to Councillors around conflicts of interest however Councillors must make their own determination about their particular circumstances and withdraw from the decision-making process if a conflict of interest exists.

Upon recognising that a conflict of interest exists, Councillors should advise the Chair at the commencement of the meeting as well as specifying the nature of the conflict of interest whilst also disclosing the interest immediately prior to the item being considered.

Councillors must comply with all the provisions of sections 77A-79B and 80A of the Act in regard to conflicts of interest, in particular:

- If a Councillor has a conflict of interest in a matter which is to be, or is likely to be, considered or discussed at a meeting of the Council or an Assembly of Councillors, the Councillor must **if he or she intends to be present at the meeting**, disclose the conflict of interest in accordance with section 79(2) of the Act, by either:
 - advising Council at the meeting of the details required under section 79(2)(b) and (c) of the Act before the matter is considered at the meeting; or
 - advising the Chief Executive Officer in writing of the details required under section 79(2)(d) of the Act in advance of the meeting.
- A Councillor who has a conflict of interest in a matter which is to be, or is likely to be, considered or discussed at a meeting of the Council or an Assembly of Councillors and **intends on not being present for the consideration of the matter must:**
 - classify the type of interest that has given rise to the conflict as either—
 - (i) a direct interest; or
 - (ii) an indirect interest, specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, or 78D; and

- describe the nature of the interest.

While the matter in respect of which a Councillor has disclosed a conflict of interest is being considered or voted on, the Councillor must leave the room and remain outside the room and any gallery or other area in view or hearing of the room until the matter is completed.

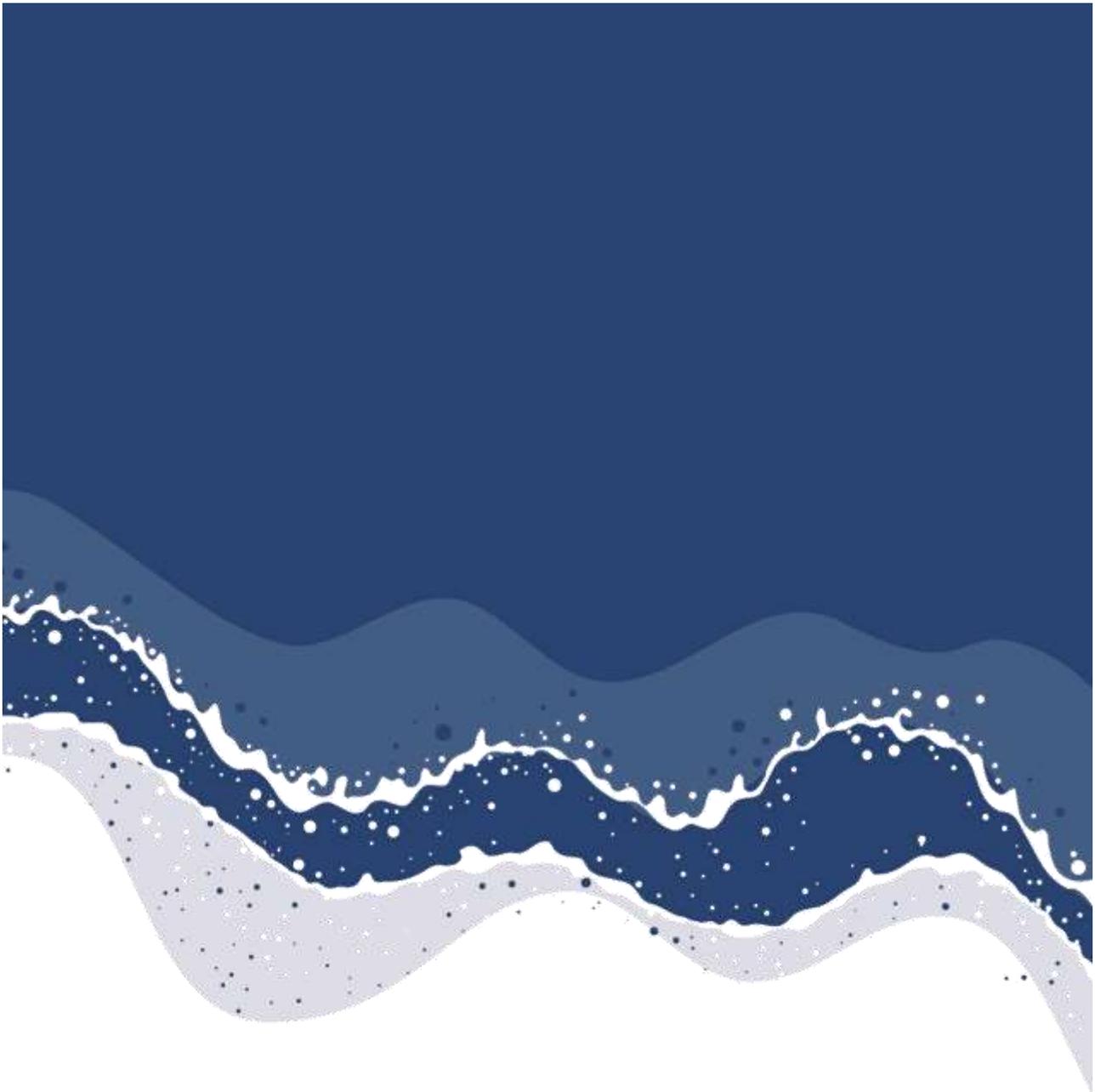
It is important to note that being absent from an Ordinary Council Meeting or Assembly of Councillors does not exempt a Councillor from disclosing a conflict of interest in relation to a specific item.

The following provides a guide in relation to the determination of Conflicts of Interest:

Type of Interest		Detail	
Direct Interest (s.77B)		Reasonably likely that your benefits, obligations, opportunities or circumstances will be directly altered	
		Reasonably likely to receive a direct benefit or loss measurable in financial terms	
		Person has, or the person together with a member/s of their family have a controlling interest in a company or other body that has a direct interest	
Indirect Interest	Close Association (s.78)	A member of your family has a direct interest or an indirect interest	
		A relative has a direct interest	
		A member of your household has a direct interest	
	Indirect Financial Interest (s.78A)	Likely to receive a benefit or incur a loss, measurable in money, resulting from a change to another person's interests	
		Holding shares in a company or body that has a direct interest (subject to threshold - \$10,000 value of shares if company shares issued exceeds \$10 million)	
		When a person with a direct interest owes money to you	
	Conflict of Duty (s.78B)	Manager or member of the governing body of an organisation with a direct interest	
		Partner, consultant, contractor, agent or employee of person, company or body with a direct interest	
		Trustee for a person with a direct interest	
		Past dealings in relation to the matter as duty to another person or body	
			Election donations valued at or above \$500 in previous 5 years



	Applicable Gift (s.78C)	Other Gifts valued at or above \$500 over a 5 year period excluding reasonable hospitality received when attending in an official capacity and a gift received 12 months before becoming a Councillor.
	Party to the Matter (s.78D)	Initiated or became party to civil proceedings in relation to the matter
	Impact on Residential Amenity (s.78E)	Reasonably likely that your residential amenity will be directly altered
Conflicting Personal Interest	Conflicting with Public Duty (s.79B)	Personal interest is in conflict with councillor's public duty in relation to the matter. Application needs to be made to the Council/Special Committee to be exempted from voting. Council/Special Committee cannot unreasonably withhold its consent.



Section 3: Civic Representation





3.1 Communication Protocols

Councillors play a key role in communicating the decisions of Council as well as promoting services and projects that will be of interest to the broader community. Communication with the public can occur in a variety of formats, from informal meetings with residents to sharing information via social media and making formal comments to the press. When communicating Council related information, Councillors must:

- Take all possible steps (such as seeking briefings or updates from Officers) to ensure that they are communicating accurate and up to date information that is not bound by confidentiality;
- Recognise that in their Council leadership role they have an obligation to accurately and responsibly communicate about Council related issues with a view to minimising misinformation or content that could mislead or confuse the public;
- Communicate with all persons in a clear and respectful manner;
- Recognise that the Mayor is the official spokesperson for Council and that Councillors can only make comment on behalf of Council in an official capacity if carried out in consultation (where practicable) with Council's Communications Unit or the Mayor/CEO (as per Council's Media Policy);
- Ensure that when expressing a personal view (that may be contrary to an endorsed Council position), it is made clear that the individual comment does not represent the position of Council as a whole. Whilst it is recognised that Councillors are entitled to express personal views, comments should not be made that could cause reputational damage or would likely cause embarrassment to Council, the organisation, staff members or another Councillor; and
- Recognise that social media is a form of publication and therefore communication protocols outlined above are applicable. It is the responsibility of Councillors to ensure that their social media profiles are managed to avoid confusion between personal/public life (for example, Councillors should avoid commenting on Council related issues from their personal profiles.)

Councillors who fail to act in accordance with the protocols outlined above will be considered in breach of this Code of Conduct. The process for handling allegations of a possible breach or other complaints is found in Section 5 of this Code.

3.2 Councillor Representative Role

It is the role of Councillors to represent Wyndham City at events or in meetings with community groups, external organisations, government departments and Members of Parliament. Whilst Councillors play a key role in acting as a representative of Council, it is vital that Councillors do not act independently or initiate or attend meetings without:

- Liaising with the relevant Director or CEO to ascertain the current status of matters relating to the group, organisation or Government representative; and

- Liaising with the relevant Director/CEO/ Manager Corporate Affairs to determine whether a Council officer should also attend the meeting or event.

To ensure that Wyndham Council's interests are being protected and Councillors are supported in their role, it is recommended that an Officer attend meetings with groups, organisations or government representatives when discussing matters that in any way relate to Council operations. If during a meeting it becomes apparent that a Council/operational issue is being discussed, the CEO/Mayor should be advised.

3.3 Gifts, Benefits or Hospitality

Councillors acknowledge that the *Gifts, Benefits and Hospitality Policy* guides the acceptance, refusal and disclosure of gifts, benefits or hospitality, and this is incorporated in this Code.

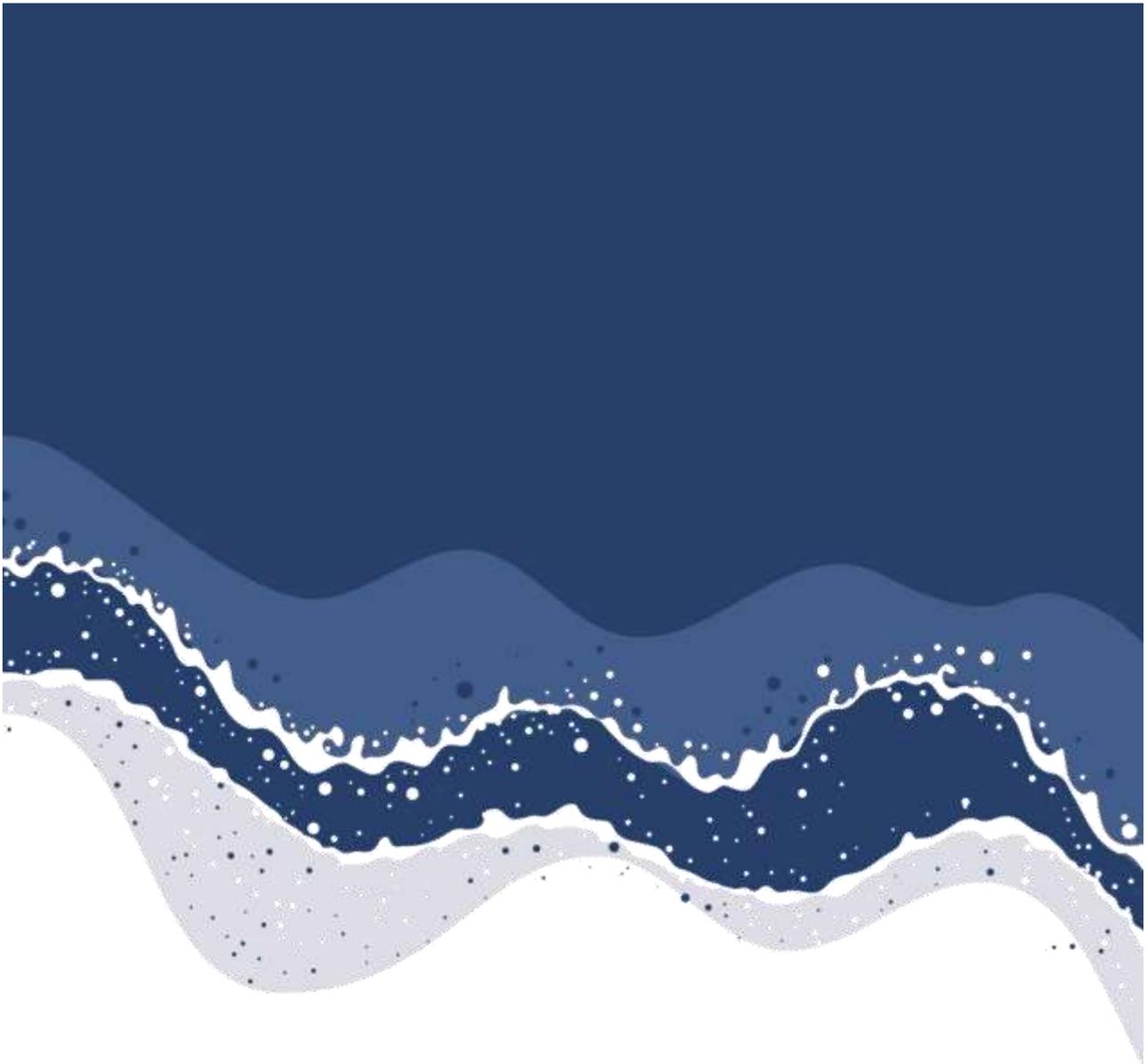
This Policy aims to ensure that:

- Council activities and decisions are not influenced, or perceived to be influenced, by the receipt of goods, benefits or hospitality,
- Decision-making by Councillors and Council staff is impartial and promotes and maintains public confidence, and
- Gifts that are accepted or declined are disclosed and managed in a fully transparent manner.

Where there is doubt as to the legal, ethical or reputational implications arising from the receipt and disclosure of any gift, benefit or hospitality it is Council Policy that Councillors and Council staff should not accept the gift, benefit or hospitality.

It is however acknowledged that Councillors and Council staff will attend functions and events where there is clear value to the work of the Council (e.g. building relationships with community groups where it relates directly to their roles and duties). As these functions and events are critical for Council to deliver results for the Council and community, it is acceptable to accept hospitality up to the nominal value of \$50, so long as this does not advantage the giver. Where this hospitality is above \$50, it will be declared and paid for by the Council. When hospitality is paid for by Council for an individual Councillor, the expense will be recorded as a Councillor expense as per the *Councillor Expenses and Entitlements Policy*. Councillors may also choose to pay for this hospitality themselves and the hospitality would not be recorded as a Councillor expense, which in some circumstances could be recorded as a Councillor (this would need to be highlighted to the Councillor in advance of the hospitality being accepted.)

There are also many occasions when the CEO delegates the Mayor and/or specific Councillors or Council staff to attend an event or meeting to perform an official duty which has been pre-arranged and agreed following the request of an external party. In these instances, the CEO or their delegate will request that an invoice be sent to and paid by Council.



Section 4: Information and Resources



4.1 Use of Council provided resources

The Councillor Expenses and Entitlements Policy is reviewed every year, and is incorporated in this Code. This Policy details the facilities and support that are to be provided to Councillors to assist in carrying out their roles.

Councillors will ensure resources are used effectively and economically, and only in the course of official duties. Councillors should also understand the limitations required during Election Periods to ensure there is no reality or perception that Council resources are used for electoral purposes, as per the *Election Period Policy*, which is a requirement under section 93B of Act and is incorporated in this Code.

Councillors agree that, while in their control, Council assets will be maintained, properly secured and not misused.

4.2 Access to Information

Councillors will be provided with relevant information to help them make informed decisions and fulfil their duties. This information may be publicly available, or in some instances, restricted or confidential. Councillors will act in accordance with confidentiality requirements outlined in s77 of the Act including when requesting a briefing from Council officers or requesting information on Council files.

A Councillor will only request operational or confidential information in order to gain a broader understanding of an issue that falls under their role and responsibilities or if it relates to a matter currently before - or expected to come before – Council for a decision. Requested information will be provided to all Councillors, unless the Chief Executive Officer determines that providing the information is likely to be a breach of privacy, prejudice Council or any person, would undermine legal privilege or would be otherwise inappropriate. The Chief Executive Officer will provide all Councillors with information on any declined requests for information, including the reason the information was not able to be provided.

4.2 Councillor Service Requests or Enquiries

A Councillor request for service is a request made by a Councillor on their own behalf, or on behalf of a community member.

In its Good Practice Guide, the Victorian Ombudsman advises, *"To ensure transparency and fairness, complaints received by Councillors should be treated the same way as ones made to Council officers... [A Councillor] must not seek to direct or influence the complaint handling process."*



Therefore, the same service standards will apply to a Councillor request, as a request for service from a community member.

Where Councillors are requesting information to assist in fulfilling their Council duties, Councillors are encouraged to submit requests via the CR Support email address (crsupport@wyndham.vic.gov.au) to enable recording and tracking of requests.

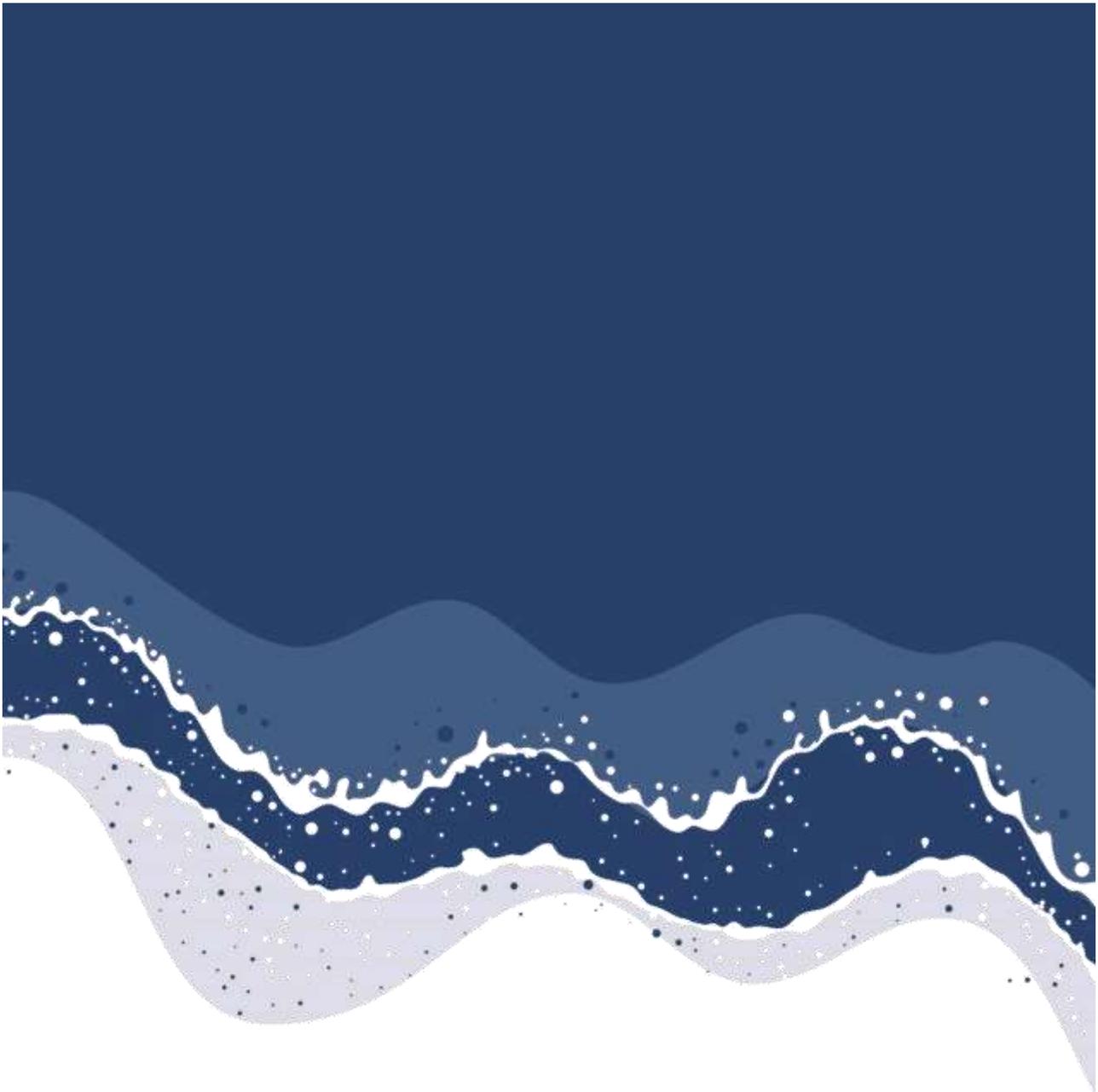
4.3 Council evaluating its governance performance

Councillors acknowledge that the effectiveness of governance needs to be measured. This will enable Councillors to continually assess agreed priorities, measure performance and satisfaction and serve as an early warning for any emerging governance issues that need to be discussed and resolved.

Councillors therefore agree to continue to reflect on and evaluate individual and collective performances.

As part of this ongoing review of performance, Councillors commit to:

- Hold informal debrief sessions where applicable to work through any matters of concern;
- Conduct a mid-term review to assess whether Council and personal goals are being achieved; and
- Annually review governance performance through an annual Governance Assessment conducted by an external entity and commit to implementing recommendations in a timely manner.



Section 5: Dispute Resolution Procedures





5.1 Internal Dispute Resolution Procedure

This conflict/dispute resolution process is intended to be used where Councillors have been unable to resolve a conflict or dispute between themselves or others or where the situation is unduly affecting the operation of Council. It is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion, debate and voting in meetings of Council.

5.2 Hierarchy of conduct standards and who handles complaints

Reforms adopted by the Victorian Parliament and the *Local Government Amendment (Improved Governance) Act 2015* clarify a hierarchy for management of Councillor conduct issues, with:

- Councils dealing with breaches of council Codes
- Councillor Conduct Panels dealing with the majority of cases, and
- The Victorian Civil and Administrative Tribunal (VCAT) dealing with exceptional cases.

This hierarchy and the new definitions of misconduct, serious misconduct and gross misconduct included at the front of this Code are summarised in the table below, along with the authority responsible for addressing the matter.

Degree of Seriousness	Definition	Responsible Authority
Conduct inconsistent with standards council has set itself	Breaches of council Code of conduct	Wyndham City Council
Misconduct	Failing to comply with a council's internal resolution procedure, including failure to abide by any decision of council in relation to a breach of the Code and repeated breaches of councillor conduct principles	Councillor Conduct Panel
Serious misconduct	Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct	Councillor Conduct Panel
Gross misconduct	Behaviour that demonstrates lack of character to be a councillor	VCAT

5.3 Disputes Between Councillors

Councillors are mindful that having and expressing differing and sometimes opposing views is a normal function of the process of democratic local government. Sharing and expressing these different views leads to informed and well considered debate. All Councillors have the right to influence the decisions made by Council through this debate.

While all Councillors will endeavour to foster and encourage positive and productive interactions at all times, conflict and/or disputes may emerge when the differences between Councillors become personal or the behaviour of Councillors towards each other is of a nature that threatens the effective operation of Council's decision-making process.

Before commencing any formal conflict/dispute resolution process, Councillors who are parties to any disagreement have an individual and collective responsibility to try every avenue possible to resolve such conflict or disputes in-house in a courteous and respectful manner to prevent them from further escalating.

A conflict or dispute may arise between two individual Councillors, between one Councillor and another Councillor or group of Councillors or between two or more different groups of Councillors. The following conflict/dispute resolution procedure will apply regardless of the dynamics and numbers involved.

Council's conflict resolution procedure comprises:

(a) Internal Mediation (Optional);

(b) External Mediation (Optional); and

(c) Internal Resolution Procedure by Independent Arbiter (Mandatory).

Councillors acknowledge that if a pattern of unsubstantiated or vexatious complaints continues to be experienced, the Manager Corporate Affairs may refuse to apply resources to investigate these complaints. In these instances, the CEO will inform the Council of these decisions and why they were taken. Furthermore, in circumstances where a complainant is not willing to have their identity disclosed, this will limit the further actions that can be taken to resolve the complaint, and it may be that the complaint cannot be pursued.

5.3.1 Internal Mediation

If an informal resolution of a dispute between Councillors is unsuccessful or not implemented, a formal request for internal mediation must be made to the CEO/Principal Conduct Officer who will facilitate "formal" discussions between the parties in dispute as soon as practicably possible.



The request must be made in writing, indicating the reason for the dispute, the names of those involved, provisions of this Code that may have been breached and any evidence to support the allegation.

A meeting will then be convened at the earliest available opportunity and will provide guidance during that meeting as to what is expected of a Councillor under the Act in relation to roles, responsibilities and conduct. Any outcomes will be documented by the Principal Conduct Officer and a copy provided to all parties.

In the event that one party does not comply with the agreed outcomes, the other party has the option for further action as described below.

5.3.2 External Mediation

In the event that reconciliation of the dispute is not possible after internal mediation, or the internal mediation is not conducted, a Councillor or group of Councillors may apply to Council's Principal Conduct Officer for a dispute to be referred for external mediation.

This request must be made in writing, indicating the reason for the dispute, the names of those involved, provisions of this Code that may have been breached, and any evidence to support the allegation. The applicant must also notify the other party of the request and provide them with a copy of the application at the same time the application is made to the Principal Conduct Officer.

The Principal Conduct Officer will ascertain whether or not the other party will attend external mediation and, if they decline, they must provide reasons for doing so to the Principal Conduct Officer. These reasons may be taken into account if the matter is the subject of an application for a Councillor Conduct Panel at a later stage. Declining to attend external mediation does not constitute a breach of this Code.

If the other party agrees to participate in external mediation, the Principal Conduct Officer will advise the applicant, the Mayor and the Chief Executive Officer accordingly. The Principal Conduct Officer will engage the services of an external and independent mediator to conduct the mediation at the earliest available opportunity.

The mediator will document any agreement or outcomes reached at the meeting and copies will be provided to both parties. In the event that one party has not agreed to mediation, one party does not comply with the agreed outcomes or mediation does not reach a satisfactory outcome, either party has the option for further action as described below.

If the dispute remains unresolved, the mediator or conciliator will be required to provide a written report for Councillors and the parties involved in the dispute as to why the process did not result in a resolution.

5.3.3 Internal Resolution Procedure by an Independent Arbiter

If a conflict or dispute arises from an alleged contravention or breach of this Code and has not been resolved through any of the previous processes, then a Councillor or group of Councillors (applicant) may apply to Council's Principal Conduct Officer for internal resolution by an independent arbiter alleging that a Councillor (or Councillors) (respondent) has contravened this Code.

This application must be made in writing, specify the name of the Councillor alleged to have contravened this Code, specify the provisions of this Code that may have been contravened and any evidence to support the allegation.

An application for an internal resolution procedure cannot be made during a Council Election Period and any procedure in progress will be suspended for the duration of an Election Period.

On receiving an application, the Principal Conduct Officer will:

- a) advise the Mayor and Chief Executive Officer of the application without undue delay;
- b) provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application;
- c) refer to the Legal Services Panel or contact the President of the Law Institute of Victoria to appoint an arbiter;
- d) obtain from the proposed arbiter written advice that they have no conflict of interest in relation to the Councillors involved;
- e) notify the parties of the name of the proposed arbiter and provide them with the opportunity (two working days) to object to the person proposed to be the arbiter;
- f) consider the grounds of any objection and appoint the proposed arbiter or appoint another arbiter;
- g) provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired;
- h) after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
- i) attend the hearing(s) and assist the arbiter in the administration of the process.

The role of the arbiter is to:

- a) consider applications alleging a contravention of this Code by a Councillor;
- b) make findings in relation to any application alleging a contravention of this Code which the arbiter must give to Council;
- c) give a written statement of reasons supporting the findings to Council; and
- d) recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened this Code.

In considering an application alleging a contravention of this Code, an arbiter will:

Wyndham City

- 
- a) in consultation with the Principal Conduct Officer, fix a time and place to hear the application;
 - b) authorise the Principal Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing;
 - c) hold as many meetings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing;
 - d) have discretion to conduct the hearing(s) as he or she deems fit while ensuring that the hearing(s) are conducted with as little formality and technicality as due and proper consideration of the application allows;
 - e) ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
 - f) consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application;
 - g) ensure that the rules of natural justice are observed and applied in the hearing of the application; and
 - h) ensure that the hearing(s) are closed to the public.

Where an application to have legal representation is granted by an arbiter, the costs of the Councillor's legal representation are to be borne in their entirety by the Councillor.

An arbiter:

- a) may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened this Code; or
- b) may find that a Councillor who is a respondent to an internal resolution procedure has contravened this Code; and
- c) will suspend consideration of an internal resolution procedure during the Election Period for a general election.

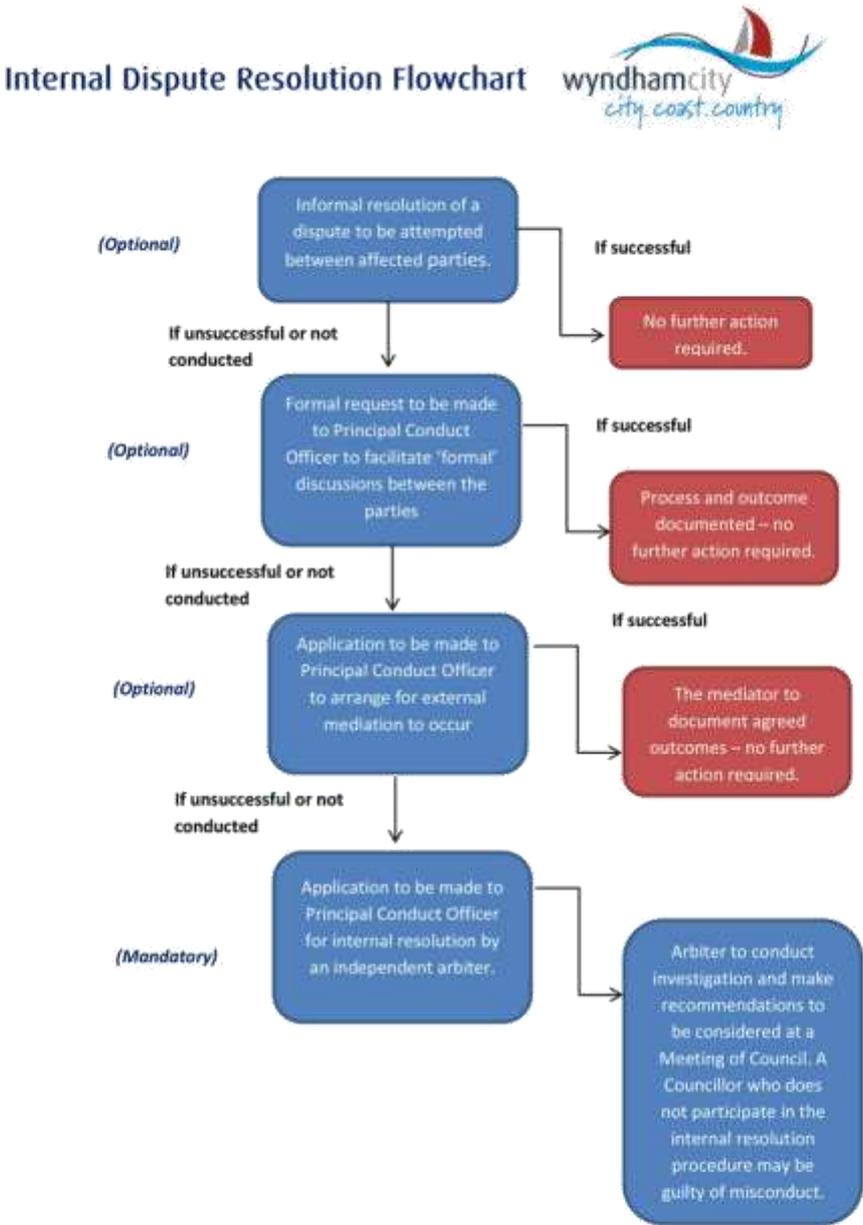
The arbiter is to give a copy of his or her findings and statement of reasons to Council, the applicant and the respondent. At the same time that the arbiter provides the findings and statement of reasons, he or she shall, where a Councillor has been found to have contravened this Code, recommend an appropriate sanction or sanctions for the contravention for consideration by Council.

A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next Ordinary Meeting of Council for its consideration. If an arbiter has found that a contravention of this Code has occurred, Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor:

- a. direct the Councillor to make an apology in a form or manner specified by Council;
- b. direct the Councillor to not attend up to, but not exceeding, two meetings of Council (in respect of the next scheduled meetings of Council);
- c. direct that, for a period of up to, but not exceeding, two months on a date specified by Council, the Councillor:

- be removed from any position where the Councillor represents Council; and
- to not chair or attend any Committee Meetings or an Assembly of Councillors or any other meeting specified in the direction.

A Councillor who does not participate in the internal resolution procedure may be guilty of misconduct.





5.4 Councillor Misconduct

Councillor misconduct is defined in section 3 of the Act (see misconduct, serious misconduct and gross misconduct). Allegations of misconduct are heard on application by a Councillor Conduct Panel as outlined in section 81B of the Act and Councillor Conduct Panels are established under, and regulated by, Division 1D of the Act.

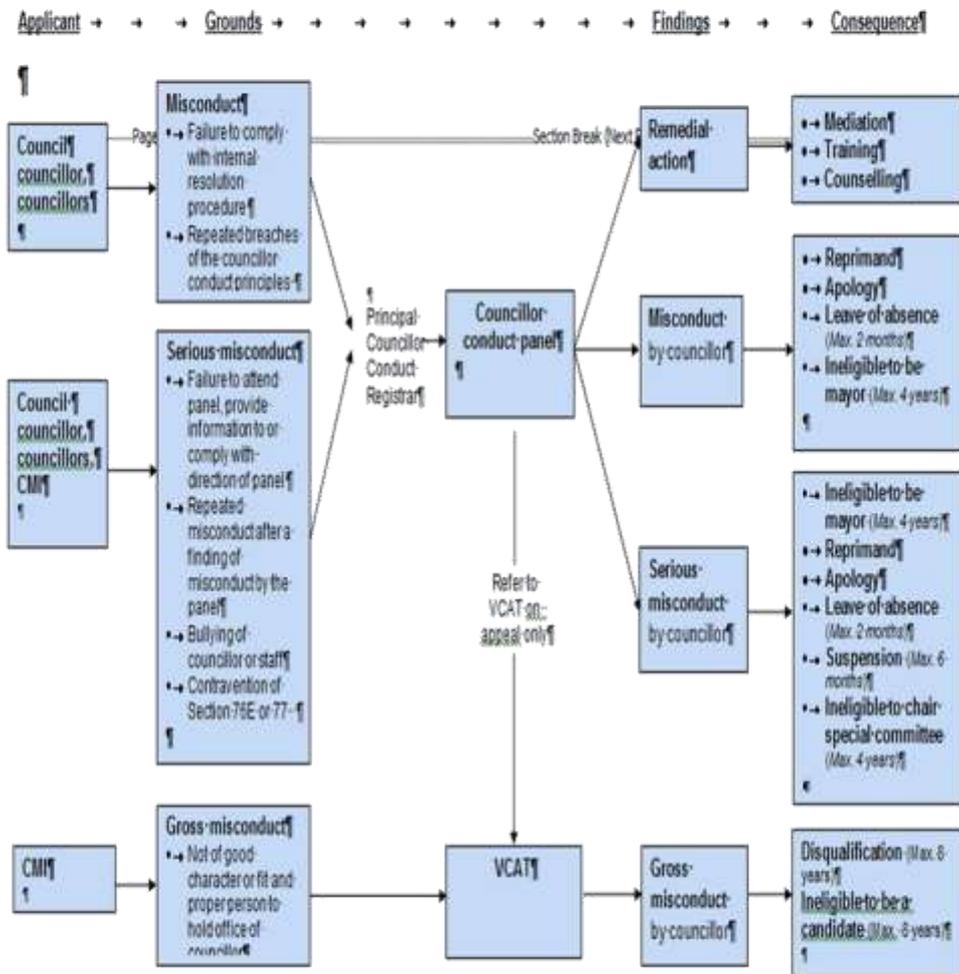
Applications for a Councillor Conduct Panel to make a finding of misconduct against a Councillor may be made by Council (following resolution of Council), a Councillor or a group of Councillors.

Applications for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by Council (following resolution of Council), a Councillor, a group of Councillors or the Chief Municipal Inspector.

Applications for a Councillor Conduct Panel must be made directly to the state-appointed Principal Councillor Conduct Registrar. Depending on the allegation and outcome, a Councillor Conduct Panel may:

- a. discipline a Councillor by reprimand, direct an apology or require the Councillor to take up to two months leave of absence;
- b. direct that the Councillor is ineligible to take up the position of Mayor for a period specified by the Panel;
- c. require remedial action, including mediation, training or counselling;
- d. suspend the Councillor from office for a period not exceeding six months; or
- e. refer a matter to VCAT if the Panel considers gross misconduct has been conducted by a Councillor.

See overleaf for an overview of this process.



5.5. Complaints from members of the public

Given the need to ensure both the reality and the perception of independence, all complaints made by members of the public will not be handled by the Mayor or any other Councillor. Rather, in the first instance the Manager Corporate Affairs (or their delegate) will administer the complaint as follows:

1. If in the early stages of the process a quick resolution can be agreed, this will be facilitated by the Manager Corporate Affairs, their delegate or a suitably qualified mediator
2. If it appears clear that the complaint is either not a breach of this Code, or more appropriately dealt with externally, the Manager Corporate Affairs would write back to the member of the public advising them of this decision and their options to



3. pursue the matter externally, consistent with the hierarchy of conduct standards and processes mentioned previously.
4. If the alleged breach of this Code does not require a detailed investigation to substantiate claims, the Manager Corporate Affairs will appoint an arbiter who may make a final determination including recommended sanctions on the matter before them for consideration by Council under section 81AB of the Act, and
5. If an alleged breach of this Code does require a detailed investigation to substantiate claims, the Manager Corporate Affairs may appoint an independent external investigator to undertake an investigation and report back to the Manager Corporate Affairs. The independent external investigator may make recommendations for Council to consider including sanctions.



Section 6: Associated Policies and Attachments





6.1 Election Period Policy 2016

Council is committed to fair and democratic elections and therefore notes that *the Election Period Policy 2016* adopted by Council at its 29 March 2016 Special Council Meeting as required by the *Local Government (Amendment (Improved Governance) Act 2015*.

6.2 Compliance with Other Legislation

This Code has been reviewed for Human Rights Charter Compliance and should be read in conjunction with the requirements of other legislation such as, but not limited to:

Information Privacy Act 2000

Freedom of Information Act 1982

Public Records Act 1973

Protected Disclosure Act 2012

6.3 Attachments

The following policies and protocols are to be considered in the context of this Code:

Wyndham City Media Policy

Wyndham City Gifts and Entitlements Policy

Councillor and Staff Interaction Policy

