



# **KNOX CITY COUNCIL MINUTES**

**Special Meeting of Council**

**Held at the  
Civic Centre  
511 Burwood Highway  
Wantirna South  
On**

**Tuesday, 28 June 2016**

## KNOX CITY COUNCIL

MINUTES FOR THE SPECIAL MEETING OF COUNCIL HELD AT THE  
CIVIC CENTRE, 511 BURWOOD HIGHWAY, WANTIRNA SOUTH

ON  
TUESDAY 28 JUNE 2016 AT 6.30PM

### PRESENT:

<i>Cr T Holland (Mayor &amp; Chairperson)</i>	<i>Friberg Ward</i>
<i>Cr P Lockwood</i>	<i>Baird Ward</i>
<i>Cr J Mortimore</i>	<i>Chandler Ward</i>
<i>Cr J Cossari</i>	<i>Collier Ward</i>
<i>Cr A Gill (arrived at 6.31pm)</i>	<i>Dinsdale Ward</i>
<i>Cr K Orpen</i>	<i>Dobson Ward</i>
<i>Cr L Cooper</i>	<i>Scott Ward</i>
<i>Cr D Pearce</i>	<i>Taylor Ward</i>
<i>Cr N Seymour</i>	<i>Tirhatuan Ward</i>
<i>Ms J Truman</i>	<i>Acting Chief Executive Officer</i>
<i>Dr I Bell</i>	<i>Director – Engineering &amp; Infrastructure</i>
<i>Mr A Kourambas</i>	<i>Director - City Development</i>
<i>Ms M Palatsides</i>	<i>Acting Director – Corporate Development</i>
<i>Ms J Brown</i>	<i>Acting Director – Community Services</i>
<i>Ms F Cousins</i>	<i>Manager - Governance &amp; Innovation</i>

### THE MEETING OPENED WITH A PRAYER, STATEMENT OF ACKNOWLEDGEMENT AND A STATEMENT OF COMMITMENT

***“Knox City Council acknowledges we are on the  
traditional land of the Wurundjeri and Bunurong people  
and pay our respects to elders both past and present.”***

**BUSINESS:****Page Nos.****1. APOLOGIES AND REQUESTS FOR LEAVE OF ABSENCE**

Nil.

**2. DECLARATIONS OF CONFLICT OF INTEREST**

Nil.

**3. CONSIDERING AND ORDERING UPON OFFICER'S REPORTS**3.1 *Review of Councillor Code of Conduct***1.**

JOANNE TRUMAN  
ACTING CHIEF EXECUTIVE OFFICER

**COUNCILLOR GILL VACATED THE CHAMBER AT 6.35PM AFTER THE VOTE AND PRIOR TO CLOSURE OF THE MEETING****ALL WARDS****3.1 REVIEW OF COUNCILLOR CODE OF CONDUCT****SUMMARY: Coordinator - Governance (Carrie Bruce)**

*This report presents to Councillors an opportunity to review the Councillor Code of Conduct. The draft Code has been prepared in accordance with statutory requirements of the Local Government Act 1989 (the Act) following recent reforms arising from the Local Government Amendment (Improved Governance) Act 2015. Councils are required to review and make the necessary amendments to their codes by 4 July 2016.*

**RECOMMENDATION**

- 1. That Council adopt the draft Councillor Code of Conduct (the Code) shown at Appendix A;**
- 2. Each Councillor affix their signature to the Code; and**
- 3. Within one month of the adoption of the Code, each Councillor make a declaration before the Chief Executive Officer stating that they will abide by the Code.**

**1. INTRODUCTION**

Reforms arising from the Local Government Amendment (Improved Governance) Act 2015 are now operational. The amending legislation contained substantial reforms to the Councillor Conduct Framework (Appendix B) and governance requirements for Councils with the aim of strengthening Councillor conduct standards. The Code works in conjunction with the Local Government Act 1989, and Council's own policies and procedures to support a good governance framework for Council.

Many of the key reforms under the Act relate to the Councillor Code of Conduct which introduce a broad range of powers to deal with potential breaches of the Code. The reforms include:

- Defining the role of Mayor and Councillor to ensure Councillors understand their role
- Making signing the Code a qualification for being a Councillor
- Introducing enforcement mechanisms in the Code including mandatory internal resolution procedures
- Creating a Principal Conduct Registrar to manage Councillor Conduct Panel processes
- Providing more powers to Councillor Conduct Panels – especially to hear serious misconduct matters

### 3.1 Review of Councillor Code of Conduct (cont'd)

- Giving power to the Minister for Local Government to appoint municipal monitors to monitor Councils and report to the Minister
- On the advice of a municipal monitor, giving power to the Minister to stand down problematic Councillors prior to a panel or VCAT hearing
- Providing a new role for the Chief Municipal Inspector in investigating allegations of misconduct, serious and gross misconduct by a Councillor
- Making it an offence for Councillors to disclose confidential information and improperly directing or influencing staff. An offence under these provisions will now incur a penalty of up to 120 penalty units.

The Code provides guidance as to the expected standards of work performance, ethical behaviour and conduct required of Councillors as well as providing a means for dealing with conflicts that may occur. It is also designed to build public confidence in the integrity of local government and its elected representatives.

Councils must review and make necessary amendments to their Code by 4 July 2016. This must be done by calling a special meeting solely for the purpose of reviewing and adopting the Code. Councils will also be required to review the Code within four months of a general election.

Within one month of any amendments being made to the Code, all Councillors must make a declaration stating that they will abide by the revised Code. The declaration must be in writing and witnessed by the Chief Executive Officer. Failure to make the declaration to abide by the Code is now grounds under the Act for disqualification as a Councillor.

The Code must also be made publicly available on Council's website as soon as practicable after it is adopted.

## **2. DISCUSSION**

Until now, Councils have had little formal capacity to manage and resolve issues arising from poor conduct by individual councillors. Councils now have a clear role in doing so by establishing a compliance mechanism in their Code of Conduct to achieve adherence to the Code. The Code complements the Act and Council's own policies and procedures to support a good governance framework.

### 3.1 Review of Councillor Code of Conduct (cont'd)

Section 81AA of the Act requires Councils to develop and maintain an internal resolution procedure for the purposes of addressing an alleged contravention of the Councillor Code of Conduct by a Councillor. The Act states that:

*The internal resolution procedure of a Council must:*

- (a) *be specified in the Councillor Code of Conduct; and*
- (b) *incorporate any prescribed processes including any application process; and*
- (c) *provide for the selection of an arbiter who is suitably independent and able to carry out the role of arbiter fairly; and*
- (d) *specify the role an arbiter is expected to undertake in the conduct of any internal resolution procedure including that the arbiter must -*
  - (i) *consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor; and*
  - (ii) *make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council; and*
- (e) *provide processes to ensure that parties affected by an application alleging a contravention of the Councillor Code of Conduct are given an opportunity to be heard by the arbiter; and*
- (f) *specify that the Council and the Councillor the subject of any application made alleging a contravention of the Councillor Code of Conduct are to be given written reasons for any findings made by an arbiter; and*
- (g) *address any matters prescribed for the purposes of this section; and*
- (h) *include any provisions prescribed for the purposes of this section.*

The introduction of an internal resolution procedure provides Councils with significantly greater authority to shape and enforce acceptable standards of conduct by their councillors.

Amendments to the Code form one component of a broader range of mechanisms that have been introduced to ensure Councillors conduct themselves in accordance with expected standards of behaviour. This includes the standards Councillors collectively set themselves in their Code.

### 3.1 Review of Councillor Code of Conduct (cont'd)

The reforms create a hierarchy for management of Councillor conduct issues, with:

- Councils dealing with breaches of the Code of Conduct
- Panels dealing with the majority of cases
- VCAT dealing with exceptional cases

Section 3(1) of the Act provides new definitions for misconduct, serious misconduct and gross misconduct. These are summarised 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 Councillor Code of Conduct	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 the Code	Panel
Serious Misconduct	Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct	Panel
Gross Misconduct	Behaviour that demonstrates lack of character to be a Councillor	VCAT

Bullying, which is a form of serious misconduct, is defined as repeated unreasonable behaviour that creates a risk to the health and safety of another Councillor or member of Council staff. This definition is consistent with the definition used in the Fair Work Act 2009 and by WorkSafe.

The new hierarchy for management of Councillor conduct issues is designed to:

- Reinforce the responsibility and authority of Councils to manage breaches of agreed conduct through mandatory internal resolution procedures

### 3.1 Review of Councillor Code of Conduct (cont'd)

- Only escalate management of misconduct and serious misconduct to panels when Councils cannot resolve the matter internally
- Give panels greater powers to manage and resolve misconduct and serious misconduct
- Retain the capacity to manage gross misconduct through VCAT

Council's current Code has been reviewed in light of the changes to the Act and the revised draft Code at Appendix A now includes an internal resolution procedure which complies with the requirements of the Act. Outlined below is an overview of the internal resolution procedure.

#### **Independent Arbiter**

It is critical that when allegations of poor conduct are levelled against a Councillor that these are fairly tested. Accordingly, the internal resolution procedure must include provision for the appointment of an independent arbiter who is able to consider alleged contraventions of the Code and make final determinations on them fairly and without bias. Persons subject to allegations must be given an opportunity to be heard. Decisions by the arbiter must be supported by written reasons.

To assist Councils in engaging an independent arbiter, the MAV is establishing a local government panel of arbiters. The MAV will publish a list of arbiters on its website so that Councils can engage an arbiter of its choice. The MAV has advised that the panel of arbiters will be in place by 30 June 2016.

#### **Sanctions for Breaches of the Code**

Section 81AB states that Councils may impose sanctions through their internal resolution procedure for breaches of their Code. Any sanction must be voted on by Council as a whole and may include any or all of the following:

- Requiring an apology
- Suspension from up to two Council meetings
- Direction that they not attend or chair an advisory or special committee for up to two months
- Direction that they be removed from a position where they represent Council for up to two months

The sanctions are aimed at ensuring Councillors are aware of the consequences of their actions in breaching the standards of behaviour they, as Council, has adopted.



### **3.1 Review of Councillor Code of Conduct (cont'd)**

The importance of Councils addressing Councillor conduct internally is reinforced in the way applications to establish panels are managed. The Principal Conduct Registrar is required to refer matters back to Council to resolve if the internal resolution procedure has not been exhausted prior to an application for a panel.

#### **Principal Councillor Conduct Registrar**

The Principal Councillor Conduct Registrar (PCCR) is a new appointment that sits within Local Government Victoria and is responsible for receiving applications for Councillor Conduct Panels as well as determining whether a panel should be formed. Appendix B shows where this role fits in the broader Councillor Conduct Framework established by the Act.

The Act also creates a new position of Principal Conduct Officer (PCO). The functions of the PCO include assisting the PCCR in their role as well as assisting Council in the implementation and conduct of its internal resolution procedure. The Manager Governance and Innovation has been appointed as Council's PCO.

#### **Roles, Responsibilities and Confidentiality**

In addition to the internal resolution procedure, it is also recommended that the Code be expanded to include the statutory roles and responsibilities of the Mayor and Councillors. Role clarity is an essential element in achieving effective governance for the organisation. The Information and Confidentiality provisions have also been strengthened to ensure Councillors are cognisant of the fact that a breach of these provisions under the Act will now incur a penalty of up to 120 penalty units.

The review of the Code on this occasion has focussed on ensuring that it responds to the amendments to the Local Government Act, arising from the Local Government Amendment (Improved Governance) Act 2015. It is envisaged that Council will undertake a major review of the Code within four months of the general election in October.

### **3. CONSULTATION**

Staff have attended a number of industry briefings on the reforms introduced by the Local Government Amendment (Improved Governance) Act 2015, including a training session with Macquarie Lawyers specifically about the role of the Principal Conduct Officer and the Code of Conduct.

The MAV has also provided assistance to the sector by drafting a model Code of Conduct to meet the requirements of the Act. While the model code is viewed very much as a 'minimalist' approach to complying with the Act, it has included a robust internal resolution procedure which has been used as the basis for the proposed internal resolution procedure in the draft Code contained at Appendix A.

**3.1 Review of Councillor Code of Conduct (cont'd)****4. ENVIRONMENTAL/AMENITY ISSUES**

There are environmental or amenity issues arising from this report.

**5. FINANCIAL & ECONOMIC IMPLICATIONS**

There are no financial or economic implications arising from this report.

**6. SOCIAL IMPLICATIONS**

In adopting a Code of Conduct, Councillors are openly committing to the standards of conduct and behaviour that will underpin their leadership role within the community. It is proposed that Councillors affix their signature to the Code to demonstrate their commitment to its principles.

**7. RELEVANCE TO CITY PLAN 2013-17 (INCORPORATING THE COUNCIL PLAN)**

The requirement to prepare and adopt a Councillor Code of Conduct is set out in the Local Government Act 1989. All Councils in Victoria are required to develop and adopt a Code of Conduct and make it available to Councillors and the community.

The Councillor Code of Conduct supports Council's intent of being an open, fair, equitable and transparent organisation.

**8. CONCLUSION**

As elected representatives of the community, Councillors are required to act in a manner that supports the expectations of their constituents and enhances public confidence in the system of local government. In supporting this draft Code, Council confirms its commitment to serve public interest with fairness, integrity and good governance.

**9. CONFIDENTIALITY**

There are no issues of confidentiality associated with this report.

**3.1 Review of Councillor Code of Conduct (cont'd)****COUNCIL RESOLUTION****MOVED: CR. PEARCE****SECONDED: CR. MORTIMORE**

1. That Council adopt the draft Councillor Code of Conduct (the Code) shown at Appendix A;
2. Each Councillor affix their signature to the Code; and
3. Within one month of the adoption of the Code, each Councillor make a declaration before the Chief Executive Officer stating that they will abide by the Code.

**CARRIED****MEETING CLOSED AT 6.38PM**

Minutes of Meeting confirmed at the  
Ordinary Meeting of Council  
held on  
Tuesday 26 July 2016

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Chairperson



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# **COUNCILLOR CODE OF CONDUCT**

**ADOPTED BY COUNCIL ON 28 JUNE 2016.**

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## COUNCILLOR CODE OF CONDUCT

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## COUNCILLOR CODE OF CONDUCT

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### GUIDELINES FOR GOOD CONDUCT

As Councillors of the Knox City Council we are committed to working together constructively as a team contributing equally to achieve the shared vision for our City.

This Code of Conduct is a statement of how we will behave and work with our community and colleagues. It provides guidance as to the general standards of performance and ethical conduct expected by us as Councillors.

The values that underpin this Code of Conduct incorporate respect and consideration of fellow Councillors, staff and the community. We will communicate openly and honestly with an appreciation for the professional views, abilities and the unique contributions each of us will make toward the effective governance of the Knox City Council.

### OUR COMMITMENT

As Councillors of the City of Knox we are committed to the greater good of our community, maintaining their trust and confidence of our governance in the municipality. This is to be achieved through a commitment to the highest level of team performance and unity by consistently adhering to the following rules of engagement:

- We will treat each other and all council officers with respect, trust and dignity built upon honest mutual dealings conducted in an open and positive environment
- We will engage in healthy, issues focused debate that may be robust, but is at all times courteous and respectful of proper meeting procedures
- We will undertake informed decision making that is evidence based and achieved when appropriate through negotiation, conciliation and compromise
- We will work in a collaborative and supportive manner by fairly sharing municipal-wide responsibilities, while diligently completing our individual ward duties in a timely manner, and we will offer support to the Mayor of the day wherever possible through regular attendance at civic functions and events.
- We recognise and respect Councillors' personal views on matters but acknowledge and respect the decisions of the Council.

### ROLES AND RESPONSIBILITIES

Excellent working relationships between elected members and the organisation, as well as mutual understanding and respect for their respective roles, are essential for a high performing organisation. Consequently, role clarity plays an essential role in achieving good governance.



## COUNCILLOR CODE OF CONDUCT

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### Role of Council

Knox City Council comprises 9 Councillors who are democratically elected by the community in accordance with the *Local Government Act 1989*.

A Council is elected to provide leadership for the good governance of the municipal district and the local community. Section 3D of the *Local Government Act 1989* sets out the primary role of a Council and states that the role of a Council includes -

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

### Role of Councillor

Section 65 of the *Local Government Act 1989* provides that the role of Councillor is -

- to participate in the decision-making of the Council; and
- 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.

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

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

It is important to note that the role of Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under section 94A of the *Local Government Act 1989*.

Councillors should not be involved in the operational decisions of the organisation or its services, and in adherence to s.76D of the *Local Government Act 1989*, will not misuse their position to direct or influence staff.



## COUNCILLOR CODE OF CONDUCT

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### Role of Mayor

The Mayor is the leader of the Council and has a number of roles which are both legislative and functional. The Mayor takes precedence at all municipal proceedings within the municipality and also chairs all meetings of the council at which he or she is present.

The mayor's role, however, extends well beyond officiating at council meetings or other municipal proceedings. Additional important roles are providing leadership, promoting positive relationships, and modelling good governance.

The functions of the Mayor are outlined in Section 73AA of the *Local Government Act 1989* which describes the functions of the Mayor as -

- providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65, and the observation of the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C; and
- acting as the principal spokesperson for the Council; and
- supporting good working relations between Councillors; and
- carrying out the civic and ceremonial duties of the office of Mayor.

### Role of Chief Executive Officer

The Chief Executive Officer has a number of statutory responsibilities and is accountable to the Mayor and Councillors for delivering Council's strategic direction. The Chief Executive Officer is responsible for the day to day operations of Council, to provide timely and relevant advice and to support the Council.

Section 94A of the *Local Government Act 1989* identifies the following functions of the Chief Executive Officer -

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





## **COUNCILLOR CODE OF CONDUCT**

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The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

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

### **RELATIONSHIPS WITH STAFF**

There must be mutual respect and understanding between Councillors and officers.

As Councillors, we will be cognisant of the requirements of Section 76E of Local Government Act 1989 and must not seek to direct or influence members of Council staff in the exercise of their duties (Appendix B).

### **COMMUNITY EXPECTATIONS**

The community's expectations of us as their elected representatives are high. The business of Council will be conducted with efficiency and impartiality, while demonstrating compassion and sensitivity towards the needs of the community.

- We will treat all members of the community with courtesy and demonstrate behaviour that respects the office of Councillor.
- We will be honest and act with integrity, avoiding conduct that might suggest any departure from these standards.
- We will practice high standards of professionalism and will exercise reasonable care and diligence in our duties by being as informed as possible about the processes and strategic functions of Council.
- We take responsibility for our actions and are accountable for their consequences.
- We will perform our duties in the best interest of the community, without fear or favour.
- All members of the community, Councillors and Council staff will be treated honestly and fairly in a manner that is not discriminatory on the basis of gender, religion, race or contrary to the Equal Opportunity Act and the Victorian Charter of Human Rights, and which in no way causes undue offence or embarrassment to individuals or groups.



## COUNCILLOR CODE OF CONDUCT

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### COMMUNICATION AND DECISION MAKING

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

There may be times when we individually disagree with a majority decision of Council and want to advise the community. As individual Councillors, we are entitled to express our own independent views. In doing so, we must not reflect negatively on individual Councillors. Furthermore:

- We will regularly attend meetings of Council, actively and openly participating in the decision making process, striving to achieve the best outcome for the community that presents Council as an effective and cohesive unit.
- We have a personal obligation to be adequately informed and will apply the following principles when voting on an issue before the Council:
  - Decisions should be based on what individual Councillors believe to be in the best interest of the Municipality having properly and diligently considered the evidence presented and/or available; and
  - We will keep an open mind and consider all information presented and/or available before determining on a matter and voting on an issue.
- We recognise that the Mayor and the Chief Executive Officer are the designated persons authorised to speak to the media and others formally on behalf of the Council.
- We will respect the views of the individual in debate, however, we also accept that decisions are to be based on a majority vote.
- We will not make allegations which are personally offensive, derogatory or defamatory.
- We will treat all matters on their individual merits.

### INFORMATION AND CONFIDENTIALITY

As Councillors, we will have access to information that may at times be confidential or controversial. Consequently:

- Information of a confidential nature will not be communicated until it is no longer treated as confidential.
- Information relating to decisions of the Council is to only be communicated in an official capacity by a designated officer of the Council and in accordance with Council policies.
- We will be careful that information concerning adopted policies, procedures and decisions of the Council is conveyed accurately.
- We are only entitled to access information which is relevant to a matter before the Council and to enable us to fulfill our role as a Councillor.
- We will be prudent in the use of information that we acquire in our role as a Councillor.
- We will not use information in a way that can cause detriment to the Council.
- Unauthorised disclosure of Council information, including misuse of intellectual property, will not occur.



## COUNCILLOR CODE OF CONDUCT

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- We will not disclose information that we know, or should reasonably know, is confidential information. Improper use or release of information is an offence under Section 77 of the Local Government Act 1989 (Appendix A).
- We will comply with the requirements of the Privacy and Data Protection Act 2014 regarding access, use and release of personal information.

As Councillors, we may only disclose information that we know is confidential information in the following circumstances:

- for the purposes of any legal proceedings arising out of this Act;
- to a court or tribunal in the course of legal proceedings;
- pursuant to an order of a court or tribunal;
- to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
- to a municipal monitor to the extent reasonably required by the municipal monitor;
- to the extent reasonably required for any other law enforcement purposes.

### USE OF COUNCIL RESOURCES

Council resources are to be used effectively and economically.

- We will maintain adequate security over Council property, facilities and resources provided to us to assist in performing our role.
- We will not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate.
- We will not use public funds or resources in a manner that is improper or unauthorised.

### DISCLOSURE OF CONFLICT OF INTERESTS

As Councillors we will comply with SECTION 77A, 77B, 78, 78A, 78B, 78C, 78D, 78E and 79 of the Local Government Act 1989 (Appendix C and D) in regard to Conflicts of Interest.

In addition to the requirements of the Act, as Councillors we will:

- Give early consideration to each matter to be considered by the Council, or special committee of whom the Councillor is a member, to ascertain if we have an Interest or a Conflict of Interest.
- Recognise that, while we may seek advice about a possible conflict of interest, the legal onus rests entirely with us to determine if a conflict exists.



## COUNCILLOR CODE OF CONDUCT

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- Be honest in carrying out our duties and avoid conflicts between private and public interest with respect to personal and financial relationships, receipt of gifts, use of confidential information obtained in the course of Council duties, in external dealings and through public comment.
- Not seek or accept a bribe or other improper inducement. If benefits or gifts are offered, disclosure must be made in a prompt and full manner to the Chief Executive Officer. Refer to Council policy, 'Gifts and Hospitality for Councillors and Members of Special Committees'.

### COUNCILLORS WORKING TOGETHER

Our primary role as Councillors is to set the vision and directions of the Knox City Council and to advocate on behalf of the community.

As Councillors, we are aware of our responsibility to comply with the Primary Principle of Councillor Conduct specified in Section 76B of the Act and the General Councillor Conduct Principles specified Section 76BA.

The Primary Principle of Councillor Conduct provides that:

*"It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—*

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

The General Councillor Conduct Principles provide that:

*"In addition to acting in accordance with the Primary Principle of Councillor Conduct specified in section 76B, in performing the role of a Councillor, a Councillor must—*

- avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;*
- act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;*
- treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, council officers and other persons;*
- exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;*
- endeavour to ensure that public resources are used prudently and solely in the public interest;*
- act lawfully and in accordance with the trust placed in him or her as an elected representative;*
- 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."*



## COUNCILLOR CODE OF CONDUCT

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### INTERNAL RESOLUTION PROCEDURE

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

This dispute resolution procedure may be used when Councillors have been unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Council.

It is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in Council and Committee Meetings.

Council's dispute resolution procedure involves:

- direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance;
- external mediation by an independent mediator engaged by the Principal Conduct Officer; and
- an internal resolution procedure involving an independent arbiter.

#### Phase 1 – Direct Negotiation

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

A dispute referred for direct negotiation may relate to:

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

The party requesting the direct negotiation meeting will provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request should indicate that it is for a “direct negotiation” dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the request is made by a group of councillors; and
- be signed and dated by the requestor or the requestor's representative.

The requestor is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Mayor or as soon as practicable thereafter.

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



## COUNCILLOR CODE OF CONDUCT

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

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

If the other party consents to a meeting, the Mayor will convene a meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within 5 working days of receiving the consent of the other party.

The Mayor may call upon the Principal Conduct Officer for advice and guidance at this point in the process.

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

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act, and the observation of the councillor conduct principles and the Councillor Code of Conduct.

The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties.

Where the dispute remains unresolved, either or both of the parties have recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Where the Mayor is a party to the dispute, the request should be made to the immediate past Mayor. The immediate past Mayor will perform the functions ascribed to the Mayor.

### **Phase 2 – External Mediation**

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

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

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



## COUNCILLOR CODE OF CONDUCT

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The applicant must submit a written application to the Principal Conduct Officer setting out the name of the Councillor and the details of the dispute. The application should indicate that the application is for an “external mediation”. Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the application is made by a group of councillors; and
- be signed and dated by the applicant or the applicant’s representative.

The applicant must notify the other party of the request and provide him or her with a copy of the application either at the same time that it is submitted to the Principal Conduct Officer or as soon as practical thereafter.

The Principal Conduct Officer will ascertain (in writing) whether or not the other party is prepared to attend an “external mediation”. If the other party declines to participate in an external mediation, he or she must provide their reasons for doing so in writing to the Principal Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

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

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

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

The mediator will document any agreement reached at the meeting. Copies of the agreement will be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.



## COUNCILLOR CODE OF CONDUCT

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### Phase 3 - Internal Resolution Procedure - Arbiter

A councillor or a group of councillors may make an application alleging that a Councillor has contravened this Councillor Code of Conduct. The application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the application is made by a group of councillors; and
- be signed and dated by the applicant or the applicant's representative.

The application must be submitted to the Council's Principal Conduct Officer.

An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and CEO of the application without undue delay;
- provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application;
- identify an arbiter to hear the application;
- obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved;
- notify the parties of the name of the proposed arbiter and provide them with the opportunity (2 working days) to object to the person proposed to be the arbiter;
- consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter;
- provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired;
- after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
- attend the hearing(s) and assist the arbiter in the administration of the process

In identifying an arbiter to hear the application, the Principal Conduct Officer must select an arbiter who is suitably independent and able to carry out the role of arbiter fairly.

The role of the arbiter is to:

- consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor;
- make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council;
- give a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council;
- recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct.





## COUNCILLOR CODE OF CONDUCT

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In considering an application alleging a contravention of the Councillor Code of Conduct, an arbiter will:

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

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

An arbiter:

- may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened the Code;
- may find that a Councillor who is a respondent to an internal resolution procedure has contravened the Code;
- will suspend consideration of an internal resolution procedure during the election period for a general election.

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

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

- direct the Councillor to make an apology in a form or manner specified by the Council;
- direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (in respect of the next scheduled meetings of the Council);



## COUNCILLOR CODE OF CONDUCT

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

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

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

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

### No Application During an Election Period

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

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

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

### Request for Councillor Conduct Panel

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

An application for a Councillor Conduct Panel to make a finding of misconduct against a Councillor may be made by the Council by resolution, a Councillor or a group of Councillors.

All applications to establish a panel to hear allegations of misconduct or serious misconduct must go to the Registrar. A panel will be established if the registrar is satisfied that the application is not frivolous or misconceived or lacking in substance, is supported by evidence and Council's internal resolution procedure has been fully exhausted or are not appropriate given the circumstances.

### ELECTION PERIOD PROVISIONS

Council is committed to fair and democratic elections. As Councillors, we will comply with all statutory and Knox City Council policy provisions regarding conduct during an election period.



## **COUNCILLOR CODE OF CONDUCT**

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### **SIGNATORIES TO THE CODE**

In signing this document, we agree to comply with the principles established by this Code of Conduct in conjunction with all relevant legislation.

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**Cr Peter Lockwood  
Baird Ward**

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**Cr John Mortimore  
Chandler Ward**

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**Cr Joe Cossari  
Collier Ward**

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**Cr Adam Gill  
Dinsdale Ward**

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**Cr Karin Orpen  
Dobson Ward**

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**Cr Tony Holland  
Friberg Ward**

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**Cr Lisa Cooper  
Scott Ward**

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**Cr Darren Pearce  
Taylor Ward**

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**Cr Nicole Seymour  
Tirhatuan Ward**

**Adopted by Council on 28 June 2016.**



## STATUTORY – CONFIDENTIAL INFORMATION

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### APPENDIX A - SECTION 77 OF LOCAL GOVERNMENT ACT 1989

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

**Penalty: 120 penalty units.**

- (1A) A person who is, or has been, a Councillor or a member of a special committee, may disclose information that the person knows is confidential information in the following circumstances—

- (a) for the purposes of any legal proceedings arising out of this Act;
- (b) to a court or tribunal in the course of legal proceedings;
- (c) pursuant to an order of a court or tribunal;
- (d) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- (e) to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
- (f) to a municipal monitor to the extent reasonably required by the municipal monitor;
- (g) to the extent reasonably required for any other law enforcement purposes.

- (1B) If an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of conduct in contravention of subsection (1) the Councillor must not be charged with an offence against that subsection in respect of the same conduct unless—

- (a) the Councillor Conduct Panel application is withdrawn; or
- (b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter under section 81P; or
- (c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or
- (d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.

- (1C) If a Councillor is charged with an offence against subsection (1), an application for a Councillor Conduct Panel to make a finding of serious misconduct by the Councillor must not be made for the same conduct in respect of which the Councillor has been charged.



## DRAFT COUNCILLOR CODE OF CONDUCT

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### Section 77 of Local Government Act 1989 (cont'd)

- (2) For the purposes of this section, information is confidential information if—
- (a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or
  - (b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or
  - (c) the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.



## STATUTORY – IMPROPER DIRECTION AND IMPROPER INFLUENCE

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### APPENDIX B - SECTION 76E OF LOCAL GOVERNMENT ACT 1989

- (2) A Councillor must not direct, or seek to direct, a member of Council staff—
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
  - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
  - (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
  - (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

**Penalty: 120 penalty units.**

- (2A) If an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of conduct in contravention of subsection (2), the Councillor must not be charged with an offence against that subsection in respect of the same conduct unless—
- (a) the Councillor Conduct Panel application is withdrawn; or
  - (b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter under section 81P; or
  - (c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or
  - (d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.
- (2B) If a Councillor is charged with an offence against subsection (2), an application for a Councillor Conduct Panel to make a finding of serious misconduct by the Councillor must not be made for the same conduct in respect of which the Councillor has been charged.
- (3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.



## STATUTORY – DIRECT AND INDIRECT INTERESTS

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### APPENDIX C SECTION 77A, 77B, 78, 78A, 78B, 78C, 78D AND 78E OF LOCAL GOVERNMENT ACT 1989

#### 77A Direct and indirect interests

- (1) A relevant person has a conflict of interest in respect of a matter if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person has a indirect interest in a matter if the relevant person has an interest of a kind described in section 77B.
- (3) A relevant person has an indirect interest in a matter if the relevant person has—
  - (a) a close association as specified in section 78; or
  - (b) an indirect financial interest as specified in section 78A; or
  - (c) a conflicting duty as specified in section 78B; or
  - (d) received an applicable gift as specified in section 78C; or
  - (e) become an interested party as specified in section 78D; or
  - (f) a residential amenity that may be altered as specified in section 78E.
- (4) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (5) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest the relevant person holds—
  - (a) is held as a resident, ratepayer or voter and does not exceed the interests generally held by other residents, ratepayers or voters; or
  - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (6) A relevant person does not have a conflict of interest in a matter if the relevant person—
  - (a) does not know the circumstances that give rise to the conflict of interest; and
  - (b) would not reasonably be expected to know the circumstances that give rise to the conflict of interest.

#### 77B Direct interest

- (1) A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subsection (1), a person has a direct interest in a matter if—
  - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;



## STATUTORY – DIRECT AND INDIRECT INTERESTS

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- (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.
- (3) A person who has a membership in a club or organisation that has a direct interest in a matter—
  - (a) does not, by reason of that membership, have a direct interest in the matter under subsection (1); and
  - (b) does not have an indirect interest in the matter, by reason of that membership, unless the person has an indirect interest in the matter under section 78A, 78B or 78C.
- (4) In subsection (2), **controlling interest** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**.

### 78 Indirect interest by close association

- (1) In this section—
  - daughter** means a biological daughter, step-daughter, adopted daughter, or female child for whom the person has custodial responsibilities;
  - direct relative** means the spouse, domestic partner, son, daughter, mother, father, brother or sister of the person;
  - domestic partner** of a person means—
    - (a) a person who is in a registered relationship with the person; or
    - (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
      - (i) for fee or reward; or
      - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);
  - family member** means—
    - (a) a spouse or domestic partner of the person; or
    - (b) a son, daughter, mother, father, brother or sister that regularly resides with the person;
  - relative** means—
    - (a) a direct relative of the person;
    - (b) a direct relative of a person who is the direct relative of the person;
  - son** means a biological son, step son, adopted son or male child for which the person has custodial responsibilities.






## STATUTORY – DIRECT AND INDIRECT INTERESTS

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- (2) A person has an indirect interest by close association in a matter if—
- (a) a family member of the person has a direct interest or an indirect interest in a matter; or
  - (b) a relative of the person has a direct interest in a matter; or
  - (c) a member of the person's household has a direct interest in a matter.
- (3) For the purposes of the definition of domestic partner in subsection (1)—
- (a) **registered relationship** has the same meaning as in the **Relationships Act 2008**; and
  - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
  - (c) a person is not a domestic partner of another person only because they are co-tenants.

### 78A Indirect interest that is an indirect financial interest

- (1) A person has an indirect financial interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (2) Without limiting subsection (1), a person has an indirect financial interest that is a conflict of interest if—
- (a) the person has a beneficial interest in shares of a company or other body that has a direct interest in the matter, except in the circumstances specified in subsection (3);
  - (b) the person is owed money from another person and that other person has a direct interest in the matter.
- (3) If a person, and family members of the person, hold shares in a company or body that has a direct or indirect interest in a matter with a combined total value that does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million, the person's indirect financial interest is not a conflict of interest.
- (4) Subsection (2)(b) does not apply if the other person is an authorised deposit-taking institution.
- (5) For the purposes of determining the value of shares under this section, the share value is to be taken from—
- (a) the close of business on the most recent of 30 June or 31 December; or
  - (b) if the person has lodged an ordinary return since the most recent of 30 June or 31 December, the close of business on the date the return was submitted.
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## STATUTORY – DIRECT AND INDIRECT INTERESTS

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### 78B Indirect interest because of conflicting duties

- (1) A person has an indirect interest in a matter because of a conflicting duty if the person—
  - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter;
  - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter;
  - (c) is a trustee for a person who has a direct interest in a matter.
- (2) A person has an indirect interest in a matter because of a conflicting duty if the person held a position or role specified in subsection (1) and, in that position or role, dealt with the matter.
- (3) A person does not have an indirect interest because of a conflicting duty if—
  - (a) the person is, or has been, only an employee in the service of the Crown or of a body established by or under any Act for a public purpose and the person has no current or expected responsibilities as that employee in relation to a matter;
  - (b) the person only holds a position in a not-for-profit organisation for which the person receives no remuneration and the person was appointed to the relevant special committee of the council to be a representative of the non-for-profit organisation;
    - (ba) the person only holds a position, with the Council's approval as a representative of the Council, in an organisation for which the person receives no remuneration;
  - (c) the person is only a Councillor who holds a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;
    - (ca) that person is only a member of a development assessment committee established under Part 4AA of the **Planning and Environment Act 1987**;
  - (d) the person only holds a position that has been prescribed for the purposes of this section.



## STATUTORY – DIRECT AND INDIRECT INTERESTS

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### 78C Indirect interest because of receipt of an applicable gift

- (1) In this section, **applicable gift** means one or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person or persons specified in subsection (2) in the 5 years preceding the decision or the exercise of the power, duty or function but does not include—
- (a) reasonable hospitality received by the person at an event or function the person attended in an official capacity as the Mayor, a Councillor or a member of Council staff or a member of a special committee; or
  - (b) a gift, other than an election campaign donation, that was received by the person more than 12 months before the person became a Councillor, a member of Council staff or a member of a special committee.
- (2) A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from—
- (a) a person who has a direct interest in the matter; or
  - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
  - (c) a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.
- (3) For the purposes of determining when a person became a Councillor or member of a special committee under subsection (1)(b), if the person is re-elected or reappointed as a Councillor or a member of a special committee, on completion of his or her term of office, the previous term of office served by that person as a Councillor or member of a special committee must be counted as continuous service with any service completed by the person after the person's re-election or reappointment.

### 78D Indirect interest as a consequence of becoming an interested party

A person has an indirect interest in a matter if the person has become an interested party in the matter by initiating civil proceedings in relation to the matter or becoming a party to civil proceedings in relation to the matter.

### 78E Indirect interest because of impact on residential amenity


A person has an indirect interest in a matter if there is a reasonable likelihood that the residential amenity of the person will be altered if the matter is decided in a particular way.



## STATUTORY – DIRECT AND INDIRECT INTERESTS

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### APPENDIX D - SECTION 79 OF LOCAL GOVERNMENT ACT 1989

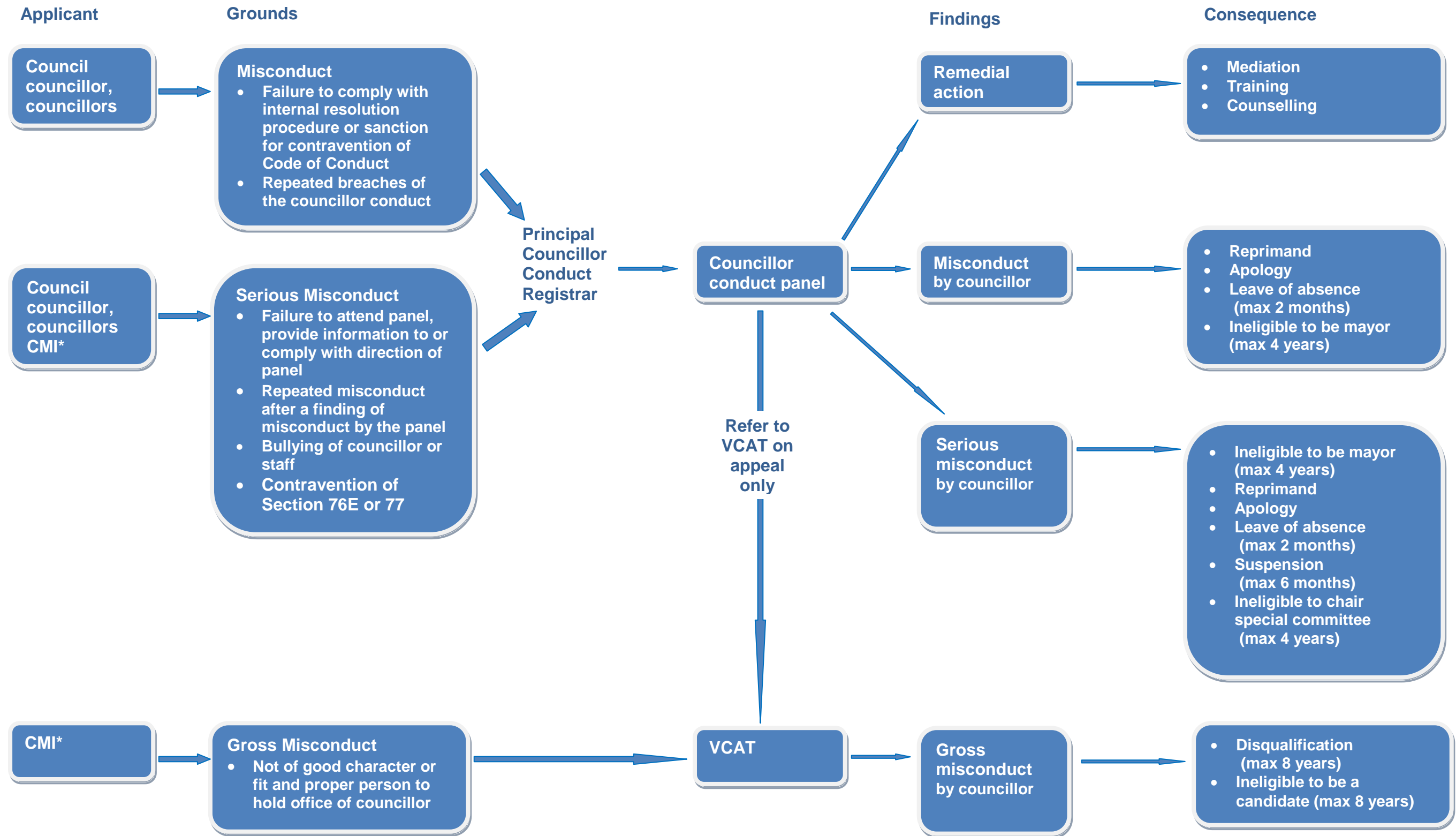
- (1) If a Councillor or member of a special committee has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or the special committee, the Councillor or member must, if he or she is attending the meeting, disclose the conflict of interest in accordance with subsection (2).
  - (2) A Councillor or member of a special committee who has a conflict of interest and is attending the meeting of the Council or special committee must make a full disclosure of that interest—
    - (a) by either—
      - (i) advising the Council or special committee at the meeting of the details required under paragraphs (b) and (c) immediately before the matter is considered at the meeting; or
      - (ii) advising the Chief Executive Officer in writing of the details required under paragraphs (b) and (c) before the meeting; and
    - (b) classifying the type of interest that has given rise to the conflict as either—
      - (i) a direct interest; or
      - (ii) an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, 78D or 78E; and
    - (c) describing the nature of the interest; and
    - (d) if the Councillor or member advised the Chief Executive Officer of the details under paragraph (a)(ii), the Councillor or member must make a disclosure of the class of interest only to the meeting immediately before the matter is considered at the meeting.
  - (3) For the purposes of section 79(2)(a)(i), if a Councillor or member of a special committee has a conflict of interest in two or more matters which are to be considered or discussed consecutively at a meeting of the Council or the special committee, the Councillor or member may make a full disclosure of each of those interests immediately before the first matter is considered at the meeting.
  - (4) Repealed;
  - (5) The Chief Executive Officer must—
    - (a) keep written disclosures given to him or her under this section in a secure place for 3 years after the date the Councillor or member of a special committee who made the disclosure ceases to be Councillor or member of a committee; and
    - (b) destroy the written disclosure when the 3 year period referred to in paragraph (a) has expired.
  - (6) While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must—
    - (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
    - (b) remain outside the room and any gallery or other area in view or hearing of the room.
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## STATUTORY – DIRECT AND INDIRECT INTERESTS

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- (7) The Mayor or the Chairperson of the special committee must cause the Councillor or member of a special committee to be notified that he or she may return to the room after—
  - (a) consideration of the matter; and
  - (b) all votes on the matter.
- (8) If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson must record in the minutes of the meeting—
  - (a) the declaration of the conflict of interest; and
  - (b) the classification of the interest that has given rise to the conflict, and if the Councillor or member has disclosed the nature of the interest to the meeting, the nature of the interest.
- (9) Unless section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence and liable to a fine not exceeding 120 penalty units.





\*Chief Municipal Inspector