

Special Meeting of Council

to be held at the Civic Centre, Civic Drive, Greensborough
on Tuesday 24 May 2016 commencing at 6.45pm.

Agenda

Stuart Burdack
Chief Executive Officer

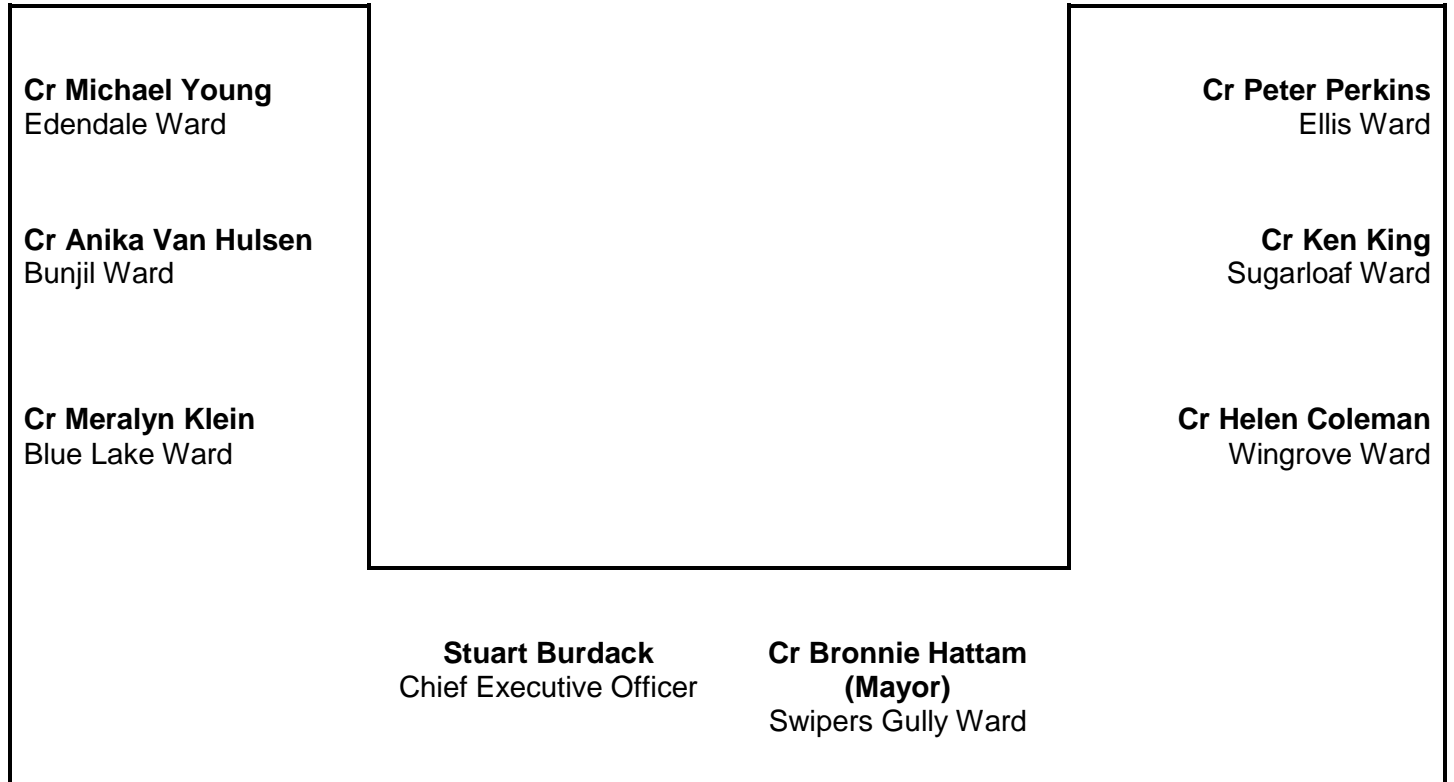
Wednesday 18 May 2016

Distribution: Public

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Domin je ka

Special Meeting of Council seating plan



Visitors in the gallery at Council meetings are:

- Welcome to copies of the reports which will be considered by the Council at the meeting. These are on the table in the foyer.
- Welcome to the tea, coffee and water provided in the foyer.
- Requested to observe Council deliberations quietly in order for Council meetings to run smoothly.
- Advised that a recording of this meeting will be made for the purpose of verifying the accuracy of the minutes.

Nillumbik Shire Council

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Nillumbik Shire Council

Agenda of the Special Meeting of Nillumbik Shire Council to be held Tuesday 24 May 2016 commencing at 6.45pm.

Welcome

Members of the public are advised the meeting will be recorded for the purpose of verifying the accuracy of the minutes.

1. Reconciliation statement

The reconciliation statement to be read by the Mayor

Nillumbik Shire Council acknowledges the Wurundjeri as the traditional custodians of the land now known as the Shire of Nillumbik and values the significance of the Wurundjeri people's history as essential to the unique character of the Shire.

2. Good governance pledge

As Councillors, we are mindful of our civic responsibilities and obligations. We pledge to take them seriously, and to carry them out with diligence and integrity.

We know the decisions we take will affect the people and environment of Nillumbik, now and in the future. We undertake, therefore, to make sound and principled decisions of lasting value, in a spirit of fairness and for the good of all.

We also pledge to serve the needs and wellbeing of the community and the environment, in an open and honest manner and to the best of our abilities.

3. Apologies

Motion

That the apologies be accepted.

4. Disclosure of conflicts of interest

Councillors should note that any conflicts of interest should also be disclosed immediately before the relevant item.

5. Officers' reports

OCM.074/16 Review of Governance Code, incorporating Councillor Code of Conduct

File: 10/10/016

Distribution: Public

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Summary

Council's 'Councillor Code of Conduct' is incorporated into its much larger Governance Code, the purpose of which is to provide a broad good governance framework for Councillors.

The recent amendments to section 76C of the *Local Government Act 1989* (the Act) now provide that Council must review and make any necessary amendments to its Councillor Code of Conduct within four months of those changes to the Act coming into effect. As a result of this amendment, perhaps the most significant requirement is that a Councillor Code of Conduct must include an internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor and that the Code may set out processes for the purpose of resolving an internal dispute between Councillors.

Councils are required to review their Councillor Codes of Conduct by 4 July 2016. The review must be done at a Special Council Meeting called solely for that purpose.

The new subsections 76C(6A) and 76C(6B) of the Act also provide that, within one month of amendments to a Councillor Code of Conduct being approved, a Councillor must make a declaration that they will abide by the Councillor Code of Conduct. The declaration must be in writing and witnessed by the CEO.

Council's current Governance Code, incorporating the Councillor Code of Conduct, has recently been reviewed by Councillors and officers. A number of amendments have been suggested to the current Code and these have been incorporated into the draft Code currently before Council.

It is recommended that the Governance Code, incorporating the amended Councillor Code of Conduct, be adopted by Council.

Recommendation

That Council approves the Governance Code incorporating the amended Councillor Code of Conduct (Attachment 1).

Attachments

1. Governance Code (incorporating Councillor Code of Conduct) May 2016

5. Officers' reports

OCM.074/16 Review of Governance Code, incorporating Councillor Code of Conduct

Background

1. Council's 'Councillor Code of Conduct' is incorporated into its much larger Governance Code, the purpose of which is to provide a broad good governance framework for Councillors.
2. The recent amendments to section 76C of the *Local Government Act 1989* (the Act) now provide that Council must review and make any necessary amendments to its Councillor Code of Conduct within four months of those changes to the Act coming into effect. As a result of this amendment, perhaps the most significant requirement is that a Councillor Code of Conduct must include an internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor and that the Code may set out processes for the purpose of resolving an internal dispute between Councillors.
3. Councils are required to review their Councillor Codes of Conduct by 4 July 2016. The review must be done at a Special Council Meeting called solely for that purpose.
4. The new subsections 76C(6A) and 76C(6B) of the Act also provide that, within one month of amendments to a Councillor Code of Conduct being approved, a Councillor must make a declaration that they will abide by the Councillor Code of Conduct. The declaration must be in writing and witnessed by the CEO.
5. The Councillor Code of Conduct must also be similarly reviewed within four months of a general election.
6. There is a legislative requirement in section 63 of the Act that, following an election, a councillor must read the Councillor Code of Conduct and make a declaration that they will abide by the Code. The declaration must be signed and witnessed by the CEO. If a councillor fails to do so within three months of being elected, the councillor is disqualified and their position declared vacant.
7. Importantly, as part of its recent determination, the Nillumbik Shire Council Councillor Conduct Panel also directed Council to review its Code of Conduct in relation to the dispute resolution procedures contained in its current Code. The Panel considered that the current Code of Conduct should be amended to more fully articulate Council's dispute resolution responsibilities and processes.
8. In response to these requirements, Council's current Governance Code, incorporating the Councillor Code of Conduct, has recently been reviewed by Councillors and officers. A number of amendments have been suggested to the current Code and these have been incorporated into the draft Code currently before Council.

Policy context

9. This report directly supports the achievement of Council Plan 2013-2017 strategy:
 - We will meet our legal responsibilities and manage our risks.

Budget implications

10. Macquarie Lawyers were engaged to review the draft Councillor Code of Conduct for legal compliance. Legal costs will be allocated from Council's operational budget.

5. Officers' reports

OCM.074/16 Review of Governance Code, incorporating Councillor Code of Conduct

Consultation/communication

11. Councillors were briefed in relation to draft versions of the Governance Code, incorporating the amended Councillor Code of Conduct, at Councillor Briefings held on 3 May and 17 May 2016.

Issues/options

12. On 5 April 2016, the MAV released a draft template of a Councillor Code of Conduct for use by councils. At a recent workshop conducted by Terry Bramham of Macquarie Lawyers the draft MAV Councillor Code of Conduct was discussed at length.
13. Macquarie Lawyers were subsequently engaged to review the Nillumbik Councillor Code of Conduct. We have used the draft MAV Code as the basis for the revised Councillor Code of Conduct, with the inclusion of a number of changes recommended by Macquarie Lawyers.
14. The draft Councillor Code of Conduct section of the Governance Code includes:
- Advice in relation to the roles of the Mayor and Councillors
 - Councillor conduct obligations
 - Use of Council resources
 - Prohibited conduct
 - Misuse of position
 - Confidential information
 - Dispute resolution procedures involving the following phases:
 - Phase 1 – Direct negotiation
 - Phase 2 (optional) – External mediation
 - Phase 3 – Internal resolution procedure - Arbiter
15. Full details of the dispute resolution procedures are included in the Code.
16. In addition, the Election Period Policy adopted by Council on 8 March 2016 has also been appended to the Governance Code in accordance with Council's resolution of that date.
17. A new Appendix K – 'Councillors role in meetings concerning planning applications' has also been included in the Governance Code. This formalises the long-standing protocol that has been in place for many years.
18. In response to feedback from Councillors and officers, the following changes have also been included in the Governance Code incorporating the Councillor Code of Conduct:
- An enhanced definition section, including new definitions of the following terms:
 - Arbiter, mediator and bullying
 - Misconduct, serious misconduct and gross misconduct

5. Officers' reports

OCM.074/16 Review of Governance Code, incorporating Councillor Code of Conduct

- Principal Conduct Officer, and
 - Principal Councillor Conduct Registrar
 - Further explanation of 'Conflict of interest procedures' in section 4.19
 - The inclusion of an extra Mayoral role, 'To uphold the decisions of Council', in section 5.1.1
 - Clarification, in section 5.1.1, of the legislative basis of Council's responsibilities with respect to Councillors as 'deemed workers'
 - Several changes to Appendix H – 'Officer Briefings on Planning Matters'
 - The inclusion of Council's 'Media Protocol' as a new Appendix L
 - Several minor typographical corrections
19. A copy of the Governance Code, incorporating the amended Councillor Code of Conduct, is attached for the information of Councillors (Attachment 1).

Conclusion

20. It is a statutory requirement of Council that its Councillor Code of Conduct be reviewed and adopted by Council by 4 July 2016.
21. It is recommended that the Governance Code, incorporating the amended Councillor Code of Conduct, be adopted by Council.

**Governance Code
(incorporating Councillor Code of Conduct)**

May 2016

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1 Introduction

In accordance with the *Local Government Act 1989* (the Act), Council's role is to provide governance and leadership for the Nillumbik community through advocacy, decision-making and action.

Adherence to good governance principles will assist Council in achieving this role.

This Governance Code has been developed to meet Council's goal of good governance for the Nillumbik community. It not only meets Council's statutory requirements for a Code of Conduct under section 76C of the Act, but also provides a framework for Councillors and officers to work in the best interests of the Nillumbik community.

It therefore contains the issues which must be addressed under the Act but also incorporates further principles of good governance which this Council has chosen to include in order to provide a framework to support good governance.

This document meets Council's statutory requirements under the Act to have a Code of Conduct. As such, it focuses on those specific issues which must be addressed under this legislation in Section 4. Section 5 is Council's broader governance framework and incorporates those principles and practices of good governance to which Council is committing itself.

2 Definitions

When we use the following terms we mean:

Administration	The paid employees of the Council, headed by the Chief Executive Officer
Arbiter	An independent person appointed by the Principal Conduct Officer to consider alleged violations of the Councillor Code of Conduct and make final determinations on them
Bullying	Persistent and repeated negative behaviour directed at a person that creates a risk to that person's health and safety
Chief Executive Officer	The most senior position in the Administration. This position is directly accountable to Council.
Code	A system of rules and regulations. In this case it includes both what the <i>Local Government Act 1989</i> requires the Council to address and also what the Council itself has chosen to incorporate.
Councillor	Elected community representative
Council	Elected representatives sitting as Council
Mayor	The elected leader of the Councillors
Mediator	An independent person engaged by the Mayor to mediate in relation to an interpersonal conflict between Councillors where: <ul style="list-style-type: none"> the conflict is, or is likely to, affect the operations of the Council; or there is an alleged contravention of this Code of Conduct
Misconduct	By a Councillor means any of the following: <ul style="list-style-type: none"> failure by a Councillor to comply with Council's internal resolution procedure; or failure by a Councillor to comply with a written direction given by Council under section 81AB of the Act; or repeated contravention of any of the Councillor conduct principles
Serious Misconduct	By a Councillor means:

	<ul style="list-style-type: none"> • the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or • the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or • the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or • 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 • bullying of another Councillor or member of Council staff by a Councillor; or • conduct by a Councillor in respect of a member of Council staff in contravention of section 76E of the Act; or • the release of confidential information by a Councillor in contravention of section 77 of the Act
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
<i>Local Government Act 1989</i> (the Act)	The primary piece of State Government legislation under which local government operates
Local Law	Under the Act, local governments have the power (and in some cases the requirement) to develop local legislation to cover certain areas. Nillumbik's Meeting Procedure Local Law covers meeting procedures.
Principal Conduct Officer	An officer appointed by the Chief Executive Officer, or Council, to assist Council in the implementation of the Councillor Code of Conduct, including Council's dispute resolution process
Principal Councillor Conduct Registrar	Is appointed by the Secretary of the Department of Environment, Land, Water and Planning to administer all councillor conduct panel processes. The Registrar will maintain the list of panel members, form appropriate panels to hear applications and publish panel findings and decisions.

The following definitions from the Act are noted:

<p>section 3(1)</p>	<p>‘electoral advertisement, handbill, pamphlet or notice’ means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting</p> <p>‘publish’ means publish by any means including by publication on the Internet</p>
<p>section 3(1A)</p>	<p>‘electoral matter’ means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election</p>
<p>section 3 (1B)</p>	<p>Without limiting the generality of the definition of ‘electoral matter’, matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:</p> <ul style="list-style-type: none"> a. the election; or b. a candidate in the election; or c. an issue submitted to, or otherwise before, the voters in connection with the election

3 Council Plan 2013-2017

Goals

- To enable a better future for Nillumbik residents and encourage healthy, safe and resilient communities through the provision of quality services
- To preserve and nurture the natural environment of the Green Wedge for future and current generations through responsible leadership and stewardship
- To provide infrastructure and plan for a built environment which respects and preserves the unique character of the Green Wedge
- To develop a prosperous local economy through partnerships with local business, governments and the community, consistent with our Green Wedge values
- To provide good governance, leadership and responsible financial management and to make decisions in an inclusive and transparent manner

4 Councillor Code of Conduct

4.1 Purpose of the Councillor Code of Conduct

The purpose of local government is to provide a system under which Councils perform the functions and exercise the powers conferred by or under the *Local Government Act 1989* (the Act) and any other Act for the peace, order and good government of their municipal districts. Good governance is fundamental to a Council being able to perform its purpose. Good governance relies on good working relations between Councillors.

This Code:

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

4.2 Background

Role of Councillors

Section 65 of the Act provides that the role of a 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 the 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.

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.

Councillors agree to comply with the requirements of section 65.

Role of Mayor

Section 73AA of the Act describes the functions of the Mayor as including:

- 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.

4.3 Conduct Obligations:

The Act places obligations on Councillors in relation to the way they should act. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions. As Councillors of Nillumbik Shire Council, we undertake to comply with all of the Councillor conduct provisions of the Act and with this Code.

Section 76B of the Act sets out the primary principle of Councillor conduct as follows:

“It is the 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.”

Section 76BA of the Act sets out the general principles of Councillor conduct as follows:

“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 orally 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 staff and other persons;
- exercise reasonable care and diligence and submit themselves to the lawful scrutiny that it 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 the Councillor as an elected representative; and
- 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.”

Councillors are required to conduct themselves in observance of the primary principle and the general principles. We undertake to do this.

4.4 Functions of the Chief Executive Officer

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

4.5 Use of Council resources

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

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

4.6 Gifts and benefits

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

We will take all reasonable steps to ensure that our immediate family members (parents,

spouse, children and siblings) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

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

We recognise that gifts equal to or above the gift disclosure threshold received in the 12 months prior to election from a person or body that has a direct interest in a matter may give rise to an indirect interest because of receipt of an applicable gift. (Refer Appendix I).

We will record all campaign donations in our “campaign donation return”.

4.7 Communication

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

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

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

4.8 Personal dealings with Council

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

4.9 Prohibited Conduct

The *Local Government Act 1989* has specific provisions that prohibit Councillors from certain conduct. This conduct relates to:

- Misuse of position
- Improper direction
- Confidential information

- Conflict of interest
- Electoral conduct

These matters are set out below in order to provide a complete picture of the obligations on Councillors. While these matters are not of a nature to be addressed as a contravention of the Councillor Code of Conduct, we undertake to comply with the prohibitions on Councillor conduct set out below. These matters should more properly be the subject of an application to a Councillor Conduct Panel for a finding of serious misconduct or a complaint to the Local Government Inspectorate or the Independent Broad-based Anti-corruption Commission depending on the nature of the allegation.

(Note: Serious misconduct by a Councillors 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.)

4.10 Misuse of position

A Councillor must not misuse his or her position:

- a. to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- b. to cause, or attempt to cause, detriment to the Council or another person.
- c. Circumstances involving the misuse of position by a Councillor include:
- d. making improper use of information acquired as a result of the position he or she held or holds; or
- e. disclosing information that is confidential information within the meaning of section 77(2); or

- f. directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
- g. exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
- h. using public funds or resources in a manner that is improper or unauthorised; or
- i. failing to disclose a conflict of interest as required under this Division.

4.11 Improper direction

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.

4.12 Confidential information

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

A Councillor may disclose information that the he or she 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.

4.13 Conflict of interest

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or special committee, an assembly of councillors, an audit committee or a section 223 committee, the Councillor must, if attending the meeting, disclose the conflict of interest in accordance with the provisions of the Act (unless any of the exemptions apply).

A Councillor has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the Councillor would be directly altered if the matter is decided in a particular way. This includes where there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms and where the Councillor, or 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.

A conflict of interest also exists where a Councillor has any of the six types of indirect interest. These indirect interests are

- Close association - an indirect interest because of a close association with a family member, relative or member of the household who has a direct interest
- Indirect financial interest - an indirect financial interest, including holding shares above a certain value in a company with a direct interest
- Conflicting duty - a conflicting duty arising from having particular responsibilities to a person or organisation with a direct interest
- Applicable gift - receipt of an applicable gift or gifts from a person or organisation with a direct interest
- Interested party - a party to the matter by having become involved in civil proceedings in relation to the matter
- Residential amenity – this occurs where there is a reasonable likelihood that the person's residential amenity will be altered if the matter is decided in a particular way.

4.14 Other legislative requirements

The Act includes requirements in relation to Councillor conduct, eligibility, electoral conduct and the election period (caretaker period). Alleged contraventions of these provisions are not to be dealt with by the Council using the internal resolution procedure in this Code.

Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

We undertake to comply with the various provisions relating to these and other relevant legislative requirements matters.

4.15 Dispute Resolution

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. Where, after these endeavours have been exhausted, the matter still remains unresolved, the parties may then resort to Council's three phase dispute resolution process.

The Council's three phase dispute resolution process involves:

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

The phases must be followed in order commencing with direct negotiation between the parties followed by, if agreed, the use of an external mediator. The use of an internal resolution procedure involving an independent arbiter, if requested by any of the parties, is the final phase only of this process if the first two phases have not resolved the dispute.

4.16 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 this Code.

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

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of this 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 the Councillor with a copy of the written request either at the same time as it is provided to the Mayor or as soon as practicable thereafter.

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

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

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

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

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

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

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

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

Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor (if any) or the immediate past Mayor. The Deputy Mayor or the immediate past Mayor will

perform the functions ascribed to the Mayor.

4.17 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 this Code.

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

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

The applicant is to notify the other party of the request and provide the Councillor 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 is to ascertain (in writing) whether or not the other party is prepared to attend an “external mediation”. If the other party declines to participate in an external mediation, he or she is to provide their reasons for doing so in writing to the Principal Conduct Officer.

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

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

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

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

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 this Code.

4.18 Phase 3 - Internal resolution procedure - Arbiter

A Councillor or a group of Councillors may make an application alleging that a Councillor has contravened this Code. 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 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 this Code by a Councillor;
- explore if the application can be resolved between the parties without making any findings;
- make findings in relation to any application alleging a contravention of this Code which the arbiter must give to the Council, Mayor and the parties to the dispute;
- 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 this Code.

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.

A Councillor who is a party to a dispute must participate in good faith in the internal resolution process involving an arbiter

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.

A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to 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, two (2) meetings of the Council (in respect of the next scheduled meetings of the Council);
- direct that, for a period of up to, but not exceeding, two (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.

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

If the respondent to an application for an arbitration 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 was 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.

4.19 Conflict of interest procedures

Conflict of interest requirements are enshrined in the *Local Government Act 1989* and, as such, are no longer required to be included in Codes of Conduct. However, in the interests of consolidating all relevant information in the one document, they are attached as Appendix B.

Notwithstanding the legislative requirements, Councillors are committed to keeping their public and private interests separate. Councillors note that, under the legislation, they themselves are ultimately accountable to identify and declare interests. Given the complexity of the legislation, Councillors will make every effort to identify relevant interests and will seek appropriate advice as required. The Administration will provide appropriate assistance to Councillors if requested.

Nillumbik also notes that conflict of interest legislation applies also to Council officers (when exercising delegated powers or providing advice to Council), consultants and others providing advice to Council and assemblies of Councillors (formal meetings involving at least four Councillors and a council officer, or any meetings of Advisory Committees).

Councillors will comply with all the provisions of the Act in regard to conflicts of interest.

It is the responsibility of the elected Councillor to identify and disclose conflicts of interest when required to do so. Assistance with conflict of interest matters may also be sought from:

- A lawyer or other suitably qualified/experienced person
- The CEO or an experienced officer authorised by the CEO to give such assistance
- Local Government Victoria\
- The MAV or VLGA

Another person can assist a Councillor to decide whether they have a conflict of interest but cannot make the decision for the Councillor. No matter what assistance is received, legally a Councillor remains responsible for their own actions.

The principle Councillors will follow is 'when in doubt, declare'.

4.20 Election Period Policy

Election period or 'caretaker period' requirements are also enshrined in the *Local Government Act 1989* and, therefore, are not required to be in the Council's Code of Conduct. Council's Election Period Policy, adopted in March 2016, as attached as Appendix C.

The purpose of these procedures are:

- to ensure that the ordinary business of local government in Nillumbik continues throughout an election period in a responsible and transparent manner and in accordance with statutory requirements and established caretaker conventions;
- to ensure that the ongoing ordinary business of Council is kept separate from Councillors' activities which relate to the election; and
- to ensure that, in the run up to an election, Council does not make decisions which inappropriately bind the next Council.

These procedures commit Council during the caretaker period to:

- Avoid making significant new policies or decisions that could unreasonably bind a future Council; and
- Ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Councillors as candidates in the election.
- To continue with normal community consultation during the caretaker period, but consultations will avoid express or implicit links to the election

Council resources must not be used to assist Councillors in election campaigning.

5 Good governance principles and practices

5.1 Key roles and relationships

5.1.1 Roles

We believe that an understanding and agreement of the different roles within a local government helps us govern better. At Nillumbik, the key roles are as follows.

Mayor

At Nillumbik, we recognise that the Mayor is the leader of Council and the local government as a whole. We also understand that the Mayor does not have any statutory authority over other Councillors and that the leadership roles of the position can only exist if all Councillors accept this role.

In addition to the functions described in the Act, the Mayor's roles are:

- To chair Council meetings effectively and in a way which maximises the opportunity for all Councillors to participate in decision-making
- To provide leadership and direction for Councillors and for the Shire
- To assist Councillors to work with each other and be an effective group
- To be the public face of Council and take key responsibility for how Council presents itself in the wider community
- To be the main media spokesperson and uphold the decisions of Council
- To work with all Councillors and assist them to achieve their goals and to use the authority of the position to suggest processes to tackle and resolve issues
- To keep across progress on key issues and help keep Councillors informed about those key issues
- To oversee dispute resolution processes between Councillors except when the Mayor is a party to the dispute (refer to Dispute Resolution Procedures)
- To assist Councillors to liaise with the CEO and Administration and to advocate on behalf of Councillors as necessary.
- To counsel a councillor or councillors if a complaint is received from a member of the public about their conduct or behavior. If the complaint is about the Mayor, the Deputy Mayor will assume this counselling role.
- If the Mayor receives a complaint about a Councillor that is potentially a breach of the *Local Government Act 1989*, it may be referred to the Local Government Inspectorate, IBAC, Victoria Police or the complainant may be asked to formalise the complaint through Protected Disclosure procedures.

Nillumbik accepts the role of the Mayor as the leader of the Council and the local government as a whole and will give the position the authority and respect required for it to undertake this role.

Deputy Mayor

The Deputy Mayor's roles are:

- To deputise for the Mayor in his/her absence
- To provide support for the Mayor as agreed between the Mayor and Deputy Mayor and by the Council.

Council

The Council's role is:

- To advocate on behalf of the community
- To plan for the future of Nillumbik through general and specific strategic planning
- To oversee and monitor progress towards achieving the Council Plan
- To develop policy to guide programs and services
- To make decisions on all matters within Council's responsibility
- To make laws and administer them as appropriate
- To work in partnership with other levels of government and the Administration for the benefit of Nillumbik.

Councillors

At Nillumbik we recognise that, as Councillors, we need to work together to achieve good outcomes for the Shire. We also understand that Councillors represent their constituents and that combining these two roles can, at times, cause tensions for Councillors. Nillumbik aims to support Councillors in achieving all their roles and expect that Councillors will manage their differing roles thoughtfully and in the best interests of the Shire as a whole.

Councillors' main focus should be on strategy and policy. However, we recognise that Councillors will at times be following up operational issues on behalf of constituents. Also, at times individual situations can fall between or outside existing policies. Even when addressing these situations, Councillors recognise that their most significant impact will be if these situations are addressed at a policy/strategic level.

In addition to that described in the Act, the role of a Councillor is:

- To advocate and represent to Council on behalf of their constituents
- To facilitate communication between Council and the community

- To debate the issues in an open, honest and informed manner to assist the decision-making process
- To participate in Council decision-making and activities in a way which supports the interests of the whole Nillumbik community
- To chair Council's advisory committee meetings in their capacity as Council delegates, and to be members of advisory committees if another Councillor is the Chair.

At Nillumbik we will recognise and support the different roles that Councillors can have and work together to ensure that these roles are understood and implemented in the best interests of the Nillumbik community.

Chief Executive Officer (CEO)

The CEO has many important roles at Nillumbik. In terms of good governance, the CEO has a critical role in fostering a culture within the organisation that supports democratic governance and respects the role of Councillors in the local government system.

Under the Act, the Chief Executive Officer is responsible for:

- 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;
- supporting the Mayor in the performance of the Mayor's role as Mayor;
- 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 Workplace Injury Rehabilitation and Compensation Act 2013; and the Occupational Health and Safety Act 2004.
- performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.

In addition to the functions in the Act, the key roles of the CEO with regard to good governance are:

- Provision of advice and support to Councillors, individually and collectively
- Managing the organisation
- Ensuring the implementation of Council decisions
- Liaison between the Administration and Councillors
- Helping manage the relationship between elected representatives and the Administration and ensuring that Councillors' requests are handled by the Administration without causing an excessive workload for officers and budget implications
- Fostering a positive culture within the organisation
- Working closely with the Mayor to provide leadership and direction to the organisation.

The CEO recognises that a critical function of the position is to support good governance and will promote this actively.

Administration

At Nillumbik, the Administration recognises that it is in the local government sector and its function is to support democratic governance. It is sensitive to the differing roles of, and the many pressures on, Councillors and works to support Council, Councillors and the CEO in the interests of Nillumbik.

The Administration is also conscious that at times there may be expectations that it fulfil a support role to Councillors which is more like that of 'minders' at the State and Federal levels. It is mindful that any such support must be focussed on supporting Councillors in their governance functions. It should not stray into support for overly political activities eg those related to re-election. It should also not support or facilitate any individual Councillor in private activities.

Key roles of the Administration are:

- Delivery of programs and services (within budgets)
- Through the CEO, providing support, advice and information to Council and Councillors
- Implementing Council decisions
- Ensuring compliance with relevant legislation.

The Administration recognises that its functions should support good governance and will always strive to do so.

5.1.2 Relationships

At Nillumbik, we believe that good working relationships are a key factor in helping us govern well. All relationships at Nillumbik should be characterised by our values and an understanding of everyone's different roles. The key relationships and their characteristics are as follows:

Mayor/Councillors

A good relationship between the Mayor and Councillors will help us work together to deliver the Council Plan. It will also increase the public credibility of the organisation.

- The Mayor is the leader of the Council and this role should be respected by all Councillors.
- Even though the Mayor does not have statutory authority over other Councillors, at Nillumbik we recognise the Mayor's leadership role and will afford the position the authority to provide that leadership.
- The Mayor is a source of advice and support to Councillors to help them achieve their goals.
- The Mayor is the Mayor of all Councillors and, as such, should be fostering relationships which support inclusive decision-making and involvement in Council activities in general.
- The Mayor should be an early contact point if there are disputes between Councillors and has the responsibility for facilitating resolution of such disputes, as outlined in the Councillor Code of Conduct.

Councillors/Councillors

Councillors need to work with each other to achieve their individual and collective goals. Good relationships between Councillors will assist in achieving a successful Council, a pleasant working environment and a Council with public credibility.

- While they may have different views, Councillors should treat each other with respect and courtesy.
- Disagreements, if they must be aired, should be expressed in a way that causes no detriment to individual Councillors or the Council as a whole.
- Councillors should adhere to the 'no surprises' principle in their relationships with each other.
- Debate and discussions should focus on issues and not on personalities.

Mayor/CEO

This important relationship can assist in the smooth running of the local government through good communication and anticipation of issues. It should be outward looking – that is focused on how the elected representatives and the organisation can be supported to best achieve Nillumbik's goals.

- The Mayor and CEO need to work closely together and must strive for a good working relationship.
- The relationship between the Mayor and CEO needs to be characterised by consistency, openness and good communication. Each has the responsibility to keep the other informed about important and relevant issues. Good communication should ensure that an understanding develops about what is important and relevant.
- The Mayor and the CEO understand that each has different roles and authorities. At Nillumbik, we understand that, while the Mayor is the leader of the local government, this position has no statutory authority (other than to chair meetings of Council) while the CEO has specific authorities. The relationship between the Mayor and the CEO is sensitive to this issue.
- The CEO is conscious of the Mayor's role in assisting Councillors to address their issues and achieve their goals and should always be looking to support this.
- At Nillumbik, the relationship between the Mayor and the CEO aims to facilitate involvement and inclusion amongst the elected representatives and the Administration. It does not seek to concentrate power in the relationship.
- At Nillumbik, the Mayor and the CEO recognise the importance of consistent communication and to support this will have regular meetings.

Councillors/CEO

Good relationships between Councillors and the CEO assist good governance. The CEO is often able to assist Councillors in addressing constituent issues. Councillors can help keep the CEO informed about what is happening in the community. Good relationships between the CEO and Councillors can improve liaison between Councillors and the Administration.

The CEO is also accountable to Councillors when they sit as Council. Councillors sitting as Council are also responsible for performance management of the CEO.

- At Nillumbik, we recognise that performance management of the CEO is important to Nillumbik achieving its goals. We understand that setting the goals for the CEO as leader of the administration and assessing performance against these goals is very important. Councillors commit themselves to spending the necessary time to set the goals as well as assessing their achievement;
- We understand that the relationship between Councillors and the CEO is based on a good understanding of each other's roles

- Councillors understand that the CEO can be a source of advice and support and that good communication between Councillors and the CEO can assist the CEO's role; and
- Councillors and the CEO will make time to meet periodically (usually monthly).

Councillors/Administration

At Nillumbik we want to encourage an open organisation, with good communication and understanding between Councillors and the Administration. Everyone should have a good understanding of overall goals. However, good and open relationships require that the nature of the relationships and communication are well understood and backed by accountability and responsible conduct.

We believe that Councillor/Administration relationships should incorporate the following understandings:

- An understanding of the complexity of both the elected representatives and Administration's roles. Every effort should be made to understand where the other is coming from
- Although the CEO and General Managers recognise that Councillors will contact staff on routine matters, Councillors need to understand that formal advice to elected representatives and Council should only come from the CEO and/or General Managers. This is the only advice against which the Administration can be held accountable
- Communication on important matters will always involve the Mayor and/or Councillors and the CEO and/or General Managers
- Communication should be characterised by straight talking
- It is preferable that, if Councillors are dissatisfied with the outcome of an initial contact, the issue be escalated upwards, either through the organisation, or to the Mayor
- Relationships between Councillors and the Administration should incorporate the 'no surprises' principle
- Councillors do not have the authority to direct staff members
- Communication will be based on respect for each other and will not be used to undermine other Councillors or staff members (refer to the General Councillor conduct principles contained in section 76BA of the Local Government Act 1989)
- Any information which is provided to an individual Councillor should be such that it is, or could be, copied to all Councillors
- Staff members should inform their Manager about any contacts with Councillors at which policies or programs were discussed in order to ensure that Councillors are receiving validated information

- A Councillor who wishes to discuss an officer's conduct should speak only with the CEO or the relevant General Manager
- As a principle, officers will discuss all significant conversations with Councillors (including emails) with their Managers beforehand to ensure accountability requirements are met
- Staff approaching Councillors about organisational issues should be referred to their Manager and reminded about Nillumbik's grievance and protected disclosure procedures
- If staff, in dealing with Councillors, feel any discomfort resulting from the nature of the Councillors' enquiries, relative to what might be expected in dealing with a member of the public, then the staff member will refer the Councillor to his/her General Manager.

Councillors and the Administration recognise the importance of appropriate and productive relationships and will always strive to support and maintain these relationships.

5.2 Decision-making process

Nillumbik recognises that good decisions are more likely to be made if good decision-making processes are used.

The key features of Nillumbik's decision-making process are:

5.2.1 Agenda setting

- We understand that the main way of having issues considered by Council is through the Council Plan and Budget processes together with the development and review of policies and strategies
- If issues arise during the year which Councillors believe require Council consideration, Councillors can work with each other, the Mayor and the Administration to put them forward for Council's consideration. If Councillors are seeking assistance in getting their issues up for consideration, they should approach General Managers, the CEO or the Mayor
- If Councillors wish to put items onto the Agenda as notices of motion, the procedures of Nillumbik's Meeting Procedure Local Law No 6 are to be followed
- Opportunities such as Open Policy Forums exist for Councillors to be proactive in putting issues forward for consideration.

Councillors and the Administration will use appropriate channels to raise issues. They will adhere to the 'no surprises' principle and ensure that no attempt is made to 'ambush' anyone.

5.2.2 Information gathering

- We recognise that Councillors will seek and obtain information from various sources including community members. We understand the difference between formal advice from the Administration and community members and other stakeholders and take this into account in assessing the information we receive;
- Councillors believe that decisions should be based on the best possible data and expect the Administration to provide Council with quality research;
- We understand that the views of those affected by our decisions is an important source of information for elected members and that is why we consult; and
- We value the information provided to us by the members of Advisory Committees and use the information gained to help us make decisions.

We recognise the importance of acting on the basis of validated information and will make every attempt to ensure that we do.

5.2.3 Opinion formation

Briefings

- At Nillumbik we use briefing sessions to help elected members make up their minds about important issues;
- Briefing sessions offer elected representatives the opportunity to ask questions, seek further information and float issues and options which are necessary for them to form their opinions on issues;
- The Administration must ensure that the necessary accurate information is made available to Councillors at briefing sessions.
- Discussion at briefing sessions is in no way a substitute for debate in Open Council meetings. In order to fully explore options, issues and information needs, it is necessary for briefing sessions to be closed to the public. Briefing papers are not intended for public distribution. Transparency requirements are met through the way in which issues are openly addressed by Council at its formal meetings;
- Briefing sessions should prevent the necessity for Council to defer issues which are on the Agenda due to Councillors feeling that they don't have enough information to make a decision;
- Appropriate use of briefing sessions should result in no surprises occurring at Council meetings or other public forums
- Minutes of discussions and matters presented at briefing sessions will be kept by the relevant General Manager or the CEO and filed on the corresponding file;
- Briefing sessions build trust and respect among Councillors and between the administration and can be used as brainstorming opportunities with all views being accepted and worked through, such is the nature of opinion forming. Councillors and staff will therefore participate fully in briefing sessions. It is their responsibility to raise all their information requests and any other matters which are necessary for them to make up their minds.

Pre-meeting briefings

- Pre-meetings scheduled prior to the Council and Committee meetings will aim to be completed 15 minutes prior to the scheduled break for a meal. This will allow any final informal discussion amongst Councillors in respect to forming their opinion and if necessary making final amendments to any draft motions that they wish to use for the purpose of debate during the meeting.
- Council officers should clarify information in officer reports and provide relevant background information if required, but should not participate in pre-meet Councillor persuasive discussions about Council motions. These discussions should be held in private by Councillors. When required, input from the CEO or General Managers can

assist with the final drafting of Councillor motions.

- Officers when requested will assist Councillors to draft motions. These draft motions are the responsibility of the Councillor to distribute to colleague Councillors should they wish to use them.
- We understand that all briefing sessions are Assemblies of Councillors under the conflict of interest provisions of the Local Government Act 1989. The requirements to be observed by an Assembly of Councillors are contained in section 80A of the Act.

We will participate fully in briefing sessions in order to help make informed decisions at Council or Committee meetings.

5.2.4 Decision-making

- We understand that our decision-making needs to be transparent. Our community needs to understand how we come to the decisions we make. Therefore, while we may have discussed an important issue in a briefing session, we will fully debate these matters when they come before Council at the formal Council meeting.
- We recognise that, at times, different Councillors will interpret the same set of information in different ways. We respect our differences and will treat each other with courtesy at Council meetings; and
- Council decisions should be made in such a way that Councillors are as participative as possible. Chairing and meeting procedures should recognise and encourage participation by all Councillors.

We will maximise participation of all Councillors in decision making. In debating, Councillors will focus on the issues rather than on each other.

5.2.5 Implementation

- Once Council has made a decision, it becomes the collective decision of Council. While it is recognised that some Councillors may not have supported the decisions, it is highly desirable that Councillors do not seek to undermine or publicly denigrate the decision
- If a Councillor believes that their accountability to constituents requires an expression of dissent this should be done carefully and with respect. Councillors must bear in mind that post-decision dissent weakens the Council in the eyes of the community
- Council decisions should be implemented promptly and professionally by the Administration.

The Administration will implement all Council decisions promptly and professionally. Councillors will not denigrate or undermine Council decisions once made, even if they disagree with them.

Appendix A: Section 77 Confidential Information

77. Confidential information

1. A person who is, or has been, a Councillor or a member of a special committee, must not release information that the person knows, or should reasonably know, is confidential information. Penalty: 120 penalty units
2. For the purposes of this section, information is confidential information if -
 - a. the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or
 - b. the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or
 - c. 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.

Appendix B: Conflict of Interest Provisions

76AA Definitions

In this Division:

family has the same meaning as family member has in section 78;

matter means a matter with which a Council, special committee or a member of council staff is concerned and that will require:

- a. a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council or a special committee in respect of the matter;
- b. a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of council staff in respect of the matter;

not-for-profit organisation means a body or organisation that:

- c. operates exclusively for charitable, civil or other social purposes; and
- d. does not share or allocate the funds or profits of the body or organisation with the owners, shareholders or executives of the body or organisation;

relevant person means a person who is a:

- e. Councillor; or
- f. member of a special committee; or
- g. member of Council staff.

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 direct 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;
 - 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:

- c. a spouse or domestic partner of the person; or
- d. a son, daughter, mother, father, brother or sister that regularly resides with the person;

relative means:

- e. a direct relative of the person;
- f. 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.

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.

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;
 - c. 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;
 - d. 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;
 - e. the person is only a member of a planning application committee established under Part 4AA of the Planning and Environment Act 1987;
 - f. the person only holds a position that has been prescribed for the purposes of this section.

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, 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.

79 Disclosure of conflict of interest

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. *****
 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.
 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.

79B Conflicting personal interest

1. This section does not apply to a Councillor or member of a special committee who has a conflict of interest in the matter.
2. If a Councillor or a member of a special committee considers that he or she has a personal interest in relation to a matter that is in conflict with his or her public duty in relation to the matter, the Councillor or member may, immediately before the matter is considered at the relevant meeting, apply to the Council or special committee to be exempted from voting on the matter.
3. If a Councillor or member of a special committee makes an application under subsection (2), he or she must give reasons in support of the application.
4. A Council or special committee may consent to an application made under subsection (2) and must not unreasonably withhold consent.
5. If a Council or special committee consents to an application under subsection (4), sections 79(6), 79(7), 79(8) and 79(9) apply as if the personal interest that is the subject of an application under subsection (2) were a conflict of interest specified under this Act.

79C Certain situations where Councillor taken to not have a conflict of interest

1. A Councillor is taken to not have a conflict of interest for the purposes of this Division if the matter only relates to:
 - a. the nomination or appointment by the Council of the Councillor to a position for which the Councillor will not be remunerated;
 - b. the election of the Mayor under section 71 or the appointment of an acting Mayor under section 73(3);
 - c. a decision in relation to the payment of allowances to the Mayor or Councillors under section 74 or 74C(2);
 - d. the adoption of a policy under section 75B in relation to the reimbursement of expenses;
 - e. the adoption of a Councillor Code of Conduct under section 76C;
 - f. an application to a Councillor Conduct Panel or VCAT under Division 1B;
 - g. an application for an exemption under section 80;
 - h. the appointment of members and Chairpersons of special committees;
 - i. a resolution that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under taxation legislation;

- j. the conduct of a Councillor with respect to:
 - i) an internal dispute that involves the Councillor;
 - ii) an allegation of misconduct or serious misconduct (as defined in section 81A) by the Councillor;
 - k. a submission provided to an electoral representation review under section 219F;
 - l. a submission provided for the purposes of a subdivision review conducted under section 219N.
2. If a budget or revised budget to be approved by a Council includes funding for a matter in respect of which a Councillor has a conflict of interest the Councillor is taken to not have a conflict of interest for the purposes of approving the budget or revised budget if:
 - a. the Council previously approved the matter and the proposed funding for the matter for inclusion in the budget or revised budget; and
 - b. the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter and the proposed funding for the matter was previously considered and made.
 3. If a Council Plan to be approved by a Council includes a matter in respect of which a Councillor has a conflict of interest, the Councillor is taken to not have a conflict of interest for the purposes of approving the Council Plan if:
 - a. the Council previously approved the matter for inclusion in the Council Plan; and
 - b. the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter was previously considered and made.
 4. If a Councillor with a conflict of interest referred to in subsection (2) or (3) notifies the Mayor or Chairperson prior to the consideration of the budget, revised budget or Council Plan of the conflict of interest, the Mayor or Chairperson must allow a prior motion to be put that the matter or funding be considered for inclusion in the budget, revised budget or Council Plan.

79D Person may make submission despite conflict of interest

Subject to subsection (2), a relevant person who has a conflict of interest in a matter and who has made a written submission under section 223 in respect of the matter, may present his or her submission under section 223(1)(b) to the Council or committee of the Council.

The relevant person who has a conflict of interest in a matter must not be at the meeting of the Council or committee of the Council any longer than is required for the Nillumbik Shire Council Governance Code

person to be heard in support of the person's written submission.

80 Exemption by Minister

(1AA): Despite section 79, the Minister may, of his or her own motion, exempt in writing a person, other than a Councillor, from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit if the Minister is satisfied that—

- a. extraordinary circumstances exist that justify the exemption of the person; and
- b. it is in the public interest to exempt the person.

(1AB): In exempting a person under subsection (1AA), the Minister must have regard to the extent of the conflict of interest of the person.

1. Despite section 79:

- a. a Council may apply, in writing, to the Minister for an exemption of any Councillor from any or all of the provisions of section 79 if the Council is of the opinion that the transaction of any Council or special committee business would be impeded because of the number of Councillors affected by section 79;
- b. a Chief Executive Officer of a Council may apply, in writing, to the Minister, after receiving written declarations of conflicts of interest from a majority of Councillors, for an exemption of those Councillors from any or all of the provisions of section 79.

(1A) After reviewing an application received from a Council or a Chief Executive Officer, the Minister may require the Council or Chief Executive Officer to provide additional information in respect of the application, including copies of the written declarations of conflicts of interests made by Councillors under section 79.

(1B) In considering an application made by a Council or Chief Executive Officer, the Minister must have regard to—

- c. the extent of the conflicts of interest of the Councillors; and
- d. the public interest.

2. The Minister may, after considering an application under subsection (1B), exempt in writing a Councillor from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit.

3. The Minister may revoke an exemption.

80A Requirements to be observed by an assembly of Councillors

1. At an assembly of Councillors, the Chief Executive Officer must ensure that a written record is kept of:

- a. the names of all Councillors and members of Council staff attending;

- b. the matters considered;
 - c. any conflict of interest disclosures made by a Councillor attending under subsection (3);
 - d. whether a Councillor who has disclosed a conflict of interest as required by subsection (3) leaves the assembly.
2. The Chief Executive Officer must ensure that the written record of an assembly of Councillors is, as soon as practicable:
 - a. reported at an ordinary meeting of the Council; and
 - b. incorporated in the minutes of that Council meeting.
 3. If a Councillor attending an assembly of Councillors knows, or would reasonably be expected to know, that a matter being considered by the assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a conflict of interest under section 79, the Councillor must, at the time set out in subsection (4), disclose to the assembly that he or she has a conflict of interest and leave the assembly whilst the matter is being considered by the assembly.

Penalty: 120 penalty units.

4. A Councillor must disclose the conflict of interest either:
 - a. immediately before the matter in relation to which the Councillor has a conflict of interest is considered; or
 - b. if the Councillor realises that he or she has a conflict of interest after consideration of the matter has begun, as soon as the Councillor becomes aware that he or she has a conflict of interest.

80B Members of Council staff to disclose conflicts of interest in respect of delegated functions

1. This section applies to:
 - a. a member of Council staff who has been delegated a power, duty or function of the Council under section 98(1) or 98(3) or under another Act;
 - b. the Chief Executive Officer who has been given a power, duty or function under this Act or another Act;
 - c. any other member of Council staff who has been delegated a power, duty or function of the Chief Executive Officer under section 98(2).
2. A member of Council staff who has a conflict of interest in a matter in which they also have delegated power, duty or function must:
 - a. not exercise the power or discharge the duty or function; and
 - b. in the case of the Chief Executive Officer, disclose the type of interest and the

nature of the interest to:

- i) the Mayor, in writing, as soon as he or she becomes aware of the conflict of interest in the matter; and
 - ii) the Council by no later than the next ordinary meeting of the Council.
- c. in the case of any other member of staff, disclose the type of interest and the nature of the interest to the Chief Executive Officer, in writing, as soon as he or she becomes aware of the conflict of interest in the matter. Penalty: 120 penalty units.
3. The Chief Executive Officer does not have a conflict of interest in a matter if the matter only relates to:
- a. the adoption or amendment of a policy relating to Council staff generally;
 - b. the adoption of a code of conduct for Council staff under section 95AA;
 - c. a decision to delegate a power, duty or function to a member of Council staff.
 - d. a decision to request the appointment of a probity auditor under Division 4.

80C Persons to disclose interests to Council when providing advice

1. This section applies to Council staff and persons engaged under a contract to provide advice or services to the Council or a special committee.
2. A person who is providing advice or a report to a meeting of the Council or a special committee, and who has a conflict of interest in a matter to which the advice or report relates, must disclose the type of interest constituting the conflict of interest when providing the advice or report and before the advice or report is considered by the Council or the committee. Penalty: 60 penalty units.
3. A disclosure made by a person under subsection (2) must be recorded in the minutes of the meeting.
4. A person who has made a disclosure under subsection (2) must disclose the nature of the interest if required to make that disclosure by the Council or committee.
5. Sections 77A to 78E apply to a person to whom this section applies as if the person were a relevant person under this Division.

Appendix C: Election Period Policy

Election Period Policy

March 2016

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1 Introduction

The Local Government Act 1989 (the Act) provides that during the 'election period' certain prohibitions apply to the general functions and powers of Council.

The 'election period' is defined by the Act as starting on the last day for nominations and ending at 6pm on the Election Day. The last day for nominations is 32 days before Election Day.

The election period for the 2016 local government elections will commence at midnight on 20 September 2016 and end at 6pm on 22 October 2016.

This policy replaces and overrides any prior Council policy or document that refers to a Caretaker or Election Period.

2 Purpose

Section 93B of the Act provides that Council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election. The policy must be prepared and adopted by 31 March 2016. The policy must include:

- procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election. 'Inappropriate decisions' are defined in section 93B as including:
- decisions that would affect voting in an election and/or
- decisions that could reasonably be made after the election
- limits on public consultation and the scheduling of Council events
- procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.

The Policy helps to ensure that the general elections for the Nillumbik Shire on Saturday 22 October 2016, and subsequent elections, are conducted in a manner that is ethical, fair and equitable and are publicly perceived as such.

The Policy will also facilitate the continuation of the ordinary business of local government in the Nillumbik Shire throughout the election period in a responsible and transparent manner, in accordance with statutory requirements and established 'caretaker' conventions.

This Policy commits Council during the election period to:

- avoid making significant new policies or decisions that could unreasonably bind a future Council (section 93A of the Act)

- ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Councillors as candidates in the election (section 93B of the Act)
- place limits on public consultations and the scheduling of events (section 93B of the Act)
- limit entrepreneurial activities
- restrict the printing, publishing and distribution of Council documents during the election period (section 55D of the Act)

3 Definitions

Where terms used in this Policy are defined in the Act, their use in this Policy is consistent with the definitions in the Act. Relevant sections of the Act are included at Attachment 1.

Definitions used in this Policy which are not defined by the Act are:

Publication Includes any means of publication including letters and information on the internet and social media.

Public consultation Means a process that involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy, and includes discussion of that matter with the public.

Significant decision Means an irrevocable decision that significantly affects the municipality.

4 Application of Policy

Council will function in accordance with this Policy during the election period commencing at midnight on 20 September 2016 and ending at 6pm on 22 October 2016.

4.1 Role of Chief Executive Officer

In addition to the Chief Executive Officer's (CEO) statutory responsibilities, the CEO or his or her delegate will ensure that:

All Councillors are provided with a copy of this Policy as soon as practicable after it is adopted by Council. All Council officers are also to be informed of, and given access to, a copy of the Policy after adoption by Council, again, as soon as practicable after the policy is adopted.

A copy of this Policy is made available for inspection by the public and published on Council's website in accordance with the Act.

Matters of Council business requiring major policy or significant decisions are scheduled to enable a Council resolution prior to the commencement of the election period, or deferred where appropriate, for determination by the incoming Council.

Guidelines to staff on the role and responsibilities of staff in the implementation of this policy are issued if appropriate.

5 Decisions by Council

5.1 Major policy decisions

Section 93A of the Act provides that Council, a Special Committee of Council or a person acting under a delegation given by Council must not make a major policy decision during the election period.

5.1.1 Definition

A 'major policy decision' is defined in section 93A to mean any decision:

- relating to the employment or remuneration of a Chief Executive Officer (CEO), other than a decision to appoint an acting CEO
- to terminate the appointment of a CEO
- to enter into a contract the total value of which exceeds one per cent of Council's revenues from rates and charges levied in the 2015-2016 financial year, currently circa \$600,000
- to exercise any entrepreneurial powers under section 193 of the Act if the sum assessed in respect of the total investment involved and the total risk exposure assessed in respect of the proposal exceeds one per cent of Council's revenues from rates and charges levied in the 2015-2016 financial year, currently circa \$600,000.

5.1.2 Prohibition on Council

Any major policy decision made during the election period is deemed to be invalid under the Act.

5.1.3 Extraordinary circumstances

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

5.2 Significant decisions

During the election period, Council will avoid making decisions that significantly affect the municipality and unreasonably bind the incoming Council.

6 Public consultation and the scheduling of Council events

6.1 Events

Council will not schedule any special events such as official openings or launches during the election period.

Annual, recurring Shire-wide community events that are scheduled to take place during the Election Period will proceed, but there will be no formal role for Councillors at these events.

All other Council events, or events which are conducted under the auspices of Council will be scheduled to take place outside the election period. Any publicity materials related to these events will be subject to the publication constraints outlined in Part 7 of this policy.

Councillors may continue to attend external events and functions during the election period, however speeches, backgrounders or other Council resources will not be provided by the organisation.

6.2 Public consultation and the right to postpone public consultation

Public consultation means a process that involves inviting individuals, groups or organisations or the community generally to comment on an issue or proposed action or proposed policy, and which includes discussion of that matter with the public.

Public consultations should be avoided during the election period.

The requirements of Clause 6.2 of this policy (above) do not apply to public consultation required under the Planning and Environment Act 1987, or matters subject to section 223 of the Local Government Act 1989.

Some public consultation activities may be necessary during the election period to facilitate the day to day business of Council and ensure matters continue to be proactively managed. Any such public consultations will avoid express or implicit links to the election and must receive prior approval from the Chief Executive Officer.

In view of the potential for a matter or issue to become contentious or politically sensitive in the course of the election period, Council reserves the right to postpone a matter if the issue is likely to affect voting at the election.

Where public consultation commences prior to the election period, the results of that consultation will not be reported until after the election period, except where approved by the CEO or his delegate.

6.3 Statutory requirements

The requirements of Clause 6.2 do not apply to public consultation required under the Planning and Environment Act 1987, or matters subject to section 223 of the Local Government Act 1989.

7 Council publications

7.1 Prohibition on publishing material during the election period

Section 55D of the Act prohibits Council from printing, publishing or distributing any advertisement, handbill, pamphlet or notice during an election period unless it has been certified, in writing, by the Chief Executive Officer.

Section 55D provides that the Chief Executive Officer must not intentionally or recklessly certify a publication that contains electoral matter, unless that material is only about the election process.

In light of the major commitment of Council resources that is required during an election period to assess whether or not Council documents contain election material, there will be restrictions placed upon the number of Council documents published during the election period.

Only publications that the CEO considers to be essential to the day-to-day operations of Council during the election period will be assessed for compliance with section 55D and submitted for certification by the CEO during that period. These publications would include information to communicate a change or disruption to a Council service or an emergency which impacts on the health and wellbeing of community members. All other documents must only be published either before, or after, the election period and not during that period.

All Council officers are to be given timely notification of the requirements of Part 7 of this policy and are required to schedule the publication of non-essential documents to a date outside of the election period.

7.2 Certification of publications

Publications to be printed, published or distributed during the election period must first be certified by the Chief Executive Officer that they do not contain electoral matter.

The certification by the Chief Executive Officer will be in writing on or affixed to a copy of the publication and be in the following form:

'Certified by the Chief Executive Officer in accordance with section 55D of the Local Government Act 1989'.

Copies of all certified documents will be retained on Council records.

Subject to the restrictions outlined in Part 7.1, publications which require certification include:

- Brochures, pamphlets, handbills, flyers, magazines, e-newsletters and books
- Reports (other than agenda papers and minutes in accordance with Section 7.7)
- Advertisements and notices except newspaper notices of meetings
- New website material
- Social media accounts (which includes Facebook and Twitter posts)
- Emails with multiple addresses, used for broad communication with the community
- Mass mail outs or identical letters sent to a large number of people by or on behalf of Council
- Media releases
- Material to publicise a function or event
- Any publication or distribution of Councillors' speeches.

7.3 Prohibited material

Electoral matter is defined in the Act and means any matter which is intended or likely to affect voting in an election, but does not include:

- Any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election, or
- An advertisement in a newspaper announcing the holding of a meeting.
- A publication is taken to contain electoral matter if it contains an express or implicit reference to, or comment on:
 - The election or
 - A candidate in the election or
 - An issue submitted to, or otherwise before, the voters in connection with the election.

Electoral matter includes material which:

- Publicises the strengths or weaknesses of a candidate
- Advocates the policies of the Council or of a candidate
- Responds to claims made by a candidate
- Publicises the achievements of the elected Council.

7.4 Council publications including Councillor information

Any reference to Councillors standing for re-election in Council publications printed, published or distributed during an election period must not include promotional text.

7.5 Website

Material published on Council's website in advance of the election period is not subject to certification, however existing material that is prominently displayed will be reviewed and consideration given to the removal of any such material that may be considered electoral matter, were it to be published during the election period. No new material is to be published on Council's website during the election period unless it is considered to be essential to the operation of Council during that period.

Councillor contact information will remain available on the website during the election period, but Councillors' profiles will be removed. Any new material published on Council's website during the election period must be certified by the Chief Executive Officer.

7.6 Social media

Any publication on Council's corporate social media sites including Facebook, Twitter, Flickr, Instagram, blogs and wiki pages and the like during the election period must be certified by the Chief Executive Officer. Consistent with Part 7.1 of this policy, no material is to be posted on any of Council's social media sites during the election period unless it is considered to be essential to the day to day operations of Council during that period.

Staff responsible for administering individual social media sites will monitor their respective sites during the election period and must use moderation features where available to ensure no electoral matter is posted.

The restrictions imposed by this Part do not apply to the personal social media accounts of Councillors provided they do not use Council resources such as photographs taken by the organisation.

7.7 Council and Committee agendas and minutes

Council will not schedule any Ordinary Council Meetings, Special Committee Meetings or Advisory Committee Meetings during the election period.

The agenda papers and minutes of any Special Council or Committee meetings which may need to be scheduled during the election period as a matter of urgency do not require certification by the Chief Executive Officer unless they are printed or published for a wider distribution than normal.

7.8 Annual Report

Council is required under Part 6 of the Act to produce and put on public display a copy of its Annual Report. The 2015-2016 Annual Report may be published during the election period. The Annual Report will not contain any material that could be regarded as overt electioneering or that inappropriately promotes individual Councillors.

The Annual Report does not require certification by the Chief Executive Officer, however any publication of an extract or summary of the Annual Report will require certification.

8 Council resources

8.1 Application of resources

Council resources, including offices, vehicles, staff, hospitality, services, property, equipment and stationery must be used exclusively for normal Council business during the election period and must not be used in connection with any election campaign or issue.

8.2 Role of Executive Assistant to Mayor and Councillors

The Executive Assistant to the Mayor and Councillors, Governance staff, or any other staff member, must not be asked to undertake any tasks connected directly or indirectly with the election campaign of a Councillor standing for re-election.

8.3 Use of Council equipment by Councillors

Councillors may continue to use any Council equipment provided to them to facilitate their performance of normal Council duties, subject to existing protocols and terms of use. Councillors standing for re-election must not use Council equipment as a resource to assist with election campaigns. This includes mobile phones, tablets, lap top or other computers and printers.

The allocated Mayoral motor vehicle must only be used for normal Mayoral activities during the election period and not to assist, or give the perception of assisting, an election campaign.

8.4 Councillors' entitlement to reimbursement

Reimbursements of Councillors' out-of-pocket expenses during the election period will only apply to costs that have been incurred in the performance of normal Council

duties, and not for expenses that support or are connected with a candidate's election campaign.

8.5 Council branding

No Council logos, letterheads, or other corporate branding will be used for, or linked in any way to, a candidate's election campaign.

8.6 Cessation of Ward specific publications and activities

No Ward meetings are to be held during the election period. Ward-specific publications, or Councillor profiles and articles in the media, will not be arranged or published by Council during the election period.

8.7 Officers' discretion

The Council will ensure that due propriety is observed in the use of all Council resources, and Council staff are required to exercise appropriate discretion in that regard. Where the use of Council resources appears to relate to the election campaign of a Councillor standing for re-election, the matter must be referred to the Chief Executive Officer or his or her delegate.

9 Media services

9.1 Restriction on services

Council's Communications team undertakes the promotion of Council activities and initiatives.

During the election period this team's services must not be used in any way that might promote a Councillor as an election candidate.

Council publicity during the election period will be restricted to communicating essential information and subject to certification by the Chief Executive Officer.

9.2 Media releases/Spokespersons

Media releases will minimise references to specific Councillors and will not identify any Councillor in a manner that could promote a Councillor as an election candidate. Where it is necessary to identify a spokesperson, the Chief Executive Officer or his or her delegate will be consulted.

Media releases will require certification by the Chief Executive Officer.

9.3 Councillors

Councillors will not use their position as an elected representative or their access to

Council Officers and other Council resources to gain media attention in support of an election campaign.

9.4 Council employees

During the election period no Council employee may make any public statement that relates to an election issue unless prior approval has been obtained by the Chief Executive Officer or his or her delegate.

10 Information

10.1 Candidates' access to information

All election candidates have equal rights to information relevant to their election campaigns from the Council administration. While it is important that sitting Councillors continue to receive information that is necessary to fulfil their existing elected roles, neither Councillors nor candidates will receive information or advice from Council officers that may improperly advantage candidates in the elections (which includes any internal Council publications).

There will be complete transparency in the provision of all information and advice during the election period.

10.2 Information Request Register

Governance will maintain an Information Request Register during the election period. This Register will be a public document that records all requests relating to electoral matters and non-routine requests for information by Councillors and candidates, and the responses given to those requests.

10.3 Improper use of position

Sections 76D and 76E of the Act prohibit Councillors from misusing or inappropriately making use of their position. A breach of section 76D attracts serious penalties, including possible imprisonment.

11 Assistance to candidates

11.1 Role of Returning Officer

All election related enquiries from candidates, whether sitting Councillors or not, will be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning Officer, to the Chief Executive Officer or his or her delegate.

11.2 Candidate information

In conjunction with external organisations such as the Victorian Electoral Commission,

the Municipal Association of Victoria and the Victorian Local Governance Association, where appropriate, Council officers will assist with the facilitation of candidate information sessions for election candidates or potential election candidates.

Further to section 62 of the Act, candidates will also be advised of the requirements to complete and submit an 'Election Campaign Return' to the Chief Executive Officer within 40 days after the election day. The return must contain details of any campaign donation or gift valued at, or greater than, more than \$500 which was received during the 'donation period' which is the period between 30 days after the previous general election and 30 days after the current general election.

Appendix D: Relevant sections from the Local Government Act 1989

Section 3 definitions

election day means -

- a. in the case of an election, the day of an election determined under section 31 or 38
- b. in the case of a poll of voters', the relevant date specified in the public notice under clause 16 of Schedule 3

election period, in relation to an election, means the period that -

- a. starts on the last day on which nominations for that election can be received and
- b. ends at 6pm on election day

Section 31 General elections

1. Subject to this Division, a general election of Councillors for all Councils must be held on the fourth Saturday in October 2012 and thereafter on the fourth Saturday in October in the fourth year after the last general election of Councillors for all Councils was held.

Section 55D Prohibition on Council

1. A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.
2. The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process. 60 penalty units
3. Despite section 98(2), the Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.
4. A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section. 60 penalty units.

Section 76D Misuse of position

1. A person who is, or has been, a Councillor or member of a special committee must not

misuse his or her position-

- a. to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- b. to cause, or attempt to cause, detriment to the Council or another person.

600 penalty units or imprisonment for five years or both

2. For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include-
 - a. making improper use of information acquired as a result of the position he or she held or holds; or
 - b. disclosing information that is confidential information within the meaning of section 77(2); or
 - c. directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
 - d. exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - e. using public funds or resources in a manner that is improper or unauthorised; or
 - f. failing to disclose a conflict of interest as required under this Division.

Section 93A Conduct of Council during election period

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

- a. relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer
- b. to terminate the appointment of a Chief Executive Officer under section 94
- c. to enter into a contract the total value of which exceeds whichever is the greater of:
 - i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1) or
 - ii) one per cent of the Council's revenue from rates and charges levied under section 158 in the preceding financial year
- d. to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or one per cent of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

Section 93B Council to adopt an election period policy

1. A Council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.
2. A Council must prepare and adopt an election period policy as required by subsection (1) -
 - a. by 31 March 2016; and
 - b. following the general election on 22 October 2016, continue to maintain the election period policy by reviewing and, if required, amending the policy not later than 12 months before the commencement of each subsequent general election period.
3. An election period policy must include the following -
 - a. procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election
 - b. limits on public consultation and the scheduling of Council events
 - c. procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.
4. A copy of the election period policy must:
 - a. be given to each Councillor as soon as practicable after it is adopted; and
 - b. be available for inspection by the public at the Council office and any district offices; and
 - c. be published on the Council's Internet website maintained under section 82A.
5. In this section:

inappropriate decisions made by a Council during an election period includes any of the following -

- a. decisions that would affect voting in an election
- b. decisions that could reasonably be made after the election.

Appendix E: Open Policy Forum Protocol

Purpose

Open Policy Forums are intended to provide the opportunity for Councillors to raise issues with their colleagues and GMT. Councillors can use them to initiate discussion on an issue. They can do this themselves, in conjunction with colleagues or GMs or through an external person/s.

Process

The process is that Councillors take the lead on presentation of an issue by themselves or an external person, which can then be followed by questions and discussion.

Agenda

The agenda is determined by the Mayor, in consultation with the presenting Councillor, and keeping other Councillors and the CEO informed. This includes items, order of presentation and time allocation.

Draft agendas should be circulated in advance so that all Councillors have an opportunity to input.

Timing

OPFs are to take place once a month.

Chairing

Open Policy Forums are chaired by the Mayor or his delegate.

Outcomes

Similar to briefings, OPFs are not a forum for decision-making. OPFs can be an opportunity for Councillors to share information with their colleagues and no further action may be required. If further action is to be taken, the issue is to be referred to the relevant GM who is then responsible, in liaison with the presenting Councillor, Mayor and CEO if required, to bring the item back into an appropriate forum for taking it further.

Attendance

OPFs are attended by Councillors and GMT. Other officer attendance to be agreed with presenting Councillor in conjunction with the Mayor and CEO.

Conduct

- Conduct in all Council forums should be based on the Code of Governance and the values it contains. There should be respect all round to the individuals at the OPF.
- The format is that the presenting Councillor will do a presentation prior to questions and

discussion.

- Questions and discussions should be characterised by respect, honesty, thoughtfulness and the desire to achieve the best possible outcomes.
- The process of referring the item to the relevant GM so as to facilitate further consideration should be made explicit and clear.
- All participants at OPFs should be able to participate appropriately.
- It is everyone's responsibility to ensure that there is appropriate conduct and respect in the OPFs and to speak up if they believe breaches are occurring.

Appendix F: Officer Briefings of Councillors Protocol

Purpose

Officer briefings of Councillors are intended to:

- Provide complex information to Councillors.
- Provide Councillors with the opportunity to ask questions and comment on issues.
- Give Councillor the opportunity to discuss complex and controversial issues in an environment which enables a free and frank exchange of views.
- Inform the Administration of Councillor views to assist in the preparation of formal advice to Council.

Process

The process being undertaken at briefings is in the first instance, the CEO or their delegate providing information to Councillors. Councillors then have the opportunity to ask questions, put forward their views and discuss the issue/s.

Agenda

The briefing agenda should be determined by the CEO, in consultation with the Mayor. This includes items, order of presentation and time allocation.

Chairing

Briefings should be chaired by the Mayor or their delegate.

Outcomes

The range of possible outcomes of briefings includes:

- Councillors having greater knowledge and understanding of the issue/s in question.
- Officers being more aware of the range of Councillor views.
- An understanding around further advice or information which is required before a decision can be made.
- A common understanding of the processes to be followed to bring an issue to decision.

They are not intended to provide a means to reach consensus or make a decision on issues. This is more properly done in Committee or Council meetings.

Attendance

Councillors, GMT, Managers and other staff as required. Consultants and any other presenters as invited.

Conduct

- Conduct in all Council forums should be based on the Code of Governance and the values it contains. There should be respect all round to the individuals at the briefing.
- The Administration has a responsibility to provide concise, relevant and comprehensive briefing material in a way which provides the maximum opportunity for Councillors to absorb and consider the information. Time should be used efficiently and time limits adhered to.
- Briefing material is provided on behalf of the CEO and the Administration. It is not put to a briefing without at least the endorsement of the relevant GM and CEO. A manager providing a briefing is doing so on behalf of the Administration.
- Councillors should have every opportunity to ask questions and make comments. These are fundamental to the briefing process. However, there should be prior agreement as to whether this occurs during or at the end of a presentation by officers.
- Questions and discussions should be characterised by respect, honesty, thoughtfulness and the desire to achieve the best possible outcomes.
- Non-presenting GMT members can participate in discussions as appropriate.
- It is everyone's responsibility to ensure that there is appropriate conduct and respect in the briefings and to speak up if they believe breaches are occurring.

Appendix G: Committee Chairperson Protocol

Responsibilities of Committee Chairperson when presenting Committee recommendations at Council meetings

Purpose

Committee Chairpersons have the responsibility for moving resolutions of the Committees they chair, as recommendations at Council meetings. This protocol aims to clarify their responsibility in this area, particularly if they do not support the recommendation.

Underlying principle

The Committee recommendation should be put before Council prior to any other motion concerning the item

Protocols

- The role of the Chairperson is to move the Committee recommendation whether they support it or not. This is in order to ensure that Council has the opportunity to consider the Committee's recommendation
- Moving the recommendation does not imply that the Chairperson supports it
- The Chairperson is not required to vote for the recommendation just because s/he has moved it
- The Chairperson may make it clear at the time of moving it that s/he is doing because it is a requirement that the Chairperson do so
- The Chairperson is not required to speak in favour of the recommendation and may reserve their right to speak later in the debate and then speak against it. If the Chair does not support the recommendation, they should not speak to the motion when they move it.
- The Chairperson may not seek to amend the Committee recommendation because, as its mover, s/he cannot amend his/her own motion. Amendments need to be moved by other Councillors.
- In circumstances where the Committee Chair does not support the Committee recommendation, a greater onus falls on the seconder of the motion to both summarise the issue and Committee debate (as the Committee Chair normally does) and their own personal view. Given the seconder only has three minutes to speak, the Mayor, or the Chair of the Council meeting, will exercise their discretion to allow an extension of time to five minutes if deemed necessary.

Appendix H: Officer Briefings on Planning matters

Preamble

Officer briefings on planning matters are not a decision making forum. Decisions on planning applications can only be made at the Planning Committee or Ordinary Council meeting, (other than the decisions made by Officers under Delegation).

Officer Planning Briefings will provide Councillors with the opportunity to ensure that they have all of the information to make fully informed decisions when they meet as the Planning Committee or Council.

Purpose

To provide an opportunity to bring complex planning matters to Councillors notice at an early stage.

To provide for greater interaction and rapport to be developed between Councillors and planning officers.

To provide additional information to Councillors on complex planning matters. To provide Councillors with the opportunity to ask questions on complex planning matters.

Process

Planning Officers will present briefings on:

- Current applications proceeding to future Committee or Council meetings. These briefings will be presented by the Officer dealing with the application.
- Planning legislation and scheme interpretation to enable a greater understanding of all provisions.
- Changes in planning legislation and significant VCAT decisions.

Agenda

The briefing agenda will be determined by the Manager Planning and Health and will be based on current issues and requests from Councillors.

Chairing

Briefings will be chaired by the Mayor.

Frequency

The Officer briefings on planning matters will be held monthly for an approximate duration of 40 minutes (depending on agenda) and will be held on the Tuesday on the week preceding the Planning Committee meeting.

Outcomes

The range of possible outcomes includes:

- Councillors being made more aware of the applications currently before Council and those coming to future committee meetings.
- Councillors having a greater understanding of planning issues and the relevant legislation.
- Councillors having a forum where Councillors can request briefings on particular matters or applications.

They are not intended to provide a means by which to reach consensus or make any decisions on issues. This is to be done in Committee or Council meetings.

Attendance

Councillors, GMT, Managers, Planning and other staff as required. Consultants and other presenters as required.

Conduct

- Conduct in all Council forums should be based on the Code of Governance and the values it contains. There should be respect all round to the individuals at the briefing.
- The Administration has a responsibility to provide concise, relevant and comprehensive briefing material in a way provides the maximum opportunity for Councillors to absorb and consider the information. Time should be used efficiently and time limits adhered to.
- The briefing material provided will be provided by individual officers and the content will be discussed and endorsed by the General Manager, Manager or Coordinator before presentation.
- Councillors should have the opportunity to ask questions and make comments in relation to the content of the briefing. These are fundamental to the briefing process.
- Questions and discussions should be characterised by respect, honesty, thoughtfulness and the desire to achieve the best possible outcomes.
- Officers can participate in the discussions as appropriate.
- It is the responsibility of all attendees to ensure that there is appropriate conduct and respect in the briefings and to speak up if they believe breaches are occurring.

Appendix I: Councillors' Receipt of Gifts Policy

Objective

To provide a transparent and accountable process for dealing with gifts or benefits received by Councillors during the performance of their duties as a Councillor.

This policy provides guidance to Councillors on the ethical treatment of any gifts received, whether token or otherwise, to ensure that the potential for any conflicts of interests are not created.

Background

Councillors may from time to time be given gifts, either of a token value or something more substantial, during the course of them acting in their capacity as a Councillor. For example, a thank you gift for accepting the invitation to speak at an event, or a promotional gift supplied to attendees at a function.

Where it is inappropriate to refuse a gift due to the potential insult it may cause, the receipt of gifts by Councillors is to be dealt with in accordance with this policy.

Details

Councillors will not expect, seek or accept (directly or indirectly) any gift, fee reward or benefit for themselves, their family or any other person or body for anything done in pursuit of their role as a Councillor. The exception to this is the receipt of gifts of a token or promotional nature or corporate merchandising, not exceeding a retail value of \$50 and hospitality not exceeding \$20 where there is clearly no suggestion of personal obligation and the gift is for personal use and not intended as a gift to the municipality.

Where a Councillor has been unexpectedly presented with a gift over the value of \$50 and it would be inappropriate or offensive for the Councillor to refuse the gift, the gift must be handed to the CEO who will determine at his/her discretion whether the Councillor may keep the gift by paying for the balance of the gift's value over \$50, or donating the gift to a Council determined charity or community organisation, or the gift should be kept for display at Council's Offices or for use by Council. Where a Councillor pays for the excess value of the gift the monies are to be paid into Council's Community Grants fund.

Regardless of the value, all gifts, fees, rewards or benefits received by Councillors, other than the exceptions listed above, are to be disclosed to the CEO to be recorded in the Register of Gifts. Councillors will also be mindful of their obligations under the disclosure of interests requirements and in particular the legislative requirements relating to the receipt of gifts while being a candidate for Council election.

Appendix J: Recognition and Bereavement Policy

Purpose

This policy outlines the process to be followed:

- To publicly acknowledge and formally recognise the service and contribution of former Councillors of Nillumbik Shire Council
- Upon advice being received of the death of a current or former Nillumbik Shire Councillor (or a councillor of the former Shires of Diamond Valley or Eltham) or a distinguished Nillumbik Shire community member.

Scope

This policy has application when:

- A Councillor retires/resigns from Council
- A Councillor is not returned to Council following a General Election
- A current or former Nillumbik Shire Councillor, or a distinguished member of the Nillumbik community, dies. The community member must have had some direct dealings with Council and a record of distinguished community service in Nillumbik.

Policy Statement and Principles

Recognition of former Councillors

The term of office for each Councillor is generally four years (subject to any changes in legislation) however it is recognised that there may be some Councillors who also have service gained when a term was three years or less due to legislative changes or who were elected as a result of a by-election.

Depending on the years of service, the following will apply:

- All Councillors: Immediate past Councillors of the Shire of Nillumbik are to be formally recognised for their contribution to the Nillumbik community as soon as practicable after a Council election. The names of all former Councillors and their years of service will be added to the Honour Boards on display in the Council Chamber at the Civic Centre.
- For service of one term or less: A framed Certificate of Service shall be presented at an Ordinary Council Meeting with the name of the Councillor, the years of service given to Council and the term/s served as Mayor if applicable.
- For Service of one to two terms: A framed Certificate of Service shall be presented at an Ordinary Council Meeting with the name of the Councillor, the years of service given to Council and the term/s served as Mayor if applicable. A Morning/afternoon tea with Mayor and Councillors, senior officers and family members.*

- For Service of three terms (10 years plus): A framed Certificate of Service shall be presented at an Ordinary Council Meeting with the name of the Councillor, the years of service given to Council and the term/s served as Mayor if applicable. A morning/afternoon tea/supper hosted by the Mayor of the day to recognise service of three terms or ten years or more.*

*Where there is more than one ex-councillor the functions may be combined.

Presentation at Council Meeting

The Certificate of Service shall be presented:

- At an Ordinary Council meeting as soon as practicable following the conclusion of an elected member's term. The presentation will be made early in the Council Meeting as part of presentations.
- For purposes of the minutes, a narrative outlining the intent of the presentation, including the former Councillor/s name/s should be included (refer Attachment 1). In addition, presentation notes are to be prepared for the Mayor (refer Attachment 2 for an example), or:
- If a former Councillor is unable to attend the Council meeting, the Certificate of Service shall be provided, if appropriate, via registered post or the recipient shall be invited to attend an alternative Council meeting.

Responsibilities

The Certificates of Service and function/s will be organised and managed by the Governance and Executive Support Units. They will liaise with outgoing Councillor/s regarding the guests to any proposed function.

Bereavement

Upon advice being received of the passing of a current Councillor, the following process will be followed:

- All current Councillors will be immediately advised of the death by Executive Services
- Funeral details, once known, will be conveyed to all Councillors by Executive Services
- A death notice will be placed in the Age or Herald Sun newspapers
- A statement will be prepared for media outlets
- Flowers will be arranged for the funeral on behalf of the Mayor, Councillors and staff or a donation will be made to a charitable organisation in accordance with the wishes of the family
- The Mayor or CEO or their delegates will attend the funeral to officially represent the Council

- Flowers and a sympathy card will be sent to the immediate family
- Individual Councillors may send personal condolences
- The flag at the Civic Centre will be flown at half-mast on the day of the funeral
- At the next available Ordinary Council Meeting one minute's silence will be observed and a formal motion of condolence will be moved

Upon advice being received of the passing of a former Councillor, the following process will be followed:

- All current Councillors will be immediately advised of the death by Executive Services
- Funeral details, once known, will be conveyed to all Councillors by Executive Services
- The Mayor or CEO or their delegates will attend the funeral to officially represent the Council, if available
- A sympathy card will be sent to the immediate family
- Individual Councillors may send personal condolences
- At the next available Ordinary Council Meeting the passing of the former Councillor will be acknowledged
- Upon advice being received of the passing of a community member and the CEO in consultation with the Mayor determines that this person has been a distinguished community member, the following process will be followed:
 - All current Councillors will be immediately advised of the death by Executive Services
 - Funeral details, once known, will be conveyed to all Councillors by Executive Services
 - The Mayor or CEO or their delegates will attend the funeral to officially represent the Council, if available
 - A sympathy card will be sent to the immediate family
 - Individual Councillors may send personal condolences

At the next available Ordinary Council Meeting the passing of the prominent community member will be acknowledged

Dispute resolution

The Chief Executive Officer will be the final decision maker on any issues arising from these guidelines.

Review

This guideline is to be reviewed in conjunction with the statutory review of the Governance

Code (incorporating Councillor Code of Conduct).

Attachment 1 to Appendix J

Ordinary Council Meeting Minutes

Presentation - Recognition of Service for former Councillors

Mayor, Cr. <Surname> made a presentation to acknowledge the service of former Councillors, <former Councillor name/s>, who were presented with framed Certificates in recognition of their service to the Nillumbik Shire Council.

Motion of Condolence (current Councillor)

That Council:

- 1. Acknowledges the recent passing of former Councillor, <former Councillor name> and recognises <insert name's > outstanding service to the Nillumbik Shire Council.**
- 2. The chamber observes one minute's silence.**

Motion of Condolence (former Councillor)

That Council acknowledges the recent passing of former Councillor, <former Councillor name> and recognises <insert name's > outstanding service to the Nillumbik Shire Council.

Presentation – passing of distinguished community member

Mayor, Cr. <Surname> acknowledged the recent passing of distinguished community member <insert name> and provided the Council and public gallery with a summary of their service to the Nillumbik Shire Council.

Attachment 2 to Appendix J

Mayoral Presentation Notes (example)

Recognition of service for former Councillors presentation

Ordinary Council Meeting on <Day, Date Month Year> <Time>, <Venue>

The Council wishes to publically acknowledge and formally recognise our former Councillors length of service by making a presentation this evening.

To be elected to represent the community of the Nillumbik Shire is a real honour and provides a sense of satisfaction in serving the community and the chance to play an important role in the changes occurring within the community.

The importance of the role of a Councillor cannot be underestimated. It involves a strong commitment to achieve effective local government, which improves the quality of life in our community. An effective Council is essential and requires teamwork and dedication from all elected members.

I would now like to call on **<former Councillor full name>** to come forward to receive a framed Certificate in recognition of <his/her> service to the Nillumbik Shire Council.

<Name> served as Councillor on the Council from **<year>** to **<year>**, a period of **<number>** years. During this time **<name>** served as Mayor in <year>.

(Further background on previous Councillor to be added)

On behalf of the Council and the community, I would like to sincerely thank **<name>** for **<his/her>** commitment, dedication and contribution to Nillumbik.

I now have great pleasure in presenting **<name>** with this certificate in recognition of **<his/her>** service to the Nillumbik Shire Council.

Allow **<name>** the opportunity to respond.

ENDS

Appendix K: Councillors role in meetings concerning planning applications

In its role as the responsible authority under the *Planning and Environment Act 1987*, Councillors will on occasion make determinations on planning applications in the Council Chamber. This will occur at Council's Planning Committee Meetings which operate under delegation of Council, or at an Ordinary Meeting of Council.

When planning applications are reported to these meetings for a determination, Council's planning officers will brief Councillors of these items at a formal briefing the week prior to the meeting (Refer Appendix H). . Prior to Councillors' determination of these planning applications, Councillors will also receive a comprehensive planning assessment and report prepared by Council officers which forms part of the meeting agenda.

Under Section 76E of the *Local Government Act 1989*, Councillors only have legal authority to influence or determine a planning application at Council's Planning Committee Meeting or Ordinary Meeting of Council. In all other circumstances, Council's planning officers will impartially and professionally process and assess planning applications in accordance with Council's statutory obligations under the *Planning and Environment Act 1987* and the Nillumbik Planning Scheme.

As part of the planning application process, Councillors will be invited to Planning Application Conferences (PAC) when these are convened. These meetings involve the permit applicant and objector parties, and are convened at the discretion of the Council planning officer where there is a willingness from the relevant parties to attend such meetings, and where there is a likelihood that some compromise or negotiated outcome will be achieved between the parties.

The purpose of a PAC is to:

- Describe to parties the purpose and factual details of this planning application
- Provide a forum for all parties to clarify their issues or concerns
- Clarify the statutory planning processes involved in the application
- Enable parties to present their views in a non-threatening environment
- Explore avenues for compromise and to encourage resolution of objections, where possible, by mutual agreement.

The meetings are chaired by the Council planning officer, and the role of Councillors in attendance at these meetings is to observe and gain a better understanding of the issues and perspectives of all parties, as well as to assist them in the event that the application is referred to Council's Planning Committee for a determination.

Appendix L: Media Protocol

Purpose

To have a professionally planned, coordinated and implemented approach to Council's relationship with the media

- To ensure clear and consistent messages are communicated from Council
- To establish a positive profile for Council as a decisive and responsible governing body
- To work in partnership with the media to develop an effective, trustworthy and cooperative two-way communication process that ensures and maximises mutual benefit to both parties
- To ensure the appropriate delegation for media comment
- To ensure a centralised system of issues management

Scope

This policy applies to all Councillors, full-time, part-time and casual employees, agents and contractors of Nillumbik Shire Council.

Policy Statement

Media comment

The Mayor is the most appropriate person to provide official comment to the media on behalf of Council on matters of public interest, particularly those which are political, controversial or sensitive in nature.

The Mayor is the official spokesperson for all policy matters that broadly affect the Nillumbik community including:

- Statewide political issues affecting local government
- Contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community
- Issues pertaining to policy and Council decisions
- Issues relating to the strategic direction of Council

The Mayor may delegate authority to an appropriate Councillor, or the Chief Executive Officer, to make an official comment on behalf of the Council, on a Ward or Advisory Committee specific issue.

This policy does not prevent individual councillors from speaking to the media, however Councillors must make it clear to the media organisation that the view being expressed is their own and does not represent the views of the whole Council.

The Chief Executive Officer and the Communications Coordinator are the appropriate people to comment on all other operational matters pertaining to Nillumbik Shire Council as an organisation, including:

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

The Chief Executive Officer may delegate authority to a Council officer, if appropriate.

Media releases

All media releases will quote the Mayor or, in the case of Ward or Advisory Committee specific issue, another Councillor where appropriate. The Mayor may choose to delegate comment to another Councillor or the CEO.

Drafts of media releases will be forwarded to Managers for first round approval or amendments.

The Mayor/Councillors will approve all comments attributed to them.

All media releases will receive final approval for distribution by the Chief Executive Officer, Group Manager and/or Manager Communications.

Where a specific comment is required from a Council officer, the Mayor or relevant Councillor will also have an opportunity to provide a comment.

Media releases will be issued to the media in line with deadline.

All media releases are available on Council's website www.nillumbik.vic.gov.au

Media enquiries

The Communications Coordinator has regular contact with the local media and needs to be familiar with any issues or stories that are running or likely to run. Council officers are to contact the Communications Coordinator on ALL matters which have the potential to attract media interest.

In all circumstances, media enquiries should be directed to the Communications Coordinator.

If a media representative contacts a Council officer, the officer should take details and inform the caller that all enquiries must be handled by the Communications Coordinator. Details about the issues are then to be provided to the Communications Coordinator.

The Communications Coordinator will provide appropriate advice on a media enquiry and

will draft official responses and comment.

Media enquiries from the Communications Unit must be dealt with as a priority, relative to the deadline provided.

The Communications Coordinator is the 24 hour media contact. All media inquiries should be directed to the Coordinator on 9433 3125 or 0438 381148.

Agents/Contractors/Consultants of Nillumbik Shire Council

An external service provider or consultant should not provide official comment or background comment on any matter pertaining to the service delivered on behalf of Council without first consulting the Communications Coordinator.

Where an issue requires comment to the media, the CEO and/or Group Manager and Communications Coordinator, in consultation with the service provider, will agree on the appropriate spokesperson and the message to be delivered.

External service providers may comment freely and without approval on aspects of their business that are not relevant to the service they are delivering on behalf of Nillumbik Shire Council.

Council's contract managers must ensure agents/contractors/consultants are aware of and abide by the Media Protocol. This will include regular discussions at contract management meetings.