

Special Meeting of Council

to be held at the Civic Centre, Civic Drive, Greensborough
on Tuesday 14 February 2017 commencing at 6.45pm.

Agenda

Mark Stoermer
Acting Chief Executive Officer

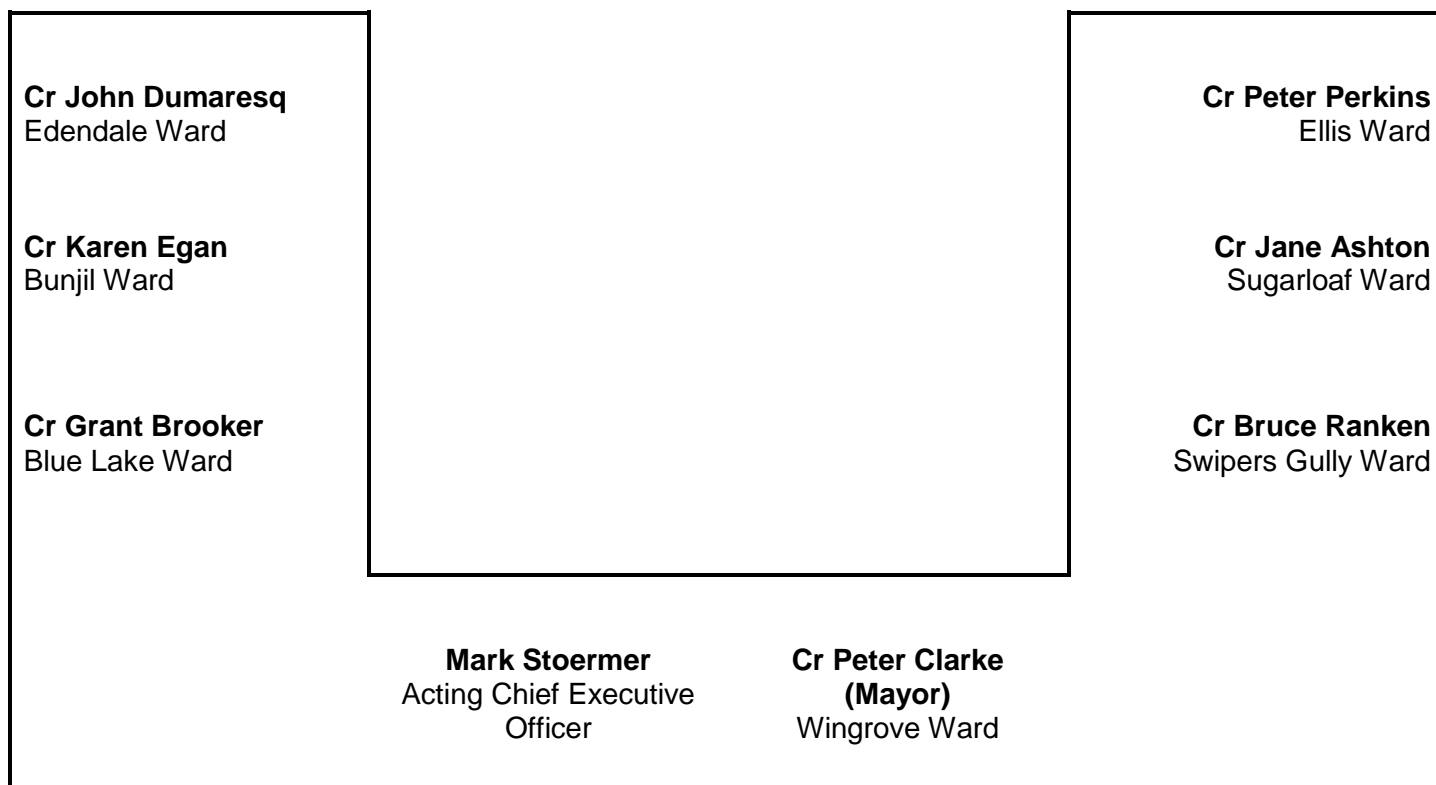
Wednesday 8 February 2017

Distribution: Public

Civic Drive, Greensborough
PO Box 476, Greensborough 3088
Telephone 9433 3111
Facsimile 9433 3777
Website www.nillumbik.vic.gov.au
Email nillumbik@nillumbik.vic.gov.au

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 an audio 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 14 February 2017 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.011/17 Councillor Code of Conduct

Distribution: Public

Manager: Andrew Port, General Manager Corporate Services

Author: Allison Watt, Manager Governance and Communications

Summary

Council is required by the *Local Government Act 1989* (the Act) to have a Councillor Code of Conduct.

The Act also requires each Council to review their Councillor Code of Conduct within four months of each general election, and this review must be considered at a Special Meeting of Council.

Feedback has been sought from Councillors in relation to any matters that needed to be considered as part of that review. As a result there have been several minor changes proposed to be made to the existing Councillor Code of Conduct.

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

Councillors have requested that the Councillor Code of Conduct become a separate, stand-alone document and that the remaining content of the Governance Code which details principles and practices about key roles and relationships, as well as decision-making processes, becomes a separate Good Governance Policy.

The Councillor Code of Conduct is presented to Council for approval in line with statutory requirements under the Act. Within one month of approving amendments to the Councillor Code of Conduct, Councillors must declare in writing that they will abide by the Code of Conduct and this declaration must be witnessed by the CEO.

The Good Governance Policy is being updated and will be reported to a future meeting for endorsement.

Recommendation

That Council:

1. **Notes the review and minor amendments to the Councillor Code of Conduct and that it has been extracted from the broader Governance Code as a separate, stand-alone document.**
2. **Approves the Councillor Code of Conduct (February 2017) presented in Attachment 1.**
3. **Receives a further report to approve the Good Governance Policy.**

Attachments

1. Councillor Code of Conduct (February 2017)

5. Officers' reports

OCM.011/17 Councillor Code of Conduct

Background

1. Council is required by the *Local Government Act 1989* (the Act) to have a Councillor Code of Conduct.
2. The Act also requires each Council to review their Councillor Code of Conduct within four months of each general election, and this review must be considered at a Special Meeting of Council.
3. Feedback has been sought from Councillors in relation to any matters that needed to be considered as part of that review. As a result there have been several minor changes proposed to be made to the existing Councillor Code of Conduct.
4. Previously, the Councillor Code of Conduct has been incorporated into Council's much larger Governance Code, the purpose of which is to provide a broad good governance framework for Councillors.
5. Councillors have requested that the Councillor Code of Conduct become a separate, stand-alone document and that the remaining content of the Governance Code which details principles and practices about key roles and relationships, as well as decision-making processes, becomes a separate Good Governance Policy.
6. The Councillor Code of Conduct is presented to Council for adoption in line with statutory requirements under the Act. Within one month of approving amendments to the Councillor Code of Conduct, Councillors must declare in writing that they will abide by the Code of Conduct and this declaration must be witnessed by the CEO.
7. The Good Governance Policy is being updated and will be reported to a future meeting for endorsement.

Policy context

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

Budget implications

9. The review of the Code of Conduct involved only minor administrative changes and officer time and was met within existing operational budgets.

Consultation/communication

10. Councillors have been consulted and provided feedback on the review of the Councillor Code of Conduct.

Issues/options

11. Nillumbik's Councillor Code of Conduct is based closely on the model template released by the Municipal Association of Victoria (MAV) in April 2016 and which has since been adopted by many Victorian Councils.
12. It includes:
 - Advice in relation to the roles of the Mayor and Councillors
 - Councillor conduct obligations
 - Use of Council resources

5. Officers' reports

OCM.011/17 Councillor Code of Conduct

- 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
13. Full details of the dispute resolution procedures are included in the Code.
14. At the request of Councillors, the Code of Conduct has been extracted from the broader Governance Code as a separate, stand-alone document.
15. The remaining parts of the Governance Code – which provides a framework for Councillors and officers to work together in the interests of the Nillumbik community – will become the Good Governance Policy which will be reported to a forthcoming future meeting for approval.

Conclusion

16. It is a statutory requirement that the Councillor Code of Conduct be reviewed and approved by Council within four months of a general election and adopted at a Special Meeting of Council. Councillors must declare in writing that they will abide by the Code of Conduct and this declaration must be witnessed by the CEO.

Councillor Code of Conduct

February 2017

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 Code of Conduct meets Council's statutory requirements under section 76C of the Act. Along with Council's Good Governance Policy, it provides a framework for Councillors and officers to work in the best interests of the Nillumbik community.

2 Definitions

When we use the following terms we mean:

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
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 Local Government Act 1989 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

	<p>Panel any information the Councillor Conduct Panel has requested the Councillor to give; or</p> <ul style="list-style-type: none"> • 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
Local Government Act 1989 (the Act)	The primary piece of State Government legislation under which local government operates
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.

3 Councillor Code of Conduct

3.1 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.

3.2 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.

3.3 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
- 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.

3.4 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.

3.5 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.

3.6 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'.

3.7 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.

3.8 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.

3.9 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.)

3.10 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.

Circumstances involving the misuse of position by a Councillor 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.

3.11 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.

3.12 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.

3.13 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.

3.14 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.

3.15 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.

3.16 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
- 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.

3.17 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 Chief Executive Officer 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.

3.18 Phase 3 - Internal resolution procedure - Arbiter

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

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

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

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 Council's Principal Conduct Officer.

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

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and CEO of the application without undue delay
- provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application
- identify an arbiter to hear the application
- obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved
- notify the parties of the name of the proposed arbiter and provide them with the opportunity (two 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
- 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
- make findings in relation to any application alleging a contravention of this Code which the arbiter must give to the Council
- give a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council
- recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened 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
- 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 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 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.