

CODE OF CONDUCT AND VALUES FOR ELECTED MEMBERS

COUNCIL POLICY NO. 078

1. INTRODUCTION

As Gannawarra Shire Councillors we are committed to working together in the best interests of the people within our municipality and to discharging our responsibilities to the best of our skill and judgment.

We recognise and respect that everyone has the same human rights entitlement to allow them to participate in, and contribute to, society and our community. We also recognise that all persons have equal rights in the provision of, and access to, Council services and facilities.

Our commitment to working together constructively will enable us to achieve the intended outcomes of the Council Plan in a manner that is consistent with our values.

The primary role of Council¹ is to provide leadership for the good governance of the Gannawarra Shire. The role of Council also includes:

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

2. COUNCILLOR VALUES²

As Councillors, we acknowledge and endorse Gannawarra Shire Council's values and how they relate to our roles as Councillors:

- We will work closely with our community using our collective skills and knowledge to build a positive future. Together with our partners we will deliver great things for our community.
- We will be resourceful and resilient, employing creative problem solving to our challenges. We will plan and be prepared for when opportunities present.
- We will embrace new ideas and technology to deliver quality services to our community at a lower cost. We will make time to consider the big issues and actively seek creative solutions.
- We will listen to our community and use our collective knowledge and sound judgement to respond and close the loop.

¹Refer *Local Government Act 1989* – s3D

²Refer Gannawarra Shire Council – Council Plan 2017 - 2021

3. CONDUCT OBLIGATIONS

CONDUCT PRINCIPLES

We commit to act in accordance with the primary conduct principle³ and general conduct principles⁴ set out in the Act.

CHIEF EXECUTIVE OFFICER

We undertake to respect the responsibilities of the Chief Executive Officer⁵ and to comply with the policies, practices and protocols established by him or her that define appropriate arrangements for interaction between Council staff and Councillors.

USE OF RESOURCES⁶

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 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.

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.

A gift can be accepted where the gift would generally be regarded as having a token value and could not be perceived to influence our actions as a Councillor.

It is appropriate to accept a gift where refusal may cause offence or embarrassment, in which case we will accept the gift on behalf of Council.

Where a gift is received on behalf of the Council with a value greater than \$30, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in the Gifts Register with a notation that it is the property of the Council.

We recognise that gifts valued over \$30, received in the twelve 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.

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

³Refer *Local Government Act 1989* – s76B

⁴Refer *Local Government Act 1989* – s76BA

⁵Refer *Local Government Act 1989* – s94A(3A)

⁶Refer *Local Government Act 1989* – s76BA(e)

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 commit to comply with Council's Media policy and respect the functions of the Mayor and Chief Executive Officer to be the spokesperson for Council, in accordance with Council policy.

We undertake that, where we choose to express a personal opinion through the media, we will make it clear that it is a personal view and does not represent the position of Council. We further 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.

We also undertake that we will not quote or divulge to any third parties, including social media forums, any comments made by Councillors at Councillor briefings (assemblies of Councillors) or Councillor-only meetings or sessions. This provision does not apply to a complaint made by a Councillor to the Principal Conduct Officer alleging a contravention of the Councillor Code of Conduct relating to a Councillor's conduct at a Councillor briefing or Councillor-only meeting or session.

PERSONAL DEALINGS WITH COUNCIL

When we deal with Council in a private capacity (eg as a ratepayer, recipient of a 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. PROHIBITED CONDUCT

The *Local Government Act 1989* has specific provisions that prohibit councillors from certain conduct. Whilst these matters are not of a nature to be addressed as a contravention of the councillor code of Conduct, we undertake to comply with prohibitions set out below. These matters should more properly be the subject of an application to a Councillor Conduct Panel for a finding of serious misconduct⁷ or a complaint to the Local Government Inspectorate or the Independent Broad-based Anti-corruption Commission, depending on the nature of the allegation.

MISUSE OF POSITION⁸

We will not misuse our position to gain or attempt to gain, directly or indirectly, an advantage for ourselves or any other person or to cause, or attempt to cause, detriment to 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 held or hold; 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 we are 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.

IMPROPER DIRECTION AND IMPROPER INFLUENCE⁹

We will not improperly direct or improperly influence, or seek to improperly direct or improperly influence, 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 exercise or performed by the member as an authorised officer under this Act or any other Act; or

⁷ Refer *Local Government Act 1989* – s3(1) (Definitions)

⁸ Refer *Local Government Act 1989* – s76E

⁹ Refer *Local Government Act 1989* – s76E

- (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.

CONFIDENTIALITY

We will not disclose confidential information¹⁰:

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

We may disclose information that we know 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.

CONFLICT OF INTEREST

Council is committed to making all decisions impartially and in the best interests of the whole community. We therefore recognise the importance of fully observing the requirements of the Act in regard to the disclosure of conflicts of interest.

For the purpose of this Code, “direct interest”, “indirect interest” and “conflicts of interest”, have the meanings specified in sections 77A, 77B, 78, 78A, 78B, 78C, 78D and 78E of the Act.

We will comply with all the provisions of the Act in regard to Conflicts of Interest:

- If, as a Councillor we consider that we have a direct or indirect interest in a matter before Council, a special committee of council or an assembly of Councillors, we have a conflict of interest; and
- If, as a Councillor we have a conflict of interest in a matter, we will comply with the requirements of the Act and ensure that we disclose the class and nature of the interest, leave the room in which the meeting or assembly is being held during any discussion, debate and vote on the matter; and
- If, as a Councillor we have a personal interest in a matter to be considered by Council or a special committee that is not a conflict of interest, and we consider that our personal interest may be in conflict with our public duty to act impartially and in the interest of the whole community, we will declare a conflicting personal interest under section 79B of the Act immediately before the matter is considered at the relevant meeting and apply to Council or special committee to be exempted from voting on the matter.

In addition to the requirements of the Act:

- We will give early consideration to each matter to be considered by Council, any special committee to which we belong, or assembly of Councillors, to ascertain if we have a conflict of interest; and

¹⁰Refer *Local Government Act 1989* – s77(2)

- We recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each of us as individual Councillors and that Council officers cannot offer any advice in relation to potential conflicts. If we cannot confidently say that we do not have a conflict of interest, we will declare a conflict of interest and comply with the relevant requirements as if we had a conflict of interest; and
- If we consider that we may be unable to vote on a matter because of a conflict of interest, we will notify, as soon as possible, the Mayor or the Committee Chair, depending on whether the matter is to be considered by Council, a special committee, or an assembly of Councillors, as well as the Chief Executive Officer.

REGISTER OF INTERESTS¹¹

We will disclose any information, whether of a pecuniary nature or not, of which we are aware and consider might appear to raise a material conflict between our private interest and our public duty as a Councillor.

OTHER LEGISLATIVE REQUIREMENTS

Alleged contraventions of provisions contained within the Act relating to councillor eligibility, electoral conduct and the election will not be dealt with by Council using the internal resolution procedure in this Code of Conduct and Values. Allegations in relation to contravention of these provisions will 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 matters.

5. 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 resort to any or all of the 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;
- external mediation by an independent mediator engaged by the Chief Executive Officer; and
- an internal resolution procedure involving an independent arbiter.

Phase 1 – Direct negotiation

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

A dispute referred for direct negotiation may relate to:

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

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 the Councillor Code of Conduct and Values, the request must:

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

¹¹Refer *Local Government Act 1989* – s81

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

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

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. Declining to participate in a meeting does not constitute a contravention of this Councillor Code of Conduct and Values.

If the other party consents to a meeting, the Mayor is to convene a meeting of the parties at the earliest opportunity. Unless one or both parties are unavailable, this should be within five 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 the Councillor Code of Conduct and Values.

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 and Values.

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 and Values.

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

Phase 2 – External mediation

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

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

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

The applicant is to submit a written application to the Principal Conduct Officer¹² 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 the Councillor Code of Conduct and Values, 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 him or her with a copy of the application either at the same time that it is submitted to the Principal Conduct Officer or as soon as practical thereafter.

¹²Council’s Director Corporate Services has been appointed to the position of Principal Conduct Officer

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. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel. Declining to participate in an external mediation does not constitute a contravention of this Councillor Code of Conduct and Values.

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 the Councillor Code of Conduct and Values.

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

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 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.

A councillor or a group of councillors may make an application alleging that a Councillor has contravened this Councillor Code of Conduct and Values. 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 Council’s Principal Conduct Officer.

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

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and CEO of the application without undue delay;
- provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application;
- identify an arbiter to hear the application;
- obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved;
- notify the parties of the name of the proposed arbiter and provide them with the opportunity (2 working days) to object to the person proposed to be the arbiter;
- consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter;

- provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired;
- after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
- attend the hearing(s) and assist the arbiter in the administration of the process.

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

The role of the arbiter is to:

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

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

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

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

An arbiter:

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

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

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, 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, 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 direction¹³.

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 Panel¹⁴.

6. RELEVANT SECTIONS OF THE LOCAL GOVERNMENT ACT

3(1)	Definitions	78	Indirect interest by close association
3D	Role of a Council	78A	Indirect interest that is an indirect financial interest
3F	Powers of Councils	78B	Indirect interest because of conflicting duties
29	Disqualifications	78C	Indirect interest because of receipt of an applicable gift
63	Oath of Office and Councillor Code of Conduct	78D	Indirect interest as a consequence of becoming an interested party
65	Role of a Councillor	78E	Indirect interest because of impact on residential amenity
73AA	Functions of Mayor	81	Register of interests
76B	Primary Principle of Councillor Conduct	81AB	Sanctions for Contravention of Councillor Code of Conduct
76BA	General Councillor Conduct Principles	81B	Application to Councillor Conduct Panel
76C	Councillor Code of Conduct	81T	Functions and powers of the Principal Councillor Conduct Registrar
76E	Improper direction and improper influence	81X	Functions of a Principal Conduct Officer
77(2)	Confidential Information	81Y	Duties of the Chief Executive Officer in relation to Councillor Conduct Panels
77A	Direct and indirect interests	94A(3A)	Functions of the Chief Executive Officer
77B	Direct Interest		

7. RELATED COUNCIL POLICIES

Policy No. 010 – Equal Employment Opportunity
 Policy No. 074 – Information Privacy and Health Records Act 2000
 Policy No. 083 – Email, Intranet and Internet
 Policy No. 100 – Fraud and Corruption
 Policy No. 101 – Media
 Policy No. 107 – Protected Disclosure
 Policy No. 117 – Complaint Handling
 Policy No. 118 – Election Period

¹³Refer *Local Government Act 1989* – s81AB

¹⁴Refer *Local Government Act 1989* – s81B

8. POLICY REVIEW

Council will review this policy within four months after a general election of the Council. At the time of review, this policy was compliant with the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

9. DECLARATION

Declarations stating that councillors will abide by this Code of Conduct and Values for Elected Members, adopted by Council on 15 February 2017 have been signed by the following councillor/s:

Cr Brian Gibson
Cr Charlie Gillingham
Cr Mark Arians
Cr Lorraine Learmonth
Cr Sonia Wright
Cr Jodie Basile
Cr Steven Tasker

10. FURTHER INFORMATION

Members of the public may inspect all Council policies at Gannawarra Shire Council's Kerang and Cohuna office or online at www.gannawarra.vic.gov.au.

Any enquiries in relation to this policy should be directed to the Chief Executive Officer on (03) 5450 9333.

Altus Folder: 3.000518

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Reviewed: 16/10/2013

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