



HUME CITY COUNCIL

CODE OF CONDUCT FOR COUNCILLORS

Adopted by Council – 4 July 2016



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1. THE CODE OF CONDUCT

1.1. Purpose

- 1.1.1. A Code of Conduct is a means of promoting a common understanding amongst Councillors regarding the expectations of conduct when representing the Council and in their dealings with the community, council staff and one another.
- 1.1.2. **Section 76C** of the Local Government Act 1989 (the Act) requires a Council to develop and maintain a Councillor Code of Conduct.
- 1.1.3. The Hume City Council Code of Conduct for Councillors (the Code) has been adopted by Council to comply with the requirements of the Act. It sets out the standards of conduct expected of Councillors when representing the Council and in their dealings with the community, council staff and one another.
- 1.1.4. The Code of Conduct is required to be reviewed within four months of a general election.

1.2. Objectives, Role and Functions of a Council

Legislative Context

Councillors must be cognisant of the objectives, roles and functions described for Victorian Local Government in the Local Government Act 1989. These being:

1.2.1. Section 3C of the Act - Objectives of a Council

- (1) *The primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.*
- (2) *In seeking to achieve its primary objective, a Council must have regard to the following facilitating objectives—*
 - (a) *to promote the social, economic and environmental viability and sustainability of the municipal district;*
 - (b) *to ensure that resources are used efficiently and effectively and services are provided in accordance with the Best Value Principles to best meet the needs of the local community;*
 - (c) *to improve the overall quality of life of people in the local community;*
 - (d) *to promote appropriate business and employment opportunities;*
 - (e) *to ensure that services and facilities provided by the Council are accessible and equitable;*
 - (f) *to ensure the equitable imposition of rates and charges;*
 - (g) *to ensure transparency and accountability in Council decision making.*

1.2.2. Section 3D of the Act - What is the role of a Council?

- (1) *A Council is elected to provide leadership for the good governance of the municipal district and the local community.*
- (2) *The role of a Council includes—*
 - (a) *acting as a representative government by taking into account the diverse needs of the local community in decision making;*
 - (b) *providing leadership by establishing strategic objectives and monitoring their achievement;*
 - (c) *maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;*

- (d) *advocating the interests of the local community to other communities and governments;*
- (e) *acting as a responsible partner in government by taking into account the needs of other communities;*
- (f) *fostering community cohesion and encouraging active participation in civic life.*

1.2.3. Section 3E of the Act - What are the functions of a Council?

- (1) *The functions of a Council include—*
 - (a) *advocating and promoting proposals which are in the best interests of the local community;*
 - (b) *planning for and providing services and facilities for the local community;*
 - (c) *providing and maintaining community infrastructure in the municipal district;*
 - (d) *undertaking strategic and land use planning for the municipal district;*
 - (e) *raising revenue to enable the Council to perform its functions;*
 - (f) *making and enforcing local laws;*
 - (g) *exercising, performing and discharging the duties, functions and powers of Councils under this Act and other Acts;*
 - (h) *any other function relating to the peace, order and good government of the municipal district.*
- (2) *For the purpose of achieving its objectives, a Council may perform its functions inside and outside its municipal district.*

1.3. The Role of a Councillor

Councillors must be cognisant of their role as defined in the Local Government Act 1989.

1.3.1. Section 65 of the Act - What is the role of a Councillor?

- (1) *The role of a Councillor is—*
 - a) *to participate in the decision-making of the Council;*
 - b) *to represent the local community in that decision-making;*
 - c) *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.*
- (2) *In performing this role, a Councillor must—*
 - a) *consider the diversity of interests and needs of the local community;*
 - b) *observe principles of good governance and act with integrity;*
 - c) *provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts;*
 - d) *participate in the responsible allocation of the resources of Council through the annual budget;*
 - e) *facilitate effective communication between the Council and the community.*
- (3) *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.*

1.3.2. Additionally, Councillors will:

- a) be consistent in their decision making and treat all matters on their individual merits;
- b) attend all meetings of the Council, actively and openly participate in the decision making process, and strive to be fully informed to enable themselves to confidently vote on all matters under consideration;
- c) make informed and reasonable decisions in the best interests of the community ensuring that the community's interests will always be given absolute priority over the private interests of Councillors;
- d) be as informed as possible about the processes and strategic functions of the Council; and
- e) obey the spirit and letter of the law and, in particular, the provisions of all relevant statutes, regulations, local laws and instruments.

1.4. The Role of a Mayor

Councillors must be cognisant of the legislation regarding the Mayor as defined in the Local Government Act 1989.

1.4.1. Section 73AA of the Act – Functions of Mayor

The functions of the Mayor include-

- (a) 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;*
- (b) acting as the principal spokesperson for the Council;*
- (c) supporting good working relations between Councillors;*
- (d) carrying out the civic and ceremonial duties of the office of Mayor.*

Section 73 of the Act - Precedence of Mayor

- (1) The Mayor of a Council takes precedence at all municipal proceedings within the municipal district.*
- (2) The Mayor must take the chair at all meetings of the Council at which he or she is present.*
- (3) If there is a vacancy in the office of Mayor or the Mayor is absent, incapable of acting or refusing to act, the Council must appoint one of the Councillors to be the acting Mayor.*
- (4) An acting Mayor may perform any function or exercise any power conferred on the Mayor.*

1.4.2. In order for the Mayor to fulfil the functions of their role, it is necessary that:

- a) The Mayor fosters positive relationships between Councillors. He or she must encourage cooperation among Councillors and promote unity. The Mayor must be alert to issues of bullying and intimidating behaviour and address them if they arise.

- b) The Mayor is charged with speaking publicly on behalf of the council both in the media and at public events. In doing so, the Mayor will reflect the views of the council, not individual views. Their responsibility is to articulate council policies and positions fairly and accurately.
 - c) The Mayor fulfils the requirements of undertaking civic and ceremonial duties diligently and responsibly. The Mayor will not expect special privileges, and will represent the council in a respectful and dignified manner.
 - d) The Mayor acts with consistency and impartiality in the chamber during Council proceedings
- 1.4.3. The Mayor will be supported in carrying out his or her role by the Chief Executive Officer.
- 1.4.4. The Deputy Mayor, in the official absence of the Mayor, shall carry out the role of Acting Mayor in accordance with **Section 73(3)** of the Act.

1.5. Functions of a Chief Executive Officer

Councillors must be cognisant of the functions of the Chief Executive Officer described in the Local Government Act 1989.

Section 94A of the Act - Functions of the Chief Executive Officer

(1) A Chief Executive Officer is responsible for—

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

Note See section 14AA of the Accident Compensation Act 1985 and clause 15 of Schedule 1 to the Workplace Injury Rehabilitation and Compensation Act 2013.

- (f) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.*

2. EXPECTATIONS OF COUNCILLOR CONDUCT

2.1. Principles of Councillor Conduct

Councillors must be cognisant of the conduct requirements as described in the Local Government Act 1989.

Section 76B - Primary principle of Councillor conduct

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

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

Section 76BA - 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:

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

2.2. Councillor Relationships

2.2.1. Respecting differences

Council is comprised of a group of individuals who bring to Council their own unique skills, talents, personalities, backgrounds and divergent views. All Councillors need to be understanding and accepting of the differences between Councillors and recognise that this diversity enriches Council and is reflected in the policies, strategies and decisions which are made in the best interests of the entire municipality.

2.2.2. Councillors will work collaboratively together by:

- a) Respecting the right of each Councillor to speak and represent their views on the needs and rights of citizens;
- b) Always speaking well of each other and Council in public;
- c) Demonstrating total commitment to consult with other Councillors, within the decision making framework and with no surprises;
- d) Always being punctual to Council meetings and civic events;
- e) Committing to a consultative approach to solving problems, developing effective decisions and communicating outcomes that build teamwork and cooperation;
- f) Demonstrating leadership by focusing on issues and refraining from personalising matters' particularly in relation to making personal remarks regarding other Councillors; and
- g) Respecting each other's right to hold different views and debate strongly on matters of difference while being united in representing Council decisions.

2.3. Interaction With Staff

- 2.3.1. Councillors must be cognisant of the definition of improper direction and improper influence of a member of Council staff as described in the Local Government Act 1989. *Refer to Section 3.1 PROHIBITED CONDUCT*

- 2.3.2. An effective Councillor will work as part of the Council team, with the Chief Executive Officer, Directors and other members of Council staff. This teamwork will only occur if Councillors and staff have a mutual respect and cooperate with each other to achieve the Council's corporate goals and implement the Council's strategies.
- 2.3.3. Councillors need to accept that their role is one of leadership, not a management or administrative role and in the interests of maintaining a high level of teamwork and encouraging good morale, there will be no personal criticism of Council staff in public by Councillors. If Councillors or Council staff wish to express any such criticism then the matter should be raised in a non-public forum.

2.3.4. Requesting advice and/or information and logging issues on behalf of residents - Protocols

2.3.4.1. In their capacity as elected representatives of the community, Councillors may have a need to request advice and/or information on matters pertaining to the day-to-day running of Council business., Councillors must comply with the following protocols to ensure consistency in dealing with community matters and that services continue to be managed in an efficient and fair way with the highest possible standard of Customer Service.

2.3.4.2. In order to ensure that Councillors and Council Officers comply with the requirements of accessing information appropriately and can respond to the matter in a timely manner, all requests for information and/or advice should be made through the following channels:

Chief Executive Officer:
Confidential Information

Executive Officer:

Councillors are to raise all requests for advice and/or information with the Executive Officer in the first instance. The Executive Officer provides a central point of contact and will register all Councillor enquiries prior to preparing a response to the Councillor.

Director:

Divisional items such as requests or follow-up enquiries on Council reports or items such as:

- Major projects
- Policy/Procedure
- Council resolutions

Manager

While all requests are to be made through the Executive Officer, there may be instances where Councillors need to seek factual advice on a manager's area of technical expertise.

2.3.4.3. Planning Information

Councillors may request to view planning files. These are documents that are normally made available to applicants and provide information that is of a general nature. The Manager Statutory Planning and Building

Control Services and/or Director will provide assistance and be present at the time the Councillor accesses the file.

2.3.4.4. Information that may be declined

- Issues related to staffing and/or employment matters
- Confidential Issues

2.3.4.5. For issues raised via the local community, for example, a resident request for service, Councillors are requested to refer their request to the Executive Officer in the first instance. The outcome of the request will be sent to the initiating Councillor, Ward Councillors and the Mayor. This practice will ensure that all Councillors are kept up to date with matters affecting their local community.

2.3.4.6. The Executive Officer will maintain a register of all requests and this information will be reported to Councillors on a quarterly basis.

Details maintained in the register will include:

- Date/Requestor/How the request was received
- Reason for request/Issue
- If a request was previously logged with Council
- Action Officer details and Merit CRM
- If the Council published process was followed.
- If the process needs to be changed.
- Outcome
- Date completed
- Advice to requestor
- Comments

2.3.4.7. Councillors will not approach any Council Officer below the level of Manager directly for advice, action or for information that may be a matter of day-to-day Council business.

2.4. Interaction with the Community

2.4.1. Accessibility of Councillors at the community level means that their actions and behaviour are closely monitored. In performing their role as Councillors, the community expects that Councillors will comply with any laws, in particular, the Local Government Act 1989, and will be aware of their responsibility to comply with the primary principle of Councillor Conduct, and the general Councillor Conduct principles as specified in the Act (clause 2.1).

2.4.2. Councillors will:

- a) represent their ward whilst also being mindful of their broader responsibility of serving the best interests of the entire municipality;
- b) work with other levels of government and organisations to achieve benefits for the community at both a local and regional level;
- c) keep the community informed about the Council's activities and plans and report to the community on these matters on a regular basis;
- d) act in a reasonable and fair way, and in a manner which is not discriminatory; and
- e) treat all members of the community honestly and fairly and in a way which does not cause offence or embarrassment to individuals or groups.

2.5. Communications

- 2.5.1. As representatives of the local community, Councillors have a primary responsibility to be responsive to community views and to adequately communicate the position and decisions of Council.
- 2.5.2. Councillors will respect that the Mayor together with the Chief Executive Officer are the designated persons authorised to speak to the media and others on behalf of the Council.
- 2.5.3. Individual Councillors are entitled to express their personal opinions through the media. Where they choose to do so, they will make it clear that such comment is a personal view and does not represent the position of Council. Councillors must ensure that any such comment is devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any person.
- 2.5.4. When accessing and/or using Council's internet, email and electronic communications, Councillors will need to comply with the **Councillor Support and Expenses Entitlement Policy**.

2.5.5. Portfolios

The allocation of portfolios allows Councillors to focus on particular areas of Council's operations that are of particular interest to them or their constituency. The portfolio Councillors also share their knowledge and experience of the portfolio with other Councillors.

Councillors must comply with the **Councillor Portfolio Guidelines Policy**. The guidelines outline the objectives and role expected of the portfolio holders.

2.6. Benefits and Gifts

Councillors must be cognisant of the requirements regarding reimbursement of expenses in the Local Government Act 1989.

75 Reimbursement of expenses of Councillors

- (1) *A Council must reimburse a Councillor for expenses if the Councillor—*
 - (a) *applies in writing to the Council for reimbursement of expenses; and*
 - (b) *establishes in the application to Council that the expenses were reasonable bona fide Councillor out-of-pocket expenses incurred while performing duties as a Councillor.*
- (2) *In this section, duties as a Councillor means duties performed by a Councillor that are necessary or appropriate for the purposes of achieving the objectives of a Council having regard to any relevant Act, regulations, Ministerial guidelines or Council policies.*

75A Reimbursement of expenses of members of council committees

A Council may reimburse members of council committees for necessary out-of-pocket expenses incurred while performing duties as a committee member.

75B Councillor reimbursement policy

- (1) *A Council must adopt and maintain a policy in relation to the reimbursement of expenses for Councillors and members of Council committees.*
- (2) *A policy adopted by Council under this section must be consistent with—*
 - (a) *the prescribed types of Councillor out-of-pocket expenses that must be reimbursed if the expenses are reasonable and bona fide; and*

(b) *the prescribed procedures to be followed by Councils in relation to the reimbursement of out-of-pocket expenses.*

(3) *A Council must keep a copy of the policy adopted and maintained under this section available for inspection at the office of the Council.*

2.6.1. Councillors must 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. Councillors will not seek or accept (directly or indirectly) from any person or body, any gift, reward or benefit (other than of a token kind, or reasonable hospitality received at an event or function attended in an official capacity as Councillor) for themselves or for any other person or body, relating to their status with the Council, or their performance of any duty or work which affects or concerns the Council.

2.6.2. Councillors must:

- a) use Council facilities, equipment and resources economically and efficiently, and not for personal benefit or for the benefit of any other person or organisation;
- b) ensure that Council facilities and equipment are kept separate from similar resources that may be used in a Councillor's private business activities;
- c) hand over to the Chief Executive Officer any gifts which are accepted as a matter of courtesy on behalf of the Council.

2.6.3. Councillors must comply with the **Councillor Support and Expenses Entitlement Policy** and the **Councillor Training and Conference Policy**.

2.7. Council Meetings

2.7.1. Council Meetings must focus on the business of Council and provide an environment for transparent and healthy debate on matters requiring decision making. Councillors must comply with the **Code of Meetings Procedure** as adopted or amended by Council to govern the conduct of meetings of Council and special committees.

2.7.2. The Mayor must chair meetings of the Council at which he or she is present and in doing so will:

- (a) retain control at all times
- (b) be impartial
- (c) preserve order, and
- (d) ensure that the business is conducted in a proper manner.

2.7.3. Councillors should be committed to paying respect to the Chair at meetings.

2.7.4. The Chair should be conscious of the needs of each Councillor and will facilitate their entry into discussions and allow fair debate and participation.

2.8. Appointments to Other Bodies

Councillors may undertake representation of the Council through appointment to government boards or sector committees, or they may join the bodies as a community representative on a particular group. It is important that Councillors clearly understand the basis of their appointment, maintain a positive image of the Council, and represent the Council policy position where appointed to the position by Council.

Councillors who are formally appointed to Committees at the annual Statutory Meeting of Council through the Councillor Delegates and Representatives process are required to provide regular reports to the Council on the activities of the organisation (unless required to do otherwise by virtue of their terms of appointment).

3. PROHIBITED CONDUCT

3.1. Improper direction and improper influence of council staff

Councillors must be cognisant of the prohibition on directing council staff as described in the Local Government Act 1989.

76E Improper direction and improper influence

(2) A Councillor must not direct, or seek to direct, a member of Council staff—

- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
- (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
- (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
- (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

Penalty: 120 penalty units.

Councillors must comply with paragraph 2.3.4 Requesting advice and/or information and logging issues on behalf of residents - Protocols, which define appropriate arrangements for Councillors to raise requests with Council staff.

3.2. Misuse of Position

Councillors must be cognisant of the prohibition on misuse of their position as described in the Local Government Act 1989.

Section 76D - Councillors must not misuse their 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.

Penalty: 600 penalty units or imprisonment for 5 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.

3.3. Use of Information

Councillors must be cognisant of the legislation regarding confidential information in the Local Government Act 1989.

77 Confidential information

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

Penalty: 120 penalty units.

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

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

Section 77(2) - 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.*

3.3.1. Additionally, Councillors need to be:

- a) aware that they are only entitled to access information which is relevant to a matter before the Council;
- b) mindful that except on matters before the Council, they only enjoy the same access rights to information as any other member of the community;
- c) aware of and compliant with the requirements of the Freedom of Information Act 1982 and the Privacy and Data Protection Act 2014 regarding access to, use and release of personal information;

- d) aware of and compliant with the requirements any specific policies that the Council has on the use of Council information; and

- 3.3.2. Councillors must not use information acquired as a Councillor to gain, or attempt to gain, an advantage for themselves or for any other person or to cause, or attempt to cause, detriment to the Council or another person.

3.4. Conflict of Interest Procedures

- 3.4.1. Council is committed to making all decisions impartially and in the best interests of the whole community. It therefore recognises the importance of fully observing the requirements of the Act in regards to the disclosure of conflicts of interest.

- 3.4.2. For the purpose of this Code, “direct interest”, “indirect interest” and “conflict of interest” have the meanings specified in the Act.

- 3.4.3. Councillors will comply with all the provisions of the Act in regard to conflicts of interest. In complying with the provisions of the Act, Councillors will adhere to the following requirements:

- a) All disclosures of conflicts of interest will be made by Councillors in writing by using the Statement of Disclosure of Conflict of Interest Form. These forms will be provided to Councillors and made available at every meeting of Council, at relevant committee meetings and at Assemblies of Councillors. Completed forms are to be handed to the Chief Executive Officer or another nominated officer. In the case of a Special Committee of Council the form is to be handed to the Secretary of the Committee.
- b) If a Councillor considers that they have a conflict of interest in a matter before Council or a Special Committee of Council, they will submit the Statement of Interests Form at the commencement of the meeting.
- c) The Mayor or Chairperson will ask Councillors to state to the meeting any conflicts of interest in regard to items listed on the Agenda at the start of the meeting. Councillors will then formally disclose the conflict of interest, clearly stating the type and nature of their interest, immediately before the matter is considered.
- d) When a Councillor has disclosed a conflict of interest in a matter he or she will leave the room whilst the matter is being considered or any vote is taken on the matter. He or she must notify the Mayor (or Chairperson) that they are leaving the meeting due to a conflict of interest and not re-enter the room until advised by the Mayor (or Chairperson) that the matter is concluded.
- e) If a Councillor has a conflict of interest in a matter being considered at an Assembly of Councillors (as defined in the Act) he or she will comply with the Act by disclosing the conflict of interest and leaving the assembly while the matter is being considered.
- f) A conflict of interest must be disclosed by the relevant Councillor on every occasion that the matter is considered by Council, a Special Committee or at an Assembly of Councillors.

- 3.4.4. In addition to the requirements of the Act:

- a) Councillors will give early consideration to each matter to be considered by Council, or Special Committee of which the Councillor is a member, to ascertain if he or she has a direct or indirect Interest. This can be done by ensuring that the agenda of any meeting is read well ahead of time before the meeting is held.

- b) Councillors recognise that while they may seek advice about a possible conflict of interest, the legal onus rests entirely with each Councillor. If a Councillor cannot confidently say that he or she does not have a conflict of interest, the Councillor will err on the side of caution and declare a conflict of interest and comply with the relevant requirements as if they had a conflict of interest.

3.5. Elections

3.5.1. Election Caretaker Period Policy

Council, in accordance with **Section 93B** of the Act, must adopt an election period policy.

Councillors must comply with Council's **Election Caretaker Period Policy** which has been developed to ensure that the general elections of Hume City Council are conducted in a manner that is ethical, fair and equitable to all candidates and is publicly perceived as such.

The policy addresses the requirements as outlined in the Act in relation to the caretaker period and activities that are impacted during this time including decision-making, council resources public consultation and events, information and communications.

The policy also addresses the requirements as outlined in the Act in relation to Councillor conduct and misuse of position during the caretaker period.

Prior to an election period the Chief Executive Officer will ensure that all Councillors and all members of Council staff are aware of the application of the Election Caretaker Period Policy.

Councillors will commit to the adoption of the practices within the policy and relevant legislative requirements as outlined in the Act.

3.5.2. State and Federal Elections

Councillors will not use their position as an elected representative in a way that contributes to, or may be interpreted as contributing to, the campaign or election activities of a candidate for the position of member of the Parliament of Victoria or a member of the Parliament of the Commonwealth of Australia or of another State or a Territory of the Commonwealth.

4. INTERNAL DISPUTE RESOLUTION PROCESSES

Section 76C(3) of the Act - a Councillor Code of Conduct -

- (a) *must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor;*
- (b) *may set out processes for the purpose of resolving an internal dispute between Councillors.*

4.1. Respecting differences

Councillors need to be mindful that having and expressing differing and sometimes opposing viewpoints is a normal function of the process of democratic government and is just as much a part of local government as it is of the other levels of Australian government. Sharing and expressing these different views leads to informed and well considered debate. All Councillors have the right to influence, through this debate, the decisions made by Council.

Therefore, having differing views, politics or attitudes from other Councillors is not considered a conflict or a dispute and does not require resolution. Conflict does emerge when the differences become personal or the behaviour of Councillors towards each other is of a nature that threatens the effective operation of Council's decision making processes.

4.2. Councillor Dispute Resolution Process

4.2.1. Facilitated resolution between parties

- a) A dispute may arise between two individual Councillors, between one Councillor and a group of Councillors or between two or more different groups of Councillors. The following Councillors dispute resolution procedure will apply regardless of the dynamics and numbers involved.
- b) Before commencing any formal dispute resolution process, the Councillors who are party to any disagreement will endeavour to resolve their differences in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.
- c) If, however, there is a dispute resulting from an interpersonal conflict between Councillors that cannot be resolved and it is unduly affecting the operation of Council, the Mayor will attempt to facilitate a resolution between the parties.
- d) Either party involved in the dispute or some other Councillor may refer the dispute to the Mayor. The Mayor will investigate whether a dispute exists and requires resolution. The Mayor may call the parties involved to meet to resolve the dispute. These initial meetings may include the participation of another mutually agreed person/s.
- e) 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 their role as a Councillor and compliance with the Councillor conduct principles within this Code.
- f) If both or one of the parties to the dispute believes that the dispute has not been resolved following initial discussions to attempt to resolve the dispute, the parties may jointly ask the Mayor to request the Chief Executive Officer to engage a professional mediator or conciliator.
- g) At any stage in this process, if one party to the dispute does not acknowledge there is a dispute and is not willing to cooperate in discussions to resolve the alleged dispute, the dispute resolution process can only be continued if Council, through a decision in the closed section of a Council meeting, determines that a dispute does exist between the parties and requests that mediation/conciliation be commenced.
- h) It is compulsory for all parties to the dispute to attend mediation/conciliation where this has been requested by a resolution of Council.
- i) The Mayor may call upon the Chief Executive Officer for advice and guidance at any point in this process.

4.2.2. Mediation/Conciliation

- a) Irrespective of the above, Council will not undertake a dispute resolution procedure if it is to occur during the caretaker period prior to a Council election.

- b) The Chief Executive Officer will arrange for a qualified mediator or conciliator to be engaged.
- c) If a mediator/conciliator is engaged, all Councillors will cooperate with the dispute resolution process and provide reasonable assistance to the mediator/conciliator when requested.
- d) Following mediation a report is to be prepared for the Chief Executive Officer by the mediator/conciliator which is to include the recommendations and actions to be taken as a consequence of the mediation.
- e) If following mediation/conciliation all parties agree that the dispute has been resolved and agreement is reached on adherence to the recommended actions, the matter is closed. If, however, it has not been resolved to the satisfaction of all parties, the parties involved will be required, as a minimum, to adhere to the Councillor Code of Conduct and Code of Meeting Procedures. Council may resolve requesting that the Mayor strictly adhere to the Code of Meeting Procedures to maintain civility at Council meetings and to ensure that Councillors are able to carry out their role in the best interests of the municipality.
- f) A dispute resolution process between the same Councillors/parties can only be re-commenced through a decision of Council during the closed section of a Council meeting.

4.2.3. Dispute between Mayor and other Councillors

- a) Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor and the Deputy Mayor will carry out the role of the Mayor in this Dispute Resolution Process.
- b) If the dispute is between the Mayor and the Deputy Mayor and another Councillor/s, two other Councillors may after consultation with the Chief Executive Officer recommend to Council that an external mediator or conciliator be engaged. Such a recommendation will need to be considered during the closed section of a Council meeting. All other aspects of the dispute resolution procedure apply.

4.3. Allegation of Breach of Councillors Code of Conduct Process

Section 81AA of the Act provides for allegations of a breach of the Councillors Code of Conduct by a Councillor to be addressed by an internal resolution procedure of a Council.

- (1) *A Council must develop and maintain an internal resolution procedure for the purposes of addressing an alleged contravention of the Councillor Code of Conduct by a Councillor.*
- (2) *The internal resolution procedure of a Council must—*
 - (a) *be specified in the Councillor Code of Conduct; and*
 - (b) *incorporate any prescribed processes including any application process; and*
 - (c) *provide for the selection of an arbiter who is suitably independent and able to carry out the role of arbiter fairly; and*
 - (d) *specify the role an arbiter is expected to undertake in the conduct of any internal resolution procedure including that the arbiter must—*
 - (i) *consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor; and*

- (ii) make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council; and*
 - (e) provide processes to ensure that parties affected by an application alleging a contravention of the Councillor Code of Conduct are given an opportunity to be heard by the arbiter; and*
 - (f) specify that the Council and the Councillor the subject of any application made alleging a contravention of the Councillor Code of Conduct are to be given written reasons for any findings made by an arbiter; and*
 - (g) address any matters prescribed for the purposes of this section; and*
 - (h) include any provisions prescribed for the purposes of this section.*
- 4.3.1. A councillor or a group of councillors may make an application alleging that a Councillor has contravened this Councillor Code of Conduct. The application must be submitted to the Principal Conduct Officer and must:
- specify the name of the Councillor and 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.
- 4.3.2. 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.
- 4.3.3. 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 and 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
- 4.3.4. 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.

- 4.3.5. The Chief Executive Officer will have available a panel of appropriately qualified arbiters upon which the Principal Conduct Officer can contact upon receiving an application alleging that a Councillor has contravened this Councillor Code of Conduct. The arbiter, in carrying out his or her role is to fully comply with **Section 81AA** of the Act.
- 4.3.6. 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.
- 4.3.7. 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.
- 4.3.8. 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.
- 4.3.9. 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.
- 4.3.10. A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next ordinary meeting of Council for its consideration.

5. SANCTIONS FOR CONTRAVENTION OF COUNCILLOR CODE OF CONDUCT

Section 81AB of the Act specifies that:

- (1) *If, after an internal resolution procedure has been conducted, it is found that a Councillor has contravened the Councillor Code of Conduct, the Council may give any or all of the following written directions to the Councillor—*
 - (a) *direct the Councillor to make an apology in a form or manner specified by the Council;*
 - (b) *direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council;*
 - (c) *direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by the Council, the Councillor—*
 - (i) *be removed from any position where the Councillor represents the Council; and*
 - (ii) *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.*
- (2) *A direction given under subsection (1)(b) must be in respect of the next scheduled meetings of the Council after the direction is made.*

5.1. Compliance with the Code

Councillors are required to comply with all applicable legislation, this Code, and its related documents.

Failure by a Councillor to comply with the Council's internal resolution procedure or to comply with a written direction given by the Council under section 81AB of the Act (sanctions for contravention of the Code) constitutes misconduct by a Councillor.

5.2. Externally-Generated Complaints

If a person other than a Councillor complains that a Councillor has breached this Code of Conduct, the complaint will not be dealt with under this Code.

Rather, that person will be advised by the Mayor that:

- a) this Code of Conduct is intended to be enforced internally; and
- b) the complaint should instead be directed to any appropriate external agency, such as the Independent Broad-based Anti-corruption Commission, the Local Government Investigations and Compliance Inspectorate or the Victorian Ombudsman.

6. ADDITIONAL PROVISIONS

6.1. Oath of Office and Code of Conduct Declaration

Councillors must be cognisant of their requirements under the Local Government Act 1989.

6.1.1. **Section 63** of the Act specifies:

- (1) *A person elected to be a Councillor is not capable of acting as a Councillor until the person has—*
 - (a) *taken the oath of office specified in subsection (1A); and*
 - (b) *read the Councillor Code of Conduct and, in accordance with subsection (3), made a declaration stating that they will abide by the Councillor Code of Conduct.*

6.1.2. A Councillor will:

Take the following Oath of Office (**Section 63(1A)**):

"I will undertake the duties of the office of Councillor in the best interests of the people in the municipal district of Hume City and faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1989 or any other Act to the best of my skill and judgment."

Make a Statement of Commitment to Abide by the Code of Conduct by declaring that:

"As a Councillor of Hume City Council I acknowledge and support the Hume Code of Conduct for Councillors. I commit to abide by the Code and perform my duties as a Councillor in a manner consistent with the principles of the Councillor Code of Conduct at all times and in the best interests of the municipality and its constituents."

6.2. Consequences of failing to take the Oath of Office and make a Code of Conduct Declaration

6.2.1. **Section 64** of the Act includes failure to take the oath of office or make a Code of Conduct declaration:

The office of a Councillor becomes vacant if a person elected to be a Councillor does not, within 3 months after the day on which the person was declared elected—

(a) take the oath of office; or

(b) make the declaration specified in section 63(1)(b).

6.2.2. Councillors will take the oath of office and make a statement of commitment to abide by the Code of Conduct at the Statutory Meeting of Council – being the first meeting of Council following a general Council Election, or within 7 days of being declared elected in the case of an extraordinary election.

6.3. Application to Special Committees

Relevant provisions of this Code of Conduct apply to members of Special Committees, including those committees established under Section 86 of the Act, with any necessary modifications.

Any reference to Councillors is taken to also refer to Special Committee members.

6.4. Review

In accordance with **Section 76C** the Act:

(2) A Council must, within the period of 4 months after a general election—

(a) call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and

(b) at that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.

As defined in **Section 76C (6A)** of the Act:

Within one month of amendments to a Councillor Code of Conduct being approved a Councillor must make a new declaration stating that they will abide by the Code.

7. RELATED DOCUMENTS

- 7.1. Statement of Disclosure of Conflict of Interest (Attachment 1)
- 7.2. Councillor Training and Conference Policy
- 7.3. Councillor Support and Expenses Entitlement Policy
- 7.4. Councillor Portfolio Guidelines Policy
- 7.5. Code of Meetings Procedure
- 7.6. Election Caretaker Period Policy

This Code of Conduct incorporates the statutory requirements specified for a Code of Conduct in accordance with Section 76C of the *Local Government Act 1989* and was adopted by resolution of the Hume City Council at a Special Meeting of Council held on 4 July 2016.



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CHIEF EXECUTIVE OFFICER..r.l)



ATTACHMENT 1



STATEMENT OF DISCLOSURE OF CONFLICT OF INTEREST

(Sections 77A – 79E of the Local Government Act 1989)

Name of Councillor/Special Committee Member.....

Date of Disclosure.....

Council Meeting Committee Assembly of Councillors

Meeting Date.....Agenda Item.....

Agenda Item Descriptions.....

Type of Interest (LGA Section 79, 2(b)):

Direct Interest Indirect Interest

Kind of indirect interest:

Close association

Indirect financial interest

Conflicting duty

Received applicable gift

Become an interested party

Having your residential amenity affected

Nature of the Interest.....

.....

.....

Signature: Date:

Councillor/Special Committee Member

Office Use Only

Recorded
by.....

at.....date.....

Initials