

Nillumbik Shire Council

Councillor Code of Conduct

Description of policy	The Councillor Code of Conduct sets out explicit standards of behaviour to help Councillors perform their duties and functions as Councillors to the requisite level.
Policy applies to	<input type="checkbox"/> All Councillors
Policy category	<input type="checkbox"/> Revised Policy
Description of revision and Version Number	Version Number: 1

Approved by	Council Resolution
Approval date	
Effective date	
Date of last revision	January 2021
Date of next review*	January 2022

*Unless replaced, this policy will still apply beyond the review date.

Related internal procedures and guidelines	<ul style="list-style-type: none"> • Governance Rule – Procedure for Disclosure of Conflict of Interests • Governance Rule – Meeting Procedure
Related policies	<ul style="list-style-type: none"> • Council Expenses Policy • Governance Rule – Decision-making Policy
Related legislation, standards and guidelines	<ul style="list-style-type: none"> • <i>Local Government Act 2020</i> • <i>Equal Opportunity Act 2010</i> • <i>Charter of Human Rights and Responsibilities Act 2006</i> • <i>Equal Opportunity Act 2010</i> • <i>Public Interest Disclosures Act 2012</i> • Local Government (Governance and Integrity) Regulations 2020

SECTION 1: BACKGROUND

1. Overview

In accordance with the *Local Government Act 2020* (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. When the Act was introduced, the second reading speech stated that it was to deliver five broad outcomes, including improving councillor conduct:

“Poor conduct by a minority of councillors is an ongoing challenge for the local government sector. This Bill sets clear standards to address and improve conduct. Mandatory standards of conduct, defining what communities expect from their councillors provides a greater understanding of acceptable behaviour, with a consistent framework against which to determine complaints and alleged breaches of the Councillor Code of Conduct. The currently complicated and varied internal resolution procedures will be replaced by clear, concise and consistent internal arbitration processes. This standardised process will be managed centrally by the Principal Councillor Conduct Registrar, and arbiters will be empowered to directly impose disciplinary measures against councillors. Where a finding of misconduct is reached, all decisions must be tabled at the next open council meeting to ensure greater transparency of the process and its outcomes..... Importantly, this Bill ensures that there will be no doubt as to what conduct constitutes sexual harassment by a councillor, making it clear that this behaviour is not tolerated in any form. Sexual harassment is defined under serious misconduct and gross misconduct within the councillor conduct framework and will carry the same definition of sexual harassment [as] under the Equal Opportunity Act 2010. Allegations of serious misconduct will be heard by a councillor conduct panel, and any egregious allegations which constitute gross misconduct will be investigated by the Chief Municipal Inspector and heard and determined by VCAT. The maximum sanction for a finding of serious misconduct is increased from six months suspension to 12 months....”

This Code of Conduct meets Council's statutory requirements under sections 139 and 140 of the Act and the *Local Government (Governance and Integrity) Regulations 2020*. Along with Council's Governance Rules, it provides a framework for Councillors and officers to work in the best interests of the Nillumbik community.

2. Policy Statement

The purpose of this Councillor Code of Conduct is to set out explicit standards of behaviour to help Councillors perform their duties and functions as Councillors to the requisite level.

3. Purpose / Objectives

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 2020* (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 Councillors;
- 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.

The objectives of this policy are to:

- make clear to Councillors the conduct expected of Councillors
- provide a reference source for complex concepts
- aid in understanding the Local Government Act 2020
- assist in comprehending the local government environment

4. Councillor Commitment To The Code Of Conduct

We, as elected representative of the community charged with decision making for the Nillumbik Shire Council, are committed to undertaking the duties and responsibilities of our office by working together with our fellow Councillors in a respectful and constructive manner to achieve the goals and vision for our Shire.

We recognise the importance of acting in accordance with the highest standards of governance, and that this is essential to honest, accountable and effective government. Our behaviour towards our colleagues, the employees of Council and the community is critical to the teamwork required to be a successful and highly functioning public authority.

We acknowledge that we have been elected by the community to a position of significant responsibility with the expectation that we will act in accordance with accepted values of our society.

As Councillors of Nillumbik Shire Council, we agree to:

- act in accordance with the principles of good governance and respectful conduct and associated obligations set out in the Code and legislation
- provide civic leadership and contribute effectively to the interests and advancement of Council and its community
- contribute to the strategic vision for Council
- uphold the public trust in the office of Councillor by refraining from any action or behaviour that would bring Council into disrepute
- act in accordance with all my obligations to the best of my skill and judgment.

This Code sets out our commitment to our fellow Councillors and the community to govern the Shire in a manner which accords with the expressed behaviours, standards and values.

This Code will be reviewed in accordance with relevant legislative obligations.

By signing below, we declare that we have read, understood and will abide by this Code of Conduct.

Councillor Peter Perkins (Mayor)

Councillor Frances Eyre (Deputy Mayor)

Councillor Richard Stockman

Councillor Karen Egan

Councillor Natalie Duffy

Councillor Ben Ramcharan

Councillor Geoff Paine

Witnessed by Chief Executive Officer, Carl Cowie

SECTION 2: COUNCILLOR CONDUCT OBLIGATIONS

1. Role of Councillors

Section 28 of the Act provides that the role of a Councillor is:

- to participate in the decision-making of Council; and
- to represent the local community in that decision-making; and
- to contribute to the strategic direction of Council through the development and review of key strategic documents of Council, including the Council Plan.

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

- consider the diversity of interests and needs of the municipal community
- support the role of Council
- acknowledge and support the role of the Mayor
- act lawfully and in accordance with the oath or affirmation of office
- act in accordance with the standards of conduct
- comply with Council procedures required for good governance.

The role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer.

Councillors agree to comply with the requirements of section 28.

2. Role of Mayor

Sections 18 and 19 of the Act describe the role of the Mayor to be to:

- chair Council meetings; and
- be the principal spokesperson for Council; and
- lead engagement with the municipal community on the development of the Council Plan; and
- report to the municipal community, at least once each year, on the implementation of the Council Plan; and
- promote behaviour among Councillors that meets the standards of conduct set out in this Code; and
- assist Councillors to understand their role; and
- take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer; and
- provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and
- perform civic and ceremonial duties on behalf of Council.

The Mayor has specific powers:

- to appoint a Councillor to be the chair of a delegated committee. Such an appointment prevails over any appointment of a chair of a delegated committee by Council.
- to direct a Councillor, subject to any procedures or limitations specified in the Governance Rules, to leave a Council meeting if the behaviour of the Councillor is preventing the Council from conducting its business;
- to require the Chief Executive Officer to report to Council on the implementation of a Council decision.

3. 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. Further details of the role and functions of the Chief Executive Officer are set out *Councillor and Staff Interactions Policy*.

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

4. Conduct Obligations and Standards of Conduct

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 139(2) of the Act sets out the purpose of the Councillor Code of Conduct as including the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification.

4.1.1. The standards of conduct for Councillors

Councillors must comply with the prescribed standards of conduct in Schedule 1 to the *Local Government (Governance and Integrity) Regulations 2020*.

A breach of the conduct standards constitutes misconduct as defined under the Act.

4.1.2. Standard 1 - Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor—

- a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010; and
- b) supports the Council in fulfilling its obligation to achieve and promote gender equality; and
- c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights

and responsibilities.

4.1.3. Standard 2 - Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor—

- a) undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and
- b) diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- c) is fit to perform the role of a Councillor conscientiously when acting in that capacity or purporting to act in that capacity; and
- d) represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

4.1.4. Standard 3 - Compliance with good governance measures

A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following—

- a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;
- b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- d) any directions of the Minister issued under section 175 of the Act.

4.1.5. Standard 4 - Councillor must not discredit or mislead Council or public

In performing the role of a Councillor:

- a) a Councillor must ensure that their behaviour does not bring discredit upon the Council.
- b) a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

4.1.6. Standard 5 - Standards do not limit robust political debate

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

5. Specific Councillor Conduct Obligations

The following section sets out specific conduct obligations that are agreed by all Councillors. In some instances a breach of the conduct obligations under this part might also constitute a breach of the conduct standards. As noted in 4.1 a breach of the conduct standards may result in a finding of misconduct under the Act.

We acknowledge and agree that Council policies, protocols and procedures referred to below apply to me as a Councillor and we commit to compliance with them and with our legislative obligations.

5.1. Decision making

We are committed to making all decisions impartially and in the best interests of the community. We will actively participate in the decision-making process and appropriately inform myself of the matter at hand. Once a decision has been made, we will respect the making of that decision.

The *Governance Rule – Decision-making Policy* set out the procedures for decision making by Council.

5.2. 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, including the *Council Expenses Policy 2020*, applying to their use.

5.3. 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. For transparency and accountability purposes, gifts will be recorded in the Gift Register in accordance with the procedures in the Councillor Gift Policy adopted by Council under section 138 of the Act. Details of any gift received that equals or exceeds \$500 in value, including gifts in the form of goods and services and multiple gifts that together equal or exceed \$500 in value, excluding gifts received from members of the Councillor's family, must be included in Council's biannual personal interest returns.

Under section 137 of the Act, a Councillor must not accept anonymous gifts for his or her benefit where the value is equal to or exceeds the gift disclosure threshold. The only exceptions are where the Councillor has what they believe is the true name and address of the person making the gift or the Councillor disposes of the gift to Council within 30 days of its receipt. The penalty for breach of this section is a maximum fine of 60 penalty units, plus the value of the gift, which is to be paid to Council.

Councillors will be mindful of their obligations under section 309 of the Act relating to the receipt of gifts under the Act while being a candidate for a Council election.

We will record all campaign donations in our campaign donation return in accordance with section 306 of the Act.

5.4. Reporting fraud and corruption

Ethical behaviour is an integral part of responsible, effective and accountable government. We acknowledge Council's obligations under the [Public Interest Disclosures Act 2012](#) to facilitate the making of disclosures of improper conduct by public officers and public bodies, including Council, its employees and Councillors.

We will immediately report to the Chief Executive Officer and/or appropriate integrity body, in line with the Council's Public Interest Disclosures Procedures, any suspected, potential or actual fraudulent, criminal, unethical, corrupt or other unacceptable behaviour that comes to my knowledge. We will participate as required to the best of our ability in any subsequent investigation whether undertaken internally or externally.

5.5. Communication and media

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

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

We will also:

- respect Council's decisions by not criticising or actively undermining any decisions which have been made
- not bring Council into disrepute through any of my words or actions
- not speak on behalf of Council without authority
- ensure any personal opinions or views I express publicly are identified as my own and not those of Council
- ensure any communications I make are not offensive, derogatory, insulting or otherwise damage the reputation of Council.

5.6. Personal dealings with Council

When we deal with 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.

6. Prohibited Conduct

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

- Misuse of position
- Directing a member of Council staff
- Confidential information
- Conflict of interest
- Electoral conduct

These matters are set out below and in the Councillor Conduct framework at the end of the Code 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.

Depending on the nature of the allegation, these matters should more properly be the subject:

- a) of an application to a Councillor Conduct Panel for a finding of misconduct or serious misconduct against a Councillor; or
- b) of an investigation by the Chief Municipal Inspector of an allegation of serious misconduct or gross misconduct of a Councillor. The Chief Municipal Inspector may make an application to the Victorian Civil and Administrative Tribunal (VCAT) for a finding of gross misconduct against a Councillor; or
- c) of an investigation by the Chief Municipal Inspector of a public interest complaint that relates to the conduct of a Councillor or a member of Council staff. If such a matter referred to the Chief Municipal Inspector Commission by the Independent Broad-based Anti-corruption Commission (IBAC) appears to involve corrupt conduct of which the Chief Municipal Inspector believes the IBAC is not aware, the Chief Municipal Inspector must notify the IBAC of that belief; or
- d) of investigation and prosecution by the Chief Municipal Inspector of any offence against the Act.

6.1. Misuse of position

Under section 123 of the Act a Councillor must not misuse his or her position.

A person who is, or has been, a Councillor or member of a delegated committee must not intentionally misuse their 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 Council or another person.

Penalty: A maximum of 600 penalty units (approx. \$99,000) or imprisonment for 5 years or both.

Misuse of a position includes—

- making improper use of information acquired as a result of the person's position
- disclosing confidential information
- directing or improperly influencing a member of Council staff
- exercising or performing a power, duty or function that the person is not authorised to exercise or perform
- using public funds or resources in an improper or unauthorised manner
- participating in a decision on a matter in which the person has a conflict of interest.

6.2. Directing a member of Council staff

Under section 124 of the Act 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 the 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 the Act or any other Act; or
- d) in relation to advice provided to Council or a delegated committee, including advice in a report to the Council or delegated committee.

The penalty is a maximum of 120 penalty units (*approx. \$20,000*).

6.3. Confidential information

What constitutes “confidential information” under the Act is set out in *Governance Rule – Decision-making Policy* at pages 12-13.

Section 125 of the Act relates to the disclosure of confidential information:

1. Unless subsection (2) or (3) applies, a person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, must not intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: 120 penalty units.

2. Subsection (1) does not apply if the information that is disclosed is information that the Council has determined should be publicly available.
3. A person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, may disclose information that the person knows, or should reasonably 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) in the course of an internal arbitration and for the purposes of the internal arbitration process;
 - e) in the course of a Councillor Conduct Panel 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 Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- h) to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry;
- i) to the extent reasonably required by a law enforcement agency.

6.4. 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 Council or a delegated committee, an Audit and Risk Committee or a section 223 (of the *Local Government Act 1989*) 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).

Conflicts of interest are defined and detailed in *Governance Rule – Procedure for Disclosure of Conflict of Interests*.

The *Local Government (Governance and Integrity) Regulations 2020* prescribe the exemptions, that is, that a conflict of interest does not arise in relation to the following matters:

Exemptions from conflict of interest requirements

1. For the purposes of section 129(g) of the Act, the following matters are prescribed to be exempt:
 - a) the nomination or appointment by the Council of a Councillor to a position for which the Councillor will not be remunerated;
 - b) the nomination or appointment by the Council of a Councillor to a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;
 - c) a submission by the Council to an electoral structure review under section 16 of the Act or a ward boundary review under section 17 of the Act;
 - d) the nomination of a Councillor for election to the office of Mayor or Deputy Mayor;
 - e) the election of a Councillor to the office of Mayor or Deputy Mayor under section 25 or 27 of the Act;
 - f) the appointment of a Councillor to the office of Acting Mayor under section 20B of the Act;
 - g) the payment of allowances to the Mayor, Deputy Mayor or Councillors as provided for under section 39(6) of the Act;
 - h) the adoption of an expenses policy by the Council under section 41 of the Act;
 - i) a decision by the Council to deal with a matter in an alternative manner under section 67 of the Act;
 - j) the establishment of a delegated committee under section 67 of the Act;
 - k) the appointment of a Councillor as a member or chairperson of a delegated committee;
 - l) the adoption, review or amendment of a Councillor Code of Conduct under section 139 or 140 of the Act;
 - m) an application for an internal arbitration process under section 143 of the Act;
 - n) an application to a Councillor Conduct Panel under section 154 of the Act;

- o) an application to VCAT for a review of a Councillor Conduct Panel decision under section 170 of the Act;
 - p) a resolution by the Council related to a declaration under section 158(1) of the *Local Government Act 1989*;
 - q) a resolution by the Council that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under any taxation legislation;
 - r) a matter related to preparing or adopting a budget or a revised budget under Part 4 of the Act if—
 - i. the budget or revised budget includes funding for that matter; and
 - ii. the Council previously approved that matter and the proposed funding for that matter; and
 - iii. a Councillor who had a conflict of interest in respect of that matter disclosed the conflict when the Council previously considered and made the decision in respect of that matter and approved the proposed funding for that matter;
 - s) a matter related to preparing or adopting a Community Vision, Council Plan, Financial Plan, Asset Plan or Revenue and Rating Plan (a **relevant document**) under Part 4 of the Act if—
 - i. the relevant document includes that matter; and
 - ii. the Council previously approved that matter for inclusion in a relevant document; and
 - iii. a Councillor who had a conflict of interest in respect of that matter disclosed the conflict when the Council previously considered and made any decisions in respect of the matter;
 - t) a matter for which—
 - i. a decision by the Council has been made under section 67 of the Act; and
 - ii. any component part of the matter in which a Councillor had a conflict of interest has been resolved; and
 - iii. the Councillor disclosed the conflict of interest when the Council previously considered that component part of the matter.
2. For the purposes of section 129(g) of the Act, the circumstances in which a Councillor carries out a function in any of the following positions are prescribed to be exempt—
- a) as a representative of the Council to a Local Government Waste Forum established under the *Environment Protection Act 1970*;
 - b) as a director of a Waste and Resource Recovery Group established under the *Environment Protection Act 1970*;
 - c) as a member of the Country Fire Authority appointed under section 7 of the *Country Fire Authority Act 1958*;
 - d) as a member of the governing body of a referral authority considering an application under section 56 of the *Planning and Environment Act 1987*;
 - e) as a representative of the Council, or Councils, to the Municipal Association of Victoria or in another body that has a purpose of representing the interests of a Council or Councils;
 - f) as an employee of the Crown or of a body established by or under any Act for a public purpose, if the Councillor has no current or expected future responsibilities as that employee that relate to a matter;

- g) as a representative of the Council (with the Council's approval) to an organisation, if the Councillor receives no remuneration as that representative;
- h) as a member of a Planning Application Committee established under the *Planning and Environment Act 1987* or as a member or co-opted member of a subcommittee of that Committee.

7. Other legislative requirements

The Act includes requirements in relation to Councillor conduct, eligibility, electoral conduct and the election period (caretaker period). We are committed to ensuring that elections conducted by the Nillumbik Shire Council are conducted fairly and democratically and in accordance with the highest standards of governance. As sitting Councillors during an election period we will abide by the requirements of the applicable legislation and the Council-endorsed Election Period Policy (which forms part of the Council's adopted Governance Rules) and, whether or not we are standing for re-election, we will at all times act respectfully towards all candidates for the election.

Alleged contraventions of these provisions are not to be dealt with by 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 Chief Municipal Inspector, 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.

7.1. Human rights and equal opportunity

In performing their role Councillors must take positive action to eliminate discrimination in accordance with the *Equal Opportunity Act 2010* and support Council in fulfilling its obligation to achieve and promote gender equality.

We acknowledge the human rights that are protected under the *Victorian Charter of Human Rights and Responsibilities Act 2006* and undertake to exercise our duties in a manner that is compatible with the rights set out in the Charter.

We acknowledge this undertaking extends to all our relationships as a Councillor, including with other Councillors, the Chief Executive Officer and Council employees, as well as any member of the public with whom we may have contact, and any decisions we participate in as a Councillor.

We will:

- take all reasonable steps to eliminate all forms of discrimination at Council
- support Council to fulfil its obligation to achieve and promote gender equality

7.2. Sexual harassment

Sexual harassment is against the law and will not be tolerated under any circumstances. In performing their role Councillors must take positive action to eliminate sexual harassment in accordance with the *Equal Opportunity Act 2010*.

We will not engage in any unwelcome conduct of a sexual nature towards another individual where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the individual harassed would be offended, humiliated or intimidated.

We will take all reasonable steps to eliminate sexual harassment at Council.

7.3. Bullying, vilification and victimisation

Council is committed to maintaining a workplace that is free from bullying, vilification and victimisation, where all people are treated with dignity and respect. In performing their role Councillors must take positive action to eliminate victimisation in accordance with the *Equal Opportunity Act 2010*.

We will uphold Council's obligations to support a safe workplace, and will not engage in repeated unreasonable behaviour toward another Councillor or member of Council staff that creates a risk to the health and safety of that other Councillor or member of Council staff.

We will take all reasonable steps to eliminate bullying, vilification and victimisation at Council.

7.4. Occupational health and safety

Council is committed to providing and maintaining a safe workplace for all and recognises the provisions of the *Occupational Health and Safety Act 2004* (OHS Act) apply to Council and Councillors. The Chief Executive Officer has a clear accountability for OHS matters, given their mandate under the Act, and will put policies in place from time to time to ensure a safe workplace for Councillors to carry out their civic duties.

As a Councillor, we understand that occupational health and safety is a shared responsibility.

Accordingly, we will each:

- take reasonable care to protect our own health and safety as well as the health and safety of others in the workplace
- take reasonable care to make sure Council carries out, through the Chief Executive Officer, its general duties to ensure a safe workplace that is without risks to health by ensuring appropriate systems and policies are in place to manage those risks
- consider any health and safety implications of Council decisions.

7.5. Interacting with children

Council prides itself on being a child safe organisation and has zero tolerance for child abuse. Council adheres to the Victorian Child Safe Standards and related legislation which governs the protection of children and young people and deals with the failure to report harm, failure to protect and grooming offenses. Accordingly, we undertake to:

- maintain the highest standards of professional conduct in my attitude, behaviour and interactions with children and young people
- support and maintain Council's commitment to the safety and wellbeing of children and young people and including through any decision I participate in as a Councillor
- take all reasonable steps to protect children and young people from harm, including complying with Council's obligations under State and Federal child protection legislation.

SECTION 3: DISPUTE RESOLUTION

1. Informal dispute resolution

Before commencing any formal dispute resolution process, 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 and the matter still remains unresolved, the parties may then resort to Council's informal dispute resolution process.

This involves direct negotiation between the parties in dispute, with the Mayor in attendance to provide guidance.

1.1. 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 Council.

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 informal dispute resolution process

The party requesting the direct negotiation meeting 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 28 of the Act, and the observation of the standards of conduct in 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 the internal resolution procedure where the matter relates to an alleged breach of the standards of conduct in 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, either or both of the parties have recourse to the internal resolution procedure where the matter relates to an alleged breach of the standards of conduct in this Code.

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.

Where the Mayor and the Deputy Mayor are both parties to the dispute, the request is to be made to the immediate past Mayor to perform the functions ascribed to the Mayor. Where the immediate past Mayor is not available, the Mayor or Deputy Mayor, or both, may apply to the Councillor Conduct Officer to appoint an external mediator to attend, provide guidance and perform the functions ascribed to the Mayor.

1.2. Formal dispute resolution of Councillor Conduct

Internal arbitration process

The internal arbitration process in Division 5 of Part 6 of the Act applies to any alleged breach of the standards of conduct. This internal resolution procedure sets out the process for internal arbitration of allegations that a Councillor has breached the prescribed standards of conduct.

An application for an internal arbitration process must specify:

- the name of the Councillor alleged to have breached the standards of conduct; and
- the clause of the standards of conduct that the Councillor is alleged to have breached; and
- the misconduct that the Councillor is alleged to have engaged in that resulted in the breach.

The complainant must sign and date the application and submit it to Council's Principal Conduct Officer.

After receiving the application the Councillor Conduct Officer must without undue delay:

- provide a copy of the application to the Councillor who is the subject of the application; and
- advise the Mayor and CEO of the application; and
- provide the original application to the Principal Councillor Conduct Registrar.

An arbiter appointed in accordance with the Act to hear an application must:

- conduct the hearing with as little formality and technicality as the proper consideration of the matter permits;
- ensure that the hearing is not open to the public.

The arbiter appointed to hear an application:

- may hear each party to the matter in person or solely by written or electronic means of communication; and
- is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit; and
- may at any time discontinue the hearing if the arbiter considers that –

- the application is vexatious, misconceived, frivolous or lacking in substance; or
- the applicant has not responded, or has responded inadequately, to a request for further information.

If, after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the prescribed standards of conduct, the arbiter may make a finding of misconduct against the Councillor. A written copy of that decision and a statement of reasons provided by the arbiter must include any sanctions imposed.

If an arbiter makes a finding of misconduct against a Councillor, the arbiter may do any one or more of the following:

- direct the Councillor to make an apology in a form or manner specified by the arbiter;
- suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month;
- direct that the Councillor be removed from any position where the Councillor represents Council for the period determined by the arbiter;
- direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
- direct a Councillor to attend or undergo training or counselling specified by the arbiter.

The arbiter provides a written copy of the arbiter's decision and statement of reasons to:

- Council; and
- the applicant or applicants; and
- the respondent; and
- the Principal Councillor Conduct Registrar.

A copy of the arbiter's decision and statement of reasons must be tabled, with any confidential information redacted, at the next Council meeting after Council received the copy of the arbiter's decision and statement of reasons and recorded in the minutes of the meeting.

After Council has tabled a copy of an arbiter's decision and statement of reasons, Council must ensure that the report, with any required redactions to remove confidential information, is made publicly available.

At any time before, during or after the hearing of an application for an internal arbitration process, if the arbiter believes that the conduct that is the subject of the application for an internal arbiter process appears to involve serious conduct, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.

SECTION 4: DEFINITIONS

When we use the following terms we mean:

Term	Definition
the Act	The <i>Local Government Act 2020</i> – the primary State legislation on local government. The <i>Local Government Act 1989</i> is to be read as if it formed part of the <i>Local Government Act 2020</i> .
Arbiter	A person selected from a panel list of eligible persons established under section 142 of the Act to conduct an internal arbiter process.
Chief Executive Officer	The person appointed by Council under section 44 of the Act to be its Chief Executive Officer or any person acting in that position.
Chief Municipal Inspector	The person appointed by the Minister administering the Act to investigate and prosecute any possible offence under the Act, to investigate any allegation of serious misconduct or gross misconduct by a Councillor, to investigate any public interest complaint that relates to the conduct of a Councillor or member of Council staff and to carry out other functions under section 182 of the Act,
Code	This Councillor Code of Conduct developed by Council under section 139 of the Act.
Council	Nillumbik Shire Council
Councillor	A person who holds the office of a member of Council
Councillor Conduct Panel	A panel formed by the Principal Councillor Conduct Officer under section 156 of the Act
Good governance	Council performing its role in accordance with the overarching governance principles and supporting principles in section 9, and Councillors performing their roles in accordance with section 28, of the Act
Governance Rules	Governance Rules developed by Council under section 60 of the Act
Gross misconduct	By a Councillor means behaviour that demonstrates that the Councillor— <ul style="list-style-type: none"> • is not of good character; or • is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature
Internal arbitration process	The internal arbitration process of Council under section 141 of the Act, the <i>Local Government (Governance and Integrity) Regulations 2020</i> and this Code.
Mayor	The leader of the Councillors elected by the Councillors
Misconduct	By a Councillor means any breach of the standards of conduct included in this Code.

Term	Definition
Municipal Monitor	A person appointed by the Minister to be a Municipal Monitor to a council under section 179 of the Act to monitor and advise on a council's governance processes and practices and improvements and to investigate and report on matters to the Minister.
Penalty unit	This is a standard amount of money used to compute fines, which are calculated by multiplying the <u>number</u> of units by the <u>value</u> of a penalty unit. This value is set annually by the Victorian Treasury and Finance Department and is updated each 1 July.
Principal Conduct Officer	The person appointed in writing by the Chief Executive Office to assist Council in the implementation and conduct of the internal arbitration process of Council and to assist the Principal Councillor Conduct Registrar to perform specific functions.
Principal Councillor Conduct Registrar	The person appointed by the Secretary to the Department of Environment, Land, Water and Planning to administer all councillor conduct panel processes. The Registrar maintains the list of panel members, forms Councillor Conduct Panels to hear applications and publishes panel findings and decisions
Serious Misconduct	<p>By a Councillor means any of the following:</p> <ul style="list-style-type: none"> • the failure by a Councillor to comply with the Council's internal arbitration process; • the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147 of the Act; • the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor; • the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; • continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b) of the Act; • bullying by a Councillor of another Councillor or a member of Council staff; • conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff; • the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information; • conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff; • the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with the Act.

COUNCILLOR CONDUCT FRAMEWORK

Direct Negotiation

Informal dispute resolution between individual Councillors through a meeting with the Mayor sought by a Councillor

- guidance on role of a Councillor under section 28 of the Act
- guidance on observing the standards of conduct



Internal Arbitration Process

An arbiter is selected from a Department Secretary panel list by the Principal Councillor Conduct Registrar

Accepts **from a Councillor, a group of Councillors, or Council following a resolution of Council**, applications alleging misconduct arising from

- breach of the Standards of Conduct prescribed in the Code



Councillor Conduct Panel

Two people are selected from a Ministerial panel list by the Principal Councillor Conduct Registrar to form a Councillor Conduct Panel

Accepts serious misconduct allegations **from an arbiter, Council following a resolution to make an application under section 154 of the Act, a Councillor or a group of Councillors, or, for an allegations of a Councillor failing to disclose a conflict of interest, only from the Chief Municipal Inspector.**

- disclosure of confidential information
- conflict of interest (only on application from Chief Municipal Inspector)
- seeking to direct a Council staff member



Local Government Inspectorate

Headed by the Chief Municipal Inspector

Accepts complaints about Council operations and potential breaches of the Act, including:

- misuse of position
- conflict of interest
- disclosure of confidential information
- electoral offences
- misconduct, serious misconduct and gross misconduct by a councillor;

And may:

- apply to a Councillor Conduct Panel to make a finding of serious misconduct against a councillor
- apply to VCAT for a finding of gross misconduct by a councillor



Victorian Civil & Administrative Tribunal (VCAT)

Accepts applications **made by the Chief Municipal Inspector** and may make a finding of gross misconduct by a Councillor