



MOUNT ALEXANDER SHIRE

COUNCILLOR

CODE OF CONDUCT

ADOPTED 21 FEBRUARY 2017

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1. Introduction

This Councillor Code of Conduct is underpinned by the principles of good governance, which provide a framework for establishing community confidence, legislative compliance, ethical decision making and good conduct.

Good governance is fundamental to a Council being able to perform its purpose. Good governance relies on good working relations between Councillors.

The primary role of Council is to provide governance and leadership for the local community through advocacy, decision making and action.

We commit to respecting the role of Council, defined by the Act as including:

- 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 Council by ensuring that resources are managed in a responsible and accountable manner;*
- d) *advocating for 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; and*
- f) *encouraging community cohesion and active participation in civic life.*

2. Governance Principles

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

We commit to complying with the primary and general principles of councillor conduct as required under Sections 76B and 76BA of the Act.

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.*

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.*

We commit to abiding by Council policies and protocols, including:

Community Engagement Policy	describes how Council will engage with the community
Councillor Correspondence Policy	describes how information will be provided to Councillors by staff
Councillor Reimbursement of Expenses Policy	defines how Councillors will be reimbursed for out of pocket expenses
Councillor and Council Staff Interaction Protocol	defines the communication channel between Councillors and officers
Election Period Policy	describes how Council will manage the provision of information to the community and candidates during the election period
Gift and Hospitality Policy	describes the process used to declare gifts and hospitality Councillors may be offered
Information Privacy Policy	provides Council's commitment to collecting, managing and using personal information
Media Policy	describes the way in which Council will provide information and interact with the media

We commit to complying with Council Local Laws, noting that the Local Law Meeting Procedures applies directly to the conduct of Council Meetings, providing for a transparent, accountable and inclusive decision-making process.

3. Role of a Councillor

We commit to undertaking the role of a councillor, as defined by the Act.

- 1) *The role of a councillor is-*
 - a) *to participate in the decision-making of the Council; and*
 - b) *to represent the local community in that decision-making; and*
 - 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 the role of a Councillor, a Councillor must:*
 - a) *consider the diversity of interests and needs of the local community; and*
 - b) *observe principles of good governance and act with integrity; and*
 - c) *provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts; and*
 - d) *participate in the responsible allocation of the resources of Council through the annual budget; and*
 - e) *facilitate effective communication between the Council and the community.*
- 3) *The role of councillors does not include the performance of any functions that are specified as functions of the Chief Executive Officer under Section 94A.*

We commit to being informed on Council matters and understanding the role we play as decision-makers by:

- 1) Attending assemblies of Councillors, so we understand matters that will come before Council for decision; and
- 2) Attending Councillor development workshops and training sessions, so that we understand our role and the framework in which we make decisions.

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

Functions of the Mayor

We commit to respecting the functions of the Mayor, which 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; and*
- b) *acting as the principal spokesperson for the council; and*
- c) *supporting good working relations between councillors; and*
- d) *carrying out the civic and ceremonial duties of the office of Mayor.*

4. Councillor Behaviours

Working together

As Councillors we worked together to agree on the following principles that underpin the way we will work together:

- We allocate the right resources to get the job done.
- We make a positive contribution in meetings.
- We engage and listen to others.
- We report back to the community about what we are doing.
- We take the time to understand and consider the information provided.
- We ask clarifying questions and give constructive feedback on the information given to us.
- We acknowledge and appreciate the information and reports given to us.
- We set aside time to openly share information and our views.
- We do what we say we will do.
- We deal respectfully with others and with each other.
- We focus on the cause, not the symptom.
- We focus on the issue/concern, not the person.
- We encourage a continuous improvement process.

Working with others

We commit to promoting relationships with the community, the organisation and stakeholders that facilitate us as being perceived as follows:

By the community

- We are all going in the one direction.
- We make positive comments.
- We drive action on the ground.
- We are efficient and effective.
- We expect to be held to account.
- We engage in vigorous debate and make good decisions.
- We advocate for our community and attract good State and Federal funding.
- We are approachable.
- We provide good customer service.
- We help businesses.
- We do what we say we will do.

By Council officers

- We are good partners, with whom officers have good interactions.
- We are an excellent resource/conduit to the organisation.
- We are positive role models.
- We are curious, not aggressive.
- We are appreciative.
- We are trusted and respected.

By stakeholders

- We understand our community and what it needs.
- We are efficient and effective.
- We are good partners, with whom stakeholders have good interactions.
- We are appreciative.
- We are trusted and respected.

Dispute resolution

We commit to resolving any disputes that may arise between Councillors in a respectful manner, which is open to hearing alternate perspectives, and to finding agreed outcomes.

We commit to complying with the internal resolution procedure (Appendix 1) to resolve any disputes that may arise between Councillors.

Courtesy and respect

We will treat all people with courtesy and respect, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities.

Integrity and honesty

We will always act with integrity and honesty by:

- being honest in all our dealings with the community, with other Councillors and with Council staff, avoiding actions that may mislead a person, or be considered defamatory or injurious; and
- not acting in ways that may damage Council or the confidence the community has in Council or our fellow Councillors.

Confidentiality and discretion

We commit to dealing sensitively and discretely with all information we receive, regardless of its nature or form, observing strict confidentiality where it may reasonably be expected by the source of the information.

We will consider information to be confidential if it is provided to Councillors for the purposes of Council business and would not be available to the general members of the community.

This applies whether it be provided through:

- Councillor briefings;
- email or written correspondence with Council staff or members of the community;
- the Councillor Bulletin; or
- discussions between Councillors or staff and other levels of government.

We acknowledge that material that will form the basis of a future Council report should be treated as confidential until such time as the agenda papers are released to the public as part of the council meeting process.

We recognise that this commitment is in addition to information deemed confidential under the Act.

Councillor relationships with staff

As Councillors we will work collaboratively with the Chief Executive Officer and Council staff.

We will direct all enquiries to the CEO, relevant Director or Manager in the first instance.

We acknowledge that under the Occupational Health and Safety Act 2004 we are responsible for the health and safety of the Chief Executive Officer.

We will refer any concerns we have about the performance or conduct of Council staff to the Chief Executive Officer on a confidential basis.

Representing Council on Committees

We recognise that when appointed to represent Council on external organisations it is our responsibility to fully understand our role on that organisation, and that we must be formally appointed by a resolution of Council.

We will report to Council on Committee activities for which we are a Council representative.

Communication

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.

As representatives of the community, we have a primary responsibility to be responsive to community views and to adequately communicate the attitudes and decisions of Council.

We will endeavour to ensure that the messages communicated through the media are clear and consistent, and positively portray Council as a decisive and responsible governing body.

5. Prohibited Conduct

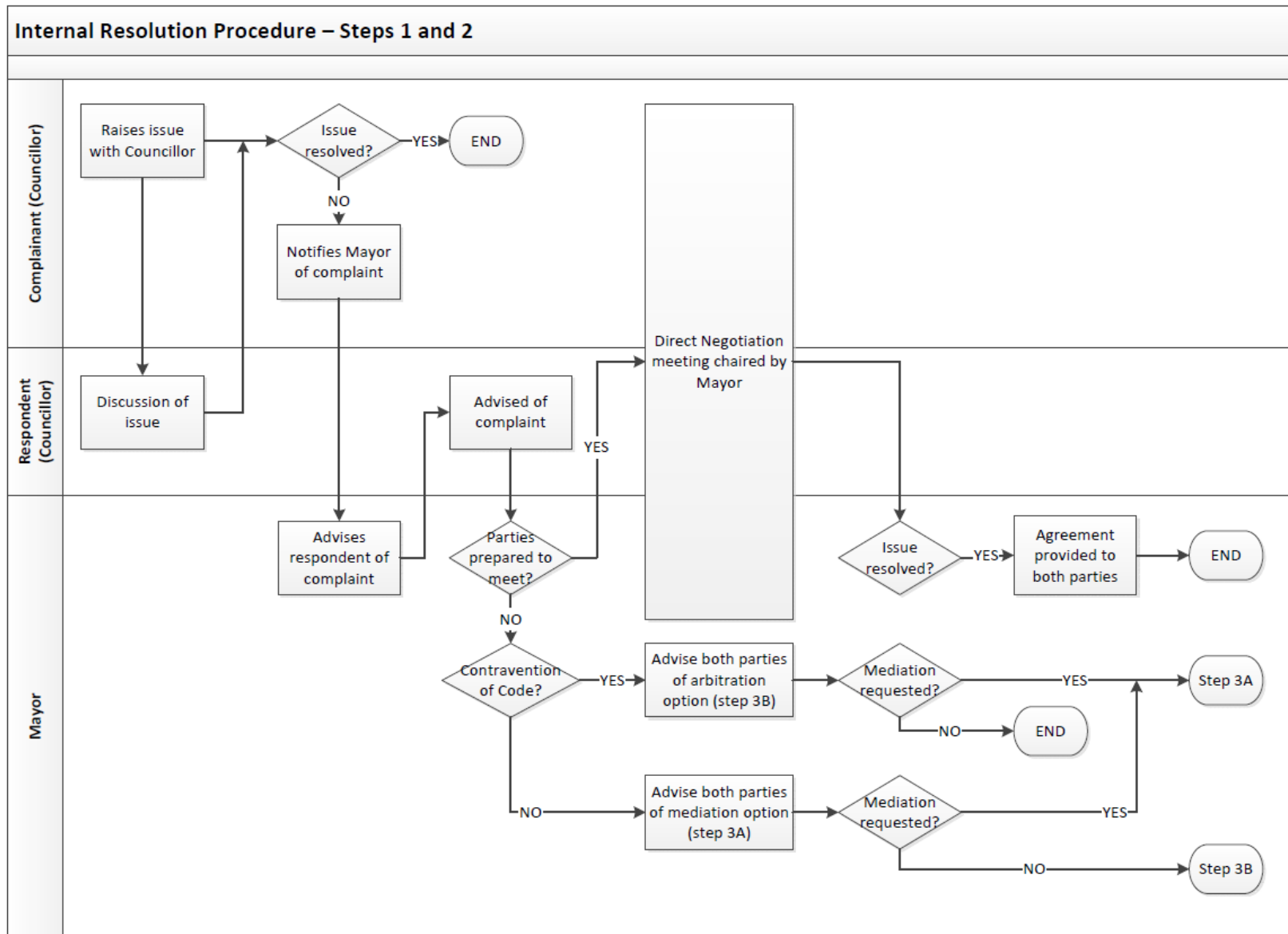
The Local Government Act 1989 has specific provisions that prohibit Councillors from certain conduct. These matters are not managed under the Code of Conduct, because they are breaches of the Act.

This conduct relates to:

- Misuse of position (Sections 76E and 77(2))
- Improper direction and improper influence (Sections 76D and 76E)
- Confidential information (Section 77)
- Conflict of interest (Sections 78 and 79)
- Electoral conduct (various sections)

Appendix 2 contains information on each type of prohibited conduct.

Appendix 1: Internal Resolution Procedure



Step 1 – Parties to resolve

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.

If the matter cannot be resolved in this step then either party can initiate the next step.

Declining to participate in this step does not constitute a contravention of this Code.

Step 2 - Direct negotiation (facilitated by the Mayor)

A dispute referred for direct negotiation may relate to:

- an interpersonal conflict between Councillors where the conflict may affect the operations of the Council; or
- an alleged contravention of the Councillor Code of Conduct.

This step is for a meeting between both parties facilitated by the Mayor. The role of the Mayor is to provide guidance to Councillors on their role and expected conduct, as defined in the Code and the Act.

- If the Mayor is a party to the dispute, the request may be made to the Deputy Mayor or the immediate past Mayor, who will perform the functions ascribed to the Mayor.

Declining to participate in direct negotiation does not constitute a contravention of this Code.

Process

1. 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.
2. If the request relates to an alleged contravention of the Code it must:
 - 2.1. State the provision(s) of the Code that are alleged to have been contravened.
 - 2.2. Include any available evidence.
 - 2.3. Be signed and dated.
3. The Councillor requesting the meeting is to notify the other party of the request and provide them with a copy of it as soon as practicable.
4. The Mayor will verify with the other party if they are prepared to attend a “direct negotiation” meeting.
 - 4.1. If the other party is not prepared to attend a meeting the Mayor is to advise the Councillor initiating the request, who can initiate Step 3 – Internal Resolution Procedure.

No further action is required of the Mayor.

Declining to participate does not constitute a contravention of this Code.
 - 4.2. If the other party consents to a meeting, the Mayor is to convene a meeting of the parties at the earliest available opportunity.
5. The Mayor may provide guidelines to help facilitate the meeting.
6. The Mayor will document any agreement reached at the meeting and copies will be provided to both parties.
7. If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Either party can initiate:
 - 7.1. Step 3A – Mediation, for interpersonal conflicts.
 - 7.2. Step 3B – Arbitration, for alleged contraventions of the Code.

Step 3A – Mediation

Mediation can be used for an interpersonal conflict between Councillors.

This step is a meeting between both parties facilitated by an independent mediator. The role of the mediator is to assist the parties to come to a mutual agreement.

Not participating in this step is not a contravention of the Code.

Process

1. The party requesting the meeting is to provide the Mayor with the name of the other Councillor, the details of the dispute in writing and to advise it is for “mediation”.
2. The Councillor requesting the meeting is to notify the other party of the request and provide them with a copy of it as soon as practicable.
3. The Mayor will verify with the other party if they are prepared to attend mediation.
 - 3.1. If the other party is not prepared to attend a meeting the Mayor is to advise the Councillor initiating the request.
 - 3.2. If the dispute relates to an interpersonal matter then no further avenues are available.

No further action is required of the Mayor.

Declining to participate does not constitute a contravention of this Code.
 - 3.3. If the other party consents to mediation, the Principal Conduct Officer will appoint an independent mediator and convene a meeting of the parties at the earliest available opportunity.
4. The mediator will meet with the parties.
5. The mediator will document any agreement reached at the meeting and provide copies of the agreement to both parties.
6. If the parties cannot resolve the dispute at the mediation, a further meeting may be convened with the consent of both parties.
7. If the interpersonal dispute cannot be resolved then no further avenues are available.

Step 3B - Arbitration

A dispute referred for arbitration must relate to an alleged contravention of the Councillor Code of Conduct.

This step is for a meeting between both parties facilitated by an independent arbiter.

Roles	Responsibilities
Arbiter	<ol style="list-style-type: none"> 1. Consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor. 2. Make findings in relation to any application alleging a contravention of the Councillor Code of Conduct. 3. Give the findings to Council together with a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council, 4. Recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct. <p>In considering an application alleging a contravention of the Councillor Code of Conduct, an arbiter will:</p> <ul style="list-style-type: none"> ▪ fix a time and place to hear the application, in consultation with the Principal Conduct Officer; ▪ authorise the Principal Conduct Officer to 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; ▪ have discretion to conduct the hearings as they deem fit, ensuring due and proper consideration of the application; ▪ ensure that all parties to, and affected by, an application are heard; ▪ consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may either grant 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.
Principal Conduct Officer	<ol style="list-style-type: none"> 1. Advise the CEO and the Mayor and notifying parties of the application. 2. Identify an arbiter. 3. Attend hearing(s) and assist the arbiter to administer the process.
Council	<ol style="list-style-type: none"> 1. Consider the arbiter's findings, statement of reasons and any recommended sanctions. 2. Resolve on any sanctions and provide written direction to respondent/s.

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.

Process

1. Councillor/s make an application for arbitration to the Principal Conduct Officer (PCO) alleging that a Councillor has contravened this Councillor Code of Conduct. The application must;
 - 1.1. State the provision(s) of the Code that are alleged to have been contravened.
 - 1.2. Include any available evidence.
 - 1.3. Be signed and dated.
 - 1.4. An applicant may withdraw an application. 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,
2. All parties notified of the application:
 - 2.1. PCO advises the Mayor and CEO of the application.
 - 2.2. PCO provides a copy of the application, within two working days, to the Councillor who is the subject of the allegation.
3. Arbiter appointed:
 - 3.1. PCO identifies an arbiter.
 - 3.2. PCO obtains written advice from the arbiter that they have no conflict of interest in relation to the Councillors involved.
 - 3.3. PCO notifies the Councillors of the name of the proposed arbiter and provides them with the opportunity (2 working days) to object.
 - 3.4. PCO considers the grounds of any objection and either appoints the proposed arbiter or identifies another arbiter.
 - 3.5. PCO provides a copy of the application to the appointed arbiter.
4. Time and place for the hearing set:
 - 4.1. PCO consults with the arbiter on a suitable time and place.
 - 4.2. PCO advises the Councillors of the time and place.
5. The hearing takes place.
 - 5.1. A Councillor who does not participate in Step 3 – Arbitration may be guilty of misconduct (see Appendix 3).
6. Arbiter provides the findings and statement of reasons to Council, the applicant and the respondent.
 - 6.1. If the Councillor has not contravened the Code the matter is closed.
 - 6.2. If the Councillor has contravened the Code the arbiter may recommend sanction/s as follows:
 - a) direct the Councillor to make an apology in a specified form or manner;
 - b) direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (in respect of the next scheduled meetings of the Council);
 - c) direct that, for a period of up to, but not exceeding, 2 months 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.
- 6.3. The findings, statement of reasons and recommended sanctions must be submitted to the next Ordinary Meeting of Council for consideration.
- 6.4. Council to consider the arbiters report and resolve on sanctions and provide any written directions to the Councillor:

Procedures suspended during general elections

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

If the respondent to an application for arbitration is not returned to office as a Councillor in the election the application lapses.

If the respondent is returned to office in the election the application may resume if:

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

Appendix 2: Prohibited Conduct

This section outlines conduct prohibited under the Local Government Act. Breaches of the Act are an offence and carry penalties. Breaches of the Act are not managed via the Council internal resolution procedures.

Misuse of position

This is defined under Sections 76E and 77(2) of the Act.

A Councillor must not misuse his or her position:

- a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- b) to cause, or attempt to cause, detriment to the Council or another person.
- c) circumstances involving the misuse of position by a Councillor include:
- d) making improper use of information acquired as a result of the position he or she held or holds; or
- e) disclosing information that is confidential information within the meaning of section 77(2); or
- f) directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
- g) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
- h) using public funds or resources in a manner that is improper or unauthorised; or
- i) failing to disclose a conflict of interest as required under this Division.

Improper direction and improper influence

This is defined under Sections 76D and 76E 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 exercise 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.

Confidential information

This is defined under Section 77 of the Act.

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

A Councillor may disclose information that the he or she knows is confidential information in the following circumstances:

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

Conflict of interest

This is defined under Sections 78 and 79 of the Act.

See Appendix 4 for a process for identifying a conflict of interest and the form to complete to declare are a conflict of interest.

Direct interest

A councillor has a **direct interest** in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the councillor would be directly altered if the matter is decided in a particular way. This includes where there is a reasonable likelihood that the councillor will receive a direct benefit or loss that can be measured in financial terms and where the councillor, together or separately with a member/s of the councillor's family, have a controlling interest in a company or other body that has a direct interest in the matter.

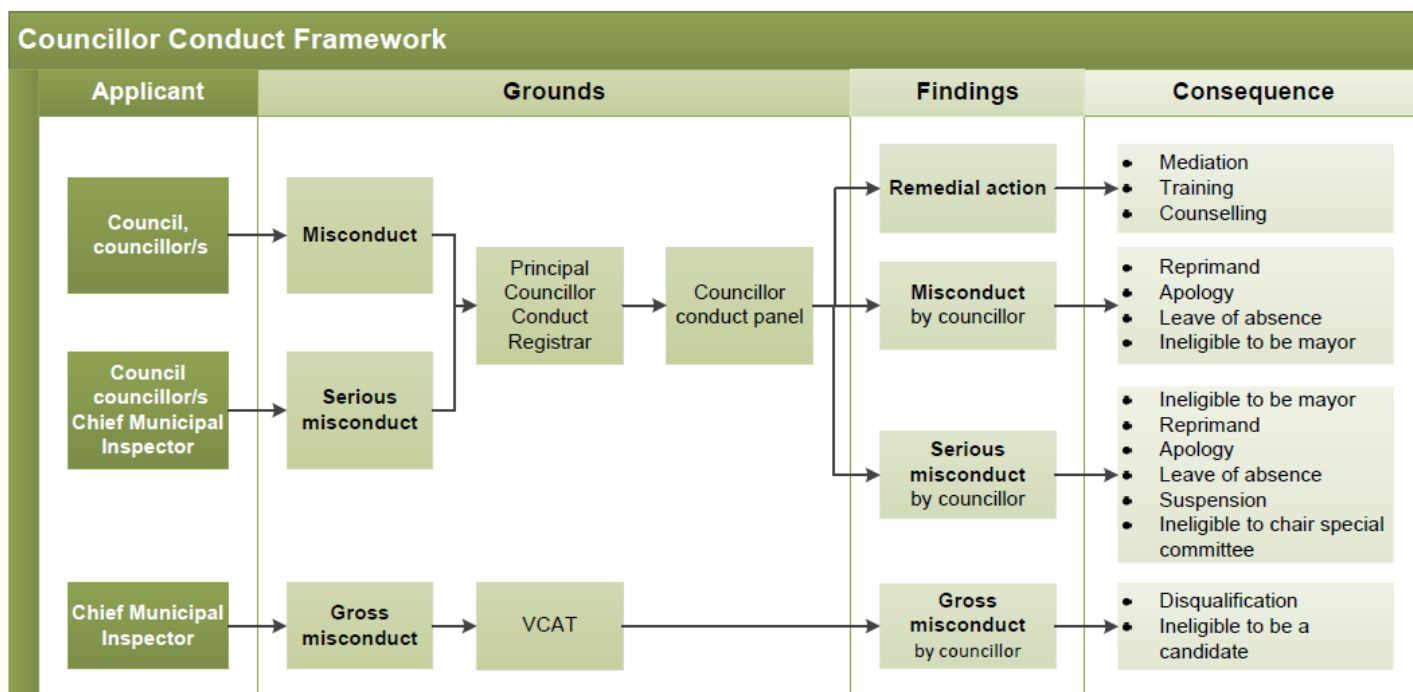
Indirect interest

A conflict of interest also exists where a councillor has an **indirect interest**, described as follows:

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

Appendix 3: Misconduct Levels and Framework

The framework below outlines the process prescribed in the Local Government Act for managing levels of misconduct.



The table below outlines the levels of misconduct as defined by the Local Government Act along with the authority responsible for addressing the matter.

Degree of seriousness	Definition	Responsible Authority
Conduct inconsistent with the standards Council has set	Contravention of Councillor Code of Conduct	Council
Misconduct	Failing to comply with Council's internal resolution procedure, including failure to abide by any decision of Council in relation to a contravention of the Code and repeated breaches of councillor conduct principles	Panel
Serious misconduct	Failing to comply with panel processes, bullying of fellow Councillors or Council staff, improperly directing Council staff, releasing confidential information and repeated misconduct	Panel
Gross misconduct	Behaviour that demonstrates lack of character to be a councillor	VCAT

Bullying by a councillor means the councillor repeatedly behaves unreasonable towards another councillor or member of council staff and that behaviour creates a risk to the health and safety of that other councillor or member of council staff.

Appendix 4: Conflict of Interest Assessment Process

Appendix 3: Prohibited Conduct outlines the types of conflict of interest. The purpose of the process below is to give an easy reference to Councillors to help them determine whether or not they have a conflict and the action they should take.

