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**Special Council Meeting  
Tuesday 14 February 2017  
Notice and Agenda of Meeting  
to be held in the Council Chamber,  
Magid Drive, Narre Warren**

**Commencing at 7.15 p.m.**

**Vision for the future**

**To be the city of choice to live, work and  
raise a family.**

**Chairperson:** *Mayor, Sam Aziz*

**Members:** *Councillor Geoff Ablett  
Councillor Steve Beardon  
Councillor Rosalie Crestani  
Councillor Rex Flannery  
Councillor Milla Gilic  
Councillor Tim Jackson  
Councillor Damien Rosario  
Councillor Susan Serey  
Councillor Wayne Smith, BJ, JP  
Councillor Amanda Stapledon*

**Chief Executive Officer:** *Mike Tyler*

# **ORDER OF BUSINESS**

- 1. Reading of the Prayer**
- 2. Statement of Acknowledgement**
- 3. Apologies**
- 4. Declaration by Councillors of any Conflict of Interest or Personal Interests pursuant to Sections 79 and 79B of the Local Government Act 1989 (the Act) in any items on the Notice Paper. (Note that Section 79(2)(a)(i) of the Act requires Councillors to disclose the nature of a Conflict of Interest or a Personal Interest immediately before the relevant consideration or discussion). Section 79B also requires that the Councillor declaring a Personal Interest must seek consent from Council to be exempt from voting on the item.**
- 5. Consideration of Officers' Reports**
  - Councillor Code of Conduct



14 February 2017

## **COUNCILLOR CODE OF CONDUCT**

Holly De Kretser

**ITEM 1**

Council Plan Reference: 5.5

**Purpose of Report: For Council to review and adopt the Councillor Code of Conduct**

### **Background**

Councillors are leaders elected to Council to provide vision, strategic direction and to make policy decisions for the benefit of the whole community

In accordance with section 76C (2) of the Local Government Act 1989, Council must review and adopt its Councillor Code of Conduct within four months of the general election.

The revised Councillor Code of Conduct, presented in Attachment A incorporates feedback from Councillors and is designed to fulfil the needs of the new Council term.

### **Changes to the Councillor Code of Conduct**

The keys changes to the Councillor Code of Conduct are:

- Removal of duplicate information that is covered in legislation or Council policies
- Addition of principles outside of those explicitly provided for in the Act
- Increased clarity regarding the process of dispute resolution
- Simplification to document to increase usability

### **Officer Direct or Indirect Interest**

No Council officers involved in the preparation of this report have a direct or indirect interest in matters for consideration.

### **Conclusion**

The current Councillor Code of Conduct was adopted by Council in May 2016, and through this revision has been adapted to meet the needs of the 2016-2020 Council term.

Once adopted, Councillors are required by legislation to within 1 month, sign written declarations witnessed by the CEO that they will abide by the Code.

### **Recommendation**

**That Council adopts the Council Code of Conduct as presented in Attachment A.**



## Councillor Code of Conduct

# Councillor Code of Conduct

**Version:** Draft

**Date updated:** Adopted Day Month Year

**Responsible Department:** Governance

## 1. Purpose

This code:

- specifies the agreed standard of Councillor behaviour required for the ethical and professional performance of duties under Section 76C of the *Local Government Act 1989* (the Act);
- Endeavours to foster good working relations between councillors to enable Councillors to work constructively together in the best interests of the local community; and
- Outlines a process for dispute resolution which encourages the Council to address matters promptly to minimise disruption to the effective decision making of Council.

## 2. Scope

This Code applies to all Councillors elected to represent the City of Casey.

## 3. Context

Councillors are leaders elected to Council to provide vision, strategic direction and to make policy decisions for the benefit of the whole community. They are required to work together constructively and this Code is a collective agreement detailing the standards Councillors will be held accountable to.

## 4. Legislative Requirements

When a Councillor is elected they swear to uphold the oath of office which states that they will:

*"undertake the duties of the office of Councillor in the best interests of the people in the municipal district of Casey 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."*

Councillors are required under s.76B of the Act to make this declaration, take this Oath and declare in writing and witnessed by the CEO, that they will abide by the Councillor Code of Conduct within one month of its approval.

*Council policy documents change from time to time and it is recommended that you consult the electronic reference copy at [www.casey.vic.gov.au/policiesstrategies](http://www.casey.vic.gov.au/policiesstrategies) to ensure that you have the current version. Alternatively you may contact Customer Service on 9705 5200.*

## 5. Code of Conduct - Principles

*It is a 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 of the Act sets out the general principles of councillor conduct as follows:

*In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B of the Act, 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 oral 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 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.*

In addition to the legislated conduct principles, Councillors of the City of Casey will:

- maintain an open mind, treating all matters on their individual merits
- acknowledge and respect differences of opinion
- express their disagreement respectfully whilst accepting and supporting the decisions of Council.
- seek information to ensure evidence based decision making
- ensure their behavior, in both personal and public life reflects positively on the City of Casey

## 6. Roles & Responsibilities

Good governance at Council is dependent on how well the relationship between the elected members and the organisation works, as well as mutual respect and understanding between councillors and officers in relation to their respective roles, functions and responsibilities.

Councillors will respect the various roles and responsibilities of Councillors, Council, the Mayor and Deputy Mayor/s as detailed in the [Governance Charter](#).

**Councillor Relationships with Council Staff** – see [Section 94A of the Act to view requirements in full](#)

- The CEO is responsible for Council staff which includes appointing, directing and managing staff. Councillors will not involve themselves in any personnel matter relating to staff, except for the CEO and will advise the CEO of any concerns that staff have acted in conflict with a formal policy or decision of Council.

**Misuse of position** - see *Section 76D of the Act*

- In order to effectively fulfil their role elected representatives are provided with information, privileges and power. In order to maintain the integrity of their position and the reputation of Council, Councillors must not misuse, or seek to misuse, their position. In summary this means that Councillors must not seek to gain an advantage for themselves or any other person, cause detriment to the Council or another person, improperly use information acquired through their position as a Councillor, disclose confidential information, improperly direct or influence Council staff, improperly use public resources or fail to declare a conflict of interest.

**Improper direction/improper Influence** - see [Section 76E of the Act to view requirements in full](#)

- Many Council officers hold positions which require specialised knowledge and skills. It is the duty of the Council officer to provide information, advice and recommendations to the best of their professional ability.
- Councillors cannot direct or improperly influence, or attempt to direct or improperly influence, the functions, duties, actions, recommendations or advice provided by Council officers.

**Confidentiality** - see [Section 77 of the Act to view requirements in full](#)

- Councillors are provided with a wide range of information in order for them to fulfil their role. Often, that includes confidential information that they would not otherwise have access to. The Act stipulates that Councillors cannot release or disclose information that they know, or should reasonably know, is confidential.

**Conflict of Interest** - see [Sections 77A through to 79D of the Act to view requirements in full](#)

- From time to time a Councillor's personal or family interests may overlap with a particular Council activity. The Act recognises this and outlines the conditions in which a Councillor is considered to have a conflict of interest or a personal interest, and the actions they must take to maintain the integrity of the decision making process.

## 7. Dispute Resolution - Process

Council is committed to early intervention to resolve disputes. Council's dispute resolution process is intended to support Councillors self-manage disputes, and provides a process of escalation where required.

Disputes may occur where the difference between Councillors becomes personal or the behaviour of Councillors toward each other threatens the effective operations of Council's decision making process. A dispute may arise between individual Councillors, between one Councillor and a group of Councillors or between two or more different groups of Councillors. The following dispute resolution procedure will apply regardless of the dynamics and numbers involved.

To internally resolve disputes Councillors:

1. Will make genuine attempts to resolve disputes amongst themselves, drawing on the leadership of the Mayor where appropriate
2. may request the CEO to engage an external mediator to assist parties resolve a dispute, where both parties are willing.
3. Will adhere to the internal resolution procedure involving an independent arbiter.  
*Failure to participate in the internal resolution process may be considered by a Councillor Conduct Panel.*

### Internal resolution by independent arbiter

An individual or group of councillors may make an application alleging that a Councillor has contravened this Councillor Code of Conduct. An application cannot be made for an internal resolution procedure during the election period for a general election.

#### **Application for Internal resolution to be submitted to Council's PCO must:**

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

On receiving an application, the PCO will:

- advise the Mayor and CEO of the application without undue delay;
- provide a copy of the application to the Councillor subject to the allegation no later than two working days from receipt;
- identify an independent arbiter to hear the application, confirming in writing they have no conflict of interest in relation to the Councillors involved;
- notify the parties 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 selected arbiter as and after consultation with the arbiter, advise the parties of the time and place for the hearing; and
- attend the hearing(s) and assist the arbiter in the administration of the process

An application for an internal resolution procedure may be withdrawn at any stage. Once withdrawn, the same or a similar application relating to the same dispute and respondent Councillor cannot be resubmitted by the applicant.

**The role of the arbiter is to:**

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

**Independent arbiter – considering application will:**

- fix a time and place to hear the application;
- authorise the PCO to formally notify the applicant and the respondent of the time and place of the hearing;
- hold a directions hearing and/or as many meetings as considered necessary to properly consider the application.
- 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;
- consider a request by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in their absolute discretion grant or deny the request;
- ensure that the rules of natural justice are observed and applied in the hearing of the application; and
- ensure that the hearings are closed to the public.

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

**Election Period**

An arbiter will suspend consideration of an internal resolution procedure during the Election Period for a general election.

If the respondent to an application for internal resolution is returned to office, 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 (or all) 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.

**Findings**

The arbiter is to give a copy of their findings and the statement of reasons to the Council, the applicant and the respondent. Where the arbiter has been found a Councillor to have contravened the Code, they will also recommend appropriate sanction/s to be considered by the Council.

A copy of the arbiter's findings, statement of reasons and any recommended sanctions must be submitted to the next ordinary meeting of the Council for consideration.

## 8. Breaches

### Contravention of Councillor Code of Conduct

If through internal resolution the independent arbiter has found that a contravention of the Code has occurred, the Council may, after considering the arbiter's findings resolve to give any or all of the following directions to the Councillor:

- direct the Councillor to make an apology in a form or manner specified by the Council;
- direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (in respect of the next scheduled meetings of the Council);
- direct that, for a period of up to, but not exceeding, 2 months on a date specified by the Council the Councillor:
  - be removed from any position where the Councillor represents the Council; and
  - to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

### Misconduct under the Act

The Act provides that misconduct by a Councillor means any of the following:

- failure by a Councillor to comply with the Council's internal resolution procedure; or
- failure by a Councillor to comply with a written direction given by the Council under section 81AB; or
- repeated contravention of any of the Councillor conduct principles.

### Serious Misconduct

The Act provides that serious misconduct by a Councillor means any of the following:

- failure of a Councillor to attend a Councillor Conduct Panel Hearing formed to make a finding in respect of that Councillor
- Failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested or
- Failure to comply with a direction of a Councillor Conduct Panel or
- Continued or repeated misconduct by a Councillor after a finding has already been made
- Bullying of another Councillor or member of Council staff by a Councillor
- Conduct by a Councillor in respect of a member of Council staff in contravention of section 76E
- The release of confidential information by a Councillor in contravention of section 77

## 9. Councillor Conduct Panel

A Councillor Conduct Panel may be convened to hear applications of misconduct or serious misconduct.

Any individual Councillor, group of Councillors, the Council by resolution or the Chief Municipal Inspector may make an application for a Councillor Conduct Panel in writing to the Principal Councillor Conduct Registrar.

## 10. Incorporated Documents

Councillors will adhere to all relevant laws, regulations and policies and in particular, this Code should be read in conjunction with the:

- [Local Government Act 1989](#)
- [Governance Charter](#)
- [Communications and Consultations Policy](#)
- [State and Federal Elections Policy](#)
- [City of Casey Community Local Law No. 1/2006](#)
- [Councillor Access to Council Information Policy.](#)
- [Councillors Gifts and Hospitality Policy.](#)
- [Councillors Support and Reimbursement of Expenses Policy.](#)
- [Councillor Ward Forums Policy.](#)
- [Equal Opportunity Act 2010](#)
- [Occupational Health and Safety Act 2004](#)
- [The Charter of Human Rights and Responsibilities 2006](#)

## 11. Definitions

<b>Council</b>	means Casey City Council, being a body corporate constituted as a municipal Council under the Local Government Act 1989
<b>Councillors</b>	means the individuals holding the office of a member of Casey City Council
<b>Council officer</b>	means the Chief Executive Officer and staff of Council appointed by the Chief Executive Officer.
<b>Principal Conduct Officer</b>	Person appointed in writing by the CEO for purposes under section 81Y of the Act. The Principal Conduct Officer for City of Casey is Manager Governance.

## 12. Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.

## 13. Review

The next biennial review of this document is scheduled for completion by Day Month Year.