



Councillor Code of Conduct

Adopted 15 February 2021

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1. Introduction

Greater Bendigo City Council (**Council**) is a municipal council which is governed by the *Local Government Act 2020 (Vic)* (**Act**). Council's vision is to work together to be the world's most liveable community.

Council considers that good governance is a key tenet in the progression and achievement of Council's vision. The role of the Council is to provide good governance in the Greater Bendigo municipal district for the benefit and wellbeing of the municipal community. The Council consists of its Councillors who are democratically elected in accordance with the Act.

Councillors must participate in Council decision making, always represent the interests of the municipal community in that decision making and contribute to the strategic direction of the Council. Councillors must always consider the diversity of interests and needs of the municipal community, act lawfully and act in accordance with prescribed standards of conduct.

To promote and ensure accountable governance, section 139 of the Act requires that the Council develops and adopts this Code of Conduct.

The primary purpose of this Code of Conduct is to set out prescribed standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including providing an environment for Councillors and the organisation that enables effective decision making, is respectful, safe and free from discrimination, all forms of harassment and vilification.

This Code of Conduct also incorporates any other matters which the Council considers appropriate, including preliminary procedures for addressing alleged breaches of the Code of Conduct which are not otherwise addressed by the Act.

Councillors also take this opportunity to record their commitment to an agreed set of values which represent how they will work together in the conduct of their role as Councillors. Councillors will act in a way that demonstrates *respect, support, understanding* and *kindness* towards each other. Councillors will seek *to listen, contribute* and apply a *careful thought process* in the way they carry out their duties and Councillors will act with *honesty* and seek to interact with each other with *good humour* and *patience*.

2. 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 (Vic)*;
- (b) supports the Council in fulfilling its obligation to achieve and promote gender equality;
- (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.

This standard also requires that:

- (a) Councillors must not engage in behaviour that is or is likely to be discrimination, sexual harassment or victimisation as defined in the *Equal Opportunity Act 2010* (Vic);
- (b) Councillors must use their best endeavours to promote organisational and community wellbeing;
- (c) Councillors must use their best endeavours to develop their understanding and awareness of the diverse cultures within the municipality, including traditional owners.
- (d) Councillors must use their best endeavours to foster strong working relationships with other Councillors and the organisation; and
- (e) Councillors acknowledge that Councillors engaging in bullying or sexual harassment of other Councillors or Council staff commit serious misconduct. Councillors alleged to have engaged in bullying behaviour or sexual harassment will likely be subject to a Councillor Conduct Panel in accordance with the Act and may face other consequences at law.

3. Performing the role of a 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;
- (b) diligently uses Council processes to become informed about matters which are subject to Council decisions;
- (c) is fit to conscientiously perform the role of a Councillor 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.

This standard also requires that:

- (a) Councillors must be fair and transparent in their decision making. Including without limitation:

- (i) diligently reviewing materials and reports prepared for them by Council staff and asking questions of staff when clarification is needed to promote informed decision making; and
 - (ii) considering the legitimate interests of all members of the community impacted by a decision,
- (b) Councillors must only communicate on behalf of the Council in accordance with agreed internal policies or processes;
 - (c) Councillors must only speak with media in accordance with agreed internal policies or processes; and
 - (d) Councillors must use their best endeavours to undertake their role, and encourage the organisation to conduct its business, in accordance with best industry practice.

4. 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; and
- (d) any directions of the Minister issued under section 175 of the Act.

This standard also requires that:

- (e) Councillors must lodge personal interests returns in the time and manner required by Part 6 Division 3 of the Act;
- (f) Councillors must diligently and properly comply with all Council policies that apply to Councillors, including policies which apply to Councillors only and organisational policies which are expressed to also apply to Councillors;
- (g) Councillors must understand the extent of their role and responsibilities with respect to town planning processes under the *Planning and Environment Act 1973* (Vic) and must not take any action in planning matters beyond their remit prescribed by law and any internal processes agreed by the Councillors; and
- (h) Councillors acknowledge that any electronic document or communication generated by Councillor's in performance of their role, including documents and communication housed on Councillors' personal electronic devices, is a Council record and may be discoverable in the course of legal proceedings or obtainable via freedom of information.

Councillors must assist Council staff with responsibility for collating, maintaining and releasing Council records as required.

5. Councillor must not discredit or mislead Council or public

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

This standard also requires that:

- (c) Councillors must proactively report through appropriate channels apparently fraudulent or corrupt activity by other Councillors or Council staff; and
- (d) Councillors must proactively report through appropriate channels apparent instances of serious or gross misconduct by another Councillor. Serious misconduct by a Councillor may be constituted by, amongst other things, bullying behaviour, sexual harassment, disclosure of confidential information, directing a member of Council staff or the failure to disclose a conflict of interest.

6. Dispute resolution procedure

This dispute resolution procedure must be followed if Councillors have a conflict or dispute amongst themselves, including where it is alleged that a Councillor has breached their obligations under this Code of Conduct.

This procedure is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion, debate and voting in Council meetings.

Disputes between Councillors

- Councillors must be mindful that having and expressing differing and sometimes opposing viewpoints is a normal function of the process of democratic local government. Sharing and expressing these different views leads to informed and well considered debate. All Councillors have the right to influence the decisions made by Council through this debate.
- Whilst Councillors must always endeavour to foster and encourage positive and productive interactions, conflicts or disputes may emerge when the differences between Councillors become personal or the behaviour of Councillors towards each other is of a nature that threatens the effective operation of Council's decision-making process.
- A conflict or dispute may arise between two individual Councillors, between one Councillor and another or a group of Councillors or between two or more different groups of Councillors. This dispute resolution procedure will apply regardless of the dynamics and numbers involved.

Steps in dispute resolution procedure

- Council's dispute resolution procedure is comprised of four steps as follows. They are:
 1. Self-resolution
 2. Internal mediation
 3. External mediation
 4. Internal arbitration procedure

Before commencing any formal dispute resolution process Councillors must be mindful that they have an individual and collective responsibility to use their best endeavours to resolve disputes in an efficient, courteous and respectful manner to prevent them from escalating unnecessarily and creating additional expense for the organisation.

Parties to a dispute must work through these steps in sequence. Step 3 must be completed before step 4 is instigated.

Note: step 4 will only apply where a dispute alleges that a Councillor has breached this Code of Conduct.

Compliance mandatory without exemption

Each step in the dispute resolution procedure is mandatory, unless a Councillor to a dispute receives an exemption from the Mayor.

A Councillor that, without exemption, fails to comply with this dispute resolution procedure commits a breach of this Code of Conduct.

Exemption by Mayor

Upon becoming aware of a dispute, a Councillor involved may request that the Mayor exempt the dispute from mandatory compliance with any of the first three steps in the dispute resolution procedure.

The request must:

- be made in writing;
- provide reasons why the dispute should be exempted (examples include where the allegations are serious enough to warrant direct referral to arbitration or where the relationship between the relevant Councillors has broken down significantly enough that self-directed resolution would be counter-productive); and
- must be received at least 5 days before the expiry of the timeframe for the parties to comply with step 1 of the dispute resolution procedure.

The Mayor must consider each request on its merits and must, before the expiry of the timeframe for the parties to comply with step 1, determine to:

- exempt the dispute from any of the first three steps in the dispute resolution procedure; or

- refuse to exempt the dispute and require the Councillors involved to comply with each step in the dispute resolution procedure.

The Mayor must promptly notify each party involved in the dispute of their determination.

Step 1 - Self resolution

Councillors should take personal responsibility and endeavour to resolve disputes in an informal but courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

- A Councillor claiming that a dispute has arisen must notify the other party or parties in writing of the details of the dispute (**Dispute Notice**).
- A dispute will only arise upon service of a Dispute Notice.
- The parties must meet within 10 days of the service of a Dispute Notice and negotiate in good faith to resolve the dispute.

Either party may ask the Mayor, as the leader of the Council team, to informally facilitate any discussions between the parties to the dispute.

In the event of a party not agreeing to self-resolution (without exemption), a party not complying with the agreed outcome of that discussion or if the discussion does not achieve a satisfactory outcome, either party has the option to progress to step 2 of the dispute resolution procedure.

Step 2 - Internal mediation

- If Step 1 is unsuccessful, a formal request for internal mediation must be made to the Mayor. As leader of the Councillor team, the Mayor will facilitate formal discussions between the parties in dispute. The Mayor will ensure the CEO is advised of the situation.
- This request must be made in writing, describing the nature of the dispute, the names of those involved, (if relevant) provisions of the Code of Conduct that are alleged to have been breached and any evidence to support the allegation and the name of a Councillor representative if the request is being made by a group of Councillors. The Councillor making the request must also notify the other party of the request and provide them with a copy of the request at the same time it is made to the CEO.
- The request must be made within 20 days of the dispute arising and the Mayor must use their best endeavours to ensure that the internal mediation occurs within 10 days of the request being received.
- The Mayor may, at their discretion, request any assistance they desire from organisation staff to assist in undertaking the informal mediation, including attendance and mediation facilitation.
- The Mayor (or staff at the request of the Mayor) will convene an informal mediation at the earliest available opportunity.
- During the informal mediation each party must:

1. be given the opportunity to present their view of the alleged dispute;
 2. be given a right of reply to any new matters raised at the mediation; and
 3. use their best endeavours to resolve the dispute and agree upon a set of outcomes.
- The Mayor will document any outcomes from the informal mediation and will provide copies to all parties.
 - In the event of a party not agreeing to informal mediation (without exemption), a party not complying with the agreed outcome of an informal mediation or if the informal mediation does not achieve a satisfactory outcome, either party has the option to progress to step 3 of the dispute resolution procedure.
 - If a conflict or dispute involves the Mayor, the Deputy Mayor will perform the role of the Mayor in facilitating discussion between the parties in dispute and liaise with the CEO.

Step 3 - External mediation

- Prior to any dispute proceeding to step 4 of this dispute resolution procedure, the relevant parties to any dispute must refer the dispute to external mediation.
- The applicant must provide, in writing to Council's Principal Conduct Officer (**PCO**), the reason for the dispute, the names of those involved, provisions of the Code of Conduct that may have been breached and any evidence to support the allegation and the name of a Councillor representative if the request is being made by a group of Councillors. The applicant must also notify the other party of the request and provide them with a copy of the application at the same time the application is made to the PCO.
- The application must be made by the later of:
 1. 30 days after the dispute arising; and
 2. 5 days after the completion of step 2.
- Where external mediation is sought, the PCO will ascertain whether or not the other party to the dispute will attend. Councillors agree that declining to attend external mediation constitutes a breach of this Code of Conduct.
- If the other party agrees to participate in external mediation, the PCO will advise the applicant, the Mayor and the CEO accordingly. The CEO will, with the assistance of the City's Governance Unit, engage the services of an external and independent mediator to conduct the mediation at the earliest available opportunity.
- The mediation must be conducted within 45 days of the application for mediation being received.
- The mediator will document any agreement or outcomes reached at the meeting and copies will be provided to both parties. In the event of one party not agreeing to formal mediation (without exemption), one party not complying with the agreed outcome or if mediation does not achieve a satisfactory outcome, either party has the option to progress to step 4 of the dispute resolution procedure.

- If the dispute remains unresolved, the mediator will be required to provide a written report for Councillors and the parties involved in the dispute as to why the process did not result in a resolution.

Step 4 - Internal arbitration process

- If a conflict or dispute arises from an alleged contravention of this Code of Conduct and it has not been resolved through any of the previous procedures, an application may be made for internal arbitration of the dispute.
- The application may be made by:
 1. the Council following a resolution of the Council; or
 2. a Councillor or a group of Councillors.
- The application must be made to the Victorian Government's Principal Councillor Conduct Registrar, using any form or processes required by regulations.
- The application must be made within 3 months of the alleged breach of the Code of Conduct.
- The Principal Councillor Conduct Registrar, after examining an application, must appoint an arbiter to the Council to hear the matter if the Principal Councillor Conduct Registrar is satisfied that:
 1. the application is not frivolous, vexatious, misconceived or lacking in substance; and
 2. there is enough evidence to support an allegation of a breach of the Code of Conduct as specified in the application.
- The Principal Councillor Conduct Registrar must reject an application if the Principal Councillor Conduct Registrar is not satisfied of points 1 and 2 above.
- The rejection of an application by the Principal Councillor Conduct Registrar does not prevent a further application being made in respect of the same conduct by a Councillor that was the subject of the rejected application. However, if an application to the Principal Councillor Conduct Registrar is rejected the parties to a dispute must re-attempt the dispute resolution procedure.
- The arbiter will ensure that parties involved in the internal arbitration process are given an opportunity to be heard by the arbiter.
- The arbiter will ensure that a Councillor who is a party to an internal arbitration process does not have a right to representation unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly.
- Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information.
- If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the Code of Conduct, the arbiter may make a

finding of misconduct against the Councillor and apply any sanction available under the Act for such a finding, which may include:

1. directing the Councillor to make an apology in a form or manner specified by the arbiter;
 2. suspending the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month; or
 3. directing that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter.
- A failure by a Councillor to comply with step 4, and a failure of a Councillor to comply with any sanction required by an arbiter following a finding of misconduct, constitute serious misconduct.

Disputes between members of the public and Councillors

Where a complaint is received from the public in respect of a Councillor, the matter will be referred to the Mayor for consideration. Where the Mayor determines a breach of the Councillor Code of Conduct has occurred, the Mayor will progress the matter in accordance with this dispute resolution procedure.

Where the complaint involves the Mayor, the Deputy Mayor will progress the matter in accordance with this dispute resolution procedure.

If the Mayor or the Councillor subject to the complaint wish to exempt the dispute from mandatory compliance with all four steps in the dispute resolution procedure, the Mayor and the Deputy Mayor must discuss the matter and agree on whether an exemption should be granted.

Disputes between Councillors and staff

The CEO has sole responsibility for the management of Council staff. In the event of a dispute between a Councillor and a member of Council staff, it must be brought to the immediate attention of the Chief Executive Officer. The CEO will investigate the dispute and progress the matter in accordance with the following procedure:

- Informal resolution

The Councillor and CEO will attempt to resolve the matter in an informal but courteous and respectful manner regardless of whether the dispute was raised by a Councillor or staff member.
- Formal complaint

If the informal process is unsuccessful and a Councillor wishes to lodge a formal complaint against a member of Council staff, this complaint must be lodged with the CEO. It will remain at the discretion of the CEO as to what, if any, action is undertaken, however, the CEO will report back to the Councillor who made the complaint, once that complaint has been investigated.
- If the complaint involves the CEO and informal resolution has been unsuccessful, the complaint must be lodged with the Mayor. It will remain at the discretion of the Mayor as to what, if any, action is undertaken. If the Mayor considers appropriate the matter will be raised at the next Councillor only session attended by the CEO.

- If the informal process is unsuccessful and a staff member wishes to lodge a formal complaint against a Councillor, this complaint must be lodged with the CEO who will, if appropriate, discuss the matter with the Mayor. Where the Mayor considers that a breach of this Code of Conduct has occurred, the Mayor will progress the matter in accordance with the dispute resolution procedure outlined in the above section titled Disputes Between Councillors.
- If the complaint involves the Mayor, the CEO will discuss the matter with the Deputy Mayor and/or all Councillors as the CEO considers appropriate.
- Further Actions

If a Councillor is found to be in breach of any relevant legislation and under that legislation the CEO is required to formally investigate a complaint from a staff member, then the CEO will not do so until the above steps have been undertaken in an attempt at resolution and the issue has been discussed with all Councillors.

7. Code does not limit robust public debate

Nothing in this Code of Conduct is intended to limit, restrict or detract from robust public debate in a democracy.



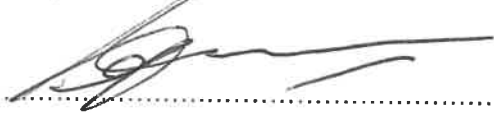

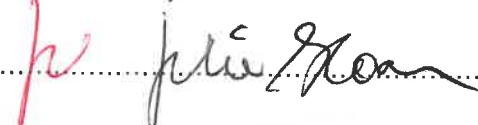




8. Consistency with legislation

This Code of Conduct is inoperative to the extent that it is inconsistent with any Act (including the *Charter of Human Rights and Responsibilities Act 2006* (Vic)) or regulation made under any Act.

9. Councillor acknowledgment

This Code of Conduct was adopted at the Council Meeting of the Greater Bendigo City Council held on 15 February 2021.

By signing below Councillors acknowledge they have made an oath or affirmation stating that they will abide by this Code of Conduct and will uphold the standards of conduct set out in this Code of Conduct.

Cr Andrea Metcalf		Dated: 9/3/21
Cr Dave Fagg		Dated: 9/3/2021
Cr Greg Penna		Dated: 8/3/21
Cr Jennifer Alden		Dated: 9/3/21
Cr Julie Sloan		Dated: 9/3/21
Cr Margaret O'Rourke		Dated: 9/3/21
Cr Matthew Evans		Dated: 9/3/2021
Cr Rod Fyffe		Dated: 15/3/2021
Cr Vaughan Williams		Dated: 9/3/21