

Agenda

Meeting of Council
Tuesday, 16 February 2021

To be held via
Video Conference (Zoom)

Commencing at 6:00pm

Council:

Cr Libby Stapleton (Mayor)
Cr Gary Allen
Cr Paul Barker
Cr Mike Bodsworth
Cr Kate Gazzard
Cr Rose Hodge
Cr Liz Pattison
Cr Adrian Schonfelder
Cr Heather Wellington

AGENDA FOR THE MEETING OF SURF COAST SHIRE COUNCIL
TO BE HELD VIA VIDEO CONFERENCE (ZOOM)
ON TUESDAY 16 FEBRUARY 2021 AT 6:00PM

PRESENT:

OPENING:

The Surf Coast Shire local government area spans the traditional lands of the Wadawurrung People and the Eastern Maar People. The main Council offices in Torquay are on Wadawurrung Country. Being an online meeting today, we wish acknowledge the Traditional Owners of the lands on which each person is attending and pay respect to Elders past and present. Council also acknowledges other Aboriginal people that may be attending the meeting today.

PLEDGE:

As Councillors we carry out our responsibilities with diligence and integrity and make fair decisions of lasting value for the wellbeing of our community and environment.

APOLOGIES:

CONFLICTS OF INTEREST:

Note to Councillors and Officers

Declaration of Interest

In accordance with Section 130 of the Local Government Act 2020 (the Act), there is an obligation to declare a conflict of interest in certain situations including matters being considered by Council.

A conflict of interest can be a general conflict of interest under section 127 of the Act, or a material conflict of interest under section 128 of the Act.

A Councillor, a non-Councillor member of a delegated committee or member of Council staff has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner contrary to their public duty.

A Councillor, a non-Councillor member of a delegated committee or member of Council staff has a material conflict of interest in respect of a matter if they or another affected person (as defined in section 128(3)) would gain a benefit or suffer a loss depending on the outcome of the matter.

Please note that some general exemptions apply and are set out in section 129 of the Act.

Disclosure of Interest

A Councillor must make full disclosure of a conflict of interest by either advising Council at the meeting immediately before the matter is considered at the meeting, or advising the Chief Executive Officer in writing prior to the meeting. While the matter is being considered or any vote taken, the Councillor with the conflict of interest must leave the room and notify the Chairperson that they are doing so. This notification must include the nature of the conflict and whether the interest is a general or material conflict of interest.

A Council officer must disclose the conflict of interest when providing information and before the information is considered.

Councillors and Council staff will also be required to complete a conflict of interest declaration form.

BUSINESS:

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1. OFFICE OF THE CEO

1.1 Councillor Code of Conduct 2021

Author's Title: Acting Chief Executive Officer

General Manager: Anne Howard

Department: Office of the CEO

File No: F21/53

Division: Office of the CEO

Trim No: IC21/243

Appendix:

- SCS-002 Councillor Code of Conduct - final draft for adoption (D21/23943)

Officer Conflict of Interest:

In accordance with Local Government Act 2020 –
Section 130:

Status:

Defined as confidential information in accordance
with Local Government Act 2020, Section 3(1):

Yes

No

Yes

No

Reason: Nil

Reason: Nil

Purpose

The purpose of this report is to seek Council adoption of SCS-002 Councillor Code of Conduct (the Code). The primary focus of the Code is to ensure compliance with the new legislative requirements.

Summary

The Surf Coast Shire Council (the Council) is required to ensure that it adopts a Councillor Code of Conduct that meets the requirements of the *Local Government Act 2020* (the Act) and *Local Government (Governance and Integrity) Regulations 2020* (the Regulations) by 24 February 2021.

Section 139(5) of the Act requires that the Code must be adopted by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council. For Surf Coast Shire Council, this means six or more Councillors must vote to adopt the Councillor Code of Conduct to achieve compliance with the Act.

Once adopted, all Councillors are required to comply with the Code, regardless of whether they vote in favour of its adoption or decide to sign the adopted Code.

The matters which the Code must include are the mandatory standards of Councillor conduct (conduct standards) contained in the Regulations.

The Code was developed through January and February 2021 and drafts have been distributed to Councillors for their review. Councillors' feedback has been considered and the final draft of the Code is attached.

Recommendation

That Council endorses SCS-002 Councillor Code Conduct (Attachment 1).

1.1 Councillor Code of Conduct 2021

Report

Officer Direct or Indirect Interest

No officer involved in the preparation of this report has any conflicts of interest.

Background

Councillors signed the existing Councillor Code of Conduct 2016 when they were sworn in as Councillors, however there is a need to adopt a new Code by 24 February 2021.

The primary focus of the revised Code is to ensure compliance with the new legislative requirements. The Code was developed through January and February 2021. Councillors participated in a workshop to develop values and behaviours, engaged in discussion at two briefing sessions and communicated through emails as the draft Code was developed. Councillors' feedback has been considered and informs the final draft of the Code (Attachment 1).

Discussion

Section 139(5) of the Act requires that the Code must be adopted by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council. For Surf Coast Shire Council, this means six or more Councillors must vote to adopt the Councillor Code of Conduct to achieve compliance with the Act.

The Code must include the prescribed standards of Councillor conduct (conduct standards) from the Regulations. The Code also includes a new internal arbitration process for determining complaints of alleged misconduct under the Code.

The Code is designed to:

- assist Councillors in maintaining the highest standards of conduct and behaviour
- provide Councillors with a means for dealing with problems that they may encounter
- assist Councillors to discharge the responsibilities of their public office appropriately
- assist Councillors to maintain good working relationships between Councillors, and between Councillors and management.

Once adopted, all Councillors are required to comply with the Code, regardless of whether they vote in favour of its adoption or decide to sign the adopted Code (it is not mandatory to sign the Code, but it is common practice as a demonstration of Councillors commitment).

Council Plan

Theme 5 High Performing Council
 Objective Select Objective
 Strategy Select Strategy

Reporting and Compliance Statements:

Local Government Act 2020 – LGA 2020

Implications	Applicable to this Report
Governance Principles (Consideration of the Governance Principles under s.9 of LGA 2020)	Yes
Policy/Relevant Law (Consideration of the Governance Principles under s.9 of LGA 2020)	Yes
Environmental/Sustainability Implications (Consideration of the Governance Principles under s.9 of LGA 2020)	No
Community Engagement (Consideration of Community Engagement Principles under s.56 LGA 2020)	No
Public Transparency (Consideration of Public Transparency Principles under s.58 of LGA 2020)	Yes
Strategies and Plans (Consideration of Strategic Planning Principles under s.89 of LGA 2020)	No

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Financial Management (Consideration of Financial Management Principles under s.101 of LGA 2020)	Yes
Service Performance (Consideration of Service Performance Principles under s.106 of LGA 2020)	No
Risk Assessment	Yes
Communication	Yes
Human Rights Charter	Yes

Governance Principles - Local Government Act 2020 (LGA 2020)

The Code has been developed to achieve the best outcome for the municipal community.

Policy/Relevant Law

The Code has been developed to comply with the relevant sections of the Act. These are referenced through the Code where relevant.

Environmental/Sustainability Implications

Sustainability is not a directly applicable consideration for this matter.

Community Engagement

No external stakeholder consultation was required given the nature of the review.

Public Transparency

The Code is a transparent statement by Councillors to the community regarding the conduct they commit to when undertaking their duties as a Councillor. The adopted Code will be available to the public via Council's website.

Financial Management

The structure of the dispute resolution process as outlined in the Code is designed in a way that is expected to minimise costs.

Risk Assessment

The Code supports Councillors to comply with the Act and to maintain a safe workplace for all.

Communication

The adopted Code will be available to the public via Council's website.

Human Rights Charter

The Human Rights Charter has been taken into consideration and the Code does not create limitation on human rights.

Options

Option 1 – Adopt the Code as attached

This option is recommended by officers as the attached Code represents the majority of views expressed during the development of the Code.

Option 2 – Adopt the Code with changes

This option is not recommended by officers as changes may not have been fully explored and may result in ambiguity or confusion.

Option 3 – Not adopt a Code

This option is not recommended by officers as it would result in Council failing to achieve compliance with the Act.

Conclusion

The Code has been developed with input from all Councillors and its adoption will achieve compliance with the Act and provide a sound basis to guide and manage a high standard of conduct amongst Councillors.

1.1 Councillor Code of Conduct 2021

APPENDIX 1 SCS-002 COUNCILLOR CODE OF CONDUCT - FINAL DRAFT FOR ADOPTION



SCS-002 Councillor Code of Conduct

Date of adoption _____

1.1 Councillor Code of Conduct 2021



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SCS-002 Councillor Code of Conduct

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1.1 Councillor Code of Conduct 2021



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1 Legislative Basis and Purpose

The *Local Government Act 2020 (Act)*, at section 139, requires Council to develop a Councillor Code of Conduct (**Code**).

Purpose of the Code (Section 139(2) of the Act)

The purpose of the Councillor Code of Conduct is to include 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.

Surf Coast Shire Councillors (**Councillors**) are committed to working together in the best interests of the people within Surf Coast Shire, to the highest standard of behaviour, and to discharge their responsibilities to the best of their skill and judgement.

As part of this commitment, all Councillors will strive to adhere to the standards, values and behaviours outlined in the Code.

The Code must include the Standards of Conduct (**Standards**) prescribed by the *Local Government (Governance and Integrity) Regulations 2020 (Regulations)*. Section 12 of the Regulations confirms that the applicable Standards are set out in Schedule 1 to the Regulations. These Standards comprise 5 topic areas:

- Treatment of Others
- Performing the Role of Councillor
- Compliance with Good Governance Measures
- Councillor must not discredit or mislead Council or public
- Standards do not limit robust political debate

Each of these Standards will be addressed in this Code.

2 Scope

This Code:

- sets out the behaviour expected of elected representatives of Council;
- supports and fosters good working relationships between Councillors, employees of Council and the community; and
- mandates conduct by Councillors which builds public confidence in the integrity of local government.

This Code applies to a Councillor who is:

- conducting the business of Council;
- conducting the business of the office to which they have been elected or appointed; and
- acting as a representative of Council.

This Code should be read alongside other Council documents, including the Council Plan, Council and Councillor policies, protocols and Council's local laws, as applicable, which all form part of Council's governance framework.

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3 Values and Behaviours

Councillors, as community and civic leaders, are committed to demonstrating integrity by being honest and showing a consistent and uncompromising adherence to strong ethical principles and values.

The Values provide a clear framework for how Councillors engage with each other and with other people, including Council officers. Core to the delivery of effective and efficient community outcomes, the Values reinforce that Councillor behaviour must always be appropriate and productive when Councillors are, or are reasonably assumed to be, acting in connection with the Council.

Councillors can demonstrate their commitment to acting with integrity both individually as Councillors, and in carrying out their joint responsibilities as Council, by acting in accordance with these agreed Values:

Committed (to their Roles)

Councillors are professional, innovative and efficient, and work collaboratively to achieve the best results for the community and the Council.

Accountable

Councillors are accountable to the community within the framework of the Council's responsibilities.

Respectful

Councillors respect the rights, culture and heritage of all people within the municipality.

Ethical

Councillors demonstrate ethical leadership in all that they do. Decision making is open minded, impartial, honest, timely and based on the best evidence available.

Behaviours consistent with demonstrating these Values in action are discussed further under the relevant Standard.

4 Standards of Conduct

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.

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Demonstrating Behaviours Consistent with Standard 1

Treating all other persons with dignity, fairness, objectivity, courtesy and respect may include demonstrating the following behaviours:

- Using reasonable and temperate language in debates (no matter how contentious the topic may be) and debating contentious issues without resorting to personal acrimony or insult
- Promoting zero tolerance for bullying and harassment
- Listening while others speak and avoiding interrupting others
- Where appropriate, providing public praise and private criticism (noting that any critique of individuals should never be public)
- Not surprising other Councillors or Council with any negative public comment (notifying relevant Councillors and the CEO of any negative public comment made in the media in advance of publication)
- Being aware of body language that others may negatively interpret

Taking positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010* (EO Act), and supporting the Council in fulfilling its obligation to achieve and promote gender equality, may include:

- Acting in accordance with relevant Councillor Policies and anti-discrimination legislation addressing issues of anti-discrimination and sexual harassment and gender equality
- Developing an understanding of, and support for, the diversity of people and cultures in the workplace
- Being tolerant of difference in others

Ensuring that Councillors do not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and other Councillors, may include:

- Treating members of the community, fellow Councillors and Council Staff with courtesy, dignity and respect
- Being mindful of the impact on others of any public comment or commentary whether by way of email, social media, the wider media or verbally
- Being mindful of the potential negative impact on others of any private interactions or communications including verbal or written comments or overt body language

Considering the diversity of interests and needs of the municipal community, treating all persons with respect and having due regard for their opinions, beliefs, rights and responsibilities, may include:

- Listening to members of the community raising potentially contentious issues
- Striving to understand the issues raised by members of the community, irrespective of whether the Councillor agrees with those issues
- Faithfully representing community interests as appropriate in carrying out the role of Councillor

Not Engaging in Behaviours Inconsistent with the Standard

Behaviours inconsistent with Standard 1 may include, but are not limited to, the following behaviours:

- Interrupting or talking over the top of others
- Bullying and harassment, aggressive and hostile behaviour
- Holding a grudge or actively trying to undermine or discredit others
- Blaming others for your mistakes
- Making vague and unsupported complaints

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- Excluding and marginalising people
- Dismissing others and their different points of view
- Offensive language or actions
- Engaging in inappropriate communication, including by email, media or social media
- Undermining the reputation of fellow Councillors, council staff, the Council and the community
- Acting in a biased manner or showing favouritism
- Making unreasonable, unfair, or unjust decisions

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:

- 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
- diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- 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.

The Role of Council and Councillors pursuant to the Act

The Act sets out the **Role of a Council** in section 8 as follows:

Section 8 Role of a Council

- The role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.
- A Council provides good governance if—
 - it performs its role in accordance with section 9;
 - the Councillors of the Council perform their roles in accordance with section 28.
- In performing its role, a Council may—
 - perform any duties or functions or exercise any powers conferred on a Council by or under this Act or any other Act; and
 - perform any other functions that the Council determines are necessary to enable the Council to perform its role.
- If it is necessary to do so for the purpose of performing its role, a Council may perform a function outside its municipal district.

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The Act sets out the **Overarching Governance Principles and supporting Principles** in section 9 as follows:

Section 9 Overarching governance principles and supporting principles

- (1) A Council must in the performance of its role give effect to the overarching governance principles.
- (2) The following are the overarching governance principles—
 - (a) Council decisions are to be made and actions taken in accordance with the relevant law;
 - (b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;
 - (c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
 - (d) the municipal community is to be engaged in strategic planning and strategic decision making;
 - (e) innovation and continuous improvement is to be pursued;
 - (f) collaboration with other Councils and Governments and statutory bodies is to be sought;
 - (g) the ongoing financial viability of the Council is to be ensured;
 - (h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
 - (i) the transparency of Council decisions, actions and information is to be ensured.
- (3) In giving effect to the overarching governance principles, a Council must take into account the following supporting principles—
 - (a) the community engagement principles;
 - (b) the public transparency principles;
 - (c) the strategic planning principles;
 - (d) the financial management principles;
 - (e) the service performance principles.

The Act sets out the Community Engagement Principles in section 56, the Public Transparency Principles in section 58, the Strategic Planning Principles in section 89, the Financial Management Principles in section 101 and the Service Performance Principles in section 106.

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The Act sets out in section 28 the **Role of a Councillor** as follows:

Section 28 Role of a Councillor

(1) The role of every Councillor is—

- (a) to participate in the decision making of the Council; and
- (b) to represent the interests of the municipal 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 municipal community; and
- (b) support the role of the Council; and
- (c) acknowledge and support the role of the Mayor; and
- (d) act lawfully and in accordance with the oath or affirmation of office; and
- (e) act in accordance with the standards of conduct; and
- (f) comply with Council procedures required for good governance.

(3) The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer.

For the purpose of clarifying section 28(3) above, the **responsibilities or functions of the Chief Executive Officer** are set out in section 46 of the Act as follows:

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Section 46 Functions of the Chief Executive Officer

(1) A Chief Executive Officer is responsible for—

- (a) supporting the Mayor and the Councillors in the performance of their roles; and
- (b) ensuring the effective and efficient management of the day to day operations of the Council.

(2) Without limiting the generality of subsection (1)(a), this responsibility includes the following—

- (a) ensuring that the decisions of the Council are implemented without undue delay;
- (b) ensuring that the Council receives timely and reliable advice about its obligations under this Act or any other Act;
- (c) supporting the Mayor in the performance of the Mayor's role as Mayor;
- (d) setting the agenda for Council meetings after consulting the Mayor;
- (e) when requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;
- (f) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Workplace Injury Rehabilitation and Compensation Act 2013.

(3) Without limiting the generality of subsection (1)(b), this responsibility includes the following—

- (a) establishing and maintaining an organisational structure for the Council;
- (b) being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff;
- (c) managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between members of Council staff and Councillors are developed and implemented;
- (d) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.

(4) For the purposes of subsection (3)(a), a Chief Executive Officer must—

- (a) develop and maintain a workforce plan that—
 - (i) describes the organisational structure of the Council; and
 - (ii) specifies the projected staffing requirements for a period of at least 4 years; and
 - (iii) sets out measures to seek to ensure gender equality, diversity and inclusiveness; and
- (b) inform the Council before implementing an organisational restructure that will affect the capacity of the Council to deliver the Council Plan; and
- (c) consult members of Council staff affected by a proposed organisational restructure, before implementing the organisational restructure.

(5) A Council and the Chief Executive Officer must, in giving effect to gender equality, diversity and inclusiveness, comply with any processes and requirements prescribed by the regulations for the purposes of this section.

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(6) A Chief Executive Officer must ensure that the Mayor, Deputy Mayor, Councillors and members of Council staff have access to the workforce plan.

(7) A Chief Executive Officer must develop the first workforce plan under this section within 6 months of the commencement of this section.

The Act sets out in section 18 the **Role of the Mayor**, as follows

Section 18 Role of the Mayor

(1) The role of the Mayor is to—

(a) chair Council meetings; and

(b) be the principal spokesperson for the Council; and

(c) lead engagement with the municipal community on the development of the Council Plan; and

(d) report to the municipal community, at least once each year, on the implementation of the Council Plan; and

(e) promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct; and

(f) assist Councillors to understand their role; and

(g) take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer; and

(h) provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and

(i) perform civic and ceremonial duties on behalf of the Council.

(2) The Mayor is not eligible to be elected to the office of Deputy Mayor.

The **Role of the Deputy Mayor** is set out in section 21 of the Act as follows:

Section 21 Role and powers of the Deputy Mayor

The Deputy Mayor must perform the role of the Mayor and may exercise any of the powers of the Mayor if—

(a) the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting; or

(b) the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or

(c) the office of Mayor is vacant.

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Demonstrating Behaviours Consistent with Standard 2

Councillor must do everything reasonably necessary to ensure that they perform the role of a councillor effectively and responsibly.

To ensure that the Councillor 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 this may include:

- Attending in person or online any training or professional development activities organised by Surf Coast Shire or ensuring that appropriate materials are read and any recordings are viewed (if the Councillor is unable to attend in person or online)
- Commitment to continuous and positive improvement

Diligently using Council processes to become informed about matters which are subject to Council decisions may include:

- Attending, when possible, all Council briefings or ensuring that all relevant papers are read and relevant questions or comments are asked or provided in a timely manner to ensure that Councillors are informed about matters
- Consistently attending and/or contributing to all meetings
- Encouraging innovative thought and supporting innovative solutions
- Sharing relevant information and insights in a timely fashion

Being fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity will include (in addition to the behaviours set out under Standard 1):

- Being reliable and delivering on commitments
- Contributing to a culture of achievement
- Being committed to working as a collaborative and cohesive team
- Communicating with pride regarding Council's achievements
- Accepting responsibility and being accountable for decisions, actions and behaviours
- Demonstrating that actions and decisions have been made with integrity and appropriate consideration
- Exercising leadership including setting high standards for everything you do and how you do it
- Owning up to mistakes and taking reasonable steps to rectify them
- Being accountable for the impact your behaviour, both verbal and non-verbal, has on others
- Using council resources efficiently and in the public interest
- Acting in a way that models and promotes the highest standard of ethical behaviour
- Adhering to legislation, regulations, and council policies and procedures
- Maintaining confidentiality
- Having the courage to address difficult issues
- Being prepared to accept the consensus decision

Representing 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, including by:

- Listening, being open minded and willing to adapt to change
- Being mindful of the Council's strategic directions and the directions set by the Government
- Representing community views and being mindful of any personal bias impacting the decision making

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Not Engaging in Behaviours Inconsistent with the Standard

Behaviours inconsistent with Standard 2 may include, but are not limited to, the following behaviours:

- Being unwilling to participate in decision making that doesn't support your point of view
- Resisting and discouraging innovation or new ideas
- Avoiding timely decisions
- Having a negative attitude
- Promoting self-interest above the needs of the organisation
- Avoiding tough decisions or difficult conversations
- Being complacent and not investing effort into self-development
- Misusing and wasting council resources and time
- Undermining the reputation of fellow councillors, council staff, the Council and the community
- Breaching privacy and confidentiality principles
- Engaging in fraudulent or illegal activities
- Intentionally misleading others or misrepresenting the Council
- Acting in a biased manner or showing favouritism
- Making unreasonable, unfair, and unjust decisions
- Participating in binding caucus votes or a process whereby a group of Councillors compel, by threat or other adverse action, a predetermined position on a matter before Council (this does not include discussing a matter before Council prior to considering the matter in question at a Council meeting, or from voluntarily holding a shared or similar view with other Councillors based on the merits of the matter)
- Engaging in bullying behaviour towards the Chair, other Councillors or any members of the public present during Council meetings;
- Engaging in conduct that disrupts Council meetings or other proceedings of Council, or that would otherwise be inconsistent with the orderly conduct of meetings.
- Making a complaint or threatening to make a complaint for an improper purpose including trivial, frivolous or vexatious complaints, complaints not made in good faith, complaints substantially made for the purpose of:
 - Bullying, intimidating or harassing another person
 - Damaging another person or Council's reputation
 - Obtaining a political advantage
 - Influencing a Council Officer or staff member in the exercise of their authorised functions or to prevent or disrupt the exercise of those functions;
 - Influencing Council in the exercise of its functions or to prevent or disrupt the exercise of those functions;
 - Avoiding disciplinary action;
 - Taking reprisal action against a person for making a complaint alleging a breach of this Code;
 - Preventing or disrupting the effective administration of this Code.
- Engaging in any act of disorder or conduct that is intended to prevent the proper or effective functioning of Council, including:
 - Leaving a meeting for the purposes of depriving the meeting of a quorum; or
 - Submitting a rescission motion, with respect to a decision for the purpose of voting against it, to prevent another Councillor from submitting a rescission motion with respect to the same decision;
 - Deliberately seeking to impede the consideration of business at a meeting.

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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.

Demonstrating Behaviours Consistent with Standard 3

Diligently and properly complying with 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, including by:

- observing and complying with any relevant Council and Councillor policy or procedure
- Sharing responsibility for a safe, healthy and supportive workplace
- Acting with courtesy towards Council staff

Diligently and properly complying with the Council expenses policy adopted and maintained by the Council under section 41 of the Act, the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act and any directions of the Minister issued under section 175 of the Act, including by:

- Observing and complying with any relevant Council and Councillor policy or procedure
- Setting high standards for everything you do and how you do it
- Using council resources efficiently and in the public interest
- Acting in a way that models and promotes the highest standard of ethical behaviour
- Disclosing any conflicts of interest in a timely manner
- Making any Personal Interest Return in a timely manner as required under the Act
- Disclosing all gifts, benefits or hospitality offered and/or accepted in the capacity as a Councillor

Not Engaging in Behaviours Inconsistent with the Standard

Behaviours inconsistent with Standard 3 may include, but are not limited to, the following behaviours:

- Misusing council resources, equipment or workplace benefits
- Breaching privacy and confidentiality principles
- Engaging in fraudulent or illegal activities
- Undermining the reputation of council staff
- Intentionally misleading others or misrepresenting the Council
- Acting in a biased manner or showing favouritism

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For Information:

Section 40 Reimbursement of expenses of Councillors and members of a delegated committee

(1) A Council must reimburse a Councillor or a member of a delegated committee for out-of-pocket expenses which the Council is satisfied—

- (a) are bona fide expenses; and
- (b) have been reasonably incurred in the performance of the role of Councillor or member of a delegated committee; and
- (c) are reasonably necessary for the Councillor or member of a delegated committee to perform that role.

(2) A Council must provide details of all reimbursements under this section to the Audit and Risk Committee.

Section 41 Council expenses policy

(1) A Council must adopt and maintain an expenses policy in relation to the reimbursement of out-of-pocket expenses for Councillors and members of delegated committees.

See also subsections (2) to (4)

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Section 60 Governance Rules

(1) A Council must develop, adopt and keep in force Governance Rules for or with respect to the following—

- (a) the conduct of Council meetings;
- (b) the conduct of meetings of delegated committees;
- (c) the form and availability of meeting records;
- (d) the election of the Mayor and the Deputy Mayor;
- (da) the appointment of an Acting Mayor;
- (e) an election period policy in accordance with section 69;
- (f) the procedures for the disclosure of a conflict of interest by a Councillor or a member of a delegated committee under section 130;
- (g) the procedure for the disclosure of a conflict of interest by a Councillor under section 131;
- (h) the disclosure of a conflict of interest by a member of Council staff when providing information in respect of a matter within the meaning of section 126(1);
- (i) any other matters prescribed by the regulations.

(2) The Governance Rules must provide for a Council to—

- (a) consider and make decisions on any matter being considered by the Council fairly and on the merits; and
- (b) institute decision making processes to ensure that any person whose rights will be directly affected by a decision of the Council is entitled to communicate their views and have their interests considered.

See also subsections (3) to (8)

Standard 4 - Councillor must not discredit or mislead Council or Public

1. In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.
2. 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.

Demonstrating Behaviours Consistent with Standard 4

In ensuring that a Councillor's behaviour does not bring discredit upon the Council or deliberately mislead the Council or the public about any matter related to the performance of their public duties, Councillors should avoid the following behaviours:

- Misusing their position in breach of section 123 of the Act
- Directing or seeking to direct a member of Council Staff in breach of section 124 of the Act
- Engaging in fraudulent or illegal activities
- Intentionally misleading others or misrepresenting the Council
- Acting in a biased manner or showing favouritism

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- Seeking or accepting any gifts which could be perceived to influence Councillor decisions
- Undermining the reputation of fellow Councillors, Council staff, the Council and the community
- Misusing council resources, equipment or workplace benefits
- Breaching privacy and confidentiality principles including breaching section 125 of the Act
- Using offensive language or actions
- Engaging in inappropriate communication, including by email, media, or social media
- Promoting self-interest above the needs of the organisation
- In any dealings with Council in a private capacity, seeking preferential treatment

For Information:

Section 123 Misuse of position

(1) 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 the Council or another person.

Penalty: 600 penalty units or imprisonment for 5 years.

(2) An offence against subsection (1) is an indictable offence.

(3) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a delegated committee include—

- (a) making improper use of information acquired as a result of the position the person held or holds; or
- (b) disclosing information that is confidential information; or
- (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or
- (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or
- (e) using public funds or resources in a manner that is improper or unauthorised; or
- (f) participating in a decision on a matter in which the person has a conflict of interest.

(4) This section—

- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of delegated committees; and
- (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

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Section 124 Directing a member of Council staff

A Councillor must not intentionally direct, or seek to direct, a member of Council staff—

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

Penalty: 120 penalty units.

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.

Demonstrating Behaviours Consistent with Standard 5

Robust public debate does not include:

- Bullying or harassment in any form, use of offensive language or actions, aggressive or hostile behaviour
- Holding a grudge or actively trying to undermine or discredit others
- Excluding or marginalising people
- Undermining the reputation of fellow Councillors, Council staff, the Council and the community
- Breaching privacy and confidentiality principles
- Intentionally misleading others or misrepresenting the Council

5 Dispute Resolution

Disputes between Councillors may occur from time to time. These might involve:

- A conflict where there may be a breakdown in communication, a misunderstanding, a disagreement between Councillors, or strained working relationships; or
- A matter of perceived misconduct which could form the basis of a formal complaint of a breach of this Code; or
- An incident in which offence is taken, a difference in personalities, or a personal dislike between parties.

In any of these situations, the parties are encouraged to try and resolve the dispute early and informally through discussion and mediation.

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Councillors are expected to support and work collaboratively with fellow Councillors and where an interpersonal dispute arises, Councillors are expected to work to resolve that dispute informally (before taking formal action) for the good of Council and the community.

An informal dispute resolution process is set out in **Appendix 1**.

The Act sets out the formal procedures for addressing breaches of the Standards of Conduct, Serious Misconduct and Gross Misconduct. Reference is made to these processes in Appendix 1.

6 Councillor Commitment to the Code of Conduct

As elected representatives of the community charged with decision making for Surf Coast Shire Council, Councillors are expected to be committed to undertaking the duties and responsibilities of their office by:

- working together with their fellow councillors, in a respectful and constructive manner, to achieve the goals and vision for the Shire and to be a successful and highly functional public authority
- recognising the importance of acting in accordance with the highest standards of governance
- complying with the Standards regarding their behaviour towards fellow Councillors, Council staff and the community.

Councillors acknowledge that they have been elected by the community to a position of significant responsibility with the expectation that they will act with integrity and professionalism.

Councillors agree to act in accordance with their obligations to the best of their skill and judgement, including:

- Demonstrating and complying with the behaviours set out in this Code in relation to the Values and the Standards including behaviour in accordance with the spirit of the Standards;
- Acting in accordance with the principles of good governance, respectful conduct and the associated obligations set out in the Code, and in legislation;
- Providing civic leadership and contributing effectively to the interests and advancement of Council and its community including contributing to the strategic vision for Council and the community; and
- Upholding the public trust, in the office of Councillor, by refraining from any action or behaviour that would bring Council into disrepute.

This Code will be reviewed in accordance with relevant legislative obligations. Additionally, Councillors will review this Code annually to ensure it continues to meet community expectation.

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By signing below, each Councillor declares to their fellow Councillors, and to the community, that they have read, understood and will abide by this Code to the best of their ability.

Councillor	Signature	Date Signed
Mayor, Cr Libby Stapleton		
Deputy Mayor, Cr Liz Pattison		
Cr Gary Allen		
Cr Paul Barker		
Cr Mike Bodsworth		
Cr Kate Gazzard		
Cr Rose Hodge		
Cr Adrian Schonfelder		
Cr Heather Wellington		

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Appendix 1 - Informal Dispute Resolution Process

As set out in clause 5, interpersonal disputes between Councillors may arise in a variety of circumstances. This process is to apply to those types of dispute.

This process provides all parties to a dispute with support and encouragement to resolve conflicts and disputes in a manner that enables all Councillors to move forward and maintain effective working relationships. This procedure is designed to minimise the cost and disruption to Council and individual Councillors due to interpersonal disputes and to avoid negative impacts on the operation of Council.

First Stage of Informal Dispute Resolution - Discussion

Councillors are encouraged to raise their issue directly with their fellow Councillors in a respectful and courteous manner, either in person or in writing, where they feel comfortable to do so.

Councillors are encouraged to recognise that:

- certain behaviours and communications may be perceived by others to be causing issues or offence that may not have been intended;
- it can provide useful insight to reflect on their own behaviour or motivation and possible contribution to the conflict, whether intended or not;
- avoiding the issue escalating and dealing with the conflict early is more likely to resolve the issue before the dispute threatens the effective operation of Council.

It is useful to frame any issue from the Councillor's perspective, eg I felt disrespected when you said or did (whatever action), rather than accusing another person of holding a particular position or taking a negative action deliberately. Let the other Councillor know how you feel and ask for an explanation rather than making any assumptions.

Second Stage of Informal Dispute Resolution - Mediation

Where a Councillor does not feel comfortable communicating directly with another Councillor, or where a direct conversation between Councillors has not been successful in resolving the dispute, the second stage of the process is to notify the Mayor of the dispute and the Mayor will request the CEO to arrange for an independent mediation to occur by completing the **Mediation Application Form** in Appendix 3.

If the Mayor is involved in the dispute, the Deputy Mayor will assume the role of the Mayor in this process. If both the Mayor and the Deputy Mayor are involved in the dispute, another Councillor can be agreed by the Mayor and Deputy Mayor to fulfil the role for the purposes of this process.

Councillors are not obliged to engage in mediation and may decline to participate.

Where Councillors have agreed to participate, a qualified independent mediator will be sourced by the CEO or their delegate from a reputable source, such as The Resolution Institute or the Municipal Association of Victoria.

The mediation process will be run by the independent mediator. Details of the outcome of the process will be confidential to the mediator and the Councillors involved, however, the parties are expected to advise the Mayor whether or not the dispute has been resolved.

Council will not pay the costs of legal advice or representation for any Councillor in the informal dispute resolution process. Parties to a dispute may seek their own legal or other advice at their own cost, if they choose to do so. Parties are expected to maintain confidentiality concerning the dispute and the process.

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The parties may not seek mediation for a second or further dispute in relation to the same subject matter. Where this issue is in dispute, the Mayor may make this decision.

Informal Dispute Resolution does not Apply in these Circumstances

The following disputes are not covered by the informal dispute resolution process:

- Differences between Councillors in relation to policy or decision making, which are appropriately resolved through discussion and voting in Council meetings;
- Complaints made against a Councillor or Councillors by a member or members of Council staff, or by any other external person;
- Disclosures made about a Councillor under the *Public Interest Disclosures Act 2012*, which can only be made to IBAC;
- Allegations of criminal misconduct - which will be immediately referred to Victoria Police or the relevant integrity authority.

Formal Dispute Resolution Procedure

The informal dispute resolution procedure operates alongside, and does not replace, the formal dispute resolution procedures outlined in the Act.

The formal dispute resolution procedure applies to misconduct, serious misconduct and gross misconduct (all terms are defined in the Definitions section in Appendix 4).

Section 141 of the Act provides for an Internal Arbitration Process concerning a breach of the Standards of Conduct set out in the Regulations and this Code.

Section 141 Internal arbitration process

- (1) The internal arbitration process applies to any breach of the prescribed standards of conduct.
- (2) The following applies to an internal arbitration process—
 - (a) any processes prescribed by the regulations, including any application process;
 - (b) the arbiter must ensure that parties involved in internal arbitration process are given an opportunity to be heard by the arbiter;
 - (c) the arbiter must 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;
 - (d) any requirements prescribed by the regulations.

Further details of the Internal Arbitration Process are set out at section 142 and following provisions of the Act.

Where an allegation of Serious Misconduct has been made, section 154 applies. Following sections detail the process to be followed.

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154 Application to Councillor Conduct Panel

- (1) A Councillor Conduct Panel may hear an application that alleges serious misconduct by a Councillor.
- (2) Subject to subsection (4), an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by—
 - (a) the Council following a resolution of the Council to make an application to a Councillor Conduct Panel under this subsection in respect of a Councillor's conduct; or
 - (b) a Councillor or a group of Councillors; or
 - (c) the Chief Municipal Inspector.
- (3) An application under subsection (2) must be made within 12 months of the alleged serious misconduct occurring.
- (4) An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor that alleges that the Councillor has failed to disclose a conflict of interest may only be made by the Chief Municipal Inspector.
- (5) An application made under this section must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(n).
- (6) An application made under this section must—
 - (a) specify the ground or grounds for the application; and
 - (b) set out—
 - (i) the circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting serious misconduct; and
 - (ii) the particulars of any evidence of those circumstances, actions or inactions of the Councillor that are alleged as constituting the serious misconduct; and
 - (c) specify—
 - (i) any steps taken by Council to resolve the matter that is the subject of the application and the reason why the matter was not resolved by the taking of those steps; or
 - (ii) if the Council did not take any steps to resolve the matter that is the subject of the application, the reason why the Council did not take any steps to resolve the matter.
- (7) If an application is made under this section by the Council or a group of Councillors, the application must state the name and address of the Councillor whom the Council or the group of Councillors has appointed as representative of the Council or the group of Councillors.

Persons affected by the decision of a Councillor Conduct Panel may apply to VCAT for a review of that decision.

VCAT also hears matters pertaining to **Gross Misconduct** pursuant to section 171 of the Act, as referred by the Chief Municipal Inspector.

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Section 171 Application to VCAT on grounds of gross misconduct

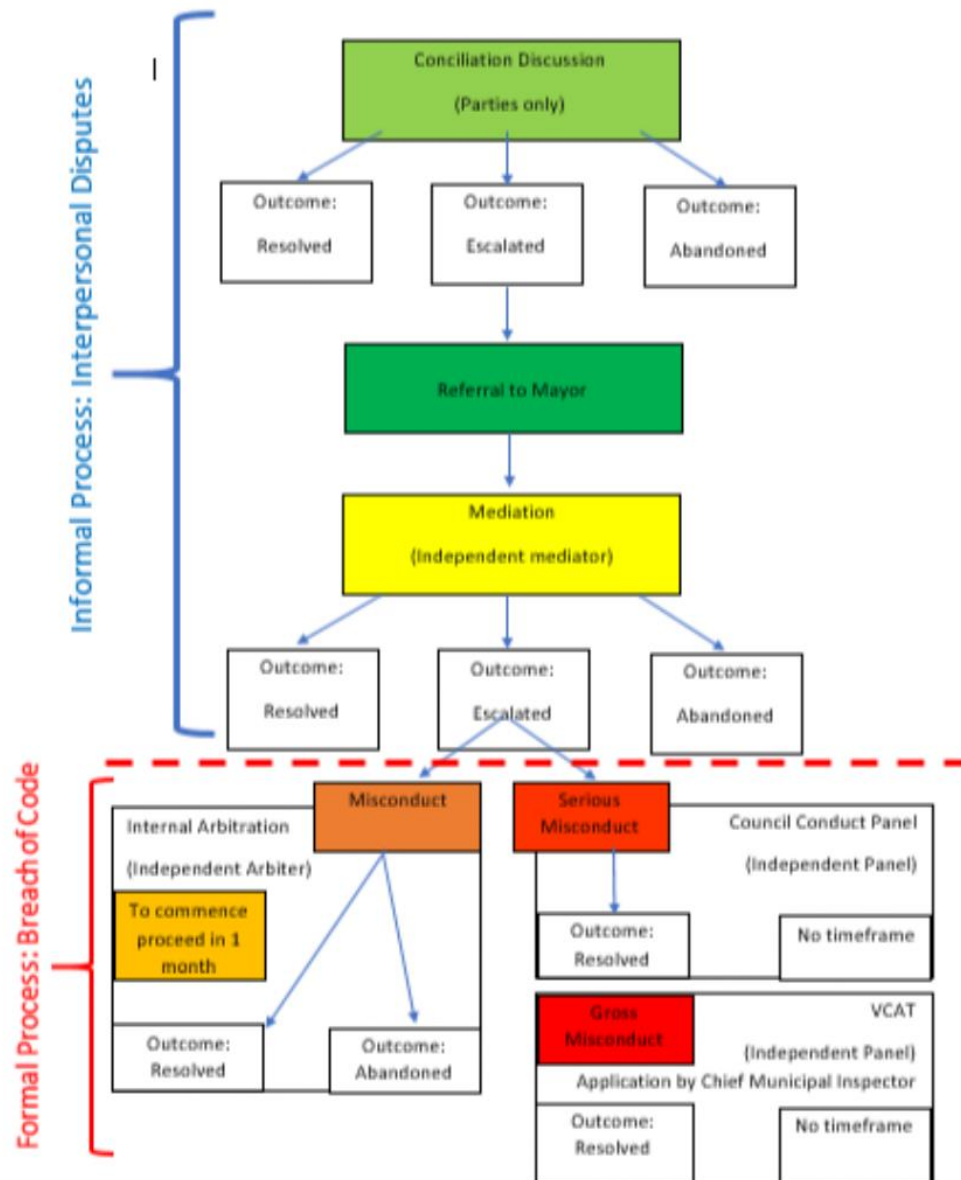
- (1) VCAT may hear an application made by the Chief Municipal Inspector that alleges gross misconduct by a Councillor.
- (2) An application made under subsection (1) may only be made by the Chief Municipal Inspector.
- (3) The applicant and respondent are parties to a proceeding commenced in VCAT under this section.

Further details of these processes are set out in the Act.

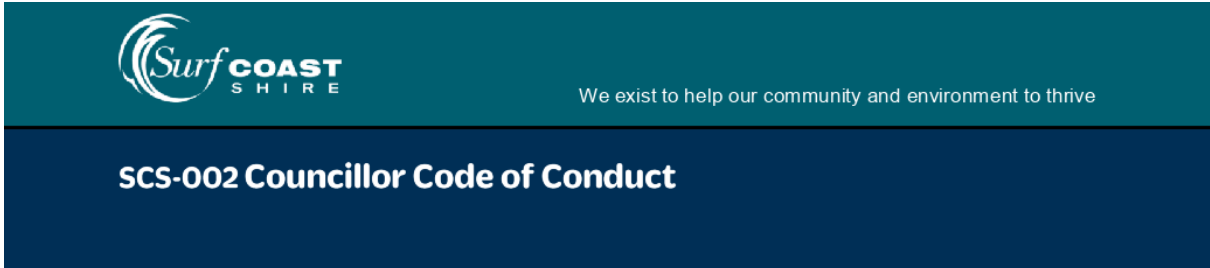
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Appendix 2 - Dispute Resolution Procedure Flowchart



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Appendix 3 – Mediation Application Form

Applicant's Name:

Name/s of other party/s to the dispute:

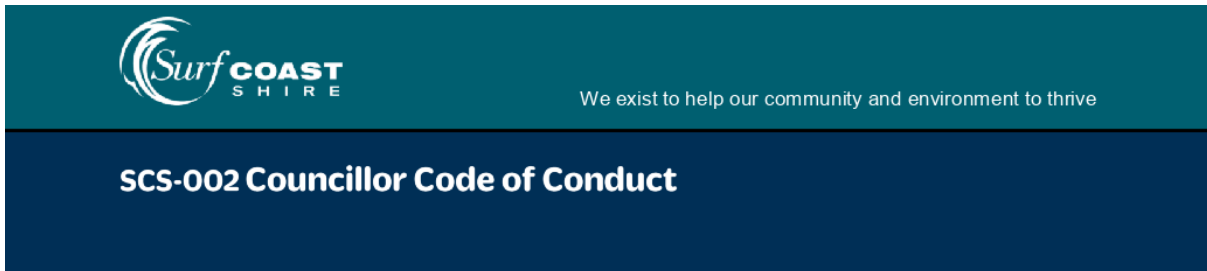
Notification of an Interpersonal Dispute - please provide details of the subject matter of the dispute:

Please provide details as to whether a discussion has or has not taken place with the other party/s and why the matter should now be referred to independent mediation.

Please provide details of any period when you are unavailable to attend a mediation for the period of 4 weeks following lodging this application:

Date:	
Signature:	

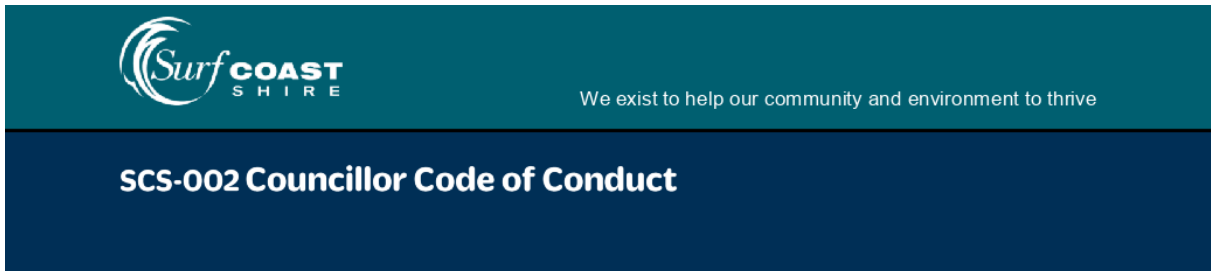
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Appendix 4 - Definitions

Chief Executive Officer	The Chief Executive Officer of Council of the Surf Coast Shire Council.
Chief Municipal Inspector	The Chief Municipal Inspector is responsible for investigating and prosecuting possible breaches and offences under the <i>Local Government Act 2020</i> , investigating allegations of Councillor misconduct, serious misconduct and gross misconduct, making an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor and making an application to the Victorian Civil and Administrative Tribunal for a finding of gross misconduct by a Councillor.
Conflict of Interest	A Councillor has a: general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty. material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter
Councillor	All references to 'Councillor' include the Mayor, Deputy Mayor and elected members of Surf Coast Shire Council.
Councillor Conduct Officer	The person appointed by the Chief Executive Officer under Section 150 of the <i>Local Government Act 2020</i> to: <ul style="list-style-type: none"> • Assist the Council in the implementation of, and conduct of, the internal arbitration process of a Council; • Assist the Principal Councillor Conduct Registrar to perform the functions specified in Section 149(1); and • Assist the Principal Councillor Conduct Registrar in relation to any request for information under Section 149(3).
Councillor Conduct Panel	A panel established under the <i>Local Government Act 2020</i> to hear applications and make findings of alleged serious misconduct by a Councillor.
Gross Misconduct	Behaviour that demonstrates that a 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.
Misconduct	Any breach by a Councillor of the prescribed Standards of Conduct included in the Councillor Code of Conduct;

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Principal Councillor Conduct Registrar	The person appointed by the Secretary under Section 148 of the Local Government Act to receive applications for the establishment of Councillor Conduct Panels.
Serious Misconduct	<p>Serious misconduct 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; or • The failure by a Councillor to comply with a direction given to the Councillor by an arbiter; or • The failure of a Councillor to attend a Councillor Conduct Panel; • The failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or • Continued or repeated misconduct by a Councillor after a finding of misconduct; or • Bullying by a Councillor of another Councillor or a member of Council staff; or • Conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff; or • The disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information; or • Conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff; or • 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 this Act.
The Act	All references to the Act are to the <i>Local Government Act 2020</i> .