



**WELLINGTON**  
SHIRE COUNCIL

*The Heart of Gippsland*

## **COUNCIL MEETING AGENDA ORDINARY MEETING**

**Meeting to be held at**

**Wellington Centre – Wellington Room**

**Foster Street, Sale and via MS Teams**

**Tuesday 7 May 2024, commencing at 5:00 PM**

**or join Wellington on the Web:  
[www.wellington.vic.gov.au](http://www.wellington.vic.gov.au)**

**ORDINARY MEETING OF COUNCIL  
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## **COUNCIL MEETING INFORMATION**

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*Members of the public who are not in attendance at the Council meeting but who wish to communicate with the Council via the online webform should lodge their questions or comments early in the meeting to ensure that their submissions can be dealt with at the end of the meeting.*

*Please could gallery visitors, Councillors and invited online attendees ensure that mobile phones and other electronic devices are turned off or in silent mode for the duration of the meeting.*

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## **MISSION STATEMENT**

*Working together to make a difference. We listen and lead to provide quality services that improve life for all.*

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## **ACKNOWLEDGEMENT OF COUNTRY**

*“Wellington Shire Council acknowledges our offices are located on the traditional lands of the Gunaikurnai nation. We pay our deep respects to their Elders past, present and future and acknowledge their ongoing cultural and spiritual connections to their land and waters.”*

## 1. APOLOGIES

## 2. DECLARATION OF CONFLICT/S OF INTEREST

## 3. CONFIRMATION OF MINUTES OF PREVIOUS COUNCIL MEETING/S

### 3.1. ADOPTION OF MINUTES OF PREVIOUS COUNCIL MEETING

#### **ACTION OFFICER: MANAGER ORGANISATIONAL PERFORMANCE AND GOVERNANCE**

#### **PURPOSE**

To adopt the minutes of the Ordinary Council Meeting of 16 April 2024.

#### **PUBLIC QUESTIONS AND COMMENTS FROM THE GALLERY**

#### **RECOMMENDATION**

*That Council adopt the minutes and resolutions of the Ordinary Council Meeting of 16 April 2024.*

#### **CONFLICT OF INTEREST**

No staff and/or contractors involved in the compilation of this report have declared a conflict of interest.

#### 4. BUSINESS ARISING FROM PREVIOUS MEETINGS

**ACTION OFFICER: CHIEF EXECUTIVE OFFICER**

ITEM	FROM MEETING	COMMENTS	ACTION BY
NIL			

#### 5. ACCEPTANCE OF LATE AND URGENT ITEMS

#### 6. NOTICE/S OF MOTION

#### 7. RECEIVING OF PETITION OR JOINT LETTERS

##### 7.1. OUTSTANDING PETITIONS

**ACTION OFFICER: CHIEF EXECUTIVE OFFICER**

ITEM	FROM MEETING	COMMENTS	ACTION BY
NIL			

#### 8. INVITED ADDRESSES, PRESENTATIONS OR ACKNOWLEDGEMENTS

#### 9. QUESTION/S ON NOTICE

##### 9.1. OUTSTANDING QUESTION/S ON NOTICE

**ACTION OFFICER: CHIEF EXECUTIVE OFFICER**

ITEM	FROM MEETING	COMMENTS	ACTION BY
NIL			

## 10. DELEGATES REPORT

## 11. GENERAL MANAGER CORPORATE SERVICES

### 11.1. ASSEMBLY OF COUNCILLORS REPORT

#### **ACTION OFFICER: MANAGER ORGANISATIONAL PERFORMANCE AND GOVERNANCE**

##### **OBJECTIVE**

To report on all Assembly of Councillor records received for the period 8 April 2024 to 28 April 2024.

##### **PUBLIC QUESTIONS AND COMMENTS FROM THE GALLERY**

#### **RECOMMENDATION**

*That Council note and receive the attached Assembly of Councillor records for the period 8 April 2024 to 28 April 2024.*

##### **BACKGROUND**

Section 80A of the *Local Government Act 1989* required a written record be kept of all assemblies of councillors, stating the names of all councillors and Council staff attending, matters considered and any conflict of interest disclosures made by a councillor. These records were required to be reported at an ordinary meeting of the Council and recorded in the minutes. Under the new *Local Government Act 2020*, this requirement is no longer provided for however, under Council's good governance framework, Council will continue to provide records of assemblies of councillors to ensure that the community are kept informed of councillors' activity and participation.

Following is a summary of all Assembly of Councillor records received for the period 8 April 2024 to 28 April 2024.

##### **ATTACHMENTS**

1. Assembly of Councillors Council Day 16 April 2024 (5) [11.1.1 - 2 pages]

##### **OPTIONS**

Council has the following options:

1. Note and receive the attached Assembly of Councillors records; or
2. Not receive the attached Assembly of Councillors records.

##### **PROPOSAL**

That Council note and receive the attached Assembly of Councillors records during the period 8 April 2024 to 28 April 2024.

## **CONFLICT OF INTEREST**

No staff and/or contractors involved in the compilation of this report have declared a conflict of interest.

## **FINANCIAL IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **COMMUNICATION IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **LEGISLATIVE IMPACT**

The reporting of written records of assemblies of Councillors to the Council in the prescribed format complied with Section 80A of the *Local Government Act 1989* however, without prescription under the *Local Government Act 2020*, Council will continue to provide these records as part of Council's good governance framework.

## **COUNCIL POLICY IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **COUNCIL PLAN IMPACT**

This impact has been assessed and while it does not meet a specific Council Plan strategic outcome, it does align with Council's good governance framework.

## **RESOURCES AND STAFF IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **COMMUNITY IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **ENVIRONMENTAL IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **ENGAGEMENT IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **RISK MANAGEMENT IMPACT**

This impact has been assessed and there is no effect to consider at this time.



## ASSEMBLY OF COUNCILLORS - COUNCIL DAY

COUNCIL WORKSHOPS – 16 APRIL 2024			
COUNCILLOR	ATTENDANCE	OFFICERS IN ATTENDANCE	
<b>Cr Ian Bye</b>	YES	<b>Chris Hastie</b>	Acting CEO, General Manager Built & Natural Environment
<b>Cr John Tatterson</b>	YES	<b>Arthur Skipitaris</b>	General Manager Corporate Services
<b>Cr Carolyn Crossley</b>	YES	<b>Ross McWhirter</b>	Acting General Manager Community & Culture
<b>Cr Carmel Ripper</b>	YES	<b>Andrew Pomeroy</b>	General Manager Development
<b>Cr Gayle Maher</b>	YES		
<b>Cr Garry Stephens</b>	YES		
<b>Cr Jill Wood</b>	YES		
<b>Cr Marcus McKenzie</b>	YES		
<b>Cr Scott Rossetti</b>	YES		
CONFLICTS OF INTEREST NOTED*			
NIL			

\* In accordance with Rule 18.5 of the Wellington Shire Council Governance Rules a Councillor who has a conflict of interest must not participate in discussion of matters that will come before Council for a decision, or if a decision will be made by a member of staff acting under delegation.

WORKSHOP DETAILS – 16 APRIL 2024		
ITEM NO.	WORKSHOP TITLE	PRESENTERS
1.1	<b>FORESTREE INTERACTIVE MAP   BUILT &amp; NATURAL ENVIRONMENT</b>	<ul style="list-style-type: none"> <li><i>Liam Cole, Open Space Planning Officer</i></li> </ul> <i>Conflicts of Interest: NIL</i>
1.2	<b>WSC AND EGSC SHARED SERVICES UPDATE   CORPORATE SERVICES</b>	<ul style="list-style-type: none"> <li><i>Arthur Skipitaris, General Manager Corporate Services</i></li> <li><i>Phillip Phillipou, Chief Information Officer</i></li> </ul> <i>Conflicts of Interest: NIL</i>

## ASSEMBLY OF COUNCILLORS - COUNCIL DAY

WORKSHOP DETAILS – 16 APRIL 2024		
ITEM NO.	WORKSHOP TITLE	PRESENTERS
1.3	<b>REVIEW OF 2024 PROPERTY REVALUATIONS   CORPORATE SERVICES</b>	<ul style="list-style-type: none"> <li>• <i>Ian Carroll, Manager Corporate Finance</i></li> <li>• <i>Mathew Dyce, Coordinator Rates and Revenue</i></li> <li>• <i>David Corrigan, Senior Regional Valuer – Valuer General</i></li> <li>• <i>Daniel Scarfo, Director Gippsland Property Valuations</i></li> </ul> <p><i>Conflicts of Interest: NIL</i></p>
1.4	<b>QUARTERLY PERFORMANCE REPORT – MARCH 2024   CORPORATE SERVICES</b>	<ul style="list-style-type: none"> <li>• <i>Ian Carroll, Manager Corporate Finance</i></li> <li>• <i>Arthur Skipitaris, General Manager Corporate Services</i></li> </ul> <p><i>Conflicts of Interest: NIL</i></p>
1.5	<b>COUNCILLOR COMMUNITY CONVERSATION – MARCH 2024   COMMUNITY AND CULTURE</b>	<ul style="list-style-type: none"> <li>• <i>Sam McPherson, Manager Communities, Facilities and Emergencies</i></li> </ul> <p><i>Conflicts of Interest: NIL</i></p>
1.6	<b>DEVELOPMENT DIVISION UPDATE   DEVELOPMENT</b>	<ul style="list-style-type: none"> <li>• <i>Andrew Pomeroy, General Manager Development</i></li> <li>• <i>Vanessa Ebsworth, Manager Regulatory Services</i></li> <li>• <i>Geoff Hay, Manager Economic Development</i></li> <li>• <i>Barry Hearsey, Manager Land Use Planning</i></li> </ul> <p><i>Conflicts of Interest: NIL</i></p>
1.7	<b>WASTE, RECYCLING AND SUSTAINABILITY UPDATE   BUILT AND NATURAL ENVIRONMENT</b>	<ul style="list-style-type: none"> <li>• <i>Samantha Nock, Coordinator Waste and Sustainability</i></li> <li>• <i>David Harper, Manager Natural Environment and Parks</i></li> </ul> <p><i>Conflicts of Interest: NIL</i></p>
1.8	<b>RESPECTFUL WORKPLACE SURVEY (SEXUAL HARASSMENT AND BULLYING)   CORPORATE SERVICES</b>	<ul style="list-style-type: none"> <li>• <i>Kirrilee Richardson, Acting Manager People and Capability</i></li> <li>• <i>Arthur Skipitaris, General Manager Corporate Services</i></li> </ul> <p><i>Conflicts of Interest: NIL</i></p>

## 11.2. CEO REMUNERATION AND EMPLOYMENT COMMITTEE RECOMMENDATIONS

### ACTION OFFICER: GENERAL MANAGER CORPORATE SERVICES

#### PURPOSE

To receive the minutes of the CEO Employment and Remuneration Committee (CERC) meeting held on 9 April 2024 and approve the Committee's recommendations.

#### PUBLIC QUESTIONS AND COMMENTS FROM THE GALLERY

#### RECOMMENDATION

*That*

**1. Council receive and note:**

- ***CERC minutes of meeting in brief of 9 April 2024 (attachment 11.2.1)***

***and approve the following CERC recommendations:***

- ***amendments to the CEO Employment and Remuneration Policy (attachment 11.2.2)***
- ***provision of administrative support for the CERC and Independent Advisor (attachment 11.2.1)***
- ***appointment of Mr Michael Malouf as an Independent Advisor (attachment 11.2.1 and confidential attachments 11.2.5 & 11.2.6)***
- ***the CEO 23/24 Performance Review and 24/25 CEO KPI Timelines (attachment 11.2.1 and confidential attachment 11.2.7)***

- 2. *The information contained in the confidential documents of this Council meeting agenda and designated confidential under Section 3(1) Confidential Information of the Local Government Act 2020 by the General Manager Corporate Services on 30 April 2024 because it relates to the following grounds: f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.***

#### BACKGROUND

Council maintains a CEO Employment and Remuneration Committee (CERC) in accordance with section 45 of the *Local Government Act 2020*.

The CEO Employment and Remuneration Committee is an advisory Committee, and its primary objective is to oversee the review of the CEO's performance as per the terms and conditions of the CEO's contract of employment. Minutes of the CEO Employment and Remuneration Committee are reported direct to Council.

A copy of the minutes in brief from the CEO Employment and Remuneration Committee meeting of 9 April 2024 is attached and is provided for the information of Council and the public in general.

## **ATTACHMENTS**

1. CERC Minutes in Brief 9 April 2024 [**11.2.1** - 1 page]
2. CEO Employment and Remuneration Policy [**11.2.2** - 9 pages]
3. Confidential Header [**11.2.3** - 1 page]
4. CONFIDENTIAL REDACTED - CERC Confidential Minutes 9 April 2024 [**11.2.4** - 2 pages]
5. CONFIDENTIAL REDACTED - Michael Malouf CERC Independent Advisor Overview [**11.2.5** - 2 pages]
6. CONFIDENTIAL REDACTED - Malouf Michael CV [**11.2.6** - 3 pages]
7. CONFIDENTIAL REDACTED - Timeline CEO Performance Reviews and KPIs 23/24 and 24/25 [**11.2.7** - 6 pages]

## **OPTIONS**

Council has the following options available:

1. To receive and note the minutes from the CEO Employment and Remuneration Committee (CERC) meeting of 9 April 2024 and approve the recommendations from the committee; or
2. To seek further information and consider the minutes at a future meeting.

## **PROPOSAL**

To receive and note the minutes from the CEO Employment and Remuneration Committee (CERC) meeting of 9 April 2024 and approve the recommendations from the committee.

## **CONFLICT OF INTEREST**

No staff and/or contractors involved in the compilation of this report have declared a conflict of interest.

## **FINANCIAL IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **COMMUNICATION IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **LEGISLATIVE IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **COUNCIL POLICY IMPACT**

This impact has been assessed and there is no effect to consider at this time.

### **COUNCIL PLAN IMPACT**

This impact has been assessed and while it does not meet a specific Council Plan strategic outcome, it does align with Council's good governance framework.

### **RESOURCES AND STAFF IMPACT**

This impact has been assessed and there is no effect to consider at this time.

### **COMMUNITY IMPACT**

This impact has been assessed and there is no effect to consider at this time.

### **ENVIRONMENTAL IMPACT**

This impact has been assessed and there is no effect to consider at this time.

### **ENGAGEMENT IMPACT**

This impact has been assessed and there is no effect to consider at this time.

### **RISK MANAGEMENT IMPACT**

This impact has been assessed and there is no effect to consider at this time.



# CEO EMPLOYMENT AND REMUNERATION COMMITTEE (CERC) MEETING

Tuesday 9 April 2024 – 10.00am

## MINUTES IN BRIEF

**PRESENT:** Councillor Ian Bye  
Councillor Gayle Maher  
Councillor Garry Stephens  
Arthur Skipitaris (General Manager Corporate Services)  
Leah Carubia (Executive Assistant)

**APOLOGIES:** Nil

1. **Minutes of Previous Meeting:**  
Nil.
2. **Actions from previous minutes**  
Nil.
3. **Review the CEO Employment and Remuneration Policy**
  - *Committee recommends to Council minor amendments (as marked up) to this policy as attached.*
4. **Administration Support**
  - *Committee recommends to Council, that administrative support be provided to the committee and independent advisor by General Manager Corporate Services and an Executive Assistant as per Section 16 of the CEO Employment and Remuneration Policy*
5. **Engagement of an Independent Advisor to assist the Committee and Councillors**
  - *Committee recommends to Council that Mr Michael Malouf be appointed for 3 years with the option of a further 2 years.*
6. **CEO 23/24 Performance Review and new 24/25 KPI Timelines**
  - *Committee recommends to Council the proposed CEO 23/24 Performance Review and 24/25 KPI Timelines*
7. **General Business**  
Nil.

The meeting closed at 10.25am

## CEO EMPLOYMENT AND REMUNERATION POLICY

<b>Policy Number:</b>	2.4.11
<b>Approved by:</b>	Council
<b>Date Approved:</b>	March 2023 <u>– to be amended following approval</u>
<b>Date of Next Review:</b>	March 2024 <u>– to be amended following approval</u>
<b>Applicable to:</b>	Organisation
<b>Responsible Officer:</b>	General Manager Corporate Services
<b>Statutory Reference:</b>	<i>Local Government Act 2020 - Section 45</i> <i>The Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019 - section 21</i> <i>Victorian Charter of Human Rights and Responsibilities Act 2006</i> <i>Fair Work Act 2009</i> <i>Charter of Human Rights Act 2008</i> <i>Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth)</i>

### AUTHORISATION

This Policy was endorsed by resolution of Council at a Council Meeting on 21 March 2023.

#### 1. Purpose of Policy

This is the Chief Executive Officer Employment and Remuneration Policy (**Policy**) of Wellington Shire Council (**Council**), made in accordance with section 45 of the Act.

This Policy provides for the following matters which Council is responsible for under the Act and/or as a requirement of this Policy:

- (a) the recruitment and appointment of the Chief Executive ensuring that:
  - (i) the recruitment decision is based on merit;
  - (ii) the recruitment processes support transparency in the recruitment process and, subject to Council's discretion to offer re-appointment in accordance with section 44 of the Act, the public advertising of the position; and
  - (iii) regard is had to gender equity, diversity and inclusiveness;
- (b) approving the Contract of Employment entered into between Council and the Chief Executive Officer;
- (c) the CEO will appoint the Acting CEO from one of the General Managers under advice to all councillors, and if this period of appointment is to exceed 2 weeks, it must be approved by the Mayor, and if it exceeds 4 weeks by all of Council.
- (d) the provision of independent professional advice in relation to the matters dealt with in the Policy;
- (e) the monitoring of the Chief Executive Officer's performance;
- (f) an annual review of the Chief Executive Officer's performance; and
- (g) determining the Chief Executive Officer's remuneration.

#### 2. Date of Commencement

- 2.1 This Policy commences operation on 21 March 2023.

### 3. Definitions

3.1 In this Policy, unless the context suggests otherwise the following words and phrases mean:

**Act** means the *Local Government Act 2020*.

**Annual Review Report** has the meaning given in clause 12.1.

**Chief Executive Officer** or **CEO** means the Chief Executive Officer of Council.

**Committee** means the CEO Employment and Remuneration Committee established under this Policy.

**Contract of Employment** means the contract of employment between Council and the CEO, including any schedules.

**Council** means Wellington Shire Council.

**Councillors** means the individuals holding the office of a member of Wellington Shire Council.

**Council meeting** has the same meaning as in the Act.

**Executive Search Consultant** means an independent consultant with specialist expertise in sourcing and evaluating candidates for senior executive roles.

**Independent Advisor** means the consultant appointed by Council from time to time to provide independent advice in accordance with section 45(2)(a) of the Act.

**KPIs** means Key Performance Indicators or performance criteria however described.

**Mayor** means the Mayor of Council.

**Performance Plan** means the annual performance plan setting out KPIs for the CEO.

**Policy** means this CEO Employment and Remuneration Policy adopted in accordance with section 45 of the Act.

**Public Sector Wages Determination** means any Determination that is currently in effect under section 21 of the *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* in relation to remuneration bands for executives employed in public service bodies.

**Recruitment Policy** means the recruitment policy adopted by the CEO under section 48(2) of the Act.

**Regulations** means the Regulations made under Division 7 of Part 2 of the Act.

**Remuneration Package** means the total gross remuneration package paid to the CEO pursuant to the Contract of Employment.

**Resolution** means a resolution of Council made at a properly constituted Council meeting.

### 4. Overview

4.1 This Policy outlines the mechanisms which support Council in fulfilling its obligations regarding the CEO's employment and under the Act.

4.2 The aims of the CEO in relation to this Policy are to:

4.2.1 work collaboratively with the Committee in determining the Performance Plan on an annual basis;

4.2.2 actively participate in the performance appraisal process as required by the Committee;

4.2.3 make use of constructive feedback from Councillors and Committee Members in relation to performance appraisals;



- 4.2.4 undertake professional development on an as needed basis, and/or as part of the Performance Plan; and
- 4.2.5 promptly draw the Committee's attention to any situation where any variation of the Performance Plan may be required in light of the current circumstances.
- 4.3 The aims of Council (including via the Committee) in relation to this Policy are to:
  - 4.3.1 establish the Committee;
  - 4.3.2 provide processes for the recruitment of a natural person, and their appointment, to the position of CEO;
  - 4.3.3 draft and approve the Contract of Employment entered into between Council and the CEO;
  - 4.3.4 seek and be guided by independent professional advice in relation to the matters dealt with in this Policy;
  - 4.3.5 provide processes for determining and reviewing the Remuneration Package;
  - 4.3.6 provide processes for the monitoring of the CEO's performance including setting the Performance Plan and conducting an annual review;
  - 4.3.7 determine, as required, any variations to the Remuneration Package and terms and conditions of employment of the CEO; and
  - 4.3.8 provide processes for the appointment of an Acting Chief Executive Officer and
  - 4.3.9 have regard to all legal, contractual and statutory obligations owed to the CEO.

## 5. CEO Employment and Remuneration Committee

- 5.1 Council will establish a CEO Employment and Remuneration Committee (**Committee**).
- 5.2 The Committee will be an advisory committee to Council and will meet that meets at least twice per year.
- 5.3 The purposes of the Committee are to consider, and make recommendations to Council with respect to, the:
  - 5.3.1 selection and appointment of the Independent Advisor;
  - 5.3.2 receive independent advice ~~received~~ from time to time from the Independent Advisor;
  - 5.3.3 performance monitoring of the CEO, including with respect to achievement of the KPIs;
  - 5.3.4 annual review of the CEO's performance, including against the agreed KPIs;
  - 5.3.5 CEO's remuneration;
  - 5.3.6 recruitment and appointment of a CEO, if required;
  - 5.3.7 provisions to be included in the Contract of Employment from time to time;
  - 5.3.8 appointment of an Acting CEO; and
  - 5.3.9 implementation of this Policy.
- 5.4 The ~~Committee must include at least the Mayor, previous Mayor or Chair of Remuneration Committee. Or in event of a new Council being elected, the~~ Committee will include the Mayor, Deputy Mayor and Remuneration Chair.
- 5.5 The Committee is to hold meetings as often as is necessary to:
  - 5.5.1 prepare documentation relevant to the CEO's employment and remuneration, including Council reports and contractual documents, for the approval of Council;

5.5.2 conduct and maintain appropriate records regarding performance reviews of the CEO; and

~~5.5.3~~ review the Remuneration Package and conditions of employment of the CEO;

~~5.5.3 provided that the Committee meets at least twice in each year.~~

5.6 The Committee will provide a report to Council following each meeting describing its activities and making recommendations about any action to be taken by Council.

5.7 The Committee will determine its procedures at its first meeting, which will include:

5.7.1 the rules for its meetings, noting that meetings should be conducted with as little formality and technicality as appropriate to fulfil the Committee's purposes;

5.7.2 how often the Committee will meet, provided that the Committee meets at least twice in each year;

5.7.3 quorum, provided that the quorum is not less than the Mayor and two Councillors or, if the Mayor is absent, three Councillors;

5.7.4 means of attendance at Committee meetings (e.g. in person or electronically); and

5.7.5 authorising administrative support, including the taking of the minutes of the Committee meetings,

and will communicate the procedures to Council.

5.8 For the avoidance of doubt, nothing in this Policy requires Council to accept any or all of the Committee's recommendations.

## **6. Recruitment of CEO**

6.1 The Committee will establish and manage the process to recruit the CEO, designed to ensure that Council can select the best available candidate from a short list of preferred candidates (with or without a recommendation from the Committee).

6.2 The Committee will determine, and make a recommendation to Council, as to:

6.2.1 whether there is a need to engage an Executive Search Consultant to run the recruitment process; and, if so

6.2.2 the Executive Search Consultant to be appointed to run the recruitment process.

6.3 If an Executive Search Consultant is engaged, the Committee, the Chair of the Committee or a member of Council staff nominated by the Committee must liaise with the Executive Search Consultant in connection with the recruitment process.

6.4 When considering the recruitment of the position of CEO to, the Committee must:

6.4.1 ensure that the recruitment decision is based on merit;

6.4.2 support transparency in the recruitment process and the public advertising of the position; and

6.4.3 ensure that regard is had to gender equity, diversity and inclusiveness.

6.5 The Committee must ensure that the Executive Search Consultant publicly advertises the CEO role.

6.6 The Executive Search Consultant will be appointed on the terms agreed by Council, including that the Executive Search Consultant will prepare, and provide to Council, a schedule of dates for key decisions to be made by Resolution throughout the recruitment process.

6.7 The Committee must provide a report and recommendation to Council so that each key decision identified in the schedule prepared under clause 6.6 can, if necessary, be made by Resolution. This may include recommendations as to:

- 6.7.1 the preferred candidate; and
- 6.7.2 the proposed high level contract terms (including the term of employment and Remuneration Package).

## **7. Appointment of the CEO**

- 7.1 Council will receive a report from the Committee on the completion of its role in the recruitment process, and Council will proceed to decide on a preferred candidate with the support of the Committee to negotiate and finalise the Contract of Employment.
- 7.2 The Committee will provide a recommendation to Council on the provisions to be contained in the proposed Contract of Employment.
- 7.3 The appointment of the CEO must be made by [Council](#) Resolution.

## **8. Reappointment of the CEO**

- 8.1 Within 9 months and not less than 6 months prior to the expiry of the current CEO's Contract of Employment, the Committee will provide a recommendation to Council on:
  - 8.1.1 whether the CEO should be reappointed under a new Contract of Employment; and
  - 8.1.2 if the recommendation is to reappoint the CEO, the proposed provisions of the further Contract of Employment.
- 8.2 Any reappointment of the current CEO must be made by [Council](#) Resolution.
- 8.3 Where the Contract of Employment is for a term of 12 months or less, the period of months referred to in clause 8.1 shall be 2 months.

## **9. Contract of Employment**

- 9.1 The Contract of Employment is to be read in conjunction with this Policy (but the terms of this Policy are not incorporated into the Contract of Employment).
- 9.2 The Contract of Employment will, at a minimum, outline the following:
  - 9.2.1 the employment term, which must not exceed 5 years in accordance with section 44(2) of the Act;
  - 9.2.2 the responsibilities and duties of the position, including compliance with the Act and the Code of Conduct for Council staff;
  - 9.2.3 how conflicts of interest will be managed;
  - 9.2.4 the CEO's Remuneration Package and other entitlements;
  - 9.2.5 legislative and contractual obligations, including those during and continuing after appointment;
  - 9.2.6 the CEO's leave entitlements;
  - 9.2.7 processes for managing unsatisfactory performance;
  - 9.2.8 This policy recognises the CEO's current contract's provisions for termination notice and this policy does not override this clause. However, in the absence of this current contract, the following applies. A notice of a minimum 4 months with notice of termination by Council will apply with a maximum of up to 6 months; and
  - 9.2.9 any other matters required to be contained in the Contract of Employment by the Regulations.
- 9.3 The Contract of Employment may only be varied by a [Council](#) Resolution with the CEO's acceptance, with such variation to be recorded in a deed of variation.

## 10. Remuneration and Expenses

- 10.1 The Remuneration Package provided to the CEO will form part of the Committee's annual review, having regard to (in accordance with section 45(3) of the Act):
- 10.1.1 any statement of policy issued by the Government of Victoria which is in force with respect to its wages policy (or equivalent);<sup>1</sup> and
  - 10.1.2 any Public Sector Wages Determination.<sup>2</sup>
- 10.2 Remuneration will be reviewed on an annual basis, in accordance with the CEO's Performance Plan and contractual requirements.
- 10.3 Council will meet expenses incurred by the CEO in relation to:
- 10.3.1 membership and subscription fees payable to professional associations which are reasonably necessary in order to carry out duties;
  - 10.3.2 reasonable costs incurred where attending conferences, seminars or other networking functions; and
  - 10.3.3 reasonable costs incurred in performance of required duties.

## 11. Performance monitoring

- 11.1 Council will adopt an annual Performance Plan for the CEO, which will include KPIs. The Performance Plan must be developed by the Committee in consultation with the CEO.
- 11.2 The CEO is to provide progress reports against the Performance Plan to the Committee on a quarterly basis.
- 11.3 The Committee may meet with the CEO following each progress report to discuss the matters contained in the progress report and any feedback from Council.
- 11.4 Following the initial 6 months of the CEO's term, a workshop with Councillors and the CEO should be arranged quarterly so that:
- 11.4.1 the CEO can prepare and present their views formed since their appointment on any related matters, and highlight any projections or forecasts of relevance to Council during their tenure;
  - 11.4.2 Councillors can provide feedback to the CEO on their perspective of the CEO's performance during the initial period of the CEO's employment; and
  - 11.4.3 Council and the CEO can consider projects and priorities for inclusion in the CEO's Performance Plan and KPIs.
- 11.5 Nothing in this Policy prevents the Committee and/or Council from monitoring the CEO's performance on an ongoing basis.

## 12. Annual review

- 12.1 In preparation for Council's review, the Committee is required to submit an annual review report (**Annual Review Report**) to Council which includes recommendations on the following:
- 12.1.1 whether, and to what extent, the CEO has met the KPIs under the Performance Plan;
  - 12.1.2 whether, and to what extent or in what respect, any KPIs or other criteria ought to be varied under the Performance Plan;

<sup>1</sup> Section 45(3)(a) of the Act requires Council to have regard to any statement of policy issued by Government of Victoria which is in force with respect to its wages policy (or equivalent). The current Victorian Government Wages Policy applies in the public sector from 1 January 2022. See: <https://www.vic.gov.au/moving-new-wages-policy-2022>.

<sup>2</sup> Section 45(3)(b) of the Act requires Council to have regard to the published remuneration bands for executives employed in public service bodies. See: <https://www.vic.gov.au/tribunals-determination-vps-executive-remuneration-bands>

12.1.3 whether, and to what extent, the Remuneration Package ought to be varied; and

12.1.4 any other necessary matters.

12.2 The Committee will submit the Annual Review Report to Council only after meeting with the CEO to discuss the Committee's proposed recommendations.

12.3 Council shall, after receipt of the Annual Review Report, review the recommendations in the Annual Review Report, resolve upon the matters described in clause 12.1 and advise the CEO of the terms or effect of the Resolution.

### **13. Acting CEO**

13.1 Council must appoint an Acting CEO when there is a vacancy in the office of the CEO or the CEO is unable to perform their duties under the Contract of Employment for a period exceeding 28 days.

13.2 The appointment of the Acting CEO must be made by a Resolution unless the Acting CEO is appointed for a period not exceeding 28 days, in which case the CEO may appoint an Acting CEO under delegation from Council pursuant to section 11(3) of the Act.

13.3 Where applicable, the Committee may advise Council on the selection and appointment of an Acting CEO.

### **14. Independent advice**

14.1 The Independent Advisor is responsible for providing independent professional advice in relation to the matters dealt with under this Policy in accordance with section 45(2)(a) of the Act.

14.2 Council will determine the:

14.2.1 term of appointment of the Independent Advisor; and

14.2.2 remuneration of the Independent Advisor,

and ensure ~~that it is a term of the Independent Advisor's engagement that~~ the Independent Advisor keep confidential all information which the Independent Advisor acquires by virtue of the engagement.

14.3 Council, or the Committee with the approval of a Resolution, can, on an as needed basis, obtain additional independent professional advice in relation to the matters dealt with under this Policy.

### **15. Dispute Resolution**

15.1 In relation to any matter under this Policy or the CEO's Contract of Employment that may be in dispute, either the CEO or Council may:

15.1.1 give written notice to each other of the particulars of any matter in dispute, and

15.1.2 within 14 days of receiving a notice specified in clause 15.1.1, a meeting will be convened between the Committee and the CEO in an attempt to resolve the dispute.

15.2 If the dispute is not resolved, Council (in consultation with the CEO and on the recommendation of the Committee) will either within 14 days:

15.2.1 refer the dispute to an independent mediator (as agreed by the CEO and Council, or if they cannot agree a mediator appointed by the Executive Director of Local Government Victoria) and the Committee/Council agree to participate in any mediation process in good faith; or

15.2.2 nominate one or more external persons for the purpose of conducting further investigation and discussion (including any consultation with the CEO, as required) and making a recommendation to Council. Persons nominated for this purpose will have had no prior involvement in the dispute.

- 15.3 The cost of any mediation or investigation will be met by Council.
- 15.4 Having regard to any proposed outcome from any mediation under clause 15.2.1, or the recommendation made in accordance with clause 15.2.2, Council will make a final decision regarding the dispute which shall be binding on the parties.
- 15.5 During this process, no party shall be prejudiced as to the final resolution of the dispute. The parties will co-operate to ensure that the steps required to reach a resolution are carried out as expeditiously as possible for the benefit of all concerned.
- 15.6 Council and/or the CEO may nominate a representative (including a legal representative) to assist it and/or the CEO in this process. The CEO and/or Council will each be responsible for meeting the cost of any nominated representative used by them or it.
- 15.7 Neither the Committee nor the Mayor can make any binding decision under any dispute resolution process, without a [Council](#) Resolution.

**16. Administrative Support**

- 16.1 Council acknowledges that, in implementing this Policy, it, the Committee and/or the Independent Advisor will from time to time require the assistance of members of staff, including assistance in relation to governance and human resources matters, and (where relevant) procurement and contract management.
- 16.2 Council, the Committee and/or the Independent Advisor may from time to time request a member of staff to provide assistance in implementing this Policy, recognising that the position of the member of staff is made difficult because they are accountable to the CEO (or a person acting as CEO) and therefore requests for assistance need to be limited to no more than those which are reasonably necessary.
- 16.3 The CEO should be kept informed of any decisions made to utilise Council staff for the purposes outlined in this section.

**17. Interaction with Act and Regulations**

- 17.1 This Policy applies subject to any inconsistent obligations in the Act or the Regulations.

**18. Confidentiality**

- 18.1 Council is not required to disclose any personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

**19. Delegations**

- 19.1 As set out in clause 13.2, Council must not delegate the power to appoint the CEO, whether on a permanent or acting basis, however, it may delegate to the CEO the power to appoint an Acting CEO for a period not exceeding 28 days (sections 11(2)(d) and 11(3) of the Act).
- 19.2 Council must not delegate the power to make any decision in relation to the employment, dismissal or removal of the CEO (section 11(2)(e) of the Act).

**20. Review of Policy**

- 20.1 This Policy will be reviewed within 12 months of its adoption by Council.
- 20.2 This Policy will thereafter be reviewed at least every 2 years by the Committee and within 6 months of each Council election, and the Committee will make a recommendation to Council with respect to any suggested changes.

## REVISION HISTORY

VERSION	MAJOR / MINOR UPDATE	SUMMARY OF CHANGES
1.0	Not applicable	No review required as this policy is still valid
2.0 <a href="#">March 2023</a>	Major update	Full review and rewrite of the policy to align with the legislative requirements as set out in the <i>Local Government Act 2020</i>
3.0 <a href="#">April 2024</a>	<a href="#">Minor Update</a>	<a href="#">Minor update to wording</a>



WELLINGTON  
SHIRE COUNCIL

*The Heart of Gippsland*

**ORDINARY COUNCIL MEETING  
7 MAY 2024**

I declare that the information contained in the attached documents; **CERC Minutes 9 April 2024, Michael Malouf CERC Independent Advisor Overview & Malouf Michael CV and Timeline CEO Performance Reviews and KPIs 23/24 and 24/25**, relating to CEO Employment and Remuneration Committee Recommendations is confidential because it contains confidential information as defined in section 3(1) of the *Local Government Act 2020*;

***(f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs***

.....  
**ARTHUR SKIPITARIS**  
General Manager Corporate Services  
30/04/2024



## 11.3. UPDATE OF COUNCILLOR CODE OF CONDUCT

### ACTION OFFICER: GENERAL MANAGER CORPORATE SERVICES

#### PURPOSE

To approve the revised Councillor Code of Conduct, as attached and approve the publication of the revised Councillor Code of Conduct on Council's website.

#### PUBLIC QUESTIONS AND COMMENTS FROM THE GALLERY

#### RECOMMENDATION

***That Council:***

- 1. Approve the revised Councillor Code of Conduct, as attached; and***
- 2. Authorise the publication of the revised Councillor Code of Conduct on Council's website.***

#### BACKGROUND

This report sets out a proposed amendment to the Councillor Code of Conduct (the Code) at Attachment 11.3.1.

The *Local Government Act 2020* (the Act) requires Council to have a Councillor Code of Conduct and the Act provides for the amendment of the Code at any time.

The proposed amendment of the Code is to strengthen the Council's position of zero tolerance on child abuse as outlined in Council's Child Safe Policy (internal policy number 2.1.4).

The attached Councillor Code of Conduct contains all revisions, which have been highlighted in yellow for ease of review. Once approved by Council, a final formatted copy will be released to councillors and made available for public access on Council's website.

Council's Child Safe Policy provides a framework for Council to meet its obligations under the *Child Wellbeing and Safety Act 2005* and the Child Victorian Child Safe Standards.

Victoria first introduced Child Safe Standards in 2016. In July 2022, the Victorian Child Safe Standards were updated to align more closely with the National Principles for Child Safe Organisations. There are now 11 Child Safe Standards.

Standard 2 requires child safety to be embedded in organisational leadership, governance and culture. As a minimum, this requires:

- The organisation to make a public commitment to child safety.
- A child safe culture to be championed and modelled at all levels of the organisation from the top down and bottom up.
- Governance arrangements to facilitate the implementation of the Child Safety Policy at all levels.
- A Code of Conduct that provides staff and volunteers with expected behavioural standards and responsibilities.

- Risk management strategies that focus on preventing, identifying and mitigating risk to children and young people.
- Staff and volunteers to understand their obligations on information sharing and record keeping.

With these legal and moral responsibilities in existence, the Code should reflect expectations of Councillor conduct in maintaining the highest standards of professional conduct in their attitude and behaviour towards, and in their interactions with, children and young people. As leaders, Councillors have a responsibility to uphold the rights and best interests of children and young people.

Some Victorian Councils have already incorporated reference to child safety in their Councillor Code of Conduct.

## **ATTACHMENTS**

1. Amended 2020-2024 Councillor Code of Conduct [**11.3.1** - 34 pages]

## **OPTIONS**

Council has the following options available:

1. Approve the revised Councillor Code of Conduct, as attached, and authorise the publication of the revised Councillor Code of Conduct on Council's website; or
2. Not approve the revised Councillor Code of Conduct, as attached, or authorise the publication of the revised Councillor Code of Conduct on Council's website and request further review.

## **PROPOSAL**

For Council to approve the revised Councillor Code of Conduct, as attached and approve the publication of the revised Councillor Code of Conduct on Council's website.

## **CONFLICT OF INTEREST**

No staff and/or contractors involved in the compilation of this report have declared a conflict of interest.

## **FINANCIAL IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **COMMUNICATION IMPACT**

The availability of the Councillor Code of Conduct on Council's website provides the community with the opportunity to access and review the standards by which their elected representatives are expected to hold themselves to and abide by.

It also provides guidance in the event of any Councillor breach of the Code of Conduct and is intended to increase public confidence in the administration of Council.

## **LEGISLATIVE IMPACT**

Section 139 of the Act requires that a Council develop and adopt a Councillor Code of Conduct within four months of a general election.

Adoption of the Councillor Code of Conduct is by Council Resolution.

## **COUNCIL POLICY IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **COUNCIL PLAN IMPACT**

This impact has been assessed and while it does not meet a specific Council Plan strategic outcome, it does align with Council's good governance framework.

## **RESOURCES AND STAFF IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **COMMUNITY IMPACT**

A clear and consistent Councillor Code of Conduct will assist in enhancing a strong governance framework which in turn promotes transparency and trust within the community.

## **ENVIRONMENTAL IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **ENGAGEMENT IMPACT**

This impact has been assessed and there is no effect to consider at this time.

## **RISK MANAGEMENT IMPACT**

This impact has been assessed and there is no effect to consider at this time.



WELLINGTON  
SHIRE COUNCIL

*The Heart of Gippsland*

**COUNCILLOR  
CODE OF CONDUCT  
2021 - 2024**

**Adopted by Council on the 16 February 2021**

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## Councillor Code of Conduct

### 1. Introduction

The *Local Government Act 2020* (the Act) and *Local Government (Governance and Integrity) Regulations 2020* (the Regulations) requires a Council to develop and maintain a Councillor Code of Conduct.

Wellington Shire Council's Councillor Code of Conduct sets out the minimum standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors as required under the Act and the Regulations.

The Councillor Code of Conduct is prescribed by the Regulations to assist Councillors by:

- (a) Providing understanding and guidance for compliance with the Standards of Conduct; and
- (b) Enabling Councillors to recognise how the Standards of Conduct enhance the Code of Conduct in directing them in fulfilling their statutory duties.

### 2. Adoption of the Councillor Code of Conduct

A person elected to be a Councillor is not capable of acting as a Councillor until the person has read the Councillor Code of Conduct and made a sworn declaration in the form of the Oath or Affirmation of Office stating that they will abide by the Councillor Code of Conduct and the declaration signed. If the Councillor fails to make a declaration to abide by the Councillor Code of Conduct within three months of being elected, their position is declared vacated. It is the personal responsibility of Councillors to ensure that they are conversant with, and comply with, the provisions of this Code.

A Council must, within four months after a general election, review and adopt the Councillor Code of Conduct. This is to occur by a formal resolution of Council passed at a meeting by at least two-thirds of the total number of Councillors. Until such time as the revised Councillor Code of Conduct is formally resolved, the existing Councillor Code of Conduct remains in force and Councillors are required to abide by the version in force.

Council may also choose to review this Code of Conduct at any other time.

A copy of this Code of Conduct (as amended from time to time) must be:

- given to each councillor;
- available for inspection at the Council office and any district offices; and
- published on the Council's internet website.

### 3. Primary Principle of Councillor Conduct

The purpose of local government is to provide a system under which Councils perform the functions and exercise the powers conferred by or under the *Local Government Act 2020* and any other Act for the peace, order and good government of their municipal districts. Good governance is fundamental to a Council being able to perform its purpose and relies on good working relations between Councillors but also with Council staff.

A Councillor must:

- act with integrity;
- impartially exercise their responsibilities in the interests of the local community; and
- not improperly seek to confer an advantage or disadvantage on any person.

Wellington Shire Council's Councillor Code of Conduct will assist Councillors in achieving their Primary Principles by:

- setting out the standards of conduct expected of elected representatives;
- endeavouring to foster good working relations between Councillors to enable a collegiate environment to work constructively together in the best interests of the Wellington Shire;
- mandating Councillor conduct designed to build public confidence in the integrity of local government;
- setting out the internal resolution procedure for dealing with misconduct and alleged contravention of the Councillor Code of Conduct;
- setting out processes for the purpose of resolving internal dispute between Councillors and Councillors and Council staff;
- facilitating contribution toward the strategic direction of the council through the development and review of key strategic documents of the council, including the Council Plan; and
- including other matters relating to the conduct of Councillors, which we as Councillors, consider to be appropriate.

The primary role of Councillors is to set the vision and direction for the Wellington Shire and to advocate on behalf of the municipality as a whole. Councillors recognise that they should represent and promote the interests of the entire Wellington Shire community, as a whole (not just one geographical area or ward), whilst recognising their particular relationship with their constituents.

#### 4. Standards of Conduct

The Act and Regulations place specific obligations on Councillors in relation to way they should act. The Act and Regulations also prohibit certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions. Councillors of Wellington Shire Council undertake to comply with the various provisions of the Act and with this Code of Conduct.





Section 12 and Schedule 1 of the Regulations sets out the Standards of Conduct detailing the following expectations of Councillors in carrying out their role:

**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.

**Performing the role of Councillor**

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

- (a) undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and
- (b) diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- (c) is fit to 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.

**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.

**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.

**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.

Councillors are required to conduct themselves in observance of these Standards of Conduct, in conjunction with the Councillor Code of Conduct.

The Wellington Shire Council also strives to be an organisation of exceptional character.

Councillors commit to lead by example, promote the highest standard in the way that Council business is conducted, undertake to comply with various provisions of the Act and Regulations, and collectively adhere to the behaviours detailed below which are encapsulated by the acronym REACH, which stands for Respectful, Engaged, Accountable, Creative and Honest:

<b>R</b>	<p><b>RESPECT AND RESPONSIBILITY – Councillors will;</b></p> <ul style="list-style-type: none"> <li>• respect and care about the community, each other, and themselves</li> <li>• act with integrity at all times and in all matters</li> <li>• take time to listen, to seek and to understand the other point of view</li> <li>• treat fellow Councillors with respect, even if they disagree with other views or decisions</li> <li>• debate contentious issues without resorting to personal acrimony or insult</li> <li>• strive to understand and respect the diversity of the community</li> <li>• understand their community role and respect the responsibility that comes with it</li> <li>• respect and work towards harmonious working relationships with others</li> <li>• act with courtesy towards Council staff and avoid intimidatory behaviour</li> <li>• support one another and staff if they are treated unfairly or without respect</li> <li>• accept that no Councillor can direct another Councillor on how to vote on any decision</li> </ul>
<b>E</b>	<p><b>ENGAGED – Councillors will;</b></p> <ul style="list-style-type: none"> <li>• listen to the community and respond</li> <li>• work together with the community and each other to achieve the best outcomes</li> <li>• have the confidence to challenge the status quo, to reach for better outcomes</li> <li>• are action-oriented in identifying and responding to new challenges</li> <li>• are responsive to the needs of the community</li> <li>• encourage active community participation in civic life</li> <li>• welcome the opinions of the community and respect their right to be heard</li> </ul>
<b>A</b>	<p><b>ACCOUNTABLE – Councillors will;</b></p> <ul style="list-style-type: none"> <li>• spend their time and effort on solutions rather than looking for someone to blame</li> <li>• take responsibility for their decisions and actions and act and work in an open and transparent manner</li> <li>• abide by all the governing Council policies and the local government sector legislation</li> </ul>

	<ul style="list-style-type: none"> <li>ensure the best use of Council resources</li> </ul>
<b>C</b>	<p><b>CREATIVE / COURAGE – Councillors will;</b></p> <ul style="list-style-type: none"> <li>care about getting the best outcomes</li> <li>constantly ask “what’s the future and what’s possible?”</li> <li>have the courage to try new ideas</li> <li>strive for excellence in everything they do</li> <li>have the courage to take on big projects and to look at the big picture</li> <li>have the courage to make sound judgements based on evidence and research to make good decisions at the right time</li> <li>persevere and commit to accomplish goals in the best interest of the Shire</li> </ul>
<b>H</b>	<p><b>HONEST – Councillors will;</b></p> <ul style="list-style-type: none"> <li>tell the truth in all dealings with the community, Councillors and Council staff</li> <li>always act with impartiality and in the best interests of the whole Shire</li> <li>form opinions and give advice from sound, evidenced-based research</li> <li>exercise reasonable care and diligence in performing their function as Councillors</li> <li>act with humility and apply the highest standards of ethical behaviour to everything they do</li> <li>comply with all relevant laws, be they Federal, State or Local Laws</li> <li>accept responsibility for mistakes and see them as opportunities for continuous improvement and growth</li> </ul>

## 5. Key Relationships, Roles and Responsibilities

A successful and harmonious Council term relies on the Mayor, Councillors, the Chief Executive Officer (CEO) and Management forming a strong working relationship built on clear and open communication to allow the focus to remain on delivering key initiatives, plans and strategies throughout the Shire.

### Relationship between the Mayor and Councillors

An effective relationship between the Mayor and Councillors will help to promote the successful delivery of the Council Plan and various strategies for the betterment of the Shire. The relationship must be based on mutual respect and understanding of the different roles. Some important aspects of this relationship include but are not limited to:

- the Mayor is the leader of the Council and this role should be respected by all Councillors;
- the Mayor should facilitate an inclusive approach to decision-making and involvement in Council activities; and
- the Mayor is able to help Councillors and should facilitate the resolution of any disputes between Councillors.

### Relationship between the Mayor and the CEO

The strong working relationship between the Mayor and the CEO assists in the smooth running of Council through good communication and anticipation of issues. This relationship focuses on ways in which Councillors and the organisation can be best supported to mutually achieve the Council's goals.

Some important aspects of this relationship include but are not limited to:

- (a) both parties work together regularly to achieve and maintain a good working relationship
- (b) the relationship is characterised by consistency, openness and clear communication whereby both parties have the responsibility to keep the other informed about important and relevant issues; and
- (c) the relationship between the Mayor and the CEO promotes involvement and inclusion amongst all of the Councillors and management and does not seek to concentrate power within the relationship.

### **Relationship between the Councillors and the CEO**

Effective relationships between Councillors and the CEO can improve communication and interactions between the Councillors and management. The CEO is often able to assist Councillors in addressing issues within the Shire through the maintenance of a strong and open relationship. The CEO is accountable to Councillors when they sit as Council and Councillors, sitting as Council, are responsible for the performance management of the CEO. Some important aspects of this relationship include but are not limited to:

- (a) each having a good understanding of each other's roles and responsibilities;
- (b) Councillors understand that the CEO can be a source of advice and support and that honest and open communication between Councillors and the CEO can assist the CEO's role;
- (c) Councillors are a source of information to the CEO about what is happening in the community.

### **Relationship between Councillors and Management**

The fundamental differences in role and responsibility between Councillors and Management underpin this relationship. Councillors should be focused on strategy, policy and be outcomes driven which means that the focus should remain on who is going to benefit from Council's activities and in what way. The role of Management is to focus on advice, implementation, operations and acting upon Council resolutions. Some important aspects of this relationship include but are not limited to:

- (a) a mutual understanding, acceptance and respect for each other's roles;
- (b) a preparedness to identify, discuss and resolve issues and problems if and as they arise;
- (c) policies are in place that inform and guide Councillor and staff communication and interaction.

### **Role of Council**

The primary role of the Council is to provide leadership for the good governance of the Wellington Shire and the wellbeing of the municipal community. The role of the Council also includes:

- (a) acting as a representative government by taking into account the diverse needs of the Wellington Shire in decision making;
- (b) providing leadership by establishing strategic objectives and monitoring their achievement;
- (c) maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;
- (d) advocating the interests of the local community to other communities and governments;
- (e) acting as a responsible partner in government by taking into account the needs of other communities; and
- (f) fostering community cohesion and encouraging active participation in civic life.

**Role of a Councillor**

The role of a Councillor as defined within section 28 of the Act 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.

In performing their role, 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.

The role of a Councillor does not include the performance of any responsibilities or functions of the CEO.

**Role of the Mayor**

The Mayor is the elected leader and is the key formal representative of Council. The Mayor, by virtue of the position, is expected to foster positive relationships between Councillors, encourage cooperation among Councillors and promote unity.

Promoting good relations between Councillors before contentious issues arise increases the likelihood that these issues can be dealt with robustly but without becoming divisive in a way that damages the reputation of the Council.

Section 18 of the Act describes the functions of the Mayor as including:

- (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.

## Role of the CEO

The CEO is responsible for managing interactions between Council staff and Councillors by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

The CEO has a number of statutory responsibilities and is accountable to the elected Council for delivering Council's policies, plans, strategies, and services. As the head of the organisation, the CEO's role is to provide professional, relevant, and timely information and support to Council. The CEO is also responsible for the staff of Council which includes appointing, directing and dismissing staff. Councillors have no right to individually direct staff to carry out particular functions or display intimidating behaviour.

The CEO is also responsible for a number of functions including:

- (a) establishing and maintaining an appropriate organisational structure;
- (b) ensuring that the decisions of the Council are implemented without undue delay;
- (c) the day to day management of Council's operations in accordance with the Council Plan;
- (d) developing, adopting and disseminating a code of conduct for Council staff;
- (e) providing timely advice to the Council;
- (f) ensuring that the council receives timely and reliable advice about its legal obligations under this Act and any other Act;
- (g) supporting the Mayor in the performance of the Mayor's role;
- (h) 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 *Accident Compensation Act 1985* or the *Workplace Injury Rehabilitation and Compensation Act 2013*;
- (i) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act;

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

## Representatives on Behalf of Council

As leader and chief spokesperson for the Council, the Mayor represents the Council at official functions and events.

Opportunities for Councillors to represent the Council will generally occur in one of the following ways:

- (a) referral of an invitation sent directly to the Mayor;
- (b) an invitation directly to a Councillor from an external source;
- (c) an invitation forwarded to management from an external source seeking the nomination of the appropriate Councillor; or
- (d) an invitation to a Councillor by a member of management.

In determining the appropriate representative in the circumstances referred to above, consideration should be given to the role and responsibilities of Councillors.

## 6. Good Governance Measures for Councillors

A Councillor, to ensure the good governance of the Council, must diligently and properly comply with a number of regulations as set out in the Standards of Conduct. These regulations relate to Council's governance requirements under the Act with the aim of creating an environment of transparency, openness and legislative compliance.

### Personal Interest Returns

A Councillor will find, on occasions, that there is a conflict or incompatibility between personal interests and their declaration to "...faithfully and impartially..." fulfil their public duties. The Act provides a mechanism to deal with these situations in the form of Personal Interests Returns.

Within thirty days of making the oath of office, a Councillor must complete a written Initial Personal Interests Return to disclose any matters which might conflict with their public duty. These returns are then completed twice yearly for the remainder of the Council Term (March and September).

A summary of these returns will be made available on Council's website for public inspection.

### Councillor Expenses

Council adopted the "Councillor Expense and Administration" policy at the September 2020 Ordinary Council meeting and the purpose of this policy is to establish the basis by which Councillors will be reimbursed for expenses while undertaking their role as Councillor. All expenses claimed by a Councillor in the carrying out of Council duties must be for a clear business purpose and substantiated by receipts and supporting documents as detailed in the policy.

### Administrative Support

An appropriate level of administrative support will be made available to assist the Mayor and Councillors in performing their roles. Administrative support may include, but not be limited to, the preparation of correspondence, responding to invitations, press release research, and constituent/community contact activities.

### Communication and Internet Expenses

Councillors are provided with all the resources required to fulfill their role as Councillors including mobile phone, laptop and printer (if required). Councillors are required to read and comply with Council's corporate policies in relation to the use of telecommunication and information technology equipment for carrying out of Council business and Councillor responsibilities. Use of technology resources and data for non-business purposes will be monitored by the General Manager Corporate Services with any concerns reported directly to the Councillor and CEO.

### Travel Expenses

Councillors may have the opportunity of attending conferences, seminars and training courses or participate or present as an official Council representative.

The "Councillor Expense and Administration" policy, outlines the processes to be followed in relation to associated travel expenses and arrangements.

### Councillor Allowances

Councils are divided into three categories based on the income and population of each Council. Wellington Shire Council is classified as a Category 2 Council and the current allowance ranges are available on the Know Your Council website. The Act specifies that a Council does not have to pay an allowance to a Councillor who does not wish to receive it.

### **Remote Area Allowance**

Council will also provide compensation to Councillors living in remote areas where long distance travel is required to carry out Council business. This allowance is set at a maximum limit of \$5,000 per annum (equating to a daily rate of \$40). The Remote Area Allowance Guideline provides full details and a checklist to assist Councillors in determining if the provision applies.

### **Reimbursement of Expenses**

Council will reimburse Councillors for expenses incurred during the course of carrying out their duties. Examples of these expenses are:

- (a) child care services;
- (b) private vehicles used on Council business;
- (c) travel on Council business;
- (d) food, beverage (with the exclusion of alcohol) and hospitality;
- (e) conferences and training.

All requests by Councillors for expense reimbursements will require appropriate evidence with an explanation of the clear business purpose for which the expense was incurred.

### **Governance Rules and Local Law 2020 – Common Seal and Enforcement and Penalties**

The details of Council's framework for processes of municipal government is outlined in Council's Governance Rules and elements relating to enforcement of penalties for breaches of the Governance Rules reside within the Local Law No 1.

The Governance Rules include details such as handling conflicts of interest, maintaining a quorum, agendas and minutes and the processes of Council meetings. They also provide Councillors with the rules of debate and how a decision of Council is made. There are many ways in which a Councillor can voice their opinion on a matter, but it must be in accordance with the Governance Rules and with the approval of the Mayor, whose role it is to control the direction of the meeting.

## **7. Conflict Resolution**

As required by the Act, the Councillor Code of Conduct must outline the processes to be followed should a conflict arise between Councillors resulting from allegations of misconduct.

It is expected that prior to any formal dispute resolution processes commencing, Councillors will endeavour to resolve their differences between themselves. If Councillors cannot resolve a dispute amongst themselves, the Act creates several levels for the management of Councillor conduct issues.

### **Definitions and Consequences of Misconduct**

Definitions for misconduct, serious misconduct and gross misconduct by Councillors are summarised in the table following, along with the authority responsible for addressing the matter.



DEGREE OF SERIOUSNESS	DEFINITION	RESPONSIBLE AUTHORITY	FINDINGS	CONSEQUENCES
<b>Conduct inconsistent with standards Council has set itself</b>	Breaches of Councillor Code of Conduct	Council Mayor Councillor Conduct Officer	Remedial Action	<ul style="list-style-type: none"> <li>• Mediation</li> <li>• Training</li> <li>• Counselling</li> </ul>
<b>Misconduct</b>	Failing to comply with a Council's internal resolution procedure, including failure to abide by any decision of Council in relation to a breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct	Panel	Misconduct	<ul style="list-style-type: none"> <li>• Reprimand</li> <li>• Apology</li> <li>• Leave of absence (max 2 mths)</li> <li>• Ineligible to be Mayor (max 4 yrs)</li> </ul>
<b>Serious Misconduct</b>	Failing to attend panel or comply with panel processes or directions. Bullying of councillor or staff or improperly directing staff. Releasing confidential information. Repeated misconduct after a finding of misconduct by the panel	Panel	Serious Misconduct	<ul style="list-style-type: none"> <li>• Ineligible to be Mayor (max 4 yrs)</li> <li>• Reprimand</li> <li>• Apology</li> <li>• Leave of absence</li> <li>• Suspension (max 12 mths)</li> <li>• Ineligible to chair delegated committee (max 4 yrs)</li> </ul>
<b>Gross Misconduct</b>	Behaviour that demonstrates that a Councillor 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	VCAT	Gross Misconduct	<ul style="list-style-type: none"> <li>• Disqualification (max 4 yrs)</li> <li>• Ineligible to be candidate (max 8 yrs)</li> </ul>

Any management of councillor conduct issues is designed to:

- reinforce the responsibility and authority of councils to manage breaches of agreed conduct through a mandatory internal resolution procedure;
- Only escalate management of misconduct and serious misconduct to panels when Council cannot resolve the matter internally;
- give panels' greater powers to manage and resolve misconduct and serious misconduct; and
- retain the capacity to manage gross misconduct through VCAT.

If a complaint is made that a Councillor has breached the Councillor Code of Conduct, Council's internal resolution procedure will be followed. The Councillor Code of Conduct sets out the process that will be followed and the sanctions that can be applied against a Councillor should the complaint be upheld at Appendix 2.

To ensure a fair process is undertaken, complaints under the internal resolution procedure are investigated by an independent mediator or arbiter. Allegations of misconduct, serious misconduct and gross misconduct are dealt with externally and independently from Council by either an arbiter, Councillor Conduct Panel or VCAT.

## 8. Prohibited Conduct

The *Local Government Act 2020* has specific provisions that prohibit Councillors from certain conduct. This conduct relates to:

- Electoral Conduct (section 69)
- Misuse of Position (section 123)
- Improper Direction and Influence (section 124)
- Confidential Information (section 125)
- Conflict of Interest (sections 126-131)

These matters are set out below in order to provide a complete picture of the obligations on Councillors. While these matters are not of a nature to be addressed as a contravention of the Councillor Code of Conduct, we undertake to comply with the prohibitions on Councillor conduct set out below. These matters should more properly be the subject of an application to a Councillor Conduct Panel for a finding of serious misconduct or a complaint to the Chief Municipal Inspector or the Independent Broad-based Anti-corruption Commission depending on the nature of the allegation.

### Electoral Conduct

Wellington Shire Council is committed to fair and democratic elections and has adopted an Election Period Policy, which is contained in the Governance Rules, and provides Councillors an outline of expected behaviours for the conduct of Council business during the lead up to a General Election. Chapter 17 of the Governance Rules provides full details and can be found on the Councillor Homepage.

A Councillor who nominates as a candidate for a state or federal election (a Nominated Candidate), must apply for leave of absence from the Council and this leave of absence must commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election (Nomination Date) and conclude no earlier than the close of voting for the election. During this period, a Councillor who is on a leave of absence must not attend meetings of the Council or otherwise act as a Councillor.

### Misuse of Position

Councillors also recognise that they hold a **position of trust** and will not 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.

Circumstances involving the misuse of position by a Councillor include:

- (a) making improper use of information acquired as a result of the position the person held or holds;
- (b) disclosing information that is confidential information;
- (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff;
- (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;
- (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.

### Improper Direction and Influence

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

- (a) in the exercise of a delegated power, or the performance of a delegated duty or function, of the Council;
- (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;
- (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;
- (d) in relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated committee.

### Confidential Information

A Councillor must not disclose information that he or she knows, or should reasonably know, is confidential information. This also includes any information that is made available through Council workshops and other discussions, until such time it is deemed available for public knowledge.

A person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, may disclose information that the person knows, or should reasonably know, is confidential information in the following circumstances:

- (a) for the purposes of any legal proceedings arising out of this Act;
- (b) to a court or tribunal in the course of legal proceedings;
- (c) pursuant to an order of a court or tribunal;
- (d) in the course of an internal arbitration and for the purposes of the internal arbitration process;
- (e) in the course of a Councillor Conduct Panel hearing and for the purposes of the hearing;
- (f) to a Municipal Monitor to the extent reasonably required by the Municipal Monitor;
- (g) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;

- (h) to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry;  
or
- (i) to the extent reasonably required by a law enforcement agency.

### Conflict of Interest

Councillors are committed to making all decisions impartially and in the best interests of the whole community. It therefore recognises the importance of fully observing the requirements of the Act in regard to the disclosure of conflicts of interest.

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council, an Assembly of Councillors or an Audit Committee, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the provisions of the Act (unless any of the exemptions apply).

A Councillor will have either a general or material conflict of interest. For example:

- A relevant person 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.
- A relevant person has a **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. The benefit may arise or the loss incurred directly or indirectly or in a pecuniary or non-pecuniary form.

### Section 130 - Disclosure of Conflict of Interest

Councillors who have a conflict of interest in a matter to be discussed at any meeting must disclose the conflict of interest if they are attending the meeting.

Councillors will comply with all the provisions of the Act in regard to Conflicts of Interest:

- (1) This section applies in respect of a conflict of interest in respect of a matter—
  - (a) to be considered at a Council meeting; or
  - (b) to be considered at a meeting of a delegated committee; or
  - (c) to be considered at a meeting of a community asset committee; or
  - (d) that arises in the course of the exercise of a power of delegation by a member of Council staff; or
  - (e) that arises in the course of the exercise of a statutory function under this Act or any other Act.
- (2) A relevant person who has a conflict of interest in respect of a matter must—
  - (a) disclose the conflict of interest in the manner required by the Council's Governance Rules; and
  - (b) exclude themselves from the decision making process in relation to that matter, including any discussion or vote on the matter at any Council meeting or delegated committee, and any action in relation to the matter.
- (3) A relevant person must not fail to comply with subsection (2) in respect of a conflict of interest that is a material conflict of interest.
- (4) If a relevant person who fails to comply with subsection (2) in respect of a conflict of interest that is a general conflict of interest is a Councillor who has been previously—
  - (a) found guilty by a court of a conflict of interest offence against this Act; or

(b) subject to a finding of serious misconduct by a Councillor Conduct Panel for a conflict of interest breach

the relevant person commits an offence against this Act and is liable to a fine not exceeding 120 penalty units.

- (5) If a relevant person who fails to comply with subsection (2) in respect of a conflict of interest that is a material conflict of interest or a general conflict of interest is a Councillor, an application may be made under section 154 to a Councillor Conduct Panel alleging serious misconduct.
- (6) If a relevant person who fails to comply with subsection (2) is the Chief Executive Officer, the Mayor must notify the Chief Municipal Inspector as soon as practicable after the Mayor becomes aware that the Chief Executive Officer has failed to comply with subsection (2).
- (7) If a relevant person who fails to comply with subsection (2) is a member of Council staff other than the Chief Executive Officer, the Chief Executive Officer—
  - (a) must notify the Chief Municipal Inspector as soon as practicable after the Chief Executive Officer becomes aware that the member of Council staff has failed to comply with subsection (2); and
  - (b) must deal with the failure to comply with subsection (2) in accordance with the code of conduct for members of Council staff.
- (8) If a relevant person who fails to comply with subsection (2) is a person other than a Councillor or a member of Council staff, the Chief Executive Officer must notify the Council and make a recommendation to the Council as to the action that is to be taken.

***For the purpose of this Code of Conduct, Councillors are to declare a Conflict of Interest based on the conditions in the following table.***

***If Councillors are unsure if a declaration should be made, they should err on the side of caution, presume a conflict of interest exists and proceed to make a declaration.***

CONFLICT TYPE	DEFINITIONS
<p><b>GENERAL CONFLICT OF INTEREST</b> <b>(Section 127)</b></p> <p>(1) Subject to section 129 (Exemptions), a relevant person has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's <b>private interests</b> could result in that person acting in a manner that is contrary to their <b>public duty</b>.</p>	<p><b>Private Interests (section 127(2))</b></p> <p>Any direct or indirect interest of a relevant person that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief.</p> <hr/> <p><b>Public Duty (section 127(2))</b></p> <p>The responsibilities and obligations that a relevant person has to members of the public in their role as a relevant person</p>
<p><b>MATERIAL CONFLICT OF INTEREST</b> <b>(Section 128)</b></p> <p>(1) Subject to section 129 (Exemptions), a relevant person has a material conflict of interest in respect of a matter if an <b>affected person</b> would gain a benefit or suffer a loss</p>	<p><b>Affected Person (section 128(3))</b></p> <p>For the purposes of section 128(3), any of the following is an <b>affected person</b>—</p> <ul style="list-style-type: none"> <li>(a) the relevant person;</li> <li>(b) a family member of the relevant person;</li> </ul>

<p>depending on the outcome of the matter.</p> <p>(2) The benefit may arise or the loss incurred -</p> <p>(a) directly or indirectly; or</p> <p>(b) in a pecuniary or non-pecuniary form.</p>	<p>(c) a body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of the governing body;</p> <p>(d) an employer of the relevant person, unless the employer is a public body;</p> <p>(e) a business partner of the relevant person;</p> <p>(f) a person for whom the relevant person is a consultant, contractor or agent;</p> <p>(g) a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee;</p> <p>(h) a person from whom the relevant person has received a <b><i>Disclosable Gift (section 128(4))</i></b> -</p> <p>means one or more gifts with a total value of, or more than, \$500 or if an amount is prescribed for the purposes of section 128(4), the prescribed amount, received from a person in the 5 years preceding the decision on the matter -</p> <p>(a) if the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received; or</p> <p>(b) if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation -</p> <p>but does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a delegated committee.</p>
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**Exemptions (section 129)**

A conflict of interest does not arise if any of the following applies—

(a) the conflict of interest is so remote or insignificant that it could not be reasonably regarded as capable of influencing the actions or decisions of the relevant person in relation to the matter;

(b) the interest that would give rise to a conflict of interest is held in common with a substantial proportion of the residents, ratepayers or electors of the municipal district and does not exceed the interest held by the other residents, ratepayers or electors;

(c) the relevant person does not know the circumstances that give rise to the conflict of interest, and could not be reasonably expected to know those circumstances;

(d) the interest only arises because the relevant person is the representative of the Council on a not-for-profit organisation that has an interest in the matter and the relevant person receives no personal advantage from the not-for-profit organisation;

(e) the interest only arises because a family member of the relevant person is a member but not an office-holder of a not-for-profit organisation;

- (f) the interest only arises because the relevant person is a member of a not-for-profit organisation that has expressed an opinion or advocated for an outcome in regard to the matter;
- (g) the interest arises in relation to a decision by a Councillor on a matter or in a circumstance that is prescribed to be exempt by the regulations.

In addition to the requirements of the Act:

- (a) Councillors will give early consideration to each matter to be considered by the Council, delegated committee of which the Councillor is a member, or Assembly of Councillors, to ascertain if they have a conflict of interest;
- (b) Councillors recognise that the legal onus to determine whether a conflict of interest exists rests entirely with the individual Councillor and that Council officers cannot offer any advice in relation to potential conflicts. If a Councillor cannot confidently say that he or she does not have a conflict of interest, the Councillor will declare a conflict of interest and comply with the relevant requirements as if they had a conflict of interest;
- (c) If the Councillor considers that they may be unable to vote on a matter because of a conflict of interest, they will notify, as soon as possible, the Mayor or the Committee Chair, depending on whether the matter is to be considered by the Council or an Assembly of Councillors, as well as the CEO.

## **9. 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 CEO and 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 process detailed herein. Where the complaint involves the Mayor, the Deputy Mayor will progress the matter in accordance with this dispute resolution process.

## **10. 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 CEO. The CEO will investigate the dispute further and bring it to an appropriate resolution.

## **11. Personal Dealings with Council**

When dealing with Council in a private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit), Councillors do not expect nor will they request preferential treatment in relation to any such private matter. Councillors will avoid any action that could lead Council staff or members of the public to believe that they are seeking preferential treatment.

## **12. Gifts, Benefits and Hospitality**

Councillors will also abide by the relevant Council policy that details the receipt and declaration of all gifts, benefits and hospitality. All gifts accepted by Councillors, regardless of value, must be declared and details included on Council's Gifts, Benefits and Hospitality Declaration Register.

Councillors will scrupulously avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from the Council.



Councillors will take all reasonable steps to ensure that their immediate family members (parents, spouse, children and siblings) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

Where a gift is received on behalf of the Council, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in Council's Gifts, Benefits and Hospitality Declaration Register with a notation that it is the property of the Council.

Councillors recognise that gifts equal to or above the gift disclosure threshold received in the twelve months prior to election from a person or body that has a direct interest in a matter may give rise to a material interest because of receipt of a disclosable gift.

Examples in which Councillors should not accept a gift include where:

- (a) such a gift could be perceived as intended to or likely to influence the Councillor in the fair, impartial and efficient discharge of their duties; or
- (b) there is or may be the perception of a conflict of interest with past, present or future duties or where the object of the gift is to maintain or return a favour.

Councillors will not accept gifts, either in their roles as Councillor or where it could be perceived to influence the Councillor, except where:

- (a) the gift would generally be regarded as having a token value only and could not be perceived to influence the Councillor's actions;
- (b) the gift, in the form of hospitality, is reasonably provided by a not-for-profit organisation to a Councillor attending a function or event in an official capacity;
- (c) refusal of the gift may cause offence or embarrassment, in which case the gift may be accepted on behalf of Council and becomes the property of Council; or
- (d) there is a clear value to Council and acceptance cannot be seen to advantage the host company.

In accordance with Section 306 of the Act, each candidate in the 2020 Council election must give an election campaign donation return to the CEO within 40 days of election day. The return gives details of any gifts received by the candidate, or on behalf of the candidate, during the election period, used for or in connection with the election campaign. This includes goods or services.

As per Section 308 (2) and (3) of the Act, a summary available to view on Council's website and copies of all election campaign donation returns received are available for inspection at the Sale Service Centre.

### **13. Bullying, Harassment, Sexual Harassment and Discrimination**

Councillors are committed to providing a safe and productive working environment free from discrimination, harassment, bullying and occupational violence. Councillors are responsible for treating others with respect and are not to participate in, condone or fail to act on inappropriate behaviour of any kind.

Discrimination is defined as treating someone unfairly or unfavourably because of a personal characteristic they have or are assumed to have. Any breaches should be reported immediately to your Manager or the CEO.

No one will be victimised for identifying discrimination in our workplace.

Councillors will also abide by the relevant Council policies that encompass bullying, harassment, and discrimination.



## 14. Interacting with children

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

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

## 15. Gender Equity, Diversity and Inclusiveness

Elected Councillors have an important role to play in ensuring Council's business reflects a human rights perspective. It is therefore essential that Councillors maintain awareness of the relevance of the Human Rights Charter in relation to the work of Council and improve their understanding of how they are expected to make decisions and act in a way which is compatible with the Charter.

All members of the community, Councillors and Council staff will be treated honestly and fairly in a manner that is not discriminatory on the basis of gender, religion, race or contrary to the *Equal Opportunity Act 2010*, *Gender Equality Act 2020* and the Victorian Charter of Human Rights, and which in no way causes undue offence or embarrassment to individuals or groups.

## 16. Cultural Awareness

Wellington Shire Council acknowledges the Gunaikurnai People as the traditional owners of the land that is now Wellington Shire.

Council currently incorporates an Acknowledgement of Country at the start of each Council meeting as follows:

*"We acknowledge the traditional custodians of this land, the Gunaikurnai people, and pay respects to their Elders past and present".*

Council and its representatives will work respectfully with traditional landowners and with the Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) to create strategies to better manage land and water, maintain historical cultural sites and cultural practices.

## 17. Use of Council Resources

Councillors commit to using Council resources effectively and economically. Councillors will:

- (a) maintain adequate security over Council property, facilities and resources provided to them to assist in performing their role and will comply with any Council policies applying to their use;
- (b) maintain appropriate separation between personal property and Council property;
- (c) ensure any expense claims that are submitted are in compliance with the relevant legislative provisions and Council policy and relate strictly to a clear business purpose in the carrying out of Council duties;

- (d) not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate;
- (e) ensure that Council resources are always used effectively and economically and for the purposes for which they are provided;
- (f) ensure that Council resources are not used in a way that creates an impression of Council endorsement; and
- (g) not use public funds or resources in a manner that is improper or unauthorised.

## 18. Privacy

Councillors are also reminded that the Council complies with its Privacy and Data Protection Policy, *Privacy and Data Protection Act 2014*, *Freedom of Information Act 1982* and other relevant legislation. These assist in the regulation, management, collection, use and disclosure of 'personal information'.

If a recognised agency or Government body lawfully approaches a Councillor for any of this information, they should be referred to the CEO or General Manager Corporate Services.

## 19. Managing and Accessing Council Information

### Managing Information

While Council values openness and accountability, during the course of their duties Councillors will be privy to information that is confidential. Reference to confidential information includes sensitive matters discussed at workshops and other Assemblies of Councillors.

Councillors will manage Council information appropriately and in particular:

- (a) will not use information gained by virtue of being a Councillor for any purpose other than to exercise their role as a Councillor;
- (b) will respect the Council's policies in relation to public comments and communications with the media;
- (c) will treat with the utmost respect, information deemed "confidential information" in accordance with Section 125 of the Act;
- (d) will recognise the requirements of the *Privacy and Data Protection Act 2014* regarding the access, use and release of personal information;
- (e) will comply with the provisions of Council's Records Management Policy at all times; and
- (f) acknowledge that all mail addressed to Councillors, both hard copy and electronic, is defined as "corporate" mail and as such is subject to automatic capture and monitoring by Council Officers.

### Accessing Information

Councillors acknowledge that all requests made by Councillors for workshops from Council officers or access to information on Council files should be registered and reported. This obligation does not apply to requests for clarification/explanation of items on a forthcoming Council agenda.

In their capacity as a private resident of the Shire, Councillors may exercise their right to approach Council officers in the same way that any other resident may and expect to receive the same level of service.

### Refusal of Access to Information

Where the CEO or General Manager refuses access to information requested by a Councillor, they must take into account whether or not the information requested is required for the Councillor to perform their official functions and whether they have disclosed a conflict of interest in the matter the information relates to which would then preclude their participation in consideration of the matter. If a refusal is upheld, the CEO or General Manager must clearly state the reasons for the decision.

## **20. Occupational health and safety**

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

Councillors understand that occupational health and safety is a shared responsibility. Accordingly, Councillors agree to:

- (a) comply with the OHS Act and incident and hazard reporting procedures;
- (b) take reasonable care to protect their own health and safety as well as the health and safety of others in the workplace;
- (c) undertake training, through Council, in order to obtain an understanding of the duties and obligations imposed by the OHS Act and their application to the duties of a Councillor; and
- (d) consider any health and safety implications of Council decisions.

Councillors will abide by the relevant Council policy that details all relevant processes and procedures.

## **21. Media and Communication**

Councillors will endeavour to ensure that the messages communicated through the media are clear and consistent, and positively portray the Council as a decisive and responsible governing body in accordance with Council's Media and Communications Policy.

The Mayor and CEO will provide official comment to the media on behalf of Council where the matter is of a political, controversial, or sensitive nature. This includes:

- (a) state-wide political issues affecting Local Government;
- (b) contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community;
- (c) issues pertaining to policy and Council decisions; and
- (d) issues relating to the strategic direction of the Council.

Where appropriate, the Deputy Mayor or other Councillor may nominate to make official comment on behalf of the Council.

The CEO is the official spokesperson for all operational matters pertaining to the Wellington Shire Council as an organisation, including:

- (a) staffing and structure of the organisation; and
- (b) corporate issues relating to service provision or the day-to-day business of Council.

Individual Councillors are entitled to express independent views through the media, however Councillors will make it clear that any unofficial comment is a personal view and does not represent the position of the Council as a whole.

## 22. Councillor Involvement at Sponsored Events

As part of involvement in sponsored events, Councillors will be given the opportunity of attending and playing an official role in a wide range of activities throughout the Shire. Where an official role (speaking or otherwise) is available to Councillors, the opportunity shall first be offered to the Mayor and then the Deputy Mayor.

## 23. Civic Functions

Councillors will have the opportunity of involvement in civic functions that actively support the Council's role as a regional cultural, sporting and business centre. The hosting of civic functions is an opportunity for the Council to take an appropriate leadership role in high profile Council events and activities.

As part of the Mayor's ceremonial role, the Mayor should always take the lead role in hosting a function (when in attendance).

## 24. Candidature of Councillors

### Distinction between Prospective Candidate and Nominated Candidate

The below guidelines draw a distinction between Prospective Candidates and Nominated Candidates because, as with council elections, candidates for state and federal elections only become actual nominated candidates a few weeks prior to the relevant election date. Accordingly, this policy recommends different treatment for Prospective Candidates and Nominated Candidates on the basis that some requirements are recommended as appropriate for Nominated Candidates during a formal election period which are not considered to be necessary prior to the formal election period.

- (a) A Councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as an independent candidate for a state or federal election (a Prospective Candidate), should provide written advice to the CEO, as soon as practicable, who should then advise all Councillors.
- (b) A Councillor who is a Prospective Candidate, should declare his/her intended candidacy at a meeting of the Council as soon as practicable after notifying the CEO pursuant to point (a) above.
- (c) A Councillor who nominates as a candidate for a state or federal election (a Nominated Candidate), should apply for leave of absence from the Council and this leave of absence should commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election (Nomination Date) and conclude no earlier than the close of voting for the election. During this period, a Councillor who is on a leave of absence should not attend meetings of the Council or otherwise act as a Councillor.
- (d) Any Councillor/staff relationship protocol which the Council has in place in respect of the election period prior to a Council election, should be observed by a Nominated Candidate and this should apply from their Nomination Date until the close of voting for the election.
- (e) A Council, upon receiving an application for a leave of absence from a Councillor who is a Nominated Candidate or who intends to become a Nominated Candidate, should approve that application.
- (f) A Councillor who is a Prospective Candidate or a Nominated Candidate, should take care to differentiate between his/her role as a state or federal election candidate and role as a Councillor when making public comment.

- (g) A Councillor who is a Prospective Candidate or a Nominated Candidate, should not use Council resources, including Council equipment and facilities in relation to his/her candidacy.
- (h) A Councillor who is a Prospective Candidate or a Nominated Candidate, should not attend Council activities, including committee meetings and Council-related external activities in relation to his/her candidacy.

## **25. Other Legislative Requirements**

The Act includes requirements in relation to Councillor eligibility, electoral conduct and the election period. Alleged contraventions of these provisions are not to be dealt with by the Council using the internal resolution procedure in this Code of Conduct. Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

Councillors undertake to comply with the various provisions relating to these matters.

## **26. Other Policies and Protocols**

Councillors acknowledge that in fulfilling the statutory requirements of their role, a shared understanding of their obligation and the practical ways that they perform their duties is necessary for good governance.

To achieve this shared understanding, Councillors commit to the development and adoption of all other operational policies and protocols as required, that help define how they will work together and create a safe and positive work environment. These will, from time-to-time, require revision to reflect contemporary best practices. Accordingly, Councillors undertake to:

- (a) take all reasonable steps to become familiar with Councillor policies and protocols;
- (b) participate in any reviews of these supporting documents; and
- (c) commit to adhere to these policies and protocols as agreed.

## Appendix 1 – Key Roles In Councillor Conduct Resolution

### Councillor Conduct Officer

The Wellington Shire Councillor Conduct Officer role is incorporated into the responsibility of the General Manager Corporate Services.

A Councillor Conduct Officer must—

- (a) assist the Council in the implementation of, and conduct of, the internal arbitration process of a Council; and
- (b) assist the Principal Councillor Conduct Registrar to perform the functions specified in section 149(1); and
- (c) assist the Principal Councillor Conduct Registrar in relation to any request for information under section 149(3).

### Independent Arbiter

It is critical that when allegations of poor conduct are levelled against a Councillor that these are fairly tested. Persons subject to allegations must be given an opportunity to be heard. Decisions by the arbiter must be supported by written reasons.

The role of the arbiter is to:

- (a) consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor;
- (b) make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council;
- (c) give a written statement of reasons supporting the findings to the Council at the same times as it gives its findings to the Council;
- (d) recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct.

An arbiter:

- (a) may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened the code;
- (b) may find that a Councillor who is a respondent to an internal resolution procedure has contravened the Code;
- (c) will suspend consideration of an internal resolution procedure during the election period for a general election.

### Principal Councillor Conduct Registrar

The Principal Councillor Conduct Registrar is responsible for overseeing the resolution process once advised by the Principal Conduct Officer that all internal attempts for resolution have failed.

The Principal Councillor Conduct Registrar has the following functions—

- (a) receive applications for the appointment of an arbiter;
- (b) appoint an arbiter from the panel list established under section 142;
- (c) publish any guidelines in relation to processes and procedures relating to internal arbitration process applications that the Principal Councillor Conduct Registrar has determined to be necessary;

- (d) set and publish a schedule of fees specifying the fees to be paid to arbiters;
- (e) send a notice to a Council specifying the fees payable by the Council following any internal arbitration process conducted for, or on behalf of, the Council;
- (f) receive applications for the establishment of Councillor Conduct Panels;
- (g) form Councillor Conduct Panels by appointing members of the panel list to sit on Councillor Conduct Panels;
- (h) provide general advice and assistance to members of the Councillor Conduct Panel in relation to their functions;
- (i) publish any determination made by a Councillor Conduct Panel and any reasons given for that determination;
- (j) keep copies of all documents requested by, and given to, a Councillor Conduct Panel;
- (k) comply with any request made by the Chief Municipal Inspector or VCAT for copies of any documents given to, or made by, a Councillor Conduct Panel;
- (l) set and publish a schedule of fees specifying the fees to be paid to members of a Councillor Conduct Panel;
- (m) send a notice to a Council specifying the fees payable by the Council following any Councillor Conduct Panel hearing conducted for, or on behalf of, the Council;
- (n) publish any guidelines in relation to Councillor Conduct Panel procedures and processes that the Principal Councillor Conduct Registrar has determined to be necessary.

The Principal Councillor Conduct Registrar has the power to do all things necessary or convenient to be done for or in connection with the performance of the Principal Councillor Conduct Registrar's functions under this Act.

The Principal Councillor Conduct Registrar is responsible for receiving application for councillor conduct panels and, after receiving applications, determining whether panels should be formed. In making a determination whether to form a panel, the Principal Councillor Conduct Registrar must be satisfied that:

- (a) an application is not frivolous, vexatious, misconceived or lacking in substance;
- (b) there is sufficient evidence to support an allegation of misconduct or serious misconduct; and
- (c) Council has taken sufficient or appropriate steps to resolve the matter or has provided satisfactory reasons for not taking the steps.

### **Chief Municipal Inspector**

The Minister may appoint a Chief Municipal Inspector who is employed under Division 5 of Part 3 of the *Public Administration Act 2004*. The Chief Municipal Inspector has the following functions—

- (a) to investigate and prosecute any possible offence under this Act;
- (b) to examine any possible breach of this Act;
- (c) to investigate any allegation of serious misconduct or gross misconduct by a Councillor;
- (d) to investigate any public interest complaint that relates to the conduct of a Councillor or a member of Council staff;
- (e) to make an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor;
- (f) to make an application to VCAT for a finding of gross misconduct by a Councillor;
- (g) to investigate a matter referred to the Chief Municipal Inspector by the Minister under section 225 and provide a report to the Minister;

(h) any other function conferred on the Chief Municipal Inspector by or under this Act.

The Chief Municipal Inspector has all the powers necessary to perform the Chief Municipal Inspector's functions. The Chief Municipal Inspector may examine, investigate and prosecute any matter relating to a Council's operations or to Council elections or electoral matters and any possible breaches of this Act.

**Jurisdiction of VCAT**

VCAT will continue to hear allegations of gross misconduct. The Chief Municipal Inspector will be responsible for making applications to VCAT for findings of gross misconduct against Councillors. Decisions of a panel may still be appealed by VCAT.



## Appendix 2 – Internal Dispute Resolution Procedures

This dispute resolution procedure is intended to be used when Councillors have been unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Council. It is not intended to resolve differences in policy or decision making, which are appropriately resolved through debate and voting in Council meetings.

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. Where, after these endeavours have been exhausted, the matter still remains unresolved, the parties may resort to any or all of the Wellington Shire Council's three phase dispute resolution process.

The Council's three phase dispute resolution process involves:

**Phase 1 - Direct Negotiation between the parties** in dispute with the Mayor in attendance to provide guidance;

**Phase 2 - External Mediation by an independent mediator** engaged by the CEO; and

**Phase 3 - An Internal Arbitration process** involving an independent arbiter.

(Refer to Appendix 1 for a summary of the key roles in Councillor conduct resolution)

### Phase 1 – Direct Negotiation

Where Councillors who are in dispute have not been able to resolve the dispute between themselves, either (or both) party (parties) may request the Mayor to convene a meeting of the parties.

A dispute referred for direct negotiation may relate to:

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

The party requesting the direct negotiation meeting is to provide the Mayor with the name of the other Councillor/s and the details of the dispute in writing. The written request is to indicate that it is for a "direct negotiation" dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Code of Conduct;
- specify the provision(s) that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the request is made by a group of Councillors; and
- be signed and dated by the requestor or the requestor's representative.

The requestor is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Mayor or as soon as practicable thereafter.

The Mayor is to ascertain whether or not the other party is prepared to attend a "direct negotiation" meeting. If the other party is not prepared to attend a meeting, the Mayor is to advise the requestor forthwith. No further action is required of the Mayor. If the other party declines to participate in a meeting, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party consents to a meeting, the Mayor is to convene a meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within five (5) working days of receiving the consent of the other party.

The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor, including in relation to the role of a Councillor under section 28 of the Act, and the observation of the Standards of Conduct and the Councillor Code of Conduct.

The Mayor is to document any agreement reached at the meeting and copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation or the internal arbitration process where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, either or both of the parties have recourse to external mediation or the internal arbitration process where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor or the immediate past Mayor. The Deputy Mayor or the immediate past Mayor will perform the functions ascribed to the Mayor.

## **Phase 2 – External Mediation**

A Councillor, or a group of Councillors, may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for “direct negotiation”.

An application made for a dispute to be referred for external mediation may relate to:

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

The applicant is to submit a written application to the Councillor Conduct Officer (CCO) setting out the name of the Councillor/s and the details of the dispute. The application is to indicate that the application is for an “external mediation”. Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must:

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

The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time that it is submitted to the CCO or as soon as practical thereafter.

The CCO is to ascertain (in writing) whether or not the other party is prepared to attend an “external mediation”. If the other party declines to participate in an external mediation, he or she is

to provide their reasons for doing so in writing to the CCO. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

When the other party declines to participate in an external mediation, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party agrees to participate in an external mediation, the CCO is to advise the applicant, the Mayor and CEO forthwith. The CEO is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The mediator is to document any agreement reached at the meeting and copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal arbitration process where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal arbitration process where the matter relates to an alleged contravention of the Councillor Code of Conduct.

### **Phase 3 – Internal Arbitration**

An application cannot be made for an internal arbitration process during the election period for a general election. Any internal arbitration process that is in progress is to be suspended during the election period for a general election.

If the respondent to an application for an internal arbitration process is not returned to office as a Councillor in the election, then the application lapses. If the respondent is returned to office in the election, the application may resume if:

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

### **Application for an Internal Arbitration Process**

- (1) An arbiter may hear an application that alleges misconduct by a Councillor.
- (2) An application for an internal arbitration process to make a finding of misconduct against a Councillor may be made by—
  - (a) the Council following a resolution of the Council; or
  - (b) a Councillor or a group of Councillors.
- (3) An application under this section must be made within 3 months of the alleged misconduct occurring.
- (4) An application 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)(c) of the Act.

### **Principal Councillor Conduct Registrar Must Examine Application**

- (1) 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—
  - (a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
  - (b) there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application.
- (2) The Principal Councillor Conduct Registrar must reject an application if the Principal Councillor Conduct Registrar is not satisfied under (1)(a) or (b) above.
- (3) 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.

### **Arbiter Must Refer Certain Applications**

- (1) If, at any time before, during or after the hearing of an application for an internal arbitration process, the arbiter believes that the conduct that is the subject of the application for an internal arbitration process appears to involve serious misconduct and would more appropriately be dealt with as an application to a Councillor Conduct Panel, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.
- (2) If the Principal Councillor Conduct Registrar receives a referral, the Principal Councillor Conduct Registrar must notify the parties to the application for an internal arbitration process that the matter has been referred by the arbiter.

### **Sanctions that may be imposed by an arbiter on finding of misconduct**

- (1) If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the prescribed standards of conduct, the arbiter may make a finding of misconduct against the Councillor.
- (2) If an arbiter has made a finding of misconduct against a Councillor, the arbiter may do any one or more of the following—
  - (a) direct the Councillor to make an apology in a form or manner specified by the arbiter;
  - (b) suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month;
  - (c) direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter;
  - (d) direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
  - (e) direct a Councillor to attend or undergo training or counselling specified by the arbiter.
- (3) The arbiter must provide a written copy of the arbiter's decision and statement of reasons to—
  - (a) the Council; and
  - (b) the applicant or applicants; and
  - (c) the respondent; and
  - (d) the Principal Councillor Conduct Registrar.
- (4) Subject to subsection (5) below, a copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the Council received the copy of the arbiter's decision and statement of reasons and recorded in the minutes of the meeting.

- (5) If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled under subsection (4) above.

Allegations of gross misconduct are heard on application by a Councillor Conduct Panel and VCAT.

In the event that reconciliation of the dispute is not possible after the internal arbitration process, the CCO will seek assistance from the Principal Councillor Conduct Registrar to resolve the issue, whilst providing support to the parties of the dispute. The Principal Councillor Conduct Registrar will convene a conduct panel and provide general advice and assistance to the conduct panel in relation to their functions.

A Councillor Conduct Panel will be able to:

- (a) discipline a Councillor by reprimand, direct an apology or require the Councillor to take up to two months leave of absence;
- (b) require remedial action, including mediation, training or counselling; or
- (c) refer a matter to VCAT.

Section 153 to 164 of the Act prescribes how Councillor Conduct Panels are established and function when required to assist Council to enforce its Code of Conduct.

## 12. GENERAL MANAGER BUILT AND NATURAL ENVIRONMENT

### 12.1. URBAN AND RURAL TREE MANAGEMENT PANEL 2024-079

#### ACTION OFFICER: MANAGER NATURAL ENVIRONMENT AND PARKS

#### PURPOSE

The purpose of this report is for Council to consider entering into a Schedule of Rates panel contract for the Urban and Rural Tree Management 2024-2026, Contract 2024-079.

#### PUBLIC QUESTIONS AND COMMENTS FROM THE GALLERY

#### RECOMMENDATION

##### *That Council:*

1. *Receive and consider this report and all attachments pertaining to this report.*
2. *Accept the Schedule of Rates for Rural Tree Management 2024-2026 for a two year term with two extension options of twelve months to be made available solely at Council's discretion as outlined in the Confidential Attachment and as submitted by:*
  - *ASAP Tree Services*
  - *Batt Brothers Vegetation Management*
  - *Benson Group Contractors*
  - *ENSPEC*
  - *Flemings Tree Services*
  - *Regal Tree Services*
  - *Roots 2 Leaves; and*
3. *The information contained in the document Urban and Rural Tree Management 2024-2026 Schedule of Rates Panel relating to the Panel Tender 2024-079, of this Council meeting agenda is designated confidential by the General Manager Built and Natural Environment on 27 April 2024 because it contains confidential information as defined in section 3(1) of the Local Government Act 2021;*
  - (g) private commercial information, being information provided by a business, commercial or financial undertaking that -*
  - (i) relates to trade secrets; or*
  - (ii) if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.*

#### BACKGROUND

Council provides tree services across the entire municipality. The Urban and Rural Tree Management 2024-26 contract seeks to establish a panel of suitably qualified private contractors as required to carry out various types of tree work throughout the Wellington Shire. The services include pruning, removals, powerline clearing, stump grinding, tree watering, assessment and control of pest and disease outbreaks.

## **ATTACHMENTS**

1. Confidential Header Urban Tree Panel Tender [12.1.1 - 1 page]
2. CONFIDENTIAL REDACTED - Tender Evaluation Urban and Rural Tree Management 2024 2026 Schedule of Rates Panel [12.1.2 - 6 pages]

## **OPTIONS**

Council has the following options available:

1. Receive and consider this report and all attachments pertaining to this report, and accept the Schedule of Rates for Rural Tree Management 2024-2026 for a two year term with two extension options of twelve months to be made available solely at Council's discretion as outlined in the Confidential Attachment and as submitted by:
  - ASAP Tree Services
  - Batt Brothers Vegetation Management
  - Benson Group Contractors
  - ENSPEC
  - Flemings Tree Services
  - Regal Tree Services
  - Roots 2 Leaves; or
2. Not approve the Panel Contract at this time and seek further information at a future Council meeting.

## **PROPOSAL**

That Council receive and consider this report and all attachments pertaining to this report, and accept the Schedule of Rates for Rural Tree Management 2024-2026 for a two year term with two extension options of twelve months to be made available solely at Council's discretion as outlined in the Confidential Attachment and as submitted by:

- ASAP Tree Services
- Batt Brothers Vegetation Management
- Benson Group Contractors
- ENSPEC
- Flemings Tree Services
- Regal Tree Services
- Roots 2 Leaves

## **CONFLICT OF INTEREST**

No staff and/or contractors involved in the compilation of this report have declared a conflict of interest.

## **FINANCIAL IMPACT**

Budget allowance for tree works is contained within Council's forward operating budgets.

## COMMUNICATION IMPACT

This impact has been assessed and there is no effect to consider at this time.

## LEGISLATIVE IMPACT

Wellington Shire Council is committed to ensuring the Contract tendering process complies with the *Local Government Act 1989*, *Local Government Act 2020* and the Victorian Local Government Code of Tendering.

## COUNCIL POLICY IMPACT

Several Council Policies and Strategies guide the activity of tree management in the Shire and require use of contracted services to deliver. These include the following:

- Urban Forest Policy 4.1.9
- Open Space Policy 4.1.3
- Significant Tree Protection Policy 4.1.8
- Public Open Space Plan 2014-2024
- Sustainability Strategy 2020-24
- Electrical Line Clearance Management Plan (ELCMP) 2024

## COUNCIL PLAN IMPACT

The Council Plan 2021-25 Strategic Direction 1 Environment and Climate Change states the following strategic objective and related strategy:

**Strategic Objective 1.3:** *"The natural environment is valued, protected and accessible."*

**Key Initiative 1.3.1:** *"Maintain a high-quality network of local parks, open space and urban forests which help lessen the impacts of extreme heat and are managed for community and environmental benefit"*

This report supports the above Council Plan strategic objective and key initiative.

## RESOURCES AND STAFF IMPACT

This contract will be primarily managed with the resources of the Natural Environment and Parks unit, however, other Council business units may engage contractors via this panel and will therefore be required to provide their own resources and staff as required.

## COMMUNITY IMPACT

The service provides the community with a well-managed and maintained urban forest.

## ENVIRONMENTAL IMPACT

All tree works shall be undertaken in accordance with relevant Australian Standards, and include an approach of avoid, minimise or offset to meet Council's objectives of protection and maintenance.



## **ENGAGEMENT IMPACT**

This impact has been assessed and there is no effect to consider at this time. Engagement on trees with the community is determined program by program and informed by best practice engagement.

## **RISK MANAGEMENT IMPACT**

All tree management and maintenance decisions and practices are driven through a risk management approach. The level of risk guides the level of responsiveness and opportunities for exploring suitable management and maintenance options.

It is considered that the proposed contract works will not expose Wellington Shire Council to any significant risks. All OH&S risks will be discussed with the contractor and allocated to the party in the best position to manage each risk.



WELLINGTON  
SHIRE COUNCIL

*The Heart of Gippsland*

**ORDINARY COUNCIL MEETING**  
**07 MAY 2024**

I declare that the information contained in the attached document **URBAN AND RURAL TREE MANAGEMENT PANEL** relating to **PANEL TENDER 2024 | 079** is confidential because it contains confidential information as defined in section 3(1) of the *Local Government Act 2020*;

***(g) private commercial information, being information provided by a business, commercial or financial undertaking that - relates to trade secrets; or - if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage***

A handwritten signature in black ink, appearing to be 'CH' followed by a flourish.

.....  
**CHRIS HASTIE**  
**General Manager Built and Natural Environment**  
**27/04/2024**

## 13. FURTHER GALLERY AND ONLINE COMMENTS

*Gallery comments are an opportunity for members of the public to raise any particular matter they wish. This allows those in the gallery to speak directly to Councillors but is not a forum designed for open discussion or debate. We will listen respectfully to what you have to say and make the commitment that if your query requires a written response, we will advise you that a response will be forthcoming, and a copy of that response will be circulated to all Councillors.*

*This is not a forum for members of the public to lodge complaints against individuals, including Councillors and staff, particularly as that individual gets no public right of reply to any matter raised. We take complaints seriously, and in line with the guidance from the Victorian Ombudsman and the local Government Inspectorate, we request that any specific complaint against an individual be put in writing. This way, your concern can be properly dealt with while ensuring fairness to all parties concerned.*

*If you wish to speak, we remind you that this part of the meeting is being recorded and broadcast on our website. Council's official Minutes will record that you have spoken to Council and the subject you spoke to Council about but will not record specific comments. We ask you to state your name in full, where you are from, and you have three minutes.*

ONLINE COMMENTS –

FURTHER GALLERY COMMENTS –

Meeting declared closed at:

The live streaming of this Council meeting will now come to a close.

## 14. IN CLOSED SESSION

### COUNCILLOR

*That the meeting be closed to the public pursuant to Section 66(2) of the Local Government Act 2020 to consider matters under Section 66(5)(b) as defined by Section 3(1) being:*

- a) Council business information*
- b) Security information*
- c) Land use planning information*
- d) Law enforcement information*
- e) Legal privileged information*
- f) Personal information*
- g) Private commercial information*
- h) Confidential meeting information*
- i) Internal arbitration information*
- j) Councillor Conduct Panel confidential information*
- k) Information prescribed by the regulations to be confidential information*
- l) Information that was confidential information for the purposes of section 77 of the Local Government Act 1989*

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IN CLOSED SESSION

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### COUNCILLOR

*That Council move into open session and ratify the decision made in closed session.*