



GOLDEN PLAINS SHIRE

ATTACHMENTS

**Under Separate Cover
Council Meeting**

6.00pm Tuesday 23 February 2021

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COUNCILLOR CODE OF CONDUCT



Councillor Code of Conduct 2021

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1. CONTEXT

- 1.1 *Councillors** were elected to the Golden Plains Shire *Council* at a general election in 2020 for a four-year term.
- 1.2 The adoption of the Councillor Code of Conduct 2021 (this Code) represents *Councillors* commitment to the core values and standards of conduct they will adopt in the performance of their role.
- 1.3 This Code is part of a broader *Councillor* conduct framework established by the Local Government Act 2020 (Vic) (the LGA20) to provide a hierarchy for the management of *Councillor* conduct.
- 1.4 The *Councillor* conduct framework provides different responses to alleged breaches of this Code and the LGA20, depending on the seriousness of the allegations against a *Councillor*.
- 1.5 Alleged breaches of this Code and the LGA20 are divided into three broad categories:

<i>Misconduct</i>	Heard and determined under the Council's <i>internal arbitration</i> process. An <i>arbiter</i> is appointed by the <i>Principal Councillor Conduct Registrar</i> from a panel of <i>arbiters</i> established by the <i>Secretary</i> of the Department of Environment, Land, Water and Planning.
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<i>Serious misconduct</i>	Heard and determined by an external <i>Councillor Conduct Panel</i> . The panel is convened by the <i>Principal Councillor Conduct Registrar</i> from a list of eligible persons appointed by the Minister.
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<i>Gross misconduct</i>	Heard and determined by the Victorian Civil and Administrative Tribunal.
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- 1.6 Allegations of *misconduct* made against a *Councillor* for breach of this Code and / or the LGA20 are dealt with under the Golden Plains Shire Councillor Dispute Resolution Policy 2021 .
- 1.7 A complaint by a person who is dissatisfied about a policy or decision made by *Council* is dealt with under the Golden Plains Shire Complaints Policy.
- 1.8 This Code has been developed in accordance with section 139 of the LGA20 and Regulation 12, Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020 (Vic).

***Note:** Words in *italics* are in the ['DEFINITIONS'](#) table in Part 15 of this Code.

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2. PURPOSE

- 2.1 The purpose of this Code is to set out the values and standards of conduct expected to be observed by a *Councillor* in the performance of their role as *Councillor*, the breach of which may constitute *misconduct*, *serious misconduct*, or *gross misconduct*.
- 2.2 The purpose of this Code is to ensure Councillors are accountable, transparent, collaborative, efficient, and engaged with the municipal community in the performance of their role.
- 2.3 Nothing in this Code is intended to limit, restrict or detract from robust public debate in a democracy.

3. VALUES

- 3.1 A *Councillor* will promote the Golden Plains Shire Council values and perform their role with:

Pride: **We know that our role is important, and we take pride in doing the best job we can.**

- (a) We take accountability for actions and results.
- (b) We recognize and celebrate our achievements.
- (c) We lead with trust and empowerment.
- (d) We approach our role with energy and enthusiasm.

Respect: **We treat each other with courtesy and respect, and are committed to keeping our environment safe, and free from judgement.**

- (a) We are inclusive and appreciate diversity.
- (b) We show compassion and kindness to one another.
- (c) We bring positive mindset to *Council*, and contribute to a positive culture.

Integrity: **We are committed to being authentic, honest and ethical in our role.**

- (a) We do what we say, and honour our commitments.
- (b) We use open and transparent communication.
- (c) We speak up when we see behaviours that compromise our values.

Collaboration: **We partner together to achieve shared goals and deliver community focused outcomes.**

- (a) We build and maintain positive relationships.
- (b) We work resourcefully and united by shared goals.
- (c) We work as a team to bring out the best in each other.

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Excellence: We are committed to delivering the best community experience and outcome that we are capable of providing.

- (a) We conduct our role with professionalism.
- (b) We seek opportunities to innovate and continuously improve.
- (c) We effectively respond to the changing needs of the community.

3.2 The values and the standards of conduct set out in this Code apply to, and should underpin, every power, duty or function performed by a *Councillor* in the performance of their role.

4. TREATMENT OF OTHERS

4.1 A Councillor must treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect.

4.2 A *Councillor* must:

4.2.1 take positive action to eliminate *discrimination, sexual harassment* and *victimisation*;

4.2.2 support *Council* to achieve and promote gender equality.

4.3 Under 4.2 a *Councillor* must take reasonable and proportionate measures to eliminate *discrimination, sexual harassment* or *victimisation* as far as possible, having regard to:

- (a) Council's nature, size, and circumstances
- (b) Council's resources, business, and operational priorities
- (c) the practicability and the cost of the measures

4.4 A *Councillor* must consider the diversity of interests and needs of the *municipal community* in the performance of their role.

4.5 A *Councillor* must treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities in the performance of their role.

4.6 A *Councillor* must not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, *members of Council staff* and *Councillors* in the performance of their role.

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5. PERFORMING THE ROLE OF COUNCILLOR

- 5.1 A *Councillor* must do everything reasonably necessary to ensure they perform the duties and functions of a *Councillor* effectively and responsibly.
- 5.2 A *Councillor* must ensure they are fit to conscientiously perform the duties and functions of a *Councillor* when acting in that capacity, or purporting to act in that capacity.
- 5.3 A *Councillor* must undertake any training or professional development activities the *Council* decides are necessary for all *Councillors* to undertake in order to effectively perform their duties and functions.
- 5.4 A *Councillor* must diligently use *Council* processes to become informed about matters which are subject to *Council* decisions.
- 5.5 A *Councillor* must ensure their behaviour does not bring discredit upon *Council*.
- 5.6 A *Councillor* must not deliberately mislead *Council* or the public about any matter related to the performance of their public duties.

6. ROLE OF COUNCILLOR

- 6.1 A *Councillor* must represent the interests of the *municipal community* across Golden Plains Shire.
- 6.2 In performing their duties and functions, a *Councillor* must:
- 6.2.1 participate in the decision making of *Council*; and
 - 6.2.2 represent the interests of the *municipal community* in decision making; and
 - 6.2.3 contribute to the strategic direction of *Council* through the development and review of key strategic documents of *Council*, including the Council Plan.
- 6.3 In performing the duties and functions in 6.2, a *Councillor* must:
- 6.3.1 consider, and be responsive to, the diversity of interests and needs of the *municipal community*; and
 - 6.3.2 support the role of *Council*; and
 - 6.3.3 acknowledge and support the role of the Mayor; and
 - 6.3.4 act lawfully and in accordance with the oath or affirmation of office; and
 - 6.3.5 act in accordance with the standards of conduct; and
 - 6.3.6 comply with *Council* procedures required for good governance.
- 6.4 The duties and functions of a *Councillor* does not include the performance of any responsibilities or functions of the Chief Executive Officer.

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- 6.5 A Councillor must diligently and properly comply with any policy, practice or protocol setting out requirements related to:
- 6.5.1 Interactions between *members of Council staff* and *Councillors* developed and implemented by the *Chief Executive Officer*.
 - 6.5.2 *Council expenses* policy adopted and maintained by *Council*.
 - 6.5.3 Council Governance Rules developed and adopted by *Council*.
 - 6.5.4 Any direction issued by the Minister requiring *Council* to amend, discontinue, replace or report on its governance processes and policies.

7. GOVERNANCE PRINCIPLES

- 7.1 In the performance of their role, a *Councillor* must give effect to the overarching governance principles in 7.2 and supporting principles in 7.3.
- 7.2 A Councillor must give effect to the **overarching governance principles**, including:
- 7.2.1 Make decisions and act in accordance with relevant law.
 - 7.2.2 Give priority to achieving the best outcomes for the *municipal community*, including future generations.
 - 7.2.3 Promote the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risk.
 - 7.2.4 Engage the *municipal community* in strategic planning and strategic decision making.
 - 7.2.5 Pursue innovation and continuous improvement.
 - 7.2.6 Seek to collaborate with other *Councils*, Governments and statutory bodies.
 - 7.2.7 Ensure the ongoing financial viability of *Council*.
 - 7.2.8 Take into account regional, state and national plans and policies in strategic planning and decision making.
 - 7.2.9 Ensure the transparency of *Council* decisions, actions and information.
- 7.3 When giving effect to the overarching governance principles, a Councillor must take into account **supporting principles**, including:
- 7.3.1 **Community engagement principles** require a meaningful and informed community engagement process, including:
 - (a) a clearly defined objective and scope;
 - (b) participant access to objective, relevant and timely information to inform their participation;

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- (c) participants that are representative of persons and groups affected by the matter;
- (d) participants are given reasonable support to enable meaningful and informed participation;
- (e) participants are informed in ways in which the engagement process will influence *Council* decision making.

7.3.2 **Public transparency principles** describe the ways *Council* information will be made publicly available, including:

- (a) transparent decision-making processes, except where information is *confidential* or contrary to the public interest;
- (b) information that is understandable and accessible to the municipal community;
- (c) public awareness of the availability of information is facilitated.

7.3.3 **Strategic planning principles** apply to the preparation of strategic documents, including:

- (a) an integrated approach to planning, monitoring and performance reporting;
- (b) addressing the Community Vision;
- (c) taking into account the resources needed for effective implementation;
- (d) identifying and addressing the risks to effective implementation;
- (e) providing for ongoing monitoring of progress and regular reviews to address changing circumstances.

7.3.4 **Financial management principles** focus on the ongoing financial viability of *Council*, including:

- (a) managing revenue, expenses, assets, liabilities, investments and financial transactions in accordance with *Council's* financial policies and strategic plans;
- (b) monitoring and prudently managing financial risks having regard to economic circumstances;
- (c) financial policies and strategic plans that seek to provide stability and predictability in the financial impact on the municipal community;
- (d) accounts and records that explain the financial operations and financial position of *Council*.

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- 7.3.5 **Service performance principles** provide a framework for *Council* to deliver services to the municipal community, including:
- (a) services being provided in an equitable manner and in a way that is responsive to the diverse needs of the *municipal community*;
 - (b) services that are accessible to those for whom they are intended;
 - (c) quality and costs standards for services set by *Council* that provide 'good' value to the *municipal community*;
 - (d) continuously seeking to improve service delivery in response to performance monitoring;
 - (e) a fair and effective process for considering and responding to complaints about service provision.

8. MISUSE OF POSITION

- 8.1 A *Councillor* must not intentionally misuse their position to:
- (a) 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 *Council* or another person.
- 8.2 For the purpose of 8.1, misuse of a position by a *Councillor* includes:
- 8.2.1 making improper use of information acquired as a result of their position;
 - 8.2.2 disclosing information that is confidential information (as defined in 11.3);
 - 8.2.3 exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform;
 - 8.2.4 using public funds or resources in a manner that is improper or unauthorised;
 - 8.2.5 directing or improperly influencing, or seeking to direct or improperly influence, a *member of Council staff*;
 - 8.2.6 participating in a decision on a matter in which the person has a *conflict of interest*.

9. DIRECTING A MEMBER OF COUNCIL STAFF

- 9.1 A *Councillor* must not intentionally direct, or seek to direct, a *member of Council staff* in the:
- 9.1.1 exercise of any power or delegated power;
 - 9.1.2 performance of any duty or function, or delegated duty or function;

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- 9.1.3 advice, including advice in a report, that a *member of Council staff* provide to the *Council* or a *delegated committee*.
- 9.2 Clause 9.1 applies to all situations where a *Councillor* exercises their power or perform a duty or function of *Council*, as an authorised officer, or member in an office or position they hold under the LGA20 or any other Act.

10. CONFLICT OF INTEREST

- 10.1 A *Councillor* exercising a power, duty or function, or making a decision in relation to any matter must:
- 10.1.1 disclose a conflict of interest in accordance with *Council's Governance Rules*; and
- 10.1.2 exclude themselves from the decision-making process in relation to the matter, including any discussion or vote on the matter that arises in:
- (a) any *Council meeting*
 - (b) any *delegated committee*
 - (c) any action in relation to the matter
 - (d) any meeting conducted under the auspices of *Council*
 - (e) the course of the exercise of a statutory function under the LGA20 or any other Act
- 10.2 Clause 10.1 refers to two types of conflicts of interest:
- 10.2.1 A **general conflict of interest** arises 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*.
- 10.2.2 A **material conflict of interest** arises in respect of a matter if an *affected person* would gain a *benefit* or suffer a *loss* depending on the outcome of the matter.
- 10.3 A *Councillor* will not have a conflict of interest if any of the following exemptions apply:
- 10.3.1 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 *Councillor* in relation to the matter;
- 10.3.2 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;
- 10.3.3 The *Councillor* does not know the circumstances that give rise to the conflict of interest, and could not be reasonably expected to know those circumstances;

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- 10.3.4 The interest only arises because the *Councillor* is the representative of *Council* on a not-for-profit organisation that has an interest in the matter and the *Councillor* receives no personal advantage from the not-for-profit organisation;
- 10.3.5 The interest only arises because a *family member* of the *Councillor* is a member but not an office-holder of a not-for-profit organisation;
- 10.3.6 The interest only arises because the *Councillor* is a member of a not-for-profit organisation that has expressed an opinion or advocated for an outcome in regard to the matter;
- 10.3.7 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.

11. CONFIDENTIAL INFORMATION

- 11.1 Subject to 11.3, a *Councillor* or a person who has been a *Councillor*, must not intentionally or recklessly disclose information that the person knows, or should reasonably know, is *confidential information*.
- 11.2 If the information disclosed is information that *Council* has determined should be publicly available, then 11.1 does not apply.
- 11.3 A *Councillor* or a person who has been a *Councillor*, may disclose confidential information where the law requires it, including:
- (a) for the purposes of legal proceedings arising under LGA20;
 - (b) to a court or tribunal in the course of legal proceedings;
 - (c) a court or tribunal orders the information be provided;
 - (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;
 - (i) to the extent reasonably required by a *law enforcement agency*.

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- 11.4 **Confidential information** means information that is confidential under the LGA20 or by virtue of any other Act, including but not limited to:
- (a) Council business information— If prematurely released would prejudice Council's position in commercial negotiations.
 - (b) Security information— If released is likely to endanger the security of Council property or the safety of any person.
 - (c) Land use planning information— If prematurely released is likely to encourage speculation in land values.
 - (d) Law enforcement information— If released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person.
 - (e) Legal privileged information— Legal professional privilege or client legal privilege applies.
 - (f) Personal information— If released would result in the unreasonable disclosure of information about any person or their personal affairs.
 - (g) Private commercial information, being information provided by a business, commercial or financial undertaking—
 - relates to trade secrets, or
 - if released would unreasonably expose the business, commercial or financial undertaking to disadvantage.
 - (h) Confidential meeting information— Records of meetings that are closed to the public when confidential information is considered by *Council* or a *delegated committee*.
 - (i) *Internal arbitration* information— Information provided to an *arbiter* or produced by an *arbiter* for the purpose of an *internal arbitration* process, other than the findings and the reasons.
 - (j) *Councillor Conduct Panel* confidential information includes—
 - Information provided to, or produced by, a *Principal Councillor Conduct Registrar*, for the purposes of an application for a *Councillor Conduct Panel* to be formed;
 - Information, other than a decision or reasons for a decision, that is provided to, or produced by, a *Councillor Conduct Panel*, for the purposes of conducting the *Councillor Conduct Panel hearing*;
 - Any part of a statement of reasons or any other document under the control or possession of the *Councillor Conduct Panel* that the *Councillor Conduct Panel* determines contains confidential information.

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| <p>(k) <i>Chief Municipal Inspector</i> issues a confidentiality notice during an investigation of a public interest complaint—</p> | <p>Information is likely to prejudice:</p> <ul style="list-style-type: none"> – an investigation by the Independent Broad-based Anti-corruption Commission or the Victorian Inspectorate; – the safety or reputation of a person; – the fair trial of a person who has been, or may be, charged with an offence. |
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12. BREACHES OF STANDARDS OF CONDUCT

- 12.1 Allegations of *misconduct* or *serious misconduct* against a Councillor may be made by:
- (a) *Council* following a resolution of *Council*
 - (b) *A Councillor*
 - (c) *A group of Councillors*
- 12.2 In the case of allegation of *misconduct*, an application is made for *internal arbitration*.
- 12.3 In the case of allegation of *serious misconduct*, an application is made for a *Councillor Conduct Panel* to make a finding against a Councillor.
- 12.4 An application made against a Councillor under 12.2 and 12.3 will dealt with in accordance with the Councillor Dispute Resolution Policy 2021.
- 12.5 An application for a *Councillor Conduct Panel* to make a finding of *serious misconduct* against a Councillor may also be made by the Chief Municipal Inspector.
- 12.6 An application that alleges *gross misconduct* by a Councillor may only be made by the Chief Municipal Inspector and heard by *VCAT*.

13. CIVIL AND CRIMINAL LIABILITY

This Code does not effect, or in any way impact on, the criminal or civil liability of a Councillor, and does not prevent the institution of any criminal or civil proceedings in respect of that liability.

14. OTHER INSTRUMENTS

This Code must be read in conjunction with relevant laws, regulations, Ministerial directions, industry standards, Council policies, procedures, protocols, or practices.

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15. DEFINITIONS

Term	Definition
<i>affected person</i>	Includes: <ul style="list-style-type: none"> (a) the <i>Councillor</i> (b) a <i>family member</i> of the <i>Councillor</i> (c) a body corporate of which the <i>Councillor</i> or their spouse or domestic partner is a Director or a member of the governing body (d) an employer of the <i>Councillor</i>, unless the employer is a public body (e) a business partner of the <i>Councillor</i> (f) a person for whom the <i>Councillor</i> is a consultant, contractor or agent (g) a beneficiary under a trust or an object of a discretionary trust of which the <i>Councillor</i> is a trustee (h) a person from whom the <i>Councillor</i> has received a disclosable gift
<i>arbiter</i>	Is an independent person appointed to <i>Council</i> by the <i>Principal Councillor Conduct Registrar</i> to hear an application that alleges <i>misconduct</i> by a <i>Councillor</i> .
<i>benefit</i>	The benefit may arise directly or indirectly, or be in a pecuniary or non-pecuniary form.
<i>bullying</i>	Bullying by a <i>Councillor</i> means the <i>Councillor</i> repeatedly behaves unreasonably towards another <i>Councillor</i> or <i>a member of Council staff</i> and that behaviour creates a risk to the health and safety of that other <i>Councillor</i> or <i>member of Council staff</i> .
<i>Chief Executive Officer</i>	The person appointed by <i>Council</i> to be its Chief Executive Officer, or any person acting in that position to support the Mayor and <i>Councillors</i> in their roles, and ensure the effective and efficient management of the day to day operations of Council.
<i>Chief Municipal Inspector</i>	Appointed by the Minister to: <ul style="list-style-type: none"> (a) examine, investigate and prosecute any possible breach or offence under the LGA20 (b) investigate any public interest complaint related to the conduct of a <i>Councillor</i> (c) make an application for a <i>Councillor Conduct Panel</i> to make a finding of <i>serious misconduct</i> against a <i>Councillor</i> (d) make an application to Victorian Civil and Administrative Tribunal for a finding of <i>gross misconduct</i> by a <i>Councillor</i> (e) investigate and report the Minister, where the Minister has reason to believe that the <i>Councillor</i> is: <ul style="list-style-type: none"> (i) creating a serious risk to the health and safety of <i>Councillor</i>

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Term	Definition
	<p>or <i>member of Council staff</i>; or</p> <p>(ii) creating a serious risk to the health and safety of other persons in the <i>Councillor's</i> capacity as a <i>Councillor</i>; or</p> <p>(iii) preventing the <i>Council</i> from performing its functions</p>
<i>Council</i>	Made up of persons democratically elected at a general election or by-election by the <i>municipal community</i> to hold the office <i>Councillor</i> to collectively ensure the peace, order and good government of each municipal district.
<i>Councillor</i>	A person who is democratically elected to hold the office of member of a <i>Council</i> .
<i>Council meeting</i>	Is a meeting of <i>Council</i> , at which: <ul style="list-style-type: none"> (a) all Councillors are entitled to attend and vote (b) no other person is entitled to vote (c) a decision to do an act, matter or thing is made by a resolution of the Council
<i>Councillor Conduct Officer</i>	The <i>member of Council staff</i> appointed by the <i>Chief Executive Officer</i> to assist <i>Council</i> with the implementation and conduct of Council's <i>internal arbitration</i> process, including: <ul style="list-style-type: none"> (a) Receiving applications for <i>internal arbitration</i> to determine allegations of <i>misconduct</i> made against a <i>Councillor</i> under the Councillor Dispute Resolution Policy 2021. (b) Assist the <i>Principal Councillor Conduct Registrar</i> in relation to applications for <i>internal arbitration</i>, including responding to any request for information regarding allegations of <i>gross misconduct</i> and <i>serious misconduct</i> against a <i>Councillor</i>.
<i>Councillor Conduct Panel Hearing</i>	A hearing by a panel selected from a list of eligible persons appointed by the Minister, convened by the <i>Principal Councillor Conduct Registrar</i> , to hear an application that alleges <i>serious misconduct</i> by a <i>Councillor</i> .
<i>delegated committee</i>	Is a committee established by Council that: <ul style="list-style-type: none"> (a) must include at least two Councillors (b) may include any other persons appointed to the delegated committee by the Council who are entitled to vote.
<i>discrimination</i>	<p>Direct discrimination occurs when a person is treated unfavourably because of a personal attribute or characteristic protected by law.</p> <p>Protected attributes include age, breastfeeding, employment activity, gender identity, disability, industrial activity, lawful sexual activity, marital status, parental status or status as a carer, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation, an expunged homosexual conviction, or personal association (whether as a relative or otherwise) with a</p>

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Term	Definition
	<p>person who is identified by reference to any of the above attributes.</p> <p>Indirect discrimination occurs when an unreasonable requirement or condition disadvantages a person, or a group of people, because of a personal attribute or characteristic protected by law.</p>
<i>family member</i>	<p>Includes:</p> <ul style="list-style-type: none"> (a) A spouse or domestic partner of the <i>Councillor</i>; or (b) A parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the <i>Councillor</i> or of their spouse or domestic partner; or (c) Any other relative that regularly resides with the <i>Councillor</i>.
<i>gift</i>	<p>Means any disposition of property otherwise than by Will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including:</p> <ul style="list-style-type: none"> (a) the provision of a service (other than volunteer labour); and (b) the payment of an amount in respect of a guarantee; and (c) the making of a payment or contribution at a fundraising function.
<i>Governance Rules</i>	Refers to the Golden Plains Shire, Council Governance Rules 2020
<i>gross misconduct</i>	<p>By a <i>Councillor</i> means behaviour that demonstrates that a <i>Councillor</i>:</p> <ul style="list-style-type: none"> (a) is not of good character; or (b) is otherwise not a fit and proper person to hold the office of <i>Councillor</i>, including behaviour that is <i>sexual harassment</i> and that is of an egregious nature.
<i>loss</i>	The loss may be incurred directly or indirectly, or be in a pecuniary or non-pecuniary form.
<i>internal arbitration</i>	A process that includes a closed hearing conducted by an independent <i>arbiter</i> appointed to <i>Council</i> by the <i>Principal Councillor Conduct Registrar</i> to hear an application that alleges <i>misconduct</i> against a <i>Councillor</i> .
<i>law enforcement agency</i>	<p>Includes:</p> <ul style="list-style-type: none"> (a) a police force or police service of any State or a Territory (b) the Australian Federal Police (c) the Australian Crime Commission (d) a commission with the function of investigating matters relating to criminal activity generally or of a specified class or classes established by a law of Victoria, any other State or a Territory, or the Commonwealth

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Term	Definition
	(e) Chief Examiner and Examiners appointed under Part 3 of the Major Crime (Investigative Powers) Act 2004 (Vic) (f) the Independent Broad-based Anti-corruption Commission (g) the Sheriff within the meaning of the Sheriff Act 2009 (Vic) (h) the Victorian Inspectorate established by the Victorian Inspectorate Act 2011 (Vic) (i) an agency responsible for the performance of functions or activities directed to: <ul style="list-style-type: none"> – the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction for a breach – the management of property seized or restrained under laws relating to the confiscation of the proceeds of crime or the enforcement of such laws, or of orders made under such laws (j) an agency responsible for the execution or implementation of an order or decision made by a court or tribunal (k) an agency responsible for the protection of the public revenue under a law administered by it
<i>member of Council staff</i>	A person appointed by the <i>Chief Executive Officer</i> .
<i>misconduct</i>	Any breach by a Councillor of the prescribed standards of conduct including those in this Code.
<i>municipal community</i>	Includes: <ul style="list-style-type: none"> (a) people who live in the municipal district of the Council; (b) people and bodies who are ratepayers of the Council; (c) traditional owners of land in the municipal district of the Council; (d) people and bodies who conduct activities in the municipal district of the Council.
<i>Municipal Monitor</i>	Appointed by the Minister to a <i>Council</i> to: <ul style="list-style-type: none"> (a) monitor and advise Council on governance processes, practices and improvements (b) report to the Minister on any steps or actions taken by the <i>Council</i> to improve its governance and the effectiveness of those steps or actions (c) make recommendations to the Minister in relation to the exercise of any power relating to governance matters of the <i>Council</i> (d) investigate and report the Minister, where the Minister has reason to believe that the <i>Councillor</i> is: <ul style="list-style-type: none"> (i) creating a serious risk to the health and safety of <i>Councillor</i> or <i>member of Council staff</i>,

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Term	Definition
	<ul style="list-style-type: none"> (ii) creating a serious risk to the health and safety of other persons in the <i>Councillor's</i> capacity as a <i>Councillor</i>; (iii) preventing the <i>Council</i> from performing its functions (e) inform the Independent Broad-based Anti-corruption Commission if they consider a matters appears to involve conduct that is corrupt conduct.
<i>Principal Councillor Conduct Registrar</i>	<p>Appointed by the <i>Secretary</i> to administer the processes under the <i>Councillor</i> conduct framework, including but not limited to:</p> <ul style="list-style-type: none"> (a) examining applications received by Council's <i>Councillor Conduct Officer</i> alleging <i>misconduct</i> against a <i>Councillor</i> and requesting <i>internal arbitration</i> (b) determining whether an <i>arbiter</i> should be appointed to <i>Council</i> to hear and determine allegations of <i>misconduct</i> against a <i>Councillor</i>. (c) convening <i>Councillor Conduct Panels</i> by appointing members of the panel list to sit on <i>Councillor Conduct Panel Hearings</i>
<i>private interests</i>	Any direct or indirect interest of a <i>Councillor</i> that does not derive from their <i>public duty</i> , but does not include an interest that is only a matter of personal opinion or belief.
<i>public duty</i>	Means the responsibilities and obligations that a <i>Councillor</i> has to members of the public in their role as a <i>Councillor</i> .
<i>Secretary</i>	Secretary to the Department of Environment, Land, Water and Planning.
<i>serious misconduct</i>	<p>By a <i>Councillor</i> means any of the following:</p> <ul style="list-style-type: none"> (a) the failure of a <i>Councillor</i> to comply with the <i>Council's internal arbitration</i> process; (b) the failure of a <i>Councillor</i> to comply with a direction given to the <i>Councillor</i> by an <i>arbiter</i> after an <i>internal arbitration</i> process that makes a finding of <i>misconduct</i>; (c) the failure of a <i>Councillor</i> to attend a <i>Councillor Conduct Panel Hearing</i> in respect of that <i>Councillor</i>; (d) the failure of a <i>Councillor</i> to comply with a direction of a <i>Councillor Conduct Panel</i>; (e) continued or repeated <i>misconduct</i> by a <i>Councillor</i> after a finding of <i>misconduct</i> has already been made in respect of the <i>Councillor</i> by an <i>arbiter</i> or by a <i>Councillor Conduct Panel</i>; (f) <i>bullying</i> by a <i>Councillor</i> of another <i>Councillor</i> or a <i>member of Council staff</i>; (g) conduct by a <i>Councillor</i> that is conduct of the type that is <i>sexual harassment</i> of a <i>Councillor</i> or a <i>member of Council staff</i>; (h) the disclosure by a <i>Councillor</i> of information the <i>Councillor</i> knows, or should reasonably know, is confidential information;

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Term	Definition
	(i) conduct by a <i>Councillor</i> that contravenes the requirement that a <i>Councillor</i> must not direct, or seek to direct, a <i>member of Council staff</i> ; (j) the failure by a <i>Councillor</i> to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with the LGA20.
<i>sexual harassment</i>	Is unwelcomed sexual behaviour that causes a person to feel offended, humiliated or intimidated, where a reasonable person could have anticipated that reaction in the circumstances. Sexual harassment includes: <ul style="list-style-type: none"> (a) an unwelcome sexual advance (b) an unwelcome request for sexual favours (c) any other unwelcome conduct of a sexual nature Conduct of a sexual nature includes: <ul style="list-style-type: none"> (a) subjecting a person to any act of physical intimacy (b) making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence (c) making any gesture, action or comment of a sexual nature in a person's presence.
<i>victimisation</i>	Subjecting, or threatening to subject a person to any detriment (treating them inappropriately or unfairly) because they, or a person associated with them, has or intends to make a complaint about discrimination or sexual harassment.
VCAT	Victorian Civil and Administrative Tribunal.

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16. RELATED LEGISLATION AND DOCUMENTS

- 16.1 Local Government Act 2020 (Vic); Section 139, 140
- 16.2 Local Government (Governance and Integrity) Regulations 2020 (Vic); Regulations 12, Schedule 1
- 16.3 Equal Opportunity Act 2010 (Vic)
- 16.4 Councillor Dispute Resolution Policy 2021
- 16.5 Golden Plains Shire Complaints Policy
- 16.6 Council Governance Rules 2020
- 16.7 Interaction Between Councillor and Council Staff Protocol (CEO Protocol)
- 16.8 Council Expenses & Entitlements Policy (July 2020)
- 16.9 Gifts, Benefits and Hospitality Policy (December 2019)
- 16.10 Computers for Councillor Policy (November 2020)
- 16.11 Information Privacy Policy 2020
- 16.12 Public Transparency Policy 2020
- 16.13 Public Participation in Council Meetings Policy: Question Time, Presentations & Submissions, Petitions & Joint Letters (August 2020)
- 16.14 Golden Plains Shire, Councillor Resource Manual 2020
- 16.15 In the Public Interest: A conflict of interest guide for Councillor, delegated committee members and Council staff (October 2020)
- 16.16 Social Media Manual 2014

17. HUMAN RIGHTS STATEMENT OF COMPATABILITY

- 17.1 This Code does not impact negatively on any rights identified in the Charter of Human Rights and Responsibilities Act 2006 (Vic).
- 17.2 This Code is inoperative to the extent that it is inconsistent with any Act (including the **Charter of Human Rights and Responsibilities Act 2006**) or regulation.

COUNCILLOR CODE OF CONDUCT

18. CODE OF CONDUCT OWNERS

- 18.1 The Golden Plains Shire *Councillors* are the owners of this Code.
- 18.2 The owners of this Code are responsible to review, edit and maintain this Code and any associated procedures.

19. IMPLEMENTATION

- 19.1 The Mayor is the point of contact for any questions regarding this Code.
- 19.2 The Mayor is responsible for the implementation of this Code and associated Policies.

20. DOCUMENT INFORMATION

DOCUMENT TYPE:	Councillor Code of Conduct
DOCUMENT STATUS:	Adopted by a formal resolution of the Council passed by at least two-thirds of <i>Councillor</i> at the Council Meeting on 23/2/21.
DOCUMENT OWNERS:	Councillors
ADOPTED BY:	Councillors
DATE ADOPTED:	23 February 2021
VERSION NUMBER:	1.0
REVIEW DATE:	Council may review or amend at any time.

COUNCILLOR CODE OF CONDUCT

21. COUNCILLOR DECLARATION

I declare that I will abide by the Councillor Code of Conduct 2021 adopted by a formal resolution of Council passed by at least two-thirds of Council under 'Part 6 Council Integrity' of the Local Government Act 2020 (Vic).

<p>_____ Signed by Mayor Helena Kirby Date: 23 February 2021</p>	<p>_____ Signed by Deputy Mayor Ian Getsom Date: 23 February 2021</p>
<p>_____ Signed by Cr Brett Cunningham Date: 23 February 2021</p>	<p>_____ Signed by Cr Gavin Gamble Date: 23 February 2021</p>
<p>_____ Signed by Cr Les Rowe Date: 23 February 2021</p>	<p>_____ Signed by Cr Owen Sharkey Date: 23 February 2021</p>
<p>_____ Signed by Cr Clayton Whitfield Date: 23 February 2021</p>	

COUNCILLOR DISPUTE RESOLUTION POLICY



Councillor Dispute Resolution Policy 2021

COUNCILLOR DISPUTE RESOLUTION POLICY

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COUNCILLOR DISPUTE RESOLUTION POLICY

1. CONTEXT

- 1.1 *Councillors** were elected to the Golden Plains Shire Council at a general election in 2020 for a four-year term.
- 1.2 The adoption of the Councillor Dispute Resolution Policy 2021 (this Policy) represents Councillors acceptance of the formal processes adopted to manage allegations of *misconduct, serious misconduct, and gross misconduct* made against a Councillor for alleged breaches of Golden Plains Shire Councillor Code of Conduct 2021 and the Local Government Act 2020 (Vic) (the LGA20).
- 1.3 This Policy sets out a hierarchy of responses established by the LGA20 to manage *Councillor* conduct.
- 1.4 The *Councillor* conduct framework provides different responses to alleged breaches of the Councillor Code of Conduct 2021 and the LGA20, depending on the seriousness of the allegations against a Councillor.
- 1.5 Alleged breaches of the Councillor Code of Conduct 2021 and the LGA20 are divided into three broad categories:

Misconduct Heard and determined under the Council's internal arbitration process. An arbiter is appointed by the *Principal Councillor Conduct Registrar* from a panel of arbiters established by the *Secretary* of the Department of Environment, Land, Water and Planning.

Serious misconduct Heard and determined by an external *Councillor Conduct Panel*. The panel is convened by the *Principal Councillor Conduct Registrar* from a list of eligible persons appointed by the Minister.

Gross misconduct Heard and determined by the Victorian Civil and Administrative Tribunal.

- 1.6 An application that alleges *misconduct* against a *Councillor* for breach of the Councillor Code of Conduct 2021 or LGA20 is dealt with under Council's internal arbitration process in this Policy.
- 1.7 An application that alleges *serious misconduct* against a Councillor for breach of the Councillor Code of Conduct 2021 or LGA20 are made under this Policy and heard and determined by an external *Councillor Conduct Panel*.
- 1.8 An application that alleges *gross misconduct* by a Councillor may only be made by the Chief Municipal Inspector and heard by VCAT.

COUNCILLOR DISPUTE RESOLUTION POLICY

- 1.9 A complaint by a person who is dissatisfied about a policy or decision made by *Council* is dealt with under the Golden Plains Shire Complaints Policy.
- 1.10 This Policy has been developed in accordance with Part 6, Divisions 5 to 7 of LGA20, and Regulation 11 of the Local Government (Governance and Integrity) Regulations 2020 (Vic).

*Note: Words in *italics* are in the '[DEFINITIONS](#)' table in Part 20 of this Policy.

2. PURPOSE

- 2.1 The purpose of this Policy is to provide a formal framework to:
- 2.1.1 manage allegations of *misconduct* and *serious misconduct* made against a Councillor(s) for breach of the Councillor Code of Conduct 2021 or LGA20
 - 2.1.2 outline the process for making an application for an internal arbitration process, in which an arbiter makes a finding of *misconduct* against a Councillor;
 - 2.1.3 outline the process for making an application for a *Councillor Conduct Panel* to make a finding of *serious misconduct* against a Councillor.
- 2.2 This policy is not intended to limit, restrict or detract from any other process that Councillors may consider appropriate for resolving:
- (a) Disputes between Councillors – disagreements about the facts or a course of action.
 - (b) Conflict between Councillors – situations that generate strong negative feelings between people or in groups.

3. PROCEDURAL FAIRNESS

- 3.1 Procedural fairness, incorporating principles of natural justice, refer to the rules that must be followed when making a finding or decision that may adversely affect the interests of a *Councillor*.
- 3.2 The rules of procedural fairness give a *Councillor* the right to:
- (a) know, and have sufficient time to respond to the particulars of any allegation made against them before a decision is made
 - (b) a decision by an impartial unbiased decision-maker that does not have a personal interest in the decision
 - (c) a decision that is based on all relevant information and evidence
 - (d) obtain reasons for a finding or decision
 - (e) have the matter considered and resolved without undue delay

COUNCILLOR DISPUTE RESOLUTION POLICY

4. MISCONDUCT HIERARCHY

4.1 **Misconduct** means any breach by a *Councillor* of the prescribed standards of conduct, including those in the Councillor Code of Conduct 2021.

4.2 **Serious misconduct** by a *Councillor* means any of the following:

- (a) the failure of a *Councillor* to comply with the *Council's* internal arbitration process;
- (b) the failure of a *Councillor* to comply with a direction given to the *Councillor* by an *arbiter* after an internal arbitration process that makes a finding of misconduct;
- (c) the failure of a *Councillor* to attend a *Councillor Conduct Panel Hearing* in respect of that *Councillor*;
- (d) the failure of a *Councillor* to comply with a direction of a *Councillor Conduct Panel*;
- (e) continued or repeated misconduct by a *Councillor* after a finding of misconduct has already been made in respect of the *Councillor* by an *arbiter* or by a *Councillor Conduct Panel*;
- (f) *bullying* by a *Councillor* of another *Councillor* or a *member of Council staff*;
- (g) conduct by a *Councillor* that is conduct of the type that is *sexual harassment* of a *Councillor* or a *member of Council staff*;
- (h) the disclosure by a *Councillor* of information the *Councillor* knows, or should reasonably know, is *confidential information*;
- (i) conduct by a *Councillor* that contravenes the requirement that a *Councillor* must not direct, or seek to direct, a member of Council staff;
- (j) the failure by a *Councillor* to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with the LGA20.

4.3 **Gross misconduct** by a *Councillor* means behaviour that demonstrates that a *Councillor*—

- (a) is not of good character; or
- (b) 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.

5. APPLICATIONS ALLEGING MISCONDUCT

5.1 An application for an internal arbitration process to make a finding of misconduct against a *Councillor* may be made by:

- (a) Council following a resolution of the Council
- (b) A *Councillor*
- (c) A group of *Councillors*

COUNCILLOR DISPUTE RESOLUTION POLICY

- 5.2 An application for an internal arbitration process must:
- 5.2.1 state the clause in the Councillor Code of Conduct 2021 that has allegedly been breached
 - 5.2.2 set out the facts that resulted in the alleged misconduct
 - 5.2.3 include any evidence to support the allegation of misconduct
- 5.3 An application for an internal arbitration process must be received by the *Council Conduct Officer* within 3 months of the alleged misconduct occurring.
- 5.4 A *Council Conduct Officer* that receives an application under 5.3 of must provide a copy of the application to the:
- (a) Councillor who is the subject of the allegations
 - (b) *Principal Councillor Conduct Registrar*

6. INTERNAL ARBITRATION PROCESS

- 6.1 When the *Principal Councillor Conduct Registrar* receives an application under 5.4 they must appoint an *arbiter* to Council to hear the matter if they are satisfied that:
- 6.1.1 the application is not frivolous, vexatious, misconceived or lacking in substance; and
 - 6.1.2 there is sufficient evidence to support the alleged breach of the clause(s) in the Policy specified in the application.
- 6.2 The *Principal Councillor Conduct Registrar* must reject the application if the requirements in 6.1 are not established.
- 6.3 If the *Principal Councillor Conduct Registrar* rejects an application under 6.2 this does not prevent a further application being made in respect of the same conduct.
- 6.4 Where a further application is made under 6.3, it must be received by the *Council Conduct Officer* within 3 months of the alleged misconduct occurring.

7. INTERNAL ARBITRATION HEARING

- 7.1 The *Principal Councillor Conduct Registrar* will appoint an *arbiter* to Council to hear the application where they consider the requirements of 6.1 are satisfied.
- 7.2 A hearing conducted by an *arbiter* under 7.1, is referred to as an Internal Arbitration Hearing, and conducted as a part of Council's internal arbitration process.
- 7.3 The *arbiter* conducting an internal arbitration process must ensure the:
- 7.3.1 parties involved in the internal arbitration process are given an opportunity to be heard by the *arbiter*;

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- 7.3.2 Internal Arbitration Hearing is conducted with as little formality and technicality as the proper consideration of the matter permits;
- 7.3.3 Internal Arbitration Hearing is not open to the public.
- 7.4 Subject to 7.5, an *arbiter*:
- 7.4.1 may hear each party to the matter in person or solely by written or electronic means of communication;
- 7.4.2 is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit.
- 7.5 A *Councillor* does not have a right to representation in an internal arbitration process unless the arbiter considers representation is necessary to ensure the process is conducted fairly.
- 7.6 If, after completing the internal arbitration process, the arbiter determines a *Councillor* has failed to comply with the prescribed standards of conduct, the *arbiter* may make a finding of misconduct against the *Councillor*.

8. SANCTIONS THAT MAY BE IMPOSED BY AN ARBITER

- 8.1 If an *arbiter* has made a finding of misconduct against a *Councillor*, the *arbiter* may do any one or more of the following:
- 8.1.1 direct the *Councillor* to make an apology in a form or manner specified by the arbiter;
- 8.1.2 suspend the *Councillor* from the office of *Councillor* for a period specified by the arbiter not exceeding one month;
- 8.1.3 direct the *Councillor* be removed from any position where the *Councillor* represents the *Council* for the period determined by the arbiter;
- 8.1.4 direct the *Councillor* be removed from being the chair of a *delegated committee* for the period determined by the *arbiter*;
- 8.1.5 direct a *Councillor* attend or undergo training or counselling specified by the *arbiter*.
- 8.2 The *arbiter* must provide a written copy of the arbiter's decision and statement of reasons to the:
- (a) Council
 - (b) Applicant(s)
 - (c) Respondent(s)
 - (d) *Principal Councillor Conduct Registrar*
- 8.3 Subject to 8.4, after *Council* receives a copy of the *arbiter's* decision and statement of reasons, it must be tabled at the next Council meeting and recorded in the minutes of the meeting.

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- 8.4 If the *arbiter's* decision and statement of reasons contains *confidential information*, the *confidential information* must be redacted from the copy tabled under 8.3.

9. DISCONTINUANCE OR REFERRAL OF AN APPLICATION

- 9.1 An *arbiter* may at any time discontinue an Internal Arbitration Hearing if the arbiter considers the:
- 9.1.1 application is vexatious, misconceived, frivolous or lacking in substance
 - 9.1.2 applicant has not responded, or has responded inadequately, to a request for further information.
- 9.2 An *arbiter* must refer the matter to the *Principal Councillor Conduct Registrar* if at any time, before, during or after an Internal Arbitration Hearing the *arbiter* believes the conduct in the application:
- 9.2.1 appears to involve *serious misconduct* under 4.2 of this Policy, and
 - 9.2.2 would more appropriately be dealt with as an application for a *Councillor Conduct Panel*.
- 9.3 If an *arbiter* makes a referral under 9.2, the *Principal Councillor Conduct Registrar* must notify the parties that the matter has been referred by the *arbiter*.

10. APPLICATIONS ALLEGING SERIOUS MISCONDUCT

- 10.1 Subject to 10.2 and 10.3, an application for a *Councillor Conduct Panel* to make a finding of *serious misconduct* against a Councillor may be made by:
- (a) Council following a resolution of the Council
 - (b) A Councillor
 - (c) A group of Councillors
 - (d) the Chief Municipal Officer
- 10.2 An application for a *Councillor Conduct Panel* to make a finding of *serious misconduct* against a Councillor that alleges that the Councillor has failed to disclose a *conflict of interest* may only be made by the Chief Municipal Inspector.
- 10.3 An application for a *Councillor Conduct Panel* to make a finding of *serious misconduct* against a Councillor must not be made if the Councillor has been charged with an offence for the same conduct, where the conduct includes:
- 10.3.1 the release of *confidential information*;
 - 10.3.2 a failure to comply with *conflict of interest* requirements;
 - 10.3.3 seeking to direct a *member of Council staff*.

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- 10.4 An application for a *Councillor Conduct Panel* to make a finding of *serious misconduct* against a Councillor must:
- 10.4.1 Specify the ground(s) for the application; and
 - 10.4.2 Set out the:
 - (a) circumstances, actions or inactions of the Councillor that the applicant alleges constitute *serious misconduct*; and
 - (b) set out the particulars of any evidence of the circumstances, actions or inactions referred to in 10.4.2(a); and
 - 10.4.3 Specify:
 - (a) any steps taken by Council to resolve the matter, and the reason why the matter was not resolved by the taking of those steps; or
 - (b) if the Council did not take any steps to resolve the matter, the reason why the Council did not take any steps to resolve the matter.
- 10.5 An application for a Councillor Conduct Panel to make a finding of *serious misconduct* must be made within 12 months of the alleged *serious misconduct* occurring.
- 10.6 An application for a Councillor Conduct Panel to make a finding of *serious misconduct* must be given to the Principal Councillor Conduct Registrar.

11. EXAMINATION OF APPLICATIONS ALLEGING SERIOUS MISCONDUCT

- 11.1 When the *Principal Councillor Conduct Registrar* receives an application under 10.6 they must form a *Councillor Conduct Panel* to hear the matter if they are satisfied that:
- 11.1.1 the application is not frivolous, vexatious, misconceived or lacking in substance; and
 - 11.1.2 there is sufficient evidence to support the allegation of serious misconduct specified in the application; and
 - 11.1.3 Council has:
 - (a) taken sufficient or appropriate steps to resolve the matter and the matter remains unresolved; or
 - (b) not taken any steps to resolve the matter but the *Principal Councillor Conduct Registrar* is satisfied as to the Council's reasons for not taking any steps.
- 11.2 The *Principal Councillor Conduct Registrar* may reject an application or refer a matter back to Council if satisfied the matter has been, or is being, dealt with, by the Council or another body.
- 11.3 Subject to 11.4, the *Principal Councillor Conduct Registrar* must reject an application or refer a matter back to Council if the requirements in 11.1 are not established.

COUNCILLOR DISPUTE RESOLUTION POLICY

- 11.4 The *Principal Councillor Conduct Registrar* must form a *Councillor Conduct Panel* to hear the matter if the application is made by the Chief Municipal Inspector.
- 11.5 If the *Principal Councillor Conduct Registrar* rejects an application or refers a matter back to Council under 11.2 or 11.3, this does not prevent a further application being made in respect of the same conduct.

12. COUNCILLOR CONDUCT PANEL HEARING

- 12.1 A *Councillor Conduct Panel* must:
- (a) fix a time and a place for the hearing to be conducted; and
 - (b) serve by post a notice of the time and place of the hearing on the applicant, the respondent and Council.
- 12.2 A Council served with a notice under 12.1 must provide all reasonable assistance necessary to enable the *Councillor Conduct Panel* to conduct the hearing and make a determination.
- 12.3 A *Councillor Conduct Panel* may:
- (a) request a person attend a hearing and answer questions
 - (b) request information from the applicant, the respondent or Council, including *confidential information* held by Council.
 - (c) direct a Councillor to attend a hearing or provide information, including *confidential information* held by the Councillor.
- 12.4 A *Councillor Conduct Panel* conducting the hearing must ensure the:
- 12.4.1 proceedings are conducted with as little formality and technicality as the requirements of the LGA20 and the proper consideration of the matter permit;
 - 12.4.2 appointed representative represents the Council or group of Councillors at the hearing where an application is made by a Council or group of Councillors;
 - 12.4.3 proceedings are not open to the public.
- 12.5 A *Councillor Conduct Panel*:
- 12.5.1 is bound by the rules of procedural fairness (natural justice);
 - 12.5.2 is not bound by the rules of evidence and may inform itself in any way it thinks fit;
 - 12.5.3 procedures are otherwise at the discretion of the *Councillor Conduct Panel*.
- 12.6 A *Councillor* does not have a right to representation at a *Councillor Conduct Panel hearing* except where the *Councillor Conduct Panel* considers representation is necessary to ensure the hearing is conducted fairly.

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- 12.7 After a *Councillor Conduct Panel* has conducted a hearing, they may:
- 12.7.1 make a finding of *misconduct* against a Councillor, so long as the application for a Councillor Conduct Panel to make a finding was made within 3 months of the breach occurring; or
 - 12.7.2 make a finding of *serious misconduct* against a Councillor; or
 - 12.7.3 make a finding that remedial action is required, whether or not they have made a finding of *misconduct* or *serious misconduct*, including directing the Councillor to attend one or more of the following:
 - (a) mediation
 - (b) training
 - (c) counselling
 - 12.7.4 dismiss the application.

13. SANCTIONS THAT MAY BE IMPOSED BY A COUNCILLOR CONDUCT PANEL

- 13.1 If a *Councillor Conduct Panel* makes a finding of *serious misconduct* against a Councillor, the Councillor becomes ineligible to hold the office of Mayor or Deputy Mayor for the remainder of the Council's term, unless the Councillor Conduct Panel directs otherwise.
- 13.2 If a Councillor Conduct Panel makes a finding of *serious misconduct* against a Councillor, the *Councillor Conduct Panel* may do any one or more of the following:
- 13.2.1 reprimand the *Councillor*;
 - 13.2.2 direct the *Councillor* to make an apology in a form or manner determined by the *Councillor Conduct Panel*;
 - 13.2.3 suspend the *Councillor* from the office for a period specified by the *Councillor Conduct Panel*, not exceeding 12 months;
 - 13.2.4 direct the Councillor is ineligible to chair a delegated committee of Council for a period specified by the *Councillor Conduct Panel*, not exceeding the remainder of the Council's term.
- 13.3 If a Councillor Conduct Panel makes a finding of *misconduct* against a Councillor, the *Councillor Conduct Panel* may do any one or more of the following:
- 13.3.1 direct the *Councillor* to make an apology in a form or manner specified by the *Councillor Conduct Panel*;
 - 13.3.2 suspend the *Councillor* from the office of *Councillor* for a period specified by the *Councillor Conduct Panel*, not exceeding one month;
 - 13.3.3 direct the *Councillor* be removed from any position where the *Councillor* represents the *Council* for the period determined by the *Councillor Conduct Panel*;

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- 13.3.4 direct the *Councillor* be removed from being the chair of a *delegated committee* for the period determined by the *Councillor Conduct Panel*;
- 13.4 The *Councillor Conduct Panel* must give a written copy of their decision and statement of reasons to the:
- (a) Council
 - (b) Parties to the matter
 - (c) Minister
 - (d) *Principal Councillor Conduct Registrar*
- 13.5 After *Council* receives a copy of the *Councillor Conduct Panel's* decision and statement of reasons, it must be tabled at the next Council meeting and recorded in the minutes of the meeting.

14. REVIEW OF A DECISION BY A COUNCILLOR CONDUCT PANEL

- 14.1 A person affected by a decision made by a *Councillor Conduct Panel* has 28 days from the date they receive the *Councillor Conduct Panel* statement of reasons to apply to VCAT for review of the decision.
- 14.2 An application for the review of a decision under 14.1 must provide a statement of reasons.
- 14.3 A Councillor is not entitled to apply for a review to dismiss an application on the grounds it is frivolous, vexatious, misconceived or lacking in substance.
- 14.4 A record of the decision of VCAT made in respect of a review under 14.1 must be tabled at the next Council meeting and recorded in the minutes of that meeting.

15. REFERRAL OF MATTER BY A COUNCILLOR CONDUCT PANEL TO THE CHIEF MUNICIPAL INSPECTOR

- 15.1 As soon as it appears a Councillor has committed an offence under the LGA20, a *Councillor Conduct Panel* must notify the Chief Municipal Inspector.
- 15.2 The Chief Municipal Inspector may at any time, whether or not they have received a notice under 15.1, require a *Councillor Conduct Panel* to suspend or stop the consideration of a matter.
- 15.3 Where 15.1 or 15.2 applies, the Chief Municipal Inspector must commence an investigation into the matter within 28 days.
- 15.4 An application that alleges *gross misconduct* by a Councillor can only be made by the Chief Municipal Inspector and heard by VCAT.
- 15.5 If VCAT makes a finding that a Councillor has engaged in conduct that constitutes gross misconduct, VCAT may order that:
- 15.5.1 the Councillor is disqualified from continuing to be a Councillor for a period specified by VCAT, not exceeding 8 years; and

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15.5.2 the office of the Councillor is vacated.

16. CHARGES FOR CERTAIN OFFENCES

- 16.1 Subject to 16.2, a Councillor must not be charged with an offence if an application for a *Councillor Conduct Panel* to make a finding of *serious misconduct* has been made for the same conduct, where the conduct includes:
- 16.1.1 the release of *confidential information*;
 - 16.1.2 a failure to comply with *conflict of interest* requirements;
 - 16.1.3 seeking to direct a *member of Council staff*.
- 16.2 A Councillor can be charged with an offence for the conduct in 16.1 where:
- 16.2.1 the Councillor Conduct Panel application is withdrawn; or
 - 16.2.2 the *Chief Municipal Inspector* requires the *Councillor Conduct Panel* to suspend or stop consideration of the matter; or
 - 16.2.3 before the *Councillor Conduct Panel* makes a determination, the Councillor ceases to be a Councillor; or
 - 16.2.4 the matter or behaviour that is the subject of an application for a finding of *serious misconduct* has been referred to another law enforcement agency.

17. CONFIDENTIALITY

- 17.1 Information provided to an *arbiter*, or produced by an *arbiter* for the purpose of an internal arbitration process, other than the findings and the reasons, is *confidential information*.
- 17.2 Unless otherwise determined by a *Councillor Conduct Panel*, the following information is *confidential information*:
- (a) information to, or produced by, a *Principal Councillor Conduct Registrar*, for the purposes of an application for a *Councillor Conduct Panel* to be formed;
 - (b) information, other than a decision or reasons for a decision, that is provided to, or produced by, a *Councillor Conduct Panel*;
 - (c) any part of a statement of reasons or any other document under the control or possession of the *Councillor Conduct Panel* that the *Councillor Conduct Panel* determines contains *confidential information*.

18. CIVIL AND CRIMINAL LIABILITY

- 18.1 This Policy does not effect, or in any way impact on, the criminal or civil liability of a Councillor, and does not prevent the institution of any criminal or civil proceedings in respect of that liability.

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19. OTHER INSTRUMENTS

- 19.1 This Policy must be read in conjunction with relevant laws, regulations, Ministerial directions, industry standards, Council policies, procedures, protocols, or practices.

20. DEFINITIONS

Term	Definition
<i>arbiter</i>	Is an independent person appointed to <i>Council</i> by the <i>Principal Councillor Conduct Registrar</i> to hear an application that alleges <i>misconduct</i> by a <i>Councillor</i> .
<i>bullying</i>	Bullying by a <i>Councillor</i> means the <i>Councillor</i> repeatedly behaves unreasonably towards another <i>Councillor</i> or a <i>member of Council staff</i> and that behaviour creates a risk to the health and safety of that other <i>Councillor</i> or <i>member of Council staff</i> .
<i>Chief Executive Officer</i>	The person appointed by <i>Council</i> to be its Chief Executive Officer, or any person acting in that position to support the Mayor and <i>Councillors</i> in their roles, and ensure the effective and efficient management of the day to day operations of Council.
<i>Chief Municipal Inspector</i>	Appointed by the Minister to: <ol style="list-style-type: none"> (a) examine, investigate and prosecute any possible breach or offence under the LGA20 (b) investigate any public interest complaint related to the conduct of a <i>Councillor</i> (c) make an application for a <i>Councillor Conduct Panel</i> to make a finding of <i>serious misconduct</i> against a <i>Councillor</i> (d) make an application to Victorian Civil and Administrative Tribunal for a finding of <i>gross misconduct</i> by a <i>Councillor</i> (e) investigate and report the Minister, where the Minister has reason to believe that the <i>Councillor</i> is: <ol style="list-style-type: none"> (i) creating a serious risk to the health and safety of <i>Councillor</i> or <i>member of Council staff</i>; or (ii) creating a serious risk to the health and safety of other persons in the <i>Councillor's</i> capacity as a <i>Councillor</i>; or (iii) preventing the <i>Council</i> from performing its functions
<i>confidential information</i>	As defined in Part 11 in the Councillor Code of Conduct 2021.
<i>conflict of interest</i>	As defined in Part 10 in the Councillor Code of Conduct 2021.
<i>Council</i>	Made up of persons democratically elected at a general election or by-election by the <i>municipal community</i> to hold the office <i>Councillor</i> to

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Term	Definition
	collectively ensure the peace, order and good government of each municipal district.
<i>Councillor</i>	A person who is democratically elected to hold the office of member of a <i>Council</i> .
<i>Councillor Conduct Officer</i>	The <i>member of Council staff</i> appointed by the <i>Chief Executive Officer</i> to assist <i>Council</i> with the implementation and conduct of Council's <i>internal arbitration</i> process, including: <ul style="list-style-type: none"> (a) Receiving applications for <i>internal arbitration</i> to determine allegations of <i>misconduct</i> made against a <i>Councillor</i> under the Councillor Dispute Resolution Policy 2021. (b) Assist the <i>Principal Councillor Conduct Registrar</i> in relation to applications for <i>internal arbitration</i>, including responding to any request for information regarding allegations of <i>gross misconduct</i> and <i>serious misconduct</i> against a <i>Councillor</i>.
<i>Councillor Conduct Panel hearing</i>	A hearing by a panel selected from a list of eligible persons appointed by the Minister, convened by the <i>Principal Councillor Conduct Registrar</i> , to hear an application that alleges <i>serious misconduct</i> by a <i>Councillor</i> .
<i>delegated committee</i>	Is a committee established by Council that: <ul style="list-style-type: none"> (a) must include at least two Councillors (b) may include any other persons appointed to the delegated committee by the Council who are entitled to vote.
<i>law enforcement agency</i>	Includes: <ul style="list-style-type: none"> (a) a police force or police service of any State or a Territory (b) the Australian Federal Police (c) the Australian Crime Commission (d) a commission with the function of investigating matters relating to criminal activity generally or of a specified class or classes established by a law of Victoria, any other State or a Territory, or the Commonwealth (e) Chief Examiner and Examiners appointed under Part 3 of the Major Crime (Investigative Powers) Act 2004 (Vic) (f) the Independent Broad-based Anti-corruption Commission (g) the Sheriff within the meaning of the Sheriff Act 2009 (Vic) (h) the Victorian Inspectorate established by the Victorian Inspectorate Act 2011 (Vic) (i) an agency responsible for the performance of functions or activities directed to: <ul style="list-style-type: none"> – the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing

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Term	Definition
	<p>a penalty or sanction for a breach</p> <ul style="list-style-type: none"> – the management of property seized or restrained under laws relating to the confiscation of the proceeds of crime or the enforcement of such laws, or of orders made under such laws <p>(j) an agency responsible for the execution or implementation of an order or decision made by a court or tribunal</p> <p>(k) an agency responsible for the protection of the public revenue under a law administered by it</p>
<i>member of Council staff</i>	A person appointed by the <i>Chief Executive Officer</i> .
<i>Municipal Monitor</i>	<p>Appointed by the Minister to a <i>Council</i> to:</p> <ul style="list-style-type: none"> (a) monitor and advise Council on governance processes, practices and improvements (b) report to the Minister on any steps or actions taken by the <i>Council</i> to improve its governance and the effectiveness of those steps or actions (c) make recommendations to the Minister in relation to the exercise of any power relating to governance matters of the <i>Council</i> (d) investigate and report the Minister, where the Minister has reason to believe that the <i>Councillor</i> is: <ul style="list-style-type: none"> (i) creating a serious risk to the health and safety of <i>Councillor</i> or <i>member of Council staff</i>; (ii) creating a serious risk to the health and safety of other persons in the <i>Councillor's</i> capacity as a <i>Councillor</i>; (iii) preventing the <i>Council</i> from performing its functions (e) inform the Independent Broad-based Anti-corruption Commission if they consider a matters appears to involve conduct that is corrupt conduct.
<i>Principal Councillor Conduct Registrar</i>	<p>Appointed by the <i>Secretary</i> to administer the processes under the <i>Councillor</i> conduct framework, including but not limited to:</p> <ul style="list-style-type: none"> (a) examining applications received by Council's <i>Councillor Conduct Officer</i> alleging <i>misconduct</i> against a <i>Councillor</i> and requesting <i>internal arbitration</i> (b) determining whether an <i>arbiter</i> should be appointed to <i>Council</i> to hear and determine allegations of <i>misconduct</i> against a <i>Councillor</i>. (c) convening <i>Councillor Conduct Panels</i> by appointing members of the panel list to sit on <i>Councillor Conduct Panel Hearings</i>
<i>Secretary</i>	Secretary to the Department of Environment, Land, Water and Planning.
<i>sexual harassment</i>	Is unwelcomed sexual behaviour that causes a person to feel

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Term	Definition
	<p>offended, humiliated or intimidated, where a reasonable person could have anticipated that reaction in the circumstances. Sexual harassment includes:</p> <ul style="list-style-type: none"> (a) an unwelcome sexual advance (b) an unwelcome request for sexual favours (c) any other unwelcome conduct of a sexual nature <p>Conduct of a sexual nature includes:</p> <ul style="list-style-type: none"> (a) subjecting a person to any act of physical intimacy (b) making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence (c) making any gesture, action or comment of a sexual nature in a person's presence.
VCAT	Victorian Civil and Administrative Tribunal

21. RELATED LEGISLATION AND DOCUMENTS

- 21.1 Local Government Act 2020 (Vic); Part 6, Divisions 5 to 7
- 21.2 Local Government (Governance and Integrity) Regulations 2020 (Vic); Regulation 11
- 21.3 Councillor Code of Conduct 2021
- 21.4 Golden Plains Shire Complaints Policy

22. HUMAN RIGHTS STATEMENT OF COMPATABILITY

- 22.1 This Policy does not impact negatively on any rights identified in the Charter of Human Rights and Responsibilities Act 2006 (Vic).
- 22.2 This Policy is inoperative to the extent its is inconsistent with any Act (including the **Charter of Human Rights and Responsibilities Act 2006**) or regulation.

23. POLICY OWNERS

- 23.1 The Golden Plains Shire Councillors are the owners of this Policy.
- 23.2 The owners of this Policy are responsible to review, edit and maintain this Policy and any associated procedures.

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24. IMPLEMENTATION

- 24.1 The *Councillor Conduct Officer* is the point of contact for any questions regarding the implementation of this Policy.
- 24.2 The *Councillor Conduct Officer* is the point of contact for any application made under this policy.

25. DOCUMENT INFORMATION

DOCUMENT TYPE:	Organisational Policy document
DOCUMENT STATUS:	Adopted by a formal resolution of the Council passed by at least two-thirds of Councillors at the Council Meeting on 23/2/21.
DOCUMENT OWNERS:	Councillors
ADOPTED BY:	Councillors
DATE ADOPTED:	23 February 2021
VERSION NUMBER:	1.0
REVIEW DATE:	Council may review or amend at any time.

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26. COUNCILLOR DECLARATION

I declare that I will abide by the Councillor Dispute Resolution Policy 2021 adopted by a formal resolution of Council passed by at least two-thirds of Council under 'Part 6 Council Integrity' of the Local Government Act 2020 (Vic).

Signed by Mayor Helena Kirby
Date: 23 February 2021

Signed by Deputy Mayor Ian Getsom
Date: 23 February 2021

Signed by Cr Brett Cunningham
Date: 23 February 2021

Signed by Cr Gavin Gamble
Date: 23 February 2021

Signed by Cr Les Rowe
Date: 23 February 2021

Signed by Cr Owen Sharkey
Date: 23 February 2021

Signed by Cr Clayton Whitfield
Date: 23 February 2021