

Minutes

for the Special meeting of the council held in the Council Chamber – 104 Hovell St, Wodonga on June 27, 2016.

Present

Cr A Speedie (Mayor)

Cr M Fraser

Cr L Mahood

Cr J Watson

In attendance

Ms P Harrington Chief Executive Officer

Mr T Ierino Director Business Services

Ms D Mudra Director Community Development

Mr L Schultz Director Planning and Infrastructure



OUR PEOPLE OUR CITY OUR FUTURE

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1. Calling to order

The meeting was called to order at 7.08pm by the Mayor.

2. Statement of acknowledgement

The Mayor read the following:

We acknowledge the traditional owners of the land on which we are meeting. We pay our respects to their Elders and to Elders from other communities who may be here today.

3. Apologies and requests for leave of absence

An apology was received from Cr Rodney Wangman.

4. Declaration under Acts, Regulations, Codes or Local Laws

Recording of council meeting

The CEO advised that the council's Meeting Procedure Local Law states that audio, video, or still image recording devices are not to be used, unless prior approval has been given by the chairperson or by council. Members of the public gallery were requested to observe this requirement.

5. Declaration by councillors of any conflict of interest

There were no conflict of interest disclosures.

6. Officers reports for determination

6.1 Councillor Code of Conduct

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7. Urgent business

8. Confidential urgent business

9. Close of meeting

	Minor (4)	Moderate (3)	Major (2)	Outstanding (1)
Opportunities	<ul style="list-style-type: none"> may change attitude or contribute to a change in attitude of small section of the community or organisation OR small reduction in expenditure/no impact on budget or minimal/no increase in income for the business units' project or program OR may improve or contribute to the improvement of capacity and/or efficiency of some business units OR may enhance or contribute to the enhancement of reputation with small section of the community OR may improve or contribute to the improvement of health/wellbeing of staff and/or sections of the community 	<ul style="list-style-type: none"> change in small section of the community and/or organisational behaviours OR moderate reduction in expenditure or increase in income for the business unit project or program (by 15% to 30%) OR improvement of capacity and/or efficiency of some business units OR enhancement of reputation with a small section of the community OR some improvement in health/wellbeing of staff and/or sections of the community 	<ul style="list-style-type: none"> significant changes in sections of the community or organisational behaviours OR significant reduction in expenditure for the business units' project or program (by 30% or more) OR significant improvement in capacity and/or efficiency of multiple business units OR significant enhancement of reputation with sections of the community OR significant improvement in health/wellbeing of staff and/or sections of the community 	<ul style="list-style-type: none"> significant change in community and organisational behaviours OR significant improvement in organisational financial position OR significant improvement in organisational capacity and/or efficiency OR significant enhancement of reputation with all/most of the community OR significant improvement in health, wellbeing of all/most community members or staff
Risks	<ul style="list-style-type: none"> could require action to offset the impact on some aspect of a business units' program or project OR consequence may be dealt with by routine operations or management action OR limited impact on the business units' operational objectives OR limited political/community sensitivity OR management reporting required OR may result in minor injury or reversible health damage which may be dealt with through primary first aid OR no reputational damage 	<ul style="list-style-type: none"> would not threaten a business units' program or project, but could result in a significant review OR some political/community sensitivity and local media scrutiny OR parliamentary questions OR require management initiated review OR some impact on the business units' objectives OR result in injury or health impacts that are reversible, but may require medical attention but limited on-going treatment 	<ul style="list-style-type: none"> would threaten the continuation of a business units' program or project OR impact adversely on the achievement of a business units' strategic objectives OR result in significant political community sensitivity and media scrutiny OR ministerial intervention OR require external audit result in life-threatening or serious injury which is irreversible requiring medical attention and on-going treatment OR may significantly impact one or more of the organisations' objectives as outlined in the Council Plan 	<ul style="list-style-type: none"> would threaten the organisations' viability OR result in extreme political/community sensitivity and national media scrutiny OR result in a commission of inquiry or request OR result in death or permanent disability OR would not allow the organisation to achieve its objectives according to the Council Plan
Likelihood	Minor (4)	Moderate (3)	Major (2)	Catastrophic (1)
Almost Certain (A) Can be expected to occur in most circumstances (i.e. weekly)	Significant	High	Extreme	Extreme
Likely (B) Will probably occur in most circumstances in the future (i.e. monthly)	Medium	Significant	High	Extreme
Possible (C) May occur in some circumstances in the future (i.e. yearly)	Medium	Significant	High	High
Unlikely (D) Could occur at some time in the future, but doubtful (i.e. every 2-10 years)	Low	Medium	Significant	High
Rare (E) Expected to occur only in the most exceptional circumstances (i.e. 10 years)	Low	Low	Medium	Significant

E – Council/CEO's attention immediately required. Possibly avoid undertaking the activity OR implement new controls
S – Manager's attention required. Ensure that controls are in place and operating and management responsibility is agreed. **M** - Manage through usual procedures and accountabilities
H – Director's attention required. Consider suspending or ending activity OR implement additional controls
L – Add treatments where appropriate

Risk management legend
 NB: This table shows the legend to the codes used in some agenda reports.

6.1 - Councillor Code of Conduct

Purpose of report

Recent changes to the *Local Government Act 1989* (the Act) require councils to amend their Councillor Codes of Conduct, to engage an arbiter as part of their internal resolution procedure, and to appoint a Principal Conduct Officer.

Councils are required to consider a revised Code of Conduct (Code) at a special meeting called solely for that purpose.

Background

Recent changes to the Act requires the council to amend its Code. The relevant sections of the Act are 76C, 81AA and 81AB. An excerpt from the Act showing these sections is attached.

Councils are required to have an internal resolution procedure in their Code by July 4, 2016. The internal resolution procedure provides for an arbiter to hear and determine allegations that a councillor has contravened its Code. This is a three step process to work through disputes that is required prior to the dispute being escalated to a Councillor Conduct Panel.

The MAV has developed a model Councillor Code of Conduct designed to meet the requirements of the recent changes to the Act. The model Code provides a minimalist compliance approach.

A Councillor Code of Conduct, based upon the MAV model, and also utilising excerpts from the current Governance Code, is attached for the consideration of the council.

The Principal Conduct Officer is appointed by the CEO, and must assist the council in the implementation and conduct of the internal resolution procedure. The CEO has appointed the Director Business Services, Trevor Ierino as the Principal Conduct Officer. This appointment is reported for the information of the council.

Council Plan

Strategic objective	Strategy	Key priority activity
We are innovative, responsive and responsible in the way we conduct business.	Practice good governance, act with transparency and integrity in our decision-making.	Not applicable

Council policy / strategy implications

The councillor code of conduct is a key policy statement on the commitment of councillors to good governance.

6.1 - Councillor Code of Conduct (cont'd)

Risk and opportunity management implications

Risk description	C'quence	L'hood	Rating	Controls & treatments
A revised councillor code is not adopted.	3	C	M	Council would be in breach of the Act – adopt the revised code by July 4.

Financial implications

There are no financial implications associated with this report.

Environmental implications

There are no environmental implications associated with this report.

Social / cultural implications

There are no social / cultural implications associated with this report.

Legislative implications

Sections 76C, 81AA and 81AB of the Act (refer to attachment).

Community engagement and internal consultation

The changes to the Act introduced by the *Local Government Amendment (Improved Governance) Act 2015* were reported to councillors at a briefing on November 9, 2015. A further report on the code of conduct requirements was provided to councillors at the briefing of April 18, 2016.

Options for consideration

1. Do nothing. This is not recommended as the council is required under the Act to conduct a review of the councillor code of conduct.
2. Adopt the attached Code. This is recommended.
3. Amend the attached Code of Conduct with such changes as councillors wish to incorporate.

6.1 - Councillor Code of Conduct (cont'd)

Conclusion

This report outlines the process for the council to comply with recent legislative changes requiring the council to review its code of conduct.

Attachments

The following documents are attached to this report:

- Attachment A: Excerpt from the Local Government Act 1989
- Attachment B: Councillor Code of Conduct

Tabled papers

Nil

Declaration of conflict of interests

Under section 80C of the *Local Government Act* 1989 officers providing advice to the council must disclose any interests, including the type of interest.

Director Business Services - Trevor Ierino
In providing this advice, I have no interests to disclose in this report.

Governance Officer - Kevin Scully
In providing this advice as the report author, I have no interests to disclose in this report.

Recommendation

That:

1. The Councillor Code of Conduct, as attached, be adopted; and
2. The Code be signed by all councillors within one month of its adoption in accordance with the requirements of sections 76C(6A) and 76C(6B) of the Act.

Motion

Crs Lisa Mahood / John Watson

That the recommendation be adopted.

Carried

Excerpt from the Local Government Act 1989

76C Councillor Code of Conduct

(1) A Council must review, and make any necessary amendments to, its Councillor Code of Conduct within 4 months after the commencement of section 15 of the Local Government Amendment (Improved Governance) Act 2015—

- (a) by calling a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
- (b) at that special meeting, approving any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.

(2) A Council must, within the period of 4 months after a general election—

- (a) call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
- (b) at that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.

(3) A Councillor Code of Conduct—

- (a) must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor;

Note

Section 81AA provides for matters to be addressed by the internal resolution procedure of a Council.

(b) may set out processes for the purpose of resolving an internal dispute between Councillors;

(c) must include any provisions prescribed for the purpose of this section;

(d) must include provisions addressing any matters prescribed for the purpose of this section;

(e) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.

(5) A Councillor Code of Conduct must not be inconsistent with any Act or regulation.

(5A) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act or regulation.

(6) A copy of the current Councillor Code of Conduct must be—

- (a) given to each Councillor;
- (b) available for inspection by the public at the Council office and any district offices;
- (c) published on the Council's Internet website maintained under section 82A.

(6A) Within one month of amendments to a Councillor Code of Conduct being approved in accordance with this section, a Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct.

(6B) A declaration by a Councillor under subsection (6A) must be—

- (a) in writing; and
- (b) witnessed by the Chief Executive Officer.

81AA Internal resolution procedure of Council

- (1) A Council must develop and maintain an internal resolution procedure for the purposes of addressing an alleged contravention of the Councillor Code of Conduct by a Councillor.
- (2) The internal resolution procedure of a Council must—
- (a) be specified in the Councillor Code of Conduct; and
 - (b) incorporate any prescribed processes including any application process; and
 - (c) provide for the selection of an arbiter who is suitably independent and able to carry out the role of arbiter fairly; and
 - (d) specify the role an arbiter is expected to undertake in the conduct of any internal resolution procedure including that the arbiter must—
 - (i) consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor; and
 - (ii) make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council; and
 - (e) provide processes to ensure that parties affected by an application alleging a contravention of the Councillor Code of Conduct are given an opportunity to be heard by the arbiter; and
 - (f) specify that the Council and the Councillor the subject of any application made alleging a contravention of the Councillor Code of Conduct are to be given written reasons for any findings made by an arbiter; and
 - (g) address any matters prescribed for the purposes of this section; and
 - (h) include any provisions prescribed for the purposes of this section.

81AB Sanctions for contravention of Councillor Code of Conduct

- (1) If, after an internal resolution procedure has been conducted, it is found that a Councillor has contravened the Councillor Code of Conduct, the Council may give any or all of the following written directions to the Councillor—
- (a) direct the Councillor to make an apology in a form or manner specified by the Council;
 - (b) direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council;
 - (c) direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by the Council, the Councillor—
 - (i) be removed from any position where the Councillor represents the Council; and
 - (ii) to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.
- (2) A direction given under subsection (1)(b) must be in respect of the next scheduled meetings of the Council after the direction is made.

Wodonga Council

Councillor Code of Conduct

June 27, 2016

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1. Introduction

The *Local Government Act 1989* (the Act) requires councils to develop and maintain a Councillor Code of Conduct. The Councillor Code of Conduct is required to be periodically reviewed. This Councillor Code of Conduct (Code) has been adopted by the Wodonga Council (the council) to comply with the requirements of the Act.

A Councillor Code of Conduct must include an internal resolution procedure for dealing with any alleged contraventions of the Code. A council can apply sanctions to a councillor who has been found to have contravened its Councillor Code of Conduct.

Failure by a councillor to comply with an internal resolution procedure or to comply with a written direction given by a council under section 81AB of the Act (sanctions for contravention of the Code) constitutes misconduct by a councillor.

If a Councillor Conduct Panel makes a finding of misconduct against a councillor, the Panel may apply further sanctions against that councillor.

2. Purpose of the Councillor Code of 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 1989* 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. Good governance relies on good working relations between councillors.

This Code:

- sets out the standards of conduct expected of Wodonga councillors;
- endeavours to foster good working relations between councillors to enable councillors to work constructively together in the best interests of the Wodonga community; and
- mandates councillor conduct designed to build public confidence in the integrity of Wodonga Council.

3. Background

A council must, within four months after a general election:

- a) call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
- b) at that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by the council to be necessary following the review of the Councillor Code of Conduct.

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

- given to each councillor
- available for inspection at the council office in Hovell Street, Wodonga
- published on the council's internet website, www.wodonga.vic.gov.au.

From the 2016 council elections, 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 declaration stating that they will abide by the Councillor Code of Conduct. It is the personal responsibility of councillors to ensure that they are conversant with, and comply with, the provisions of this Code.

3.1 Role of mayor and councillors

Section 65 of the Act provides that the role of a councillor is:

- a) to participate in the decision-making of the council; and
- b) to represent the local 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 the role of a councillor, a councillor must:

- a) consider the diversity of interests and needs of the local community; and
- b) observe principles of good governance and act with integrity; and
- c) provide civic leadership in relation to the exercise of the various functions and responsibilities of the council under this Act and other Acts; and
- d) participate in the responsible allocation of the resources of council through the annual budget; and
- e) facilitate effective communication between the council and the community.

The role of a councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer (CEO) under section 94A of the Act.

Section 73AA of the Act describes the functions of the Mayor as including:

- a) providing guidance to councillors about what is expected of a councillor including in relation to the role of a councillor under section 65, and the observation of the councillor conduct principles and the Councillor Code of Conduct by councillors under sections 76B, 76BA and 76C; and
- b) acting as the principal spokesperson for the council; and
- c) supporting good working relations between councillors; and
- d) carrying out the civic and ceremonial duties of the office of Mayor.

A Code:

- a) must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct;
- b) may set out processes for the purpose of resolving an internal dispute between councillors;
- c) must include any provisions prescribed for the purpose of this section;
- d) must include provisions addressing any matters prescribed for the purpose of this section;
- e) may include any other matters relating to the conduct of councillors which the council considers appropriate.

4. Conduct Obligations

The Act places obligations on councillors in relation to way they should act. The Act also prohibits certain conduct by councillors and prescribes penalties for councillors who contravene these provisions. As councillors of Wodonga Council, we undertake to comply with the various provisions of the Act and with this Code of Conduct.

Section 76B of the Act sets out the primary principle of councillor conduct as follows:

"It is the primary principle of Councillor conduct that, in performing the role of a councillor, a councillor must:

- a) act with integrity; and
- b) impartially exercise his or her responsibilities in the interests of the local community; and
- c) not improperly seek to confer an advantage or disadvantage on any person."

Section 76BA of the Act sets out the general principles of councillor conduct as follows:

"In addition to acting in accordance with the primary principle of councillor conduct specified in section 76B, in performing the role of a councillor, a councillor must:

- a) avoid conflicts between his or her public duties as a councillor and his or her personal interests and obligations;
- b) act honestly and avoid statements (whether orally or in writing) or actions that will or are likely to mislead or deceive a person;
- c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other councillors, council staff and other persons;
- d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that it is appropriate to his or her office;
- e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- f) act lawfully and in accordance with the trust placed in him or her as an elected representative;
- g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of councillor."

Councillors are required to conduct themselves in observance of the primary principle and the general principles. We undertake to do this.

4.1 Functions of the Chief Executive Officer

The CEO is responsible for:

- a) establishing and maintaining an appropriate organisational structure for the council; and
- b) ensuring that the decisions of the council are implemented without undue delay; and
- c) the day to day management of the council's operations in accordance with the Council Plan; and
- d) developing, adopting and disseminating a code of conduct for council staff; and

- e) providing timely advice to the council; and
- 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 as Mayor;
- 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; and
- i) performing any other function or duty of the CEO specified in this Act or any other Act.

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

We 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.

4.2 Interaction with staff

We recognise that it is the role of the CEO to direct staff on all council matters. The protocols which apply to councillor and officer communication are:

- Council employs the CEO, and the CEO is responsible for the organisation, and therefore councillors primary point of communication should be with the CEO.
- Councillors seeking information or wishing to make comment on a specific matter should do so either via the CEO, or if the matter specifically relates to a particular directorate, in which case the councillor should contact the relevant Director.
- Councillors do not have the authority to direct staff members.
- Any information that is provided to an individual councillor should be such that it is, or could be, copied to all councillors
- Senior managers may be requested to provide information to councillors by their director or the CEO in some situations.
- Contact with managers is appropriate where councillors are seeking clarification or further specific information on matters sent to councillors for their information by that manager.
- Staff should inform their director/manager of any contact made directly to them by councillors if the contact is outside of this protocol.
- Contact by councillors with directors is appropriate for matters specific to the director's area of individual responsibility. The CEO should be copied in on all communication between councillors and directors or managers.
- Where a manager, or one of their staff, services a committee or a forum attended by a councillor it is appropriate for the councillor to seek information directly from that manager or staff member, provided the relevant director is copied in.
- Given the above protocols telephone, verbal or email contact between councillors and staff should not occur.

- In regard to governance, media, and IT Support, councillors may deal directly with the Governance Officer, Manager Community Relations and support staff, and relevant IT staff, where needed.

Improper councillor direction to, or influence on, council staff in relation to advice (oral or written) is prohibited under S76E of the Act. This provision also applies in respect of officer reports presented to council and on directing staff acting under delegation, as an authorised officer, in a position held under another Act.

4.3 Use of Council resources

We commit to using council resources effectively and economically. We will:

- maintain adequate security over council property, facilities and resources provided to us to assist in performing our role and will comply with any council policies applying to their use;
- ensure any expense claims that we submit are in compliance with the relevant legislative provisions and council policy;
- 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; and
- not use public funds or resources in a manner that is improper or unauthorised.

4.4 Gifts and benefits

We 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.

We will take all reasonable steps to ensure that our family members (as per the definition in section 78) 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 the Gifts and Hospitality Register with a notation that it is the property of the council.

We recognise that gifts equal to or above the gift disclosure threshold from a person or body that has a direct interest in a matter may give rise to an indirect interest because of receipt of an applicable gift.

We will record all campaign donations in our "campaign donation return".

4.5 Communication

We recognise that as representatives of the local community, we have a primary responsibility to be responsive to community views and to adequately communicate the position and decisions of council.

We undertake to comply with the council's Media Directive and respect the functions of the Mayor and CEO to be the spokespersons for the council in accordance with our policy.

We acknowledge that individual councillors are entitled to express their personal opinions through the media. Where we choose to do so, we will make it clear that such comment is a personal view and does not represent the position of council. We undertake to ensure that any such comment is devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any person.

4.6 Council Policies

We agree to abide by all council policies, directives, protocols and / or guidelines that may be adopted by the council or issued by the CEO from time to time. We acknowledge that a breach of any of these documents will be deemed to be a breach of this Code of Conduct.

4.7 Personal dealings with Council

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

4.8 Decision-making process

We recognise that good decisions are more likely to be made if good decision-making processes are used. The key features of council's decision-making process are:

Agenda setting

- The main way of having issues considered by the council is through the Council Plan and budget processes together with the development and review of policies and strategies.
- If issues arise during the year which councillors believe require attention, we can work with each other, the Mayor and the CEO to put them forward for the council's consideration. If councillors require assistance in getting their issues up for consideration, they should approach the CEO or the Mayor.
- If we wish to put items onto the Agenda as notices of motion, the procedures of the *Meeting Procedures Local Law* should be followed.
- Councillor briefings provide an opportunity for councillors to be proactive in canvassing issues with fellow councillors.

Information gathering

- We acknowledge that decisions must be based on the best possible data and as such expect the CEO to provide high quality reports.
- We accept that the views of those affected by the council's decisions is an important source of information and to that end should engage with the community in accordance with the principles and practices established in the Community Engagement Policy.

- We will value the information provided by Advisory Committees and use that information to help in the decision making process.

Opinion formation

- Councillor briefing sessions offer the opportunity to ask questions, seek further information and float issues and options which are necessary for determining views on issues.
- Briefing sessions should provide each councillor with sufficient information to make a decision when a matter comes before council.
- Appropriate use of briefing sessions should result in “no surprises” occurring at council meetings or other public forums.
- Briefing sessions are confidential, and can be used as brainstorming opportunities with all views being accepted and worked through. Councillors and staff should therefore participate equally in briefing sessions. It is each councillor’s responsibility to raise all information requests and any other matters which are necessary for making an informed decision.
- Briefing sessions are “Assemblies of councillors” and under the conflict of interest provisions of the Act councillors are required to make appropriate conflict of interest disclosures.

Decision-making

- Council’s decision-making should be transparent. The community is entitled to understand how council reaches a decision. Therefore, councillors should debate matters when they come before council at the formal council meeting, notwithstanding that discussion may have occurred at a councillor briefing session.
- Councillors should respect differences of opinion and should treat each other with courtesy at council meetings.
- Council decisions should be made in such a way that councillors are as participative as possible. Chairing and meeting procedures should recognise and encourage participation by all councillors.

Implementation

- Once council has made a decision, it becomes the collective decision of council. While it is recognised that some councillors may not have supported the decisions, councillors should not undermine or publicly denigrate the decision.
- If a councillor believes that his or her accountability to constituents requires him or her to express dissent this should be done carefully and with respect. Councillors should bear in mind that post-decision dissent weakens the council in the eyes of the community.

5. Prohibited Conduct

The Act has specific provisions that prohibit councillors from certain conduct. This conduct relates to:

- Misuse of position
- Improper direction and improper influence
- Confidential information
- Conflict of interest
- Electoral conduct

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 Local Government Inspectorate or the Independent Broad-based Anti-corruption Commission depending on the nature of the allegation.

(Note: Section 3(1) of the Act defines serious misconduct by a councillor to mean:

- a) the failure of a councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that councillor; or*
- b) the failure of a councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the councillor to give; or*
- c) the failure of a councillor to comply with a direction of a Councillor Conduct Panel; or*
- d) continued or repeated misconduct by a councillor after a finding of misconduct has already been made in respect of the councillor by a Councillor Conduct Panel; or*
- e) bullying of another councillor or member of Council staff by a councillor; or*
- f) conduct by a councillor in respect of a member of council staff in contravention of section 76E; or*
- g) the release of confidential information by a councillor.)*

5.1 Misuse of position

Section 76D(1) of the Act stipulates that a councillor must not misuse his or her 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.

Section 76D(2) of the Act states that the circumstances involving the misuse of position by a councillor include:

- a) making improper use of information acquired as a result of the position he or she held or holds; or
- b) disclosing information that is confidential information within the meaning of section 77(2); or
- c) directing, or improperly influencing, or seeking to direct or improperly influence, a member of council staff in contravention of section 76E; or
- d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
- e) using public funds or resources in a manner that is improper or unauthorised; or
- f) failing to disclose a conflict of interest as required under this Division.

5.2 Improper direction and improper influence

Section 76E(2) of the Act provides that 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; or
- b) in the exercise of a power or the performance of a duty or function exercise or performed by the member as an authorised officer under this Act or any other Act; or
- c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
- d) in relation to advice provided to the council or a special committee, including advice in a report to the council or special committee.

5.3 Confidential information

Section 77 of the Act declares that a councillor must not disclose information that he or she knows, or should reasonably know, is confidential information.

A councillor may disclose information that he or she knows 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) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- e) to a Councillor Conduct Panel in the course of a 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 extent reasonably required for any other law enforcement purposes.

Notwithstanding section 77 of the Act we acknowledge and respect that all material prepared under the direction of the CEO and issued to councillors for consideration at relevant internal briefings involving councillors, shall be deemed and remain as confidential material, unless resolved otherwise by the council or the CEO has informed all councillors in writing or the material is no longer confidential by virtue of being in the public domain (other than as a consequence of a disclosure by a councillor in contravention of the Act or this section).

5.4 Conflict 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 or special committee, an assembly of councillors, an audit committee or a section 223 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 has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the councillor

would be directly altered if the matter is decided in a particular way. This includes where there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms and where the councillor, or together with a member or members of the person's family have a controlling interest in a company or other body that has a direct interest in the matter.

A conflict of interest also exists where a councillor has any of the six types of indirect interest. These indirect interests are

- Close association - an indirect interest because of a close association with a family member, relative or member of the household who has a direct interest
- Indirect financial interest - an indirect financial interest, including holding shares above a certain value in a company with a direct interest
- Conflicting duty - a conflicting duty arising from having particular responsibilities to a person or organisation with a direct interest
- Applicable gift - receipt of an applicable gift or gifts from a person or organisation with a direct interest
- Interested party - a party to the matter by having become involved in civil proceedings in relation to the matter
- Residential amenity – this occurs where there is a reasonable likelihood that the person's residential amenity will be altered if the matter is decided in a particular way.

5.5 Other legislative requirements

The Act includes requirements in relation to councillor eligibility, electoral conduct and the election period (caretaker 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.

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

6. Dispute Resolution

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 council's three phase dispute resolution process.

The council's three phase dispute resolution process involves:

- direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance;
- external mediation by an independent mediator engaged by the CEO; and
- an internal resolution procedure involving an independent arbiter.

6.1 Phase 1 – Direct negotiation

Where councillors who are in dispute have not been able to resolve the dispute between them, 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 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;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the councillor appointed 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 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 65 of the Act, and the observation of the councillor conduct principles and the Councillor Code of Conduct.

The Mayor is to document any agreement reached at the meeting. 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 resolution procedure 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 resolution procedure 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 (if any) or the immediate past Mayor. The Deputy Mayor or the immediate past Mayor will perform the functions ascribed to the Mayor.

6.2 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 Principal Conduct Officer setting out the name of the councillor 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;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the councillor appointed 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 Principal Conduct Officer or as soon as practical thereafter.

The Principal Conduct Officer 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 Principal Conduct Officer. 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 Principal Conduct Officer 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. 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 resolution procedure 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 resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

6.3 Phase 3 - Internal resolution procedure – Arbiter

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure 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 resolution procedure is not returned to office as a councillor in the election, 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.

A councillor or a group of councillors may make an application alleging that a councillor has contravened this Councillor Code of Conduct. The application must:

- specify the name of the councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the councillor appointed 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 application must be submitted to the council's Principal Conduct Officer. An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent councillor cannot be resubmitted by the applicant.

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and CEO of the application without undue delay;

- provide a copy of the application to the councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application;
- identify an arbiter to hear the application;
- obtain from the arbiter written advice that they have no conflict of interest in relation to the councillors involved;
- notify the parties of the name of the proposed arbiter and provide them with the opportunity (two working days) to object to the person proposed to be the arbiter;
- consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter;
- provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired;
- after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
- attend the hearing(s) and assist the arbiter in the administration of the process

In identifying an arbiter to hear the application, the Principal Conduct Officer must select an arbiter who is suitably independent and able to carry out the role of arbiter fairly.

The role of the arbiter is to:

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

In considering an application alleging a contravention of the Councillor Code of Conduct, an arbiter will:

- in consultation with the Principal Conduct Officer, fix a time and place to hear the application;
- authorise the Principal Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing;
- hold as many meetings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing;
- have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the application allows;
- ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
- consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application;
- ensure that the rules of natural justice are observed and applied in the hearing of the application; and
- ensure that the hearings are closed to the public.

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

An arbiter:

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

The arbiter is to give a copy of his or her findings and the statement of reasons to the council, the applicant and the respondent. At the same time, the arbiter provides the findings and statement of reasons, he or she shall, where a councillor has been found to have contravened the Code, recommend an appropriate sanction or sanctions for the contravention for consideration by the council.

A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next ordinary meeting of the council for its consideration. If an arbiter has found that a contravention of the Code has occurred, the council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the councillor:

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

A councillor who does not participate in the internal resolution procedure may be guilty of misconduct. The Act provides that misconduct by a councillor means any of the following:

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

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

7 – Urgent business	
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Clause 23 of the council's Meeting Procedure Local Law (no. 1 of 2009) states:

If the agenda for an Ordinary meeting makes provision for urgent business, business cannot be admitted as urgent business other than by resolution of Council and only then if it:

- a) relates to or arises out of a matter which has arisen since distribution of the agenda; or
- b) cannot safely or conveniently be deferred until the next Ordinary meeting or involves a matter of urgent community concern.

There was no urgent business.

8 – Confidential urgent business

Clause 23 of the council's Meeting Procedure Local Law (no. 1 of 2009) states:

If the agenda for an Ordinary meeting makes provision for urgent business, business cannot be admitted as urgent business other than by resolution of Council and only then if it:

- a) relates to or arises out of a matter which has arisen since distribution of the agenda; or
- b) cannot safely or conveniently be deferred until the next Ordinary meeting or involves a matter of urgent community concern.

A confidential urgent business item also needs to stipulate the reason for the matter being considered as confidential in accordance with section 89 (2) and section 89 (3) of the *Local Government Act 1989*.

There was no confidential urgent business.

9 – Close of meeting	
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There being no further business the meeting closed at 7.15pm.

Minutes confirmed this day of 2016.

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Chairperson