



SPECIAL COUNCIL MEETING

AGENDA

1 FEBRUARY 2017

at 4PM

COPACC

COLAC OTWAY SHIRE COUNCIL MEETING

1 FEBRUARY 2017

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OFFICER REPORT

SC170102-1 COUNCILLOR CODE OF CONDUCT

COLAC OTWAY SHIRE COUNCIL SPECIAL MEETING

NOTICE is hereby given that the next **SPECIAL MEETING OF THE COLAC OTWAY SHIRE COUNCIL** will be held in COPACC on 1 February 2017 at 4pm.

AGENDA

1. I DECLARE THIS MEETING OPEN

OPENING PRAYER

Almighty God, we seek your blessing and guidance in our deliberations on behalf of the people of the Colac Otway Shire. Enable this Council's decisions to be those that contribute to the true welfare and betterment of our community.

AMEN

2. PRESENT

3. APOLOGIES

4. MAYORAL STATEMENT

Colac Otway Shire acknowledges the original custodians and law makers of this land, their elders past and present and welcomes any descendents here today.

I ask that we all show respect to each other and respect for the office of an elected representative.

All Council and Committee meetings are audio recorded, with the exception of matters identified as confidential items in the Agenda. This includes the public participation sections of the meetings.

Audio recordings of meetings are taken to facilitate the preparation of the minutes of open Council and Committee meetings and to ensure their accuracy.

In some circumstances a recording will be disclosed to a third party. Those circumstances include, but are not limited to, circumstances, such as where Council is compelled to disclose an audio recording because it is required by law, such as the Freedom of Information Act 1982, or by court order, warrant, or subpoena or to assist in an investigation undertaken by the Ombudsman or the Independent Broad-based Anti-corruption Commission.

Council will not use or disclose the recordings for any other purpose. It is an offence to make an unauthorised recording of the meeting.

The sole purpose of the Special Meeting is to review the Councillor Code of Conduct.

5. QUESTION TIME

Thank you. At every Special Meeting, a public question time not exceeding 30 minutes will be held to enable any member of the public to question Council but only on items included in the Agenda of that Special Meeting.

Please remember, you must ask a question. If you do not ask a question you will be asked to sit down and the next person will be invited to ask a question.

1. Questions received in writing prior to the meeting (subject to attendance and time).
2. Questions from the floor.

6. DECLARATION OF INTEREST

SPECIAL COUNCIL MEETING
COUNCILLOR CODE OF CONDUCT
SC170102-1

LOCATION / ADDRESS	Whole of Municipality	GENERAL MANAGER	Mark Lyons
OFFICER	Jenny Wood	DEPARTMENT	Corporate Services
TRIM FILE	F16/6678	CONFIDENTIAL	No
ATTACHMENTS	1. Councillor Code of Conduct_ 1 February_Final version		
PURPOSE	To consider the adoption of the revised Colac Otway Shire Councillor Code of Conduct.		

1. DECLARATION OF INTERESTS

No officer declared an interest under the *Local Government Act 1989* in the preparation of this report.

2. BACKGROUND

The Local Government Act 1989 requires that all Victorian Councils 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.”

In accordance with the legislation, Council must review and make any amendments to the Councillor Code of Conduct and adopt by 22 February 2017.

Once adopted, within one month (1 March 2017) Councillors must, in the presence of the CEO, sign the adopted Code of Conduct and make a declaration stating that they will abide by the Councillor Code of Conduct.

The Code of Conduct presented reflects the outcomes of several formal briefing discussions with Councillors in 2017.

3. POLICY

The Code of Conduct recognises that for Council to be successful in fulfilling its leadership role in the community, all Councillors must work together in the best interests of the community and discharge their roles to best of their skill and judgement. The Councillor Code of Conduct sets out the responsibilities and principles that will be followed in fulfilling this leadership role.

4. ISSUES / OPTIONS

The revised Code of Conduct articulates the Colac Otway Shire Councillors commitment to working together as a team to achieve positive outcomes for the community.

Councillors are expected to act in accordance with the Code at all times and in circumstances where this does not occur, the Code provides the process to manage and resolve conduct issues.

It is noted that the Act now provides for an independent arbitration process, mechanisms for resolution and sanctions which councils can apply to address any failure to meet code standards.

5. PROPOSAL

It is proposed that Council adopt the revised Councillor Code of Conduct.

6. FINANCIAL AND OTHER RESOURCE IMPLICATIONS

Not applicable

7. COMPLIANCE ISSUES

Council must adopt a reviewed Councillor Code of Conduct by 22 February 2017 in order to comply with legislative requirements.

Once adopted, within one month (1 March 2017) Councillors must, in the presence of the CEO, sign the adopted Code of Conduct and make a declaration stating that they will abide by the Councillor Code of Conduct.

8. ENVIRONMENTAL AND CLIMATE CHANGE CONSIDERATIONS

Not applicable

9. COMMUNITY ENGAGEMENT

The method selected is to advise the Community once the revised Code of Conduct is adopted.

10. IMPLEMENTATION

Once a revised Code of Conduct is adopted by Council, all Councillors must make a declaration stating that they will abide by the revised Councillor Code of Conduct within one month (1 March 2017). This declaration must be signed and witnessed by the CEO (Section 76C).

Failure to make a declaration to abide by the Councillor Code of Conduct (S.76C) is grounds for disqualification as a Councillor (Section 29 (1) (ea)).

Once adopted, the revised Code of Conduct will be immediately made publicly available on Councils website.

11. CONCLUSION

It is recommended that Council adopt the revised Code of Conduct which reflects the discussions by Councillors at recent briefings.

Once adopted Councillors will be given an opportunity to sign the revised Code of Conduct immediately after the conclusions of the Special Council Meeting on 1 February 2017.

12. RECOMMENDATION

Recommendation

- 1. That Council adopts the revised Colac Otway Shire Councillor Code of Conduct.***

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# Councillor Code of Conduct

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## 1. WORKING TOGETHER

As Councillors of the Colac Otway Shire Council, we are committed to working together in the best interests of the people within our community and to discharging our responsibilities to the best of our skill and judgement. We are strongly committed to working together constructively as a team to achieve positive and future-focused outcomes for the benefit of our community.

### 1.1. OUR VISION

A sustainable community with a vibrant future.

### 1.2. OUR MISSION

Council will work with our community and partners to provide:

- Innovative leadership, good governance and financial accountability;
- Value for money, accessible and appropriately targeted services;
- A strong advocacy and engagement approach to achieve a truly liveable community

### 1.3. OUR VALUES

Council will achieve its Vision and Mission by acting with:

- Respect
- Integrity
- Goodwill
- Honesty
- Trust

### 1.4. OBJECTIVES OF A COUNCIL:

The primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions. In seeking to achieve its primary objective, a Council must have regard to the following facilitating objectives:

- To promote the social, economic and environmental viability and sustainability of the Colac Otway Shire;
- To ensure that resources are used efficiently and effectively and services are provided in accordance with the Best Value Principles to best meet the needs of the local community;
- To improve the overall quality of life of people in the local community;
- To promote appropriate business and employment opportunities;
- To ensure that services and facilities provided by the Council are accessible and equitable;
- To ensure the equitable imposition of rates and charges;
- To ensure transparency and accountability in Council decision-making.

5.3C of the Local Government Act 1989

### 1.5. THE ROLE OF A COUNCIL:

The Council is elected to provide leadership for the good governance of the Colac Otway Shire. The role of the Council includes:

- Acting as a representative government by taking into account the diverse needs of the local community in decision-making;
- Providing leadership by establishing strategic objectives and monitoring their achievement;

- Maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;
- Advocating the interests of the local community to other communities and governments;
- Acting as a responsible partner in government by taking into account the needs of other communities;
- Fostering community cohesion and encouraging active participation in civic life.

*S.3D of the Local Government Act 1989*

## 1.6. FUNCTIONS OF A MAYOR:

The functions of the Mayor of a Council include:

- Providing 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 abiding by the Councillor Conduct Principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C; of the Act and;
- Acting as the principal spokesperson for the Council; and
- Supporting good working relations between Councillors; and
- Carrying out the civic and ceremonial duties of the office of Mayor; and
- Chairing meetings of Council at which the Mayor is present; and
- Having a casting vote where necessary at meetings of the Council; and
- Taking precedence at all municipal proceedings.

*Sections 73AA, 73 (2), 90 (1) (e) and 73 (1) of the Local Government Act 1989*

## 1.7. THE ROLE OF A COUNCILLOR:

The role of a Councillor is:

- To participate in the decision-making of the Council; and
- To represent the local community in that decision-making; and
- 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:

- Consider the diversity of interests and needs of the local community; and
- Observe principles of good governance and act with integrity; and
- Provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under the *Local Government Act 1989* and other Acts; and
- Participate in the responsible allocation of the resources of Council through the annual budget; and
- 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 under section 94A.

*S.65 of the Local Government Act 1989*

## 1.8. COUNCILLOR CONDUCT PRINCIPLES

As Councillors we acknowledge and strongly support and endorse the following Councillor Conduct Principles as specified within the *Local Government Act 1989*:

### 1.8.1. PRIMARY PRINCIPLE OF COUNCILLOR CONDUCT:

It is a primary principle of Councillor Conduct that, in performing the role of a Councillor, a Councillor must:

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

#### 1.8.2. GENERAL COUNCILLOR CONDUCT PRINCIPLES

In addition to acting in accordance with the principles specified above, Councillors in the performance of their role must:

- Avoid conflicts between their public duties as a Councillor and their personal interests and obligations;
- Act honestly and avoid statements (oral or in writing) or actions that will or are likely to mislead or deceive person;
- Treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;
- Exercise reasonable care and diligence and submit themselves to the lawful scrutiny that is appropriate to their office;
- Endeavour to ensure that public resources are used prudently and solely in the public interest;
- Act lawfully and in accordance with the trust placed in them as an elected representative; and
- 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.

*Section 76B & 76BA of the Local Government Act*

### 1.9. ADHERENCE TO THE CODE OF CONDUCT

As Councillors we recognise that the conduct and behaviour of an individual Councillor reflects on the Council as a whole and that as community leaders, we should be role models, setting the standard for other people to follow.

This Code of Conduct places an obligation on all Colac Otway Shire Councillors to take responsibility for their own conduct. We accept that it is critical that our individual and collective conduct must be exemplary at all times to ensure that the Council functions properly.

All Councillors commit to building and maintaining a strong and respectful relationship to ensure the good governance of the Colac Otway Shire.

All Councillors commit to working collaboratively and professionally with each other, with the organisation and with the community in a manner that is always consistent with the following principles.

#### 1.9.1. WORKING TOGETHER

Good governance in local government is underpinned by visionary leadership, teamwork, collaborative decision-making and a shared commitment to plan, work and advocate for and achieve the best possible outcomes for the entire community. Towards this at all times;

- All Councillors commit to working together with fellow Councillors in a manner that is respectful and professional.
- All Councillors commit to working together with fellow Councillors to reach common goals.
- All Councillors commit to fostering and establishing strong working relationships between each other to perform their duties as a Councillor in the best interests of the Colac Otway Shire community.
- All Councillors commit to working constructively with the Mayor and to establishing and maintaining a strong, courteous and positive working relationship.
- All Councillors commit to treating fellow Councillors courteously and with dignity and respect and not being critical of each other or the organisation in any public forum.
- All Councillors commit to not harming or attempting to harm, maliciously or recklessly, directly or indirectly, the reputation of others including those of fellow Councillors and Council staff.

- All Councillors commit to raising any issues of concern related to the conduct or actions of a fellow Councillor directly with the Mayor and not with any member of Council staff or via the media (including social media).
- All Councillors commit to raising any issues of concern related to the conduct or actions of the Mayor directly with the CEO or via the dispute resolution process and not with any other member of Council staff or via the media (including social media).

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#### 1.9.2. COURTESY AND RESPECT

All Councillors commit to treating all people with courtesy and respect, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities. This includes:

- All Councillors commit to recognising and acknowledging one another in any public forum.
- All Councillors commit to always treating members of the community and fellow Councillors with dignity, courtesy and respect, and ensuring that neither offence nor embarrassment are caused even when disagreeing with their views or decisions.
- All Councillors commit to participating in all discussions or debates in a manner which is professional, courteous and respectful irrespective of the issue and without resorting to personal acrimony or insult.
- All Councillors commit to ensuring their punctual attendance at Council Meetings and all other meetings associated with Council.
- All Councillors commit to being respectful of all Council staff and to not being critical of the work of Council or the organisation in any public forum.
- All Councillors commit to acknowledging and promptly responding to all correspondence, emails, phone calls and messages from fellow Councillors.
- All Councillors acknowledge their legislative obligations with respect to equal opportunity, intimidation, harassment, bullying and discrimination. Under no circumstances will any behaviour of this nature toward each other be tolerated.

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#### 1.9.3. INTEGRITY AND HONESTY

- All Councillors commit to always acting with integrity and honesty;
- All Councillors commit to being professional and honest in all dealings with the community, with fellow Councillors and with all Council employees;
- All Councillors commit to exercising good judgement in decision-making, always acting ethically, impartially and in the long-term best interests of the community as a whole;
- All Councillors commit to acting in a manner that avoids damage to the Council or its ability to exercise good government;
- All Councillors commit to exercising reasonable care and diligence in performing their functions as Councillors;
- All Councillors acknowledge their responsibility to complying with all relevant laws, be they Federal, State or Local Laws;
- All Councillors commit to pursuing and maintaining high standards of personal and professional conduct.

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#### 1.9.4. POSITION OF TRUST

Recognising that they hold a position of trust, Councillors will not misuse or derive undue benefit from their positions:

- All Councillors commit to avoiding conflicts of interest and ensuring compliance with the relevant provisions of the Act and this Code of Conduct relating to interests and conflicts of interest; and
- All Councillors commit to not exercising undue influence on other Councillors, Council employees or members of the public to gain or attempt to gain an advantage for themselves; and
- All Councillors commit to being responsive in their dealings with others including fellow Councillors.

## 1.10. COUNCIL BRIEFINGS, MEETINGS AND PUBLIC EVENTS

As Councillors of Colac Otway Shire, we are committed to good governance and making high quality, transparent decisions impartially and in the best interests of the whole community.

We recognise that as elected representatives of the community, we have an obligation to understand the legal framework established under the provisions of the *Local Government Act 1989* and in doing so, acknowledge that effective decision-making is vital to the democratic process and an essential component of good governance.

In recognition of this, Councillors commit to attending a minimum of 80% of all Council Meetings, Briefings and Workshops.

If a Councillor will be absent from any Meeting, Briefing or Workshop, he/she must inform the Mayor as soon as possible prior to the absence, unless the absence is due to an emergency or unforeseen circumstances, in which case the Mayor must be informed as soon as possible following the absence.

### 1.10.1

Briefings and Workshops are information sessions involving Councillors and Council staff and are fundamental to ensuring that all Councillors have enough information and advice to form a considered, well-informed opinion and are in the best possible position to debate the issues effectively and determine a position at a Council meeting. Briefings are not open to the public.

Towards this, all Councillors acknowledge the importance and value of Briefings and Workshops for Councillors as a forum to collect information, consider strategic matters, raise issues, participate and provide input to policy preparation.

Except where prior notification has been given to the Mayor in accordance with paragraph 1.10 of the Code and noted in the Assembly of Councillors document, Councillors must attend a minimum of 80% of all Briefings and Workshops.

### 1.10.2 COUNCIL MEETINGS, SPECIAL COMMITTEE MEETINGS AND ADVISORY COMMITTEE MEETINGS

Local Law 4 regulates the proceedings at Council Meetings, Special Committee Meetings, Advisory Committee Meetings and other meetings conducted by the Council. Local Law 4 provides a mechanism for good governance of the Council through its meeting procedure to ensure effective and efficient decision-making by Council.

All Councillors must adhere to the requirements of Local Law 4 at all times.

Except where prior notification has been given to the Mayor in accordance with paragraph 1.10 of the Code and noted in the minutes of the relevant Meeting, Councillors must attend a minimum of 80% of each of the following scheduled meetings:

- Ordinary Council Meetings; and
- Planning Meetings; and
- Special Council Meetings.

Note: Council's approval of a leave of absence, as contemplated by s.69 (1) (g) of the *Local Government Act*, will be required if a Councillor will be absent from 4 or more consecutive Ordinary Council Meetings and the meetings from which the Councillor is absent will not be counted as 'missed' Council Meetings for the purposes of their 80% attendance rate. If Council's approval is not obtained in these circumstances, the office of the Councillor becomes vacant.

### 1.10.4 GENERAL

All Councillors commit to:

- Attending and participating in Community Conversations and other events and engagements scheduled by the Mayor or Office of the Chief Executive Officer.
- Actively and openly participating in the decision-making process, and being informed so as to achieve the best outcome for the community.
- Respecting the views of the individual in debate on issues. However, Councillors also accept that decisions are based on a majority vote.
- Accepting that no Councillor can direct another Councillor on how to vote on any decision.



- Accepting that decisions of Council can only be made at a formally constituted Council meeting and that individual Councillors do not have decision-making power.
- Accepting to making decisions based on adopted Council policies.
- Accepting and respecting that the functions and role of the Chief Executive Officer are defined by the *Local Government Act 1989* and that the CEO's accountability is solely to the Council as a whole.
- Supporting and fostering a healthy working relationship between the Mayor and the Chief Executive Officer and assisting where appropriate in facilitating the relationship.
- Preparing for all scheduled meetings, Briefings and Workshops by reading all papers which are distributed in advance to ensure a thorough understanding of the topics to be discussed.
- Promoting collaboration between the organisation and Councillors at Workshops and Briefings to promote good governance and strategic thinking.
- Acknowledging that Workshops and Briefings are not forums for debate or for Councillors to take a collective position on an issue.
- Being respectful of all Council staff and to not being critical of the work of Council or the organisation at all Council workshops or briefing style forums, Council Meetings including Special Committee Meetings, Advisory Committee Meetings and other meetings conducted by the Council where provided.
- Accepting that decisions of the Council are binding on the whole Council.
- Accepting and respecting the decision made by the majority of Councillors through the democratic process without compromising the rights of individual Councillors to maintain their opposition to a Council decision.
- Being respectful of the CEO and not being critical of the work of the Council or the CEO in any public forum.
- Exhibiting exemplary conduct at all times during any Council Meetings including Special Committee Meetings, Advisory Committee Meetings and other meetings conducted by the Council.
- Promoting collaboration between the organisation and Councillors at all Council Workshops or Briefing style forums, Council Meetings including Special Committee Meetings, Advisory Committee meetings and other meetings conducted by the Council.
- Recognising and acknowledging one another at all Council workshops or briefing style forums, Council Meetings including, Special Committee Meetings, Advisory Committee meetings and other meetings conducted by the Council.
- Treating their fellow Councillors with dignity, courtesy and respect at all times, and ensuring that neither offence nor embarrassment are caused even when disagreeing with their views or decisions at all Council Workshops or Briefing style forums, and Council Meetings including Special Committee Meetings, Advisory Committee Meetings and other meetings conducted by the Council.
- Participating in any discussions or debate in a manner which is at all times professional, courteous and respectful irrespective of the issue and without resorting to personal acrimony or insult.
- Fully participating in all meetings, briefings and forums by listening while others are speaking, avoiding interrupting, and using reasonable, polite and temperate language in debates (irrespective of the issue) and refraining from texting, emailing, tweeting or engaging on social media during Council Meetings including Special Committee Meetings, Advisory Committee Meetings and other meetings conducted by the Council.
- Showing respect and observing all rulings of the chairperson without comment.
- Not making assertions of improper motives or personal reflections on Councillors, employees of Council and members of the public.
- All Councillors acknowledge their legislative obligations with respect to equal opportunity, intimidation, harassment, bullying and discrimination. Under no circumstances will any behaviour of this nature will be tolerated.

Whilst we understand that it is acceptable for an individual Councillor to publicly state that they did or did not vote in favour of any Council decision, we commit to ensuring that this is done in a manner which is respectful of the Council's decision.

We commit to respecting the role and precedence of the Mayor, Deputy Mayor or appointed representative of the Mayor at all times including in all Council proceedings. Towards this, Councillors will at all times accept that when a Councillor is appointed by the Council as a member of an external committee that Councillor will:

- represent the views of the Council where they are known;
- not forecast or pre-empt the views of Council;



- report to Council on any major issues or decisions of a Committee.

#### 1.11. ACCESS TO AND USE OF CORPORATE INFORMATION

Councillors are to treat all Council information appropriately. All Councillors commit to:

- Not using information gained by virtue of being a Councillor for any purpose than to exercise their role as a Councillor.
- Respecting and accepting the Council's process and protocols in relation to public comments and communications with the media.
- Recognising the requirements of the *Privacy and Data Protection Act 2014* regarding the access, use and release of personal information.
  - Councillors do not have unrestricted access to personal information held by Council, nor do they have an unfettered right to use and disclose such information.
  - In particular, personal information held by Council must not be used for a Councillor's own personal or business purposes, outside of his or her functions as a Councillor.
  - If Councillors do use personal information in breach of the Information Privacy Principles, they may be individually liable and their actions may mean that Council is also liable.
  - When Councillors collect personal information for Council business, it is important to note that not only is this information subject to the *Privacy and Data Protection Act*, it is also subject to other legislation such as the *Public Records Act* and *Freedom of Information Act*.

All Councillors recognise that at times, information provided to Councillors will be of a confidential nature and therefore it is essential that the confidentiality of such information be strictly maintained.

Councillors acknowledge that they will comply with their obligations under section 77 of the Act in relation to confidential information and recognise that this obligation extends to ensuring the safekeeping of confidential information. Breaches of section 77(1) carry with it a penalty of up to 120 penalty units.

#### 1.12. USE OF COUNCIL RESOURCES – INCLUDING FUNDS/PROPERTY

All Councillors must ensure that they exercise appropriate prudence in the use of Council resources to ensure they are utilised in an effective and economical manner. This includes:

- Maintaining appropriate separation between their personal property and Council property in the care of the Council.
- Not using Council resources, including employees, equipment and intellectual property, for electoral or other personal purposes.
- Ensuring that Council resources are always used effectively and economically and for the purposes for which they are provided.
- Ensuring that Council resources are not used in a way that creates an impression of Council endorsement; and
- Ensuring that claims for out-of-pocket expenses are accurate and relate strictly to Council business.

Councillors acknowledge their obligation to report on their use of all Council funds and property. Councillors are committed to implementing a transparent, thorough and regular system of reporting on their use of Council funds and property during the course of performing their duties.

Councillors will not use public funds or resources in a manner that is improper or unauthorised.

## 2. WORKING WITH THE ORGANISATION

Governance is the framework of structures, rules and processes by which an organisation is directed and controlled. It is also the way in which organisational objectives are set, decisions are made, powers granted, performances verified and accountability ensured.

Good governance requires strong vision, strategy, leadership, clear and timely decision-making processes and appropriate checks and balances.

A healthy, constructive and respectful relationship with the organisation provides Councillors with the ability to make high-quality decisions and provide good governance of the Colac Otway Shire.

Councillors support a collective commitment to the organisation with a strong, open and professional partnership relationship between the Council and the Council organisation to assist in achieving Council's strategic objectives.

### 2.1. WORKING WITH THE CHIEF EXECUTIVE OFFICER (CEO)

It is critical that all Councillors commit to building and maintaining a positive, strong and respectful relationship with the CEO to ensure the good governance of the Colac Otway Shire by:

#### 2.1.1. WORKING TOGETHER

- All Councillors commit to demonstrating a public commitment to supporting the CEO and to maintaining a professional relationship at all times.
- All Councillors commit to supporting the CEO in representing the Shire and the community at all times.
- All Councillors commit to working collaboratively with the CEO to reach common goals in a manner that is respectful and professional at all times.
- All Councillors commit to fostering and establishing a strong, positive and constructive working relationship with the CEO so that they can perform their duties in the best interests of the Colac Otway Shire community.
- All Councillors commit to treating the CEO courteously and with dignity and respect and not being publicly critical of the CEO or the organisation.
- All Councillors commit to not harming or attempting to harm, maliciously or recklessly, directly or indirectly, the reputation of the CEO.
- All Councillors commit to raising any issues of concern related to the conduct or actions of the CEO directly with the Mayor and not with any member of Council staff or via the media (including social media).

#### 2.1.2. COURTESY AND RESPECT

- All Councillors commit to acknowledging and responding to all invitations from the CEO or the CEO's office promptly.
- All Councillors commit to recognising and acknowledging the CEO in any public forum.
- All Councillors commit to attending all meetings scheduled by the CEO or the CEO's office or promptly make alternative arrangements to ensure all information is received and matters are discussed in a timely manner.
- All Councillors commit to acknowledging and responding to all correspondence, emails, phone calls and messages from the CEO or the CEO's office promptly.
- All Councillors commit to providing constructive input in the setting of the key performance indicators of the CEO.
- Except where the Councillor has provided a notification of absence, all Councillors commit to attending and participating in the CEO annual review process and to providing considered and productive feedback.
- All Councillors commit to not make imputations of improper motives or personal reflections on the CEO.
- All Councillors acknowledge their legislative obligations with respect to equal opportunity, intimidation, harassment, bullying and discrimination.

- All Councillors commit to participating in all discussions with the CEO in a manner which is professional, courteous and respectful irrespective of the issue and without resorting to personal acrimony or insult. Under no circumstances will any behaviour of this nature toward the CEO be tolerated.

### 2.1.3. COMMITMENT TO SERVICE

- All Councillors commit to promptly passing on all correspondence, enquiries, requests for information or service, complaints and acknowledgements provided to a Councillor to the email address [governance@colacotway.vic.gov.au](mailto:governance@colacotway.vic.gov.au) so these can be acknowledged and actioned by the organisation in a timely manner.
- All Councillors commit to making every effort to resolve concerns, complaints or grievances in good faith through reasonable direct communication and negotiation.
- All Councillors commit to providing feedback and raising any issues of concern directly with the Chief Executive Officer and not with any member of staff or via the media (including social media). Issues of concern may include but are not restricted to:
  - Conduct or actions of Council staff;
  - Reports and publications prepared by the Council organisation;
  - Service delivery standards; and
  - Strategy or direction of the Council organisation.

## 2.2. WORKING WITH COUNCIL STAFF

At all times Councillors will respect the role of the Council's officers and employees and treat them in a way that engenders mutual respect at all times.

Councillors acknowledge that:

- Councillors will not to try influence or direct council staff.
- Council staff are accountable to the whole Council through the CEO management structure and not to individual Councillors.

The requirements of section 76E of *Local Government Act 1989* require that a Councillor must not seek to improperly direct or influence members of Council staff in the exercise of their duties.

- Unlawful direction is trying to direct an officer when providing advice to Council acting under delegation or acting as an authorised officer. Breaches of section 76E carry with it a penalty of up to 120 penalty units.

The Councillor role is one of advocacy and leadership rather than management and administration. The CEO is responsible for all staff matters.

In order to ensure Councillors receive high quality, consistent advice, an organisational process which involves approval by a General Manager or the CEO will occur.

Communicating with the Chief Executive Officer, or General Managers, to ensure that dissemination of information occurs on a joint collaborative basis and such will enable the formulation of appropriate actions.

All Councillors commit to:

- Accepting forthright professional advice from qualified staff by protecting the professional integrity of the staff member when providing information in support of the decision-making process of Council.
- Fostering a respectful relationship between Councillors and officers in relation to their roles, functions and responsibilities.
- Recognising and acknowledging Council staff at all Council events, meetings and functions.

- Treating all Council staff with dignity, courtesy and respect, and ensuring that neither offence nor embarrassment are caused even when disagreeing with their views, advice or recommendations.
- Participating in any discussions with Council staff in a manner which is professional, courteous and respectful irrespective of the issue and without resorting to personal acrimony or insult.
- Being respectful of all Council staff and to not being publicly critical of the organisation.
- Not harming or attempting to harm, maliciously or recklessly, directly or indirectly, the professional reputation of Council staff or others.
- Using the appropriate mode of address to employees of Council.
- Not to making assertions of improper motives or personal reflections on employees of Council.
- Acting with courtesy towards Council employees and avoiding behaviour that is intimidating and being aware of legislative obligations with respect to equal opportunity, harassment and discrimination. Under no circumstances will any behaviour of this nature toward Council staff be tolerated.

In general the legislation prohibits and makes unlawful discrimination on the basis of age, breastfeeding, career status, disability/impairment, gender identity, industrial activity, lawful sexual activity, marital status, parental status, physical features, political belief, pregnancy, race, religious belief, sex, sexual preference or personal association with someone who has one of these characteristics.

- Sexual harassment is behaviour of a sexual nature that is unwelcome, unsolicited and unreciprocated. It is unlawful to sexually harass another person.
- Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety. This is consistent with the definition of bullying used in the *Fair Work Act 2009* (Commonwealth) and by WorkSafe Victoria.
- Bullying is prohibited.
- Bullying is also a form of 'serious misconduct' which is a potential trigger for Councillor Conduct Panel.

Councillors will refrain from using their position to improperly influence employees in their duties, or to gain an advantage for themselves or others.

Any alleged transgression of this may potentially be a breach of section 76E of the Act.

## 2.3. EMAILS AND TELECOMMUNICATIONS EQUIPMENT

### 2.3.1. EMAILS AND CALENDARS

Immediately after being elected, all Councillors are issued with a Colac Otway Shire email address (email inbox and calendar) to conduct any and all functions and duties as a Councillor.

Without exception, all Councillors will only use the official email address provided to them by the Shire when conducting their duties as a Councillor. This allows all communication to be documented and stored on the Council electronic document management system should it be required for future use.

The official email address will be the sole email address used by Councillors for all communications to and from other Councillors and Council staff, including the CEO, General Managers and officers. However, Councillors can forward correspondence, enquiries, requests for information or service, complaints and acknowledgements to the Governance email address from their private email address if required.

The official email address will be the sole email address used by Councillors for all communications relating to any aspect of Council functions when providing information externally.

Any correspondence received from an external source relating to any aspect of the functions, responsibilities or actions of the Shire or the Council will immediately be forwarded to the [governance@colacotway.vic.gov.au](mailto:governance@colacotway.vic.gov.au) email address.

Any information that has been sent to the official email address of a Councillor by the organisation or another Councillor is deemed to have been received.

Councillors recognise and acknowledge that it is their responsibility and obligation to ensure that their email is working correctly by activating requests for corrective action by the organisation if an issue arises and in doing so, will inform Council staff promptly and in a respectful and timely manner if they are experiencing any issues with regard to their email address, email inbox or calendar.

#### 2.3.2. TELECOMMUNICATIONS – MOBILE PHONES (SMART PHONES) AND IPADS (TABLET DEVICES)

Immediately after being elected, all Councillors are issued with a Colac Otway Shire mobile phone (smartphone) and iPad (tablet device).

Without exception, all Councillors will only use the official Council mobile phone number and iPad (tablet device) provided to them by the Shire when conducting their duties as a Councillor.

Councillors may either use the mobile phone (smartphone) provided or divert the official Council mobile phone number to an alternative device.

The official mobile phone number will be the sole mobile phone number used by Councillors for all communications to and from other Councillors and the Colac Otway Shire staff, including the CEO, General Managers and officers.

The official mobile phone number will be the sole mobile phone number used by Councillors for all communications relating to any aspect of Council duties or functions including providing information externally.

Any information that has been sent to a Councillor by the organisation or another Councillor to the mobile phone (smartphone), mobile phone number or iPad (tablet device) is deemed to have been received.

Councillors recognise and acknowledge that it is their responsibility and obligation to ensure that their mobile phone (smartphone), mobile phone number and iPad (tablet device) are working correctly by activating requests for corrective action by the organisation if an issue arises and in doing so, will inform Council staff promptly and in a respectful and timely manner if they are experiencing any issues with regard to their devices including their mobile phone (smartphone), mobile phone number or iPad (tablet device).

#### 2.4. COUNCILLOR REQUESTS FOR INFORMATION

All Councillors commit to promptly recording and submitting all correspondence received which relates to the function/role of council as well as any requests received for service, information, comments or enquiries to the Governance email address [governance@colacotway.vic.gov.au](mailto:governance@colacotway.vic.gov.au) for action to be taken as appropriate. It is recognised by the organisation that Councillors require information in order to undertake their role.

Councillors acknowledge that all requests made by Councillors for briefings from Council officers, access to information on Council files or clarification/explanation of items on a forthcoming Council agenda, should be registered and reported. Towards this, these types of requests are to be sent to [governance@colacotway.vic.gov.au](mailto:governance@colacotway.vic.gov.au) to be actioned by the organisation as soon as possible.

The organisation must take into account a range of factors in considering the information request:

- *The Privacy and Data Protection Act* principles, including the responsibility of the organisation to remove identifying personal information.



- If the information relates to a new issue, an issue currently before Council or a matter already dealt with by Council.
- If the information should be provided to the requesting Councillor only or to all Councillors.

In general, most requests for information will be made at Councillor Workshops, Briefing sessions or Committees where Councillors and officers as a group can properly understand the nature of the request, any implications, resource issues and timelines. In responding to information requests outside these forums the following principles will apply:

- Requests for information should be made to the organisation at the email address [governance@colacotway.vic.gov.au](mailto:governance@colacotway.vic.gov.au).
- Requests that are able to be carried out without impacting on existing priorities, workload or resources will be undertaken promptly.
- Requests for information relating to an issue currently before Council should be treated with priority so that Councillors have the information they need to make informed decisions at Council Meetings.
- Where the information is very specific (such as a constituent-specific issue), it will be provided only to the requesting Councillor.
- Where the information is more general such as relating to an issue currently before Council, the information will be provided to all Councillors.
- If the information cannot be provided without significantly impacting on existing priorities, workload or resources, or if the information request relates to information about an issue which has already been dealt with by Council, the information request can be put to Council for a decision.
- If the requesting Councillor wishes, an officer report may be tabled to Council outlining the request, the impact and context of the request to enable Council to make an informed decision as to whether the information request should be implemented by the organisation.
- If the information cannot be provided within a few days or cannot be provided without agreement of Council, the requesting Councillor will be contacted and advised of the likely timeline and/or process for providing the information.

### 3. COMMUNICATIONS INCLUDING MEDIA AND SOCIAL MEDIA

At all times messages communicated through the media (including social media) must be clear and consistent, and accurately and fairly portray the Council position.

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

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

Where there has been a prior discussion and approval by the Mayor, a Councillor may make comment to the media or on social media on aspects of Council's activities. Every effort will be made to inform all Councillors if this occurs.

This does not restrict Councillors from sharing authorised media releases, newsletters and official publications or event information and updates.

Councillors acknowledge and recognise that as a public official any individual public comment is likely to be interpreted as representing the views and position of Colac Otway Shire Council.

Councillors also acknowledge the potential risks and damage to Council that can occur, either directly or indirectly, from personal use of social media.

Each Councillor is personally responsible for content published in a personal capacity on any form of social media platform.

Towards this, all Councillors commit to:

- keeping comments polite and professional;
- ensuring that content is accurate, is not misleading and complies with relevant policies;
- ensuring that comments are respectful of the community and any other potential reader;
- not making personal comments about other elected members, staff and members of the community;
- adhering to Council's policies and codes;
- adhering to copyright, privacy, defamation, contempt of court, discrimination, harassment and other applicable laws;
- observing the rules governing confidentiality;
- maintaining a positive tone.

Whilst we understand that it is acceptable for an individual Councillor to publicly state that they did or did not vote in favour of any Council decision and the reasons, we commit to ensuring that this is done in a manner which is respectful of the Council's decision. Therefore as Councillors, we commit to:

- Ensuring we do not undermine the authority or public perception and standing of the Colac Otway Shire Council or any other Councillor;
- Avoiding public criticism of the decision of Council;
- Actively supporting the implementation of the decision of Council.

The CEO is the official spokesperson for all operational matters pertaining to the Colac Otway Shire as an organisation including:

- staffing and structure of the organisation; and
- legal or operational matters.

Councillors acknowledge and recognise that as a public official, they will not make any comments that are deemed inappropriate about or directed to Council, its management, other employees or people linked to Council that may be derogatory, threatening or bullying.

The CEO may nominate a Council officer as spokesperson if appropriate.

#### 4. CONFLICT OF INTEREST GUIDELINES

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

For the purpose of this Code, "direct interest", "indirect interest" and "conflicts of interest" have the meanings specified in the Act. Councillors will comply with all the provisions of the Act in regard to Conflicts of Interest.

If the Councillor considers that they have a direct or indirect interest in a matter before the Council, a Special Committee of Council or an Assembly of Councillors, they have a conflict of interest.

If a Councillor has a conflict of interest in a matter, they will comply with the requirements of the Act and must:

- Disclose the conflict of interest immediately before the matter is considered;
- Notify the Mayor/Chair that they are leaving the meeting; and
- Leave the room and any area where they can see or hear the meeting until the matter has been concluded.

If a Councillor has a personal interest in a matter to be considered by the Council that is not a direct or indirect conflict of interest, and the Councillor considers that their personal interest may be in conflict with their public duty to act impartially and

in the interest of the whole community, the Councillor will declare a conflicting personal interest under Section 79B of the Act immediately before the matter is considered at the relevant meeting and request of Council that they be exempted from voting on the matter.

When making a request to Council to be exempted, a Councillor must provide reasons to support such request and Council must not unreasonably withhold consent. If Council consents to the application, then provisions of the Act as per all conflicts of interest apply. In addition to the requirements of the Act:

- Councillors will give early consideration to each matter to be considered by the Council, Special Committee of which the Councillor is a member, or Assembly of Councillors, to ascertain if they have a conflict of interest.
- Councillors recognise that the legal onus to determine whether a conflict of interest exists rests entirely with the individual Councillor.
- Assistance from Council officers is limited to aiding understanding of the provisions of the Act. Officers cannot offer any formal advice in relation to a potential conflict.
- If a Councillor cannot with certainty say that he or she does not have a conflict of interest, the Councillor should declare a conflict of interest and comply with the relevant requirements as if they had a conflict of interest.
- Concerns about the result of a Council decision should not influence the Councillor's decision about whether to disclose a conflict of interest. The Councillor's responsibility to disclose a conflict of interest overrides any other obligation a Councillor has as a decision maker.
- If the Councillor considers that they may be unable to vote on a matter because of a conflict of Interest, they will notify, as soon as possible, the Mayor or the Committee Chair, depending on whether the matter is to be considered by the Council, a Special Committee, or an Assembly of Councillors, as well as the Chief Executive Officer.

## 5. GIFTS AND HOSPITALITY

The *Local Government Act 1989* and the Victorian Ombudsman recommendations provide a framework for the matter of gifts and benefits. A great deal of focus has been placed upon the local government sector regarding gifts and benefits and also conflicts of interest that may potentially be created.

An applicable gift is defined by legislation as one or more gifts with a total value of \$500 or over received in the past 5 years by i) a person; or ii) an employee, General Manager, contractor or agent of a company or body, having a direct interest in a matter. It is illegal for a Councillor to accept an anonymous gift valued at \$500 or more.

Extreme care and caution is to be exercised by Councillors on the matter of gifts and hospitality. Public perception is a key to if a conflict exists, or if a Councillor has compromised them in any manner.

As a rule of thumb, Councillors should use caution and not accept gifts either in their roles as Councillors or where it could be perceived to influence the Councillor. Exceptions to this are:

- Where the gift would generally be regarded as only having a token value and could not be perceived to influence the Councillor's actions; and
- Where refusal of the gift may cause offence or embarrassment.
  - In which case the gift may be accepted on behalf of the Council and becomes the property of the Council.
  - Such gift is to be declared to the Chief Executive Officer who will make immediate arrangements to have the details of the gift recorded in a register maintained by the Governance Advisor.
  - Advice will be tendered to the provider of the gift that the Councillor was unable to accept it on a personal basis and it is now the property of Council.

Hospitality – reasonable hospitality provided at a function or event that a Councillor attends in an official capacity as Mayor or Councillor is not counted as an applicable gift for defining conflicts of interest.

It is important that Councillors are familiar with these governance principles. Being a Councillor involves engendering public trust and public confidence. This means that duties must be carried out impartially and with integrity. Consequently, it is not



appropriate for Councillors to be offered, and to accept, gifts and benefits that affect, may be likely to affect, or could reasonably be perceived to affect, the performance of their official duties.

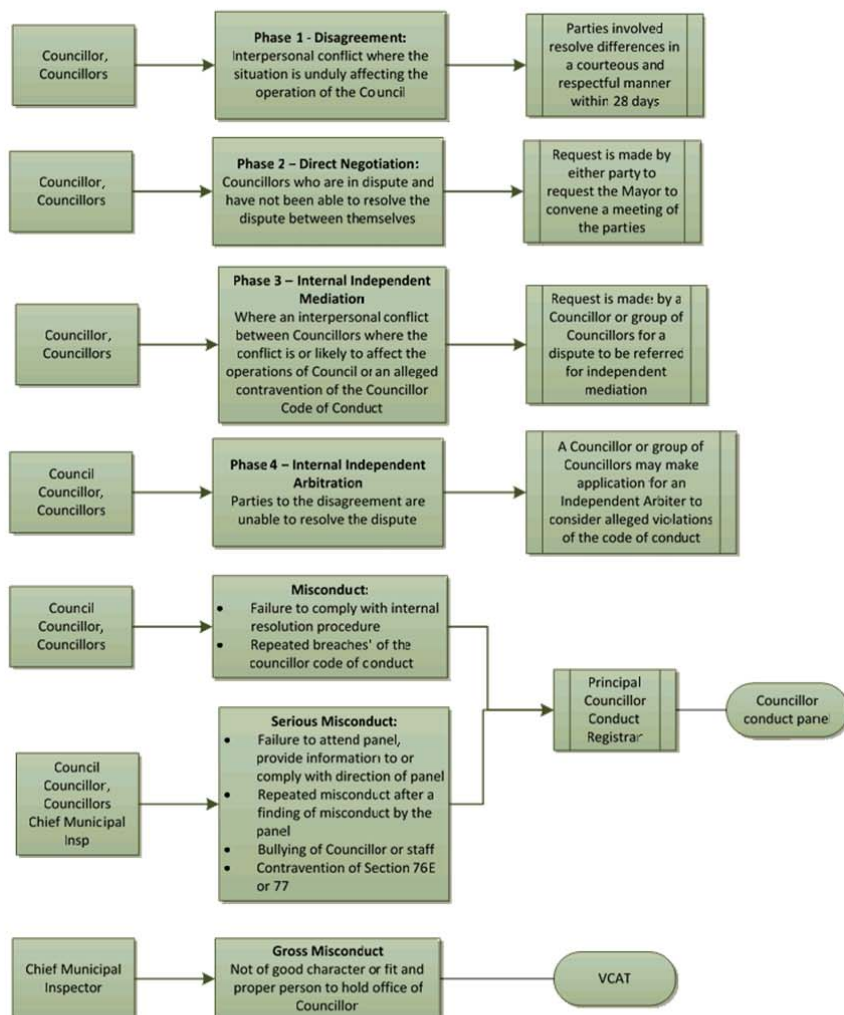
Councillors must at all times be mindful of their obligation to maintain and enhance public confidence in the integrity of Council.

Councillors must not seek or encourage the giving of any form of gift or benefit in connection with the performance of official duties.

Any gift or benefit accepted may imply a relationship that could interfere with objectivity and independence.

Councillors may decline offers of gifts or benefits courteously by explaining that acceptance would be viewed as contravening this code of conduct and consequently they have little to no discretion in the matter.

6. DISPUTE RESOLUTION PROCEDURES



## 6.1 OVERVIEW

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 and the matter still remains unresolved, the parties may resort to any or all of the FOUR PHASE dispute resolution process.

The Council's FOUR PHASE dispute resolution process involves:

1. Disagreement where Councillors who are parties to the disagreement will endeavour to resolve their differences in a courteous and respectful manner;
2. Direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance;
3. An internal independent mediation resolution procedure led by someone appointed by the Chief Executive Officer (not necessarily external);
4. An internal independent arbitration resolution procedure.

### 6.1.1 PHASE 1 – DISAGREEMENT

Before commencing any formal dispute resolution process, the Councillors who are parties to any disagreement will endeavour to resolve their differences in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community. Councillors may seek assistance in resolving their differences.

This process is to be private and confidential.

### 6.1.2 PHASE 2 – DIRECT NEGOTIATION

There are several steps in phase two.

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

A dispute referred for direct negotiation may relate to:

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

The party requesting the direct negotiation meeting is to provide the Mayor with the name of the other Councillor 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 including when and where;
- 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 must 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 5 working days of receiving the consent of the other party.

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

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 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 internal Independent Mediation or the Internal Independent Arbitration 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 Internal independent Mediation or the Internal Independent Arbitration 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.

During this phase the Mayor may seek assistance from the CEO, Principal Conduct Officer or other relevant person as deemed necessary.

This process is to be private and confidential.

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#### 6.1.3 PHASE 3 – INTERNAL INDEPENDENT MEDIATION

A Councillor or a group of Councillors may make an application for a dispute to be referred for Independent 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 Independent 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 “Independent 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 “Independent Mediation”. If the other party declines to participate in an Independent 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 independent mediation, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party agrees to participate in an Independent Mediation, the Principal Conduct Officer is to advise the applicant, the Mayor and Chief Executive Officer forthwith.

The Chief Executive Officer (or delegate) is to engage the services of an independent 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 Independent Arbitration 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 Independent Arbitration procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct. This process is to be private and confidential.

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#### 6.1.4 PHASE 4 - INTERNAL INDEPENDENT ARBITRATION

An application cannot be made for an Internal Independent Arbitration procedure during the election period for a general election. Any Internal Independent Arbitration 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 Independent Arbitration 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 was 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 Independent Arbitration 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 for a period of 3 months.

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 (2 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 Independent Arbitration procedure application has not contravened the Code;
- may find that a Councillor who is a respondent to an Internal Independent Arbitration procedure has contravened the Code;
- will suspend consideration of an Internal Independent Arbitration 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, 2 meetings of the Ordinary Council (in respect of the next scheduled meetings of the Council);
- direct that, for a period of up to, but not exceeding, 2 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 Independent Arbitration procedure may be guilty of misconduct. The Act provides that misconduct by a Councillor means any of the following:

- failure by a Councillor to comply with the Council’s Internal Independent Arbitration procedure; or
- failure by a Councillor to comply with a written direction given by the Council under section 81AB; or
- repeated contravention of any of the Councillor Conduct Principles.

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

## 6.2 DEFINITIONS

| Degree of Seriousness                                        | Definition                                                                                                                                                                                                                                           | Responsible Authority |
|--------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| <b>Conduct inconsistent with Colac Otway Shire standards</b> | Contravenes the Councillor Code of Conduct                                                                                                                                                                                                           | Council               |
| <b>Misconduct</b>                                            | Failing to comply with Colac Otway Shire’s Internal Independent Arbitration procedure, including failure to abide by any decision of Council in relation to a contravention of the Code and repeated contraventions of Councillor Conduct Principles | Panel                 |
| <b>Serious misconduct</b>                                    | Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct                                                                                                             | Panel                 |
| <b>Gross misconduct</b>                                      | Behaviour that demonstrates lack of character to be a Councillor                                                                                                                                                                                     | VCAT                  |

## 6.3 COUNCILLOR CONDUCT PANELS

Where a matter cannot be resolved internally, an application can be made for a Councillor Conduct Panel to be established.

A Panel has the power to consider both “misconduct” and “serious misconduct” of a Councillor.

- **Misconduct:** Failing to comply with a Colac Otway Shire’s Internal Independent Arbitration procedure, including failure to abide by any decision of Council in relation to a breach of the Code and repeated breaches of Councillor Conduct Principles.
- **Serious misconduct:** Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct.

### 6.3.1 APPLICATION FOR A PANEL

An application for a Panel can be made by:-

- Council - *via resolution*;
- A Councillor; or
- A group of Councillors.

Applications are made to the Principal Councillor Conduct Registrar. Colac Otway Shire Council’s Principal Conduct Officer assists the Principal Councillor Conduct Registrar in the conduct of their role, functions and duties. The Principal Councillor Conduct Registrar has the power to reject applications for a panel in prescribed circumstances.

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### 6.3.2 COMPOSITION OF A PANEL

A Councillor Conduct Panel is to comprise of a lawyer and a person with relevant expertise.

The relevant expertise is broader of just local government knowledge and may include specialist knowledge in governance, ethics and probity.

A Councillor Conduct Panel may give findings of:-

- Remedial action
  - Requiring a Councillor to undertake mediation, training, or counselling.
- Misconduct finding:-
  - Reprimand the Councillor.
  - Direct the Councillor to make an apology.
  - Direct the Councillor take a leave of absence for a period up to 2 months.
  - Direct that a Councillor is ineligible to hold the office of Mayor for a period of up to 4 years (but not exceeding the remainder of the Councillor's term of office).
- Serious Misconduct finding:-
  - Reprimand the Councillor.
  - Direct the Councillor to make an apology.
  - Direct the Councillor take a leave of absence for a period up to 2 months.
  - Direct that a Councillor is ineligible to hold the office of Mayor for a period of up to 4 years (but not exceeding the remainder of the Councillor's term of office).
  - Suspend the Councillor from office for a period not exceeding 6 months.

The Chief Municipal Inspector

- In relation to allegations of serious misconduct against Councillors, has the power to investigate and also initiate applications for a panel to be established.
- Is responsible for making applications to VCAT to consider findings of "gross misconduct" against Councillors.
- Has the power to investigate and prosecute various offences under the Act.

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### 6.3.3 GROSS MISCONDUCT

Gross Misconduct is the most serious type of misconduct behaviour.

It is defined as behaviour that demonstrates that a Councillor is not of good character, or is otherwise not a fit and proper person to hold the office of Councillor.

The Chief Municipal Inspector makes an application to VCAT for that body to consider such alleged behaviour/s.

Gross Misconduct finding:

- Disqualification of Councillor of up to 8 years.
- Ineligible to be a candidate for a period of up to 8 years.

## 6.4 INDEPENDENT BROAD BASED ANTI-CORRUPTION COMMISSION - IBAC

Recently established under the Independent Broad-based *Anti-corruption Commission Act 2011*, as part of a new integrity system for Victoria, IBAC has a major role under the provisions of the *Protected Disclosure Act 2012* in investigating any possible improper or corrupt conduct of Councillors.

The *Protected Disclosure Act 2012* provides that any person that has reasonable grounds to believe that improper or corrupt conduct has occurred can make a disclosure.



- Disclosures may relate to both Councillors and officers of Colac Otway Shire.
- Any disclosure regarding a Councillor or Councillors is/are to be made direct to IBAC. Further details are available on the IBAC website [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au).

## 7 ELECTION PERIOD (CARETAKER) POLICY

Colac Otway Shire is committed to fair and democratic elections. Council is required to adopt an Election Period (Caretaker) Policy prior to each election that governs the actions of Colac Otway Shire Council and Councillors during the election period. The election period is a 32-day period prior to the Election Day.

It is an established democratic principle that elected bodies should not unnecessarily bind an incoming government during an election period. Council therefore commits to the principle that it will make every endeavour to avoid making decisions that inappropriately bind an incoming Council during an election period.

## 8 DISCLAIMER

Colac Otway Shire Council's Code of Conduct under the Act is intended to ensure all Councillors agree to the standards of conduct and behaviour documented within the Code. Councillors have other legal obligations – under the Act, other legislation and at common law – that are not documented or reported in this Code. The Code should be read in the context of those other obligations.

## 9 STATUTORY REQUIREMENTS

In accordance with section 76C of the *Local Government Act 1988*, Colac Otway Shire Council is required to review the Councillor Code of Conduct within the period of 4 months after a general election. It is acknowledged that in accordance with the legislation, this Code addresses the statutory requirements set out in section 76C of the Act, namely it:

- Sets out the Internal Independent Arbitration procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor.
- Includes other provisions addressing matters seen as appropriate by Colac Otway Shire Council.

**10 ENDORSEMENT**

This Code of Conduct was adopted at a Special Council Meeting held on 1 February 2017.

Additionally, in accordance with the provisions of section 63 of the Act, Councillors are required to sign and make a declaration stating they have read the Code of Conduct and they will abide by the provisions of the Code.

I \_\_\_\_\_ hereby agree to abide by the Councillor Code of Conduct.

Declaration made in the presence of the Chief Executive Officer Sue Wilkinson or authorised delegate.

|                            |              |                            |              |
|----------------------------|--------------|----------------------------|--------------|
| <b>Cr. Kate Hanson</b>     | <b>Date:</b> | <b>CEO – Sue Wilkinson</b> | <b>Date:</b> |
| <b>Cr. Stephen Hart</b>    | <b>Date:</b> | <b>CEO – Sue Wilkinson</b> | <b>Date:</b> |
| <b>Cr. Joe McCracken</b>   | <b>Date:</b> | <b>CEO – Sue Wilkinson</b> | <b>Date:</b> |
| <b>Cr. Chris Potter</b>    | <b>Date:</b> | <b>CEO – Sue Wilkinson</b> | <b>Date:</b> |
| <b>Cr. Jason Schram</b>    | <b>Date:</b> | <b>CEO – Sue Wilkinson</b> | <b>Date:</b> |
| <b>Cr. Chris Smith</b>     | <b>Date:</b> | <b>CEO – Sue Wilkinson</b> | <b>Date:</b> |
| <b>Cr. Terry Woodcroft</b> | <b>Date:</b> | <b>CEO – Sue Wilkinson</b> | <b>Date:</b> |