



# LATROBE CITY COUNCIL

## MINUTES FOR THE SPECIAL COUNCIL MEETING

HELD IN NAMBUR WARIGA MEETING ROOM  
CORPORATE HEADQUARTERS, MORWELL  
AT 5.00 PM ON  
13 FEBRUARY 2017

SM494

**PRESENT:**

<b>Councillors:</b>	Cr Kellie O'Callaghan, Mayor	East Ward
	Cr Graeme Middlemiss, Deputy Mayor	Central Ward
	Cr Alan McFarlane	Central Ward
	Cr Darren Howe	East Ward
	Cr Dale Harriman	East Ward
	Cr Dan Clancey	East Ward
	Cr Darrell White	South Ward
	Cr Brad Law	West Ward
	Cr Sharon Gibson	West Ward
<b>Officers:</b>	Gary Van Driel	Chief Executive Officer
	Sara Rhodes-Ward	General Manager Community Services
	Phil Stone	General Manager City Development
	Sarah Cumming	General Manager Corporate Services
	Steven Piasente	General Manager Infrastructure & Recreation
	Jodie Pitkin	Manager Governance
	Amy Phillips	Coordinator Governance
	Kylie Stockdale	Governance Officer

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**1. OPENING PRAYER**

The Mayor read the opening prayer.

**2. ACKNOWLEDGEMENT OF THE TRADITIONAL OWNERS OF THE LAND**

The Mayor read the acknowledgement of the traditional owners of the land.

**3. APOLOGIES AND LEAVE OF ABSENCE**

Cr Gibson is an apology.

**4. DECLARATION OF INTERESTS**

Nil.

**5. PUBLIC QUESTION TIME**

Nil.

# **CORPORATE SERVICES**

## **6. CORPORATE SERVICES**

### **6.1 Review of the Councillor Code of Conduct**

**General Manager**

**Corporate Services**

**For Decision**

#### **EXECUTIVE SUMMARY**

The report deals with the requirement in the *Local Government Act 1989* (the Act) that Councils must within 4 months of the general election, review the Councillor Code of Conduct (the Code).

For the purposes of complying with the Act, the special meeting and the review of the Code must be completed no later than 22 February 2017.

The Act requires that Councils must call a special meeting:

- solely for the purpose of reviewing the Code; and
- at that special meeting, approve any amendments determined by the Council following the Code's Review.

Prior to Christmas, Councillors participated in a discussion about the Code facilitated by Macquarie Lawyers, where a number of proposed changes were identified. Macquarie Lawyers have provided a revised Code of Conduct for Councils' review and if it reflects the changes sought, for Council approval.

Council has considered the revised Code of Conduct and have made one further change.

The changes made to the Code are intended to streamline the document by removing duplicated requirements, removing provisions from the Act currently in Appendix 3 and removing the Dispute Resolution Management Checklist in Appendix 2. A tracked changes version of the proposed revised Code is attached for review.

Council can determine that following the formal review of the Code at the special meeting:

- the amended Code reflects the agreed changes and approve it;
- determine that only some changes be approved; or
- determine that the content and form of the existing Code is appropriate and that the Code be approved.

The Code was reviewed in mid 2016 as a result of new legislative requirements. The current review obviously provides an opportunity for newly elected Councillors to contribute to the Code that they are required by the Act to 'abide by'.

Within one month of the approval of any amendments to the Code, Councillors are also required by the Act to make a written declaration stating that they will abide by the Code. The declaration is to be witnessed by the CEO.

### **MOTION**

**Moved:** Cr White

**Seconded:** Cr Harriman

**That Council:**

- 1. Adopts the *Councillor Code of Conduct* with an effective date of 13 February 2017; and**
- 2. Notes that the adoption of this *Councillor Code of Conduct* rescinds previous versions of the Code.**

**CARRIED UNANIMOUSLY**

### **DECLARATION OF INTERESTS**

Officers preparing this report have declared they do not have a conflict of interest in this matter under the provisions of the *Local Government Act 1989*.

### **DISCUSSION**

The requirements in the Act about the Councillor Code of Conduct are mandatory.

In summary, the Code:

- sets out the standard of conduct expected of elected representatives;
- is intended to build and maintain public confidence in the integrity of local government;
- provides opportunities for Councils to resolve disputes internally and before they need to be dealt with in another forum; and
- articulates the intention to achieve good working relationships between Councillors so that outcomes are in the best interests of the community.

The Act prescribes matters which must be included in the Code and these are not negotiable. These matters are mostly about the requirement for including an internal resolution procedure and setting out the processes for the purposes of resolving internal disputes between Councillors. The Code also defines an internal dispute to mean an alleged contravention of the Code.

The proposed amendments to the Code:

- make a number of editorial and drafting changes so that the intention of some of the provisions is more clearly spelt out. For example, the changes in clauses 1-9;
- remove provisions that are a duplication of requirements in the Act, such as in clause 11 which refers to the conflict of interest provisions in the Act and Appendix 3 which contains relevant requirements applied under the Act;
- remove the reference to the Councillor Requests And Interactions Policy in clause 9.4 on the basis that this Policy is an operational one with the primary intention of guiding Council staff, not Councillors; and

- streamline the processes applying to internal dispute resolution by amending Appendix 1 to better clarify the three phase internal dispute resolution process and incorporating a Dispute Management Resolution Checklist. See clause 12.

At the Councillor briefing on 30 January 2017, Councillors considered a draft revised Code of Conduct prepared by Macquarie Lawyers. Councillors were also provided with additional time to submit any further comments they may have had. No further comments or concerns have been raised.

The main change resulting from the Councillor briefing is the removal of a reference to the Councillor Requests and Interactions Policy in clause 9.4. That Policy is primarily intended to guide Council staff in their dealing with Councillors. The Act also contains clear requirements (sections 76D and 76E) concerning Council direction of staff and is considered to sufficiently cover the limitations and restrictions.

The Local Government Act requires that within one month of amendments to the Code being approved by Council, a Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct. A declaration must be in writing and witnessed by the Chief Executive Officer. Councillors will note that the declaration provisions are contained at the end of the Code of Conduct.

The Act contains a sanction for Councillors who do not make the declaration. The office of the Councillor who fails to comply with the declaration requirement becomes vacant in this circumstance.

### **STAKEHOLDER CONSULTATION**

Following the election in 2016 Councillors reviewed the Code in a workshop facilitated by Macquarie Lawyers. This followed an extensive review earlier in 2016 to address the changes required by amendments to the Act.

There is no requirement in the Act for community consultation on the Code and given the recent election and timeframes required for compliance with the Act, external consultation is not recommended.

The Code will be made available on Council's website and available for inspection at Council offices once adopted.

### **FINANCIAL AND RESOURCES IMPLICATIONS**

There are no financial or resource implications with the adoption of the new Code of Conduct. Workshops and advice received have been accommodated within operational budgets.

### **RISK IMPLICATIONS**

Risk has been considered as part of this report and it is considered to be consistent with the Risk Management framework.

If Council does not adopt a Code for Councillors by the required date, Councillors are committing a compliance breach. The Act contains sanctions for Councillors who do not make the declaration associated with the Code of Conduct within the prescribed timeframes, including that the office of Councillor becomes vacant. That prospect can also lead to allegations that a person is acting as a Councillor "while incapable", which is a criminal offence.

**CONCLUSION**

Council has reviewed the Councillor Code of Conduct in accordance with the requirements in the Local Government Act and made the changes it considers appropriate.

The revised Code of Conduct is submitted for Council's approval.

**SUPPORTING DOCUMENTS**

Nil

**Attachments**

1. Draft Councillor Code of Conduct



## **6.1**

### **Review of the Councillor Code of Conduct**

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## Councillor Code of Conduct

Version: DRAFT 2017

Approval Date: DRAFT

Review Date: DRAFT

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**Latrobe City Council – Councillor Code of Conduct**

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## **Latrobe City Council – Councillor Code of Conduct**

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### **1. Introduction**

As Councillors, we are committed to working in the best interests of the people within our municipality and to discharging our responsibilities to the best of our skill and judgment.

### **2. Purpose of the Councillor Code Of Conduct**

- 2.1. Councils are required to perform the functions and exercise the powers conferred by or under the *Local Government Act 1989 (the Act)* and any other legislation for the peace, order and good government of their municipal districts. Good governance is fundamental to a Council being able to perform its functions. Good governance relies on good working relations between Councillors.
- 2.2. The purpose of this Code is to:
  - 2.2.1. set out the standards of conduct expected of Councillors;;
  - 2.2.2. endeavour to foster good working relations between Councillors to enable Councillors to work constructively together in the best interests of the local community; and
  - 2.2.3. mandate councillor conduct so as to build public confidence in the integrity of local government.

### **3. Councillor Conduct Principles**

As Councillors, we agree to comply with the Councillor Conduct Principles specified in sections 76B and 76BA of the Act.

- 3.1. In carrying out our role as Councillors, we will:
  - 3.1.1. act with integrity;
  - 3.1.2. impartially exercise our responsibilities in the interests of the local community; and
  - 3.1.3. not improperly seek to confer an advantage or disadvantage on any person.
- 3.2. In addition, each Councillor will:
  - 3.2.1. avoid conflicts between our public duties as a Councillor and our personal interests and obligations;
  - 3.2.2. act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
  - 3.2.3. treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other persons;

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- 3.2.4. exercise reasonable care and diligence and submit ourselves to the lawful scrutiny that is appropriate to our office;
  - 3.2.5. endeavour to ensure that public resources are used prudently and solely in the public interest;
  - 3.2.6. act lawfully and in accordance with the trust placed in us as elected representatives; and
  - 3.2.7. 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.
- 4. Council decision making**
- 4.1. We are committed to making all decisions impartially and in the best interests of the whole community and acknowledge that effective decision-making is vital to the democratic process and an essential component of good governance. Accordingly:
    - 4.1.1. We will actively and openly participate in the decision-making process, striving to be informed to achieve the best outcome for the community;
    - 4.1.2. We will respect the views of the individual in the debate. However, we also accept that decisions are based on a majority vote; and
    - 4.1.3. We accept that no Councillor can direct another Councillor on how to vote on any decision.
- 5. Confidential information**
- 5.1. We will comply with our obligations under section 77 of the Act in relation to confidential briefings or information (as defined under the Act) and recognise that this obligation extends to ensuring the safekeeping of confidential information.
  - 5.2. This includes:
    - 5.2.1. All discussions during a meeting that is deemed to constitute an assembly of Councillors, including Councillor briefing sessions shall be confidential;
    - 5.2.2. All discussions between Councillors shall be deemed confidential if one or more Councillors designates the discussion to be confidential; and
    - 5.2.3. All correspondence between Councillors designated “confidential” shall be treated as confidential information.
  - 5.3. We agree to maintain confidentiality in relation to any alleged contravention of this Code dealt with through the Internal Resolution Procedure outlined in the Appendix.

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### **6. Access to and use of council information**

- 6.1. We will treat Council information appropriately, by:
- 6.1.1. Not using information gained by virtue of our position as a Councillor for any purpose other than to exercise our role as a Councillor;
  - 6.1.2. Respecting the Council's policies in relation to public comments and communications with the media;
  - 6.1.3. Not releasing information deemed 'confidential information' in accordance with section 77 of the Act; and
  - 6.1.4. Recognising the requirements of the *Privacy and Data Collection Act 2014* regarding the access, use and release of personal information.
- 6.2. We acknowledge that all requests made by Councillors for briefings from Council officers or access to information on council files should be registered and reported. This obligation does not apply to requests for clarification / explanation of items on a forthcoming Council agenda.

### **7. Use of Council Resources**

- 7.1. Council resources are to be used effectively and economically by ensuring:
- 7.1.1. We maintain adequate security over Council property, facilities and resources provided to us;
  - 7.1.2. We do not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and ensure payments are made where appropriate; and
  - 7.1.3. We do not use public funds or resources in a manner that is improper or unauthorised.

### **8. Candidature of Councillors at State or Federal Elections**

- 8.1. As Councillors, we will comply with the following if intending on standing for a State or Federal Election:
- 8.1.1. A Councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as an independent candidate for a state or federal election (a Prospective Candidate), must provide written advice to the CEO, as soon as practicable, who must then advise all councillors.
  - 8.1.2. A Councillor who is a Prospective Candidate, must declare his/her intended candidacy at a meeting of the Council as soon as practicable after notifying the CEO pursuant to 8.1.1.
  - 8.1.3. A Councillor who nominates as a candidate for a state or federal election (a Nominated Candidate), must apply for leave of absence from the Council and this leave of absence must commence no later than the date of their nomination as a candidate with the relevant

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electoral commission for the election (Nomination Date) and conclude no earlier than the close of voting for the election. During this period, a Councillor who is on a leave of absence must not attend meetings of the Council or otherwise act as a Councillor.

- 8.1.4. Any Councillor / staff relationship protocol which the Council has in place in respect of the caretaker period prior to a Council election, must be observed by a Nominated Candidate and this must apply from their Nomination Date until the close of voting for the election.
- 8.1.5. Council, upon receiving an application for a leave of absence from a councillor who is a Nominated Candidate or who intends to become a Nominated Candidate, must not unreasonably refuse that application.
- 8.1.6. A Councillor who is a Prospective Candidate or a Nominated Candidate, must take care to differentiate between his/her role as a state or federal election candidate and role as a Councillor when making public comment.
- 8.1.7. A Councillor who is a Prospective Candidate or a Nominated Candidate, must not use Council resources, including Council equipment and facilities in relation to his/her candidacy.
- 8.1.8. A Councillor who is a Prospective Candidate or a Nominated Candidate, must not use Council activities, including committee meetings and Council-related external activities in relation to his/her candidacy.
- 8.1.9. A Councillor who is a Prospective Candidate or a Nominated Candidate, must not attend any Council meeting, even as a member of the gallery, whilst on a leave of absence.

### **9. Relationships with Staff**

- 9.1. As Councillors we will work as part of the Council team with the Chief Executive Officer (CEO) and other members of staff. There should be mutual respect and understanding between Councillors and officers in relation to our respective roles, functions and responsibilities.
- 9.2. Our role is one of advocacy and leadership rather than management and administration. The CEO is responsible for all staff matters.
- 9.3. As Councillors, we are aware of the requirements of section 76E of the Act and must not seek to improperly direct members of Council staff in the exercise of their duties. It is appropriate to notify either the relevant General Manager or Manager when specific issues or particular functions are required to be undertaken.

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### **10. Communication and Media**

- 10.1. We will endeavour to ensure that the messages communicated through the media are clear and consistent, and positively portray the Council as a decisive and responsible governing body.
- 10.2. The Mayor will provide official comment to the media on behalf of Council.
- 10.3. The Mayor may nominate a Councillor to make official comment on behalf of the Council, where appropriate.
- 10.4. The CEO is the official spokesperson for all operational matters pertaining to Council as an organisation including:
- 10.4.1. Staffing and structure of the organisation; and
  - 10.4.2. Corporate issues relating to service provision or the day-to-day business of Council.
- 10.5. The CEO may nominate a Council officer spokesperson if appropriate.
- 10.6. As Councillors, we are entitled to express independent views through the media, however we will make it clear that any unofficial comment is a personal view, and does not represent the position of the Council as a whole.

### **11. Conflict of Interest Procedures**

- 11.1. We will comply with all the provisions of the Act in regard to conflicts of interest.
- 11.2. In addition to the requirements of the Act:
- 11.2.1. We will give early consideration to each matter to be considered by the Council, any special committee to which we belong, or assembly of Councillors, to ascertain if we have a conflict of interest;
  - 11.2.2. We recognise that Council officers may be able to assist with accessing and providing resources in relation to potential conflicts of interest, however the legal onus to determine whether a conflict of interest exists rests entirely with each individual Councillor; and
  - 11.2.3. If we cannot confidently say that we do not have a conflict of interest, we will declare a conflict of interest and comply with the relevant requirements as if we had a conflict of interest and 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 CEO.

### **12. Internal Resolution Procedure**

- 12.1. We agree to follow the Internal Resolution Procedure contained in the Appendix in the event of a dispute arising which concerns an alleged contravention of this Code and we will use the Dispute Management



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Resolution Checklist, being a document incorporated by reference into this Code, to assist with that process.

12.2. All Councillors agree to participate in the three phase Internal Resolution Procedure outlined in the Appendix .

### 13. Roles within Council

We recognise that being clear about the different roles and functions of Councillors and Council staff will assist us in achieving good governance.

#### 13.1. Mayor

The functions of the Mayor include:

- providing guidance to Councillors about what is expected of a Councillor including in relation to the statutory role of a Councillor, and the observation of the Councillor conduct principles and this Code by Councillors;
- acting as the principal spokesperson for Council;
- supporting good working relations between Councillors; and
- carrying out the civic and ceremonial duties of the office of Mayor.

The Mayor is the leader of Latrobe City Council and as such should be the leader of all Councillors. The Mayor has a key role to help all Councillors participate and work together in the interests of the Latrobe City Council's community.

In fostering good governance, the most important roles of the Mayor are:

- to chair the Council meetings in a way which encourages the participation and involvement by all Councillors;
- to encourage Councillors to treat each other with respect and courtesy;
- to model the type of behaviour which Latrobe City Council expects of all Councillors;
- to provide leadership in demonstrating and achieving good governance;
- to work with the CEO in providing leadership to the entire organisation;
- to be the public spokesperson in support of Council decisions;
- to liaise with all Councillors with a view to facilitating the capacity of Councillors to work together and to identify any possible issues or problems which may require assistance in resolution;
- to be the leader of all Councillors and not to align themselves with any particular group of Councillors;
- to meet with organisations and people on behalf of Council;
- to represent Council's position at meetings;
- to use best endeavours to invite other Councillors to such meetings; and

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- to keep Councillors informed of matters discussed at meetings such as those outlined in the Councillor Bulletin newsletter.

### 13.2. Deputy Mayor

Council has a Deputy Mayor in order to enhance the leadership provided by the Mayor and also to ensure that Latrobe City Council can be represented by its political leadership wherever this is necessary or desirable. The Deputy Mayor should also assist the Mayor to facilitate the spirit of cooperation and inclusion between Councillors.

The appointment of a Deputy Mayor shall only apply when Council has elected to appoint a Councillor to the role of Deputy Mayor.

The Deputy Mayor is part of the leadership group and as such should participate in the meetings between the Mayor and the CEO.

The most important roles of the Deputy Mayor are:

- to deputise for the Mayor as required when the issue or function relates to the entire municipality (when the issue or function is more ward based, the Mayor may nominate the ward Councillor to be their representative);
- to liaise with all Councillors with a view to facilitating the capacity of Councillors to work together and to identify any possible issues or problems which may require assistance in resolution; and
- to model leadership and good governance behaviour internally and externally.

### 13.3. Councillors

The role of a Councillor is:

- to participate in the decision-making of Council;
- 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 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;
- observe principles of good governance and act with integrity;
- ensure transparency and accountability;
- abide by the confidentiality requirements of the Act;
- provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under the Act and other Acts;

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- participate in the responsible allocation of the resources of Council through the annual budget;
- avoid conflicts of interest;
- ensure that we do not misuse our position:
  - to gain or attempt to gain, directly or indirectly, an advantage for themselves or for another person;
  - to cause, or attempt to cause, detriment to the Council or another person; and
- facilitate effective communication between Council and the community.

The role of a Councillor does not include the performance of any functions that are specified as statutory functions of the CEO.

Councillors must not represent or speak on behalf of Council or another Councillor without written authorisation to do so.

### **13.4. Chief Executive Officer**

A key role of the CEO is to foster a culture of democratic governance within the organisation.

The CEO should support this process by:

- ensuring the provision of the best possible advice to Council,
- recognising that one of the highest priorities of the position is governance and devoting time to managing relationships and facilitating the decision-making processes;
- modelling and leading the organisation in the culture of democratic governance;
- ensuring that the organisation understands its role in democratic governance and providing appropriate training;
- ensuring that all Councillors are treated with the courtesy and respect arising from their position;
- facilitating good communication between the officers and Councillors through appropriate strategies including the weekly Bulletin;
- not aligning themselves with any particular group of Councillors; and
- encouraging all parties to treat each other with courtesy and respect.

### **13.5. Latrobe City Officers**

The role of the administration is to implement Council's goals, strategies and services and to support democratic governance through its support of and advice to Council.

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Council officers also play other roles at times. This includes assisting Councillors with particular ward issues and providing Councillors with advice and information in accordance with Council's Councillor Requests and Interactions Policy.

### 14. Relationships

Good governance and a successful Code of Conduct at Latrobe City Council is based on good relationships between the different parts of the organisation.

#### 14.1. Mayor / Councillors

A good relationship between the Mayor and Councillors will assist all in working together to deliver the community plan and Latrobe 2026 vision. It will also increase the public credibility of the Latrobe City Council. Councillors understand that:

- the Mayor is the leader of the Council and this role should be respected by all Councillors;
- the Mayor should facilitate an inclusive approach to decision-making and involvement in Council activities in general;
- the Mayor is responsible for Councillors' training and development and should work with the CEO to ensure that Councillors receive necessary training opportunities; and
- the Mayor is a source of assistance for Councillors and also has the responsibility for facilitating resolution of any disputes between Councillors.

#### 14.2. Councillors / Councillors

Councillors need each other to achieve their individual and collective goals. Good relationships between Councillors assist in achieving a successful Council, a pleasant working environment and a Council with public credibility. Councillors recognise that:

- Councillors should have good working relationships in order to succeed individually and collectively;
- while they may have different views, Councillors should treat each other with respect and courtesy;
- disagreements, if they must be aired, should be expressed in a way that causes no detriment to individual Councillors or the Council as a whole; and
- Councillors should not undermine each other, either within the organisation or in public.

In accordance with Council's Social Media Policy, Councillors shall:

- Ensure that any information about Council, Councillors or the organisation is accurate and factual; and

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- Ensure no disparaging remarks are made about Council, Councillors, or the organisation.

### 14.3. Mayor / CEO

This important relationship assists in the smooth running of the organisation through good communication and anticipation of issues. It should be outward looking – that is, focused on how the elected representatives and the organisation can be supported to best achieve the organisations goals. We understand that:

- the Mayor and CEO should work closely together and put energy into achieving a good working relationship;
- the relationship between the Mayor and CEO should be characterised by consistency, openness and good communication - each has the responsibility to keep the other informed about important and relevant issues and good communication ensures that an understanding develops about what is important and relevant;
- the Mayor and the CEO need to understand that each has different roles and authorities - while the Mayor is the leader of Latrobe City Council, this position has no specific authority, unlike the CEO who has particular authorities under the *Local Government Act 1989* and the relationship between the Mayor and the CEO should be sensitive to this issue;
- the relationship between the Mayor and the CEO should aim to facilitate involvement and inclusion amongst the Councillors and the organisation - it does not seek to concentrate power in the relationship;
- to facilitate inclusion and information sharing, the Mayor and CEO will publish a list of key meetings attended in the previous week in the weekly Bulletin; and
- the Mayor and the CEO recognise the importance of consistent communication and, to support this, should have fixed weekly meetings which also involve the Deputy Mayor.

### 14.4. Councillors / CEO

Good relationships between Councillors and the CEO assist good governance and support this Code. The CEO is often able to assist Councillors in addressing constituent issues. Similarly Councillors can keep the CEO informed about issues which may require additional resources. Good relationships between the CEO and Councillors can develop the relationship between Councillors and officers.

The CEO is also accountable to Councillors when they sit as Council. Councillors sitting as Council, are also responsible for performance management of the CEO.

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It is recognised that:

- performance management of the CEO is important to the organisation achieving its goals and setting the goals for the CEO is as important as assessing whether they have been achieved;
- Councillors should commit themselves to spending the necessary time to set the goals as well as assessing their achievement;
- the relationship between Councillors and CEO is based on a good understanding of each other's roles;
- Councillors understand that the CEO can be a source of advice and support and that good communication between Councillors and the CEO can assist the CEO's role; and
- all Councillors have an interest in the selection and performance of the CEO and will ensure that any sub-committees charged with responsibilities in these areas will be broadly representative of the whole Council.

### 14.5. Councillors / Officers

Relationships between Councillors and Council staff should be based on:

- a mutual understanding and respect for each others' roles;
- a preparedness to identify, discuss and resolve issues and problems if they arise;
- on the part of the officers, a respect for and commitment to democratic governance and the primacy of Council in the organisational structure; and
- on the part of Councillors, an understanding that the officers carry, in addition to their normal bureaucratic role, an additional workload, which at other levels of government, is shared with electorate officers and researchers. This means that:
  - Councillor requests have implications both for workload and potential "politicisation" of officers and Councillors bear this in mind when requesting information and/or assistance from officers; and
  - Officers understand that they are the only direct resource Councillors have when they require information or assistance and should keep this in mind when they are approached.
- On occasions where Councillors wish to express any concerns regarding officer conduct or performance, these concerns shall be expressed directly to the CEO.

**Latrobe City Council – Councillor Code of Conduct**

**Councillor Declarations**

I, Cr Kellie O'Callaghan, Mayor, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with section 76C of the *Local Government Act 1989*.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Witness Chief Executive Officer Gary Van Driel

Signature \_\_\_\_\_ Date: \_\_\_\_\_

I, Cr Graeme Middlemiss, Deputy Mayor, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with section 76C of the *Local Government Act 1989*.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Witness Chief Executive Officer Gary Van Driel

Signature \_\_\_\_\_ Date: \_\_\_\_\_

**Latrobe City Council – Councillor Code of Conduct**

I, Cr Sharon Gibson, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with section 76C of the *Local Government Act 1989*.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Witness Chief Executive Officer Gary Van Driel

Signature \_\_\_\_\_ Date: \_\_\_\_\_

I, Cr Dale Harriman, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with section 76C of the *Local Government Act 1989*.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Witness Chief Executive Officer Gary Van Driel

Signature \_\_\_\_\_ Date: \_\_\_\_\_



**Latrobe City Council – Councillor Code of Conduct**

I, Cr Alan McFarlane, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with section 76C of the *Local Government Act 1989*.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Witness Chief Executive Officer Gary Van Driel

Signature \_\_\_\_\_ Date: \_\_\_\_\_

I, Cr Dan Clancey, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with section 76C of the *Local Government Act 1989*.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Witness Chief Executive Officer Gary Van Driel

Signature \_\_\_\_\_ Date: \_\_\_\_\_

**Latrobe City Council – Councillor Code of Conduct**

I, Cr Darren Howe, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with section 76C of the *Local Government Act 1989*.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Witness Chief Executive Officer Gary Van Driel

Signature \_\_\_\_\_ Date: \_\_\_\_\_

I, Cr Bradley Law, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with section 76C of the *Local Government Act 1989*.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Witness Chief Executive Officer Gary Van Driel

Signature \_\_\_\_\_ Date: \_\_\_\_\_

**Latrobe City Council – Councillor Code of Conduct**

I, Cr Darrell White, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with section 76C of the *Local Government Act 1989*.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Witness Chief Executive Officer Gary Van Driel

Signature \_\_\_\_\_ Date: \_\_\_\_\_

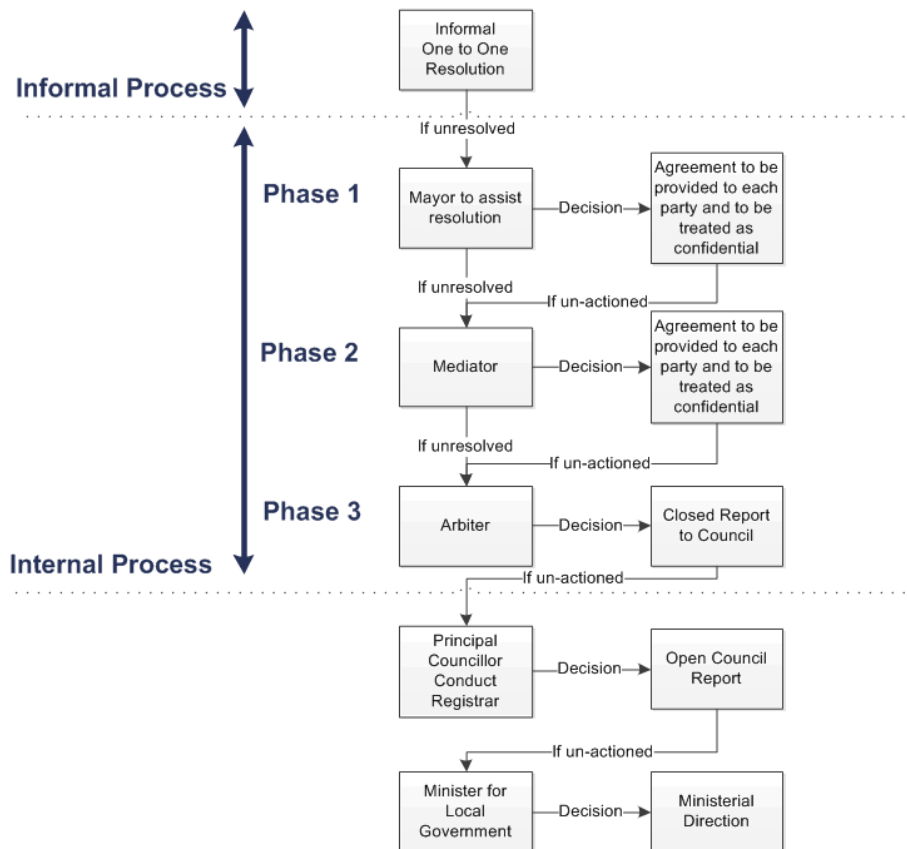
**APPENDIX 1: Internal Resolution Procedure**

Before commencing the formal internal resolution procedure outlined below, the Councillors who are parties to an alleged contravention of this Code will endeavour to resolve the matter informally in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

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.

**Dispute Resolution Process Flowchart**



**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 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 and the parties are required to sign the agreement. Copies of the agreement are to be provided to both parties and are to be treated as confidential.

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.

#### **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 and both parties are required to sign the agreement. Copies of the agreement are to be provided to both parties and are to be treated as confidential.

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.

### **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 (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 an applicant or 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 applicant's and/or the respondent's legal representation are to be borne by the applicant or 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, 2 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, 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 resolution 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 resolution 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.**

The meeting closed at 5:05 pm.