



LATROBE CITY COUNCIL

**AGENDA FOR THE
SPECIAL COUNCIL MEETING**

**TO BE HELD IN NAMBUR WARIGA MEETING ROOM
CORPORATE HEADQUARTERS, MORWELL
AT 5.00PM ON
09 JUNE 2016**

SM484

MISSION

TO PROVIDE
THE BEST POSSIBLE
FACILITIES, SERVICES,
ADVOCACY AND LEADERSHIP
FOR LATROBE CITY, ONE OF
VICTORIA'S FOUR MAJOR
REGIONAL CITIES.

VALUES

- » Providing affordable people focused community services
- » Planning strategically and acting responsibly, in the best interests of the whole community
- » Accountability, transparency and honesty
- » Listening to and working with the community
- » Respect, fairness and equity
- » Open to and embracing new opportunities

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1. OPENING PRAYER

Our Father who art in Heaven, hallowed be thy name. Thy kingdom come, thy will be done on earth as it is in Heaven. Give us this day our daily bread, and forgive us our trespasses, as we forgive those who trespass against us, and lead us not into temptation but deliver us from evil. For the kingdom, the power, and the glory are yours now and forever. Amen.

2. ACKNOWLEDGEMENT OF THE TRADITIONAL OWNERS OF THE LAND

I would like to acknowledge the traditional owners upon whose land we are meeting on today, the Gunaikurnai people and pay my respects to their Elders past and present.

If there are other Aboriginal people/Elders present I would also acknowledge them.

3. APOLOGIES AND LEAVE OF ABSENCE**4. DECLARATION OF CONFLICT OF INTEREST****5. ACKNOWLEDGEMENTS**

Councillors may raise any formal acknowledgements that need to be made at this time, including congratulatory or condolences.

6. PUBLIC QUESTION TIME

Members of the public who have registered before 12.00 Noon on the day of the Council meeting are invited to speak to an item on the agenda or to ask a question of the Council.

**ITEMS REFERRED BY
THE COUNCIL TO THIS
MEETING FOR
CONSIDERATION**

7. ITEMS REFERRED BY THE COUNCIL TO THIS MEETING FOR CONSIDERATION

7.1 ADOPTION OF THE COUNCILLOR CODE OF CONDUCT

General Manager

Corporate Services

For Decision

PURPOSE

Councillors have been engaged in a process to review the Councillor Code of Conduct (Code) as required in recent legislative changes. This report presents the revised Code for adoption by Council.

EXECUTIVE SUMMARY

The Council is required to review and adopt an amended Councillor Code of Conduct due to legislative changes in the *Local Government Act 1989*.

All Councillors have participated in the review process, and the proposed Code is presented for adoption.

A number of changes and inclusions have been made, including:

- Provision of an internal resolution procedure
- Provisions covering when a Councillor becomes a prospective candidate or nominates as a candidate for a State or Federal election
- Clarification as to what Council officers may assist with in relation to Councillors determining if they have a Conflict of Interest
- Provision of the written declarations that Councillors sign after the Code has been adopted
- Provision of a dispute resolution checklist to assist the internal resolution procedures
- Updated extracts from the *Local Government Act 1989*
- Formatting changes (including minor changes to wording, numbering and inclusion of a table of contents)

Councillors must make a written declaration that they will abide by the Code within one month of the Code being adopted.

RECOMMENDATION

That Council:

- 1. Adopts the *Councillor Code of Conduct* with an effective date of 09 June 2016; and**
- 2. Notes that with the adoption of this *Councillor Code of Conduct*, that any previous versions are now rescinded.**

DECLARATION OF INTEREST

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

STRATEGIC FRAMEWORK

This report is consistent with Latrobe 2026: The Community Vision for Latrobe Valley and the Latrobe City Council Plan 2013-2017.

Latrobe 2026: The Community Vision for Latrobe Valley

Strategic Objectives - Governance

Latrobe City Council Plan 2013 - 2017

Theme and Objectives

Theme 3: Efficient, effective and accountable governance

BACKGROUND

Under changes to the *Local Government Act 1989 (Act)* arising from the *Local Government Amendment (Improved Governance) Act 2015*, every Victorian Council is now required, by law, to undertake a process of reviewing and amending their Code. Each Council must then, at a Special Meeting of Council (called solely to deal with their revised Code), accept into Council a revised Code reflective of the councillor conduct reform amendments contained in the revised Act.

This is a time sensitive matter. Each Victorian Council must, by law, have their revised Code adopted prior to 04 July 2016. A Special Council Meeting must be called for the sole purpose of adopting the Code prior to this date.

Within one month of that revised and compliant Code being accepted into Council, each councillor must sign an individual, written declaration (to be witnessed and co-signed by the CEO), stating they will abide by the revised Code. Under the revised Act, Councillors who do not make their written declaration within that timeframe are automatically disqualified from standing as councillor and their office of councillor shall automatically lapse.

The review process began with an introductory presentation by Macquarie Lawyers on 04 April 2016 with Councillors. As discussed during that presentation, the next phase was to hold a Councillor information and consultation workshop. The workshop was held on Monday, 09 May 2016.

The workshop was the forum for all Councillors to have their comments and queries addressed in order to help shape, and to agree in principle, the contents of a new Code for Councillors. A revised Code was provided and discussed with Councillors at a briefing held on 30 May 2016. It has now been prepared for adoption of Council.

KEY POINTS/ISSUES

The proposed Code:

- sets out the standards of conduct expected of elected representatives;
- endeavours to foster good working relations between Councillors to enable Councillors to work constructively together in the best interests of the local community; and
- mandates Councillor conduct designed to build public confidence in the integrity of local government.

A number of changes have been included in the proposed Code to ensure compliance with the new legislative requirements under the Act, as well as suggestions by Councillors on the standards of conduct expected.

Changes include:

- Inclusion of an internal resolution procedure
- Provisions covering when a Councillor becomes a prospective candidate or nominates as a candidate for a State or Federal election
- Clarification as to what Council officers may assist with in relation to Councillors determining if they have a Conflict of Interest
- Inclusion of the written declarations that Councillors sign after the Code has been adopted
- Inclusion of a dispute resolution checklist to assist the internal resolution procedures
- Updated extracts from the *Local Government Act 1989*
- Formatting changes (including minor changes to wording, numbering and inclusion of a table of contents)

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, there may be ramifications for the Council.

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.

INTERNAL/EXTERNAL CONSULTATION

The review of the Code commenced in April 2016 with Councillors. Workshops have been undertaken and feedback incorporated into the Code.

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There is no requirement under the *Local Government Act 1989* (Act) for community consultation to occur, and given the timeframes required for compliance to the Act, it is not recommended.

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

OPTIONS

Council has the following options:

1. To adopt the Councillor Code of Conduct as presented;
2. To adopt the Councillor Code of Conduct with amendments;
3. To not adopt the Councillor Code of Conduct at this time, but requesting further changes and a new Special Council meeting prior to the 04 July 2016 to be arranged.

CONCLUSION

The Councillor Code of Conduct has been reviewed in accordance with requirements under the *Local Government Act 1989* and is presented for adoption by Council.

SUPPORTING DOCUMENTS

Proposed Councillor Code of Conduct (with marked up changes)

Attachments

1. Councillor Code of Conduct

7.1

Adoption of the Councillor Code of Conduct

1 Councillor Code of Conduct 11



Councillor Code of Conduct

Version: June 2016

Approval Date: DRAFT
Review Date: 30 May 2016

Latrobe City Council – Councillor Code of Conduct

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Latrobe City Council – Councillor Code of Conduct

1. Introduction

As Councillors of the Latrobe City Council 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. The purpose of local government is to provide a system under which Councils perform the functions and exercise the powers conferred by or under the *Local Government Act 1989* and any other legislation for the peace, order and good government of their municipal districts. Good governance is fundamental to a Council being able to perform its purpose. Good governance relies on good working relations between Councillors.

2.2. This Code:

- 2.2.1. sets out the standards of conduct expected of elected representatives;
- 2.2.2. endeavours 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. mandates councillor conduct designed to build public confidence in the integrity of local government.

3. Councillor Conduct Principles

We endorse and agree to the following Councillor Conduct Principles specified in sections 76B and 76BA of the *Local Government Act 1989*:

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;
- 3.1.3. not improperly seek to confer an advantage or disadvantage on any person.

3.2. In addition, in performing our role 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;
- 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. Councillors acknowledge that we will comply with our obligations under section 77 of the *Local Government Act 1989* 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. All Councillors agree to maintain confidentiality in relation to any contravention of this Councillor Code of Conduct dealt with through the Internal Resolution Procedure outlined in Appendix 1.

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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. Councillors 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 to assist in performing our role;
 - 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 or 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. A council, upon receiving an application for a leave of absence from a councillor who is a Nominated Candidate or who intends to become a Nominated Candidate, must approve 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 will be aware of the requirements of section 76E of the *Local Government Act 1989* 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.
- 9.4. We will comply with the Councillor/Council staff interaction policy or protocol implemented by the CEO.

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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 individual 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. 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 *Local Government Act 1989* in regard to the disclosure of conflicts of interest.
- 11.2. For the purpose of this Code, "direct interest", "indirect interest" and "conflicts of interest", have the meanings specified in the *Local Government Act 1989*.
- 11.3. We will comply with all the provisions of the Act in regard to conflicts of interest.
- 11.4. In addition to the requirements of the *Local Government Act 1989*:
 - 11.4.1. 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;
 - 11.4.2. 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
 - 11.4.3. 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. If we consider that we

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may be unable to vote on a matter because of a conflict of interest, we 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 CEO.

12. Internal Resolution Procedure

12.1. We agree the Internal Resolution Procedure set out at Appendix 1 shall be followed in the event of any dispute arising from or in relation to this Councillor Code of Conduct.

12.2. All Councillors agree to participate in the three phase Internal Resolution Procedure outlined in Appendix 1.

12.3. We agree that the checklist listed in Appendix 2 may be utilised to assist the process.

13. Roles within Latrobe City Council

We recognise that being clear about the different roles of the various parts of our organisation will assist us in maintaining good governance. We also recognise that by understanding our roles we can better communicate and work together.

We agree on the following definitions of functions and roles:

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;

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- 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
- 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

We have important roles to play in helping to achieve good governance. We recognise that we need to work together to achieve the best outcomes for the Latrobe City Council community.

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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;
- 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 at Latrobe City Council is to foster a culture of democratic governance in the organisation. The Latrobe City Council Administration recognises that it is part of the organisation and that the reason for its existence is to support the Council in reflecting the aspirations of the Latrobe City community.

The CEO should support this process by:

- ensuring the provision of the best possible advice to Council, (this is the highest priority in supporting good governance);

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- ensuring that this advice incorporates the political context of the issue - at Latrobe City Council, the organisation shouldn't "play politics", but recognises that issues have a political context and that sophisticated advice reflects this;
- 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 to align themselves with any particular group of Councillors; and
- to encourage all parties to treat each other with courtesy and respect.

13.5. Latrobe City Officers

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

At Latrobe City Council, officers also play other roles at times. These include assisting Councillors with particular ward issues and providing Councillors with advice and information.

Councillors at Latrobe City Council should recognise that at times they do place demands on officers and understand that these expectations can raise issues for officers. Councillors and officers should use good and open communication in order to ensure that relationships are not adversely affected and that expectations are understood and negotiated.

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:

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- 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
- 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

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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.

At Latrobe City Council 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.

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14.5. Councillors / Officers

In general relationships between Councillors and the officers at Latrobe City Council 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 its 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 expressed directly to the CEO.

15. Councillor requests for information

We will from time to time request information from the CEO, General Managers and Managers.

Councillors recognise that such requests should be issues based. Councillor requests can significantly add to the workloads of officers and cannot always be responded to immediately. Officers understand that it is legitimate for Councillors to make information requests of officers.

The process for addressing councillor requests for Information is that Councillors address information requests to the CEO, General Managers or Managers via the Mayoral and Council Support division. Where the information request does not, in the judgment of the CEO, General Manager or Manager, involve significant resources, the request will be met within a timeframe agreed on between the CEO, General Manager or Manager.

If the CEO, General Manager or Manager believes that the information request will involve significant resources, they will work with the requesting Councillor to prepare a report to Council seeking an appropriate Council resolution for the request to be met. Generally, all Councillor requests for information should be made through the Mayoral and Council Support division. From time to time

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requests may be made through the CEO, General Manager or Managers directly.

If a General Manager or Manager believe that the requests from a Councillor or Councillors are becoming excessive, they will report this to the CEO who will discuss it with the Councillor/s concerned and then with the Mayor if the problem persists.

15.1. Requests via email

The protocol aims to ensure that all responses from officers to Councillors in respect to Councillor requests for information is provided to all Councillors.

The rationale for this approach is to ensure that all Councillors are provided with information at the same time and within the same context. This process ensures that no Councillor is either advantaged or disadvantaged in respect to access to information.

All Councillors will be emailed a copy of the response provided following an individual Councillor's request for information. This protocol also removes from officers the delicate choice of what matters are of concern to all Councillors. This process enables officers to remain well removed from the political processes in that all Councillor requests for information are dealt with in a uniform, transparent and unbiased manner.

There is benefit in all Councillors receiving notification of all requests and the responses as these can be used by Councillors to inform them of trends and patterns of requests coming from other areas of Latrobe City. Such patterns may provide vital information at budget preparation discussions.

If a Councillor makes a request which they believe is of a private or confidential nature, the email will be directed to the CEO. Discussions will take place between the Councillor and the CEO to determine if the CEO agrees that the item should remain confidential and not shared with all other Councillors. If the CEO disagrees with the confidential nature of the email the Councillor will have the opportunity to withdraw the request.

15.2. Councillor / CEO, General Manager and Managers

Councillor-officer communication should incorporate the following understandings:

- Councillor and officers' roles are complex and every effort is be made to understand where each is coming from;
- Formal advice to Council will only be provided from the CEO and General Managers;
- Councillors do not have the authority to direct officers;
- Communication is based on respect for each other and is not be used to undermine other Councillors or officers;
- Officers will inform their manager about any contact with Councillors;

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- a Councillor who wishes to complain about an officer will speak only with the CEO; and
- officers approaching Councillors about organisational issues are referred to their Manager, General Manager or CEO.

Councillor Declarations

I, Cr Michael Rossiter, Mayor, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with Section 63 of the *Local Government Act 1989*.

Signature _____ Date: _____

Witness Chief Executive Officer Gary Van Driel

Signature _____ Date: _____

I, Cr Sharon Gibson, Deputy Mayor, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with Section 63 of the *Local Government Act 1989*.

Signature _____ Date: _____

Witness Chief Executive Officer Gary Van Driel

Signature _____ Date: _____

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I, Cr Peter Gibbons, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with Section 63 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 63 of the *Local Government Act 1989*.

Signature _____ Date: _____

Witness Chief Executive Officer Gary Van Driel

Signature _____ Date: _____

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I, Cr Sandy Kam, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with Section 63 of the *Local Government Act 1989*.

Signature _____ Date: _____

Witness Chief Executive Officer Gary Van Driel

Signature _____ Date: _____

I, Cr Graeme Middlemiss, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with Section 63 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 Kellie O'Callaghan, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with Section 63 of the *Local Government Act 1989*.

Signature _____ Date: _____

Witness Chief Executive Officer Gary Van Driel

Signature _____ Date: _____

I, Cr Christine Sindt, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with Section 63 of the *Local Government Act 1989*.

Signature _____ Date: _____

Witness Chief Executive Officer Gary Van Driel

Signature _____ Date: _____

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I, Cr Darrell White, declare that I have read, understand and will abide by the Councillor Code of Conduct 2016, in accordance with Section 63 of the *Local Government Act 1989*.

Signature _____ Date: _____

Witness Chief Executive Officer Gary Van Driel

Signature _____ Date: _____

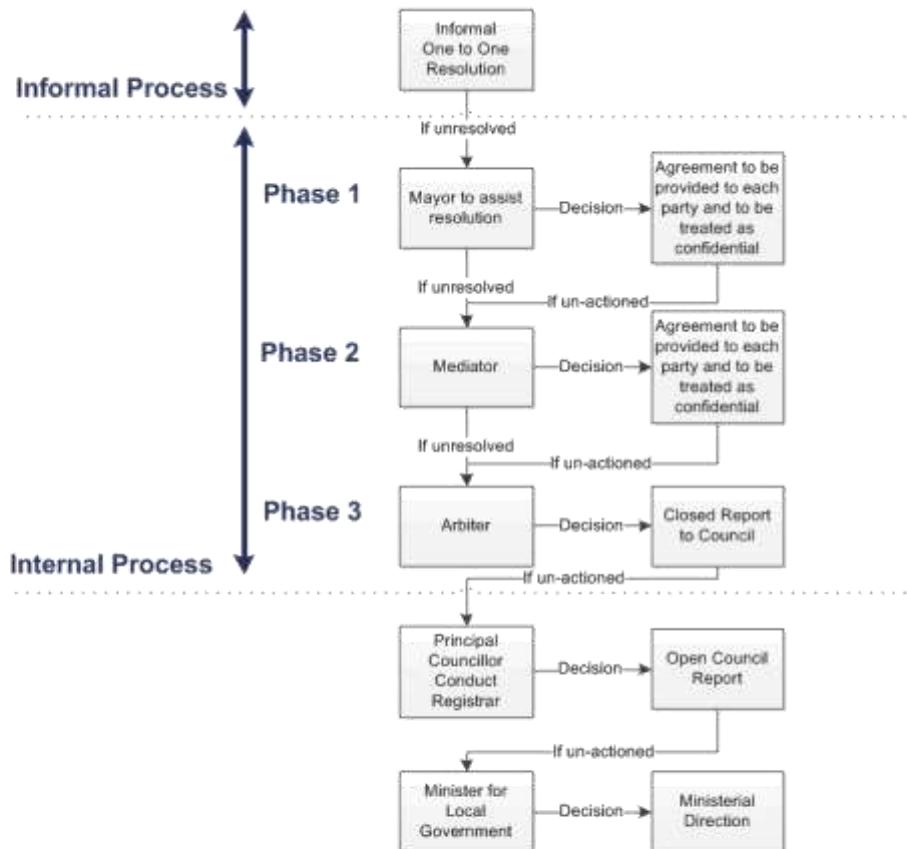
APPENDIX 1: Internal Resolution Procedure

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 open/closed ? 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.

APPENDIX 2: Dispute Resolution Management Checklist

The Dispute Resolution Management Checklist is to be used at each stage of dispute resolution escalation, to identify the issues that have led to a dispute, the viewpoints of the parties involved in the matter and the actions agreed toward resolving it.

The parties involved at each stage are asked to sign the document.

Applicant Name, Title and Contact Details	
Respondent Name, Title and Contact Details	
Date Matter Initiated	
Running Log Stages and Status Timeline - dates meetings held and status at the end of meeting.	Status
Informal One to One	
Stage 1	
Stage 2	
Stage 3	

Informal One to One Resolution Process

Applicant to complete:

What the problem is for me:	Reason it is a concern to me:
Example of the behaviour or action that is a concern:	Timing/Currency – when this behaviour or action occurred:
How I think the problem can be resolved	

Respondent to complete:

Factors that I believe have contributed to the situation:	Reason these are a concern to me:
Example of the behaviour or action that have contributed to the situation:	Timing/Currency – when this behaviour or action occurred:
How I think the problem can be resolved	

Applicant and Respondent to complete at the end of the meeting :

Areas of common ground reached	Issue(s) remaining in dispute (if any)
Applicant actions agreed to maintain the common ground including time lines	Status of remaining issues – Select 1) Issue resolution requires escalation to Stage 1.
Respondent actions agreed to maintain the common ground including time lines	

Applicant Signature _____

Date _____

Respondent Signature _____

Date _____

Stage 1

Documentation from the one to one process to be carried forward into Stage 1
 Mayor / CEO to complete in discussion with Applicant and Respondent

The outstanding issues from the one to one process are related to:	If Yes is the response to any of these differing opinions – respond to the corresponding questions to work through the issue
<p>Is this a matter of differing opinions on a contextual/policy matter or a matter before Council?</p> <ul style="list-style-type: none"> - Have these matters been resolved by Council? - If so, what was Council's ruling? - If so, why is Council's decision in question here? - If not, is the matter to come before Council in the near future? - If so, should this issue be resolved as a political debate in the Council Meeting? - If not, is the matter related to a legislative responsibility of Council's? 	
<p>Is this a matter of differing opinions on particular behaviours, values or ethics?</p> <ul style="list-style-type: none"> - Do these behaviours (of both parties) align with, or they contrary to, the requirements of the behaviours in the Councillor Code of Conduct? - If they are contrary to the Councillor Code of Conduct is there a potential breach of the Code? - If so, demonstrate by example what the breach is and its level of significance? 	

<p>Is this a matter of differing opinions on a legislative context?</p> <ul style="list-style-type: none"> - How does the legislation support or vary from the issue and/or matters raised from both parties perspectives? - If they are contrary to the legislation is there a potential breach? - If so, demonstrate by example what the breach is and its level of significance? 	
<p>Is this a matter of differing opinions on bullying or harassing behaviour?</p> <ul style="list-style-type: none"> - Have the actions of one contributed to the actions of another? How? - If so, demonstrate by example what the inappropriate behaviours are? (Consider both parties behaviours) - Do the issues and examples constitute 'bullying' or 'harassing' behaviour as defined by the Health and Wellbeing Act and Council's OH&S Policy? - If so, specify the behaviour changes required by one or both parties. 	
<p>Does the conflict have any other basis requiring identification and clarification?</p>	

Applicant and Respondent to complete at the end of the meeting:

Areas of common ground reached from one to one and stage 1:	Issue(s) remaining in dispute (if any):
Applicant actions agreed to maintain the common ground including time lines from one to one and stage 1:	Status of remaining issues – Select 1) Issue resolution requires escalation to Stage 3:
Respondent actions agreed to maintain the common ground including time lines from one to one and stage 1:	

Applicant Signature _____

Date _____

Respondent Signature _____

Date _____

Mayor/Deputy Mayor
Signature _____

Date _____

CEO Signature _____

Date _____

Stage 1

Documentation from previous stages to be carried forward into Stage 2.

Mediator to complete in consultation with the parties:

Applicant's outstanding issues	Specific issue(s) remaining in dispute
Applicants agreed actions completed	Applicants agreed actions not completed and reasons for inaction
Respondent's outstanding issues	Specific issue(s) remaining in dispute
Respondents agreed actions completed	Respondents agreed actions not completed and reasons for inaction

Mediator to hear alleged contraventions of the Councillor Code of Conduct by either party

Relevant Sections of the Code:	Alleged contraventions of the Code against the Applicant:
Relevant Sections of the Code:	Alleged contraventions of the Code against the

	Respondent:

Mediator to review the Mayor/CEO interpretation of a Council decision, legislation, Local Law No 1 Meeting Procedure Local Law, or Councillor Code of Conduct, including any legal opinion available.

(Only required if one of more of these factors remains an outstanding issue)

Applicant's perspective and interpretation
Applicant's perspective and interpretation

Mediator to complete with the parties

Areas of common ground reached in Stage 2	Issue(s) remaining in dispute (if any) to be arbitrated by the Mediator.
Applicant actions agreed to maintain the common ground including time lines from Stage 2	

Respondent actions agreed to maintain the common ground including time lines from Stage 2

Applicant Signature _____
Date _____

Respondent Signature _____
Date _____

Mediator _____
Date _____

Note: remaining stages do not require documentation recorded on this Checklist as they will be dealt with in the Mediator's Finding Report, Council Report(s) and/or Councillor Conduct Panel or Ministerial Reports.

APPENDIX 3: Local Government Act 1989 Extracts**Division 1A—Conduct and interests****76AA Definitions**

In this Division—

family has the same meaning as **family member** has in section 78;

matter means a matter with which a Council, special committee or a member of council staff is concerned and that will require—

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council or a special committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of council staff in respect of the matter;

not-for-profit organisation means a body or organisation that—

- (a) operates exclusively for charitable, civil or other social purposes; and
- (b) does not share or allocate the funds or profits of the body or organisation with the owners, shareholders or executives of the body or organisation;

relevant person means a person who is a—

- (a) Councillor; or
- (b) member of a special committee; or
- (c) member of Council staff.

76B Primary principle of Councillor conduct

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

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

76BA General Councillor conduct principles

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

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

76C Councillor Code of Conduct

- (1) A Council must review, and make any necessary amendments to, its Councillor Code of Conduct within 4 months after the commencement of section 15 of the **Local Government Amendment (Improved Governance) Act 2015**—
 - (a) by calling a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
 - (b) at that special meeting, approving any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.
- (2) A Council must, within the period of 4 months after a general election—
 - (a) call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and

- (b) at that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.
- (3) A Councillor Code of Conduct—
- (a) must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor;
- Note**
- Section 81AA provides for matters to be addressed by the internal resolution procedure of a Council.
- (b) may set out processes for the purpose of resolving an internal dispute between Councillors;
 - (c) must include any provisions prescribed for the purpose of this section;
 - (d) must include provisions addressing any matters prescribed for the purpose of this section;
 - (e) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.
- (5) A Councillor Code of Conduct must not be inconsistent with any Act or regulation.
- (5A) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act or regulation.
- (6) A copy of the current Councillor Code of Conduct must be—
- (a) given to each Councillor;
 - (b) available for inspection by the public at the Council office and any district offices;
 - (c) published on the Council's Internet website maintained under section 82A.
- (6A) Within one month of amendments to a Councillor Code of Conduct being approved in accordance with this section, a Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct.
- (6B) A declaration by a Councillor under subsection (6A) must be—
- (a) in writing; and
 - (b) witnessed by the Chief Executive Officer.

76D Misuse of position

- (1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—
- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.
- Penalty: 600 penalty units or imprisonment for 5 years or both.
- (2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—
- (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of section 77(2); or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using public funds or resources in a manner that is improper or unauthorised; or
- (3) This section—
- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and
 - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

76E Improper direction and improper influence

- (2) A Councillor must not direct, or seek to direct, a member of Council staff—
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or

- (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
- (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

Penalty: Penalty: 120 penalty units.

- (2A) If an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of conduct in contravention of subsection (2), the Councillor must not be charged with an offence against that subsection in respect of the same conduct unless—
- (a) the Councillor Conduct Panel application is withdrawn; or
 - (b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter under section 81P; or
 - (c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or
 - (d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.
- (2B) If a Councillor is charged with an offence against subsection (2), an application for a Councillor Conduct Panel to make a finding of serious misconduct by the Councillor must not be made for the same conduct in respect of which the Councillor has been charged.
- (3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

77 Confidential information

- (1) A person who is, or has been, a Councillor or a member of a special committee, must not disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: Penalty: 120 penalty units.

- (1A) A person who is, or has been, a Councillor or a member of a special committee, may disclose information that the person knows is confidential information in the following circumstances—
- (a) for the purposes of any legal proceedings arising out of this Act;

- (b) to a court or tribunal in the course of legal proceedings;
 - (c) pursuant to an order of a court or tribunal;
 - (d) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
 - (e) to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
 - (f) to a municipal monitor to the extent reasonably required by the municipal monitor;
 - (g) to the extent reasonably required for any other law enforcement purposes.
- (1B) If an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of conduct in contravention of subsection (1), the Councillor must not be charged with an offence against that subsection in respect of the same conduct unless—
- (a) the Councillor Conduct Panel application is withdrawn; or
 - (b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter under section 81P; or
 - (c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or
 - (d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.
- (1C) If a Councillor is charged with an offence against subsection (1), an application for a Councillor Conduct Panel to make a finding of serious misconduct by the Councillor must not be made for the same conduct in respect of which the Councillor has been charged.
- (2) For the purposes of this section, information is **confidential information** if—
- (a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section

89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or

- (c) the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.

77A Direct and indirect interests

- (1) A relevant person has a conflict of interest in respect of a matter if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person has a direct interest in a matter if the relevant person has an interest of a kind described in section 77B.
- (3) A relevant person has an indirect interest in a matter if the relevant person has—
 - (a) a close association as specified in section 78; or
 - (b) an indirect financial interest as specified in section 78A; or
 - (c) a conflicting duty as specified in section 78B; or
 - (d) received an applicable gift as specified in section 78C; or
 - (e) become an interested party as specified in section 78D; or
 - (f) a residential amenity that may be altered as specified in section 78E.
- (4) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (5) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest the relevant person holds—
 - (a) is held as a resident, ratepayer or voter and does not exceed the interests generally held by other residents, ratepayers or voters; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (6) A relevant person does not have a conflict of interest in a matter if the relevant person—
 - (a) does not know the circumstances that give rise to the conflict of interest; and

- (b) would not reasonably be expected to know the circumstances that give rise to the conflict of interest.

77B Direct interest

- (1) A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subsection (1), a person has a direct interest in a matter if—
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.
- (3) A person who has a membership in a club or organisation that has a direct interest in a matter—
 - (a) does not, by reason of that membership, have a direct interest in the matter under subsection (1); and
 - (b) does not have an indirect interest in the matter, by reason of that membership, unless the person has an indirect interest in the matter under section 78A, 78B or 78C.
- (4) In subsection (2), **controlling interest** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**.

78 Indirect interest by close association

- (1) In this section—
 - daughter** means a biological daughter, step-daughter, adopted daughter, or female child for whom the person has custodial responsibilities;
 - direct relative** means the spouse, domestic partner, son, daughter, mother, father, brother or sister of the person;
 - domestic partner** of a person means—
 - (a) a person who is in a registered relationship with the person; or
 - (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one

or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—

- (i) for fee or reward; or
- (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

family member means—

- (a) a spouse or domestic partner of the person; or
- (b) a son, daughter, mother, father, brother or sister that regularly resides with the person;

relative means—

- (a) a direct relative of the person;
- (b) a direct relative of a person who is the direct relative of the person;

son means a biological son, step son, adopted son or male child for which the person has custodial responsibilities.

- (2) A person has an indirect interest by close association in a matter if—
- (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) For the purposes of the definition of **domestic partner** in subsection (1)—
- (a) **registered relationship** has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and

- (c) a person is not a domestic partner of another person only because they are co-tenants.

78A Indirect interest that is an indirect financial interest

- (1) A person has an indirect financial interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (2) Without limiting subsection (1), a person has an indirect financial interest that is a conflict of interest if—
 - (a) the person has a beneficial interest in shares of a company or other body that has a direct interest in the matter, except in the circumstances specified in subsection (3);
 - (b) the person is owed money from another person and that other person has a direct interest in the matter.
- (3) If a person, and family members of the person, hold shares in a company or body that has a direct or indirect interest in a matter with a combined total value that does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million, the person's indirect financial interest is not a conflict of interest.
- (4) Subsection (2)(b) does not apply if the other person is an authorised deposit-taking institution.
- (5) For the purposes of determining the value of shares under this section, the share value is to be taken from—
 - (a) the close of business on the most recent of 30 June or 31 December; or
 - (b) if the person has lodged an ordinary return since the most recent of 30 June or 31 December, the close of business on the date the return was submitted.

78B Indirect interest because of conflicting duties

- (1) A person has an indirect interest in a matter because of a conflicting duty if the person—
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter;
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter;
 - (c) is a trustee for a person who has a direct interest in a matter.

- (2) A person has an indirect interest in a matter because of a conflicting duty if the person held a position or role specified in subsection (1) and, in that position or role, dealt with the matter.
- (3) A person does not have an indirect interest because of a conflicting duty if—
- (a) the person is, or has been, only an employee in the service of the Crown or of a body established by or under any Act for a public purpose and the person has no current or expected responsibilities as that employee in relation to a matter;
 - (b) the person only holds a position in a not-for-profit organisation for which the person receives no remuneration and the person was appointed to the relevant special committee of the Council to be a representative of the non-for-profit organisation;
 - (ba) the person only holds a position, with the Council's approval as a representative of the Council, in an organisation for which the person receives no remuneration;
 - (c) the person is only a Councillor who holds a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;
 - (ca) the person is only a member of the Planning Application Committee established under Part 4AA of the **Planning and Environment Act 1987** or a member or co-opted member of a subcommittee of that Committee;
 - (d) the person only holds a position that has been prescribed for the purposes of this section.

78C Indirect interest because of receipt of an applicable gift

- (1) In this section, **applicable gift** means one or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person or persons specified in subsection (2) in the 5 years preceding the decision or the exercise of the power, duty or function but does not include—
- (a) reasonable hospitality received by the person at an event or function the person attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee; or
 - (b) a gift, other than an election campaign donation, that was received by the person more than 12 months before the person became a Councillor, a member of Council staff or a member of a special committee.

- (2) A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from—
- (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.
- (3) For the purposes of determining when a person became a Councillor or member of a special committee under subsection (1)(b), if the person is re-elected or reappointed as a Councillor or a member of a special committee, on completion of his or her term of office, the previous term of office served by that person as a Councillor or member of a special committee must be counted as continuous service with any service completed by the person after the person's re-election or reappointment.

78D Indirect interest as a consequence of becoming an interested party

A person has an indirect interest in a matter if the person has become an interested party in the matter by initiating civil proceedings in relation to the matter or becoming a party to civil proceedings in relation to the matter.

78E Indirect interest because of impact on residential amenity

A person has an indirect interest in a matter if there is a reasonable likelihood that the residential amenity of the person will be altered if the matter is decided in a particular way.

79 Disclosure of conflict of interest

- (1) If a Councillor or member of a special committee has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or the special committee, the Councillor or member must, if he or she is attending the meeting, disclose the conflict of interest in accordance with subsection (2).
- (2) A Councillor or member of a special committee who has a conflict of interest and is attending the meeting of the Council or special committee must make a full disclosure of that interest—

- (a) by either—
 - (i) advising the Council or special committee at the meeting of the details required under paragraphs (b) and (c) immediately before the matter is considered at the meeting; or
 - (ii) advising the Chief Executive Officer in writing of the details required under paragraphs (b) and (c) before the meeting; and
 - (b) classifying the type of interest that has given rise to the conflict as either—
 - (i) a direct interest; or
 - (ii) an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, 78D or 78E; and
 - (c) describing the nature of the interest; and
 - (d) if the Councillor or member advised the Chief Executive Officer of the details under paragraph (a)(ii), the Councillor or member must make a disclosure of the class of interest only to the meeting immediately before the matter is considered at the meeting.
- (3) For the purposes of section 79(2)(a)(i), if a Councillor or member of a special committee has a conflict of interest in two or more matters which are to be considered or discussed consecutively at a meeting of the Council or the special committee, the Councillor or member may make a full disclosure of each of those interests immediately before the first matter is considered at the meeting.
- (5) The Chief Executive Officer must—
- (a) keep written disclosures given to him or her under this section in a secure place for 3 years after the date the Councillor or member of a special committee who made the disclosure ceases to be Councillor or member of a committee; and
 - (b) destroy the written disclosure when the 3 year period referred to in paragraph (a) has expired.
- (6) While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must—
- (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and

- (b) remain outside the room and any gallery or other area in view or hearing of the room.
- (7) The Mayor or the Chairperson of the special committee must cause the Councillor or member of a special committee to be notified that he or she may return to the room after—
 - (a) consideration of the matter; and
 - (b) all votes on the matter.
- (8) If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson must record in the minutes of the meeting—
 - (a) the declaration of the conflict of interest; and
 - (b) the classification of the interest that has given rise to the conflict, and if the Councillor or member has disclosed the nature of the interest to the meeting, the nature of the interest.
- (9) Unless section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence and liable to a fine not exceeding 120 penalty units.

79B Conflicting personal interest

- (1) This section does not apply to a Councillor or member of a special committee who has a conflict of interest in the matter.
- (2) If a Councillor or a member of a special committee considers that he or she has a personal interest in relation to a matter that is in conflict with his or her public duty in relation to the matter, the Councillor or member may, immediately before the matter is considered at the relevant meeting, apply to the Council or special committee to be exempted from voting on the matter.
- (3) If a Councillor or member of a special committee makes an application under subsection (2), he or she must give reasons in support of the application.
- (4) A Council or special committee may consent to an application made under subsection (2) and must not unreasonably withhold consent.
- (5) If a Council or special committee consents to an application under subsection (4), sections 79(6), 79(7), 79(8) and 79(9) apply as if the personal interest that is the subject of an application under subsection (2) were a conflict of interest specified under this Act.

79C Certain situations where Councillor taken to not have a conflict of interest

- (1) A Councillor is taken to not have a conflict of interest for the purposes of this Division if the matter only relates to—
- (a) the nomination or appointment by the Council of the Councillor to a position for which the Councillor will not be remunerated;
 - (b) the election of the Mayor under section 71 or the appointment of an acting Mayor under section 73(3);
 - (c) a decision in relation to the payment of allowances to the Mayor or Councillors under section 74 or 74C(2);
 - (d) the adoption of a policy under section 75B in relation to the reimbursement of expenses;
 - (e) the adoption of a Councillor Code of Conduct under section 76C;
 - (f) an application to a Councillor Conduct Panel or VCAT under Division 1B;
 - (g) an application for an exemption under section 80;
 - (h) the appointment of members and Chairpersons of special committees;
 - (i) a resolution that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under taxation legislation;
 - (j) the conduct of a Councillor with respect to—
 - (i) an internal dispute that involves the Councillor;
 - (ii) an allegation of misconduct or serious misconduct (as defined in section 81A) by the Councillor;
 - (k) a submission provided to an electoral representation review under section 219F;
 - (l) a submission provided for the purposes of a subdivision review conducted under section 219N.
- (2) If a budget or revised budget to be approved by a Council includes funding for a matter in respect of which a Councillor has a conflict of interest the Councillor is taken to not have a conflict of interest for the purposes of approving the budget or revised budget if—
- (a) the Council previously approved the matter and the proposed funding for the matter for inclusion in the budget or revised budget; and

- (b) the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter and the proposed funding for the matter was previously considered and made.
- (3) If a Council Plan to be approved by a Council includes a matter in respect of which a Councillor has a conflict of interest, the Councillor is taken to not have a conflict of interest for the purposes of approving the Council Plan if—
 - (a) the Council previously approved the matter for inclusion in the Council Plan; and
 - (b) the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter was previously considered and made.
- (4) If a Councillor with a conflict of interest referred to in subsection (2) or (3) notifies the Mayor or Chairperson prior to the consideration of the budget, revised budget or Council Plan of the conflict of interest, the Mayor or Chairperson must allow a prior motion to be put that the matter or funding be considered for inclusion in the budget, revised budget or Council Plan.

79D Person may make submission despite conflict of interest

- (1) Subject to subsection (2), a relevant person who has a conflict of interest in a matter and who has made a written submission under section 223 in respect of the matter, may present his or her submission under section 223(1)(b) to the Council or committee of the Council.
- (2) The relevant person who has a conflict of interest in a matter must not be at the meeting of the Council or committee of the Council any longer than is required for the person to be heard in support of the person's written submission.

80 Exemption by Minister

- (1AA) Despite section 79, the Minister may, of his or her own motion, exempt in writing a person, other than a Councillor, from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit if the Minister is satisfied that—
 - (a) extraordinary circumstances exist that justify the exemption of the person; and
 - (b) it is in the public interest to exempt the person.

- (1AB) In exempting a person under subsection (1AA), the Minister must have regard to the extent of the conflict of interest of the person.
- (1) Despite section 79—
- (a) a Council may apply, in writing, to the Minister for an exemption of any Councillor from any or all of the provisions of section 79 if the Council is of the opinion that the transaction of any Council or special committee business would be impeded because of the number of Councillors affected by section 79;
 - (b) a Chief Executive Officer of a Council may apply, in writing, to the Minister, after receiving written declarations of conflicts of interest from a majority of Councillors, for an exemption of those Councillors from any or all of the provisions of section 79.
- (1A) After reviewing an application received from a Council or a Chief Executive Officer, the Minister may require the Council or Chief Executive Officer to provide additional information in respect of the application, including copies of the written declarations of conflicts of interests made by Councillors under section 79.
- (1B) In considering an application made by a Council or Chief Executive Officer, the Minister must have regard to—
- (a) the extent of the conflicts of interest of the Councillors; and
 - (b) the public interest.
- (2) The Minister may, after considering an application under subsection (1B), exempt in writing a Councillor from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit.
- (3) The Minister may revoke an exemption.

80A Requirements to be observed by an assembly of Councillors

- (1) At an assembly of Councillors, the Chief Executive Officer must ensure that a written record is kept of—
- (a) the names of all Councillors and members of Council staff attending;
 - (b) the matters considered;
 - (c) any conflict of interest disclosures made by a Councillor attending under subsection (3);
 - (d) whether a Councillor who has disclosed a conflict of interest as required by subsection (3) leaves the assembly.

- (2) The Chief Executive Officer must ensure that the written record of an assembly of Councillors is, as soon as practicable—
- (a) reported at an ordinary meeting of the Council; and
 - (b) incorporated in the minutes of that Council meeting.
- (3) If a Councillor attending an assembly of Councillors knows, or would reasonably be expected to know, that a matter being considered by the assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a conflict of interest under section 79, the Councillor must, at the time set out in subsection (4), disclose to the assembly that he or she has a conflict of interest and leave the assembly whilst the matter is being considered by the assembly.
- Penalty: 120 penalty units.
- (4) A Councillor must disclose the conflict of interest either—
- (a) immediately before the matter in relation to which the Councillor has a conflict of interest is considered; or
 - (b) if the Councillor realises that he or she has a conflict of interest after consideration of the matter has begun, as soon as the Councillor becomes aware that he or she has a conflict of interest.

80B Members of Council staff to disclose conflicts of interest in respect of delegated functions

- (1) This section applies to—
- (a) a member of Council staff who has been delegated a power, duty or function of the Council under section 98(1) or 98(3) or under another Act;
 - (b) the Chief Executive Officer who has been given a power, duty or function under this Act or another Act;
 - (c) any other member of Council staff who has been delegated a power, duty or function of the Chief Executive Officer under section 98(2).
- (2) A member of Council staff who has a conflict of interest in a matter in which they also have delegated power, duty or function must—
- (a) not exercise the power or discharge the duty or function; and
 - (b) in the case of the Chief Executive Officer, disclose the type of interest and the nature of the interest to—

- (i) the Mayor, in writing, as soon as he or she becomes aware of the conflict of interest in the matter; and
 - (ii) the Council by no later than the next ordinary meeting of the Council.
- (c) in the case of any other member of staff, disclose the type of interest and the nature of the interest to the Chief Executive Officer, in writing, as soon as he or she becomes aware of the conflict of interest in the matter.
- Penalty: 120 penalty units.
- (3) The Chief Executive Officer does not have a conflict of interest in a matter if the matter only relates to—
- (a) the adoption or amendment of a policy relating to Council staff generally;
 - (b) the adoption of a code of conduct for Council staff under section 95AA;
 - (c) a decision to delegate a power, duty or function to a member of Council staff;
 - (d) a decision to request the appointment of a probity auditor under Division 4.

80C Persons to disclose interests to Council when providing advice

- (1) This section applies to Council staff and persons engaged under a contract to provide advice or services to the Council or a special committee.
- (2) A person who is providing advice or a report to a meeting of the Council or a special committee, and who has a conflict of interest in a matter to which the advice or report relates, must disclose the type of interest constituting the conflict of interest when providing the advice or report and before the advice or report is considered by the Council or the committee.
- Penalty: 60 penalty units.
- (3) A disclosure made by a person under subsection (2) must be recorded in the minutes of the meeting.
- (4) A person who has made a disclosure under subsection (2) must disclose the nature of the interest if required to make that disclosure by the Council or committee.
- (5) Sections 77A to 78E apply to a person to whom this section applies as if the person were a relevant person under this Division.

81 Register of interests

(1) In this section—

nominated officer means the senior officers of the Council and any other member of the Council staff nominated by the Chief Executive Officer;

relative has the same meaning as **relative** has in section 78;

return period in relation to the ordinary return of a Councillor, member of a special committee or nominated officer means—

- (a) if the last return of the Councillor, member of a special committee or nominated officer was a primary return, the period between the date of the primary return and the date the ordinary return is submitted; or
- (b) if the last return of the Councillor, member of a special committee or nominated officer was an ordinary return, the period between the date of that return and the date the current ordinary return is submitted.

(2) A person who becomes a Councillor or a member of a special committee must submit a primary return in the prescribed form to the Chief Executive Officer within—

- (a) in the case of a Councillor—
 - (i) 30 days of election day; or
 - (ii) 7 days of making the oath of office of a Councillor; or
- (b) 30 days of becoming a member of a special committee.

Penalty: 60 penalty units.

(2A) A Council may exempt a member of a special committee who is not a Councillor from being required to submit a primary return or an ordinary return.

(2B) The Council must review any exemptions in force under subsection (2A) within the period of 12 months after a general election.

(3) If a person is re-elected or reappointed upon completion of his or her term of office as a Councillor or member of a special committee, the Councillor or member of a special committee does not have to submit a new primary return.

(4) Any person who becomes a nominated officer must within 30 days of becoming a nominated officer submit a primary return in the prescribed form to the Chief Executive Officer.

Penalty: 60 penalty units.

- (4A) Any person who becomes a nominated officer solely because of the amendment made to this Act by section 8 of the **Local Government (Amendment) Act 1994** is deemed for the purposes of subsection (4) to have become a nominated officer on the date section 8 of that Act came into operation.
- (5) A Councillor, a member of a special committee or a nominated officer must submit an ordinary return in the prescribed form to the Chief Executive Officer on—
- (a) 30 June or within 40 days after 30 June; and
 - (b) 31 December or within 40 days after 31 December.
- Penalty: 60 penalty units.
- (6) A Councillor, a member of a special committee or a nominated officer must disclose the following information in the primary return as at the date of the primary return—
- (a) the name of any company or other body in which he or she holds any office whether as a director or otherwise;
 - (b) the name or description of any company or body in which he or she holds a beneficial interest unless the total value of the interest does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million;
 - (c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she has any beneficial interest other than by way of security for any debt;
 - (d) a concise description of any trust in which he or she holds a beneficial interest or of which he or she is a trustee and a member of his or her family holds a beneficial interest;
 - (e) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, a member of a special committee or nominated officer.
- Penalty: 60 penalty units.
- (7) A Councillor, a member of a special committee or a nominated officer must disclose in an ordinary return the following information in relation to the return period—

- (a) if he or she has held an office whether as director or otherwise in any company or body, corporate or unincorporate—the name of the company or body;
- (b) the name or description of any company or body in which he or she holds or has held a beneficial interest unless the total value of the interest does or did not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10million;
- (c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she had any beneficial interest other than by way of security for any debt;
- (d) a concise description of any trust in which he or she held a beneficial interest or of which he or she is a trustee and a member of his or her family held a beneficial interest;
- (e) particulars of any gift of or above the amount or value of the gift disclosure threshold received by him or her, either directly or indirectly, other than a gift received—
 - (i) from a person who is a relative of him or her; or
 - (ii) as hospitality at an event or function he or she attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee;
- (f) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, member of a special committee or nominated officer.

Penalty: 60 penalty units.

- (9) The Chief Executive Officer must maintain a register of the interests of Councillors, members of special committees and nominated officers consisting of the last 3 returns that those Councillors, members and officers were required to submit under this section.
- (10) The Chief Executive Officer must allow a person to inspect the register if that person has previously made written application to the Chief Executive Officer to do so and the application meets the requirements of the regulations.
- (11) The register may be inspected at the office of the Council during normal office hours.

- (12) The Chief Executive Officer must take all reasonable steps to ensure that no person other than a person who has made application has access to or is permitted to inspect the register or any return.
- (13) A person must not publish any information derived from the register unless that information is a fair and accurate summary or copy of the information derived from the register.
- (13A) The Chief Executive Officer must maintain a record of the names of persons who have inspected the register of interests under subsection (10).
- (13B) A Councillor, a member of a special committee or a nominated officer, whose interests are recorded in the register may inspect the recorded names of people kept under subsection (13A) who have inspected his or her personal records.
- (14) A member of Council staff must not, whether before or after he or she ceases to be so employed, make a record of, divulge or communicate to any person any information in relation to a matter dealt with by this section that is gained by or conveyed to him or her during his or her employment with the Council or make use of that information for any purpose other than the discharge of his or her official duties under this section.
- Penalty: 60 penalty units.
- (16) As soon as practicable after a person ceases to be a Councillor or a member of a special committee or a nominated officer, the Chief Executive Officer must remove all the returns submitted by that person from the register.

Division 1AB—Internal resolution procedure of Council

81AA Internal resolution procedure of Council

- (1) A Council must develop and maintain an internal resolution procedure for the purposes of addressing an alleged contravention of the Councillor Code of Conduct by a Councillor.
- (2) The internal resolution procedure of a Council must—
- (a) be specified in the Councillor Code of Conduct; and
 - (b) incorporate any prescribed processes including any application process; and
 - (c) provide for the selection of an arbiter who is suitably independent and able to carry out the role of arbiter fairly; and

- (d) specify the role an arbiter is expected to undertake in the conduct of any internal resolution procedure including that the arbiter must—
 - (i) consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor; and
 - (ii) make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council; and
- (e) provide processes to ensure that parties affected by an application alleging a contravention of the Councillor Code of Conduct are given an opportunity to be heard by the arbiter; and
- (f) specify that the Council and the Councillor the subject of any application made alleging a contravention of the Councillor Code of Conduct are to be given written reasons for any findings made by an arbiter; and
- (g) address any matters prescribed for the purposes of this section; and
- (h) include any provisions prescribed for the purposes of this section.

81AB Sanctions for contravention of Councillor Code of Conduct

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

Division 1B—Councillor Conduct Panels**81B Application to Councillor Conduct Panel**

- (1) A Councillor Conduct Panel may hear an application that alleges misconduct or serious misconduct by a Councillor.
- (1A) An application for a Councillor Conduct Panel to make a finding of misconduct against a Councillor may be made by—
 - (a) the Council following a resolution of the Council to make an application to a Councillor Conduct Panel under this subsection in respect of a Councillor's conduct; or
 - (b) a Councillor or a group of Councillors.
- (1B) An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by—
 - (a) the Council following a resolution of the Council to make an application to a Councillor Conduct Panel under this subsection in respect of a Councillor's conduct; or
 - (b) a Councillor or a group of Councillors; or
 - (c) the Chief Municipal Inspector.
- (3) An application made under this section must—
 - (a) specify the ground or grounds for the application;
 - (b) set out—
 - (i) the circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting misconduct or serious misconduct; and
 - (ii) the particulars of any evidence of those circumstances, actions or inactions of the Councillor that are alleged as constituting the misconduct or serious misconduct;
 - (c) specify—
 - (i) any steps taken by Council to resolve the matter that is the subject of the application and the reason why the matter was not resolved by the taking of those steps; or
 - (ii) if the Council did not take any steps to resolve the matter that is the subject of the application, the reason why the Council did not take any steps to resolve the matter;
 - (d) if the application is made by the Council or a group of Councillors, state the name and address of the Councillor whom

the Council has, or group have, appointed as representative of the Council or group.

81C Principal Councillor Conduct Registrar must reject application for formation of a Councillor Conduct Panel in specified circumstances

- (1) The Principal Councillor Conduct Registrar, after examining an application made under section 81B, must form a Councillor Conduct Panel to hear the matter if the Principal Councillor Conduct Registrar is satisfied that—
 - (a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
 - (b) there is sufficient evidence to support an allegation of misconduct or serious misconduct as specified in the application; and
 - (c) the Council—
 - (i) has taken sufficient or appropriate steps to resolve the matter; or
 - (ii) has not taken any steps to resolve the matter but the Principal Councillor Conduct Registrar is satisfied of the Council's reasons for not taking any steps.
- (2) Subject to subsection (3), the Principal Councillor Conduct Registrar must reject an application, or refer a matter the subject of a an application back to the Council, if the Principal Councillor Conduct Registrar is not satisfied under subsection (1)(a), (b) or (c).
- (3) The Principal Councillor Conduct Registrar must form a Councillor Conduct Panel to hear the matter if the application is made under section 81B(1B)(c) by the Chief Municipal Inspector for a finding of serious misconduct.
- (4) The rejection of an application, or the referral of a matter the subject of an application back to the Council, by the Principal Councillor Conduct Registrar under this section does not prevent a further application being made under section 81B in respect of the same conduct by a Councillor that was the subject of the rejected or referred application.

81E Application on grounds of gross misconduct

- (1) VCAT may hear an application made by the Chief Municipal Inspector that alleges gross misconduct by a Councillor.
- (2) An application made under subsection (1) may only be made by the Chief Municipal Inspector.

81F Parties to a VCAT proceeding

- (1) The applicant and respondent are parties to a proceeding commenced in VCAT under section 81E.

81G Notice of a Councillor Conduct Panel

- (1) A Councillor Conduct Panel must—
 - (a) fix a time and, subject to subsection (2), a place that is within the municipal district of the relevant Council, for the hearing to be conducted; and
 - (b) serve by post a notice of the time and place of the hearing on the applicant, respondent and Council.
- (2) For the purposes of subsection (1)(a), a Councillor Conduct Panel may fix a place for the hearing that is not within the municipal district of the relevant Council if the Panel considers it necessary or appropriate in the circumstances.

81H Procedures

- (1) A Councillor Conduct Panel may—
 - (a) request a person to attend a hearing and answer questions;
 - (b) request information from the applicant, the respondent or the Council, including confidential information held by the Council.
- (2) Members of a Councillor Conduct Panel that are provided with confidential information must ensure that the information is not released to the public.

81I Conduct of a Councillor Conduct Panel

- (1) A Councillor Conduct Panel must not make a determination under section 81J until it has conducted a hearing.
- (2) The following applies to a hearing of a Councillor Conduct Panel—

- (a) the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit;
 - (b) there is no right to representation at the hearing except if the Panel considers that a party requires representation to ensure that the hearing is conducted fairly;
 - (c) the proceedings must not be open to the public;
 - (d) if the hearing is based on an application made by Council or group of Councillors, the appointed representative must represent the Council or group of Councillors at the hearing;
 - (e) the Panel is not bound by rules of evidence but may inform itself in any way it thinks fit;
 - (f) the Panel is bound by the rules of natural justice;
 - (g) the procedure of a Panel is otherwise in its discretion.
- (3) At the hearing of an application, the Councillor Conduct Panel must provide the respondent with an opportunity to be heard.

81J Determinations by a Councillor Conduct Panel

- (1) After a Councillor Conduct Panel has conducted a hearing, the Panel may—
- (a) make a finding of misconduct against a Councillor; or
 - (b) make a finding of serious misconduct against a Councillor; or
 - (c) whether or not a finding of misconduct or serious misconduct against a Councillor has been made, make a finding that remedial action is required; or
 - (d) in addition to any findings made under paragraphs (a) to (c), direct that the Council amend its Councillor Code of Conduct in a particular way or to address a particular issue; or
 - (e) dismiss the application.
- (2) If a Councillor Conduct Panel makes a finding of misconduct against a Councillor, the Panel may—
- (a) reprimand that Councillor; or
 - (b) direct that Councillor to make an apology in a form or manner determined by the Panel; or
 - (c) direct that Councillor to take leave of absence for a period specified by the Panel not exceeding 2 months, commencing on a date specified by the Panel; or

- (d) direct that the Councillor is ineligible to hold the office of Mayor for a period specified by the Panel not exceeding the remainder of the Council's term.
- (2A) If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor—
- (a) that Councillor becomes ineligible to hold the office of Mayor for the remainder of the Council's term unless the Panel directs otherwise; and
 - (b) the Panel may—
 - (i) reprimand that Councillor; or
 - (ii) direct that Councillor to make an apology in a form or manner determined by the Panel; or
 - (iii) direct that Councillor to take a leave of absence for a period specified by the Panel not exceeding 2 months, commencing on a date specified by the Panel; or
 - (iv) suspend that Councillor from office for a period specified by the Panel not exceeding 6 months; or
 - (v) direct that the Councillor is ineligible to chair a special committee of the Council for a period specified by the Panel not exceeding the remainder of the Council's term.
- (3) If a Councillor Conduct Panel makes a finding that remedial action is required under subsection (1)(c), the Panel may—
- (a) direct the Councillor who is the subject of the application to attend mediation; or
 - (b) direct the Councillor who is the subject of the application to attend training; or
 - (c) direct the Councillor who is the subject of the application to attend counselling.
- (4) For the purposes of subsection (3), a Councillor Conduct Panel may set reasonable conditions in respect of how or when remedial action is to be undertaken.
- (5) Any necessary expenses incurred by Councillors in attending mediation, training or counselling must be paid by the Council.
- (6) If a Councillor Conduct Panel directs the Council to amend its Councillor Code of Conduct, the Council must comply with that direction within 3 months of the direction being made.

81K Findings and orders of VCAT

If VCAT makes a finding that a Councillor has engaged in conduct that constitutes gross misconduct, VCAT may order that the Councillor is disqualified from continuing to be a Councillor for a period specified by VCAT not exceeding 8 years and the office of the Councillor is vacated.

81M Notice of determinations and tabling of decisions

- (1) After a Councillor Conduct Panel has made a determination under section 81J, the Panel must give a copy of the decision to—
 - (a) the Council; and
 - (b) the parties to the matter; and
 - (c) the Minister; and
 - (d) the Principal Councillor Conduct Registrar.
- (2) A copy of the decision given to the Council under subsection (1)(a) must be tabled at the next ordinary meeting of the Council and recorded in the minutes for that meeting.
- (3) A Councillor Conduct Panel must give a written statement of reasons for the decision, within 28 days of making a determination, to—
 - (a) the Council; and
 - (b) the parties to the matter; and
 - (c) the Minister; and
 - (d) the Principal Councillor Conduct Registrar.
- (4) A statement of reasons provided in accordance with subsection (3) is taken to be a statement of reasons provided in accordance with section 46(1) of the **Victorian Civil and Administrative Tribunal Act 1998**.
- (5) A record of the decision of VCAT, made in respect of an application or review under this Division in relation to a Councillor of a Council, must be tabled at the next ordinary meeting of the Council and recorded in the minutes of that meeting.

81N Suspension of matters during election period

- (1) Applications and proceedings made and conducted under this Division must be suspended during the election period for a general election.

- (2) If an application is made to a Councillor Conduct Panel for a finding of misconduct or serious misconduct against a person who is a Councillor before a general election, and that person is not returned to the office of Councillor as a result of the general election, the application made against that person who was a Councillor before the election lapses.
- (3) If an application is made to a Councillor Conduct Panel for a finding of misconduct or serious misconduct against a person who is a Councillor before a general election, and that person is returned to the office of Councillor as a result of the general election, the application made against the Councillor may resume, whether or not the applicants were returned as a result of the general election.
- (4) An application under section 81E against a person who is a Councillor before a general election must resume after the general election is held whether or not the person is returned to the office of Councillor.

81O Breach of Act by Councillor

- (1) This section applies if it appears to a Councillor Conduct Panel that a Councillor has committed an offence under this Act.
- (2) A Councillor Conduct Panel must by notice in writing notify the Chief Municipal Inspector that a Councillor appears to have committed an offence under this Act as soon as the Panel becomes aware of the apparent offence.

81P Investigation by Chief Municipal Inspector

- (1) The Chief Municipal Inspector may at any time (whether or not the Chief Municipal Inspector has received a notice under section 81O), by notice, require a Councillor Conduct Panel to suspend or stop the Panel's consideration of a matter.
- (2) Within 28 days of the Chief Municipal Inspector requiring a Councillor Conduct Panel to suspend or stop consideration of a matter, the Chief Municipal Inspector must commence an investigation into the matter.

81Q Review by VCAT

- (1) In this section, *party* means the applicant or respondent to an application made to, and matter heard by, a Councillor Conduct Panel, under this Division.

- (2) Subject to subsection (3), a party who is affected by the decision made by a Councillor Conduct Panel under this Division may apply to VCAT for review of the decision.
- (3) A person is not entitled to apply for review of a decision made by a Councillor Conduct Panel to dismiss the application because it is frivolous, vexatious, misconceived or lacking in substance.

81R Time period for making application to VCAT

An application for review under section 81Q must be made within 28 days of the Councillor Conduct Panel giving a statement of reasons under section 81M.

**SPECIAL COUNCIL MEETING AGENDA
09 JUNE 2016 (SM484)**