



HEPBURN SHIRE COUNCIL
SPECIAL MEETING OF COUNCIL
DRAFT MINUTES

TUESDAY 19 JULY 2016

THE WAREHOUSE - CLUNES

36 FRASER STREET

CLUNES

5:35PM

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MINUTES

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The Warehouse - Clunes
36 Fraser Street, Clunes
Commenced 5:35PM

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AARON VAN EGMOND
CHIEF EXECUTIVE OFFICER
19 JULY 2016

1. ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

We would like to acknowledge we are meeting on Jaara people country, of which members and elders of the Dja Dja Wurrung community and their forebears have been custodians for many centuries.

On this land, the Jaara people have performed age old ceremonies of celebration, initiation and renewal.

We acknowledge their living culture and their unique role in the life of this region.

2. OPENING OF MEETING

PRESENT: MAYOR COUNCILLOR NEIL NEWITT, COUNCILLOR BILL MCCLENAGHAN, COUNCILLOR GREG MAY, COUNCILLOR PIERRE NICLAS, COUNCILLOR DON HENDERSON, COUNCILLOR KATE REDWOOD AM, COUNCILLOR SEBASTIAN KLEIN

IN ATTENDANCE: CHIEF EXECUTIVE OFFICER AARON VAN EGMOND, GENERAL MANAGER CORPORATE SERVICES GRANT SCHUSTER, GENERAL MANAGER COMMUNITY SERVICES KATHLEEN BRANNIGAN, GENERAL MANAGER INFRASTRUCTURE BRUCE LUCAS, MANAGER PLANNING JUSTIN FIDDES, MANAGER COMMUNITY AND ECONOMIC DEVELOPMENT MARK TRAVERS

STATEMENT OF COMMITMENT

“WE THE COUNCILLORS OF HEPBURN SHIRE
DECLARE THAT WE WILL UNDERTAKE ON EVERY OCCASION
TO CARRY OUT OUR DUTIES IN THE BEST INTERESTS
OF THE COMMUNITY
AND THAT OUR CONDUCT SHALL MAINTAIN THE STANDARDS
OF THE CODE OF GOOD GOVERNANCE
SO THAT WE MAY FAITHFULLY REPRESENT
AND UPHOLD THE TRUST PLACED IN THIS COUNCIL BY THE
PEOPLE OF HEPBURN SHIRE”

3. APOLOGIES

Nil

4. DECLARATIONS OF CONFLICTS OF INTEREST

Nil

5. OFFICER'S REPORTS

5.1. REVIEW OF COUNCILLOR CODE OF CONDUCT GENERAL MANAGER CORPORATE SERVICES

In providing this advice to Council as the General Manager Corporate Services, I Grant Schuster have no interests to disclose in this report.

PURPOSE

The purpose of this report is for Council to review the Councillor Code of Conduct which is required due to recent changes to the *Local Government Act 1989*.

BACKGROUND

Recent amendments to the *Local Government Act 1989* require Councils to amend their Councillor Codes of Conduct and make any necessary amendments within four months of the requirements coming into force. Council is required to hold a special council meeting solely for the purpose of considering the new Councillor Code of Conduct.

ISSUE / DISCUSSION

The Councillor Code of Conduct has been completely rewritten using the Municipal Association of Victoria's Model Councillor Code of Conduct. Utilising the model Councillor Code of Conduct assists to achieve compliance with the Local Government Act.

The major changes include:

- The Code of Conduct now outlines the functions of the Mayor and the role of a Councillor
- The Principles of Councillor Conduct are no longer required to be included in the Code of Conduct as these are contained within the Act
- The Act now makes the improper release of confidential information an offence that carries a penalty of 120 penalty units and will be referred to a Councillor Conduct Panel for investigation. This has been outlined in the Code of Conduct
- The Act now makes the improper direction or influence of staff an offence that carries a penalty of 120 penalty units and will be referred to a Councillor Conduct Panel for investigation. This has been outlined in the Code of Conduct
- The Code of Conduct now outlines Councils internal resolution procedure relating to an allegation of a breach of the Councillor Code of Conduct

- The Code of Conduct also outlines the process involved for the allegation of Misconduct, Serious Misconduct and Gross Misconduct
- As required by the Act, procedures relating to the Election Period have been removed as Council adopted a dedicated Election Period (Caretaker) Policy at the Ordinary Council Meeting held on 24 March 2016
- The Act now requires that the Code of Conduct be reviewed and approved by Council within four months after a general election
- The requirements that the Code of Conduct must be adopted at a Special Council Meeting called solely for the purpose of reviewing the Councillor Code of Conduct
- That Councillors must sign the Councillor Code of Conduct declaring that they have read and will abide by the Councillor Code of Conduct. The signing must be witnessed by the Chief Executive Officer.

COUNCIL PLAN / LEGISLATIVE COMPLIANCE

The *Local Government Act 1989* requires a Council to develop and maintain a Councillor Code of Conduct.

FINANCIAL IMPLICATIONS

There are no financial implications noted in relation to the revisions made.

RISK IMPLICATIONS

The Councillor Code of Conduct has been revised to better manage the risks associated with breaches of the code and misconduct.

ENVIRONMENTAL / SOCIAL / ECONOMIC IMPLICATIONS

There are no environmental, social or economic implications noted in relation to the revisions made.

COMMUNITY AND STAKEHOLDER ENGAGEMENT

The revision of the Councillor Code of Conduct was due to legislative changes. The Municipal Association of Victoria engaged with the Victorian Local Government sector to agree a model Code, which has been used as the basis for the attached draft.

CONCLUSION

Council has reviewed its Councillor Code of Conduct in accordance with amendments to the *Local Government Act 1989* and is presented for adoption.

OFFICER'S RECOMMENDATION

That Council:

- 5.1.1. Adopts the revised Policy 47 (C) - Councillor Code of Conduct.
- 5.1.2. Requires all Councillors to read and acknowledge that they will abide by the Councillor Code of Conduct.
- 5.1.3. Makes the revised Councillor Code of Conduct available on Council's website and at its service centres in Daylesford, Creswick and Clunes.

MOTION

That Council:

- 5.1.1. *Adopts the revised Policy 47 (C) - Councillor Code of Conduct.*
- 5.1.2. *Requires all Councillors to read and acknowledge that they will abide by the Councillor Code of Conduct.*
- 5.1.3. *Makes the revised Councillor Code of Conduct available on Council's website and at its service centres in Daylesford, Creswick and Clunes.*

Moved: Cr Kate Redwood AM

Seconded: Cr Don Henderson

Carried

ATTACHMENT 1 - DRAFT COUNCILLOR CODE OF CONDUCT

A white right-pointing triangle followed by the text "DRAFT COUNCILLOR CODE OF CONDUCT" in white, sans-serif, uppercase letters.

POLICY NUMBER: 47 (C)

NAME OF POLICY: Councillor Code of Conduct

DATE OF NEXT REVIEW: 22 February 2017

DATE APPROVED: XX July 2016

REFERENCES: Section 76C of the *Local Government Act 1989*

1. INTRODUCTION

As custodians of the Hepburn Shire Council, Councillors hold a unique and important role within Victoria. They have been democratically elected to provide leadership for the good governance of the municipality and the local community as recognised in the *Local Government Act 1989* (the Act). The Act describes how the Council will be accountable in the performance of its functions, the exercise of expected standards of conduct and behaviour and the use of resources.

The Act requires Council to develop and maintain a Councillor Code of Conduct. The Councillor Code of Conduct is required to be periodically reviewed. This Councillor Code of Conduct has been adopted by Council to comply with the requirements of the Act.

2. SCOPE

The Councillor Code of Conduct applies to the seven councillors of Hepburn Shire Council.

This Code of Conduct does not apply to Council Staff. Council Staff are bound by the Employee Code of Conduct.

3. PURPOSE

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 Act and any other Act for the peace, order and good government of their municipal

districts. Good governance is fundamental to a Council being able to perform its purpose. Good governance relies on good working relations between councillors.

This Code:

- sets out the standards of conduct expected of 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.

4. BACKGROUND

A Councillor Code of Conduct (Section 76C(3) of the Act):

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

4.1. Role of mayor and councillors

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

- (a) to participate in the decision-making of the Council; and
- (b) to represent the local community in that decision-making; and
- (c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

In performing the role of a Councillor, a Councillor must:

- (a) consider the diversity of interests and needs of the local community; and
- (b) observe principles of good governance and act with integrity; and
- (c) provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts; and

- (d) participate in the responsible allocation of the resources of Council through the annual budget; and
- (e) facilitate effective communication between the Council and the community.

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

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

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

5. CONDUCT OBLIGATIONS

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

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

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

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

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

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

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

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

5.1. Functions of the Chief Executive Officer

Under Section 94A, the Chief Executive Officer is responsible for:

- (a) establishing and maintaining an appropriate organisational structure for the Council;
- (b) ensuring that the decisions of the Council are implemented without undue delay;
- (c) the day to day management of the Council's operations in accordance with the Council Plan;
- (d) developing, adopting and disseminating a code of conduct for Council staff;
- (e) providing timely advice to the Council;
- (f) ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act;

- (g) supporting the Mayor in the performance of the Mayor's role as Mayor;
- (h) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013; and
- (i) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.

The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

We undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.

5.2. Use of Council resources

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

- maintain adequate security over Council property, facilities and resources provided to us to assist in performing our role and will comply with any Council policies applying to their use;
- ensure any expense claims that we submit are in compliance with the relevant legislative provisions and Council policy;
- not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate; and
- not use public funds or resources in a manner that is improper or unauthorised.

5.3. Gifts and benefits

We will scrupulously avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from the Council.

We will take all reasonable steps to ensure that our family members (as per the definition in Section 78 of the Act) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

Where a gift is received on behalf of the Council, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in the organisation's Gifts Register with a notation that it is the property of the Council.

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

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

5.4. Communication

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

We undertake to comply with the Council's media rules and respect the functions of the Mayor and Chief Executive Officer to be the spokespersons for the Council, as follows.

5.4.1. The Mayor

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

- (a) state-wide political issues affecting Local Government;
- (b) contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community;
- (c) issues pertaining to policy and Council decisions;
- (d) issues relating to the strategic direction of the Council;
- (e) issues that might be the subject of current investigations and/or litigation.

5.4.2. The Chief Executive Officer

The Chief Executive Officer or delegate (General Manager) is the official spokesperson for all operational matters pertaining to the organisation including:

- (a) staffing and structure of the organisation;
- (b) corporate issues relating to service provision; and
- (c) the day-to-day business of Council.

5.4.3. Media Releases

All media releases issued by Council will be issued by the Communications Officer.

Prior to their release, all media releases issued by Council will be authorised by the Chief Executive Officer or delegate (General Manager). Prior approval must be obtained from the respective Councillor for a media release issued by Council where that Councillor is quoted by name.

5.4.4. Councillor Public Comment

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

There may be times when a Councillor as an individual disagrees with a majority decision of the Council and wants the community to know that. The appropriate time and place for communicating diverging views is when an item is being debated in the Council Chamber. This provides the best opportunity for informed decision-making and for both the community and the media to better understand the diversity of Councillor views and perspectives in context.

Although the Hepburn Shire Council supports transparency and accountability in decision making, free speech and the use of appropriate robust processes to debate policy, pursue political objectives and resolve differences, it does not and will not condone personal and public criticisms of Councillors, staff and the organisation. Any Councillor who engages in such conduct will be in breach of the Councillor Code of Conduct.

5.4.5. Personal dealings with Council

When we deal with our Council in our private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) we do not expect nor will we request preferential treatment in relation to any such private matter. We will

avoid any action that could lead Council staff or members of the public to believe that we are seeking preferential treatment.

6. PROHIBITED CONDUCT

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

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

These matters are set out below in order to provide a complete picture of the obligations on Councillors. While these matters are not of a nature to be addressed as a contravention of the Councillor Code of Conduct, we undertake to comply with the prohibitions on Councillor conduct set out below. These matters should more properly be the subject of an application to a Councillor Conduct Panel for a finding of serious misconduct or a complaint to the Local Government Inspectorate or the Independent Broad-based Anti-corruption Commission depending on the nature of the allegation.

(Note: Serious misconduct by a Councillors means:

- the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor;*
- the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give;*
- the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;*
- continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel;*
- bullying of another Councillor or member of Council staff by a Councillor;*
- conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or*

(g) *the release of confidential information by a Councillor.*)

6.1. Misuse of position (Section 76D)

A Councillor must not misuse his or her position:

- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- (b) to cause, or attempt to cause, detriment to the Council or another person.

Circumstances involving the misuse of position by a Councillor include:

- (a) making improper use of information acquired as a result of the position he or she held or holds;
- (b) disclosing information that is confidential information within the meaning of section 77(2);
- (c) directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E;
- (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;
- (e) using public funds or resources in a manner that is improper or unauthorised; or
- (f) failing to disclose a conflict of interest as required under this Division.

6.2. Improper direction and improper influence (Section 76E)

A Councillor must not direct, or seek to direct, a member of Council staff:

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

6.3. Confidential information (Section 77)

A Councillor must not disclose information that the he or she knows, or should reasonably know, is confidential information.

A Councillor may disclose information that the he or she knows is confidential information in the following circumstances:

- (a) for the purposes of any legal proceedings arising out of this Act;
- (b) to a court or tribunal in the course of legal proceedings;
- (c) pursuant to an order of a court or tribunal;
- (d) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- (e) to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
- (f) to a municipal monitor to the extent reasonably required by the municipal monitor;
- (g) to the extent reasonably required for any other law enforcement purposes.

6.4. Conflict of interest (Division 1A)

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or special committee, an assembly of councillors, an audit committee or a section 223 committee, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the provisions of the Act (unless any of the exemptions apply).

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

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

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

6.5. Other legislative requirements

The Act includes requirements in relation to Councillor eligibility, electoral conduct and the election period (caretaker period). Alleged contraventions of these provisions are not to be dealt with by the Council using the internal resolution procedure in this Code of Conduct. Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

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

7. DISPUTE RESOLUTION

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. Where, after these endeavours have been exhausted, the matter still remains unresolved, the parties may resort to any or all of the Council's three phase dispute resolution process.

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 Chief Executive Officer; and
- an internal resolution procedure involving an independent arbiter.

7.1. Phase 1 – Direct negotiation

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

A dispute referred for direct negotiation may relate to:

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

The party requesting the direct negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a "direct negotiation" dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;

▶ DRAFT COUNCILLOR CODE OF CONDUCT

- 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. Page 11 of 15

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

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act, and the observation of the councillor conduct principles and the Councillor Code of Conduct.

The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, either or both of the parties have recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor (if any) or the immediate past Mayor. The Deputy Mayor or the immediate past Mayor will perform the functions ascribed to the Mayor.

7.2. Phase 2 – External mediation

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for “direct negotiation”.

An application made for a dispute to be referred for external mediation may relate to:

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

The applicant is to submit a written application to the Principal Conduct Officer setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an “external mediation”. Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the application is made by a group of councillors; and
- be signed and dated by the applicant or the applicant’s representative.

The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time that it is submitted to the Principal Conduct Officer or as soon as practical thereafter.

The Principal Conduct Officer is to ascertain (in writing) whether or not the other party is prepared to attend an “external mediation”. If the other party declines to participate in an external mediation, he or she is to provide their reasons for doing so in writing to the Principal Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

When the other party declines to participate in an external mediation, this does not constitute a contravention of this Councillor Code of Conduct.

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

The Chief Executive Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

7.3. Phase 3 - Internal resolution procedure – Arbiter

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:

- the application was made by the Council and the Council so resolves; or
- the application were made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application; or
- the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

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

- specify the name of the Councillor alleged to have contravened the Code;

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- 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.

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The role of the arbiter is to:

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

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

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

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

An arbiter:

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

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

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

- direct the Councillor to make an apology in a form or manner specified by the Council;
- direct the Councillor to not attend up to, but not exceeding, 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:
 - o be removed from any position where the Councillor represents the Council; and
- to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

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

- (a) failure by a Councillor to comply with the Council's internal resolution procedure;

- (b) failure by a Councillor to comply with a written direction given by the Council under section 81AB; or
- (c) repeated contravention of any of the Councillor conduct principles.

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

8. DEFINITIONS

The following terms are referred to in the policy.

Term	Definition
Council	Hepburn Shire Council
The Act	Local Government Act 1989
Principal Conduct Officer	The role will be performed by the Chief Executive Officer, or in his/her absence by the General Manager Corporate Services

9. IMPLEMENTATION

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

- given to each councillor
- available for inspection at the council office and any district offices
- published on the Council's internet website

From the 2016 general Council elections, a person elected to be a Councillor is not capable of acting as a Councillor until the person has read the Councillor Code of Conduct and made a declaration stating that they will abide by the Councillor Code of Conduct. It is the personal responsibility of councillors to ensure that they are conversant with, and comply with, the provisions of this Code.

10. REVIEW

A Council must, within 4 months after a general election (Section 76C of the Act):

- (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.

Council may also review this Code of Conduct when and if it is required.

Council's review is to be facilitated by the General Manager Corporate Services.

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11. ENDORSEMENT

This Code of Conduct was adopted by the Council on XX July 2016 and is signed by the following councillors to declare that they will abide by the Councillor Code of Conduct:

Name	Signature	Date
Cr Don Henderson		
Cr Sebastian Klein		
Cr Greg May		
Cr Bill McClenaghan		
Cr Neil Newitt		
Cr Pierre Niclas		
Cr Kate Redwood		

Witnessed by:

Chief Executive Officer	Signature	Date
Aaron van Egmond		

6. CLOSE OF MEETING

The meeting was closed at 5:42pm.
