



COUNCILLOR CODE OF CONDUCT

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This Councillor Code of Conduct was adopted by resolution of the Strathbogie Shire Council on 14 June 2016 in accordance with section 76C of the Local Government Act 1989.

Councillor - Code of Conduct

Contents

Contents

Preamble	2
1. Introduction	2
2. Conduct of Councillors	2
2.1 Primary Principle of Councillor Conduct	2
2.2 General Councillor Conduct Principles	3
3. Councillors' Behaviours	3
4. Councillors Meeting Etiquette	4
5. Communication	5
6. Council Decision Making	5
7. Relationships with Staff	6
8. Dispute Resolution Procedures and Complaints	6
8.1 Disputes between Councillors	6
8.2 Self Resolution (Optional)	7
8.3 Formal Request for Remedy of Contravention	7
8.4 External arbitration	7
9. Councillors' Commitment	8
10. Councillor Code of Conduct Support Guide	8
Appendix	9

Preamble

As Councillors of Strathbogie Shire Council we are committed to working together constructively as a team to achieve our shared vision for the shire. We recognise that good governance and conduct exists where a strong, democratically elected and proactive Council is dedicated to the interests and progress of its community.

We respect and embrace the shire's diversity and recognise our indigenous heritage, making Strathbogie a shire of many assets both natural and built. As Councillors we represent the local community in a fair and equitable way.

This Councillor Code of Conduct (**Code**) goes beyond what is required by the *Local Government Act 1989 (Act)* as our commitment to governing this shire effectively with the highest standards of democratic and corporate governance. The Code applies to all Councillors and relates to the performing of Council powers, duties and functions and all the various forms of decision making processes.

The Code is supported by the principles of the *2013-2017 Council Plan (Council Plan)* as reviewed which includes Actions and Key Strategic Indicators. Whilst the Council Plan outlines our vision and overall strategy, the Actions and Key Strategic Indicators are reviewed and updated annually and integrated into our overall operations to ensure the projects and objectives are consistent with the community's needs and Council's broader vision and goals.

Our main focus areas in the Council Plan are achieving future sustainability, improving our liveability, encouraging investment opportunities in our shire, improving the wellbeing of our residents and connecting effectively with our local communities.

Local governments recognise the need for mutual respect, a co-operative attitude, adherence to the principles of confidentiality and courtesy in their dealings with each other. Regional co-operation can be crucial to effective governance in the interests of communities. Decisions made by co-operating local governments in properly constituted democratic forums must be accorded their legitimacy and authority.

1. Introduction

The values that underpin this Code incorporate respect and consideration of fellow Councillors, staff and the community. We will communicate openly and honestly with an appreciation of the professional views, abilities and the unique contributions each of us make towards the effective governance of the shire.

2. Conduct of Councillors

2.1 Primary Principle of Councillor Conduct

It is a primary principle of Councillor Conduct that, in performing the role of a Councillor, a Councillor must comply with section 76B of the Act, which states that a Councillor must:

- act with integrity
- impartially exercise his or her responsibilities in the interests of the local community
- not improperly seek to confer an advantage or disadvantage on any person

2.2 General Councillor Conduct Principles

In addition to acting in accordance with the primary principle of Councillor Conduct specified, in performing the role of a Councillor, a Councillor must comply with section 76BA of the Act, which states that a Councillor must:

- avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations
- act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person
- treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other persons
- exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office
- endeavour to ensure that public resources are used prudently and solely in the public interest
- act lawfully and in accordance with the trust placed in him or her as an elected representative
- 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

3. Councillors' Behaviours

We confirm that we will adhere to the following principles of behaviour in our general conduct as Councillors - treating all people with courtesy and respect, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities. This includes:

- treating members of the community with dignity and ensuring that neither offence nor embarrassment are caused
- treating fellow Councillors with respect, even when disagreeing with their views or decisions
- debating contentious issues without resorting to personal acrimony or insult
- ensuring their punctual attendance at Council and committee meetings; and
- acting with courtesy towards Council staff

In defining courtesy and respect, Council believes in the following principles:

- being honest
- active listening to each other and making sure we understand the basis of another person's views
- being careful about the tone we use to ensure that we are not conveying disrespect through our tone
- setting examples to each other and the community by our behaviour
- using self-reflection to monitor ourselves
- seeking feedback from each other
- being punctual and making the meeting or presentation we are at the priority when it comes to going outside to take or make telephone calls, including ensuring that electronic devices are placed on silent at all meetings
- adherence to the principles of confidentiality

We will always act with integrity and honesty by:

- being honest in all dealings with the community, with other Councillors and with Council staff
- always acting with impartiality and in the best interests of the community as a whole
- not acting in ways that may damage the Council or its ability to exercise good government
- exercising reasonable care and diligence in performing their functions as Councillors
- complying with all federal, state and local relevant laws

Recognising that we hold a position of trust which we will not misuse or derive undue benefit from our positions:

- we will comply with the relevant provisions of the Act and this Code relating to interests and conflicts of interest
- we will not exercise undue influence on other Councillors, members of Council staff, contractors or members of the public to gain or attempt to gain an advantage for ourselves or others

Recognising the increased use and reliance on electronic devices, we believe in the following principles:

- when using electronic media we will mark items as confidential when dealing with Council business items where the matter is of a nature that is sensitive and/or business related that requires discussion between Councillors
- items that are dealt with at an Assembly of Councillors are not to be discussed with anyone outside of this meeting to ensure good governance is upheld and the ability to debate in an open and frank manner is preserved
- we will be mindful of the target audience when replying and/or sending emails
- the tone used in electronic media will be respectful
- we will adhere to Council's policies dealing with electronic media
- to recognise and support each other's wellbeing, Councillors are not expected to reply to emails on a weekend and/or nights unless urgent
- our electronic communication will be concise, timely and transparent

4. Councillors Meeting Etiquette

Councillors should familiarise themselves with Council's Meeting Procedure Local Law No. 1 (2014) (Local Law).

As an elected Council we believe that we should exhibit the highest standards possible when attending, chairing, and participating in meetings as a Council. As such the following principles are essential to reinforce this commitment, in particular the following:

- the Chairperson will control the meeting / Assembly of Councillors and / or presentations at all times
- all Councillors will need to be punctual at these meetings to ensure they start at the advertised or scheduled time
- Councillors will ensure they have prepared for any meeting / Assembly of Councillors and / or presentations by reading the relevant material at all times
- to ensure the welfare of all Councillors, adequate breaks will be placed in an agenda for meetings that go beyond 1½ hours
- so all Councillors have an opportunity to raise issues and debate an issue, the Chairperson will ensure that, at any time, only one person addresses the meeting (this includes not allowing interjecting by the gallery)

- if the Chairperson believes the debate / conversation / a comment has run its course they may ask the Councillor to conclude
- Councillors will ensure that they comply with the Act and the Local Law for required meeting attendance and will endeavour, unless there are unavoidable circumstances, to attend all required meetings including but not limited to ordinary and special Council meetings, Planning Committee Meetings (which have delegated power to make some planning decisions), Assemblies of Councillors, staff briefings and briefings by guests
- Councillors wishing to speak at a meeting will do so by indicating with their hand
- Councillors will ensure that where they are attending and / or participating at official functions / meetings that they will wear appropriate business attire
- Assembly of Council and Councillor only discussions will be treated as confidential and will not be discussed publicly.

5. Communication

As an elected Council, we 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.

The Mayor will provide official comment to the media on behalf of Council.

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

- staffing and structure of the organisation
- corporate issues relating to service provision or the day-to-day business of the Council

The CEO may delegate authority to a Council officer if appropriate.

As individual Councillors, we are entitled to express our own independent views through the media, however we will make it clear that any unofficial comment is our own personal view and does not represent the position of the Council as whole.

Following a decision of Council, a Councillor may make comment on behalf of their ward but not to the detriment of the Council decision and/or a personal attack on the process and/or another Councillor.

6. Council Decision Making

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:

- we will actively and openly participate in the decision making process, striving to be informed to achieve the best outcome for the community
- we will respect the views of the individual in the debate, however we also accept that decisions are based on a majority vote
- we accept that no Councillor can direct another Councillor on how to vote on any decision

7. Relationships with Staff

As detailed in section 94A of the Act, the CEO is responsible for the staff of Council which includes appointing, directing and dismissing staff. Councillors have no right to individually direct staff to carry out particular functions. Councillors will not involve themselves in any personnel matter relating to staff, except the CEO. The information provided to one Councillor should be equally available to other Councillors and no treatment that is unequal should be sought from any staff member.

As effective Councillors we will work cooperatively with the CEO and other members of staff. We recognise the division of responsibilities and that the role of Councillors is one of advocacy and leadership and that the CEO is responsible for management and administration. Therefore as Councillors, we will be aware of the requirements of section 76E of the Act and must not seek to improperly direct or influence members of Council staff in the exercise of their duties. It is appropriate to notify either the relevant Director or Manager when specific issues or particular functions are required to be undertaken.

In performing our duties as Councillors we will respect the roles and responsibilities of Council staff, and welcome the same respect in return.

In line with occupational health and safety, human rights and equal opportunity legislation, we are committed to ensuring that our interactions with staff, each other or others associated with Council, do not breach the requirements of this legislation. As such we are also committed to protecting the health, safety and well-being of all Councillors and staff and will provide, as far as is practicable, a safe Council working environment that is free from bullying, harassment, discrimination and violent behaviour.

We recognise that as a small rural Council, there is likely to be informal contact between Councillors and staff at various times and in various places. We encourage friendly and respectful interaction while acknowledging that formal advice to Council and Councillors comes via the CEO and senior management and that this is the advice on which Councillors are entitled to rely.

We will comply with the Councillor/Council staff interaction policy or protocol required to be implemented by the CEO under section 94A (3A) of the Act.

8. Dispute Resolution Procedures and Complaints

8.1 Disputes between Councillors

Councillors should be mindful that having and expressing differing and sometimes opposing viewpoints is a normal function of the process of democratic local government. Sharing and expressing these different views leads to informed and well considered debate. All Councillors have the right to influence the decisions made by Council through this debate.

Therefore, having differing views, politics or attitudes from other Councillors is not considered a conflict or a dispute and does not require resolution.

Conflict and/or disputes emerge when the differences between Councillors become personal or the behaviour of Councillors towards each other and/or staff is of a nature that threatens the effective operation of Council's decision-making processes. Disputes may also involve allegations of contraventions of this Code.

A dispute may arise between two individual Councillors, between one Councillor and a group of Councillors or between two or more different groups of Councillors. In this dispute resolution process the Councillor or group of Councillors that are seeking a resolution are referred to as 'the Applicant' and the Councillor or Councillors against whom the application is lodged are entitled 'the Respondent'. The following dispute resolution procedure will apply regardless of the dynamics and numbers involved.

Council's dispute resolution process comprises four components. They are:

- self-resolution (optional)
- formal request for remedy of the dispute or contravention
- external arbitration
- request for a Councillor Conduct Panel to be established to determine alleged misconduct or serious misconduct

Councillors will seek to resolve disputes or deal with alleged contraventions of the Code in-house if at all possible.

8.2 Self Resolution (Optional)

Where a dispute and a contravention of the Code arises, the preferred outcome would be for the Applicant and Respondent to have informal discussions in the first instance with a view to resolving any issues without further recourse to this dispute resolution procedure. This may be undertaken informally or alternatively either party may request a discussion with the Mayor acting as a mediator. In the event that the Mayor is either the Applicant or Respondent, a Councillor appointed by the Council shall perform the role of the Mayor for this purpose. Where either party believes that this step will not achieve a resolution, this step in the dispute resolution process may be by-passed.

8.3 Formal Request for Remedy of Contravention

The Applicant will provide written details of the alleged contravention of the Code and the remedy sought, to the Mayor for formal consideration. Where this occurs the Mayor will interview the Respondent and if they feel necessary, mediate a meeting between both parties. If an investigation of an alleged contravention of the Code is required, the Mayor may request assistance from the CEO.

Following interviews and/or mediation and investigations, if the Mayor believes that a contravention of the Code has occurred, he or she will formally write to the Respondent requesting actions from the Respondent that remedy the contravention and provide a timeframe in which the remedy should be implemented.

In the event that the Mayor is either the Applicant or Respondent, a Councillor appointed by the Council shall perform the role of the Mayor for this purpose.

8.4 External arbitration

In the event that the contravention of the Code is not remedied within the timeframe established, or where the Respondent does not accept that a contravention of the Code has occurred, either the Applicant or Respondent may request the engagement of an arbiter by lodging an application in writing with the Principal Conduct Officer (PCO).

Council will utilise the MAV panel of arbiters for this purpose. The Applicant and Respondent may both indicate their preferred arbiter however the ultimate decision on the arbiter will rest with the PCO based on the availability of the arbiters and any other circumstances deemed relevant by the PCO.

The arbiter must be suitably independent and able to carry out the role of the arbiter fairly.

The role of the arbiter is to:

- consider the complaint
- ensure that the parties to the complaint are given an opportunity to be heard by the arbiter
- explore if the complaint can be resolved between the parties without making any findings
- make any findings in relation to the complaint which the arbiter must give, together with written reasons for any findings, to Council and to each party to the complaint

If an arbiter is appointed, all parties to the complaint shall provide reasonable assistance to the arbiter, as requested.

9. Councillors' Commitment

In adopting this Code, we as Councillors commit to representing the local community in a fair and equitable way.

We confirm that this Code goes beyond what is required by the Act to demonstrate our commitment to governing this Council effectively with the highest standards of democratic and corporate governance.

The Code, like the Act, applies to all Councillors and relates to the performing of Council powers, duties and functions and all the various forms of decision making processes.

10. Councillor Code of Conduct Support Guide

The Code is supported by the Councillor Code of Conduct Support Guide (Guide) located as an Appendix to the Code. The Guide should be read in conjunction with this Code.

Appendix

Councillor Code of Conduct Support Guide

This Councillor Code of Conduct Support Guide is to be read in conjunction with the Councillor Code of Conduct that was adopted on 14 June 2016.

This Guide comprises resource material that complements the Councillor Code of Conduct, in order to assist Councillors to better understand their responsibilities and obligations.

This Guide has been produced for the reference of Councillors and Council staff.

Contents – Guide

- 1. Definitions**
- 2. The role of Councillors**
- 3. What a Councillor must not do in exercising their role**
- 4. Functions of the Mayor**
- 5. The role of the CEO in supporting the Mayor**
- 6. Hierarchy and definitions of misconduct**
- 7. Supporting Council management of Councillor behaviour**
- 8. Sanctions for breaches of the Code**
- 9. Principal Conduct Officer**
- 10. If the internal resolution procedure fails**
- 11. The Principal Councillor Conduct Registrar**
- 12. Jurisdiction of panels**
- 13. Information and Confidentiality**
- 14. Misuse of Position**
- 15. Professional Indemnity Insurance**
- 16. Improper Direction or Improper Influence**
- 17. Interaction between Councillors and staff**
- 18. Use of Council Resources**
- 19. Access to Council Offices**
- 20. Conflict & Disclosure of Interest Procedures**
 - 20.1 Legislative requirements**
 - 20.2 Direct Interest**
 - 20.3 Indirect interest**
- 21. Assembly of Councillors**
- 22. Gifts and Bribery**
- 23. Fraud and Corruption**

Councillor Conduct Framework 1

SCHEDULE

1. Definitions

The following definitions are listed to assist with the reading of this Guide:

Arbiter means an independent arbiter appointed by a council to consider alleged violations of the council's Code by a councillor and make final determinations on them

Assembly of Councillors means a meeting of an advisory committee of the Council, if at least one Councillor is present, or a planned or scheduled meeting of at least half of the Councillors and one member of Council staff which considers matters that are intended or likely to be:

- the subject of a decision of the Council or
- subject to the exercise of a function, duty or power of the Council that has been delegated to a person or committee but does not include a meeting of the Council, a special committee of the Council, an audit committee established under section 139 of the Act, a club, association, peak body, political party or other organisation¹

Confidential information means information that is:

- 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
- 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
- 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

Council means Strathbogie Shire Council, being a body corporate constituted as a municipal Council under the Local Government Act 1989

Council Officers means the Chief Executive Officer (CEO) and staff of Council appointed by the CEO

Councillor Conduct Panel (CCP) means a panel of two people established by the Principal Councillor Conduct Registrar (PCCR) to hear applications of misconduct and serious misconduct

Councillors means the individuals holding the office of a member of Strathbogie Shire Council

¹ The definition appears in section 3 of the Act

Election Period means the period that starts on the last day on which nominations for that election can be received and ends at 6:00pm on Election Day

Electronic media means any electronic device used by Councillors and/or staff to transmit information/data and/or mail

Gross Misconduct means behaviour that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor

Local Community includes:

- people who live in the municipal district
- people and bodies that are ratepayers
- people and bodies that conduct activities in the municipal district

Misconduct 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

Municipal Monitor means a person appointed by the Minister for Local Government to monitor governance and provide reports to the Minister

Penalty Unit has the meaning set out in section 110 of the *Sentencing Act 1991*²

Principal Conduct Officer (PCO) means an officer appointed by each council to assist the council in the implementation of its Code, including conduct of the internal resolution procedure

Principal Councillor Conduct Registrar (PCCR) means an employee of the Department of Environment, Land, Water and Planning (DELWP) whose role is to administer all CCP processes and appeals of panel decisions

Section or Act means the Act and sections made under it

Serious Misconduct means:

- the failure of a Councillor to attend a CCP hearing formed to make a finding in respect of that Councillor or
- the failure of a Councillor to give a CCP any information the CCP has requested the Councillor to give or
- the failure of a Councillor to comply with a direction of a CCP or

² A penalty unit is currently \$151.67. The amount is indexed annually on 1 July.

- continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a CCP or
- bullying of another Councillor or member of Council staff by a Councillor or
- conduct by a Councillor in respect of a member of Council staff in contravention of section 76E or
- the release of confidential information by a Councillor

2. The role of Councillors

The role of a Councillor is now defined in section 65 of the Act to provide greater clarity and better understanding of what is expected of Councillors. The section provides that the role of a Councillor is to do all of the following:

- to participate in the decision-making of the Council
- to represent the local community in that decision-making
- to contribute to the strategic direction of the Council through the development
- review of key strategic documents of the Council including the Council Plan

In performing the role of a Councillor, a Councillor must do all of the following:

- consider the diversity of interests and needs of the local community
- observe principles of good governance and act with integrity
- provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts
- participate in the responsible allocation of the resources of Council through the annual budget
- 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.

3. What a Councillor must not do in exercising their role

The Reforms arising from the Local Government Amendment (Improved Governance) Act 2015 – A guide for councils (The Guide) states:

“Councillors are not responsible for implementing council actions. They also have no authority to give directions to council staff. This is to facilitate effective administration and to avoid staff being subject to conflicting directions. Clear lines of managerial authority are critical. This is not to say

councillors cannot express their views about administrative matters or implementation – but rather that they must do so through the CEO.

Therefore councillors must understand that all communication with council staff must be in line with the policies and protocols put in place by the CEO.

This is reinforced by the expansion of the role of CEO in section 94A of the Act to include responsibility for managing interactions between councillors and staff. This extends to the CEO being responsible for developing, implementing and enforcing policies and protocols to manage interactions between councillors and staff.

Councillors who improperly direct or influence a member of council staff in the exercise of their duties will be in breach of section 76E of the Act”.³

4. Functions of the Mayor

The functions of Mayor are now defined in legislation to provide greater clarity and to reflect the role of the Mayor as it has evolved.

Previously the Act identified only three functions differentiating the Mayor from other councillors:

- as chairperson of meetings of council at which the Mayor is present
- having a casting vote where necessary
- taking precedence at all municipal proceedings

The functions of the Mayor of a Council now include:

- 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 Code by Councillors under sections 76B, 76BA and 76C
- acting as the principal spokesperson for the Council
- supporting good working relations between Councillors
- carrying out the civic and ceremonial duties of the office of Mayor

5. The role of the CEO in supporting the Mayor

Prior to the recent legislative amendments, section 94A of the Act provided that the CEO of a council was responsible for all of the following:

- establishing and maintaining an appropriate organisational structure for the Council

³ Penalty: 120 penalty units

- ensuring that the decisions of the Council are implemented without undue delay
- the day to day management of the Council's operations in accordance with the Council Plan
- developing, adopting and disseminating a code of conduct for Council staff
- providing timely advice to the Council
- ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act
- supporting the Mayor in the performance of the Mayor's role as Mayor
- 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
- performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act

Section 94A of the Act now expands the functions of the CEO to specifically include the responsibility for supporting the Mayor in the performance of his or her role. The expansion of the role of CEO also includes responsibility for managing interactions between councillors and staff. This means the CEO is responsible for developing, implementing and enforcing policies and protocols to manage interactions between councillors and staff.

The Guide states:

"The CEO in practice also supports the Mayor to achieve a complete understanding of the full range of functions expected of them. However, in some instances other councillors have questioned why the CEO should treat the Mayor differently. The Act now makes clear this is an expectation which lies squarely within the functions and responsibilities of the CEO. An example of such additional support may involve the CEO providing advice on the Mayor's role at functions such as citizenship ceremonies, as well as at official meetings with other organisations where the mayor represents a council".

6. Hierarchy and definitions of misconduct

The reforms create a hierarchy for management of councillor conduct issues, with:

- councils dealing with breaches of councillor codes
- panels dealing with the majority of cases
- VCAT dealing with exceptional cases

Section 3(1) of the Act provides new definitions. These new definitions for misconduct, serious misconduct and gross misconduct are summarised in *Table 1* along with the authority responsible for addressing the matter. The new Councillor Conduct Framework is shown on page 16.

Degree of Seriousness	Definition	Responsible Authority
Conduct inconsistent with standards council has set itself	Breaches of Council Code of Conduct	Council
Misconduct	Failing to comply with a Council's internal resolution procedure, including failure to abide by any decision of Council in relation to a breach of the Code and repeated breaches of Councillor Conduct Principles	Panel
Serious misconduct	Failing to comply with panel processes, bullying*, improperly directing staff, releasing confidential information and repeated misconduct	Panel
Gross misconduct	Behaviour that demonstrates lack of character to be a councillor	VCAT

Table 1

*Bullying, which is a form of serious misconduct, is defined as repeated unreasonable behaviour that creates a risk to the health and safety of another councillor or a member of council staff. This is consistent with the definition of bullying used in the *Fair Work Act 2009* and by WorkSafe.

7. Supporting Council management of Councillor Behaviour

Until now, councils have had little capacity to manage and resolve issues arising from poor conduct by individual councillors. Councils now have a clear role in doing so through establishing and creating a compliance mechanism to achieve adherence to the Council's Code of Conduct.

The internal resolution procedure is a mandatory requirement for inclusion within the Code of Conduct. Strathbogie Shire Council's internal resolution procedure is described in detail in the Code.

The Act now provides for an independent arbitration process, mechanisms for resolution and sanctions which councils can apply to address any failure to meet Code standards.

Section 63 defines the conditions for the declaration⁴ to abide by a Councillor Code of Conduct. All Councillors must read the Code and make a declaration that they will abide by

⁴ The declaration need not be a statutory declaration

the Code. The declaration must be signed and witnessed by the CEO. If the Councillor fails to do so within three months of being elected their position is declared vacated (Section 64). This means that failure to make a declaration to abide by the Code is now a ground for disqualification as a councillor (section 29 (1) (e)).

The form of declaration is shown in the Schedule of the Appendix (Guide).

Within one month of any amendment being made to the Code, all Councillors must make a declaration stating that they will abide by the revised Code. This declaration must be signed and witnessed by the CEO (section 76C).

8. Sanctions for breaches of the Code

Section 81AB specifies that Councils may impose sanctions through their internal resolution procedure for breaches of the Code. These must be voted on by Council as a whole and they may include:

- requiring an apology
- suspension from up to two council meetings
- a direction that they not attend or chair an advisory or special committee for up to two months; and
- a direction that they be removed from a position where they represent council for up to two months.

The Guide states:

“These sanctions are aimed at ensuring councillors know the consequences of their actions in breaching the standards of behaviour that they, as councillors, have adopted. The sanction framework is designed to assist councils assume responsibility for resolving behavioural and conduct issues occurring within the council.

The primacy given to councils addressing councillor conduct internally is reinforced by the way applications to establish panels are dealt with. The Principal Councillor Conduct Registrar is required to refer matters back to a council to resolve if the internal council code process has not been exhausted prior to an application for a panel”.

9. Principal Conduct Officer

The Act creates a new position of Principal Conduct Officer (PCO) which must be appointed by each Council. The functions of the PCO include assisting the Council in the implementation and conduct of the internal resolution procedure in its Code and assisting the PCCR.

The PCO can be appointed as:

- a senior Council officer appointed by the CEO; or
- another person (not necessarily a Council staff member) appointed by Council providing the Council resolves that the person is suitably qualified to perform the functions of the PCO

The Strathbogie Shire Council PCO is the Executive Manager Corporate and Community.

10. If the internal resolution procedure fails

Failure by a Councillor to comply with a Council's internal resolution procedure or with a written direction given by the Council at the conclusion of the internal resolution process will constitute misconduct under the new definition provided by the Act. This gives the Council authority to enforce its Code.

Misconduct will be dealt with by Councillor Conduct Panels. Sanctions for misconduct include:

- reprimand
- a requirement for an apology
- enforced leave of absence for a maximum of two months
- ineligibility to be Mayor for a period specified by the CCP not exceeding the remainder of the Council's term

11. The Principal Councillor Conduct Registrar

The legislation, whilst encouraging Councils to self-regulate, also improves the capacity of external authorities to enforce standards of conduct in the sector through more effective CCPs.

A Principal Councillor Conduct Registrar (PCCR) position is created in the Department of Environment, Land, Water and Planning. The registrar will be appointed by the Secretary of the department but will be separate from Local Government Victoria.

The PCCR will take over the current role managing panel processes performed by the Municipal Association of Victoria (MAV). In part this responds to the increasing number of applications. This change has been made in consultation with and agreed by the MAV. It will also leave the MAV free to provide independent advice to councils about the process.

The PCCR has the power to do all things necessary or convenient to be done for or in connection with the performance of the PCCR functions under the Act.

The functions of the PCCR are to:

- receive applications for the establishment of CCPs
- form CCPs by appointing members of the panel list to sit on CCPs

- provide general advice and assistance to members of the CCP in relation to their functions
- publish any determination made by a CCP and any reasons given for that determination
- keep copies of all documents requested by, and given to, a CCP
- comply with any request made by the Chief Municipal Inspector or VCAT for copies of any documents given to or made by a CCP
- set and publish a schedule of fees specifying the fees to be paid to members of a CCP
- send notice to a Council specifying the fees payable by the Council following any CCP hearing conducted for, or on behalf of, the Council
- publish any guidelines in relation to CCP procedures and processes that the PCCR has determined to be necessary

12. Jurisdiction of panels

Panels will now be able to more effectively and authoritatively deal with the whole spectrum of Councillor misconduct. In particular, panels will now be able to deal with allegations of serious misconduct.

Previously applications for serious misconduct were required to go to a panel for confirmation that there was evidence of serious misconduct before being referred on to VCAT. Respondents in applications for both misconduct and serious misconduct could elect to forward their application direct to VCAT.

Panels will now hear serious misconduct matters and have the power to impose the higher penalties that have until now been the preserve of VCAT, including:

- suspending a Councillor from Council for up to six months
- specifying that a Councillor is ineligible to be Mayor for up to four years, and
- specifying that a Councillor is ineligible to chair a special committee for up to four years

13. Information and Confidentiality

Councillors will have access to information that may at times be confidential. As such, Councillors will respect the confidentiality of the information received in the course of performing their duties and responsibilities and will not under any circumstances convey electronically, verbally or in writing, information to a third party for as long as it continues to be confidential.

Councillors will treat Council information appropriately by:

- not using information gained by virtue of being a Councillor for any purpose other than to exercise their role as a Councillor
- respecting Council's policies in relation to public comments and communications with the media
- not releasing information deemed "confidential information" in accordance with section 77 of the Act
- recognising the requirements of the *Privacy and Data Protection Act* 2014 regarding the access, use and release of personal information
- adhering to Council policies relating to accessing Council information
- ensuring that items dealt with in the confidential section of a Council meeting or at an Assembly of Councillors are not discussed with anyone outside of such meeting to ensure good governance is upheld and the ability to debate in an open and frank manner is preserved
- 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. Councillors seeking information/explanation or wishing to provide feedback on a matter should do so in accordance with Council policy

There may be times where, in accordance with section 77(1C), the Council resolves or the CEO designates items as confidential.

The release of confidential information by a Councillor in contravention of section 77 of the Act is now serious misconduct and is a misuse of position pursuant to section 76D of the Act.⁵

However, section 77(1A) of the Act provides that a Councillor may disclose information that he or she knows is confidential information in the following circumstances:

- for the purposes of any legal proceedings arising out of the Act
- to a court or tribunal in the course of legal proceedings
- pursuant to an order of a court or tribunal
- to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector
- to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing
- to a municipal monitor to the extent reasonably required by the municipal monitor or

⁵ Penalties for disclosing confidential information are set out in section 77 of the Act.

- to the extent reasonably required for any other law enforcement purposes

14. Misuse of Position

A Councillor must comply with section 76D of the Act which states that a person who is, or has been, a Councillor must not misuse his or her position:

- to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person or
- to cause, attempt to cause, detriment to the Council or another person

Circumstances involving the misuse of a position by a person who is, or has been, a Councillor include making improper use of information acquired as a result of their position, disclosing confidential information within the meaning of Section 77 (2) of the Act, exercising or performing a power, duty or function that they are not authorised to do or using public funds or resources in a manner that is improper or unauthorised.

Council has determined that misuse of position also involves the use of Council staff/resources above what an “ordinary” person is able to do for non-Council business.

15. Professional Indemnity Insurance

Under section 76 of the Act, Council is required to indemnify and keep indemnified each Councillor against claims or actions done or omitted to be done **in good faith** in the exercise of any function or power conferred on Council or the Councillor under the Act or any other Act.

This means that Council indemnifies Councillors against civil (not criminal) claims or actions providing they are performing a legitimate function as a Councillor and acting in good faith.

Not acting in good faith can mean acting with malice (i.e. with the intention of damaging someone), saying something in the knowledge that it is untrue or being reckless as to whether it is true.

Councillors must understand their obligations with regard to good conduct, integrity and honesty and will ensure that they do not put themselves or the Council at risk.

16. Improper Direction or Improper Influence

A Councillor must comply with section 76E (2) of the Act which states:

- “(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”.*⁶

17. Interaction between Councillors and staff

Councillors require information in order to do their jobs. Some, but not all, of the information they require will be provided by Council reports.

Information requests by Councillors should generally be seen as legitimate. Fundamentally, if something would be available through Freedom of Information (FoI) provisions, it should be available to Councillors.

Access to information however, needs to satisfy privacy requirements. Information requests from Councillors should be specific and Council Officers must ensure that only material directly related to the request is supplied. Any advice provided to a Councillor should be generally available to all Councillors on request.

Councillors should ensure that their information requests are specific, legitimate and related to their roles. If a request for information from a Councillor is considered to require an excessive level of resource, the matter should be referred to the relevant Director or the CEO for guidance.

Councillors seeking information on policy issues and day to day matters in the exercise of their duties should contact the CEO, the relevant Director, or with the agreement of the CEO or Director, seek specific advice from the appropriate member of staff. The CEO or Director should advise Councillors of any impediment to the supply of the requested material.

In interacting with staff, Councillors must:

- only seek information on sensitive or controversial policy matters from the CEO or a Director
- restrict their dealings with staff (other than the CEO or Directors) to normal working hours)
- behave in keeping with the provisions of the Code and this Guide

In interacting with Councillors, staff must:

- ensure that Councillors receive timely, courteous, succinct and accurate advice to help Councillors in the performance of their civic and statutory duties
- not withhold information from a Councillor if the information is available to other Councillors

⁶ The penalty for a breach of section 76E (2) is 120 penalty units.

- when providing advice to Councillors, document the interaction in those terms that would occur if such advice was being provided to a member of the community

It is within the discretion of the CEO to require that a Councillor put a request in writing or to advise the Council of a request to obtain particular information.

Council Officers have the discretion to refer any request for information from a Councillor to their Director or the CEO. The Councillor should be advised of the reason for the referral.

18. Use of Council Resources

The following must be adhered to by all Councillors:

- they must use Council property, facilities, funds and equipment honestly, efficiently, economically and carefully and in keeping with policies and procedures
- maintain adequate security over Council property, facilities and resources provided to assist in performing the role of Councillor and compliance with any Council policies applying to their use
- ensure any expense claims submitted comply with the relevant legislative provisions and Council policy
- Council equipment can be hired on the same terms and conditions as it may be made available for hire by members of the public
- Councillors are not permitted to borrow any Council equipment that is not ordinarily available for hire by members of the community
- Councillors are obliged to conform to the provisions of any policy dealing with the payment of expenses and provision of facilities to Councillors
- Councillors will not use public funds or resources in a manner that is improper or unauthorised

19. Access to Council Offices

Councillors are entitled to have access to the Council Chamber, Committee Room, Mayor's Office (Councillors' Room) and other public areas of the Council offices.

Councillors who are not pursuing their civic duties have the same rights of access to Council buildings and premises as any other members of the public.

A Councillor does not have the right to enter staff only areas unless authorised to do so by the CEO or a Director.

20. Conflict & Disclosure of Interest Procedures

20.1 Legislative requirements

Council is committed to making all decisions impartially and in the best interests of the public. Council recognises the importance of fully observing the requirements of the Act relating to the disclosure of conflicts of interest.

To ensure that Councillors meet the requirements of the Act, the Local Government Victoria explanatory booklet *Conflict of Interest – A Guide for Councillors October 2012* should be read in conjunction with this Code.

In addition, Councillors must familiarise themselves with the following sections of the Act:

- sections 77A and 77B – direct interests
- sections 78, 78A, 78B, 78D and 78E – indirect interests
- sections 79, 79B, 79C and 79D – disclosure of any conflict of interest

Conflicts of interest must be disclosed at:

- Council meetings
- assemblies of councillors
- meetings of special committees, including committees established pursuant to section 223 of the Act to hear submissions
- meetings of the Audit Committee

20.2 Direct Interest

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.

20.3 Indirect interest

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

21. Assembly of Councillors

An assembly of Councillors is a meeting of an advisory committee (but not the Audit Committee) of the Council if at least one Councillor is present, or a planned or scheduled meeting comprising at least half of the Councillors and one member of Council staff, which considers matters that are intended or likely to be:

- the subject of a decision of the Council; or
- subject to the exercise of a function, duty or power of the Council that has been delegated to a person or committee

If a Councillor attending an assembly of Councillors knows 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 of the Act, the Councillor must disclose to the assembly that he or she has a conflict of interest and leave the assembly while the matter is being considered.

The provisions for requirements to be observed by assemblies of Councillors are provided under section 80A of the Act. The CEO will ensure that a written record of assemblies of Councillors is kept in accordance with the Act.

22. Gifts and Bribery

Councillors must 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. Councillors must adhere to Council's Acceptance of Gifts and Hospitality Policy.

Councillors must take all reasonable steps to ensure that their immediate family members (parents, spouse, children and siblings) 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 Councillors Gifts Register with a notation that it is the property of the Council.

Gifts equal to or above the gift disclosure threshold received in the twelve months prior to election 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.

Campaign donations must be disclosed in the campaign donation return.

Councillors must not seek or accept any immediate or future reward or benefit in return for performance of any duty or work for the Council.

Under the provisions of section 78C of the Act, Councillors can be seen to have an indirect interest if they have received an applicable gift or gifts with a total value of \$500 or more directly or indirectly from:

- a person who has a direct interest in the matter; or
- 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
- 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

In addition to disclosing an interest in this instance, any gift, goods, service or other item of value worth \$500 or more that is offered by an external person, company or body, whether accepted or returned, must be promptly reported on the appropriate disclosure form to the CEO. This includes token gifts and acts of hospitality. A record of gifts and other considerations is required for the reporting of fringe benefits tax and is kept by the CEO.

In addition to the statutory provisions, Council has an Acceptance of Gifts and Hospitality Policy.

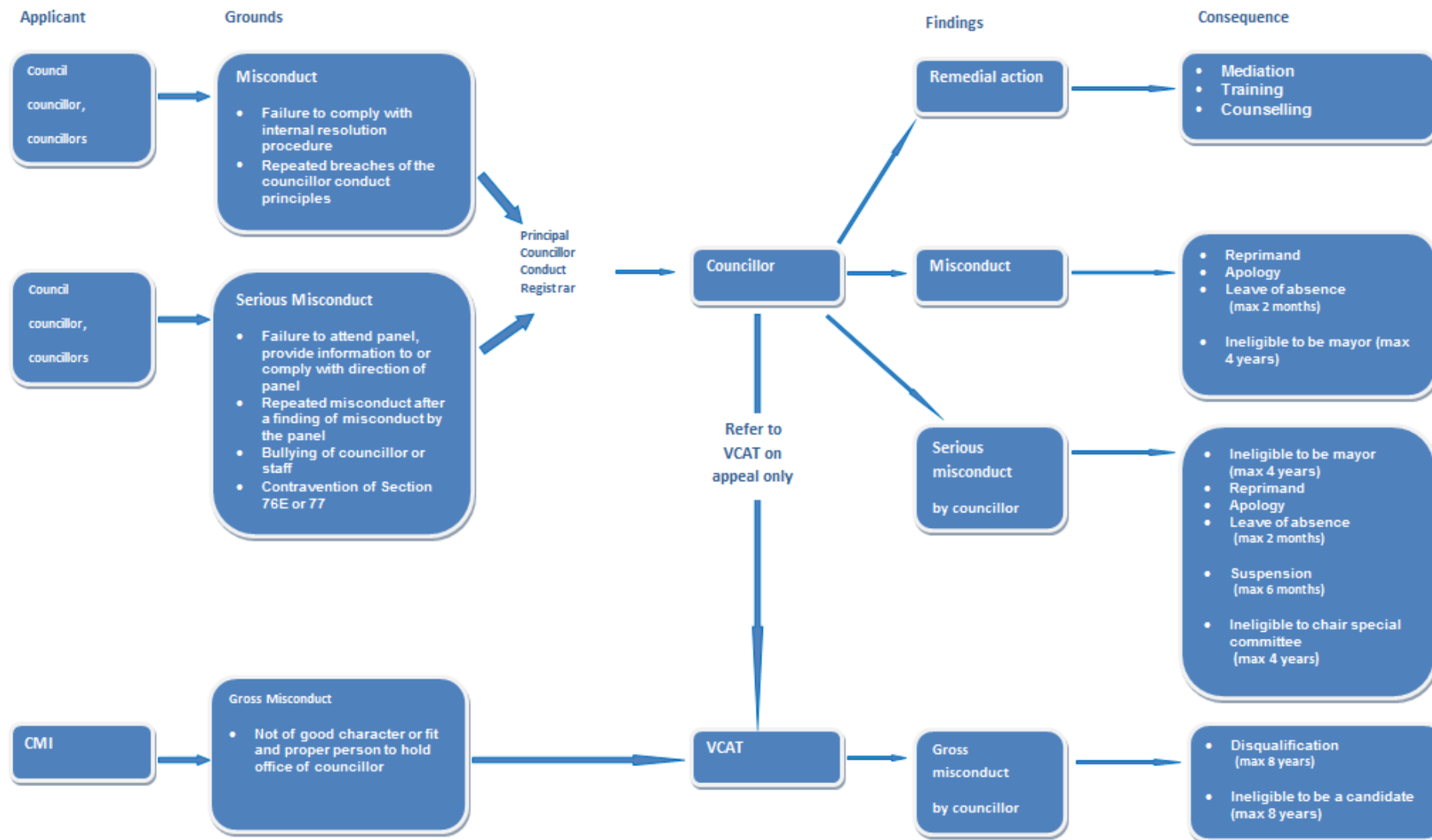
23. Fraud and Corruption

Council is committed to preventing fraud and corruption in the Council workplace.

Councillors must adhere to Council's fraud and corruption policy, procedures and strategy.

All Councillors are accountable for reporting any suspected fraud and corruption which they become aware of, in line with the abovementioned policy. Any suspected fraud and/or corruption is to be reported immediately to the CEO. If the issue is one that involves the CEO then the matter must be reported to the Mayor.

Protection is available under the Protected Disclosure Act 2012 for anyone reporting an issue.



Councillor Conduct Framework 1

STRATHBOGIE SHIRE COUNCIL

SCHEDULE

**DECLARATION PURSUANT TO SECTION 76C(6A)
OF THE
LOCAL GOVERNMENT ACT 1989**

I, _____ do declare that:

- a) I have read the Strathbogrie Shire Council's Councillor Code of Conduct which was adopted by the Council on **2016**; and
- b) I will abide by the Code of Conduct.

Definition

In this Declaration, Councillor Code of Conduct means the Code of Conduct developed by Council pursuant to section 76C of the *Local Government Act* 1989.

DECLARED at _____ in the State of Victoria on 2016

Signature

**Full name
Councillor**

before me:

Signature

**Steve Crawcour
Chief Executive Officer**