



44 Station Street  
Cobram Vic 3644  
[www.moira.vic.gov.au](http://www.moira.vic.gov.au)  
[info@moira.vic.gov.au](mailto:info@moira.vic.gov.au)

## **AGENDA**

**SPECIAL ORDINARY MEETING OF COUNCIL  
FOR  
MONDAY 20 JUNE 2016  
TO BE HELD AT PRESIDENTS ROOM, NUMURKAH TOWN HALL, KNOX STREET,  
NUMURKAH  
COMMENCING AT 4:30 PM**

**1. CALLING TO ORDER - CEO**

**2. PRAYER**

Almighty God we humbly ask you to guide our deliberations for the welfare and benefit of the Moira Shire and its people whom we serve.

Amen

**3. ACKNOWLEDGEMENT OF COUNTRY**

We, the Moira Shire Council, would like to acknowledge the traditional owners of the land upon which we meet and pay our respects to their Elders both past and present.

**4. APOLOGIES & REQUESTS FOR LEAVE OF ABSENCE**

**5. DECLARATION UNDER ACTS, REGULATIONS, CODES OR LOCAL LAWS**

**6. DECLARATION OF ANY INTEREST OR CONFLICT OF INTEREST**

**7. OFFICER REPORTS FOR DETERMINATION**

**7 CORPORATE**

7.1 MOIRA SHIRE COUNCIL DRAFT COUNCILLOR CODE OF CONDUCT 2

**8. CLOSE OF MEETING**

FILE NO: 100012  
5. DEMONSTRATING GOOD GOVERNANCE

ITEM NO: 7.1  
(MANAGER GOVERNANCE AND  
COMMUNICATIONS, LINDA  
NIEUWENHUIZEN)  
(GENERAL MANAGER - CORPORATE,  
LEANNE MULCAHY)

## MOIRA SHIRE COUNCIL DRAFT COUNCILLOR CODE OF CONDUCT

### RECOMMENDATION

That Council adopt the draft Councillor Code of Conduct.

### 1. Executive Summary

Following Councillor briefing and feedback, Moira Shire Council's draft Councillor Code of Conduct is now provided for consideration and adoption by Council at a Special Meeting convened solely for the purpose of reviewing the Councillor Code of Conduct.

All Victorian Councils are required to review and update their Councillor Code of Conduct to comply with the Local Government reforms introduced as part of the Local Government (Improved Governance) Act 1989 that came into effect in March this year.

The draft Councillor Code of Conduct has been prepared by Council officers with reference to

- Council's existing Councillor Code of Conduct
- the MAV model Code of Conduct
- updated Codes recently adopted by other Victorian Councils
- the changes required to comply with the Local Government (Improved Governance) Act 1989
- and incorporates Best Practice guidance and proposals to improve understanding and use of the Code.

All Councils must adopt the Code at a Special Meeting of Council by 4 July 2016. Following adoption, and in accordance with S76 (6) of the Act, Council will

- Provide a copy of the Code to each Councillor
- Make the Code available for inspection at Council's Service Centres and on Council's website

Within one month of adopting the Code, Councillors are required to individually declare they have read and will abide by the Councillor Code of Conduct. The process for making the declaration is defined in the Act.

### Background and Options

The Councillor Code of Conduct sets out the standards for conduct expected of Councillors and is therefore a key tool for guiding Councillor behavior and fostering community understanding and confidence in Local Government.

With Council elections taking place later this year, the Code of Conduct is also an important resource for anyone considering standing for Council. Access to the Code will assist their understanding of what is required in the role of a Councillor and as part of Council.

All Victorian Councils are required to review and update their Councillor Code of Conduct to comply with the Local Government reforms introduced late last year as part of the Local Government (Improved Governance) Act 1989 (the Act). The reforms came into effect on 30 March 2016 and Councils have four months from the commencement date to review and adopt the Councillor Code of Conduct.

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## MOIRA SHIRE COUNCIL DRAFT COUNCILLOR CODE OF CONDUCT (cont'd)

To meet the requirements of the Act a Council's Councillor Code of Conduct must (in summary)

- Include definitions of role of Councillor, Mayor and CEO and the CEO's role in supporting the Mayor
- Reflect the new definitions of misconduct and gross misconduct
- Include Councillor declarations to abide by the Code
- Define internal dispute resolution procedures (which include the use of external mediators and arbiters)
- Define processes for making a request for external management of Councillor conduct (which includes Councillor Conduct Panels established by the Principal Councillor Conduct Registrar)

Councillors were provided with a draft revised Code of Conduct in May for discussion at the scheduled Council briefings. Following Councillor feedback, the draft is now provided for adoption by Council at a Special Meeting convened solely for the purpose of reviewing the Councillor Code of Conduct as required by the Act.

The draft Councillor Code of Conduct has been prepared by Council officers with reference to

- Council's existing Councillor Code of Conduct
- Council's existing Council policies including Councillor Expense and Support Policy
- the MAV model Code of Conduct
- Updated Codes recently adopted by other Victorian Councils
- the changes required to comply with the Local Government (Improved Governance) Act 1989
- and incorporates Best Practice guidance and proposals to improve understanding and use of the Code.

The updated Code needs to be adopted at a Special meeting of Council no later than 4 July 2016. The Special Meeting is currently scheduled to take place during briefing on 20 June.

### 2. Financial Implications

There are potential financial implications associated with the code, once adopted, if internal and/or external resolution procedures are triggered.

### 3. Risk Management

Adoption of the code, declaration by Councillors and the associated publication of the Code is important to fulfilling Council legislative obligations and providing the community with a clearer understanding of the role of Council and Councillors.

### 4. Internal and External Consultation

The Code has been prepared with reference to a range of resources including the MAV model Code and other codes recently adopted by other Councils.

The Code was provided for Councillor review and consideration in May and was discussed at the 6 June Council briefing.

### 5. Regional Context

All Victorian Councils are required to review and update their Code of Conduct by 4 July 2016.

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## MOIRA SHIRE COUNCIL DRAFT COUNCILLOR CODE OF CONDUCT (cont'd)

### 6. Council Plan Strategy

Demonstrating Good Governance

### 7. Legislative / Policy Implications

The draft Code will support Council's compliance with its legislative obligations and has been prepared with regard to Council's existing policies.

### 8. Environmental Impact

Nil

### 9. Conflict of Interest Considerations

Nil

### 10. Conclusion

The draft Code has been prepared using the MAV model Code of Conduct and with regard to a range of resources and guidance including Codes recently adopted by other councils. It will assist Council to meet its requirement to adopt an updated Code by 4 July 2016.

Following adoption of the Code, Councillors will be required, within one month of adoption, to declare in writing their commitment to abide by the Code, and Council will make the Code available to the community through its website and on display at Council Service Centres.

The Code will be subject to a further review within four months of the Council Elections in October 2016.

## Attachments

- 1 Draft Councillor Code of Conduct

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ATTACHMENT No [1] - Draft Councillor Code of Conduct



# Councillor Code of Conduct

June 2016

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**ATTACHMENT No [1] - Draft Councillor Code of Conduct**

*Draft - Moira Shire Council Councillor Code of Conduct – June 2016*

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**1. INTRODUCTION**

As Councillors of the Moira Shire Council we are committed to working together in the best interests of the people within our community and to discharging our responsibilities to the best of our skill and judgement.

Our commitment to working together constructively will enable us to achieve the vision and mission of the Moira Shire Council in a manner that is consistent with our values.

The Local Government Act 1989 (the Act) requires a 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.

This Councillor Code of Conduct includes an internal resolution procedure for dealing with any alleged contraventions of the Code. A Council can apply sanctions to a Councillor who has been found to have contravened the Councillor Code of Conduct.

Failure by a Councillor to comply with the Council's internal resolution procedure or to comply with a written direction given by the Council under section 81AB of the Act (sanctions for contravention of the Code) constitutes misconduct by a Councillor.

If a Councillor Conduct Panel makes a finding of misconduct against a Councillor, the Panel may apply further sanctions against that Councillor.

**2. PURPOSE OF THE COUNCILLOR CODE OF CONDUCT**

The purpose of local government is to provide a system under which Councils perform the functions and exercise the powers conferred by or under the *Local Government Act 1989* and any other 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.

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 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.

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**3. OBJECTIVES OF A COUNCIL**

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

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

**4. ROLES AND RESPONSIBILITIES**

**ROLE OF A COUNCIL**

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

- Acting as a representative government by taking into account the diverse needs of the local community in decision making;
- Providing leadership by establishing strategic objectives and monitoring their achievement,
- Maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;
- Advocating the interests of the local community to other communities and governments;
- Acting as a responsible partner in government by taking into account the needs of other communities; and
- Fostering community cohesion and encouraging active participation in civic life.

**ROLE OF MAYOR**

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

- Providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act, and abiding by the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C; of the Act and;
- Acting as the principal spokesperson for the Council in media, social media and at public events;
- Liaising with primary stakeholders from the community, business and other Local, State and Federal Governments to promote the interests of Council and the local community;
- Supporting good working relations between Councillors; and
- Carrying out the civic and ceremonial duties of the office of Mayor; and
- Chairperson of meetings of council at which the mayor is present; and
- Having a casting vote where necessary at meeting of the Council; and
- Taking precedence at all municipal proceedings.

At all times Councillors will respect the role and precedence of the Mayor, Deputy Mayor or appointed representative of the Mayor at all Council proceedings within the Shire as the representative of the Moira Shire Council.

**ROLE OF DEPUTY MAYOR**

If the Mayor is unable to fulfil his/her functions, the Deputy Mayor will perform the functions of the Mayor. The reasons may include but are not limited to a leave of absence or a conflict of interest.

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THE ROLE OF A COUNCILLOR

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 the 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.

COUNCILLORS APPOINTED BY COUNCIL TO EXTERNAL COMMITTEES

Councillors will at all times accept that when a Councillor is appointed by the Council as a member of an external committee the Councillor will:

- Represent the views of the Council where they are known;
- Not forecast or pre-empt the views of Council;
- Report to Council at an Ordinary Council Meeting on the issues or progress of the Committee and any recommendations made by the committee for Council to consider, and
- Recognise that formal decisions made by the Committee are binding on the Committee as a whole.

**5. COUNCILLOR CONDUCT PRINCIPLES**

The Act places obligations on Councillors in relation to way they should act. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions.

As Councillors of Moira 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;

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- (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.

**COUNCIL DECISION MAKING**

The Council is committed to making all decisions impartially and in the best interests of the whole community.

Councillors recognise that as elected representatives of the community they have an obligation to understand the legal framework established under the provisions of the Local Government Act and in doing so Council acknowledges that effective decision-making is vital to the democratic process and an essential component of good governance. Accordingly all Councillors will:

- Actively and openly participate in the decision making process, striving to be informed so as to achieve the best outcome for the community;
- Respect the views of the individual in debate on issues. However, Councillors also accept that decisions are based on a majority vote;
- Accept that no Councillor can direct another Councillor on how to vote on any decision.
- Accept that decisions of Council can only be made at a formally constituted Council meeting and that individual Councillors do not have decision making power.
- Commit to making decisions based on adopted Council policies
- Accept and respect that the functions and role of the Chief Executive Officer are defined by the Local Government Act 1989 and that the CEO's accountability is solely to the Council as a whole.
- Support and foster a healthy working relationship between the Mayor and the Chief Executive Officer and will assist where appropriate in facilitating the relationship.
- Attend and participate in a minimum of 80% of scheduled meetings, briefings and workshops for Councillors unless a leave of absence has been approved by Council.
- Acknowledge the value of workshops and briefing sessions for Councillors as a forum to suggest ideas, raise issues and provide input to policy and other decision making.
- Support collaboration between the organisation and Council at all meetings, workshops and briefings to promote good governance and strategic thinking for the community
- Prepare for all scheduled meetings, briefings and workshops by reading all papers which are distributed in advance to ensure a thorough understanding of the topics to be discussed.
- Accept that decisions of the Council are binding on the whole Council.
- Accept and respect the decision made by the majority of Councillors through the democratic process without compromising the rights of individual Councillors to maintain their opposition to a Council decision

While it is acceptable for an individual Councillor to publicly state that they did or did not vote in favour of any Council decision, this shall be done in a manner which is respectful of the Council's decision. Therefore Councillors:

- Will not undermine the authority or public perception and standing of the Moira Shire Council or any other Councillor
- Will not criticise the decision of the Council
- Will actively support the implementation of the decision of Council

**ADHERANCE TO LOCAL LAW – MEETING PROCEDURES**

All Councillors confirm that they will adhere to *Local Law - Meeting Procedures* in their general conduct as Councillors.

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**6. CONDUCT OBLIGATIONS**

**FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER (CEO)**

The relationship between the Councillors and CEO is critical to the good governance of the Moira Shire.

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

- establishing and maintaining an appropriate organisational structure for the Council; and
- ensuring that the decisions of the Council are implemented without undue delay; and
- the day to day management of the Council's operations in accordance with the Council Plan; and
- developing, adopting and disseminating a code of conduct for Council staff; and
- providing timely advice to the Council; and
- 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; and
- 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.

**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 comply with the relevant legislative provisions and Council policy and procedures;
- 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.
- ensuring that Council resources are not used in a way that creates an impression of Council endorsement
- implementing a transparent, thorough and regular system of reporting on our use of Council funds and property during the course of performing our duties.

**GIFTS AND BENEFITS**

We will comply with Council's *Councillor Expense and Support Policy*.

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 immediate family members (as per the definition in Section 78)) 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.

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We recognise that gifts equal to or above the gift disclosure threshold received in the 12 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.

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

**COMMUNICATION, MEDIA AND SOCIAL MEDIA**

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

At all times messages communicated through Council's media (including social media) must be clear and consistent, and positively portray the Council position reflecting Moira Shire as a decisive and responsible governing body.

We undertake to comply with the Council's communication, media and social media policy and protocols and respect the functions of the Mayor and Chief Executive Officer to be the spokespersons for the Council in accordance with our policy.

Without exception all Councillors will use their official Council allocated email address for all communications to and from the Moira Shire.

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

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

A Councillor is only to make official comment to the media if the Mayor has nominated that Councillor to do so.

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

- Staffing and structure of the organisation; and
- Legal or operational matters.

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

We acknowledge that individual Councillors are entitled to express their personal opinions through the media, public forums and social 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.

**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.

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**MOIRA SHIRE COUNCIL DRAFT COUNCILLOR CODE OF CONDUCT (cont'd)**

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**7. PROHIBITED CONDUCT**

The Local Government Act 1989 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:*

- a) *the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or*
- b) *the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or*
- c) *the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or*
- d) *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; or*
- e) *bullying of another Councillor or member of Council staff by a Councillor; or*
- f) *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.)*

**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; or
- b) disclosing information that is confidential information within the meaning of section 77(2); or
- c) directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
- d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
- e) using public funds or resources in a manner that is improper or unauthorised; or
- f) failing to disclose a conflict of interest as required under this Division.

**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.

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CONFIDENTIAL INFORMATION (Section 77)

A Councillor must not disclose information that

- a) he or she knows, or should reasonably know, is confidential information
- b) has been deemed 'confidential information' in accordance with section 77 of the Act.

Councillors acknowledge that they will comply with their obligations under section 77 of the Act in relation to confidential information and recognise that this obligation extends to ensuring the safekeeping of confidential information.

Breaches of section 77(1) carry with it a penalty of up to 120 penalty units.

Councillors are to treat Council information appropriately, by:

- Not using information gained by virtue of being a Councillor for any purpose than to exercise their role as a Councillor;
- Not using the personal information held by Council for a Councillor's own personal or business purposes, outside of his or her functions as a Councillor.
- Respecting the Council's policies and protocols in relation to public, media and social media comments and communications;
- Recognising the requirements of the *Privacy and Data Protection Act 2014* regarding the access, use and release of personal information.
- Taking reasonable steps to ensure the secure access, storage and disposal of Council information by avoiding the use of non-council devices, email accounts, including shared email accounts, and other electronic distribution storage and disposal options.
- When Councillors collect personal information for Council business this information is subject to the *Privacy and Data Protection Act*, and other legislation such as the *Public Records Act and Freedom of Information Act*.

A Councillor may disclose information that 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.

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

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- 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.

In addition to the requirements of the Act:

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

**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.

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**8. COUNCILLOR INTERACTION WITH THE BUSINESS**

Councillors support a strong, open, professional and partnership relationship between the Council and the Council organisation to assist in achieving Council's objectives by using the following protocols:

- Recording and submitting requests for service to Executive Support Mayor and Councillors for entry into the Council's customer request system.
- Providing feedback and raising any issues of concern directly with the Chief Executive Officer and not with the staff members or via the media (including Social media). Issues of concern include but are not restricted to:
  - Behaviour or actions of Council staff members;
  - Reports and publications prepared by the Council organisation;
  - Service delivery standards; and
  - Strategy or direction of the Council organisation.
- Acting with courtesy towards Council staff in all situations respecting the need for staff to have a quiet work area free of significant interruptions and/or inappropriate behaviours.

**COUNCILLOR REQUEST FOR INFORMATION**

It is recognised by the organisation that Councillors require information in order to undertake their role. The organisation must take into account a range of factors in considering the information request:

- The Privacy and Data Protection Act principles, including the responsibility of the organisation to remove identifying personal information
- Resources and workload
- If the information relates to a new issue, an issue currently before Council or a matter already dealt with by Council
- If the information should be provided to the requesting Councillor only or to all Councillors.

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

- Requests for information should be made to the Chief Executive Officer or the relevant General Manager.
- Access to information held by the Council which is not publicly available can be made available to a Councillor where it will assist a Councillor in their consideration of a matter that requires a Council decision.
- Access to information that is of interest to a Councillor but not related to a matter requiring a Council decision will be dealt with at the discretion of the CEO.
- Requests that are able to be carried out without impacting on existing priorities, workload or resources will be undertaken promptly.
- Requests for information relating to an issue currently before Council should be treated with priority so that Councillors have the information they need to make informed decisions at Council meetings.
- Where the information is very specific (such as a constituent specific issue) it will be provided only to the requesting Councillor.
- Where the information is more general such as relating to an issue currently before Council, the information will be provided to all Councillors.
- If the information cannot be provided without significantly impacting on existing priorities, workload or resources or if the information request relates to information about an issue which has already been dealt with by Council, the information request can be put to Council for a decision.
- If the requesting Councillor wishes, an officer report would be put to Council outlining the request, the impact and context of the request to enable Council to make an informed decision as to whether the information request should be implemented by the organisation.

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- If the information cannot be provided within a few days or cannot be provided without agreement of Council the requesting Councillor will be contacted and advised of the likely timeline and/or process for providing the information

**9. 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.

The Council's three phase dispute resolution process involves:

- direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance;
- external mediation by an independent mediator engaged by the Chief Executive Officer; and
- an internal resolution procedure involving an independent arbiter.

This dispute resolution procedure is to be used when Councillors have been unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Moira Shire. It is not intended to resolve differences in policy or decision-making, which are appropriately resolved through discussion and voting in Council meetings.

**INTERNAL DISPUTE RESOLUTION PROCEDURES - PHASE 1 – DIRECT NEGOTIATION**

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

A dispute referred for direct negotiation may relate to:

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

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

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

The requestor is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Mayor or as soon as practicable thereafter.

The Mayor is to ascertain whether or not the other party is prepared to attend a "direct negotiation" meeting.

If the other party is not prepared to attend a meeting, the Mayor is to advise the requestor forthwith. No further action is required of the Mayor.

If the other party declines to participate in a meeting, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party consents to a meeting, the Mayor is to convene a meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within 5 working days of receiving the consent of the other party.

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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.

**INTERNAL DISPUTE RESOLUTION PROCEDURES - 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 forthwith.

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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.

**INTERNAL DISPUTE RESOLUTION PROCEDURES - PHASE 3 - ARBITER**

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

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

The application must be submitted to the Council's Principal Conduct Officer.

An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and CEO of the application without undue delay;
- provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application;
- identify an arbiter to hear the application;
- obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved;
- notify the parties of the name of the proposed arbiter and provide them with the opportunity (2 working days) to object to the person proposed to be the arbiter;
- consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter;
- provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired;
- after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
- attend the hearing(s) and assist the arbiter in the administration of the process

In identifying an arbiter to hear the application, the Principal Conduct Officer must select an arbiter who is suitably independent and able to carry out the role of arbiter fairly.

The role of the arbiter is to:

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

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

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- 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:
  - 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; or
- 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.

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**DURING CARETAKER PERIOD**

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.

**10. COUNCILLOR CONDUCT PANEL**

Where a matter cannot be resolved internally, an application can be made for a Councillor Conduct Panel to be established. A Panel has the power to consider both "misconduct" and "serious misconduct" of a Councillor.

**Misconduct:**

- Failing to comply with a Moira Shire'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
- Serious misconduct:
- Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct.

**APPLICATION FOR A PANEL**

An application for a Panel can be made by:

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

Applications are made to the Principal Councillor Conduct Registrar.

- Moira Shire Council's Principal Conduct Officer assists the Principal Councillor Conduct Registrar in the conduct of their role, functions and duties.
- The Principal Councillor Conduct Registrar has the power to reject applications for a panel in prescribed circumstances

**COMPOSITION OF A PANEL**

A Councillor Conduct Panel is to comprise of a lawyer and a person with relevant expertise. The relevant expertise is broader than just local government knowledge and may include specialist knowledge in governance, ethics and probity.

A Councillor Conduct Panel may give findings of:-

- Remedial action
- Requiring a Councillor to undertake mediation, training, or counselling.

Misconduct finding:-

- Reprimand the Councillor.
- Direct the Councillor to make an apology.
- Direct the Councillor take a leave of absence for a period up to 2 months.
- Direct that a Councillor is ineligible to hold the office of Mayor for a period of up to 4 years (but not exceeding the remainder of the Councillor's term of office).

Serious Misconduct finding:-

- Reprimand the Councillor.

FILE NO: 100012  
5. DEMONSTRATING GOOD GOVERNANCE

ITEM NO: 7.1  
(MANAGER GOVERNANCE AND  
COMMUNICATIONS, LINDA  
NIEUWENHUIZEN)  
(GENERAL MANAGER - CORPORATE,  
LEANNE MULCAHY)

**MOIRA SHIRE COUNCIL DRAFT COUNCILLOR CODE OF CONDUCT (cont'd)**

**ATTACHMENT No [1] - Draft Councillor Code of Conduct**

*Draft - Moira Shire Council Councillor Code of Conduct – June 2016*

- Direct the Councillor to make an apology.
- Direct the Councillor take a leave of absence for a period up to 2 months.
- Direct that a Councillor is ineligible to hold the office of Mayor for a period of up to 4 years (but not exceeding the remainder of the Councillor's term of office).
- Suspend the Councillor from office for a period not exceeding 6 months.

**11. THE CHIEF MUNICIPAL INSPECTOR**

In relation to allegations of serious misconduct against Councillors the Chief Municipal Inspector has the power to investigate and also initiate applications for a panel to be established.

- Is responsible for making applications to VCAT to consider findings of "gross misconduct" against Councillors.
- Has the power to investigate and prosecute various offences under the Act.

**GROSS MISCONDUCT.**

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

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

Gross Misconduct finding:

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

**12. INDEPENDENT BROAD BASED ANTI-CORRUPTION COMMISSION - IBAC**

IBAC has a major role under the provisions of the Protected Disclosure Act 2012 in investigating any possible improper or corrupt conduct of Councillors.

- The Protected Disclosure Act 2012 provides that any person that has reasonable grounds to believe that improper or corrupt conduct has occurred can make a disclosure.
- Disclosures may relate to both Councillors and Officers Moira Shire.
- Any disclosure regarding a Councillor or Councillors is/are to be made direct to IBAC. Further details are available on the IBAC website [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

**13. ELECTION PERIOD (CARETAKER) POLICY**

Moira Shire is committed to fair and democratic elections.

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

Council adopted on 29 March 2016 an *Election Period (Caretaker) Policy* that governs the actions of Moira Shire Council and Councillors during the election period prior to the 2016 elections. The election period is a 32-day period prior to the Election Day from 12:01am Wednesday 21 September through to 6pm Saturday 22 October 2016.

**14. DISCLAIMER**

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

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**15. STATUTORY REQUIREMENTS**

In accordance with section 76C of the Local Government Act 1989 Moira Shire Council is required to review the Councillor Code of Conduct within the period of four months after a general election.

It is acknowledged that in accordance with the legislation, this Code addresses the statutory requirements set out in section 76C of the Act, namely it:

- Sets out the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor
- Includes other provisions addressing matters as seen appropriate by Moira Shire Council.

**16. ENDORSEMENT**

This Code of Conduct was adopted at a Special Council Meeting held on 20 June 2016 and subsequently signed by all Councillors.

Additionally in accordance with the provisions of section 63 of the Act Councillors are required to sign and make a declaration stating they have read the Code of Conduct and they will abide by the provisions of the Code. The declarations of each Councillor present at the Special Meeting are incorporated as part of the Council Minutes.

<b>Councillor</b>	<b>Signature</b>
Cr. Gary Cleveland	_____
Cr. Ed Cox	_____
Cr. Kevin Bourke	_____
Cr. Wendy Buck	_____
Cr. Brian Keenan	_____
Cr. Don McPhee	_____
Cr. Peter Mansfield	_____
Cr. Marie Martin	_____
Cr. Alex Monk	_____

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[www.moira.vic.gov.au](http://www.moira.vic.gov.au)

Phone (03) 5871 9222 NRS 133 677

Fax (03) 5872 1567

Email [info@moira.vic.gov.au](mailto:info@moira.vic.gov.au)

Mail PO Box 578, Cobram Vic 3643

Office Locations 44 Station Street Cobram and 100 Belmore Street Yarrawonga