

7.6 Amendment of Councillor Code of Conduct

Executive Summary

Purpose

This report sets out considerations for Council in deciding whether to adopt the amended Councillor Code of Conduct at **Attachment 1**.

Background

The Local Government Act 2020 (the Act) requires Council to have developed a Councillor Code of Conduct (the Code) on or before 24 February 2021. The current Councillor Code of Conduct was adopted by Council on 22 February 2021.

Clause 6.8 of the Code deals with Councillors standing for Federal or State elections. It requires Councillors standing for Federal or State elections to:

- apply for a leave of absence from the Council which will commence no later than the date of their nomination as a candidate in the election and conclude no earlier than the close of voting for the election; and
- not attend meetings of the Council whilst on this leave of absence.

Key Issues

Clause 6.8 constrains Councillors who are standing for Federal or State election from fully representing their ward and performing their duties under the Act in circumstances where the obligations in clause 6.8 are not required, supported or enforceable under the Act.

- The Act also does not require Councillors who are standing for election including as nominated candidates take a leave of absence during this time.
- The Act does not support Councillors who are standing at a Federal or State election from being relieved from performing their duties. In this time, they also continue to be paid their allowance and legally have access to all materials.
- Clause 6.8 is not enforceable under the Act because it is not a “standard of conduct” that is imposed on Councillors under the Act or relevant regulations.

While clause 6.8 reduces the chances of conflicts of interest, Councillors standing for election are still bound by numerous other provisions in the Act which are enforceable. Many duties and functions of a Councillor do not conflict with being a candidate for election.

Removing part 6.8 from the Code will remove the requirement for nominated candidates to take a leave of absence and more closely align the Code with the Act.

Next Steps

If adopted, the amended Councillor Code of Conduct will be uploaded on the Council website and distributed to Councillors electronically.

Officers' recommendation

That Council resolve to adopt the Councillor Code of Conduct (**Attachment 1**) as annexed to the Minutes.

Responsible director: Phillip Storer, Chief Executive Officer

1. Purpose

This report sets out considerations for Council in deciding whether to adopt the amended Councillor Code of Conduct at Attachment 1.

2. Policy implications and relevance to community plan and council plan

Adopting the Policy relates to Priority Theme 7: Leadership and Governance in the Boroondara Community plan 2021-2031.

Adopting the Policy is also consistent with Strategic Objective 7:1: Decision making is transparent and accountable through open governance processes with timely communication and reporting.

3. Background

The Local Government Act 2020 (the Act) requires Council to have developed a Councillor Code of Conduct (the Code) on or before 24 February 2021.

The Act states “the purpose of the Councillor Code of Conduct is to include the **standards of conduct** expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification” (emphasis added).

From 2020, in accordance with the Act, the Code must include four mandatory standards of Councillor conduct and an arbitration process for determining complaints alleging misconduct under the Code.

The standards of conduct for the Act as set out in relevant regulations are address the following four main areas of Councillor behaviour:

- Standard 1: Treatment of others.
- Standard 2: Performing the role of Councillor.
- Standard 3: Compliance with good governance measures.
- Standard 4: Councillor must not discredit or mislead Council or public.

The current Councillor Code of Conduct was adopted by Council on 22 February 2021.

4. Outline of key issues/options

Part 6 of the Code deals with good governance. Clause 6.8 specifically deals with Federal or State elections and states that all Councillors who are nominated candidates in those elections must:

- apply for a leave of absence from the Council which will commence no later than the date of their nomination as a candidate in the election and conclude no earlier than the close of voting for the election; and
- not attend meetings of the Council whilst on this leave of absence.

On its face, clause 6.8 constrains Councillors who are standing for election from fully representing their ward and performing their duties under the Act, including sitting on key delegated committees. Consequently, there ought to be cogent legislative reasons to include and impose clause 6.8 on Councillors.

However, the requirements of clause 6.8 of the Code are not imposed, required or enforceable by the Act.

The obligations in clause 6.8 are not required under the Act

The Act also does not require Councillors who are standing for election, including as nominated candidates, to take a leave of absence during this time. Rather the Act only precludes Councillors who are elected to State or Federal Parliament from being Councillors after they are elected.

The Act does not support Councillors being relieved from functions and duties under the Act

The Act does not support Councillors who are standing for Federal or State Parliament being granted leaves of absence. To the contrary, officers understand that Councillors must continue to be paid their allowances and officers cannot restrict access to Council or councillor materials during the time that clause 6.8 obliges Councillors to take a leave of absence. Further, a Councillor who has taken a leave of absence does not cease to be a Councillor and still has a statutory role to satisfy.

Clause 6.8 is not enforceable

Division 5, Part 6 of the Act deals with Councillor Conduct. Sections 139(2) and 139(3)(a) of the Act requires Council to develop a Code of Conduct that includes the standards of conduct prescribed by relevant local government legislation.

Officers understand that the requirements of clause 6.8 are not enforceable because the obligation in clause 6.8 does not relate to a standard of conduct under the Act or relevant regulations.

Indeed, clause 6.8 itself explicitly states that it is not concerned with the standards of conduct prescribed by the Act or relevant regulations. The preamble of part 6.8 states that “nothing in part 6 of the Code is intended to impose a binding Standard of Conduct on Councillors” and that “these matters are expressed as operating in addition to the Standards of Conduct.”

Consequently, a breach of clause 6.8 is not enforceable and cannot lead to any disciplinary consequences. The internal arbitration process set out in section 141 of the Act can not apply. This means that if a Councillor determines not to apply for a leave of absence, or to attend a meeting of Council during the leave period, there will be no legal consequences for that Councillor.

Other mechanisms in the Act

While clause 6.8 may help reduce the chance of conflicts of interest or other misuse of position when a Councillor is campaigning for Federal or State Parliament, officers note that there are multiple other mechanisms both in the

Act and enforceable under the Act, that can be relied upon to ensure that Councillors who are candidates do not misuse their position. These include:

- misuse of position (section 123);
- restriction on using and disclosing confidential information (section 125);
- conflict of interest provisions (section 126 - 131); and
- standards of conduct (section 139)

For the reasons discussed above, officers recommend the removal of part 6.8 from the Code. A version of the Code with all changes shown using tracked changes is provided in **Attachment 2**.

5. Consultation/communication

No external stakeholder consultation with the community was required given the nature of this report.

When adopted by Council a copy of the Code will be given to each councillor and published on Council's website.

6. Financial and resource implications

The costs associated with the review and amendment of the Councillor Code of Conduct can be accommodated within the Governance operating budget.

7. Governance issues

No member of Council staff involved in advising or in preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

For the purposes of section 129(g) of the Act, regulation 7(1)(l) of the relevant regulations provides that a councillor is taken to not have a conflict of interest in a decision when adopting, reviewing or amending the Councillor Code of Conduct.

The implications of this report have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities Act 2006 and the provisions in the Code are not considered to infringe unreasonably upon any prescribed human rights, freedoms or responsibilities.

8. Social and environmental issues

Councillors are elected to represent and serve their community. The Code sets out the principles, values, standards and behaviours that will guide Council collectively, and councillors individually, in undertaking their duties and obligations as set out in the Act and all other applicable legislation.

The Code is intended to set a high standard of conduct to ensure good governance and increase public confidence in the administration of Council.

Manager: Bryan Wee, Manager Governance and Legal

Report officer: Bryan Wee, Manager Governance and Legal

Councillor Code of Conduct

2022

Responsible Directorate: Chief Executive Office

Authorised By: Council

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Table of contents

1	Introduction	4
1.1	Legislative Framework.....	4
1.2	Councillors' commitment.....	4
1.3	Purpose of this Code	4
2	Roles and Responsibilities	5
2.1	Role of Council	5
2.2	Role of Councillors.....	5
2.3	Role of the Mayor	6
2.4	Role of the Deputy Mayor	6
2.5	Role of the CEO.....	6
2.6	Role of Councillor Conduct Officer	8
2.7	Role of the Principle Councillor Conduct Registrar.....	8
3	Standards of Conduct	8
3.1	Treatment of others	8
3.2	Performing the role of Councillor	9
3.3	Compliance with good governance measures	9
3.4	Councillor must not discredit or mislead Council or public	10
3.5	Standards do not limit robust political debate	10
4	Other Categories of Misconduct	10
4.1	Bullying	10
4.2	Sexual harassment	11
4.3	Addressing bullying and sexual harassment	12
5	Prohibited Conduct	12
5.1	Misuse of position	13
5.2	Directing a member of Council staff.....	13
5.3	Confidential information	13
5.4	Conflict of interest	15
5.5	Other legislative requirements	16
6	Good Governance.....	16
6.1	Overarching Governance Principles	16
6.2	Council decision-making.....	17
6.3	Use of Council resources.....	17

6.4	Gifts and benefits.....	18
6.5	External communications.....	18
6.6	Personal Dealings with Council	19
6.7	Occupational Health and Safety	19
6.8	Child Safe Standards.....	19
7	Complaints From Members of the Public.....	20
8	Interpersonal Dispute Between Councillors	20
8.1	Informal discussions between councillors.....	20
8.2	Facilitated discussion.....	20
9	Allegations of Contravention of the Code	20
9.1	The application	21
9.2	Process on receiving an application	22
9.3	Mediation	23
9.4	Internal arbitration.....	24
9.5	Responsibilities of councillors.....	27
10	Adoption of this Code.....	27
11	Accountabilities	27
12	References.....	27
12.1	Related documents.....	27
13	Definitions	28
14	Version History.....	30

1 Introduction

1.1 Legislative Framework

The *Local Government Act 2020 (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 (**Code**) has been adopted by Council to comply with the requirements of the Act.

A Councillor Code of Conduct:

- must include the Standards of Conduct prescribed by the *Local Government (Governance and Integrity) Regulations 2020 (Regulations)* expected to be observed by Councillors;
- must include any provisions prescribed by the Regulations;
- must include provisions addressing any matters prescribed by the Regulations; and
- may include any other matters which Council considers appropriate, other than any other Standards of Conduct.

The Standards of Conduct with which Councillors are required to comply are specified in Schedule 1 to the Regulations.

Failure by a Councillor to comply with the Standards of Conduct constitutes misconduct under the Act, which may be pursued in accordance with the processes set out in this Code.

1.2 Councillors' commitment

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

1.3 Purpose of this Code

The purpose of this Code is to set out the Standards of Conduct with which Councillors must comply and to:

- foster good working relationships between Councillors to enable Councillors to work constructively together in the best interests of the municipal community;
- lift the standard of behaviour of Councillors during Council meetings, Councillor briefings and any other meetings which Councillors participate in from time to time; and
- establish benchmarks for Councillor conduct designed to build public confidence in the integrity of local government.

2 Roles and Responsibilities

2.1 Role of Council

The role of Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community (see s 8 of the Act). Council provides good governance if:

- it performs its role in accordance with the Overarching Governance Principles in s 9 of the Act; and
- the Councillors perform their roles in accordance with s 28 of the Act.

In performing its role, Council may:

- perform any duties or functions and exercise any powers conferred on it under the Act or any other Act; and
- perform any other functions that it considers are necessary to enable that performance.

Good governance is fundamental to Council being able to perform its role. Good governance relies on, among other things, good working relationships between Councillors.

2.2 Role of Councillors

Section 28 of the Act provides the role of a Councillor is:

- to participate in the decision-making of Council;
- to represent the interests of the municipal community in that decision-making; and
- to contribute to the strategic direction of 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:

- consider the diversity of interests and needs of the municipal community;
- support the role of Council;
- acknowledge and support the role of the Mayor;
- act lawfully and in accordance with the oath or affirmation of office;
- act in accordance with the Standards of Conduct; and
- comply with Council procedures required for good governance.

The role of a Councillor expressly excludes the performance of any responsibilities or functions of the Chief Executive Officer (**CEO**).

2.3 Role of the Mayor

Section 18 of the Act provides the role of the Mayor is to:

- chair Council meetings;
- be the principal spokesperson for Council;
- lead engagement with the municipal community on the development of the Council Plan;
- report to the municipal community, at least once each year, on the implementation of the Council Plan;
- promote behaviour among Councillors that meets the Standards of Conduct set out in the Councillor Code of Conduct;
- assist Councillors to understand their role;
- take a leadership role in ensuring the regular review of the performance of the CEO;
- provide advice to the CEO when the CEO is setting the agenda for Council meetings; and
- perform civic and ceremonial duties on behalf of Council.

The Mayor also has the power to:

- appoint a Councillor to be the chair of a delegated committee;
- direct a Councillor, subject to any procedures or limitations specified in Council's Governance Rules, to leave a Council meeting if the behaviour of the Councillor is preventing Council from conducting its business; and
- require the CEO to report to Council on the implementation of a Council decision.

2.4 Role of the Deputy Mayor

Section 21 of the Act provides the role of the Deputy Mayor is to perform the role, and exercise any of the powers, of the Mayor if:

- the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting;
- the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or
- the office of the Mayor is vacant.

2.5 Role of the CEO

Section 94A of the *Local Government Act 1989* sets out the functions of the CEO, which include:

- establishing and maintaining an appropriate organisational structure for Council;
- ensuring Council decisions are implemented without undue delay;

- day to day management of Council's operations in accordance with the Council Plan;
- developing, adopting and disseminating a Staff Code of Conduct;
- providing timely advice to Council;
- ensuring that Council receives timely and reliable advice about its legal obligations;
- supporting the Mayor in the performance of the Mayor's role; and
- carrying out Council's obligations as an employer with respect to Councillors as deemed employees under the workplace health and safety legislation.

From 1 July 2021, s 94A of the *Local Government Act 1989* will be replaced by s 46 of the Act. The CEO's functions will then include:

- supporting the Mayor and the Councillors in the performance of their roles;
- ensuring the effective and efficient management of the day to day operations of the Council;
- ensuring that Council receives timely and reliable advice about its legal obligations;
- supporting the Mayor in the performance of the Mayor's role;
- setting the agenda for Council meetings after consulting the Mayor;
- when requested by the Mayor, reporting to Council in respect of the implementation of a Council decision;
- carrying out Council's obligations as an employer with respect to Councillors as deemed employees under the workplace health and safety legislation;
- establishing and maintaining an organisational structure for Council;
- being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff; and
- managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between Council staff and Councillors.

The CEO will determine the extent to which Councillors will be informed of decisions made in pursuit of these functions. Councillors acknowledge any information provided by the CEO is provided as a courtesy and in pursuit of maintaining good working relationships.

Councillors accept they must not seek to direct the CEO with respect to the fulfilment of these functions.

It is neither the role nor the responsibility of the CEO to mediate disagreements arising between Councillors, or to draft, or otherwise assist in the drafting of, an application made under this Code or the Act.

2.6 Role of Councillor Conduct Officer

The CEO will from time to time appoint a member of Council staff as the Councillor Conduct Officer under s 150 of the Act.

The Councillor Conduct Officer must:

- assist Council in the implementation and conduct of the internal arbitration process;
- assist the Principal Councillor Conduct Registrar to perform his or her functions; and
- assist the Principal Councillor Conduct Registrar in relation to any request for information.

It is neither the role nor the responsibility of the Councillor Conduct Officer to draft, or to otherwise assist in the drafting of, an application made under this Code or the Act.

2.7 Role of the Principle Councillor Conduct Registrar

The Principal Councillor Conduct Registrar is appointed by the Secretary Department of Jobs, Precincts and Regions under s 148 of the Act and is employed by the State Government under Part 3 of the *Public Administration Act 2004*. The role of the Principal Councillor Conduct Registrar relevantly includes:

- receiving and examining applications for the appointment of an arbiter;
- appointing an arbiter from the panel list kept by the Secretary Department of Jobs, Precincts and Regions as required; and
- publishing guidelines in relation to processes and procedures relating to internal arbitration process applications as considered necessary.

3 Standards of Conduct

The Standards of Conduct to be observed by Councillors are set out in the Regulations. Failure to comply with the Standards of Conduct constitutes 'misconduct' for the purposes of the Act. If allegations of misconduct cannot be resolved between Councillors informally, they will be referred to the internal arbitration process, which may result in the imposition of sanctions.

3.1 Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring the Councillor:

- takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*;
- supports Council in fulfilling its obligation to achieve and promote gender equality;
- does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

3.2 Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring the Councillor:

- undertakes any training or professional development activities that Council decides it is necessary for all Councillors to undertake to effectively perform the role of a Councillor;
- diligently uses Council processes to become informed about matters which are subject to Council decisions;
- is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

3.3 Compliance with good governance measures

A Councillor, in performing the role of a Councillor, to ensure the good governance of Council, must diligently and properly comply with the following:

- any policy, practice or protocol developed and implemented by the CEO in accordance with s 46 of the Act for managing interactions between members of Council staff and Councillors;
- the Council expenses policy adopted and maintained by Council under s 41 of the Act;
- the Governance Rules developed, adopted and kept in force by Council under s 60 of the Act; and
- any directions of the Minister for Local Government issued under s 175 of the Act (governance directions).

3.4 Councillor must not discredit or mislead Council or public

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

- ensure that their behaviour does not bring discredit upon Council; and
- not deliberately mislead Council or the public about any matter related to the performance of their public duties.

3.5 Standards do not limit robust political debate

Councillors acknowledge nothing in the Standards of Conduct is intended to limit, restrict or detract from robust public debate in a democracy. So, while Councillors must always meet these Standards of Conduct, participation in vigorous debate of matters before Council for decision should not be viewed as being inconsistent with them.

4 Other Categories of Misconduct

Councillors acknowledge the Act creates two other categories of misconduct, being 'serious misconduct' and 'gross misconduct'. In the case of allegations of conduct constituting:

- 'serious misconduct', application can be made to convene a Councillor Conduct Panel to hear the allegation by a Councillor, a group of Councillors, a Council resolution or the Chief Municipal Inspector; and
- 'gross misconduct', application can be made to the Victorian Civil and Administrative Tribunal (VCAT) by the Chief Municipal Inspector.

Although allegations of conduct constituting 'serious misconduct' and 'gross misconduct' might not be addressed as a contravention of this Code, Councillors acknowledge and commit to the following with respect to:

- bullying; and
- sexual harassment,

each of which constitutes 'serious misconduct' for the purposes of the Act.

4.1 Bullying

The Act provides 'bullying' by a Councillor means:

... the Councillor repeatedly behaves unreasonably towards another Councillor or a member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff.

A Councillor who bullies another Councillor or a member of Council staff engages in 'serious misconduct' and may be the subject of an application to convene a Councillor Conduct Panel.

Councillors agree bullying is unacceptable under any circumstances and each commit to avoiding conduct which might constitute bullying, and to calling out their fellow Councillors when they exhibit conduct which might constitute bullying, whether directed at another Councillor or at a member of Council staff.

4.2 Sexual harassment

The Act provides 'sexual harassment' has the meaning given by s 92 of the *Equal Opportunity Act 2010*, which provides that:

- (1) For the purpose of this Act, a person sexually harasses another person if he or she -
 - (a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
 - (b) engages in any other unwelcome conduct of a sexual nature in relation to the other person -

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

- (2) In subsection (1) conduct of a sexual nature includes -
 - (a) subjecting a person to any act of physical intimacy;
 - (b) making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence;
 - (c) making any gesture, action or comment of a sexual nature in a person's presence.

A Councillor who engages in sexual harassment towards another Councillor or a member of Council staff engages in 'serious misconduct' and may be the subject of an application to convene a Councillor Conduct Panel.

Councillors agree sexual harassment is unacceptable under any circumstances and each commit to avoiding conduct which might constitute sexual harassment, and to calling out their fellow Councillors when they exhibit conduct which might constitute sexual harassment, whether directed at another Councillor or at a member of Council staff.

It is acknowledged that Councillors may also be subjected to sexual harassment from outside Council, for example from members of the public.

4.3 Addressing bullying and sexual harassment

A Councillor who feels they have been subjected to bullying or sexual harassment by another Councillor, a member of Council staff or a member of the public may:

- access Council's Employee Assistance Program for confidential support, with contact details available from the Councillor Conduct Officer;
- make an allegation of 'serious misconduct' by way of an application to convene a Councillor Conduct Panel in accordance with the Act, with details of that process available from the Councillor Conduct Officer; and/or
- make a complaint to an appropriate external body, such as the Local Government Inspectorate, the Victorian Equal Opportunity and Human Rights Commission and Victoria Police.

Councillors acknowledge a Councillor who feels that they have been subjected to bullying or sexual harassment by another Councillor may not be comfortable pursuing any of the informal or internal dispute resolution procedures set out in this Code. Those informal and internal dispute resolution procedures are not compulsory in the case of alleged 'serious misconduct' or 'gross misconduct' and there is no expectation that they will be followed in those circumstances.

5 Prohibited Conduct

In addition to observing the Standards of Conduct, Councillors acknowledge the Act prohibits them from engaging in certain conduct and doing so constitutes a criminal offence. This conduct relates to:

- misuse of position;
- improper direction and improper influence;
- confidential information;
- conflict of interest; and
- electoral conduct.

Councillors acknowledge while these matters are not Standards of Conduct and are not to be addressed as a contravention of this Code, they must comply with them.

In the case of non-compliance, these matters could be the subject of an application to a Councillor Conduct Panel made by the Chief Municipal Inspector, or of a complaint to the Local Government Inspectorate, the Independent Broad-based Anti-corruption Commission (IBAC) or Victoria Police, depending on the nature of the allegation.

5.1 Misuse of position

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, or attempt to cause, detriment to Council or another person.

Circumstances involving the misuse of position by a Councillor include, but are not limited to:

- making improper use of information acquired as a result of the Councillor's position (current and past);
- disclosing information that is confidential information;
- directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff;
- exercising or performing, or purporting to exercise or perform, a power, duty or function that the Councillor is not authorised to exercise or perform;
- using public funds or resources in a manner that is improper or unauthorised; and
- participating in a decision on a matter in which the Councillor has a conflict of interest.

5.2 Directing a member of Council staff

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

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

5.3 Confidential information

A Councillor must not intentionally or recklessly disclose information they know, or should reasonably know, is confidential information.

For the purposes of the Act 'confidential information' means the following information:

- Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
- security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
- land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
- law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;
- legal privileged information, being information to which legal professional privilege or client legal privilege applies;
- personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
- private commercial information, being information provided by a business, commercial or financial undertaking that:
 - relates to trade secrets; or
 - if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
- confidential meeting information, being the records of meetings closed to the public under the Act;
- internal arbitration information, being information specified in s 145 of the Act;
- Councillor Conduct Panel confidential information, being information specified in s 169 of the Act;
- information prescribed by regulations to be confidential information for the purposes of the Act; and
- information that was confidential information for the purposes of s 77 of the *Local Government Act 1989*.

A Councillor may disclose information that would be considered 'confidential information' if the information that is disclosed is information that Council has determined should be publicly available.

Otherwise, a Councillor may disclose information they know 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;
- in the course of an internal arbitration and for the purposes of the internal arbitration process;
- in the course of a Councillor Conduct Panel hearing and for the purposes of the hearing;
- to a Municipal Monitor to the extent reasonably required by the Municipal Monitor;

- to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry; and
- to the extent reasonably required for any other law enforcement purposes.

Councillors acknowledge they will have access to confidential information in many forms and it will not always be labelled as being 'confidential'. Councillors will take reasonable steps to inform themselves about the confidential nature of any Council information before discussing it outside the organisation.

5.4 Conflict of interest

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of Council or a delegated committee, a meeting of a community asset committee, or any other meeting held under the auspices of Council, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the Governance Rules (unless any of the exemptions apply).

A Councillor may have a 'general' or a 'material' conflict of interest in a matter being considered at a meeting.

A Councillor has a 'general' conflict of interest in a matter if an impartial, fair-minded person would consider that the Councillor's private interests could result in the Councillor acting in a manner that is contrary to their public duty.

For the purposes of general conflict of interest:

- 'private interests' means any direct or indirect interest of a Councillor that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief; and
- 'public duty' means the responsibilities and obligations that a Councillor has to members of the public in their role as a relevant person.

A Councillor has a 'material' conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.

The benefit may arise or the loss incurred:

- directly or indirectly; or
- in a pecuniary or non-pecuniary form.

For the purposes of a material conflict of interest, any of the following is an 'affected person':

- the Councillor;
- a family member of the Councillor;
- a body corporate of which the Councillor or their spouse or domestic partner is a Director or a member of the governing body;
- an employer of the Councillor, unless the employer is a public body;
- a business partner of the Councillor;
- a person for whom the Councillor is a consultant, contractor or agent;
- a beneficiary under a trust or an object of a discretionary trust of which the Councillor is a trustee;
- a person from whom the Councillor has received a disclosable gift (i.e. exceeding \$500 in value).

Councillors acknowledge they must be clear about their associations with parties external to Council and to avoid conflicts between those associations and their role as Councillors.

5.5 Other legislative requirements

The Act includes requirements relating to eligibility to be a Councillor, electoral conduct and the election period ('caretaker period'). 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.

Councillors acknowledge they are responsible for complying with the various provisions relating to these matters.

6 Good Governance

Nothing in this Part **Error! Reference source not found.** of the Code is intended to impose a binding Standard of Conduct on Councillors. These matters are expressed as operating in addition to the Standards of Conduct. Further, nothing in this part of the Code is intended to modify or derogate from the Standards of Conduct.

This part of the Code sets out conduct the Councillors agree will contribute to the good governance, integrity and responsible operation of Council.

6.1 Overarching Governance Principles

Councillors will support the role of Council by ensuring Council gives effect to the overarching governance principles when participating in Council's decision-making functions.

The overarching governance principles are set out in s 9(2) of the Act and are as follows:

- Council decisions are to be made and actions taken in accordance with the relevant law;
- priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
- the municipal community is to be engaged in strategic planning and strategic decision making;
- innovation and continuous improvement is to be pursued;
- collaboration with other councils and governments and statutory bodies is to be sought;
- the ongoing financial viability of Council is to be ensured;
- regional, state and national plans and policies are to be taken into account in strategic planning and decision making; and
- the transparency of Council decisions, actions and information is to be ensured.

6.2 Council decision-making

Councillors are committed to ensuring a high level of transparency in Council's decisions and Council's decision-making processes. Councillors acknowledge Council decisions cannot be made other than by resolutions made at properly constituted Council meetings following fulsome public debate in the Council Chamber. While Councillors will engage in informal discussion of matters coming before Council for decision, they acknowledge these informal discussion are not decision-making forums, and a final position on such matters cannot be reached before the Council meeting.

Councillors acknowledge the role reports prepared by members of Council staff provide professional advice which assists in informing Councillors about matters before Council for decision. Councillors will pay respect and attention to the information provided by members of Council staff to assist Council's decision-making functions.

6.3 Use of Council resources

Councillors commit to using Council resources effectively, economically and only for proper purposes connected with their role as a Councillor, consistent with relevant Council policies and procedures.

In particular, Councillors will:

- maintain adequate security over Council property, facilities and resources provided by Council to assist in performing their role;
- comply with any legislation and Council policies and procedures applying to the use of Council property, facilities and resources provided by Council to assist in performing their role;
- not use Council resources, including the services of members of Council staff, for private purposes, unless authorised to do so, and paying for those resources where required to do so; and
- not use public funds or resources in a manner that is improper or unauthorised.

6.4 Gifts and benefits

Councillors will 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 Council.

Councillors will take all reasonable steps to ensure that their immediate family members do not receive gifts or benefits that give rise to the appearance of an attempt to gain favourable treatment.

Councillors will only accept gifts that exceed the gift disclosure threshold (currently, \$500) if:

- the name and address of the person making the gift are known to them; or
- at the time when the gift is made, they reasonably believe that the name and address provided are the true name and address of the person making the gift.

Anonymous gifts that exceed the gift disclosure threshold will be disposed of to Council within thirty (30) days of receiving the gift.

Councillors will comply with the Councillor Gift Policy, once adopted, and any other policies and procedures adopted by Council from time to time relevant to the acceptance of gifts.

6.5 External communications

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

Councillors are committed to respecting the function of the Mayor as the spokesperson of Council in accordance with the Act.

Councillors undertake to comply with Council's Communication Policy and any other relevant policies, as adopted from time to time, including recognition of and respect for the:

- role of the Mayor as the principal spokesperson of Council, including in communications with the media on behalf of Council;
- role of the CEO in communicating with the media on behalf of Council with respect to matters of an operational nature; and
- practice of directing media enquiries to Council's Communications Team at first instance.

Councillors acknowledge individual Councillors are entitled to express their personal opinions through the media. In doing so, Councillors will make it clear that such comment is their personal view and does not represent the position of Council. Councillors will ensure such comments avoid being derogatory, offensive or insulting of Council, Councillors, members of Council staff, members of the community and others and are factually accurate.

6.6 Personal Dealings with Council

When Councillors deal with Council in their private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit), they will not expect or request preferential treatment in relation to any such private matter. Councillors will avoid any action that could lead members of Council staff or members of the community to believe that they are seeking preferential treatment.

6.7 Occupational Health and Safety

Councillors acknowledge meeting Council's obligations as an employer under the *Occupational Health and Safety Act 2004* by, among other things, providing a safe workplace for Councillors, members of Council staff and visitors to Council premises is essential.

Councillors are committed to working in ways that protect and promote the health and safety of Councillors, members of Council staff and visitors to Council premises and to minimise risks to them.

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6.8 Child Safe Standards

Councillors acknowledge the importance of protecting the safety of children in its municipal community, and encouraging their participation and empowerment. Councillors support Council's zero tolerance approach to child abuse and its adherence to the Victorian Child Safe Standards and related legislating including Failure to Disclose, Failure to Protect and Grooming offences.

Councillors will maintain the highest standards of professional conduct in attitude and behaviour towards, and in their interactions with, children and young people. As leaders, Councillors will uphold the rights and best interests of children and young people in the municipal community to the extent possible.

7 Complaints From Members of the Public

Councillors acknowledge complaints about their conduct may be made by members of the public from time to time. This Code does not, and is not intended to, provide mechanisms for the management of such complaints.

Council will give consideration to the development of such mechanisms when preparing and adopting its Complaints Policy, as required by s 107 of the Act.

8 Interpersonal Dispute Between Councillors

Councillors acknowledge interpersonal differences and disputes (as distinct from allegations of contravention of the Standards of Conduct) may arise from time to time. Councillors commit to taking reasonable steps to resolve any interpersonal difference or dispute that arises without recourse to formal processes with a view to maintaining effective working relationships.

In resolving interpersonal differences or disputes, Councillors will consider pursuing informal steps, including:

8.1 Informal discussions between councillors

Councillors will first consider discussing their interpersonal difference or dispute informally with a view to resolving it.

8.2 Facilitated discussion

If Councillors are unable to discuss their interpersonal difference or dispute informally, or their informal discussions are unsuccessful, they will consider approaching a fellow Councillor, chosen with the agreement of both Councillors, to facilitate a discussion with a view to resolving their interpersonal difference or dispute.

If the interpersonal difference or dispute cannot be resolved informally, the Councillors will consider whether any of the conduct giving rise to it constitutes a contravention of the Standards of Conduct. If they consider that it does, they may choose to pursue it as such under part **Error! Reference source not found.** of this Code.

9 Allegations of Contravention of the Code

An allegation that the Standards of Conduct have been breached by a Councillor can be made by:

- Council, by resolution;
- a Councillor; or
- a group of Councillors.

Where an allegation is made by Council or by a group of Councillors, a single Councillor must be nominated to act as the representative of Council or the group of Councillors (as the case may be) in the internal resolution process. Only that Councillor will be entitled to participate in the internal resolution process.

When an allegation of a breach of the Standards of Conduct is alleged, the Councillors who are party to the allegation undertake to use their best endeavours to resolve it in a courteous and respectful manner without recourse to formal processes under this Code or under the Act. If, after these endeavours have been exhausted, the allegation remains unresolved, either or both of the Councillors may have recourse to any or all of the internal resolution processes set out in this Code.

Councillors accept the following three-phase internal resolution process:

- Formal discussion between the Councillors, facilitated by the Mayor or, if the Mayor is involved in the allegation, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the allegation, the most recent past Mayor.
- Formal mediation between the Councillors, facilitated by a qualified mediator.
- Formal internal arbitration process.

Councillors recognise the first and second phases are voluntary and they are not obliged to agree to either of them but will endeavour to resolve allegations without resorting to the mandatory internal arbitration process.

9.1 The application

An application alleging a breach of the Standards of Conduct must:

include the:

- (a) name of the Councillor alleged to have breached the Standards of Conduct;
- (b) clause(s) of the Standards of Conduct that the Councillor is alleged to have breached;
- (c) particular misconduct, or behaviour, that the Councillor is alleged to have engaged in that resulted in the breach; and
- (d) phase of the internal resolution process being pursued by the Councillor making the allegation at the first instance; and

be submitted to the Councillor Conduct Officer for:

- (a) action, if the application seeks engagement in the first or second phase of the internal resolution process; or
- (b) referral to the Principal Councillor Conduct Registrar, if the application seeks a formal internal arbitration process.

If an application received by the Councillor Conduct Officer does not meet the requirements of this Part 9.1, the Councillor Conduct Officer will return it to the Councillor submitting it with a brief statement of the ways in which the application is deficient.

A Councillor may revise and resubmit to the Councillor Conduct Officer a deficient application, provided that the Councillor submits the revised application no later than 3 months after the alleged breach of the Standards of Conduct occurred (see s 143(3) of the Act).

9.2 Process on receiving an application

On receiving an application from a Councillor which meets the requirements of Part 9.1 of this Code and which seeks a facilitated discussion, the Councillor Conduct Officer will take the following steps:

- (a) notify Mayor or, if the Mayor is involved in the allegation, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the allegation, the most recent past Mayor (as the case may be) and the CEO (for the CEO's information only) and provide them with a copy of the application;
- (b) notify the Councillor the subject of allegation in the application and provide them with a copy of the application;
- (c) request the Councillor the subject of the application to advise whether they will participate in the facilitated discussion within 5 days of receiving the application, noting that, if no advice is received, the Councillor will be taken to have declined;
- (d) if the Councillor agrees to participate in the facilitated discussion:
 - (i) the Councillor Conduct Officer will, with the cooperation of the Councillors involved in the application and the Mayor or, if the Mayor is involved in the application, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the application, the most recent past Mayor (as the case may be), arrange a suitable time and place for the facilitated discussion, to be no later than 5 days from the date of the advice provided under paragraph (c);

- (ii) the facilitated discussion must be completed with the Mayor or, if the Mayor is involved in the application, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the application, the most recent past Mayor (as the case may be) providing a record of the outcome to the Councillors involved in the application and the CEO no later than 5 days after the discussion takes place; and
 - (iii) if the facilitated discussion is not complete within 5 days of the date nominated for it to take place, the Councillors will be taken as not having agreed to participate in a facilitated discussion, unless both Councillors agree to extend the time for completion;
- (e) if the facilitated discussion is not completed in accordance with this Part 9.2 for whatever reason, or if the facilitated discussion does not resolve the allegation the subjection of the application, the Councillor Conduct Officer will advise the:
 - (i) Councillor making the application and ask the Councillor to advise whether they wish to escalate the matter to another phase of the internal resolution process and, if so, which phase;
 - (ii) Councillor the subject of the application; and
 - (iii) CEO; and
- (f) the Councillor Conduct Officer will make arrangements to close or to escalate the application, as the case may be, according to the advice of the Councillor making the application.

9.3 Mediation

On receiving an application from a Councillor which meets the requirements of Part 9.1 of this Code and which seeks a mediation, or on escalating an application where a facilitated discussion has not been completed or has not resolved the allegation, the Councillor Conduct Officer will take the following steps:

- (a) notify the CEO and provide them with a copy of the application;
- (b) notify the Councillor the subject of allegation in the application and provide them with a copy of the application;
- (c) request the Councillor the subject of the application to advise whether they will participate in mediation within 5 days of receiving the application, noting, if no advice is received, the Councillor will be taken to have declined;
- (d) if the Councillor agrees to participate in mediation:

- (i) the CEO, or a member of Council staff nominated by the CEO for the purpose (**the CEO's nominee**), will engage a mediator, to be chosen by the CEO (or the CEO's nominee);
 - (ii) the CEO (or the CEO's nominee) will, with the cooperation of the Councillors involved in the application, arrange a suitable time and place for the mediation, to be no later than 5 business days from the date of the advice provided under paragraph (c); and
 - (iii) if the mediation is not complete within 5 business days of the date nominated for it to take place, the Councillors will be taken as not having agreed to participate in the mediation, unless both Councillors agree to extend the time for completion;
- (e) if the mediation resolves the application, the mediator will document the agreement reached by the Councillors involved and provide a copy of the agreement to both Councillors and to the CEO;
 - (f) if the mediation is not completed in accordance with this Part 9.3 for whatever reason, the CEO (or the CEO's nominee) will advise the:
 - (i) Councillor making the application and ask the Councillor to advise whether they wish to escalate the matter to another phase of the internal resolution process and, if so, which phase; and
 - (ii) Councillor the subject of the application; and
 - (g) the CEO (or the CEO's nominee) will ask the Councillor Conduct Officer to make arrangements to close or to escalate the application, according to the advice of the Councillor making the application.

9.4 Internal arbitration

A breach of the Standards of Conduct constitutes 'misconduct' for the purposes of the Act and may be referred to an arbiter for determination. The process for internal arbitration is prescribed by Part 6 of the Act and r 11 of the Regulations.

Internal arbitration may be commenced either after the first two phases of the internal resolution process prove unsuccessful in resolving the allegation, or as the first step in an application.

On receiving an application from a Councillor which meets the requirements of Part 9.1 of this Code and which seeks an internal arbitration process, or on escalating an application where a facilitated discussion and/or mediation has not been completed or has not resolved the allegation, the Councillor Conduct Officer will:

- (a) refer the application to the Principal Councillor Conduct Registrar;
- (b) notify the Councillors involved in the application of the referral;
- (c) notify the CEO of the referral (for the CEO's information only);
- (d) await advice from the Principal Councillor Conduct Registrar about the application; and
- (e) take such steps as are necessary to give effect to the Principal Councillor Conduct Registrar's advice, in accordance with any instructions received.

Councillors recognise an application for internal arbitration for an allegation of a breach of the Standards of Conduct will only be accepted by the Principal Councillor Conduct Registrar, and an arbiter will only be appointed, if the Principal Councillor Conduct Registrar is satisfied:

- (f) the application is not frivolous, vexatious, misconceived or lacking in substance; and
- (g) there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct.

It is for the Councillor or Councillors submitting an application to ensure the application meets these requirements.

If the Principal Councillor Conduct Registrar is satisfied an application for internal arbitration should be accepted, the Principal Councillor Conduct Registrar will appoint an arbiter from a panel list compiled by the Secretary to the Department of Jobs, Precincts and Regions.

In conducting an arbitration the arbiter must:

- (h) ensure the parties involved are given an opportunity to be heard;
- (i) ensure a Councillor who is a party does not have a right to representation, unless the arbiter considers representation is necessary to ensure the process is conducted fairly;
- (j) conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
- (k) ensure the hearing is not open to the public.

Additionally, in conducting an arbitration the arbiter:

- (l) may hear each party to the matter in person or solely by written or electronic means of communication;

- (m) is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit;
- (n) may at any time discontinue the hearing if the arbiter considers the:
 - (i) application is vexatious, misconceived, frivolous or lacking in substance; or
 - (ii) Councillor making the application, or representing the group of Councillors making the application, has not responded, or has responded inadequately, to a request for further information.

If, at the completion of the internal arbitration process, the arbiter determines a Councillor has breached the Standards of Conduct, the arbiter may make a finding of misconduct against the Councillor and impose any one or more of the following sanctions:

- (o) direct the Councillor to make an apology;
- (p) suspend the Councillor from the office of Councillor for a period specified by the arbiter (not exceeding one month);
- (q) direct the Councillor be removed from any position where the Councillor represents Council for a period determined by the arbiter;
- (r) direct the Councillor is removed from being the chair of a delegated committee for a period determined by the arbiter; and/or
- (s) direct a Councillor to attend or undergo training or counselling specified by the arbiter.

The arbiter must provide a written copy of the arbiter's findings and statement of reasons to:

- (t) Council;
- (u) the applicant(s) and the respondent; and
- (v) the Principal Councillor Conduct Registrar.

A copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the arbiter's findings and statement of reasons are provided. If the arbiter's decision and statement of reasons contain any confidential information, the confidential information must be redacted before it is tabled.

Councillors recognise a failure to participate in and comply with the internal arbitration process or a direction given to the Councillor by an arbiter is 'serious misconduct' for the purposes of the Act.

Allegations of 'serious misconduct' are heard by a Councillor Conduct Panel.

9.5 Responsibilities of councillors

It is the responsibility of a Councillor or the Councillors submitting an application to prepare the application, including by identifying and collating the evidence which supports it.

While members of Council staff may provide some administrative support, that support will not extend to assisting Councillors with the preparation of the substance of an application.

10 Adoption of this Code

This Code was adopted by a resolution of Council made at the Council meeting held on 22 February 2021, with a majority of at least two thirds of all Councillors voting in favour of it.

This Code may be reviewed at any time during the Council term but need not be reviewed until after the general election to be held in October 2024.

11 Accountabilities

For all queries or feedback regarding the Councillor Code of Conduct, please use the contact details for the responsible department below.

Position Title	Contact number	Contact department email
Manager Governance and Legal	9278 4470	boroondara@boroondara.vic.gov.au

12 References

12.1 Related documents

Council policies:

- Councillor and Member of a Delegated Committee Expenses Policy
- Councillor Gift Policy
- Governance Rules
- Public Transparency Policy

Victorian legislation:

- Charter of Human Rights and Responsibilities Act 2006
- Equal Opportunity Act 2010
- Independent Broad Based Anti-Corruption Commission Act 2011
- Local Government Act 1989
- Local Government Act 2020
- Occupational Health and Safety Act 2004
- Ombudsman Act 1973
- Public Administration Act 2004
- Public Interest Disclosure Act 2012
- Victorian Civil and Administration Tribunal Act 1998
- Local Government (Governance and Integrity) Regulations 2020
- Occupational Health and Safety Regulations 2017

13 Definitions

CEO Chief Executive Officer	The Chief Executive Officer of Council of the City of Boroondara
Chief Municipal Inspector	The Chief Municipal Inspector is responsible for investigating and prosecuting possible breaches and offences under the <i>Local Government Act 2020</i> , investigating allegations of Councillor misconduct, serious misconduct and gross misconduct, making an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor and making an application to the Victorian Civil and Administrative Tribunal (VCAT) for a finding of gross misconduct by a Councillor.
Conflict of Interest	A Councillor has; <ul style="list-style-type: none"> ▪ a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty. ▪ a material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.
Conduct Standards	The standards of Councillor conduct prescribed under Schedule 1 to the <i>Local Government (Governance and Integrity) Regulations 2020</i> .

Councillor	All references to 'Councillor' include the Mayor, Deputy Mayor and elected members of the Boroondara City Council except as expressly provided.
Councillor Conduct Officer	A person appointed by the Chief Executive Officer to assist Council in implementing its internal arbitration process.
Councillor Conduct Panel	A panel established under the <i>Local Government Act 2020</i> to hear applications and make findings of alleged misconduct or serious misconduct by a Councillor.
Employee	An employee of Council includes all members of staff, contractors and volunteers under the direct control or supervision of the City of Boroondara.
gross misconduct	'Gross misconduct' by a Councillor 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, including behaviour that is sexual harassment and that is of an egregious nature.
improper conduct	'Improper conduct' includes a failure to disclose a conflict of interest, a breach of confidentiality, the improper direction or influence of staff, the improper use of Council resources, or a breach of Council policy under the Code of Conduct by a Councillor.
misconduct	Misconduct by a Councillor means any breach by a Councillor of the prescribed conduct standards included in this Councillor Code of Conduct.
Principal Councillor Conduct Registrar	The Principal Councillor Conduct Registrar receives applications for the establishment of Councillor Conduct Panels under the <i>Local Government Act 2020</i> .
serious misconduct	Serious misconduct by a Councillor means: <ul style="list-style-type: none"> ▪ failure by a Councillor to comply with the Council's internal arbitration process ▪ failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147

	<ul style="list-style-type: none"> ▪ the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor. ▪ failure of a Councillor to comply with a direction of a Councillor Conduct Panel ▪ continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b) of the <i>Local Government Act 2020</i>. ▪ bullying by a Councillor of another Councillor or a member of Council staff; ▪ conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or member of Council staff. ▪ the disclosure by a Councillor of information the Councillor knows or should reasonably know, is confidential information; ▪ conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff. ▪ the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with the <i>Local Government Act 2020</i>.
The Act	All references to 'the Act' are to the <i>Local Government Act 2020</i> .

14 Version History

Councillor Code of Conduct

Adopted by Council on 13 February 2017

By signing below, I declare to my fellow Councillors and to the community I have read, understood and will abide by this Code of Conduct.

Councillor Jane Addis

Councillor Jim Parke

Councillor Susan Biggar

Councillor Felicity Sinfield

Councillor Victor Franco

Councillor Nick Stavrou

Councillor Wes Gault

Councillor Garry Thompson

Councillor Di Gillies

Councillor Cynthia Watson

Councillor Lisa Hollingsworth

Witnessed by Chief Executive Officer, Phillip Storer

Councillor Code of Conduct

~~22 February 2021~~2022

Responsible Directorate: Chief Executive Office

Authorised By: Council

Date of Adoption: ~~24 October 2021~~2022

Review Date: February 2025

Policy Type: Council



Table of contents

1	Introduction	4
1.1	Legislative Framework.....	4
1.2	Councillors' commitment.....	4
1.3	Purpose of this Code	4
2	Roles and Responsibilities	5
2.1	Role of Council	5
2.2	Role of Councillors.....	5
2.3	Role of the Mayor	6
2.4	Role of the Deputy Mayor	6
2.5	Role of the CEO.....	6
2.6	Role of Councillor Conduct Officer	8
2.7	Role of the Principle Councillor Conduct Registrar.....	8
3	Standards of Conduct	8
3.1	Treatment of others	8
3.2	Performing the role of Councillor	9
3.3	Compliance with good governance measures	9
3.4	Councillor must not discredit or mislead Council or public	10
3.5	Standards do not limit robust political debate	10
4	Other Categories of Misconduct	10
4.1	Bullying	10
4.2	Sexual harassment.....	11
4.3	Addressing bullying and sexual harassment	12
5	Prohibited Conduct	12
5.1	Misuse of position	13
5.2	Directing a member of Council staff.....	13
5.3	Confidential information	13
5.4	Conflict of interest	15
5.5	Other legislative requirements	16
6	Good Governance.....	16
6.1	Overarching Governance Principles	16
6.2	Council decision-making.....	17
6.3	Use of Council resources.....	17

6.4	Gifts and benefits	18
6.5	External communications.....	18
6.6	Personal Dealings with Council	19
6.7	Occupational Health and Safety	19
6.8	Child Safe Standards.....	19
7	Complaints From Members of the Public.....	20
8	Interpersonal Dispute Between Councillors	20
8.1	Informal discussions between councillors.....	20
8.2	Facilitated discussion.....	20
9	Allegations of Contravention of the Code	20
9.1	The application	21
9.2	Process on receiving an application	22
9.3	Mediation	23
9.4	Internal arbitration.....	24
9.5	Responsibilities of councillors.....	27
10	Adoption of this Code.....	27
11	Accountabilities	27
12	References.....	27
12.1	Related documents.....	27
13	Definitions	28
14	Version History.....	30
1	Introduction	4
1.1	Legislative Framework.....	4
1.2	Councillors' commitment.....	4
1.3	Purpose of this Code	4
2	Roles and Responsibilities.....	5
2.1	Role of Council	5
2.2	Role of Councillors.....	5
2.3	Role of the Mayor	6
2.4	Role of the Deputy Mayor.....	6
2.5	Role of the CEO.....	6
2.6	Role of Councillor Conduct Officer	8
2.7	Role of the Principle Councillor Conduct Registrar.....	8
3	Standards of Conduct	8
3.1	Treatment of others	8

3.2	Performing the role of Councillor	9
3.3	Compliance with good governance measures	9
3.4	Councillor must not discredit or mislead Council or public	10
3.5	Standards do not limit robust political debate	10
4	Other Categories of Misconduct	10
4.1	Bullying	10
4.2	Sexual harassment	11
4.3	Addressing bullying and sexual harassment	12
5	Prohibited Conduct	12
5.1	Misuse of position	13
5.2	Directing a member of Council staff	13
5.3	Confidential information	13
5.4	Conflict of interest	15
5.5	Other legislative requirements	16
6	Good Governance	16
6.1	Overarching Governance Principles	16
6.2	Council decision-making	17
6.3	Use of Council resources	17
6.4	Gifts and benefits	18
6.5	External communications	18
6.6	Personal Dealings with Council	19
6.7	Occupational Health and Safety	19
6.8	Candidature for State, Federal or Local Government elections	19
6.9	Child Safe Standards	20
7	Complaints From Members of the Public	21
8	Interpersonal Dispute Between Councillors	21
8.1	Informal discussions between councillors	21
8.2	Facilitated discussion	21
9	Allegations of Contravention of the Code	21
9.1	The application	22
9.2	Process on receiving an application	23
9.3	Mediation	24
9.4	Internal arbitration	25
9.5	Responsibilities of councillors	28
10	Adoption of this Code	28

11	Accountabilities	28
12	References	28
12.1	Related documents	28
13	Definitions	29
14	Version History	31

1 Introduction

1.1 Legislative Framework

The *Local Government Act 2020* (**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 (**Code**) has been adopted by Council to comply with the requirements of the Act.

A Councillor Code of Conduct:

- must include the Standards of Conduct prescribed by the *Local Government (Governance and Integrity) Regulations 2020* (**Regulations**) expected to be observed by Councillors;
- must include any provisions prescribed by the Regulations;
- must include provisions addressing any matters prescribed by the Regulations; and
- may include any other matters which Council considers appropriate, other than any other Standards of Conduct.

The Standards of Conduct with which Councillors are required to comply are specified in Schedule 1 to the Regulations.

Failure by a Councillor to comply with the Standards of Conduct constitutes misconduct under the Act, which may be pursued in accordance with the processes set out in this Code.

1.2 Councillors' commitment

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

1.3 Purpose of this Code

The purpose of this Code is to set out the Standards of Conduct with which Councillors must comply and to:

- foster good working relationships between Councillors to enable Councillors to work constructively together in the best interests of the municipal community;
- lift the standard of behaviour of Councillors during Council meetings, Councillor briefings and any other meetings which Councillors participate in from time to time; and
- establish benchmarks for Councillor conduct designed to build public confidence in the integrity of local government.

2 Roles and Responsibilities

2.1 Role of Council

The role of Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community (see s 8 of the Act). Council provides good governance if:

- it performs its role in accordance with the Overarching Governance Principles in s 9 of the Act; and
- the Councillors perform their roles in accordance with s 28 of the Act.

In performing its role, Council may:

- perform any duties or functions and exercise any powers conferred on it under the Act or any other Act; and
- perform any other functions that it considers are necessary to enable that performance.

Good governance is fundamental to Council being able to perform its role. Good governance relies on, among other things, good working relationships between Councillors.

2.2 Role of Councillors

Section 28 of the Act provides the role of a Councillor is:

- to participate in the decision-making of Council;
- to represent the interests of the municipal community in that decision-making; and
- to contribute to the strategic direction of 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:

- consider the diversity of interests and needs of the municipal community;
- support the role of Council;
- acknowledge and support the role of the Mayor;
- act lawfully and in accordance with the oath or affirmation of office;
- act in accordance with the Standards of Conduct; and
- comply with Council procedures required for good governance.

The role of a Councillor expressly excludes the performance of any responsibilities or functions of the Chief Executive Officer (**CEO**).

2.3 Role of the Mayor

Section 18 of the Act provides the role of the Mayor is to:

- chair Council meetings;
- be the principal spokesperson for Council;
- lead engagement with the municipal community on the development of the Council Plan;
- report to the municipal community, at least once each year, on the implementation of the Council Plan;
- promote behaviour among Councillors that meets the Standards of Conduct set out in the Councillor Code of Conduct;
- assist Councillors to understand their role;
- take a leadership role in ensuring the regular review of the performance of the CEO;
- provide advice to the CEO when the CEO is setting the agenda for Council meetings; and
- perform civic and ceremonial duties on behalf of Council.

The Mayor also has the power to:

- appoint a Councillor to be the chair of a delegated committee;
- direct a Councillor, subject to any procedures or limitations specified in Council's Governance Rules, to leave a Council meeting if the behaviour of the Councillor is preventing Council from conducting its business; and
- require the CEO to report to Council on the implementation of a Council decision.

2.4 Role of the Deputy Mayor

Section 21 of the Act provides the role of the Deputy Mayor is to perform the role, and exercise any of the powers, of the Mayor if:

- the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting;
- the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or
- the office of the Mayor is vacant.

2.5 Role of the CEO

Section 94A of the *Local Government Act 1989* sets out the functions of the CEO, which include:

- establishing and maintaining an appropriate organisational structure for Council;
- ensuring Council decisions are implemented without undue delay;

- day to day management of Council's operations in accordance with the Council Plan;
- developing, adopting and disseminating a Staff Code of Conduct;
- providing timely advice to Council;
- ensuring that Council receives timely and reliable advice about its legal obligations;
- supporting the Mayor in the performance of the Mayor's role; and
- carrying out Council's obligations as an employer with respect to Councillors as deemed employees under the workplace health and safety legislation.

From 1 July 2021, s 94A of the *Local Government Act 1989* will be replaced by s 46 of the Act. The CEO's functions will then include:

- supporting the Mayor and the Councillors in the performance of their roles;
- ensuring the effective and efficient management of the day to day operations of the Council;
- ensuring that Council receives timely and reliable advice about its legal obligations;
- supporting the Mayor in the performance of the Mayor's role;
- setting the agenda for Council meetings after consulting the Mayor;
- when requested by the Mayor, reporting to Council in respect of the implementation of a Council decision;
- carrying out Council's obligations as an employer with respect to Councillors as deemed employees under the workplace health and safety legislation;
- establishing and maintaining an organisational structure for Council;
- being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff; and
- managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between Council staff and Councillors.

The CEO will determine the extent to which Councillors will be informed of decisions made in pursuit of these functions. Councillors acknowledge any information provided by the CEO is provided as a courtesy and in pursuit of maintaining good working relationships.

Councillors accept they must not seek to direct the CEO with respect to the fulfilment of these functions.

It is neither the role nor the responsibility of the CEO to mediate disagreements arising between Councillors, or to draft, or otherwise assist in the drafting of, an application made under this Code or the Act.

2.6 Role of Councillor Conduct Officer

The CEO will from time to time appoint a member of Council staff as the Councillor Conduct Officer under s 150 of the Act.

The Councillor Conduct Officer must:

- assist Council in the implementation and conduct of the internal arbitration process;
- assist the Principal Councillor Conduct Registrar to perform his or her functions; and
- assist the Principal Councillor Conduct Registrar in relation to any request for information.

It is neither the role nor the responsibility of the Councillor Conduct Officer to draft, or to otherwise assist in the drafting of, an application made under this Code or the Act.

2.7 Role of the Principle Councillor Conduct Registrar

The Principal Councillor Conduct Registrar is appointed by the Secretary Department of Jobs, Precincts and Regions under s 148 of the Act and is employed by the State Government under Part 3 of the *Public Administration Act 2004*. The role of the Principal Councillor Conduct Registrar relevantly includes:

- receiving and examining applications for the appointment of an arbiter;
- appointing an arbiter from the panel list kept by the Secretary Department of Jobs, Precincts and Regions as required; and
- publishing guidelines in relation to processes and procedures relating to internal arbitration process applications as considered necessary.

3 Standards of Conduct

The Standards of Conduct to be observed by Councillors are set out in the Regulations. Failure to comply with the Standards of Conduct constitutes 'misconduct' for the purposes of the Act. If allegations of misconduct cannot be resolved between Councillors informally, they will be referred to the internal arbitration process, which may result in the imposition of sanctions.

3.1 Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring the Councillor:

- takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*;
- supports Council in fulfilling its obligation to achieve and promote gender equality;
- does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

3.2 Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring the Councillor:

- undertakes any training or professional development activities that Council decides it is necessary for all Councillors to undertake to effectively perform the role of a Councillor;
- diligently uses Council processes to become informed about matters which are subject to Council decisions;
- is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

3.3 Compliance with good governance measures

A Councillor, in performing the role of a Councillor, to ensure the good governance of Council, must diligently and properly comply with the following:

- any policy, practice or protocol developed and implemented by the CEO in accordance with s 46 of the Act for managing interactions between members of Council staff and Councillors;
- the Council expenses policy adopted and maintained by Council under s 41 of the Act;
- the Governance Rules developed, adopted and kept in force by Council under s 60 of the Act; and
- any directions of the Minister for Local Government issued under s 175 of the Act (governance directions).

3.4 Councillor must not discredit or mislead Council or public

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

- ensure that their behaviour does not bring discredit upon Council; and
- not deliberately mislead Council or the public about any matter related to the performance of their public duties.

3.5 Standards do not limit robust political debate

Councillors acknowledge nothing in the Standards of Conduct is intended to limit, restrict or detract from robust public debate in a democracy. So, while Councillors must always meet these Standards of Conduct, participation in vigorous debate of matters before Council for decision should not be viewed as being inconsistent with them.

4 Other Categories of Misconduct

Councillors acknowledge the Act creates two other categories of misconduct, being 'serious misconduct' and 'gross misconduct'. In the case of allegations of conduct constituting:

- 'serious misconduct', application can be made to convene a Councillor Conduct Panel to hear the allegation by a Councillor, a group of Councillors, a Council resolution or the Chief Municipal Inspector; and
- 'gross misconduct', application can be made to the Victorian Civil and Administrative Tribunal (VCAT) by the Chief Municipal Inspector.

Although allegations of conduct constituting 'serious misconduct' and 'gross misconduct' might not be addressed as a contravention of this Code, Councillors acknowledge and commit to the following with respect to:

- bullying; and
- sexual harassment,

each of which constitutes 'serious misconduct' for the purposes of the Act.

4.1 Bullying

The Act provides 'bullying' by a Councillor means:

... the Councillor repeatedly behaves unreasonably towards another Councillor or a member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff.

A Councillor who bullies another Councillor or a member of Council staff engages in 'serious misconduct' and may be the subject of an application to convene a Councillor Conduct Panel.

Councillors agree bullying is unacceptable under any circumstances and each commit to avoiding conduct which might constitute bullying, and to calling out their fellow Councillors when they exhibit conduct which might constitute bullying, whether directed at another Councillor or at a member of Council staff.

4.2 Sexual harassment

The Act provides 'sexual harassment' has the meaning given by s 92 of the *Equal Opportunity Act 2010*, which provides that:

- (1) For the purpose of this Act, a person sexually harasses another person if he or she -
 - (a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
 - (b) engages in any other unwelcome conduct of a sexual nature in relation to the other person -

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

- (2) In subsection (1) conduct of a sexual nature includes -
 - (a) subjecting a person to any act of physical intimacy;
 - (b) making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence;
 - (c) making any gesture, action or comment of a sexual nature in a person's presence.

A Councillor who engages in sexual harassment towards another Councillor or a member of Council staff engages in 'serious misconduct' and may be the subject of an application to convene a Councillor Conduct Panel.

Councillors agree sexual harassment is unacceptable under any circumstances and each commit to avoiding conduct which might constitute sexual harassment, and to calling out their fellow Councillors when they exhibit conduct which might constitute sexual harassment, whether directed at another Councillor or at a member of Council staff.

It is acknowledged that Councillors may also be subjected to sexual harassment from outside Council, for example from members of the public.

4.3 Addressing bullying and sexual harassment

A Councillor who feels they have been subjected to bullying or sexual harassment by another Councillor, a member of Council staff or a member of the public may:

- access Council's Employee Assistance Program for confidential support, with contact details available from the Councillor Conduct Officer;
- make an allegation of 'serious misconduct' by way of an application to convene a Councillor Conduct Panel in accordance with the Act, with details of that process available from the Councillor Conduct Officer; and/or
- make a complaint to an appropriate external body, such as the Local Government Inspectorate, the Victorian Equal Opportunity and Human Rights Commission and Victoria Police.

Councillors acknowledge a Councillor who feels that they have been subjected to bullying or sexual harassment by another Councillor may not be comfortable pursuing any of the informal or internal dispute resolution procedures set out in this Code. Those informal and internal dispute resolution procedures are not compulsory in the case of alleged 'serious misconduct' or 'gross misconduct' and there is no expectation that they will be followed in those circumstances.

5 Prohibited Conduct

In addition to observing the Standards of Conduct, Councillors acknowledge the Act prohibits them from engaging in certain conduct and doing so constitutes a criminal offence. This conduct relates to:

- misuse of position;
- improper direction and improper influence;
- confidential information;
- conflict of interest; and
- electoral conduct.

Councillors acknowledge while these matters are not Standards of Conduct and are not to be addressed as a contravention of this Code, they must comply with them.

In the case of non-compliance, these matters could be the subject of an application to a Councillor Conduct Panel made by the Chief Municipal Inspector, or of a complaint to the Local Government Inspectorate, the Independent Broad-based Anti-corruption Commission (IBAC) or Victoria Police, depending on the nature of the allegation.

5.1 Misuse of position

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, or attempt to cause, detriment to Council or another person.

Circumstances involving the misuse of position by a Councillor include, but are not limited to:

- making improper use of information acquired as a result of the Councillor's position (current and past);
- disclosing information that is confidential information;
- directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff;
- exercising or performing, or purporting to exercise or perform, a power, duty or function that the Councillor is not authorised to exercise or perform;
- using public funds or resources in a manner that is improper or unauthorised; and
- participating in a decision on a matter in which the Councillor has a conflict of interest.

5.2 Directing a member of Council staff

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

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

5.3 Confidential information

A Councillor must not intentionally or recklessly disclose information they know, or should reasonably know, is confidential information.

For the purposes of the Act 'confidential information' means the following information:

- Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
- security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
- land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
- law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;
- legal privileged information, being information to which legal professional privilege or client legal privilege applies;
- personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
- private commercial information, being information provided by a business, commercial or financial undertaking that:
 - relates to trade secrets; or
 - if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
- confidential meeting information, being the records of meetings closed to the public under the Act;
- internal arbitration information, being information specified in s 145 of the Act;
- Councillor Conduct Panel confidential information, being information specified in s 169 of the Act;
- information prescribed by regulations to be confidential information for the purposes of the Act; and
- information that was confidential information for the purposes of s 77 of the *Local Government Act 1989*.

A Councillor may disclose information that would be considered 'confidential information' if the information that is disclosed is information that Council has determined should be publicly available.

Otherwise, a Councillor may disclose information they know 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;
- in the course of an internal arbitration and for the purposes of the internal arbitration process;
- in the course of a Councillor Conduct Panel hearing and for the purposes of the hearing;
- to a Municipal Monitor to the extent reasonably required by the Municipal Monitor;

- to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry; and
- to the extent reasonably required for any other law enforcement purposes.

Councillors acknowledge they will have access to confidential information in many forms and it will not always be labelled as being 'confidential'. Councillors will take reasonable steps to inform themselves about the confidential nature of any Council information before discussing it outside the organisation.

5.4 Conflict of interest

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of Council or a delegated committee, a meeting of a community asset committee, or any other meeting held under the auspices of Council, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the Governance Rules (unless any of the exemptions apply).

A Councillor may have a 'general' or a 'material' conflict of interest in a matter being considered at a meeting.

A Councillor has a 'general' conflict of interest in a matter if an impartial, fair-minded person would consider that the Councillor's private interests could result in the Councillor acting in a manner that is contrary to their public duty.

For the purposes of general conflict of interest:

- 'private interests' means any direct or indirect interest of a Councillor that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief; and
- 'public duty' means the responsibilities and obligations that a Councillor has to members of the public in their role as a relevant person.

A Councillor has a 'material' conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.

The benefit may arise or the loss incurred:

- directly or indirectly; or
- in a pecuniary or non-pecuniary form.

For the purposes of a material conflict of interest, any of the following is an 'affected person':

- the Councillor;
- a family member of the Councillor;
- a body corporate of which the Councillor or their spouse or domestic partner is a Director or a member of the governing body;
- an employer of the Councillor, unless the employer is a public body;
- a business partner of the Councillor;
- a person for whom the Councillor is a consultant, contractor or agent;
- a beneficiary under a trust or an object of a discretionary trust of which the Councillor is a trustee;
- a person from whom the Councillor has received a disclosable gift (i.e. exceeding \$500 in value).

Councillors acknowledge they must be clear about their associations with parties external to Council and to avoid conflicts between those associations and their role as Councillors.

5.5 Other legislative requirements

The Act includes requirements relating to eligibility to be a Councillor, electoral conduct and the election period ('caretaker period'). 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.

Councillors acknowledge they are responsible for complying with the various provisions relating to these matters.

6 Good Governance

Nothing in this Part **Error! Reference source not found.** of the Code is intended to impose a binding Standard of Conduct on Councillors. These matters are expressed as operating in addition to the Standards of Conduct. Further, nothing in this part of the Code is intended to modify or derogate from the Standards of Conduct.

This part of the Code sets out conduct the Councillors agree will contribute to the good governance, integrity and responsible operation of Council.

6.1 Overarching Governance Principles

Councillors will support the role of Council by ensuring Council gives effect to the overarching governance principles when participating in Council's decision-making functions.

The overarching governance principles are set out in s 9(2) of the Act and are as follows:

- Council decisions are to be made and actions taken in accordance with the relevant law;
- priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
- the municipal community is to be engaged in strategic planning and strategic decision making;
- innovation and continuous improvement is to be pursued;
- collaboration with other councils and governments and statutory bodies is to be sought;
- the ongoing financial viability of Council is to be ensured;
- regional, state and national plans and policies are to be taken into account in strategic planning and decision making; and
- the transparency of Council decisions, actions and information is to be ensured.

6.2 Council decision-making

Councillors are committed to ensuring a high level of transparency in Council's decisions and Council's decision-making processes. Councillors acknowledge Council decisions cannot be made other than by resolutions made at properly constituted Council meetings following fulsome public debate in the Council Chamber. While Councillors will engage in informal discussion of matters coming before Council for decision, they acknowledge these informal discussion are not decision-making forums, and a final position on such matters cannot be reached before the Council meeting.

Councillors acknowledge the role reports prepared by members of Council staff provide professional advice which assists in informing Councillors about matters before Council for decision. Councillors will pay respect and attention to the information provided by members of Council staff to assist Council's decision-making functions.

6.3 Use of Council resources

Councillors commit to using Council resources effectively, economically and only for proper purposes connected with their role as a Councillor, consistent with relevant Council policies and procedures.

In particular, Councillors will:

- maintain adequate security over Council property, facilities and resources provided by Council to assist in performing their role;
- comply with any legislation and Council policies and procedures applying to the use of Council property, facilities and resources provided by Council to assist in performing their role;
- not use Council resources, including the services of members of Council staff, for private purposes, unless authorised to do so, and paying for those resources where required to do so; and
- not use public funds or resources in a manner that is improper or unauthorised.

6.4 Gifts and benefits

Councillors will 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 Council.

Councillors will take all reasonable steps to ensure that their immediate family members do not receive gifts or benefits that give rise to the appearance of an attempt to gain favourable treatment.

Councillors will only accept gifts that exceed the gift disclosure threshold (currently, \$500) if:

- the name and address of the person making the gift are known to them; or
- at the time when the gift is made, they reasonably believe that the name and address provided are the true name and address of the person making the gift.

Anonymous gifts that exceed the gift disclosure threshold will be disposed of to Council within thirty (30) days of receiving the gift.

Councillors will comply with the Councillor Gift Policy, once adopted, and any other policies and procedures adopted by Council from time to time relevant to the acceptance of gifts.

6.5 External communications

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

Councillors are committed to respecting the function of the Mayor as the spokesperson of Council in accordance with the Act.

Councillors undertake to comply with Council's Communication Policy and any other relevant policies, as adopted from time to time, including recognition of and respect for the:

- role of the Mayor as the principal spokesperson of Council, including in communications with the media on behalf of Council;
- role of the CEO in communicating with the media on behalf of Council with respect to matters of an operational nature; and
- practice of directing media enquiries to Council's Communications Team at first instance.

Councillors acknowledge individual Councillors are entitled to express their personal opinions through the media. In doing so, Councillors will make it clear that such comment is their personal view and does not represent the position of Council. Councillors will ensure such comments avoid being derogatory, offensive or insulting of Council, Councillors, members of Council staff, members of the community and others and are factually accurate.

6.6 Personal Dealings with Council

When Councillors deal with Council in their private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit), they will not expect or request preferential treatment in relation to any such private matter. Councillors will avoid any action that could lead members of Council staff or members of the community to believe that they are seeking preferential treatment.

6.7 Occupational Health and Safety

Councillors acknowledge meeting Council's obligations as an employer under the *Occupational Health and Safety Act 2004* by, among other things, providing a safe workplace for Councillors, members of Council staff and visitors to Council premises is essential.

Councillors are committed to working in ways that protect and promote the health and safety of Councillors, members of Council staff and visitors to Council premises and to minimise risks to them.

~~6.8 Candidature for State, Federal or Local Government elections~~

~~For the purposes of this section, and in relation to a forthcoming state or federal election or a forthcoming local government election in a municipality other than the City of Boroondara:~~

- ~~• A "Prospective Candidate" means a councillor who has applied or nominated for preselection with a registered political party.~~

- ~~A "Declared Candidate" means a Councillor who has:~~
 - ~~(a) been preselected or endorsed as the candidate of a registered political party; or~~
 - ~~(b) publicly expressed an intention to run as an independent candidate.~~
- ~~A "Nominated Candidate" means a councillor who has formally nominated as a candidate with the relevant electoral commission or Returning Officer or Election Manager.~~

~~If nominating as a candidate in an election, a Councillor who becomes a Prospective Candidate commits to:~~

- ~~1. provide written advice to the Chief Executive Officer as soon as practicable, who must then advise all councillors as soon as practicable.~~
- ~~2. take care to differentiate between their role as a Prospective Candidate and their role as a councillor when making public comment.~~
- ~~3. not using:~~
 - ~~a. Council provided resources (including equipment or facilities); or~~
 - ~~b. Council activities, (including committee meetings and Council related external activities); in relation to their candidacy.~~

~~In addition to the obligations upon a Prospective Candidate above, a Councillor who becomes a Declared Candidate must declare their intended candidacy at a meeting of the Council as soon as practicable after notifying the Chief Executive Officer.~~

~~In addition to the obligations upon a Prospective Candidate and a Declared Candidate, a Councillor who becomes a Nominated candidate commits to:~~

- ~~1. applying for a leave of absence from the Council and this leave of absence will commence no later than the date of their nomination as a candidate in the election and conclude no earlier than the close of voting for the election; and~~
- ~~2.1. not attending meetings of the Council whilst on this leave of absence.~~

6.96.8 Child Safe Standards

Councillors acknowledge the importance of protecting the safety of children in its municipal community, and encouraging their participation and empowerment. Councillors support Council's zero tolerance approach to child abuse and its adherence to the Victorian Child Safe Standards and related legislating including Failure to Disclose, Failure to Protect and Grooming offences.

Councillors will maintain the highest standards of professional conduct in attitude and behaviour towards, and in their interactions with, children and young people. As leaders, Councillors will uphold the rights and best interests of children and young people in the municipal community to the extent possible.

7 Complaints From Members of the Public

Councillors acknowledge complaints about their conduct may be made by members of the public from time to time. This Code does not, and is not intended to, provide mechanisms for the management of such complaints.

Council will give consideration to the development of such mechanisms when preparing and adopting its Complaints Policy, as required by s 107 of the Act.

8 Interpersonal Dispute Between Councillors

Councillors acknowledge interpersonal differences and disputes (as distinct from allegations of contravention of the Standards of Conduct) may arise from time to time. Councillors commit to taking reasonable steps to resolve any interpersonal difference or dispute that arises without recourse to formal processes with a view to maintaining effective working relationships.

In resolving interpersonal differences or disputes, Councillors will consider pursuing informal steps, including:

8.1 Informal discussions between councillors

Councillors will first consider discussing their interpersonal difference or dispute informally with a view to resolving it.

8.2 Facilitated discussion

If Councillors are unable to discuss their interpersonal difference or dispute informally, or their informal discussions are unsuccessful, they will consider approaching a fellow Councillor, chosen with the agreement of both Councillors, to facilitate a discussion with a view to resolving their interpersonal difference or dispute.

If the interpersonal difference or dispute cannot be resolved informally, the Councillors will consider whether any of the conduct giving rise to it constitutes a contravention of the Standards of Conduct. If they consider that it does, they may choose to pursue it as such under part **Error! Reference source not found.** of this Code.

9 Allegations of Contravention of the Code

An allegation that the Standards of Conduct have been breached by a Councillor can be made by:

- Council, by resolution;
- a Councillor; or
- a group of Councillors.

Where an allegation is made by Council or by a group of Councillors, a single Councillor must be nominated to act as the representative of Council or the group of Councillors (as the case may be) in the internal resolution process. Only that Councillor will be entitled to participate in the internal resolution process.

When an allegation of a breach of the Standards of Conduct is alleged, the Councillors who are party to the allegation undertake to use their best endeavours to resolve it in a courteous and respectful manner without recourse to formal processes under this Code or under the Act. If, after these endeavours have been exhausted, the allegation remains unresolved, either or both of the Councillors may have recourse to any or all of the internal resolution processes set out in this Code.

Councillors accept the following three-phase internal resolution process:

- Formal discussion between the Councillors, facilitated by the Mayor or, if the Mayor is involved in the allegation, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the allegation, the most recent past Mayor.
- Formal mediation between the Councillors, facilitated by a qualified mediator.
- Formal internal arbitration process.

Councillors recognise the first and second phases are voluntary and they are not obliged to agree to either of them but will endeavour to resolve allegations without resorting to the mandatory internal arbitration process.

9.1 The application

An application alleging a breach of the Standards of Conduct must:

include the:

- (a) name of the Councillor alleged to have breached the Standards of Conduct;
- (b) clause(s) of the Standards of Conduct that the Councillor is alleged to have breached;
- (c) particular misconduct, or behaviour, that the Councillor is alleged to have engaged in that resulted in the breach; and
- (d) phase of the internal resolution process being pursued by the Councillor making the allegation at the first instance; and

be submitted to the Councillor Conduct Officer for:

- (a) action, if the application seeks engagement in the first or second phase of the internal resolution process; or
- (b) referral to the Principal Councillor Conduct Registrar, if the application seeks a formal internal arbitration process.

If an application received by the Councillor Conduct Officer does not meet the requirements of this Part 9.1, the Councillor Conduct Officer will return it to the Councillor submitting it with a brief statement of the ways in which the application is deficient.

A Councillor may revise and resubmit to the Councillor Conduct Officer a deficient application, provided that the Councillor submits the revised application no later than 3 months after the alleged breach of the Standards of Conduct occurred (see s 143(3) of the Act).

9.2 Process on receiving an application

On receiving an application from a Councillor which meets the requirements of Part 9.1 of this Code and which seeks a facilitated discussion, the Councillor Conduct Officer will take the following steps:

- (a) notify Mayor or, if the Mayor is involved in the allegation, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the allegation, the most recent past Mayor (as the case may be) and the CEO (for the CEO's information only) and provide them with a copy of the application;
- (b) notify the Councillor the subject of allegation in the application and provide them with a copy of the application;
- (c) request the Councillor the subject of the application to advise whether they will participate in the facilitated discussion within 5 days of receiving the application, noting that, if no advice is received, the Councillor will be taken to have declined;
- (d) if the Councillor agrees to participate in the facilitated discussion:
 - (i) the Councillor Conduct Officer will, with the cooperation of the Councillors involved in the application and the Mayor or, if the Mayor is involved in the application, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the application, the most recent past Mayor (as the case may be), arrange a suitable time and place for the facilitated discussion, to be no later than 5 days from the date of the advice provided under paragraph (c);

- (ii) the facilitated discussion must be completed with the Mayor or, if the Mayor is involved in the application, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the application, the most recent past Mayor (as the case may be) providing a record of the outcome to the Councillors involved in the application and the CEO no later than 5 days after the discussion takes place; and
 - (iii) if the facilitated discussion is not complete within 5 days of the date nominated for it to take place, the Councillors will be taken as not having agreed to participate in a facilitated discussion, unless both Councillors agree to extend the time for completion;
- (e) if the facilitated discussion is not completed in accordance with this Part 9.2 for whatever reason, or if the facilitated discussion does not resolve the allegation the subjection of the application, the Councillor Conduct Officer will advise the:
 - (i) Councillor making the application and ask the Councillor to advise whether they wish to escalate the matter to another phase of the internal resolution process and, if so, which phase;
 - (ii) Councillor the subject of the application; and
 - (iii) CEO; and
- (f) the Councillor Conduct Officer will make arrangements to close or to escalate the application, as the case may be, according to the advice of the Councillor making the application.

9.3 Mediation

On receiving an application from a Councillor which meets the requirements of Part 9.1 of this Code and which seeks a mediation, or on escalating an application where a facilitated discussion has not been completed or has not resolved the allegation, the Councillor Conduct Officer will take the following steps:

- (a) notify the CEO and provide them with a copy of the application;
- (b) notify the Councillor the subject of allegation in the application and provide them with a copy of the application;
- (c) request the Councillor the subject of the application to advise whether they will participate in mediation within 5 days of receiving the application, noting, if no advice is received, the Councillor will be taken to have declined;
- (d) if the Councillor agrees to participate in mediation:

- (i) the CEO, or a member of Council staff nominated by the CEO for the purpose (**the CEO's nominee**), will engage a mediator, to be chosen by the CEO (or the CEO's nominee);
 - (ii) the CEO (or the CEO's nominee) will, with the cooperation of the Councillors involved in the application, arrange a suitable time and place for the mediation, to be no later than 5 business days from the date of the advice provided under paragraph (c); and
 - (iii) if the mediation is not complete within 5 business days of the date nominated for it to take place, the Councillors will be taken as not having agreed to participate in the mediation, unless both Councillors agree to extend the time for completion;
- (e) if the mediation resolves the application, the mediator will document the agreement reached by the Councillors involved and provide a copy of the agreement to both Councillors and to the CEO;
 - (f) if the mediation is not completed in accordance with this Part 9.3 for whatever reason, the CEO (or the CEO's nominee) will advise the:
 - (i) Councillor making the application and ask the Councillor to advise whether they wish to escalate the matter to another phase of the internal resolution process and, if so, which phase; and
 - (ii) Councillor the subject of the application; and
 - (g) the CEO (or the CEO's nominee) will ask the Councillor Conduct Officer to make arrangements to close or to escalate the application, according to the advice of the Councillor making the application.

9.4 Internal arbitration

A breach of the Standards of Conduct constitutes 'misconduct' for the purposes of the Act and may be referred to an arbiter for determination. The process for internal arbitration is prescribed by Part 6 of the Act and r 11 of the Regulations.

Internal arbitration may be commenced either after the first two phases of the internal resolution process prove unsuccessful in resolving the allegation, or as the first step in an application.

On receiving an application from a Councillor which meets the requirements of Part 9.1 of this Code and which seeks an internal arbitration process, or on escalating an application where a facilitated discussion and/or mediation has not been completed or has not resolved the allegation, the Councillor Conduct Officer will:

- (a) refer the application to the Principal Councillor Conduct Registrar;
- (b) notify the Councillors involved in the application of the referral;
- (c) notify the CEO of the referral (for the CEO's information only);
- (d) await advice from the Principal Councillor Conduct Registrar about the application; and
- (e) take such steps as are necessary to give effect to the Principal Councillor Conduct Registrar's advice, in accordance with any instructions received.

Councillors recognise an application for internal arbitration for an allegation of a breach of the Standards of Conduct will only be accepted by the Principal Councillor Conduct Registrar, and an arbiter will only be appointed, if the Principal Councillor Conduct Registrar is satisfied:

- (f) the application is not frivolous, vexatious, misconceived or lacking in substance; and
- (g) there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct.

It is for the Councillor or Councillors submitting an application to ensure the application meets these requirements.

If the Principal Councillor Conduct Registrar is satisfied an application for internal arbitration should be accepted, the Principal Councillor Conduct Registrar will appoint an arbiter from a panel list compiled by the Secretary to the Department of Jobs, Precincts and Regions.

In conducting an arbitration the arbiter must:

- (h) ensure the parties involved are given an opportunity to be heard;
- (i) ensure a Councillor who is a party does not have a right to representation, unless the arbiter considers representation is necessary to ensure the process is conducted fairly;
- (j) conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
- (k) ensure the hearing is not open to the public.

Additionally, in conducting an arbitration the arbiter:

- (l) may hear each party to the matter in person or solely by written or electronic means of communication;

- (m) is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit;
- (n) may at any time discontinue the hearing if the arbiter considers the:
 - (i) application is vexatious, misconceived, frivolous or lacking in substance; or
 - (ii) Councillor making the application, or representing the group of Councillors making the application, has not responded, or has responded inadequately, to a request for further information.

If, at the completion of the internal arbitration process, the arbiter determines a Councillor has breached the Standards of Conduct, the arbiter may make a finding of misconduct against the Councillor and impose any one or more of the following sanctions:

- (o) direct the Councillor to make an apology;
- (p) suspend the Councillor from the office of Councillor for a period specified by the arbiter (not exceeding one month);
- (q) direct the Councillor be removed from any position where the Councillor represents Council for a period determined by the arbiter;
- (r) direct the Councillor is removed from being the chair of a delegated committee for a period determined by the arbiter; and/or
- (s) direct a Councillor to attend or undergo training or counselling specified by the arbiter.

The arbiter must provide a written copy of the arbiter's findings and statement of reasons to:

- (t) Council;
- (u) the applicant(s) and the respondent; and
- (v) the Principal Councillor Conduct Registrar.

A copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the arbiter's findings and statement of reasons are provided. If the arbiter's decision and statement of reasons contain any confidential information, the confidential information must be redacted before it is tabled.

Councillors recognise a failure to participate in and comply with the internal arbitration process or a direction given to the Councillor by an arbiter is 'serious misconduct' for the purposes of the Act.

Allegations of 'serious misconduct' are heard by a Councillor Conduct Panel.

9.5 Responsibilities of councillors

It is the responsibility of a Councillor or the Councillors submitting an application to prepare the application, including by identifying and collating the evidence which supports it.

While members of Council staff may provide some administrative support, that support will not extend to assisting Councillors with the preparation of the substance of an application.

10 Adoption of this Code

This Code was adopted by a resolution of Council made at the Council meeting held on 22 February 2021, with a majority of at least two thirds of all Councillors voting in favour of it.

This Code may be reviewed at any time during the Council term but need not be reviewed until after the general election to be held in October 2024.

11 Accountabilities

For all queries or feedback regarding the Councillor Code of Conduct, please use the contact details for the responsible department below.

Position Title	Contact number	Contact department email
Manager Governance and Legal	9278 4470	boroondara@boroondara.vic.gov.au

12 References

12.1 Related documents

Council policies:

- Councillor and Member of a Delegated Committee Expenses Policy
- Councillor Gift Policy
- Governance Rules
- Public Transparency Policy

Victorian legislation:

- Charter of Human Rights and Responsibilities Act 2006
- Equal Opportunity Act 2010
- Independent Broad Based Anti-Corruption Commission Act 2011
- Local Government Act 1989
- Local Government Act 2020
- Occupational Health and Safety Act 2004
- Ombudsman Act 1973
- Public Administration Act 2004
- Public Interest Disclosure Act 2012
- Victorian Civil and Administration Tribunal Act 1998
- Local Government (Governance and Integrity) Regulations 2020
- Occupational Health and Safety Regulations 2017

13 Definitions

CEO Chief Executive Officer	The Chief Executive Officer of Council of the City of Boroondara
Chief Municipal Inspector	The Chief Municipal Inspector is responsible for investigating and prosecuting possible breaches and offences under the <i>Local Government Act 2020</i> , investigating allegations of Councillor misconduct, serious misconduct and gross misconduct, making an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor and making an application to the Victorian Civil and Administrative Tribunal (VCAT) for a finding of gross misconduct by a Councillor.
Conflict of Interest	A Councillor has; <ul style="list-style-type: none"> ▪ a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty. ▪ a material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.
Conduct Standards	The standards of Councillor conduct prescribed under Schedule 1 to the <i>Local Government (Governance and Integrity) Regulations 2020</i> .

Councillor	All references to 'Councillor' include the Mayor, Deputy Mayor and elected members of the Boroondara City Council except as expressly provided.
Councillor Conduct Officer	A person appointed by the Chief Executive Officer to assist Council in implementing its internal arbitration process.
Councillor Conduct Panel	A panel established under the <i>Local Government Act 2020</i> to hear applications and make findings of alleged misconduct or serious misconduct by a Councillor.
Employee	An employee of Council includes all members of staff, contractors and volunteers under the direct control or supervision of the City of Boroondara.
gross misconduct	'Gross misconduct' by a Councillor 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, including behaviour that is sexual harassment and that is of an egregious nature.
improper conduct	'Improper conduct' includes a failure to disclose a conflict of interest, a breach of confidentiality, the improper direction or influence of staff, the improper use of Council resources, or a breach of Council policy under the Code of Conduct by a Councillor.
misconduct	Misconduct by a Councillor means any breach by a Councillor of the prescribed conduct standards included in this Councillor Code of Conduct.
Principal Councillor Conduct Registrar	The Principal Councillor Conduct Registrar receives applications for the establishment of Councillor Conduct Panels under the <i>Local Government Act 2020</i> .
serious misconduct	Serious misconduct by a Councillor means: <ul style="list-style-type: none"> ▪ failure by a Councillor to comply with the Council's internal arbitration process ▪ failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147

	<ul style="list-style-type: none"> ▪ the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor. ▪ failure of a Councillor to comply with a direction of a Councillor Conduct Panel ▪ continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b) of the <i>Local Government Act 2020</i>. ▪ bullying by a Councillor of another Councillor or a member of Council staff; ▪ conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or member of Council staff. ▪ the disclosure by a Councillor of information the Councillor knows or should reasonably know, is confidential information; ▪ conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff. ▪ the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with the <i>Local Government Act 2020</i>.
The Act	All references to 'the Act' are to the <i>Local Government Act 2020</i> .

14 Version History

Councillor Code of Conduct

Adopted by Council on 13 February 2017

By signing below, I declare to my fellow Councillors and to the community I have read, understood and will abide by this Code of Conduct.

Councillor Jane Addis

Councillor Jim Parke

Councillor Susan Biggar

Councillor Felicity Sinfield

Councillor Victor Franco

Councillor Nick Stavrou

Councillor Wes Gault

Councillor Garry Thompson

Councillor Di Gillies

Councillor Cynthia Watson

Councillor Lisa Hollingsworth

Witnessed by Chief Executive Officer, Phillip Storer