

MINUTES

SPECIAL MEETING OF COUNCIL

Tuesday, 28 June 2016

Held at the
Council Conference and Reception Centre
City Hall, Little Malop Street, Geelong
commencing at 5.30p.m.

**MINUTES OF THE SPECIAL MEETING
OF THE GREATER GEELONG CITY COUNCIL
HELD AT THE COUNCIL CONFERENCE AND RECEPTION CENTRE
CITY HALL, LITTLE MALOP STREET, GEELONG
TUESDAY, 28 JUNE 2016
COMMENCING AT 5.30P.M.**

PRESENT: Dr K Alexander (Chair), L Gardner, P Dorling

Also present: K Spiller (Chief Executive Officer), D Frost (General Manager Strategy & Performance), S Sodomaco (Acting General Manager Planning and Development), W Tieppo (General Manager City Services), L Quinn (General Manager Community Life), B Luxford (General Manager Investment and Attraction), A Keen (Executive Manager People and Organisational Development), T McDonald (Manager Customer Service & Council Business)

OPENING: The Chair declared the meeting open at 5.30pm

ACKNOWLEDGEMENTS:

Council acknowledged Wadawurrung Traditional Owners of this land and all Aboriginal and Torres Strait Islander People who are part of the Greater Geelong community today.

DECLARATIONS OF CONFLICTS OF INTEREST: Nil.

1. COUNCILLOR CODE OF CONDUCT

Source:	Office of the Chief Executive Officer
CEO:	Kelvin Spiller
Index Reference:	Governance

Purpose

To gain agreement and approval from the Administrators on the Councillor Code of Conduct policy as per the *Local Government Amendment (Improved Governance) Act 2015* and the CoGG Workplace Culture Review Councillor Action Plan.

Summary

- Previous Councillors were involved in the development and refinement of the draft Councillor Code of Conduct during two workshops (8 and 22 March 2016) facilitated by Susan Halliday and Terry Bramham (Macquarie Local Government Lawyers).
- The *Local Government Amendment (Improved Governance) Act 2015* was passed by the Legislative Council in October 2015 and the sections relating to Councillor Code of Conduct came into effect March 1, 2016.
- All Victorian councils are required to adopt a Code which complies with the requirements of the *Local Government Amendment (Improved Governance) Act 2015* by 4 July 2016.

- Councils now have greater authority and responsibility to articulate expectations about values and behaviour in Councillor Codes, and in turn deal with councillor misconduct internally. The draft policy details new and improved procedures to address breaches of the Code.

L Gardner moved, P Dorling seconded -

That Council adopt the Councillor Code of Conduct.

Carried.

Background

New laws have been introduced by State Government to strengthen the governance framework of councils.

The new draft Councillor Code of Conduct takes into account the requirements of the *Local Government Amendment (Improved Governance) Act 2015*. The new Code has also been developed with consideration to the findings of the CoGG Workplace Culture Review conducted by Susan Halliday in 2015.

Discussion

The *Local Government Amendment (Improved Governance) Act 2015* is intended to improve the accountability of councillors. In particular the reforms seek to encourage improved standards of behaviour in order to strengthen council governance.

The following are the key changes arising from the *Local Government Amendment (Improved Governance) Act 2015*:

- Councillors will be required to sign up to codes of conduct
- Councils need to have procedures in place to deal with alleged breaches of these codes
- Allegations of misconduct and serious misconduct will be dealt with by independent Councillor Conduct Panels, which will have the power to suspend councillors for up to six months
- The Minister for Local Government receives new powers, including the option to recommend to the Governor in Council that a councillor be stood down from their role as councillor if:
 - the councillor has been accused of serious or gross misconduct and a panel or VCAT hearing is pending
 - the councillor's behaviour represents a threat to health and safety, is preventing council from performing its functions or is inconsistent with the role of councillor; and
 - a municipal monitor recommends the minister stand the councillor down.
- The Minister is empowered to appoint municipal monitors who can recommend that the Minister issue governance directions to councils.

The new draft Councillor Code of Conduct sets out that councillors should perform their role in accordance with articulated 'councillor conduct principles' and incorporates values and behaviours.

The code specifies the roles and responsibilities of the Mayor, Deputy Mayor, Councillors, CEO and administration staff together with the expectations of the community.

The draft Code informs Councillors about Council's positive duty obligations as mandated in the *Victorian Equal Opportunity Act 2010*.

Disputes or grievances between Councillors are covered by the new Code, and Council is aiming for a document to provide the mechanism to address situations where a member of staff or the community allege that a Councillor has contravened the Code.

Potential breaches of the Act are addressed in the draft Code including disclosure of confidential information, improper direction or influence by a Councillor of a member of staff, misuse of position by a councillor or failure to declare conflicts of interest.

The draft Code outlines the internal dispute resolution procedure for alleged contraventions and sanctions that may apply depending on the seriousness of the breach. If a councillor fails to comply with the internal resolution procedure or with a decision of Council, or repeated contravention of the Councillor conduct principles, the Council, a Councillor or a group of Councillors may make an application for a Councillor Conduct Panel to make a finding of misconduct against a Councillor.

Environmental Implications

There are no environmental implications arising from this report.

Financial Implications

There will be costs associated with responding to any disputes or grievances.

Policy/Legal/Statutory Implications

This policy addresses the new requirements of the *Local Government Amendment (Improved Governance) Act 2015*.

Alignment to City Plan

How We Do Business

Officer Direct or Indirect Interest

No officers involved in the preparation of this report have either a direct or indirect interest.

Risk Assessment

By adopting this policy, Council demonstrates legislative compliance and ensures an understanding of matters raised during the CoGG Workplace Culture Review.

Social Considerations

The adoption of this policy will provide the community with the enhanced standards of behaviour expected of Councillors as elected representatives of the municipality.

Human Rights Charter

This policy considers the key principles of human rights such as fairness, equity, transparency and accountability.

Consultation and Communication

Council has considered guidance provided by Local Government Victoria and other experts in developing this policy.

Councillor Code Of Conduct

COUNCIL POLICY

Councillor Code of Conduct	Document No:	CPL40.7
	Approval Date:	28 June 2016
	Approved By:	Council
	Review Date:	31 October 2017
Responsible Officer:	Expiry Date:	N/A
General Manager Strategy & Performance	Version No:	06
Authorising Officer:	Chief Executive Officer	

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Introduction

This Code of Conduct (**Code**) is a public declaration that Councillors of the City of Greater Geelong (**Council**) are committed to

- the principles of good governance
- ensuring appropriate conduct and ethical engagement
- discharging their responsibilities to the best of their skill and judgment
- working together in the best interests of the people within the municipality
- securing a sustainable future for our community, and
- enhancing the health, social wellbeing, economic prosperity and quality of life of the Greater Geelong community.

Within three months of being elected as a Councillor, each Councillor must make a written declaration witnessed by the Chief Executive Officer stating they will abide by this Code.

Within one month of any amendment to this Code being approved by Council, each Councillor must make a written declaration witnessed by the Chief Executive Officer stating that they will abide by the amended Code.

As far as is practicable this Code applies to members of Special Committees in the same manner as it applies to Councillors.

Councillor Conduct Principles

The *Local Government Act 1989* (**Act**) defines “Councillor conduct principles” as the principles set out in sections 76B and 76BA of the Act, which are standards of conduct that the community has a right to expect of all Councillors. These are the “primary principle of Councillor conduct” and the seven “general Councillor conduct principles”. These principles must be observed by every Councillor.

Primary principle

In performing the role of a Councillor, a Councillor must

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

General principles

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

- avoid conflicts between their public duties as a Councillor and their personal interests and obligations

- act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person
- treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other persons
- exercise reasonable care and diligence and submit themselves to the lawful scrutiny that is appropriate to their office
- endeavour to ensure that public resources are used prudently and solely in the public interest
- act lawfully and in accordance with the trust placed in them as an elected representative, and
- support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

Values and Behaviours

The Council's values are

- Integrity
- Responsibility
- Innovation
- Respect.

Councillors are required to actively model and foster the Council's values. Core to the delivery of effective and efficient community outcomes, the values reinforce the nature of Councillor conduct ensuring that it is appropriate at any point in time that there is an association or alignment with the Council.

The Council's values provide a framework for growing and sustaining a culture of trust that inspires people to achieve and extends dignity to all. The values invoke the need for Councillors to engage in the development of professional relationships with Councillor colleagues, Council staff and the community at large, ensuring appropriate boundaries and conducive courteous communication.

Values-based leadership is required of all Councillors, mindful that the standards set by Councillors inform and guide all who work for the organisation and the community at large.

Roles and Responsibilities

Councillors are able to exercise authority as members of Council after they are formally sworn in and when they meet formally as Council. All decisions are made at Council meetings or through delegations that are formally made by Council. As a group, Councillors determine and monitor Council policy, direct and control Council's affairs and allocate resources. These duties are to be progressed in an inclusive and deliberate manner that ensures comprehensive understanding and a level of knowledge that facilitates sound decision making.

It is the responsibility of Councillors to recognise and embrace the importance of appropriate and productive relationships. As part of their role Councillors will demonstrate a commitment to professional engagement that supports and maintains these relationships as they work cooperatively to achieve Council's vision in a way that ensures the organisation is not brought into disrepute.

It is the responsibility of Councillors to adopt the principles of positive duty as relevant to the mode of operation of the Council at large. Introduced as a requirement of Council under the Victorian *Equal Opportunity Act 2010*, positive duty places an onus on the Council to ensure that reasonable and proportionate measures to identify and eliminate inappropriate and unlawful workplace and work-related behaviour across all levels, are undertaken in an informed and timely way.

This positive duty places an obligation on the Council and in turn those who represent the mind and will of the Council, to be proactive and pre-emptive. It requires action that educates about, and prevents, unlawful discrimination, harassment, victimisation, vilification and bullying. There is an obligation that potential problems are identified and dealt with thoroughly and swiftly by persons in leadership roles, including Councillors.

Employing the concept of positive duty is both a group and an individual responsibility that places people first. Councillors have a positive duty to act in order that any risk of unfair treatment or harm to others is mitigated.

The Mayor

The Mayor is directly elected to represent the municipal district.

The functions of the Mayor include

- providing guidance to Councillors about what is expected of a Councillor including in relation to the statutory role of a Councillor, and the observation of the Councillor conduct principles and the Code of Conduct
- acting as the principal spokesperson for Council
- supporting good working relations between Councillors, and
- carrying out the civic and ceremonial duties of the office of Mayor.

In general terms the principle areas of responsibility of the Mayor are

- to provide leadership and represent, support and promote the businesses and people of the municipality
- to facilitate the setting of the strategic direction and goals for the municipality
- to establish and maintain inter-governmental relationships at Regional, State and Federal levels and private sector organisations
- to generate community cohesion and inclusiveness and advocate on behalf of community programs, needs and wellbeing
- to promote high standards of democratic and internal governance

- to preside efficiently, firmly and fairly over Council meetings, and
- to represent Council at key ceremonial and social occasions.

Mayoral Robe and Chain Protocol

The Mayor will decide whether to wear or not to wear the current Mayoral robe and /or chain during their term of office.

The following circumstances are when the Mayoral robe and chain can be worn

- official swearing in of the Mayor ceremony
- Citizenship ceremonies held in the municipality
- Australia Day Civic ceremonies and presentation of Order of Australia awards
- Remembrance Day memorial services
- as a representative of the Council at graduation and dedication ceremonies held by universities and education institutions
- for the purposes of official portraits to be placed at City Hall and advertising materials which signify official capacity
- on occasions when the Mayor represents or is asked to officially represent the Council as the Mayor at events, functions and delegations where the objective is to showcase the City's profile, to the credit of the Council, ensuring the enhancement of Council reputation, and
- as otherwise agreed from time to time with the Chief Executive Officer to the benefit, official promotion and credit of the Council.

The Mayoral robe and chain are not to be worn by other elected Councillors, Council staff or citizens, with the exception of the Deputy Mayor if standing in for the Mayor.

The Mayoral robe and chain will be stored in a secure location at the direction of, and as determined by, the Chief Executive Officer.

The Chief Executive Officer will be responsible for ensuring the maintenance of the Mayoral robe and chain, and for arranging the necessary delivery to, and collection from the Mayor promptly after use.

The Mayoral chain must not be left unattended when not stored in a secure Council location.

The Deputy Mayor

The role of the Deputy Mayor is to represent the Mayor in all capacities in the event of the Mayor's absence. In practice, the Deputy Mayor, being elected by all Councillors, provides a critical role in supporting the Mayor's leadership of Council. Given the demands and complexity of the role of the Mayor, the Deputy Mayor, with the agreement of the Mayor, will provide support in areas such as

- assistance with communication between Councillors and between Councillors and the Mayor
- providing leadership support to Councillors to ensure adherence with Council values and behaviours
- taking the lead on strategic Council initiatives on behalf of the Mayor
- liaising with Council's administration on behalf of Councillors to ensure organisation support meets their role requirement, and
- advising the Mayor on a broad range of Council and Councillor matters.

Media Protocol

As Councillors we will comply with Council's [Mayor and Councillors' Media Engagement Policy](#).

Training and Development

As Councillors we commit to active participation in the induction process and ongoing training and development in relation to effective governance.

Councillors

Developing and maintaining positive and productive working relationships between Councillors is integral to achieving the best outcomes for the community. It is incumbent upon each Councillor to recognise and value diversity and ensure deferential regard is shown to Councillor colleagues.

The role of a Councillor is

- to participate in the decision-making of Council
- to represent the municipality in that decision-making, and
- to contribute to the strategic direction of the Council through the development and review of key strategic documents of Council, including the Council Plan.

In performing the role of a Councillor, a Councillor must

- consider the diversity of interests and needs of the whole community
- observe principles of good governance and act with integrity
- ensure transparency and accountability
- abide by the confidentiality requirements of the Act

- provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under the Act and other Acts
- ensure the responsible allocation of the resources of Council in the annual budget
- avoid conflicts of interest
- ensure that they do not misuse their position
 - to gain or attempt to gain, directly or indirectly, an advantage for themselves or for another person
 - to cause, or attempt to cause, detriment to the Council or another person
- facilitate effective communication without bias or discrimination between Council and the community.

The role of a Councillor does not include the performance of any functions that are specified as statutory functions of the Chief Executive Officer.

In addition, Councillors will

- strive to achieve the best outcomes by working with colleagues and staff in a manner that demonstrates mutual respect and worthiness
- be honest and open with other Councillors
- recognise and respect the individual strengths of fellow Councillors, and where possible, offer encouragement and support as needed
- ensure punctual attendance at meetings
- read all appropriate documentation prior to engaging in debate and decision making
- debate contentious issues without resorting to personal acrimony or insult
- consider the best interests of the Council as a whole
- refrain from personal attacks or conduct that demeans, bullies or vilifies other Councillors, or members of the public, ensuring a focus on the issue at hand, and
- participate in any internal resolution procedure specified in the Code, in good faith.

Chief Executive Officer and Administration

The administration is accountable to Council through the Chief Executive Officer, who is responsible for the management and administration of the organisation.

The Chief Executive Officer will ensure timely provision of the Agenda for meetings for Councillors, and ensure that advice provided by Council staff, such as alternate motions, is shared with all Councillors.

Councillors will ensure interactions with members of Council staff do not, and are not perceived to, direct or influence members of Council staff in the exercise of their duties, or in their professional advice to Council.

Decisions which reject or modify Council officer recommendations must only be made for relevant and proper reasons at a formal Council or Special Committee meeting.

The relationship between Councillors and Council staff must be one of mutual co-operation and support with a clear understanding of each other's roles and responsibilities.

Councillors will

- treat Council staff with respect and dignity at all times ensuring written and verbal communication is professional, courteous, fair, constructive, honest, equitable and ethical
- avoid engaging in any form of inappropriate or intimidating behaviour, including discrimination, harassment, bullying, victimisation or vilification
- demonstrate a commitment to working co-operatively and constructively with Council staff to achieve the Council's common goals,
- refer their requests for service through the relevant General Manager or Department Manager, with the exclusion of direct support areas of the Office of the Mayor & Councillors
- understand and respect the distinction in roles of Councillors and staff, acknowledging that the Chief Executive Officer is responsible for the operations of Council and the management of staff. Councillors will not involve themselves, directly or indirectly, in any personnel matter relating to a Council officer
- acknowledge that Councillors must not in any way direct, reward, instruct or inculcate members of staff in the performance of their duties
- acknowledge that access to staff in the Office of the Mayor & Councillors shall be available in accordance with approved protocols
- refrain from using the Councillor position to improperly influence members of staff in their duties or functions, or to seek preferential treatment or gain an advantage for themselves or others
- advise the Chief Executive Officer in a timely way of any concerns relating to a Council officer who has acted in a manner contrary to a formal Council policy or decision, or the Council Staff Code of Conduct. Any discussions pertaining to the performance of a Council officer must be held privately with the Chief Executive Officer or appropriate General Manager in a constructive and objective manner, and

- refrain from publicly criticising or vilifying Council staff in a way that casts aspersions on their professional competence or credibility.

The Council Crest

The heritage themed Council Crest adopted in 2014 can be used for Council sanctioned functions and civic events where the Council has an official role. The crest can also be used on official correspondence originating from the Mayor and Councillor's office. If the Crest is accompanied by words or a bi-line, they shall read *City of Greater Geelong* or *Geelong Council*. The artwork is the property of the Council and shall not be altered.

The Community

Councillors are elected to govern the municipality as Council. On behalf of the community, Councillors are committed to representing constituents and the broader community, working together to achieve the Council's vision, common goals and associated outcomes that are in the best interests of the municipality.

Consultation, representation, fair and equitable treatment, ethical engagement, openness and accountability are the key features of the relationships that are to be established and maintained between Council and the community. Councillors will

- treat members of the community with respect and dignity at all times ensuring written and verbal communication is professional, courteous, fair, constructive, honest, equitable and ethical
- strive to understand and acknowledge diversity, including the emergence of different points of view within the community
- be available to interact, and listen actively responding to community concerns, mindful of the need to avoid promising outcomes which cannot, or may not, be delivered
- make decisions in the best interest of the community after considering all relevant interests and points of view
- be cognisant of the principles of procedural fairness prior to making statements on issues where public submissions have been invited
- encourage partnerships with the community so that mutual strengths can be utilised to achieve common goals, and
- encourage understanding, tolerance and harmony across the community, ensuring to act to discourage divisiveness among citizens of the City of Greater Geelong.

Internal Resolution Procedure

At times there will be disputes or grievances between Councillors arising from alleged contraventions of the Code. These disputes may require resolution outside the Council Chamber.

At other times a member of Council staff or a community member may allege that a Councillor has contravened the Code.

Before commencing the formal internal resolution procedure specified below, the Councillor(s), member of Council staff or community member who are parties to an alleged contravention of this Code will endeavour to resolve the matter informally in a courteous and respectful manner, recognising that the Councillor against whom the alleged contravention has been made was elected to represent the best interests of the community. The parties may seek assistance of any third party in resolving the alleged contravention.

If the alleged contravention is unable to be resolved, the following internal resolution procedure is available to a Complainant being

- any Councillor; and/or
- the member(s) of Council staff or the community member(s) who has/have made the alleged contravention of this Code against a Councillor, provided that the allegation is not frivolous, vexatious, misconceived or lacking in substance as determined by the Chief Executive Officer.

The Chief Executive Officer will maintain a complaints register, regarding complaints made against Councillors, irrespective of the complainant (e.g. community member, staff member or Councillor).

A written report (complaint) will be furnished by the Complainant to the Mayor detailing an alleged contravention(s) of the Code, and specifying the relevant provisions of the Code.

Within five working days of receipt of the complaint, the Mayor will

- provide written acknowledgment of receipt of the complaint to the Complainant
- provide a copy of the complaint to the Councillor concerned, and
- attempt to facilitate a resolution.

The Mayor may call upon the Chief Executive Officer for advice and guidance at this point in the process. The Mayor may appoint an independent expert to express an opinion in relation to the dispute.

If the matter is not able to be satisfactorily resolved, the Mayor shall appoint an arbiter nominated by the President of the Law Institute of Victoria and who is suitably independent and able to carry out the role of the arbiter fairly.

The role of the arbiter is to

- consider the complaint
- ensure that the parties to the complaint are given an opportunity to be heard by the arbiter
- explore if the complaint can be resolved between the parties without making any findings, and

- make any findings in relation to the complaint which the arbiter must give, together with written reasons for any findings, to Council and to each party to the complaint.

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

If the Mayor is involved in the complaint, the Deputy Mayor shall assume the role of the Mayor for the purposes of this part of the Code unless the Deputy Mayor is also involved in the complaint, in which case another Councillor determined by Council shall assume the role of the Mayor for the purposes of this part of the Code.

Throughout any internal resolution procedure, all parties must refrain from speaking to the media and must not disclose the nature of the dispute to any third parties.

A Councillor who is a party to a complaint must participate in good faith in the internal resolution procedure specified in this Code.

Sanctions for Contravention of Code

If, after an internal resolution procedure has been conducted, it is found that a Councillor has contravened this Code, Council may give any or all of the following written directions to the Councillor

- direct the Councillor to make an apology in a form or manner specified by Council
- direct the Councillor to not attend up to, but not exceeding, 2 meetings of Council, and
- direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by Council, the Councillor
 - be removed from any position where the Councillor represents Council
 - to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

Application to a Councillor Conduct Panel

Council, a Councillor or a group of Councillors may make an application for a Councillor Conduct Panel (**Panel**) to make a finding of **misconduct** or **serious misconduct** against a Councillor.

A Councillor Conduct Panel is a panel of 2 people selected by the Principal Councillor Conduct Registrar who is appointed by the Secretary of the Department of Environment, Land, Water and Planning.

Misconduct

Misconduct by a Councillor means

- failure by a Councillor to comply with the internal resolution procedure specified in this Code
- failure by a Councillor to comply with a written direction given by Council after a finding that the Councillor has contravened this Code, and
- repeated contravention of any of the Councillor conduct principles.

Serious misconduct

Serious misconduct by a Councillor means

- failure to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor
- failure to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give
- failure to comply with a direction of a Councillor Conduct Panel
- continued or repeated misconduct after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel
- bullying being repeated unreasonable behaviour that creates a risk to the health and safety of another Councillor or member of Council staff
- improper direction of a member of Council staff
- release of confidential information.

The Chief Municipal Inspector may make an application

- for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor
- to VCAT to make a finding of **gross misconduct** against a Councillor.

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.

If VCAT makes a finding that a Councillor has engaged in conduct that constitutes gross misconduct, it may order that the Councillor is disqualified for up to 8 years and the office of the Councillor is vacated.

Panel findings

After a Councillor Conduct Panel has conducted a hearing, the Panel may make a finding

- of misconduct or serious misconduct against a Councillor, and
- that remedial action is required, whether or not a finding of misconduct or
- serious misconduct has been made.

If a Panel makes a finding of misconduct against a Councillor, it may

- reprimand the Councillor
- direct the Councillor to make an apology in a form or manner determined by the Panel
- direct the Councillor to take leave of absence for up to 2 months, and
- direct that the Councillor is ineligible to hold the office of Mayor for up to the remainder of the Council's term.

If a Panel makes a finding of serious misconduct against a Councillor, the Councillor becomes ineligible to hold the office of Mayor for the remainder of the Council's term unless the Panel directs otherwise and the Panel may

- reprimand the Councillor
- direct the Councillor to make an apology in a form or manner determined by the Panel
- direct the Councillor to take leave of absence for up to 2 months
- suspend that Councillor from office for up to 6 months, and
- direct that the Councillor is ineligible to chair a special committee of the Council for up to the remainder of the Council's term.

If a Panel makes a finding that remedial action is required, it may direct the offending Councillor to attend mediation, training and/or counselling.

If it appears to a Panel that a Councillor has committed an offence under the Act, it must promptly notify the Chief Municipal Inspector who may commence an investigation.

Standing down of Councillor

If during a Panel proceeding for serious misconduct or a VCAT proceeding for gross misconduct, a complaint is made to the Minister alleging that the Councillor

- is creating a serious risk to the health and safety of Councillors or Council staff or
- is preventing the Council from performing its functions or
- is behaving in a manner that does not accord with the role of a Councillor – the Councillor may be temporarily stood down following an investigation and the making of an Order in Council.

Suspension of all Councillors

The Minister may recommend to the Governor in Council that all the Councillors of a Council be suspended, if the Minister is satisfied on reasonable grounds

- that there has been a serious failure to provide good government after considering what steps the Council has taken to address and remedy the difficulties underlying the failure or
- that the Council has acted unlawfully in a serious respect or
- that the Council has repeatedly and substantially failed to comply with a general Order and any special Order.

Conflict of Interest

A conflict of interest occurs when a Councillor has a direct or indirect interest, or a personal interest that is in conflict with their duty as a Councillor and has been accepted by Council. A conflict will prevent the Councillor in question from debating and voting on the related matter.

Councillors are required to proactively assess their individual circumstances and are personally responsible for determining if they have a conflict of interest in an honest, timely and transparent manner. Where necessary additional information and advice can be provided by persons authorised by the Chief Executive Officer.

Direct Conflict of Interest

If a Councillor's financial benefits, obligations or circumstances would directly change for better or worse due to a matter being decided in a particular way at Council, then the Councillor has a direct conflict of interest. This includes where the Councillor or members of the Councillor's family have a controlling interest in an entity with a direct interest in the matter before Council.

Indirect Conflict of Interest

Indirect conflicts of interest occur when a matter comes before council and

- a **close association** exists when a Councillor's family member has a **direct or indirect** interest in a matter, or a relative or household member has a **direct** interest in a matter
- Councillor has an **indirect financial interest** and is likely to gain or lose financially as a result of a financial gain or loss to someone else with a direct or indirect interest in a matter
- a Councillor has **conflicting duties** if a Councillor is a
 - manager or member of a governing body of a company (including an incorporated association which most clubs are) or body that has a direct interest in a matter

- partner, consultant, contractor, agent or employee of a person, company or body with a direct interest in a matter
- trustee for someone with a direct interest in a matter
- a Councillor receives an **applicable gift** or gifts worth \$500 or more during the last five years from people who have a direct interest in a matter (reasonable hospitality at an event or function attended in an official capacity, isn't considered an applicable gift)
- the Councillor is an **interested party**, who has initiated or is a party to, civil proceedings related to a matter that comes before Council
- there is a reasonable likelihood that the **residential amenity** in a Councillor's neighbourhood will be altered as a result of a matter.

Certain Situations where a Councillor is taken to not have a Conflict of Interest

A Councillor is taken to not have a conflict of interest if the matter only relates to

- the nomination or appointment by Council of the Councillor to a position for which the Councillor will not be remunerated
- the appointment of an acting Mayor
- a decision in relation to the payment of allowances to the Mayor or Councillors
- the adoption of a policy in relation to the reimbursement of expenses
- the adoption of a Councillor Code of Conduct
- an application to a Councillor Conduct Panel or VCAT
- an application for Ministerial exemption
- the appointment of members and Chairpersons of special committees
- a resolution that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under taxation legislation
- the conduct of a Councillor with respect to
 - an internal dispute that involves the Councillor
 - an allegation of misconduct or serious misconduct by the Councillor
- a submission provided to an electoral representation review
- a submission provided for the purposes of a subdivision review.

If a budget or revised budget to be approved by Council includes funding for a matter in respect of which a Councillor has a conflict of interest, the Councillor is taken to not have a conflict of interest for the purposes of approving the budget or revised budget if

- Council previously approved the matter and the proposed funding for the matter for inclusion in the budget or revised budget; and
- the Councillor disclosed the nature of the conflict of interest when the
- decision in respect of the matter and the proposed funding for the matter was previously considered and made.

If a Council Plan to be approved by Council includes a matter in respect of which a Councillor has a conflict of interest, the Councillor is taken to not have a conflict of interest for the purposes of approving the Council Plan if

- Council previously approved the matter for inclusion in the Council Plan, and
- the Councillor disclosed the nature of the conflict of interest when the decision in respect of the matter was previously considered and made.

If a Councillor with a conflict of interest notifies the Mayor prior to the consideration of the budget, revised budget or Council Plan of the conflict of interest, the Mayor must allow a prior motion to be put that the matter or funding be considered for inclusion in the budget, revised budget or Council Plan.

Exemptions

A Councillor does not have a conflict of interest in a matter if

- the interest is so remote or insignificant that it could not reasonably be regarded as capable of influencing the Councillor in relation to the matter
- the interest is held
 - as a resident, ratepayer or voter and does not exceed the interests generally held by other residents, ratepayers or voters or
 - in common with a large class of persons and does not exceed the interests generally held by the group of persons
- the circumstances of the interest are unknown to the Councillor and who would not reasonably be expected to know about the interest.

Conflicting Personal Interest

A Councillor can have a **conflicting personal interest** (a personal interest that is in conflict with their public duty) that is neither direct nor indirect. The Councillor should ask to be excused from the meeting before the matter is considered and voting takes place. The Councillor must detail the reasons why they should be excused. Council can consent; and must not unreasonably withhold consent. If consent is given, the personal interest is treated in the same way as a conflict of interest.

Perceived and Potential Conflicts of Interest

While there are some exceptions to conflicts of interest under the *Local Government Act*, in the interests of good governance and sound community relationships, it is essential that Councillors understand and are responsive to perceived conflicts of interest and potential conflicts of interest.

A **potential conflict of interest** is one that may arise between the Councillor's public duties and their private interests.

A **perceived conflict of interest** is where a third party (such as a community member or business owner) could reasonably form the view that a conflict exists and that the Councillor's private interests could improperly influence their actions in the immediate or longer term.

Conflict of Role

It is required of Councillors that they are cognisant of, and in turn respond appropriately to, situations where there is a **conflict of role**. This occurs when a Councillor has two or more roles, related to or under the auspice of the Council, and there is a conflict between their duties when they act in each role.

Conflict of Interest when Attending a Council Meeting

If a Councillor with a conflict of interest attends a Council meeting, the Councillor must disclose and describe the interest, including whether it is a direct, indirect or personal type.

Alternatively, the Councillor can describe the conflict, providing detail about the type of conflict, to the CEO in writing before the meeting. The Councillor then only needs to disclose the type of interest in the Council meeting immediately before the matter's considered. The Councillor must leave the Council chamber before the discussion that leads to the vote on the matter. The Councillor cannot be present for the vote, post the discussion.

All conflicts of interest must be recorded in the council meeting minutes, including the type and description of the conflict. This information can be provided verbally by the Councillor at the meeting or in writing to the Chief Executive Officer prior to the meeting, and in this circumstance the Chief Executive Officer is to read the correspondence out at the meeting.

When a conflict is disclosed to the CEO in writing, it is to be kept by the CEO in a secure place for three years after the Councillor stops holding office. The disclosure must then be destroyed.

Conflict of Interest Accountability

Councillors play a key role in ensuring the reputability of the Council and are required to diligently manage their duties and personal circumstances so as maintain professional credibility. Early identification, appropriate disclosure and timely action in relation to conflict of interest, including potential and perceived conflict of interest, is incumbent upon each individual Councillor.

If not managed appropriately, conflict of interest can bring the organisation into disrepute and undermine confidence in the Council and local government at large. While managing conflicts of interest is an important part of Council business, it is the conduct of individual Councillors that will ensure operational success and in turn protect the public interest.

Register of Interests

It is incumbent upon a Councillor to provide the CEO with accurate details of all registrable interests. This must be done within thirty days of the election or within seven days of making the oath of office of a Councillor, whichever date is later. In addition, each year after being elected, Councillors must update and submit an **ordinary return** by 9 February and 9 August. New items are to be recorded on the next ordinary return. It is unnecessary to advise of additional items outside of the dates. A Councillor is accountable for the timely submission of their relevant information and adherence to this governance obligation.

Unlawful Conduct

Under the Victorian *Equal Opportunity Act 2010* it is against the law for local governments to treat, or propose to treat, someone unfavourably because of a personal characteristic protected by law. It is also against the law to sexually harass. For example a Councillor must not discriminate against, harass or sexually harass another Councillor, Council Committee member, staff member or community member.

Local government also has responsibilities in other areas of public life covered by the *Equal Opportunity Act 2010* including employment and provision of goods and services.

Discrimination and Harassment

Direct discrimination is unfavourable treatment due to a personal characteristic protected by law. Indirect discrimination occurs when an unreasonable requirement, condition or practice is imposed resulting in disadvantage for a person or group because of a personal characteristic protected by law.

Systemic discrimination relates to behaviour and action that affects a person or group with personal characteristics protected by law, and the outcomes of the behaviour and action have become entrenched or part of the culture, and are reinforced by policies or procedures.

Harassment is a form of discrimination. It is unwelcome conduct that offends, humiliates or intimidates on the basis of a personal characteristic protected by law. Intent or motive is irrelevant – it is the nature and the impact of the behaviour that is assessed. A single incident can amount to harassment.

Sexual harassment is unwelcome behaviour of a sexual nature that offends, intimidates or humiliates. It can be physical, verbal, written or online conduct. Sexual harassment is unlawful and can also be criminal. Intent or motive is irrelevant – it is the nature and impact of the behaviour that is assessed. A single incident can amount to sexual harassment.

Personal Characteristics Protected by law in Victoria

- age
- breastfeeding
- carer and parental status
- disability (physical, sensory, intellectual disability, work-related injury, medical conditions, and mental, psychological and learning disabilities)
- employment activity
- expunged homosexual conviction
- gender identity
- industrial activity
- lawful sexual activity
- marital status
- physical features
- political belief or activity
- pregnancy (including potential pregnancy)
- race (including colour, nationality, ethnicity and ethnic origin)
- religious belief or activity

- sex
- sexual orientation
- association with someone who has one of the personal characteristics.

The *Australian Human Rights Commission Act 1986* provides guidance in relation to the inappropriate nature of discrimination on the basis of irrelevant criminal record, irrelevant medical record and social origin. These characteristics are adopted by the Council and are deemed protected personal characteristics under this Code, and shall be adhered to in the same manner as all other protected personal characteristics identified under the Victorian *Equal Opportunity Act 2010*. It is noted that under this Code 'social origin' is used by Council to refer to place of origin, place of residency and presumed social status.

Victimisation

Victimisation is subjecting, or threatening to subject, someone to reprisal or detriment because they have asserted their rights under equal opportunity law, made a complaint, helped someone else to make a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation.

Vilification

Vilification is behaviour that incites physical harm or hatred, serious contempt, revulsion or severe ridicule of a person or group because of their race or religion. It is unlawful conduct.

Bullying

Bullying is unlawful. It is repeated, unreasonable behaviour, directed towards an individual or a group of people, that creates a risk to health and safety. It includes both physical and mental risks and abuse. 'Repeated behaviour' refers to the persistent or systematic nature of the behaviour or pattern of behaviours, over a period of time. 'Unreasonable behaviour' means behaviour that a reasonable person, having regard to all the circumstances, would expect to intimidate, humiliate, undermine, frighten or threaten.

Stalking can constitute bullying. It is willful, repeated behaviour (or obsessive attention) that arouses apprehension and fear placing physical or mental health and safety at risk. Stalking involves intent and is often calculated behaviour, be it in person, or via other intrusive means such as surveillance, interfering with property, or the repeated delivery of messages, items or gifts. Stalking is unlawful conduct.

Cyber-bullying utilises technology and operates via social media sites, text messages, chat, and websites. It is willful, repeated behaviour (or obsessive attention) that humiliates, intimidates and causes anxiety and fear, placing physical or mental health and safety at risk. Abusive text messages, malicious rumours or inappropriate images posted on-line and establishing false internet profiles are examples of cyber-bullying.

Violence

Violence refers to any incident where a person is physically attacked, threatened, or subjected to significant aggression. It can be a single incident where a person is abused, or assaulted. It covers abusive and aggressive behaviours that place physical or mental health and safety at risk, including verbal threats to harm, maim or kill, physical assault, the dangerous application of force to the body or clothing of a person, holding a person against their will or attacking a person with a weapon or makeshift weapon.

Accountability in relation to Unlawful Conduct

It is incumbent upon Councillors to ensure that they do not allow, permit, aid, foster, encourage, reward, incite or instruct any form of unlawful conduct, nor in engage in a manner that condones unlawful conduct. Councillors have individual legal obligations and can be held accountable as individuals by external courts and tribunals, for conduct that compromises the rights of other Councillors, Council staff and members of the community.

CLOSE OF MEETING:

As there was no further business the meeting closed at 5.36pm. Tuesday, 28 June 2016.

Signed: _____
Dr Kathy Alexander - Chair

Date of Confirmation: _____