

16 October 2023

# Councillors Code of Conduct

## Contents

<b>1</b>	<b>Definitions</b> .....	<b>4</b>
<b>2</b>	<b>Preamble</b> .....	<b>4</b>
<b>3</b>	<b>Overarching Principles</b> .....	<b>5</b>
<b>4</b>	<b>Councillor Values</b> .....	<b>5</b>
<b>5</b>	<b>Treatment of Others</b> .....	<b>6</b>
5.1	Standard .....	6
5.2	Promoting Wellbeing in the Workplace.....	6
5.3	Fairness and equity.....	6
5.4	Harassment and discrimination .....	7
5.5	Bullying.....	7
5.6	Occupational Health and Safety.....	7
5.7	Disputes between Councillors .....	8
5.7.1	<i>Resolving Conduct Related Matters</i> .....	8
5.7.2	<i>Self Resolution (Optional)</i> .....	8
5.7.3	<i>Optional Mediation Undertaken by an External Mediator</i> .....	10
5.7.4	<i>Internal Arbitration Process</i> .....	11
5.7.5	<i>Councillor Conduct Panel</i> .....	13
5.7.6	<i>The Victorian Civil and Administrative Tribunal (VCAT)</i> .....	14
5.7.7	<i>Handling and Use of Confidential and Personal Information</i> .....	14
5.8	Councillor Relationships with Council Staff .....	15
5.9	Binding Caucus Votes.....	16
5.10	Obligations in Relation to Meetings.....	16
5.11	Disputes between Councillors and Council Staff .....	17
5.12	Disputes between Members of the Public and Councillors .....	17
5.13	Access to Council Buildings .....	17
<b>6</b>	<b>The Council and performing the role of the Councillor</b> .....	<b>17</b>
6.1	Standard .....	17
6.2	The Council's role .....	18
<b>7</b>	<b>Roles and Responsibilities</b> .....	<b>18</b>
7.1	The Role of the Mayor .....	18
7.2	The Role of the Councillor.....	19
7.3	The Role of the Chief Executive Officer (CEO) .....	20
7.4	The Role of Councillor Conduct Officer .....	21

<b>8</b>	<b>Councillor Misconduct</b> .....	<b>21</b>
8.1	Misconduct .....	21
	8.1.1 <i>Serious Misconduct</i> .....	21
	8.1.2 <i>Gross Misconduct</i> .....	22
<b>9</b>	<b>Compliance with Good Governance Principles</b> .....	<b>22</b>
9.1	Standard.....	22
9.2	Elections.....	22
9.3	Planning and Lobbying .....	22
9.4	Social Media .....	22
<b>10</b>	<b>Reputation of the Council</b> .....	<b>23</b>
10.1	Standard.....	23
10.2	Conflict of Interest.....	23
10.3	Significant and/or Intimate Relationships .....	24
10.4	Gifts and Hospitality.....	24
10.5	Reporting Fraud and Corruption.....	24
10.6	Use of Council Resources.....	24

## 1 DEFINITIONS

AB	Arbitrator
CCO	Councillor Conduct Officer
CCP	Councillor Conduct Panel
CEO	Chief Executive Officer
CMI	Chief Municipal Inspector
Code	This Councillor Code of Conduct
IBAC	Independent Broad-based anticorruption Commission
LGA	Local Government Act
LGI	Local Government Inspectorate
ME	Mediator
MAV	Municipal Association Victoria
Officer	A member of Council staff
OHS Act	<i>Occupational Health and Safety Act 2004</i>
PCCR	Principal Councillor Conduct Registrar
Standards of Conduct	The standards of conduct prescribed by the Regulations
Regulations	<i>Local Government (Governance and Integrity) Regulations 2020</i>
VCAT	Victoria Civic and Administrative Tribunal

## 2 PREAMBLE

The *Local Government Act 2020* requires that a Council must have adopted a Councillors Code of Conduct. The purpose of the Code is to specify the standards of conduct and behaviour expected from Councillors in performing their duties and functions including prohibiting discrimination, harassment and vilification<sup>1</sup>.

It is important that as a Councillor you must commit to the required standards of the Code of Conduct which are laid down in the *Local Government (Governance and Integrity) Regulation 2020* and the four standards are outlined in this document.

A Code of Conduct whilst a statutory requirement is seen as good governance that provides clear direction of the expectations of elected members and supplements the training provided as part of the Councillor Induction programme.

The Officers of Council are not empowered to discipline or admonish Councillors where a breach of this Code or any regulatory framework may have been violated. Officers may however report any complaints directly to the Local Government Inspectorate (LGI) or Independent Broad-based Anticorruption Commission (IBAC) for investigation.

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<sup>1</sup> S 139 *Local Government Act 2020*.

### 3 OVERARCHING PRINCIPLES

- a. The Council is required in the performance of its role to observe the following overarching governance principles<sup>2</sup>. These requirements should be front of mind in fulfilling the role of both Councillors and the Council.
- i. *Council decisions are to be made and actions taken in accordance with the relevant law;*
  - ii. *priority is to be given to achieving the best outcomes for the municipal community, including future generations;*
  - iii. *the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;*
  - iv. *the municipal community is to be engaged in strategic planning and strategic decision making;*
  - v. *innovation and continuous improvement is to be pursued;*
  - vi. *collaboration with other Councils and Governments and statutory bodies is to be sought;*
  - vii. *the ongoing financial viability of the Council is to be ensured;*
  - viii. *regional, state and national plans and policies are to be taken into account in strategic planning and decision making;*
  - ix. *the transparency of Council decisions, actions and information is to be ensured.*

### 4 COUNCILLOR VALUES

As a result of a workshop the following have been adopted as the shared values and behaviours expected of City of Stonnington councillors for the current electoral term.

- Integrity
- Courage
- Accountability
- Respect
- Excellence

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<sup>2</sup> S 45 Local Government Act 2020.

## 5 TREATMENT OF OTHERS

### 5.1 Standard

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 that the Councillor:

- (a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010* ; and
- (b) supports the Council in fulfilling its obligation to achieve and promote gender equality; and
- (c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- (d) 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; and
- (e) ensures that all public comments are factually correct, non-defamatory and are evidenced based; and
- (f) does not engage in any behavior which reflects poorly on the Councillor or brings the Council into disrepute.

### 5.2 Promoting Wellbeing in the Workplace

Stonnington prides itself on having a culture that embraces and encourages diversity and inclusion. This diversity is reflected in our workforce and the backgrounds of our elected members.

Diversity encompasses differences in our work background, experience, education, age, gender, race, national origin, ethnicity, disability, religious belief, sexual orientation, gender identity, and other real and perceived differences.

An inclusive culture is one where everyone feels valued, respected and willing to contribute their talents and perspectives. Inclusion occurs when everyone can fully participate in the workplace and have equal access to opportunities.

Our commitment to diversity and inclusion also helps us to provide a more innovative, responsive and customer focused organisation.

There is a responsibility for Councillors to support and promote diversity, equality and the elimination of discrimination in the Council workplace. A range of workplace policies have been implemented at Council and legislative requirements support these ideals.

### 5.3 Fairness and equity

Councillors must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures and in a non-discriminatory manner. Know the relevant facts that you should be reasonably aware in assessing the particular merits of each case. Do not take irrelevant matters or circumstances into consideration when making decisions.

## **5.4 Harassment and discrimination**

As a Councillor you must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of age, disability, race (including colour, national or ethnic origin or immigrant status), sex, pregnancy, marital or relationship status, family responsibilities or breastfeeding, sexual orientation, gender identity or intersex status or political, religious or other affiliation.

For the purposes of this code, “harassment” is any form of behaviour towards a person that:

- is not wanted by the person
- offends, humiliates or intimidates the person, and
- creates a hostile environment.

## **5.5 Bullying**

Councillors must not engage in bullying behaviour towards others.

For the purposes of this code, “bullying behaviour” is any behaviour in which:

- a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons, and
- the behaviour creates a risk to health and safety.

Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:

- aggressive, threatening or intimidating conduct
- belittling or humiliating comments
- spreading malicious rumours
- teasing, practical jokes or ‘initiation ceremonies’
- displaying offensive material
- pressure to behave in an inappropriate manner.

## **5.6 Occupational Health and Safety**

Whilst Councillors are elected officials not employees of the Council, you have a statutory responsibility and duties under the Occupational Health and Safety Act 2004 (OHS Act). You must comply with your duties under the OHS Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety.

Specifically, you must:

- take reasonable care for your own health and safety
- take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
- comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the OHS Act and any policies or procedures adopted by the council to ensure workplace health and safety

- cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to council staff
- report accidents, incidents, near misses, to the CEO or such other staff member nominated by the CEO, and take part in any incident investigations
- so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the OHS Act in relation to the same matter.

## **5.7 Disputes between Councillors**

### *5.7.1 Resolving Conduct Related Matters*

At times there may be disputes between Councillors that extend beyond political differences or differences of opinion and may lead to an application being made to commence the dispute resolution processes in this Code.

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute will use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. After all attempts have been exhausted, and the matter remains unresolved, the parties may resort to any or all of the available dispute resolution processes, set out in this Code.

That said, Councillors acknowledge that not all disputes will be suitable for resolution without resort to formal processes. For example, 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 dispute resolution processes set out in this Code. Those informal dispute resolution processes are not compulsory in the case of alleged bullying or sexual harassment and, while Councillors are generally encouraged to resolve disputes informally, there is no expectation that they will do so in those circumstances.

A Councillor who feels that they have been subjected to bullying or sexual harassment by another Councillor may, instead of, or as well as, following the dispute resolution processes set out in this Code:

- 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 CCO; 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.

### *5.7.2 Self Resolution (Optional)*

Under this Code, conduct related matters should, in the first instance be, addressed internally and usually are:

- an interpersonal conflict between Councillors, where the conflict is or is likely to affect the operations of Council; or
- an alleged contravention of the Standards of Conduct or other parts of this Code.



Either or both Councillors may request the Mayor to convene a meeting of the parties.

The Councillor requesting the self-resolution meeting (**Applicant**) will make a written request to the Mayor, with a copy to the CCO, advising of the name of the other Councillor(s) (**Respondent(s)**) and the written details of the dispute. The written request must:

- specify the name of the other Councillor(s)
- an outline of the interpersonal conflict or alleged contravention of the Code;
- specify the provisions of the Code that allegedly have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the request has been made by a group of Councillors; and
- it must be signed and dated.

The Mayor is to contact the Respondent(s) within five working days of receiving the request from the Application to ascertain whether or not the Respondent(s) is prepared to attend the meeting.

The Respondent(s) is required to advise the Mayor within five days if they are prepared to attend the meeting and the Mayor shall advise the Applicant immediately of such advice. No further action is required of the Mayor. Declining to participate in a meeting does not constitute a contravention of this Code and the Applicant may consider whether to escalate the request to a later stage in the dispute resolution process. If the Respondent(s) fails to inform the Mayor whether they are prepared to attend the meeting within five working days of the Mayor's communication, they will be taken to have declined.

If the Respondent(s) consents to the meeting, the Mayor will convene the meeting as soon as possible, which should be within five working days of receiving consent to the meeting.

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

The Mayor will document any resolution to the matter reached at the meeting. Copies of the resolution are to be provided to all parties and the CCO. If a resolution cannot be reached at the meeting, the Applicant may consider whether to escalate the request to a later stage in the dispute resolution process.

Where the parties reach a resolution to the matter, the document containing the basis of that resolution is to be signed by the parties and witnessed by the Mayor.

If the parties cannot resolve the dispute at the meeting a further meeting may be convened with the consent of all concerned. If the dispute remains unresolved, the Applicant may consider whether to escalate the request to a later stage in the dispute resolution process.

Where the Mayor is a party to the dispute the application is to be made:

- a) in the first instance, to the Deputy Mayor (if the Deputy Mayor is not a party to the dispute); or
- b) in the event that (a) is not possible, the immediate past Mayor (if the immediate past Mayor is not a party to the dispute).

The person so appointed will perform the functions as outlined as if he or she was the Mayor.

### 5.7.3 *Optional Mediation Undertaken by an External Mediator*

This process is discretionary and a further means to resolve conflicts between Councillors. It is a process coordinated by the Council whereas a process for "internal arbitration" is mandated in the Local Government Act 2020.

A Councillor or a group of Councillors may make an application for a dispute to the CCO to be dealt with under Optional Mediation for similar reasons to those outlined under optional self-resolution, whether or not the dispute has been the subject to self-resolution process.

The Councillor making the request for Optional Mediation (**Applicant**) is to submit a written application to the CCO setting out the name of the Councillor(s) who is the subject of the allegation (**Respondent(s)**) and the details of the dispute. The application is to indicate that the dispute/issue is to be referred for Optional Mediation. The application must:

- specify the name of the Respondent(s);
- outline the alleged contravention(s) of the Code;
- specify the provisions of the Code that allegedly have been contravened;
- include evidence in support of the allegation(s);
- name the Councillor appointed to be their representative, where the request has been made by a group of Councillors; and
- be signed and dated.

A copy of the request and details is to be provided to all Councillor(s) at the same time as it is submitted to the CCO.

The CCO is to ascertain (in writing) whether or not the other Councillor(s) is prepared to attend the optional mediation and if they decline to participate, the Councillor must advise the CCO in writing of the reasons for doing so. These reasons may be taken into account if the matter is subsequently the subject of an application to the Councillor Conduct Panel<sup>3</sup>. Declining to participate in an external mediation does not constitute a contravention of this Code.

If the Respondent(s) agree to Optional Mediation, the CCO will advise the applicant, the Mayor and the CEO immediately. The CEO will then arrange for an independent, external mediator to be appointed by either the Chief Executive of the MAV or the Institute of Arbitrators and Mediators Australia.

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<sup>3</sup> S 154 Local Government Act 2020.

The mediator will facilitate the Optional Mediation as soon as practicable after their appointment. The mediation will occur within 20 working days after their engagement, unless otherwise agreed by the parties. The mediator will document any agreement reached. Copies of the agreement are to be provided to all parties, the Mayor and the CCO.

If the parties cannot agree to an outcome, the Applicant may consider whether to escalate the matter to internal arbitration, if the dispute relates to an alleged contravention of the Standards of Conduct.

#### 5.7.4 *Internal Arbitration Process*<sup>4</sup>

This is a process prescribed by the Act whereby an application can be made for an independent arbiter to investigate alleged misconduct (i.e. a breach of one or more of the Standards of Conduct) by a Councillor(s). An application may be made by:

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

An application for Internal Arbitration must:

- specify the name of the Councillor(s) alleged to have breached the Standards of Conduct (**Respondent(s)**);
- specify the clause(s) of the Standards of Conduct that the Respondent(s) is alleged to have breached;
- specify the misconduct that the Respondent(s) is alleged to have engaged in that resulted in the breach;
- include evidence in support of the allegation(s);
- name the Councillor appointed to be their representative, where the request has been made by a group of Councillors; and
- be signed and dated.

When a compliant application is submitted to the CCO, the CCO will:

- refer the application to the PCCR for assessment;
- provide a copy of the application to the Respondent(s);
- notify the Applicant and the Respondent(s) of the referral;
- notify the Mayor and the CEO (for their information only);
- await advice from the PCCR about the application; and

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<sup>4</sup> S 141 Local Government Act 2020.

- take such steps as are necessary to give effect to the PCCR’s advice, in accordance with any instructions received.

Councillors recognise that an application for Internal Arbitration for an alleged breach of the Standards of Conduct will only be accepted by the PCCR, and an independent arbiter will only be appointed, if the PCCR is satisfied that:

- the application is not frivolous, vexatious, misconceived or lacking in substance; and
- there is sufficient evidence to support an allegation of a breach of the Standards of Conduct.

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

If the PCCR is satisfied that an application for Internal Arbitration should be accepted, the PCCR will appoint an independent arbiter from a panel list maintained by the Secretary to the Department of Jobs, Precincts and Regions<sup>5</sup>.

The independent arbiter will conduct the Internal Arbitration process in accordance with legal requirements<sup>6</sup> and must:

- ensure that the parties involved are given an opportunity to be heard;
- ensure that a Councillor who is a party does not have a right to representation, unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly;
- ensure that the hearing is not open to the public.

Additionally, in conducting an Internal Arbitration, the independent arbiter:

- may hear each party to the matter in person or solely by written or electronic means of communication;
- is not bound by the rules of evidence and may be informed in any manner the independent arbiter sees fit; and
- may at any time discontinue the hearing if the independent arbiter considers that the:
  - application is vexatious, misconceived or lacking in substance; or
  - 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.

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<sup>5</sup> S 143 Local Government Act 2020.

<sup>6</sup> Reg 11 Local Government (Governance & integrity) Regulation 2020

If it is determined, at the conclusion of the Internal Arbitration process, that the Respondent(s) has failed to comply with the Standards of Conduct, the arbiter may make a finding of misconduct against the Respondent(s) and can do one or more of the following<sup>7</sup>—

- direct the Respondent(s) to make an apology in a form or manner specified by the independent arbiter;
- suspend the Respondent(s) from the office of Councillor for a period specified by the independent arbiter not exceeding one month;
- direct that the Respondent(s) be removed from any position where the Respondent(s) represents Council for the period determined by the independent arbiter;
- direct that the Respondent(s) is removed from being the chair of a delegated committee for the period determined by the independent arbiter;
- direct the Respondent(s) to attend or undergo training or counselling specified by the independent arbiter.

The independent arbiter must provide a written copy of their decision and statement of reasons to:

- Council;
- the Applicant(s);
- the Respondent(s); and
- the PCCR.

A copy of that decision and those reasons must be tabled at the next Ordinary Council meeting after they have been received and recorded in the minutes of that Ordinary Council meeting (provided that any confidential information must first redacted from the decision and reasons).

The independent arbiter, at any time during the Internal Arbitration process, must refer a matter of serious misconduct to the PCCR for action.

A Councillor who does not participate in the Internal Arbitration process may be guilty of serious misconduct.

#### 5.7.5 *Councillor Conduct Panel*<sup>8</sup>

An allegation of serious misconduct by a Councillor(s) can be the subject of an application to the PCCR to convene a (CCP). An application must be made within 12 months of the

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<sup>7</sup> S 147 Local Government Act 2020.

<sup>8</sup> Part 5 Division 7 Local Government Act 2020.

alleged serious misconduct occurring, and details of the application process can be obtained from the CCO.

On making a finding of serious misconduct, the CCP can impose a range of sanctions, including:

- directing that the Respondent(s) make an apology in a form or manner specified by the CCP; and
- suspending the Respondent(s) from office for a period not exceeding 12 months.

A Councillor who is subject to a finding of serious misconduct is automatically disqualified from holding the office of Mayor for the remainder of their term.

#### *5.7.6 The Victorian Civil and Administrative Tribunal (VCAT).*

A person who is affected by the decision made by a CCP may apply to VCAT for a review of the decision. In addition, VCAT may hear an application made by the CMI that alleges gross misconduct by a Councillor.

VCAT may order that the Councillor is disqualified for a period up to eight years; and the office of the Councillor is vacated, in which case the Victorian Electoral Commission conducts an electronic countback of votes from the previous election to fill the vacancy.

#### *5.7.7 Handling and Use of Confidential and Personal Information*

Councillors must maintain the integrity and security of confidential information in their possession, or for which they are responsible. It is expected that all Councillors will be prudent in the use of information acquired in their role as a Councillor.

In addition the general obligations relating to the use of council information, Councillors must:

- only access confidential information that they are authorised to access and only do so for the purposes of exercising official functions.
- protect confidential information.
- only release confidential information if there is authority to do so.
- only use confidential information for the purpose for which it is intended to be used.
- not use confidential information gained through their official position for the purpose of securing a private benefit for themselves or for any other person.
- not use confidential information with the intention to cause harm or detriment to the Council or any other person or body.
- Respect Council's policies in relation to public comments and communications with the media and the persons authorised to speak on Council's behalf.
- not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

When dealing with personal information Councillors must comply with the Privacy and Data Protection Act 2014 and Council's privacy obligations. This includes the release of personal details about individuals including, name, address, family details, phone numbers, email address and other more sensitive information including racial or ethnic origin, political memberships and opinions, religious beliefs or affiliations, philosophical beliefs, professional , trade or union memberships; sexual preferences or practices; or a criminal record.

### **5.8 Councillor Relationships with Council Staff**

The role of the Council is defined in the *Local Government Act 2020* and the good governance principles.

Council's role includes the development and endorsement of the strategic plans, programs, strategies and policies of the Council and to keep the performance of the Council under review.

The CEO is responsible for the day-to-day management of the Council in accordance with the Council Plan and other strategies, plans, programs, and policies of the Council and will facilitate implementation without undue delay Council decisions The CEO shall ensure that the Mayor and Councillors are given timely information and advice and will arrange administrative and professional support necessary to effectively discharge their official functions.

The two roles are distinctly different, mutually exclusive and to achieve the best results all parties must work together as a team and mutually respect each other's role.

Councillors must:

- acknowledge that the CEO, in accordance with the Act, is responsible for staff and the administrative management of the Council;
- acknowledge that they are not responsible for implementing Council actions;
- not direct Council staff<sup>9</sup> other than by giving appropriate direction to the CEO (or the CEO's delegate).
- not contact a member of the staff of the Council on Council-related business unless in accordance with the policy and procedures governing the interaction of Councillors and Council staff.
- not contact or issue instructions to any of the Council's contractors, including the Council's legal advisers.
- refrain from using their position to improperly influence members of staff in their duties or functions to gain advantage for themselves or others;

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<sup>9</sup> S 124 *Local Government Act 2020*

- respect the role of Council officers and staff and treat them in a way that engenders mutual respect at all times;
- acknowledge the professional obligation officers have to give advice based on their knowledge and experience and to write reports and recommendations in a professional, objective and unbiased way;
- act with courtesy towards Council staff and avoid intimidatory behaviour; and
- refrain from publicly criticising Council Officers in a way that casts aspersions on their professional competency or credibility. Councillors should advise the CEO in a timely manner of any concerns that they may have with any Council officer.

Similarly, Council staff members must:

- give their attention to the business of the Council while on duty;
- ensure that their work is carried out ethically, efficiently, economically and effectively;
- carry out reasonable and lawful directions given by any person having authority to give such directions;
- give effect to the lawful decisions, policies and procedures of the Council, whether or not the staff member agrees with or approves of them;
- ensure that any participation in political activities outside the service of the Council does not interfere with the performance of their official duties.

## **5.9 Binding Caucus Votes**

A binding caucus vote is a process whereby a group of Councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the Council or committee, irrespective of the personal views of individual members of the group on the merits of the matter before the Council or committee.

Councillors must not participate in binding caucus votes in relation to matters to be considered at a Council or committee meeting.

Nevertheless, Councillors are not prohibited from discussing a matter before the Council or committee prior to considering the matter in question at a Council or committee meeting, or from voluntarily holding a shared view with other councillors on the merits of a matter.

These provisions do not apply to a decision to elect the Mayor or Deputy Mayor, or to nominate a person to be a member of a Council Committee or a representative of the Council on an external body.

## **5.10 Obligations in Relation to Meetings**

Councillors must comply with rulings by the Chair at Council and committee meetings or other proceedings of the Council unless a motion dissenting from the ruling is passed.

Councillors must not engage in bullying behaviour towards the Chair, other Council officials or any members of the public present during Council or committee meetings or other proceedings of the Council (such as, but not limited to, workshops and briefing sessions).



In addition, Councillors must not engage in conduct that disrupts Council or committee meetings or other proceedings of the Council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.

Councillors must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the Council, or of a committee of the Council. Without limiting this clause, they must not:

- leave a meeting of the Council or a committee for the purposes of depriving the meeting of a quorum, or
- submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another Councillor from submitting a rescission motion with respect to the same decision, or
- deliberately seek to impede the consideration of business at a meeting.

#### **5.11 Disputes between Councillors and Council Staff**

At times Councillors and staff members may have disagreements or disputes. Any such issues shall be addressed in accordance with a Councillor and Staff Interaction Protocol developed in accordance with S 46(3)(c) of the *Local Government Act 2020*.

#### **5.12 Disputes between Members of the Public and Councillors**

Members of the public at times may make a complaint against a Councillor. Any such complaint shall be dealt with in accordance with the City of Stonnington's *Complaints Handling Policy* and a *Customer Service Charter*.

#### **5.13 Access to Council Buildings**

Councillors may only enter the areas designated above and should not access operational areas with the exception of egress or access to bathroom facilities.

## **6 THE COUNCIL AND PERFORMING THE ROLE OF THE COUNCILLOR**

### **6.1 Standard**

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

- a) undertake any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor;
- b) diligently use Council processes to become informed about matters which are subject to Council decisions;
- c) is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- d) 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.

## **6.2 The Council's role**

The Council is the elected governance body for the City. It must provide good governance for the benefit and wellbeing of its residents. Councillors comprise the Council, which oversees the service provided to the Community and represents the community on issues of concern.

Guidance in this role is provided by the good governance principles now included in the *Local Government Act 2020*.

Namely that 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 the 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.

The Act also provides further guidance with principles outlined for community engagement, public transparency, strategic planning, financial management and service performance.

## **7 ROLES AND RESPONSIBILITIES**

### **7.1 The Role of the Mayor**

The Mayor, as the lead Councillor is considered to be “the voice of the Council” and a leader within the local community. It is a demanding role with extra workload and civic responsibilities additional to the role of a Councillor.

The Mayor is elected by their fellow Councillors for a one or two year term pending a Council decision at the first meeting after the general election. This is usually held in November. The procedure is outlined in the Governance Rules

The Mayor is “first among equals” and he or she has the same role and responsibilities as other Councillors but has additional responsibilities that reflect their leadership role.

The Local Government Act 2020 provides that the role of the Mayor is to:

- chair Council meetings
- be the principal spokesperson for the Council

- lead engagement with the municipal community on the development of the Council Plan
- report to the municipal community, at least annually, 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 the Council.

There is a significant advocacy role assumed by the Mayor on behalf of the local community.

## **7.2 The Role of the Councillor**

Being a councillor is one of the most rewarding forms of public service. As a democratically elected local representative, their role is a unique and privileged position which has the potential to make a real difference to people's lives and the community.

Being a good Councillor is demanding and an expectation exists to balance the needs and interests of the local area and residents, community groups, local businesses and the Council. Legitimate demands will be made for time in addition to the existing commitments to family, friends and career.

Councillors will have many different roles to balance. First and foremost, a Councillor will represent their ward, engaging with residents and groups of on a wide range of different issues and taking on an important community leadership role.

At the Council, they will contribute to the development of policies and strategies, including its budget setting and may be involved in reviewing staff recommendations or making decisions on planning matters. Councillors provide a bridge between the community and the Council.

As a Councillor they are responsible for making fair and just decisions in the best interests of all residents and the wider Stonnington community.

The *Local Government Act 2020* requires all Councillors to fulfil the expectation of their role and are required to:

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

In performing your role as a Councillor, Councillors must:

- consider the diversity of interests and needs of the municipal community;

- support the role of the 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.

### **7.3 The Role of the Chief Executive Officer (CEO)**

The CEO is the most senior employee of a Council and is the only member of staff selected and appointed by Councillors and the only officer to which Councillors may give a direction. This is a key position and vital to the success of the Council.

The CEO's role is to implement Council decisions without undue delay and carry out functions imposed by legislation. The Council's monitors the implementation of its decisions via reports by CEO to Council.

Under the Act, the CEO has responsibility for following functions:

- 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 the decisions of the Council are implemented without undue delay;
- ensuring that the Council receives timely and reliable advice;
- setting the agenda for Council meetings after consulting the Mayor;
- when requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;
- carrying out the Council's responsibilities with respect to the *Workplace Injury Rehabilitation and Compensation Act 2013*;
- establishing and maintaining an organisational structure for the Council;
- being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff; and
- managing interactions between staff and Councillors and ensuring that policies, practices and protocols that support arrangements such are developed and implemented.

Strategy development is a requirement of the role and the CEO must deliver the Council Plan, a Workforce Plan, annual financial plans and other strategies determined by the Council and by the Local Government Act 2020.

The CEO can delegate to staff specific functions that have been approved by the Council for delegation. This is important to provide direction of staff responsibilities and provide operational boundaries.

The CEO is a contract appointment determined in accordance with the Council's Chief Executive Officer Employment and Remuneration Policy which covers recruitment,

employment conditions and remuneration, a process for performance monitoring and an annual review.

#### **7.4 The Role of Councillor Conduct Officer.**

The CEO can appoint a member of staff as the Councillor Conduct Officer<sup>10</sup> (CCO) who will co-ordinate any request for internal arbitration in accordance with Clause 5.7.4.

For the City of Stonnington, the Chief People Officer has been appointed to this role.

### **8 COUNCILLOR MISCONDUCT**

There are three levels categorised by degree of severity; misconduct, serious misconduct and gross misconduct.

Allegations determined by level of transgression.

#### **8.1 Misconduct**

- Types – abuse, inappropriate behaviour and predominantly Code of Conduct breaches.
- Internal Arbitration process exists for reporting and considering breach of the standards of conduct.
- Complaint can be lodged by Council, a Councillor or group of Councillors.
- Independent arbiter appointed to consider reported breaches and make findings.
- Sanctions can be ordered including an apology, suspension or removal from office.

##### **8.1.1 *Serious Misconduct***

- Types – bullying, failure to comply with arbiters sanction, conflict of interest, sexual harassment etc.
- CEO to appoint a Councillor Conduct Officer to assist with these matters.
- Complaint can be lodged by Council, a Councillor or group of Councillors or Chief Municipal Inspector (CMI)
- Councillor Conduct Panel appointed and conducts a hearing to consider serious misconduct complaints.
- May make findings of misconduct or serious misconduct and suggest remedial actions.
- Serious misconduct could lead to suspension or dismissal as a Councillor.

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<sup>10</sup> S 150 Local Government Act 2020.

- Some offences to be notified to CMI and there are appeal provisions to VCAT.

### 8.1.2 *Gross Misconduct*

- Types – not of good character and not fit to hold office.
- CMI can refer matters considered gross misconduct to VCAT for determination.

## 9 COMPLIANCE WITH GOOD GOVERNANCE PRINCIPLES

### 9.1 Standard

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

- a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;
- b) the Council Expenses Policy adopted and maintained by the Council under section 41 of the Act;
- c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act; and
- d) any directions of the Minister issued under section 175 of the Act.

### 9.2 Elections

Elections conducted by the City of Stonnington are shall be conducted fairly and democratically and in accordance with the highest standards of governance, the *Local Government Act 2020* and the *Electoral Act 2002*. A sitting Councillor during any election period is obliged to abide by the requirements of the applicable legislation and the Council Election Period Policy (which forms part of the Council's adopted Governance Rules) and, whether or not standing for re-election, will at all times act respectfully towards all candidates for the election.

Councillors that nominate as candidates in Federal or State Elections shall not use their position as a Stonnington Councillor to further their campaign for election to another level of Government.

### 9.3 Planning and Lobbying

The Council has adopted a 'developer contact register' and guidelines which outlines ethical and transparent interactions with developers, submitters and lobbyists. Mandatory reporting for Councillors is required.

### 9.4 Social Media

Social media is part of society's fabric and an integral part of our daily lives. Councillors can have personal or public office social media accounts but must operate such accounts and any posts or comments that are made in a respectful and appropriate way that accords with this Code of Conduct.

Transparency is a fundamental cornerstone of the Local Government Act 2020 reforms and accordingly Councillors must not at any time use any non-official letterhead, crests, email or social media or other information that mimics Councils format or could give the appearance that it is official Council material:

Councillors must not use social media to host, post or share comments, photos, videos, electronic recordings or other information that:

- a) is offensive, humiliating, threatening or intimidating to other Council officials or those who deal with the Council;
- b) contains content about the Council that is misleading or deceptive;
- c) divulges confidential Council information;
- d) breaches the privacy of other Council officials or those who deal with Council;
- e) contains allegations of suspected breaches of this code or information about the consideration of a matter under the Procedures, or
- f) could be perceived to be an official comment on behalf of the Council where you have not been authorised to make such comment.

Whilst Council is in the Caretaker Period prior to a Council election, Council social media accounts must not engage with the accounts of elected Councillors, candidates or potential candidates. Further, any links to Council social media accounts should be turned off and not be operative during the Caretaker Period.

Councillors should not use their personal social media accounts to personally criticise Council staff or denigrate fellow Councillors or members of the community. Any such criticism would be a breach of the Code of Conduct.

Councillors and Council staff should not have direct communications on Council business via social media. All staff contact is to be coordinated through the CEO and Directors.

## **10 REPUTATION OF THE COUNCIL**

### **10.1 Standard**

Councillors must not discredit or mislead Council or public in performing the role of a Councillor, and must ensure that their behaviour does not bring discredit upon the Council. Further, in performing their role, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

### **10.2 Conflict of Interest**

Sections 126 to 131 of the *Local Government Act 2020*, and Chapter 5 of the *Governance Rules* require each Councillor to identify, manage and disclose any conflicts of interest they may have.

Councillors must acknowledge that they have read and understand these provisions and will abide by them. In the event of an actual or perceived conflict of interest in relation to a matter, the Councillor will declare and identify this at the commencement of any discussion on the matter.

The Councillor will seek advice from the Chief Executive Officer or Governance staff if any assistance is needed in the interpretation of the legislative provisions.

Any declaration must be in writing, and must be made at any Council meeting, Committee meeting or meeting conducted under the auspices of Council, at which the matter is to be discussed.

### **10.3 Significant and/or Intimate Relationships**

There is potentially a conflict and bias can arise from situations where relatives or people with significant and/or intimate relationships work together. This can potentially lead or be seen to lead to decisions made by a Councillor being made for reasons other than the public interest.

If a Councillor is involved in a relationship of a significant or intimate nature with another Councillor or an employee, the Councillor must disclose the fact of this relationship to the Mayor and the Chief Executive Officer.

### **10.4 Gifts and Hospitality**

Councillors must meet any statutory obligations in relation to gifts and hospitality. In addition, they will comply with Council's Gift's Benefits and Hospitality Policy and disclose all gifts, benefits or hospitality received in accordance with the Policy.

In addition, Councillors must notify the Chief Executive Officer and Chief Governance Officer if in the conduct of their duties they are offered or receive an inappropriate offer or benefit of any kind.

### **10.5 Reporting Fraud and Corruption**

The Council has a zero tolerance attitude to fraud and corruption and in addition to the Council policy, there are also obligations under the *Public Interest Disclosures Act 2012*.

Councillors are encouraged to make a disclosure of any improper conduct by public officers and public bodies, including Council, its employees and Councillors.

Councillors are encouraged to immediately report to the Chief Executive Officer and/or appropriate integrity body, in line with the Council's Public Interest Disclosures Procedures, any suspected, potential or actual fraudulent, criminal, unethical, corrupt or other unacceptable behaviour that comes to my knowledge.

Councillors may be required to assist with any investigation whether undertaken internally or externally.

### **10.6 Use of Council Resources**

Councillors undertake to use Council resources ethically, effectively, efficiently and carefully in exercising official functions, and not to use them for private purposes, unless this use is lawfully authorised and proper payment is made where appropriate.

Councillors also undertake to maintain adequate security over Council property, facilities and resources in their possession or control.

Any claims for expenses will be in accordance with all legislative obligations and Council policies and public funds or resources will not be used in a manner that is improper or unauthorised.