

**Our community,
our future**



DRAFT

COUNCILLOR

CODE OF CONDUCT

2013

MELTON CITY COUNCIL

Table of Contents

1.	Good Governance	3
2.	Role of Councillors & Council	3
3.	Good Conduct.....	4
4.	Council Decision Making	7
5.	Acceptance of Gifts.....	7
6.	Conflict of Interest.....	7
7.	Caretaker Proceedings	8
8.	Functional Separation and Cooperation	8
9.	Engaging Media.....	9
10.	Dispute Resolution & Complaint Procedures	10

1. GOOD GOVERNANCE

The Councillor Code of Conduct is underpinned by the principle of good governance, which provides a framework for establishing community confidence, legislative compliance, ethical decision making and good conduct.

Conduct:

A mode or standard of personal behaviour especially as based on moral principles.

All Victorian Councils are required to adopt a Councillor code of conduct, which includes prescribed principles of Councillor conduct, in accordance with section 76C of the *Local Government Act 1989* (the Act).

2. ROLE OF COUNCILLORS & COUNCIL

Individually and collectively as the Council, the role of Councillors is to provide leadership for the good governance of Melton. This includes¹:

- (a) acting as a representative government by taking into account the diverse needs of the local community in decision making;
- (b) providing leadership by establishing strategic objectives and monitoring their achievement;
- (c) maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;
- (d) advocating the interests of the local community to other communities and governments;
- (e) acting as a responsible partner in government by taking into account the needs of other communities; and
- (f) fostering community cohesion and encouraging active participation in civic life.

¹ Part 1A, s.3D(2), *Local Government Act 1989*

3. GOOD CONDUCT

Councillors should act with integrity and impartiality. They should be honest and diligent, avoid conflicts of interest, treat people and fellow Councillors with respect, act lawfully and show leadership.

As a consequence of public office, Councillors are held to a higher standard of conduct and behaviour than non-office bearing members of the community. Council therefore affirms the following principles and behaviours to secure and preserve public confidence in the office of Councillor:

Courtesy and respect

Councillors will treat all people with due consideration, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities.

This includes:

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

Integrity and honesty

Acting transparently, applying high ethical and moral standards, Councillors must use their position of elected authority for the good governance and leadership of the City of Melton.

This includes:

- being honest in all dealings with the community, with other Councillors and with Council staff, avoiding actions that may mislead a person, or be considered defamatory or injurious²;
- always acting with impartiality and in the best interests of the community as a whole;
- approach issues and items for consideration with an open mind, determining outcomes based on merit, not preconceived notions³;
- not acting in ways that may damage the Council or its ability to exercise good government;
- exercising reasonable care and diligence in performing their functions as Councillors;

² Councillors, unlike state and federal members of parliament, do not have parliamentary privilege. A Councillor can be subject to civil action by a person who considers that the Councillor has defamed them or has acted in a way that improperly harms them, whether this occurs in the Council Chambers or not.

³ *Ensuring Unbiased Democratic Council Decision Making – Principle to Guide Good Practice*, DPCD, 2008; *Winky Pop Pty Ltd & Anor v Hobsons Bay City Council* [2007] VSC 468 austlii.edu

- not exercising or performing a power, duty or function that a Councillor is not authorised to exercise or perform⁴;
- not commit fraud by inducing a course of action by deceit or other dishonest conduct, involving acts or omissions or the making of false statements, orally or in writing, with the object of obtaining money or other benefit, from, or evading a liability to, the Council⁵; and
- complying with all relevant laws, be they Federal, State or Local Laws.

Trust and responsibility

Recognising that they hold a position of trust, Councillors will not abuse the responsibility granted by the community and will not misuse or derive undue benefit from their positions.

This includes:

- avoiding conflicts of interest and comply with the relevant provisions of the Act and this Code of Conduct relating to interests and conflicts of interest⁶
- not making improper use of their position to advantage or disadvantage any person or organisation;
- not exercising undue influence on other councillors, members of Council staff or the public to gain or attempt to gain an advantage for themselves; and
- observing the relevant provisions of the Act and this Code of Conduct relating to acceptance and declaration of gifts⁷.

Stewardship

Councillors will exercise careful, prudent and responsible management of Council and community resources entrusted to their care, or to which are entitled access.

This includes:

- maintaining appropriate separation between their personal property and Council property in the care of the Council;
- not using Council resources, including staff, equipment and intellectual property for electoral or other personal purposes;
- ensuring that Council resources are always used effectively and economically and for the purposes for which they are provided;
- ensuring that Council resources are not used in a way that creates an impression of Council endorsement;
- ensuring that claims for out of pocket expenses are accurate and relate strictly to Council business; and
- fulfilling obligations to transparently and honestly report the use of Council funds, resources and assets.

⁴ Part 4, s.76D(2)(d) *Local Government Act 1989*

⁵ As defined in Council's 'Fraud Control Policy'.

⁶ See Code of Conduct – 6. Conflict of Interest

⁷ See Code of Conduct – 5. Acceptance of Gifts

Confidentiality and discretion

Councillors must deal sensitively and discretely with all information made privy, regardless of nature or form, observing strict confidentiality where it may reasonably be expected or inferred.

This includes:

- not using information gained by virtue of being a Councillor for any purpose other than to exercise their role as a Councillor;
- respecting the Council's policies in relation to public comments and communications with the media⁸;
- not releasing information deemed 'confidential information' in accordance with section 77 of the Act;
- recognising the requirements of the Information Privacy Act 2000 regarding the access, use and release of personal information;
- assuming information disclosed in non-public meetings and in personal correspondence is confidential in nature unless otherwise agreed or obviously for wider distribution; and
- requesting Council information, briefings or files through the office of the Chief Executive Officer.

Cooperation

To achieve Council's and the community's vision, it is vital that the Council works as an effective and cohesive team.

This includes:

- sharing work load, public profile, rewards and acknowledgments;
- being strategic in its thinking and planning;
- working together in a spirit of cooperation and goodwill;
- 'agreeing to disagree' without recourse or acrimony;
- accepting majority decisions, respected by those for and against the argument;
- supporting consensus positions as being in the best interests of the community and not reserving the right to speak against it or attack it after the formal decision has been made;
- respecting and being seen to respect the opinions and view of Councillors, officers and the community equally and fairly; and
- 'playing fair' at all times, working on a level playing field without any games, tricks or surprises.

⁸ See Code of Conduct – 9. Engaging Media

4. COUNCIL DECISION MAKING

The *Local Government Act* 1989 states that a Council decision may only be made at a properly constituted Council meeting or under Council delegation. Neither the Mayor nor an individual Councillor has the legal authority to act or make a decision on behalf of the Council.

Councillors must make decisions in an equitable and impartial manner on behalf of their communities, representing their current and future best interests.

Accordingly, Councillors:

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

5. ACCEPTANCE OF GIFTS

Receiving a gift (or gifts) exceeding \$500⁹ in value (over five years) from a single source is known as an 'applicable gift'¹⁰. An applicable gift triggers conflict of interest provisions with the Act.

As such:

- Councillors will not accept gifts in their roles as a Councillor or where it could be perceived to influence the Councillor in the fair, impartial and efficient discharge of their duties of Councillor, except:
 - i. where the gift is only of token value and could not be perceived to influence the Councillor's actions; and/or
 - ii. where refusal of the gift may cause offence or embarrassment, in which case the gift may be accepted on behalf of the Council and becomes the property of the Council.

All gifts received, regardless of value, must be declared and recorded on Council's Gift Register.

6. CONFLICT OF INTEREST

Conflict of interest is underpinned by the principle of transparency. Councillors must make it clear that private interests are not affecting public duties and that position of office is not being used for personal benefit¹¹.

Sections 77A to 81 of the *Local Government Act* 1989 define the specific circumstances that lead to a conflict of interest and describe what Councillors and Council officers must do if

⁹ Disclosure threshold as defined in Part 1, s.3(1), *Local Government Act* 1989

¹⁰ Part 4, s.78C, *Local Government Act* 1989

¹¹ *Conflict of Interest - A Guide for Councillors*, DPCD, Oct 2012

they believe there is a conflict. This includes direct and indirect interests, disclosure requirements, exemptions, provision of advice and registers of interest.

Consequently:

- Councillors must identify and disclose conflicts of interest when required to do so. If unclear, assistance should be sought or an interest disclosed to avoid the risk of committing an offence; and
- Councillors acknowledge the responsibility to disclose conflict of interests overrides any other obligations as a decision maker.

7. CARETAKER PROCEEDINGS

Council must comply with special arrangements during Council elections to ensure the probity of the election process and to safeguard the authority of the incoming Council.

These arrangements, limitations and prohibitions are known as caretaker arrangements.

Caretaker arrangements, under the *Local Government Act 1989*, prohibit Council decisions in relation to Chief Executive Officers, contracts and entrepreneurial or investment ventures exceeding a threshold amount.

In addition, limitations are placed on Council publications to ensure that public funds are not used to produce material that may influence, or be seen to influence, people's voting intentions. Relevant Council publications must be certified by the Chief Executive Officer (CEO) before they may be distributed.

Finally, Council resources must not be used for private purposes, including electioneering.

Accordingly:

- Councillors will conform with all applicable legislative requirements and the Council's Caretaker Policy;
- Councillor's will apply a conservative interpretation of the applicable legislation and Council's Caretaker Policy; and
- Councillors will respect the conservative interpretation of the applicable legislation and Council's Caretaker Policy by Staff, with particular reference to communication requests.

8. FUNCTIONAL SEPARATION AND COOPERATION

A number of factors contribute to a positive working relationship between Councillors and the organisation. These include goodwill, understanding of roles, communication, protocols and a strong understanding of legislative requirements.

To this end;

- Councillors will respect the division of responsibilities between the Council and the organisation. The role of Councillor is one of advocacy and leadership, and the Chief Executive Officer is responsible for management and administration;

- Councillors will not direct, or seek to direct Council staff or request staff to alter any recommendations made by officers nor imply that recommendations should be changed;
- Councillors accept that all decisions to modify, change or reject officer recommendations can only be made at formal Council meetings; and
- Councillors will ensure that any interactions with staff, each other, or others associated with Council, meet the requirements of relevant legislation¹² to protect people from risks to their health and safety, including harassment, bullying, violence and discrimination.

9. ENGAGING MEDIA

Council's media policy clearly establishes the position of council in engaging or responding to media.

The Mayor will provide official comment to the media on behalf of Council where the matter is of a political, controversial or sensitive nature, and is the default Council spokesperson unless exceptional circumstances apply.

The Chief Executive Officer is the official spokesperson for all operational matters pertaining to the Melton City Council as an organisation. The Chief Executive Officer may nominate a Council officer spokesperson if appropriate.

Accordingly:

- Councillors must ensure that any messages communicated through the media are consistent with the official position, policy or Council decision, and positively portray the Council as a decisive and responsible governing body;
- Councillors are entitled to express independent comment through the media, but must state that any comment is a personal view, and does not represent an officially adopted position of Council; and
- Councillors must not make unattributed or anonymous statements to the media, nor pass on information that could reasonably be considered by related parties to be sensitive or confidential.

¹² *Occupational Health and Safety Act 2004, Equal Opportunity Act 1995, Charter of Human Rights and Responsibilities Act 2006*

10. DISPUTE RESOLUTION & COMPLAINT PROCEDURES

Frivolous, vexatious, unsubstantiated or insubstantial complaints will not be considered of sufficient import to be formally managed under the procedures defined within.

Involving Councillors

Before commencing any formal dispute resolution process, Councillors who are parties to any conflict will endeavour to resolve their differences in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

Internal mediation processes include meetings with the Councillor and the Mayor in the first instance, with the Chief Executive Officer being brought in at the request of either party.

In the event of any dispute occurring where Councillors are unable to resolve interpersonal conflicts that adversely affects the operation of the Council, the affected agree to the appointment of a suitably qualified and independent mediator or conciliator who is acceptable to both parties in the dispute.

Failing agreement within seven (7) days, the mediator will be nominated by the President of the Municipal Association of Victoria. If a mediator is appointed, all Councillors agree to cooperate with the dispute resolution process and use their best endeavours to assist the mediator when requested.

In the event that a dispute cannot be resolved, it may be referred to a Councillor Conduct Panel established under Division 1B¹³ of the Act to hear disputes between Councillors and allegations of misconduct by Councillors.

Involving staff

Should a Councillor wish to lodge a complaint against the Chief Executive Officer, the complaint is to be made to either the Mayor, the office of the Chief Executive Officer or the Protected Disclosure Officer¹⁴, whereupon the matter will be progressed as deemed appropriate.

Where a written complaint concerning bullying, victimisation or harassment is lodged against the Chief Executive Officer by a Councillor, unless frivolous or vexatious, the complaint must be handled in accordance with the Act¹⁵. Once becoming aware of the complaint, the Chief Executive Officer must immediately notify the Mayor, and advise Council at the next available Council Meeting.

In the event of a Councillor wishing to lodge a complaint against a member of Council staff, the complaint must be lodged with the Chief Executive Officer, where the matter will be progressed as deemed appropriate.

Where a staff member has a complaint in respect of a Councillor, the complaint must be made to the Chief Executive Officer who will, if deemed appropriate, discuss the matter with the Mayor. Where a staff complaint involves the Mayor, the Chief Executive Officer will progress the matter as deemed appropriate.

¹³ Part 4, Div. 1B—Councillor Conduct Panels, *Local Government Act 1989*

¹⁴ Melton City Council Procedures for Disclosure, *Whistleblowers Protection Act 2001*

¹⁵ Part 4, Div. 4—Complaints, *Local Government Act 1989*

Councillor misconduct, if sufficiently serious, may require the establishment of a Councillor Conduct Panel under Division 1B¹⁶ of the Act.

Involving community members

Where a complaint is received from the public in respect of a Councillor, the matter will be referred to either the Mayor or the Chief Executive Officer for consideration. Where a breach of the Councillor Code of Conduct has occurred, the matter will progress in accordance with this dispute resolution process.

Where a complaint is received by a Councillor from the public in respect of the Chief Executive Officer, the Councillor should exercise discretion in referring it to either the Mayor or Chief Executive Officer for consideration and appropriate action.

¹⁶ Part 4, Div. 1B–Councillor Conduct Panels, *Local Government Act 1989*

STATEMENT OF COMMITMENT

As a Councillor of Melton City Council, I acknowledge and endorse the Councillor Code of Conduct.

I also understand that in accordance with the Act¹⁷, I must act with integrity, impartially exercise my responsibilities in the interests of the local community, and not improperly seek to confer an advantage or disadvantage on any person.

I thereby commit to undertaking my duties as a Councillor in a manner that is consistent with the principles of the Act and the Councillor Code of Conduct at all times and in the best interests of the municipality and its constituents.

Signatures

Cr Borg

Cr Carli

Cr Cugliari

Cr Dunn

Cr Majdlik

Cr Ramsey

Cr Turner

This Code of Conduct was adopted by the Council at the Ordinary Meeting 25 June 2013.

¹⁷ Part 1A, s.3D(2), *Local Government Act 1989*