



Councillor Code of Conduct

PART A – PURPOSE OF THE CODE

1. PURPOSE

- 1.1 This Code of Conduct has been adopted to assist Councillors in meeting their responsibilities. It sets out the standards of conduct for Councillors in the Shire of Cardinia, so as to ensure that the conduct of Councillors is legal, ethical and appropriate at all times.**
- 1.2 As the performance of the Council and the wellbeing of the Cardinia community are directly affected by the conduct of the Shire’s elected Councillors, the community is entitled to expect that:-**
- a) the business of the Council is conducted with efficiency, impartiality and integrity;
 - b) Councillors obey the spirit and letter of the law and, in particular, the provisions of relevant statutes, regulations, local laws and other legislative instruments; and
 - c) responsibility to the community is always to be given absolute priority over the private interests of Councillors.
- 1.3 This Code is adopted by Council with a two thirds majority as required by section 139 of the *Local Government Act 2020* (“the Act”), and is binding on all Councillors.**

PART B – FRAMEWORK FOR GOOD GOVERNANCE

2. INTRODUCTION TO GOVERNANCE AT CARDINIA

- 2.1 The Shire of Cardinia is governed by nine Councillors who are democratically elected in accordance with the Act. Collectively, they constitute the Council.**
- 2.2 The role of a Council as set by section 8(1) of the Act, is:**
- to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.*
- 2.3 In performing its role, the Council, must give effect to the overarching governance principles as set out in section 9(2) of the Act. These are:**
- a) Council decisions are to be made and actions taken in accordance with the relevant law;
 - b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;
 - c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
 - d) the municipal community is to be engaged in strategic planning and strategic decision making;
 - e) innovation and continuous improvement is to be pursued;
 - f) collaboration with other Councils and Governments and statutory bodies is to be sought;
 - g) the ongoing financial viability of the Council is to be ensured;
 - h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
 - i) the transparency of Council decisions, actions and information is to be ensured.

2.4 The role of a Councillor is contained in section 28 of the Act. It is:

- a) to participate in the decision-making of the Council; and
- b) to represent the local community in that decision-making; and
- c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

Importantly this role does not include any functions of the Chief Executive Officer described in section 94A of the *Local Government Act 1989* and, from 1 July 2021 onwards, in section 46 of the Act (and summarised in section 2.7 of this Code).

In performing this role, a Councillor must (according to section 28(2) of the Act):

- a) consider the diversity of interests and needs of the municipal community; and
- b) support the role of the Council; and
- c) acknowledge and support the role of the Mayor; and
- d) act lawfully and in accordance with the oath or affirmation of office; and
- e) act in accordance with the standards of conduct; and
- f) comply with Council procedures required for good governance..

2.5 These roles and functions are supported by the following principles, many of which focus on Councillors working collaboratively.

It is agreed that:

- a) the Council is elected to provide leadership for the good governance of the municipal district and the local community;
- b) the Council is elected to act in the best interest of the whole Shire;
- c) a council makes decisions on behalf of the community and a Councillor should have primary regard to the merits of each individual case rather than any ward loyalty, personal affiliations or interests;
- d) the Council is a body corporate and a Councillor is part of the corporate team;
- e) a Councillor can only act with the authority obtained from the Council exercising its decision-making powers at a Council meeting;
- f) the Council is custodian for community assets and the community has entrusted it to make decisions on its behalf; and
- g) a Councillor's primary role is to represent and translate the community's needs and aspirations into a strategy for the municipality which is articulated in the Council Plan.
- h) every Councillor will respect the right of every other Councillor to speak and represent their views on the needs of citizens;
- i) every Councillor will speak well of every other and Council in public;

- j) every Councillor will demonstrate commitment to consult with other Councillors, within the decision making framework;
- k) every Councillor will respect the diverse needs, views and nature of the Cardinia community;
- l) every Councillor will support and have regard for the role of local government as an important level of government within Australia;
- m) every Councillor will commit to a consultative approach to solving problems, developing effective decisions and communicating outcomes that build teamwork and cooperation;
- n) every Councillor will demonstrate leadership by focusing on issues and refraining from personalising matters particularly in relation to making personal remarks regarding other Councillors; and
- o) every Councillor will respect every other Councillor's right to hold different views and engage in constructive debate on matters of difference, while being united in representing Council decisions.

2.6 Key governance responsibilities of the Council include:

- a) developing and adopting a Community Vision and Council Plan which set out the strategic objectives of the Council and strategies for achieving them over at least the next four years, a requirement under sections 88 and 90 of the Act;
- b) approving the annual Budget;
- c) developing and adopting policies covering key programs and services (including but not limited to home and community care, maternal and child health, waste management and planning);
- d) hosting and engaging in numerous community forums, activities and events; and
- e) making representations to the Federal and State Governments, Parliamentary inquiries, peak local government bodies and others in order to advocate for the interests of the Cardinia community.

2.7 Within this framework of strategic leadership, advocacy and representative government, sections 44 and 46 of the Act will, from 1 July 2021 onwards, provide for the establishment of the position and duties of the Chief Executive Officer who is to be responsible for:

- a) supporting the Mayor and the Councillors in the performance of their roles; and
- b) ensuring the effective and efficient management of the day to day operations of the Council.
- c) ensuring that the decisions of the Council are implemented without undue delay;
- d) ensuring that the Council receives timely and reliable advice about its obligations under this Act or any other Act;
- e) supporting the Mayor in the performance of the Mayor's role as Mayor;
- f) setting the agenda for Council meetings after consulting the Mayor;
- g) when requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;

- h) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the *Workplace Injury Rehabilitation and Compensation Act 2013*.

2.8 Councillors govern, and managers manage, within a framework which is made up of:

- a) the Act and other statutory regulations and instruments;
- b) the Council's Local Laws;
- c) this Code of Conduct; and
- d) policies adopted by the Council.

2.9 The aim is for those who govern and those who manage to work together in order to produce the best outcomes for the community.

PART C – COUNCILLOR CONDUCT

3. STANDARDS OF CONDUCT

Section 139(3)(a) of the Act requires that the following prescribed standards of conduct (“the Standards of Conduct”) are included in the Code of Conduct:

3.1 Treatment of others

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

3.2 Performing the role of Councillor

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

- a) undertakes 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; and
- b) diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- 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

3.3 Compliance with good governance measures

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;
- d) any directions of the Minister issued under section 175 of the Act.

3.4 Councillor must not discredit or mislead Council or public

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

3.5 Standards do not limit robust political debate

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

4. ADDITIONAL COUNCILLOR CONDUCT PRINCIPLES

4.1 Cardinia-Specific Councillor Conduct Principles

Central to the Standards of Conduct (see Section 3 above) are the concepts of:

- a) integrity;
- b) impartiality;
- c) honesty;
- d) respect for others;
- e) diligence;
- f) observance of legal obligations (including the obligations imposed under the *Equal Opportunity Act 2010* not to discriminate against or sexually harass another Councillor, and any relevant obligations under the *Occupational Health and Safety Act 2004* or other legislation prohibiting bullying); and
- g) leadership by example.

Councillors are, as part of meeting the standards inherent in these and as a means of ensuring that the conduct of Councillors is legal, ethical and appropriate at all times,

prepared to commit to some additional (Cardinia-specific) Councillor Conduct Principles. These are:

- h) Objectivity;
- i) Transparency;
- j) Teamwork; and
- k) Ethical Decision-Making.

4.2 Objectivity

Councillors are accountable to the public for their decisions and actions. Decisions must be made solely on merit. This includes decisions about awarding contracts, planning applications, funding proposals and whether particular individuals should be recommended for rewards, recognition or benefits.

4.3 Transparency

Councillors have a duty to be as transparent as possible about their decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands.

4.4 Teamwork

- a) There are nine members of the Council. Councillors should contribute towards the Councillor group working its way towards a collective decision.
- b) Councillors' decisions are made in Council meetings. In discussions leading up to such decisions, in Assemblies of Councillors not open to the public, Councillors may explore a range of positions and express a range of views. Those views must not be reported outside those meetings. To do so would discourage full discussion of developing issues and the ability for Councillors to firm up their views as questions are answered and information provided. Councillors' accountability is for their vote and statements in support of their vote at the time that the matter is decided in the Council meeting.

4.5 Ethical Decision-Making

If Councillors are unsure about the ethical issues involving an action or decision, consideration should be given to the following:

- a) Is the decision or conduct lawful?
- b) Is the decision or conduct consistent with the Council's policies and objectives, and with this Code of Conduct?
- c) What will the outcome be for the community, the Council, a Councillor(s) and any other parties?
- d) Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- e) Can the decision or conduct be justified in terms of the public interest?

Should there be any uncertainty about the ethical nature of any action or decision, Councillors should seek advice from appropriate people which may include the Chief Executive Officer, the independent members of the Audit and Risk Committee, the Municipal Association of Victoria, the Victorian Local Governance Association or Local Government Victoria.

5. MISUSE OF POSITION

- 5.1 Councillors must ensure that they understand all of their legal obligations but particularly their obligation set out in section 123 of the Act.**
- 5.2 Section 123 of the Act relates to misuse of position and makes it an offence for a Councillor to intentionally misuse their position to**
- a) gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - b) cause, or attempt to cause, detriment to the Council or another person
- 5.3 For the purposes of Section 123 , circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a delegated committee include**
- a) making improper use of information acquired as a result of the position the person held or holds; or
 - b) disclosing information that is confidential information; or
 - c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or
 - d) exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or
 - e) using public funds or resources in a manner that is improper or unauthorised; or
 - f) participating in a decision on a matter in which the person has a conflict of interest.

6. USE OF INFORMATION

- 6.1 Councillors acknowledge that information is provided and is available to enable them to adequately carry out their duties and functions and to enable informed decisions to be made. This means that there may be times when Councillors receive information that is sensitive, controversial or confidential or to which the *Privacy and Data Protection Act 2014* applies**
- 6.2 Councillors acknowledge that Section 125 of the Act makes it an offence to intentionally or recklessly disclose information that the Councillor knows, or should reasonably know, is confidential information**
- 6.3 In carrying out their role as Councillors, Councillors further acknowledge that:**
- a) they are aware of the restrictions in the Act on the use of information;
 - b) they are only entitled to access information which is relevant to a matter before the Council;
 - c) information that is confidential cannot be disclosed until it is no longer designated as confidential by the Council;
 - d) information must not be used to cause detriment to others; and
 - e) any policies that the Council has concerning the use of Council information will also be complied with

7. CONFLICTS OF INTEREST, GIFTS AND HOSPITALITY

7.1 Councillors acknowledge that it is their responsibility to be aware of the provisions of the Act relating to conflicts of interest as detailed in Sections 126 to 131 of the Act and that the decision on whether a conflict of interest exists can only rest with the individual Councillor.

7.2 Councillors agree that they will avoid the potential for real or perceived conflicts of interest through the acceptance of gifts or hospitality if the acceptance could be perceived by a 'reasonable person', as intended to, or likely to, influence their fair, impartial, honest and efficient discharge of their duties as a Councillor. Councillors acknowledge that, from 1 July 2021 onwards, section 137 of the Act makes it an offence to accept an anonymous gift above the gift disclosure threshold (currently \$500)

The Act defines a gift as any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including—

- a) the provision of a service (other than volunteer labour); and
- b) the payment of an amount in respect of a guarantee; and
- c) the making of a payment or contribution at a fundraising function;

7.3 For the purpose of this Code a gift does not include any gift that is offered but not accepted and any gift that has a retail value of \$25.00 or less.

Hospitality includes (but is not limited to) the provision or the promise of the provision of:

- a) free or heavily discounted entertainment and/or use of facilities – (including accommodation, travel and entry to sporting/cultural/entertainment events); or
- b) free or heavily discounted meals, drinks and the like.

In determining whether to accept a gift, consideration may be given to whether refusal of the gift could cause offence to the person offering the gift.

It is to be noted that reasonable hospitality provided to a Councillor at any function or event that is attended by the Councillor in an official capacity does not constitute a 'disclosable gift' for the purposes of section 128 of the Act.

Councillors agree to advise the Manager Governance of any gifts or hospitality for recording in the Gifts Register.

8. COUNCIL RESOURCES

8.1 Councillors agree that if, in any month, a mobile phone account for the cost of calls or data use exceeds \$150 then the Councillor concerned will be provided with a copy of

the account whereupon they will highlight any personal calls and reimburse the Council for such personal calls.

8.2 Additional constraints on the use of the Council resources apply during the election period. These are set out in the Council's Election (Caretaker) Period Policy, which is incorporated into this Code by reference.

9. RELATIONS WITH COUNCIL STAFF

9.1 Councillors acknowledge that:

- a) all staff members are accountable to the Chief Executive Officer. Councillors respect that the Chief Executive Officer is responsible for appointing, directing, managing and dismissing all Council staff and for all other issues that relate to Council staff;
- b) a professional and well-managed team of managers and staff is essential to the wellbeing of the community; and
- c) the Chief Executive Officer is under an obligation to provide timely advice to the Council and implement Council decisions without undue delay and that reports written by officers are based on their professional knowledge and skill. While Council may decide whether to accept the advice that is submitted, Councillors cannot direct officers to change the reports.

9.2 Where Councillors have concerns about the performance of any staff member or service unit, they acknowledge that such concerns should be directed to the Chief Executive Officer.

9.3 Councillors will, when interacting with Council staff, act:

- a) respectfully;
- b) with courtesy; and
- c) in a manner that is not (or not likely to be) intimidatory.

Specific protocols for Councillor and staff interaction are set out in a separate "Councillor / staff relationship" policy, which is incorporated into this Code by reference.

9.4 Councillors will observe Council processes and systems that are established from time to time for receiving and responding to requests for service.

Requests for service from Councillors will be given appropriate priority for action depending on the circumstances involved and specific nature of the request.

A Customer Request Management (CRM) module has been established for Councillors to register service requests directly into the system. The module will ensure requests are actioned in the order they are received and allow Councillors to track the status of their request at any time.

PART D – THE MAYOR

10. OFFICE OF MAYOR AND DEPUTY MAYOR

10.1 The governance of the Council is the responsibility of the Councillors collectively. The Mayor is “first-among-equals”. While the Mayor has only limited executive authority, Councillors acknowledge and respect that the Mayor has been elected by Councillors to:

- a) lead the Councillor group; and
- b) represent the Council.

Accordingly Councillors agree to co-operate with the Mayor of the day in the fulfilment of the Mayoral leadership role.

10.2 Under section 19 of the Act, the role of the Mayor is to:

- a) chair Council meetings; and
- b) be the principal spokesperson for the Council; and
- c) lead engagement with the municipal community on the development of the Council Plan; and
- d) report to the municipal community, at least once each year, on the implementation of the Council Plan; and
- e) promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct; and
- f) (assist Councillors to understand their role; and
- g) (take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer; and
- h) provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and
- i) perform civic and ceremonial duties on behalf of the Council.

10.3 In the Mayor’s role as Chairperson of meetings they will:

- a) retain control of the meeting at all times;
- b) be impartial;
- c) preserve order; and
- d) ensure that the business of the meeting is conducted in a proper and efficient manner, and in accordance with the Governance Rules and any applicable Local Law.
- e) direct a Councillor to leave a Council meeting if the behaviour of the Councillor is preventing the Council from conducting its business;

Councillors must respect the Chair at all times during a meeting and must observe any lawful direction given by the Mayor.

10.4 Deputy Mayor

The role of the Deputy Mayor is to perform the role of the Mayor and they may exercise any of the powers of the Mayor if:

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

PART E – EXTERNAL COMMUNICATION

11. EXTERNAL COMMUNICATIONS

11.1 Because the Mayor is the principal spokesperson of the Council, an individual Councillor must not, without the authority of Council or (where it is not practicable to seek the authority of the Council) the Mayor, purport to speak on behalf of the Council.

As the Mayor is the designated spokesperson for the Council, Councillors must advise the Mayor (or delegate) or Chief Executive Officer (or delegate) if:

- a) they are approached to speak to the media;
- b) before they speak or intend to speak the media,

or as soon as practicably possible after they have spoken to the media.

11.2 Although any Councillor is entitled to communicate his or her views to the media, constituents and others, they should not in doing so:

- a) seek to actively undermine any decision or position already taken by the Council; or
- b) bring the Council into disrepute, or
- c) create a bias or perception of bias, or affect procedural fairness or natural justice, on a matter relating to an upcoming decision of council.

11.3 As a representative of the community, Councillors need to accurately communicate the attitudes and decisions of the Council even when the Councillor as an individual disagrees with a majority decision of the Council.

11.4 In presenting views or information to the community, Councillors acknowledge that as a member of the Council they:

- a) need to respect that decisions are made by the majority of the Council;
- b) understand that they are not prevented from commenting or providing information concerning matters affecting their ward, but that the Mayor is the principal spokesperson for the Council (other than on operational matters or matters of administration) and except where any other person has been specifically

authorised by the Mayor, is the principal person who can provide information about a Council position or decision to the media and others;

- c) should exercise care in the way in which information is provided or the way in which comments are made so that the Council is not exposed to risk;
- d) should understand that there may be occasions when a matter is to be treated as confidential and information should not be released; and
- e) the principal objective is to achieve an outcome that presents the Council as effective and cohesive.

Councillors will try, as far as possible, to provide information about adopted policies, procedures and decisions of the Council that is accurate.

PART F – BREACHES AND RESOLVING DISPUTES

12. DISPUTE RESOLUTION

12.1 Externally-Generated Complaints

If a person other than a Councillor or the Chief Executive Officer complains that a Councillor has breached this Code of Conduct, the complaint will not be entertained.

Rather, that person will be advised by the Mayor that:

- a) this Code of Conduct is intended to be enforced internally; and
- b) the complaint should instead be directed to any appropriate external agency, such as the Independent Broad-based Anti-corruption Commission, Local Government Investigations and Compliance Inspectorate or Victorian Ombudsman.

12.2 Standards of Conduct

A Councillor or a group of Councillors may lodge a complaint with the Councillor Conduct Officer which alleges a Councillor has breached the Standards of Conduct.

Such a complaint must specify—

- a) the name of the Councillor alleged to have breached the Standards of Conduct;
- b) the Standard of Conduct that is alleged to have been breached; and
- c) the behaviour that is alleged to have resulted in the breach;

After receiving a complaint, the Councillor Conduct Officer must provide the complaint to the Principal Councillor Conduct Registrar.

An arbiter appointed to hear a complaint must:

- a) ensure that the parties to the complaint are given an opportunity to be heard;
- b) consider the evidence and information provided by the parties to the complaint;
- c) ensure that the rules of natural justice are observed and applied in hearing the complaint;

- d) conduct the hearing of the complaint with as little formality and technicality as the proper consideration of the complaint permit;
- e) ensure that the process is not open to the public.

An arbiter appointed to hear a complaint:

- a) may hear the parties to the complaint in person or by written or electronic means; and
- b) is not bound by the rules of evidence and may inform itself in any manner it sees fit.

The arbiter may at any time close the complaint if the arbiter is of the view that:

- a) it is vexatious, misconceived, frivolous or lacking in substance; or
- b) the complainant has not responded, or has responded inadequately, to a request for further information.

A written copy of the decision and statement of reasons provided by the arbiter must include:

- a) the finding;
- b) a written statement of reasons supporting the finding; and
- c) any sanctions imposed.

12.3 Interpersonal and Other Differences

If there are interpersonal or other differences between two or more Councillors that:

- a) are not of a policy character;
- b) are impeding the effective governance of the Council; and
- c) do not involve a complaint that the Standards of Conduct have been breached,

the Mayor (or, if the Mayor is one of those Councillors, the Deputy Mayor or a Councillor elected by the Council for the purpose) will facilitate a meeting of those Councillors to see whether the differences can be resolved. If one or both Councillors do not participate in the meeting or the meeting is held but the differences remain, the Mayor (or, where relevant, Deputy Mayor or other Councillor elected for the purpose) may arrange for mediation.

12.4 Disputes between Councillors and staff

If the Chief Executive Officer becomes aware of a complaint by a staff member in respect of a Councillor the Chief Executive Officer must:

- a) immediately advise the Mayor about the complaint; and
- b) at the next meeting of the Council, advise the Council about the complaint when the meeting is closed to members of the public.

Where the Council deems that a breach of the Standards of Conduct may have occurred, the Mayor will progress the matter in accordance with the steps detailed in the Act.

PART G – MISCELLANEOUS

13. MISCELLANEOUS

13.1 As part of their representative role, Councillors may represent the Council on external organisations. Some appointments are made annually by the Council. It is important that Councillors:

- a) clearly understand the basis of their appointment;
- b) recognise the differences in their legal obligations as a delegate or member of the governing organ of the external organisation; and
- c) provide regular reports to the Council on the activities of the organisation that they have been appointed to.

13.2 Once a Council decision is taken, a Councillor should accept the majority will and not seek to undermine or publicly criticise the decision.

A Councillor must not exercise his or her right to lodge a notice revoking or altering a resolution of the Council unless, since that resolution was made, there has occurred an event or development which justifies reconsideration of the decision embodied in the resolution.

It remains open to a Councillor to foreshadow lodging a notice revoking or altering a resolution. This can be done during the meeting at which the resolution was made.

Ultimately the Councillor will need to lodge the notice themselves. This should be done as soon as is practicable after the resolution was made.