

JUNE 2016

COUNCILLOR CODE OF CONDUCT

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Councillor Code of Conduct

Our Commitment to Stonnington

As the Councillors for the Stonnington municipality we are committed to achieving:

- Community – A city where all people can be happy, healthy, safe and feel part of and contribute to the community;
- Environment - A cleaner, safer and better environment for future generations to enjoy;
- Liveability - The most desirable place to live, work and visit
- Prosperity - A prosperous community, recognised as a creative city, a premier visitor and retail destination

This commitment is reflected in Council's Vision that Stonnington will be a connected community that fosters the hopes, wellbeing and aspirations of all people.

This commitment will be achieved by Council providing an environment that allows the organization to achieve its best and to protect and enhance the wellbeing of the Community. To deliver on this purpose, Council will strive for excellence, ensuring that it has the capacity to deliver timely and efficient services to meet community needs and to continually improve standards of service delivery.

As Councillors we declare that we will abide by, observe and perform our duties as a Councillor of Stonnington City Council in accordance with this Code of Conduct, the Local Government Act 1989 and Council's General Local Law 2008 (No.1)



Councillor Code of Conduct

This Code of Conduct and Councillors Commitment to the City of Stonnington to abide by the Code, was adopted by the Stonnington City Council with individual declarations made, signed and witnessed by the Chief Executive Officer on Monday 27 June 2016, as follows:

East Ward

Cr Erin Davie

Cr John McMorrow

Cr Jim Athanasopoulos

North Ward

Cr John Chandler

Cr Jami Klisaris

Cr Matthew Koce

South Ward

Cr Tini Athanasopoulos

Cr Melina Sehr

Cr Claude Ullin

Before Me:

Warren Roberts
Chief Executive Officer

Councillor Code of Conduct

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Councillor Code of Conduct

1. INTRODUCTION

The Councillors' Code of Conduct ("the Code") was originally adopted by Council in 2001 and subsequently amended to meet the requirements of Section 76C of the *Local Government Act 1989* ("the Act") with further reviews undertaken as required under the Act and to respond to any legislative changes.

A Council must, within 4 months after a general election:-

- a. call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
- b. at that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.

A copy of the Code of Conduct (as amended from time to time) must be:

- given to each Councillor
- available for inspection at the Council office and any district offices
- published on the Council's internet website

1.1 Purpose of the Councillor Code of Conduct

The purpose of local government is to provide a system under which Councils perform the functions and exercise the powers conferred by or under the Act and any other Act for the peace, order and good government of their municipal districts. Good governance is fundamental to a Council being able to perform its purpose. Good governance relies on good working relations between Councillors.

This Code:

- sets out the standards of conduct expected of elected representatives;
- endeavours to foster good working relations between Councillors to enable Councillors to work constructively together in the best interests of the local community; and
- mandates Councillors conduct designed to build public confidence in the integrity of local government.

From the 2016 Council elections, a person elected to be a Councillor is not capable of acting as a Councillor until the person has read the Councillor Code of Conduct and made a declaration stating that they will abide by the Councillor Code of Conduct. It is the personal responsibility of Councillors to ensure that they are conversant with, and comply with, the provisions of this Code.

This Code of Conduct recognises that the establishment and strengthening of good working relationships between Councillors and also with Officers is the basis for a solid and effective team, to represent the community and provide leadership and guidance for the future of the municipality.

The Code complements the Council Plan and the Employee Code of Conduct with other supporting policies (listed further).

The provisions of this Code also apply to:

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- a. Members of special committees – whether or not they are Councillors (currently only Inner Melbourne Action Plan Implementation Committee –IMAP);
- b. Members of the Audit Committee (which is an Advisory Committee);
- c. Members of Council's Advisory Committees;
- d. Mayor and Councillors.

2. ROLE OF MAYOR AND COUNCILLORS

2.1 MAYOR'S ROLE

Section 73AA of the Act outlines that the functions of the Mayor include –

- (a) providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65, and the observation of the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C; and
- (b) acting as the principal spokesperson for the Council; and
- (c) supporting good working relations between Councillors; and
- (d) carrying out the civic and ceremonial duties of the Office of Mayor.

2.2 ROLE OF A COUNCILLOR

The Stonnington City Council consists of nine Councillors who are democratically elected by the voters of the City of Stonnington in accordance with the Act.

The role of a Councillor has been defined in the Act (Section 65) as follows:

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

- (2) *In performing the role of Councillor, a Councillor must-*
 - (a) *consider the diversity of interests and needs of the local community; and*
 - (b) *observe the principles of good governance and act with integrity; and*
 - (c) *provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts; and*
 - (d) *participate in the responsible allocation of the resources of Council through the annual budget; and*
 - (e) *facilitate effective communication between the Council and the community.*

- (3) *The role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under Section 94A of the Act.*

The Act places obligations on Councillors in relation to the way they should act. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions. Councillors of the Stonnington City Council undertake to comply with the various provisions of the Act and with this Code of Conduct.

Section 76B of the Act sets out the primary principle of Councillor conduct as follows:

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It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

- (a) act with integrity; and*
- (b) impartially exercise his or her responsibilities in the interests of the local community; and*
- (c) not improperly seek to confer an advantage or disadvantage on any person.*

Section 76BA of the Act sets out the general principles of Councillor conduct as follows:

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must—

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;*
- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;*
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;*
- (d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;*
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;*
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;*
- (g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.*

Councillors are required to conduct themselves in observance of the primary principle and the general principles. Councillors undertake to do this.

3. FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER (CEO)

The Chief Executive Officer (CEO) is responsible for:

- a. establishing and maintaining an appropriate organisational structure for the Council;
- b. ensuring that the decisions of the Council are implemented without undue delay;
- c. the day to day management of the Council's operations in accordance with the Council Plan;
- d. developing, adopting and disseminating a Code of Conduct for Council staff;
- e. providing timely advice to the Council;
- f. ensuring that the Council receives timely and reliable advice about its legal obligations under the Act and any other Act;
- g. supporting the Mayor in the performance of the Mayor's role as Mayor;
- 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

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Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013; and

- i. performing any other function or duty of the CEO specified in this Act or any other Act.

The CEO is responsible for managing the interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

Councillors will undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.

4. OUR VALUES AND BEHAVIOURS

In undertaking our role as Councillor we confirm the following values and behaviours.

4.1 BEHAVIOURS

A Councillor will behave in accordance with this Code at all times when:

- a. conducting the business of the Council;
- b. conducting the business of the office to which he or she has been elected or appointed; or
- c. acting as a representative of the Council.

Where a Councillor acts as a representative of the Council:

- a. on another relevant authority, the Councillor must, when acting for that other authority, comply with that other authority's code of conduct; or
- b. on any other body, the Councillor must, when acting for that other body, comply with the authority's code of conduct, except insofar as it conflicts with any other lawful obligations to which the body may be subject;
- c. must clearly understand the basis of their appointment;
- d. provide regular reports to the Council on the activities of the organisation; and
- e. at any other meeting, function or social occasion the Councillor will be mindful that they are representing the City of Stonnington at all times and behave in a manner expected under this Code of Conduct.

4.2 COURTESY AND RESPECT

Councillors will treat all people with courtesy and respect, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities. This includes:

- a. treating members of the community with dignity and ensuring that neither offence nor embarrassment is caused;
- b. being respectful of other people's time;
- c. adopting a positive attitude to teamwork and treating fellow Councillors with respect, even when disagreeing with their views or decisions;
- d. debating contentious issues without resorting to personal acrimony or insult;

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- e. being mindful of the work and family commitments of other Councillors;
- f. ensuring their punctual attendance at Council meetings, briefings and committee meetings, and that they are prepared in advance for any Council meeting, briefing or other public forum and are familiar with issues on the agenda;
- g. fully participating in Council meetings, briefings, and other public events;
- h. submitting an apology to the Mayor and Chief Executive Officer in advance of any Council meeting, briefing or other public forum when it becomes known that the Councillor is unable to attend; and
- i. acting with courtesy towards Councillors and Council staff and avoiding intimidatory behaviour or language.

4.3 HONESTY AND INTEGRITY

Councillors recognise that they hold a position of trust and will not misuse or derive undue benefit from their positions. Councillors will:

- a. avoid conflicts of interest and comply with the relevant provisions of the Act and this Code of Conduct relating to interests and conflicts of interest;
- b. not exercise undue influence on other Councillors, members of Council staff or members of the public, Council customers, contractors or suppliers to gain or attempt to gain an advantage for themselves or any members of their family;
- c. not accept gifts, benefits or hospitality either in their roles as Councillor, or any member of their family, or where it could be perceived to influence the Councillor except:
 - Where the gift would generally be regarded as only having a token value and could not be perceived to influence the Councillor's actions and in accordance with Council's Receiving Gifts, Benefits and Hospitality Policy
 - 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 (see policy on "Receiving Gifts, Benefits and Hospitality")
 - When the Councillor has an active role at an event on behalf of Council
 - The Receiving Gifts, Benefits and Hospitality Policy establishes guidelines to help Councillors and Officers comply with the conflict of interest provisions of the Act where they are offered gifts, benefits or hospitality.
- d. avoid situations that might create a conflict between their public and private roles and avoid using their public position to promote personal interests/pursuits;
- e. be honest in their dealings with the community, other Councillors and with Council staff;
- f. always act impartially and in the best interest of the community as a whole; and
- g. from commencement of their electoral term, maintain, and following the subsequent election, submit to the Chief Executive an accurate election campaign donation return as required by section 62 of the *Local Government Act 1989* and clause 115 of the *Local Government (Electoral) Regulations 2015*.

Council, as part of its public transparency, will maintain a register of gifts, benefits or hospitality received over the value of \$20.00 and the Chief Executive Officer should be advised of all such gifts so they can be recorded in the register.

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4.4 USE OF COUNCIL RESOURCES

Councillors will commit to using Council resources effectively and economically. Councillors will:

- maintain adequate security over Council property, facilities and resources provided to assist in performing the role of a Councillor and will comply with any Council policies applying to their use;
- ensure any expense claims submitted are in compliance with the relevant legislative provisions and Council policy;
- not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate;
- when dealing with Council in our private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) not expect nor request preferential treatment in relation to any such private matter; and will avoid any action that could lead Council staff or members of the public to believe that they are seeking preferential treatment;
- not use public funds or resources in a manner that is improper or unauthorised; and
- use Council provided computer, ipad and telephones in accordance with Council's IT Acceptable Use policy including the appropriate use of email, internet and Social Media use policy.

4.5 COUNCIL INFORMATION

Information is made available daily to assist Councillors in their representation and decision making. To obtain information that is up-to-date and offered in the right context, liaison should be made with the CEO, General Manager or Manager.

Speaking directly to officers below the Manager level without the authorisation of the relevant Manager or General Manager may result in Councillors receiving advice that has not been formally endorsed by the management. Exceptions are made with support staff or other designated staff such as media advisers or planning officers, who, for operational reasons, have regular contact with all Councillors.

The provision of information and advice to Councillors operates on the principle that information provided to one Councillor should generally be made available to all Ward Councillors and preferably all Councillors.

Councillors will treat Council information appropriately by:

- a. being aware that information of a confidential nature (as outlined in section 8 Confidential Information) must not be communicated until it is no longer treated as confidential and that the improper use or release can contravene the Act;
- b. not using information gained by virtue of being a Councillor for any purpose other than to exercise their role as a Councillor;
- c. being aware that they are only entitled to access information which is relevant to a matter before the Council or Special Committee or likely to come before the Council or Special Committee;

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- b. respecting the Council's policies in relation to public comments and communications with the media and the persons authorised to speak on Council's behalf;
- c. recognising the requirements of the Privacy and Data Protection Act 2014 regarding the access, use and release of personal information also apply to them as individuals;
- d. not preventing another person from gaining access to information to which that person is entitled by law; and
- e. being prudent in the use of information that they acquire in their role as a Councillor or member.

5 COUNCILLOR/STAFF RELATIONSHIPS

The Local Government Act outlines that all Council staff are accountable to the Chief Executive Officer who is responsible for appointing, directing or terminating staff. Councillors are not in a position to instruct or direct, or admonish Council staff on any matters pertaining to the performance of their duties.

The Council appoints and reviews the performance of the Chief Executive Officer. To achieve its desired outcome, Council must work as a team with the Chief Executive Officer and Council staff. For teamwork to be successful, Councillors need to:

- a. accept that their role is one of policy development and leadership, not management or administration;
- b. acknowledge that the Chief Executive Officer, in accordance with the Act, is responsible for staff and the administrative management of the Council;
- c. acknowledge that they are not responsible for implementing Council actions;
- d. acknowledge that they have no capacity to individually direct members of staff to perform or not perform particular functions;
- e. refrain from using their position to improperly influence members of staff in their duties or functions to gain advantage for themselves or others;
- f. respect the role of Council officers and staff and treat them in a way that engenders mutual respect at all times;
- f. 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;
- g. act with courtesy towards Council staff and avoid intimidatory behaviour; and
- h. refrain from publicly criticising Council Officers in a way that cast aspersions on their professional competency or credibility. Councillors should advise the CEO in a timely fashion of any concerns that they may have with any Council officer.

Note: Improper direction of Council staff by a Councillor (section 76E) is an offence under the Act and carries a maximum penalty currently of 120 penalty units.

6. DISCLOSURE OF INTERESTS

Councillors, committee members including advisory committees and members of the Audit Committee will comply with the provisions of the Act in regard to conflicts of interest, whether of a direct or indirect nature. This also applies to section 223 hearings.

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It is a Councillor's responsibility to identify and disclose any conflicts of interest when required to do so, even a perceived conflict, and Councillors will:

- give early consideration to each matter to be considered by the Council, any special committee to which they belong, or Assembly of Councillors, to ascertain if they or any immediate family member, have a conflict of interest
- recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each individual Councillor and that Council officers cannot offer any advice in relation to potential conflicts
- if a Councillor considers or cannot confidently say they or any immediate family member do not have a direct or indirect interest in a matter before the Council, a Special Committee of Council or an Assembly of Councillors the Councillor will declare they have a conflict of interest
- ensure they disclose the class and nature of the interest and leave the room in which the meeting or assembly is being held immediately before any discussion, debate and vote on the matter and not return until the matter has been dealt with
- if a Councillor considers that their personal interest or that of any immediate family member may be in conflict with their public duty to act impartially and in the interest of the whole community, the Councillor will declare a conflicting personal interest and apply to the Council or Special Committee to be exempted from voting on the matter. The Councillor will leave the Chamber as outlined above.

Guidance on the conflict of interest provisions of the Act can be found in "*Conflict of Interest – A Guide for Councillors – October 2012*" and "*Conflict of Interest – A guide for members of Council committees – October 2012*" on the DELW&P website.

Councillors are also required to lodge an Ordinary Return twice yearly for as long as the Councillor holds the relevant office; specifically

- between 30 June and 9 August; and
- between 31 December and 9 February

Returns must be lodged with the Chief Executive Officer or his delegate. Disclosures on the return must relate to the entire period from the last return and full details of these requirements are outlined in the documentation.

Stonnington Council has also resolved that annually (mid-year) Councillors will submit a Statutory Declaration (Attachment Three) that declares that the Councillor is still eligible and capable of continuing as a Councillor.

7 ASSEMBLY OF COUNCILLORS

An Assembly of Councillors is defined under the Act and means a meeting of an advisory committee of the Council (including a Councillor Briefing), if at least one Councillor is present or a planned or scheduled meeting of at least half of the Councillors and one member of Council staff which considers matters that are intended or likely to be:

- a. the subject of a decision of the Council; or
- b. by a member of Council staff under delegation.

but does not include a Council meeting, a Special Committee of the Council, Audit Committee or club, association, peak body, political party or other organisation.

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An Assembly of Councillors Record will also be completed and submitted for any Planning Consultative meeting where a Councillor attends.

If a Councillor or member has a conflict of interest (as outlined in section 6 Disclosure of Interests), they must disclose the interest, but do not have to give details of the interest and leave the meeting while the matter is discussed.

A written record of each Assembly of Council is made which includes the names of all Councillors and members of staff attending; the matters considered; any conflict of interest disclosures made and time the person left and returned to the meeting. The Assembly of Councillors form is required to be reported to the next Council meeting by the CEO and incorporated into the Council minutes.

8. CONFIDENTIAL INFORMATION

A Councillor must not disclose information that he or she knows, or should reasonably know, is confidential information.

A Councillor may disclose information that he or she knows is confidential information in the following circumstances:

- a. for the purpose of any legal proceedings arising out of the Act;
- b. to a court or tribunal in the course of legal proceedings;
- c. pursuant to an order of a court or tribunal;
- d. to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- e. to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
- f. to a municipal monitor to the extent reasonably required by the municipal monitor; and
- g. to the extent reasonably required for any law enforcement purposes.

Information is confidential if:

- a. the information was provided to the Council or special committee in relation to a matter considered in a meeting closed to members of the public, in accordance with section 89(2) of the Act, and the Council or special committee has not passed a resolution that the information is not confidential; or
- b. the information has been designated as confidential information by a resolution of the Council or special committee which specifies the relevant grounds applying under section 89(2) of the Act and the Council has not passed a resolution that the information is not confidential; or
- c. the information has been designated in writing as confidential information by the Chief Executive Officer under section 77 specifying the ground or grounds applying and the Council has not passed a resolution that the information is not confidential.¹

8.1. COUNCILLOR BRIEFINGS

The role of Councillor Briefing Sessions is to advise and inform Councillors of new matters or the progress of existing matters.

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These informal and, at times, confidential Briefing Sessions provide the opportunity for Councillors to be informed, to discuss, challenge, question and clarify matters of Council business and up-coming meeting agendas. They also provide the opportunity for Councillors to discuss policy formulation and direction.

The briefing sessions do not involve decision-making. Decisions are made by Council at the formal Council meetings.

Frequently information is provided at Councillor Briefing Sessions which is confidential.

Attendees at Councillor Briefing Sessions must not disclose to any person other than staff directly involved any matters deemed as confidential at such sessions, whether in the form of information or advice provided, discussions held, or opinions or views given. See comments under section 4.5 Council Information.

The Councillor Briefing Sessions Charter adopted by Council on 24 May 2010 is included as Attachment One.

Note: A disclosure of confidential information by a Councillor by a Councillor (section 77(1)) is an offence under the Act and carries a maximum penalty currently of 120 penalty units.

9. WARD ISSUES

The Electoral Structure of the Council comprises three wards of three Councillors. For the operational requirements of Council, the following procedures will occur:

- a. Copies of correspondence received by Council will be distributed to all ward Councillors irrespective of whether it is individually addressed.
- b. It is the responsibility of each Councillor to ensure that their co-ward Councillors are kept informed of any actions or matters relating to the Ward that they are actioning.
- c. Protocols for the conduct and the organising of Consultative meetings will be:
 - The preferred method of communication with the “requesting” Councillor and other Councillors is to be via email with a 24-48 hour response expectation.
 - arranging the details associated with the meeting (dates, time, venue, etc) is to be organised by the Planning Office and advised by email to all ward Councillors and be subject to the same response time from Councillors as outlined above.
 - In cases where the “call up” is made by a non ward Councillor, the Councillors for the ward are to be advised of the call up at the time it is being called up. This will be undertaken by the Planning Office.
 - The Chair of the meeting is to be the “requesting” Councillor, unless otherwise arranged between the Councillors.
- d. Ward meetings will be arranged by the Civic Support Unit at a date that meets the requirements of the Ward Councillors. At least one Ward meeting will be held annually, however there will be no Ward meetings held in the four months preceding a General election.
- e. In accordance with the Act, Discretionary or Ward funds are prohibited.

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10. COMMUNITY ENGAGEMENT

The Council Plan states that the City of Stonnington is committed to engaging and consulting with the community and considers this to be an important part of Council's business. Council believes that gaining community input on important local issues ensures that Council services and facilities best meet community needs.

Councillors are the representatives of the community and as such need to be responsive to community views and provide feedback on the Council's position and decisions on various matters. This may be through various consultation or ward meetings or from Council meetings.

At times a Councillor may disagree with the majority decision of Council and wants the community to know that. Councillors are entitled to present their own views, but in doing so, acknowledge that:

- they will respect the right of other Councillors to have a different opinion to themselves and will respect the decision-making process of the Council which is based on a decision of a majority of the Council;
- they will recognise the need to achieve a balance in the matters that are communicated and endeavour to present the Council as effective and cohesive
- should the media or other members of the public cite confidential information from Council that they make no public comment on it
- the Mayor , CEO or other designated person is authorised to speak to the media on Council's behalf to convey Council's official position on matters/issues before Council, in accordance with Council's Media Policy 2012 or Social Media Policy 2012.

11. PROHIBITED CONDUCT

The Local Government Act 1989 has specific provisions that prohibit Councillors from certain conduct. This conduct relates to:

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

These matters are set out below in order to provide a complete picture of the obligations on Councillors. While these matters are not of a nature to be addressed as a contravention of the Councillor Code of Conduct, Councillors undertake to comply with the prohibitions on Councillor conduct set out below. These matters should more properly be the subject of an application to a Councillor Conduct Panel for a finding of serious misconduct or a complaint to the Local Government Inspectorate or the Independent Broad-based Anti-corruption Commission (IBAC) depending on the nature of the allegation.

[Note: Serious misconduct by a Councillor means:

- (a) the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or
- (b) the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or
- (c) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or

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- (d) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or
- (e) bullying of another Councillor or member of Council staff by a Councillor; or
- (f) conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or
- (g) the release of confidential information by a Councillor.]

11.1 Misuse of Position

A Councillor must not misuse his or her position:

- a. to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- b. to cause, or attempt to cause, detriment to the Council or another person.

Circumstances involving the misuse of position by a Councillor include:

- a. making improper use of information acquired as a result of the position he or she held or holds; or
- b. disclosing information that is confidential information within the meaning of section 77(2); or
- c. directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
- d. exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
- e. using public funds or resources in a manner that is improper or unauthorised; or
- f. failing to disclose a conflict of interest under this Division.

11.2 Improper Direction and Improper Influence

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

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

11.3 Confidential Information (see also sections 4.5 and 8)

A Councillor must not disclose information that he or she knows, or should reasonably know, is confidential information.

A Councillor may disclose information that he or she knows is confidential information in the following circumstances:

- a. for the purposes of any legal proceedings arising out of this Act;
- b. to a court or tribunal in the course of legal proceedings;
- c. pursuant to an order of a court or tribunal;
- d. to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- e. to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;

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- f. to a municipal monitor to the extent reasonably required by the municipal monitor;
- g. to the extent reasonably required for any other law enforcement purposes.

11.4 Conflict of Interest (see also section 6 Disclosure of Interests)

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or Special Committee, an Assembly of Councillors, an Audit Committee or a Section 223 Committee, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the provisions of the Act (unless any of the exemptions apply).

A Councillor has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the Councillor would be directly altered if the matter is decided in a particular way. This includes where there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms and where the Councillor, or together with a member or members of the person's family has a controlling interest in a company or other body that has a direct interest in the matter.

A conflict of interest also exists where a Councillor has any of the six types of indirect interest. These indirect interests are:

- Close association – an indirect interest because of a close association with a family member, relative or member of the household who has a direct interest;
- Indirect financial interest – an indirect financial interest, including holding shares above a certain value in a company with a direct interest;
- Conflicting duty – a conflicting duty arising from having particular responsibilities to a person or organisation with a direct interest;
- Applicable gift – recipient of an applicable gift or gifts from a person or organisation with a direct interest;
- Interested party – a party to the matter by having become involved in civil proceedings in relation to the matter;
- Residential amenity – this occurs where there is a reasonable likelihood that the person's residential amenity will be altered if the matter is decided in a particular way.

11.5 Other Legislative Requirements

The Act includes requirements in relation to Councillor eligibility, electoral conduct and the Election Period (caretaker period) (refer to Council's Electoral Period Policy). Alleged contraventions of these provisions are not to be dealt with by the Council using the internal resolution procedure in this Code of Conduct. Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission (VEC) or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

Councillors undertake to comply with the various provisions relating to these matters.

12. DISPUTE RESOLUTION (SEE ATTACHMENT FOUR FLOWCHART)

Having different or sometimes opposing points of view is a normal function of the democratic process. Informed and considered debate comes from the sharing of various points of view. While Councillors recognise that debate can be lively within the context of a Council or other meetings every effort will be made to ensure that the Code of Conduct, particularly as it relates to the manner in which Councillors deal with each other, is followed.

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It is recognised that at times there may be disputes or grievances between Councillors. Sometimes these disputes give rise to the need for further resolution outside the public arena of the Council Chamber.

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. Where, after these endeavours have been exhausted, the matter still remains unresolved, the parties may resort to any or all of the Council's three phase dispute resolution process.

12.1 Internal Resolution Process

The Act requires the Councillor Code of Conduct to contain an internal resolution process for dealing with any alleged contravention of this Code.

The Council's three step dispute resolution process involves:

- Step one – direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance
- Step two – external mediation by an independent mediator engaged by the CEO; and
- Step three – an internal resolution procedure involving an independent arbiter.

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:

- the application was made by the Council and the Council so resolves; or
- the application was made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application; or
- the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

12.1.1 Step One - Direct Negotiation

Where Councillors who are in dispute have not been able to resolve the dispute between them, either (or both) party (parties) may request the Mayor to convene a meeting of the parties.

A dispute referred for direct negotiation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
 - an alleged contravention of the Councillor Code of Conduct.
- i. The party requesting the direct negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a "direct negotiation" dispute resolution process.
 - ii. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:

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- specify the name of the Councillor alleged to have contravened the Code;
 - specify the provision/s of the Code that allegedly has 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
 - be signed and dated by the requestor or the requestor's representative.
- iii. The requestor will notify the other party of the request and provide him or her with a copy of the written request at the same time as when provided to the Mayor, or as soon as practicable thereafter.
- iv. The Mayor is to ascertain whether or not the other party is prepared to attend a 'direct negotiation' meeting.
- v. If the other party is not prepared to attend a meeting, the Mayor is to advise the requestor immediately. No further action is required of the Mayor. Declining to participate in a meeting does not constitute a contravention of this Code.
- vi. If the other party consents to a meeting, the Mayor is to convene a meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within five (5) working days of receiving the consent of the other party.
- vii. The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.
- viii. The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act and the observation of the Councillor conduct principles and the Councillor Code of Conduct.
- ix. The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.
- x. If the parties cannot resolve the dispute at the meeting a further meeting may be convened with the consent of both parties.
- xi. Where the dispute remains unresolved, either or both of the parties have recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.
- xii. Where the Mayor is a party to the dispute the request is to be made to the immediate past Mayor who will perform the functions as outlined as if he or she were the Mayor.

12.1.2 Step Two – External Mediation

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation, whether or not the dispute has been the subject of an application for 'direct negotiation'.

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An application made for a dispute to be referred for external mediation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
 - an alleged contravention of the Councillor Code of Conduct.
- i. The applicant is to submit a written application to the Council's Principal Conduct Officer (PCO) setting out the name of the Councillor and the details of the dispute. An application may also be made by a group of Councillors. The application is to indicate that the dispute/issue be referred for 'external mediation'.
 - ii. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:
 - specify the name of the Councillor alleged to have contravened the Code;
 - specify the provision/s of the Code that allegedly has 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
 - be signed and dated by the requestor or the requestor's representative.
 - iii. The applicant will notify the other party of the request and provide him or her with a copy of the application at the same time as when submitted to the PCO, or as soon as practicable thereafter.
 - iv. The PCO is to ascertain (in writing) whether or not the other party is prepared to attend an external mediation. If the other party declines to participate in an external mediation, he or she is to provide (in writing) their reasons for doing so to the PCO. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel. Declining to participate in an external mediation does not constitute a contravention of this Code.
 - v. If the other party agrees to participate in an external mediation, the PCO will advise the applicant, Mayor and CEO immediately.
 - vi. An independent, external mediator will be appointed by the CEO to conduct the mediation at the earliest opportunity.
 - vii. The Mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.
 - viii. If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

12.1.3 Step Three – Internal Resolution Procedure - Arbiter

- i. A Councillor or group of Councillors may make an application to the PCO for the appointment of an Arbiter to resolve a dispute which involves an that a Councillor has contravened the Councillor Code of Conduct.

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- ii. The request must:
 - specify the name of the Councillor alleged to have contravened the Code;
 - specify the provision/s of the Code that allegedly has 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
 - be signed and dated by the requestor or the requestor's representative.
- iii. An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.
- iv. On receiving an application, the PCO will:
 - advise the Mayor and CEO of the application without undue delay;
 - provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application;
 - identify an independent, suitably qualified, Arbiter to hear the application;
 - obtain written advice from the Arbiter that they have no conflict of interest in relation to the Councillors involved;
 - notify the parties of the name of the proposed Arbiter and provide them with the opportunity (2 working days) to object to the person proposed to be the Arbiter;
 - consider the grounds of any objection and appoint the proposed Arbiter or identify another Arbiter;
 - provide a copy of the application to the Arbiter as soon as practicable after the opportunity for the parties to object to an Arbiter has expired;
 - after consultation with the Arbiter, advise the applicant and the respondent of the time and place for the hearing; and
 - attend the hearing/s and assist the Arbiter in the administration of the process.

12.1.4 Role of Arbiter

The role of the Arbiter is to:

- consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor;
- make findings in relation to any application alleging a contravention of the Councillor Code of Conduct;
- give a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council;
- recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct.

In considering an application alleging a contravention of the Councillor Code of Conduct, an Arbiter will:

- in consultation with the PCO fix a time and place to hear the application;
- authorise the PCO to formally notify the applicant and the respondent of the time and place of the hearing;

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- hold as many meetings as he or she considers necessary to properly consider the application. The Arbiter may hold a directions hearing;
- have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the application allows;
- ensure that the parties to and affected by an application are given an opportunity to be heard by the Arbiter;
- consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant or deny the application
- ensure that the rules of natural justice are observed and applied in the hearing of the application;
- ensure that the hearings are closed to the public.

Where an application to have legal representation is granted by an Arbiter, the costs of the respondent's legal representation are to be borne entirely by the respondent.

12.1.5 Findings

The Arbiter is to give a copy of his or her findings and the statement of reasons to the Council, the applicant and the respondent. At the same time the Arbiter provides the findings and statement of reasons, he or she shall, where a Councillor has been found to have contravened the Code, recommend an appropriate sanction or sanctions for the contravention for consideration by Council.

A copy of the Arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next Ordinary Meeting of the Council for its consideration.

If the Arbiter has found that a Councillor has contravened the Councillor Code of Conduct, the Council, may, after considering the Arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor:

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

A Councillor who does not participate in the internal resolution procedure may be guilty of misconduct.

The Act provides that misconduct by a Councillor means any of the following:

- (a) failure by a Councillor to comply with the Council's internal resolution procedure; or
- (b) failure by a Councillor to comply with a written direction given by the Council under section 81AB; or
- (c) repeated contravention of any of the Councillor conduct principles.

Allegations of misconduct are heard on application by a Councillor Conduct Panel.

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12.2 Councillor Conduct Panel

If the Principal Conduct Officer considers the relationship between Councillors is such that it is unduly affecting the operation of the Council, then the matter may be referred to the Principal Councillor Conduct Registrar (PCCR) for consideration. An application for a Councillor Conduct Panel may be made by:

- the Council by resolution to make such application; or
- a Councillor or group of Councillors; or
- the Chief Municipal Inspector

Such Panel may be established for a Council to help Council enforce its Councillor Code of Conduct. This step can only be undertaken after Council has been through its own internal dispute resolution processes without success.

An application must specify the:

- ground or grounds for the application; and
- set out the circumstances, actions or inactions of the Councillor who is the subject of the application

In determining whether to form a panel, the PCCR must be satisfied that:

- the application is not frivolous, vexatious, misconceived or lacking in substance;
- there is sufficient evidence to support an allegation of misconduct or serious misconduct; and
- the Council has taken sufficient or appropriate steps to resolve the matter or has provided satisfactory reasons for not taking these steps in accordance with the internal resolution procedure above.

The PCCR will streamline and expedite panel processes. If the application is supported by evidence the Registrar will proceed to establish a panel.

The Chief Municipal Inspector may also apply to the Registrar for the establishment of a panel.

A Councillor Conduct Panel will be able to hear and determine on allegations of both misconduct, and also serious misconduct. While Panels will continue to have the discretion to allow legal representation at a hearing, this is not encouraged. The costs of the Panel will be met by Council and generally will be held in the municipality.

The recommendations from the findings of the panel may include:

- discipline a Councillor by reprimand
- demand an apology
- require the Councillor to take up to two months leave of absence,
- require remedial action, including mediation, training or counselling,
- determine the Councillor is ineligible to be Mayor up to a maximum period of four years
- suspend the Councillor for up to a maximum period of 6 months
- determine the Councillor is ineligible to chair any special committee for up to a maximum of four years, or
- refer a matter to VCAT if a Councillor's behaviour appears to be gross misconduct.¹

¹ Division 1B of the Act outlines Councillor Conduct Panels processes in full.

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12.3 Victorian Civil and Administrative Tribunal (VCAT)

The Chief Municipal Inspector is responsible for making applications to VCAT for findings of gross misconduct against Councillors.

Decisions of a panel may also be appealed to VCAT.

13. ACCESS TO COUNCIL BUILDINGS

Meeting rooms and facilities for Councillors are provided in the Council Office. An office for the Mayor is provided in the Governance area of the Stonnington City Centre together with a Councillors meeting room/lounge, and for shared use at Prahran Town Hall and Malvern Town Hall.

Councillors are entitled to full access to the Councillors' Lounge and the Councillor office located near the Chamber areas at both Malvern and Prahran. Other meeting rooms in the Council offices are used during the day and should a Councillor require use, a booking needs to be made via the Civic Support Officer on 8290 1331. If a booking is requested at short notice, it needs to be understood the room may have been allocated already, and the Councillor may be requested to select another room or another date. If meetings are to be held out of hours, this should be arranged through Civic Support to ensure a Facilities Officer is there to assist.

Councillors have access to the Council buildings and facilities at the same level as any other member of the public, during business hours and on payment of the set fee or charge if the booking is for personal use.

Councillors have been issued with an access pass to the main Council offices to allow them to pass through the offices during business hours only, and to the top floor Malvern to the Chamber area at all times as well as the Governance area at Stonnington City Centre. Pass access is required for the lift at the City Centre. An after-hours key access is provided to enable rear access to the Councillor suite at Prahran. Loss of a pass or keys should be reported immediately to the Civic Support Officer.

14. PROTECTED DISCLOSURE (formerly Whistleblowers Protection)

The Stonnington City Council is committed to the aims and objectives of the Protected Disclosure Act 2012. It does not tolerate improper conduct by its Councillors or Staff, nor the taking of reprisals against those who come forward to disclose such conduct.

15. EQUAL OPPORTUNITY

The Stonnington City Council is committed to the principles of Equal Opportunity.

This ensures that all Councillors, Officers and staff members are treated fairly without regard to age, race, sex, disability, pregnancy, breastfeeding, marital status, parental status, career status, religious beliefs, political beliefs, industrial beliefs, lawful sexual activity, gender identity, sexual orientation, physical features, or on the grounds of association with another person on the basis of the above.

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The Stonnington City Council does not condone and will not tolerate discrimination of any kind and this statement reflects the desired objective of enjoying a Council free from discrimination and harassment where each individual has the opportunity to progress to the extent of their ability. The Stonnington City Council acknowledges that under the Victorian Equal Opportunity Act (2010) discrimination is unlawful and this policy applies equally to the treatment of our residents, ratepayers, customers/clients and contractors.

16. STATEMENT OF HUMAN RIGHTS

Adopted by Council on 4 February 2008

'The City of Stonnington recognises and respects that everyone has the same human rights entitlement to allow them to participate in, and contribute to, society and our community. We recognise that all persons have equal rights in the provision of, and access to, Council services and facilities. We recognise that, at times, such rights may be limited, insofar as to strike a balance between individual rights and the protection of public interest.'

17. ELECTION PERIOD POLICY

Council has adopted an Election Period Policy in order to ensure that the lead up to the general election or any by-election for the City of Stonnington is conducted in a manner that is fair and equitable, and is publically perceived as such and where Council decisions are as required to meet statutory obligations.

These guidelines are applicable to Councillors and Council staff and are a separate Policy.

18. COUNCILLOR POLITICAL ACTIVITY

It is acknowledged that it is a democratic right of Councillors to seek political or other office in pursuit of their personal ambitions. Councillors, in pursuit of their goals, will abide by the requirements and provisions of the Act relating to the Oath of Office, Councillor Conduct Principles, misuse of position and overall obligations in the Councillor Code of Conduct. This requires Councillors to act impartially and in the best interests of the community to avoid conflicts between public duty and personal interests, not to obtain a personal advantage for themselves or others and not to misuse public resources. The positive image of and confidence in the office of Councillor is to be secured and preserved at all times.

18.1 STATE OR FEDERAL ELECTION CANDIDATES

Councillors may at times nominate for State or Federal elections.

The Commonwealth Electoral Amendment (Members of Local Government Bodies) Act 2003 provides that any State legislation that discriminates against a Councillor on the ground that the Councillor has been, or is to be, nominated or declared as a candidate for the House or Representatives of the Senate has no effect.

The following Guidelines are to be observed by any person who is nominating or becomes an endorsed candidate for the State or Federal elections:-

- The Councillor will advise the Chief Executive Officer in writing, as soon as practicable, who will then advise all Councillors, that the Councillor has become an endorsed candidate;

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- The Councillor who is a candidate for State or Federal election should declare this at a meeting of the Council as soon as practicable after the nomination date;
- The same provisions as outlined in the Council's Caretaker Policy will apply in respect to the Councillor who is the nominated candidate; this includes no use of Council resources, including Council equipment - and particularly telephones, mobile phones, logos, letterhead, mail, publications in relation to his/her candidacy;
- A Councillor who is an endorsed candidate should take leave from any Council or representative role;
- The Councillor must not use Council activities, including Council or Advisory Committee meetings and Council-related external activities in relation to his/her candidacy;
- Where a Councillor speaks on Council issues as a candidate in an election, the Councillor should clearly identify this fact;
- The Councillor will seek their own legal advice in respect to these issues.

19. REFERENCES

- *Local Government Act 1989*
- *City of Stonnington General Local Law 2008 (No.1)*
- *Conflict of Interest – A Guide for Councillors – October 2012– published by the Department of Planning and Community Development*
- *Conflict of Interest - A guide for members of Council committees – October 2012*
- *City of Stonnington Councillor Civic Support and Expenses Policy*
- *Equal Opportunity Act 2010 (Victorian)*
- *Sex Discrimination Act (1984) (Commonwealth)*
- *Disability Discrimination Act 1992 (Commonwealth)*
- *Racial Discrimination Act 1975 (Commonwealth)*
- *Age Discrimination Act 2004 (Commonwealth)*
- *Election Period Policy adopted by Council 21 March 2016*
- *Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth)*
- *Protected Disclosure Act 2012*
- *Charter of Human Rights and Responsibilities Act 2006 (Victorian)*
- *Privacy and Data Protection Act 2014*
- *City of Stonnington Media Policy August 2012 and Social Media Policy 2012*
- *Fraud and Corruption Control Policy and Procedure 2016*

20. REVIEW

To ensure that the Code remains relevant to the operations of Council in addition to the statutory requirements to review the Code of Conduct within four months after each Council Election, this Code will be reviewed if required as a result of legislative changes. Any review will be done at a Special Meeting of Council solely for the purpose of reviewing the Councillor Code of Conduct.

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21. SCHEDULE OF CHANGES

No.	Change	Date
1	Original adopted by Council	1 October 2001
2.	Revision incorporating new legislation adopted	18 October 2004
3.	Reviewed following general election of 2004	2 May 2005
4.	Administrative changes review	3 October 2008
5.	Reviewed following general election of 2008	6 July 2009
6.	Amended to reflect changes to Local Government Act	5 October 2009
7.	Briefing Sessions – Confidentiality added including Councillor Briefing Sessions Charter	20 September 2010
8.	Reviewed following Internal Audit and adopted by Council	3 October 2011
9.	Post-2012 Election Review	20 May 2013
10.	Administrative review	May 2015
11.	Legislative review	2016

DEFINITIONS

Arbiter – an independent person who has been appointed by Council's Principal Conduct Officer, after any objections to his or her appointment have been considered to conduct the Internal Resolution Hearings and make findings and submit a report to Council.

Bullying - unreasonable behaviour that creates a risk to the health and safety of another Councillor or a member of Council staff which is also a form of serious misconduct.

Chief Municipal Inspector – is responsible for the independent administrative office established to assess compliance with the *Local Government Act 1989*. The Inspectorate can only investigate matters related to Council operations and breaches of the Act involving a Councillor, a senior council officer or any individual subject to the conflict of interest provisions within the Act; or any individual where the matter relates to electoral provisions.

Gross misconduct - Behaviour that demonstrates lack of character to be a Councillor.

Mediator – An impartial, trained and nationally accredited person who helps parties to confidentially discuss the issues, identify solutions and work towards a mutually acceptable agreement.

The mediator will help a Councillor and the other parties to:

- identify and explore the issues in dispute
- develop options
- consider alternatives
- work together to reach an agreement
- record details of any agreement reached

Misconduct - failing to comply with a Council's internal resolution procedure, including failure to abide by any decision of Council in relation to a breach of the Code and repeated breaches of Councillor conduct principles.

Municipal Monitor – appointed by the Minister to monitor and advise Council on governance processes and practices and any improvements Council should make. Will also investigate any referred complaint from the Minister. Must report to the Minister on any steps or actions

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taken by Council to improve or provide a report about a Councillor in respect to whom a complaint has been made.

Principal Conduct Officer (PCO) - a senior officer of Council appointed in writing by the CEO, and responsible for assisting the Council in matters of internal resolution of Councillor Code of Conduct matters.

Principal Councillor Conduct Registrar (PCCR) – a State Government position and statutory office.

Serious misconduct - failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct. It means:

- a. The failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or
- b. The failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested to Councillor to give; or
- c. The failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or
- d. Continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by the Councillor Conduct Panel; or
- e. Bullying of another Councillor or member of Council staff by a Councillor; or
- f. Conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or
- g. The release of confidential information by a Councillor.

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ATTACHMENT ONE

COUNCILLOR BRIEFING SESSIONS CHARTER

Adopted by Council 24 May 2010

BRIEF DESCRIPTION

The Councillor Briefing Session comprises all Councillors and is supported by the Executive Management Team and specialist officers as required. The meeting is closed to members of the public, and is defined in the Local Government Act Section 80A as an '*Assembly of Councillors*' and subject to the compliance requirements of the Act.

The provisions of Council's Meeting Procedure Local Law do not apply to Briefing Sessions.

The Mayor shall be the Chair of all Briefing Sessions and in the absence of the Mayor, a Chairperson shall be elected by a majority of Councillors present at the meeting.

ROLE

To advise and inform Councillors of new matters or the progress of existing matters.

To consider Agenda items and officer reports for subsequent meetings and other Council business matters.

Reports are not presented for Councillor/s pre-determination of issues being put to a subsequent Council or Committee forum; for debate on the ultimate officer recommendation being put to Council; or to invite Councillor/s preapproval of any subsequent recommendation by officer/s.

These informal and confidential Briefing Sessions provide the opportunity for Councillors to be informed, to discuss, challenge, question and clarify matters of Council business and meeting agendas. They also provide the opportunity for Councillors to discuss policy formulation and direction.

CONFIDENTIALITY OF DISCUSSIONS

Where a matter is confidential all discussion, comment, opinion, information and material related to that confidential matter will also be deemed to be confidential.

AMENDMENT TO CHARTER

This Charter and the Role of the Briefing Sessions may be amended from time to time by direction of Council.

ATTENDANCE

In addition to all Councillors, the Chief Executive Officer, General Managers, and officers with a specific interest or involvement in a presentation, report or matter being dealt with in the Agenda presented to the Briefing Session shall attend the meeting.

A record of matters discussed by the Councillor Briefing Session shall be maintained for record purposes, a summary of which will be included in the required Assembly of Councillors form to be presented to the next practicable Ordinary Council Meeting.

Councillor Code of Conduct

ATTACHMENT TWO

LEGISLATION REFERENCES

Division 1A—Conduct and interests

Division 1A—Conduct and interests

76AA Definitions

In this Division—

* * * * *

family has the same meaning as **family member** has in section 78;

matter means a matter with which a Council, special committee or a member of Council staff is concerned and that will require—

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council or a special committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Council staff in respect of the matter;

not-for-profit organisation means a body or organisation that—

- (a) operates exclusively for charitable, civil or other social purposes; and
- (b) does not share or allocate the funds or profits of the body or organisation with the owners, shareholders or executives of the body or organisation;

relevant person means a person who is a—

- (a) Councillor; or
- (b) member of a special committee; or
- (c) member of Council staff.

76B Primary principle of Councillor conduct

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.

76BA General Councillor conduct principles

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must—

Councillor Code of Conduct

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;
- (d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;
- (g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

76C Councillor Code of Conduct

- (1) A Council must review, and make any necessary amendments to, its Councillor Code of Conduct within 4 months after the commencement of section 15 of the **Local Government Amendment (Improved Governance) Act 2015**—
 - (a) by calling a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
 - (b) at that special meeting, approving any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.
- (2) A Council must, within the period of 4 months after a general election—
 - (a) call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
 - (b) at that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.
- (3) A Councillor Code of Conduct—
 - (a) must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor;

Note

Section 81AA provides for matters to be addressed by the internal resolution procedure of a Council.

 - (b) may set out processes for the purpose of resolving an internal dispute between Councillors;
 - (c) must include any provisions prescribed for the purpose of this section;

Councillor Code of Conduct

- (d) must include provisions addressing any matters prescribed for the purpose of this section;
- (e) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.

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- (5) A Councillor Code of Conduct must not be inconsistent with any Act or regulation.
- (5A) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act or regulation.
- (6) A copy of the current Councillor Code of Conduct must be—
 - (a) given to each Councillor;
 - (b) available for inspection by the public at the Council office and any district offices;
 - (c) published on the Council's Internet website maintained under section 82A.
- (6A) Within one month of amendments to a Councillor Code of Conduct being approved in accordance with this section, a Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct.
- (6B) A declaration by a Councillor under subsection (6A) must be—
 - (a) in writing; and
 - (b) witnessed by the Chief Executive Officer.

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76D Misuse of position

- (1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.Penalty: 600 penalty units or imprisonment for 5 years or both.
- (2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of section 77(2); or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or

Councillor Code of Conduct

- (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using public funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under this Division.
- (3) This section—
- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and
 - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

76E Improper direction and improper influence

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- (2) A Councillor must not direct, or seek to direct, a member of Council staff—
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
 - (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
 - (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.
- Penalty: 120 penalty units.
- (2A) If an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of conduct in contravention of subsection (2), the Councillor must not be charged with an offence against that subsection in respect of the same conduct unless—
- (a) the Councillor Conduct Panel application is withdrawn; or
 - (b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter under section 81P; or
 - (c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or
 - (d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.
- (2B) If a Councillor is charged with an offence against subsection (2), an application for a Councillor Conduct Panel to make a finding of serious misconduct by the

Councillor Code of Conduct

Councillor must not be made for the same conduct in respect of which the Councillor has been charged.

- (3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

77 Confidential information

- (1) A person who is, or has been, a Councillor or a member of a special committee, must not disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: 120 penalty units.

- (1A) A person who is, or has been, a Councillor or a member of a special committee, may disclose information that the person knows is confidential information in the following circumstances—
- (a) for the purposes of any legal proceedings arising out of this Act;
 - (b) to a court or tribunal in the course of legal proceedings;
 - (c) pursuant to an order of a court or tribunal;
 - (d) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
 - (e) to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
 - (f) to a municipal monitor to the extent reasonably required by the municipal monitor;
 - (g) to the extent reasonably required for any other law enforcement purposes.
- (1B) If an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of conduct in contravention of subsection (1), the Councillor must not be charged with an offence against that subsection in respect of the same conduct unless—
- (a) the Councillor Conduct Panel application is withdrawn; or
 - (b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter under section 81P; or
 - (c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or
 - (d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.
- (1C) If a Councillor is charged with an offence against subsection (1), an application for a Councillor Conduct Panel to make a finding of serious misconduct by the Councillor must not be made for the same conduct in respect of which the Councillor has been charged.
- (2) For the purposes of this section, information is **confidential information** if—

Councillor Code of Conduct

- (a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or
- (b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or
- (c) the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.

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77A Direct and indirect interests

- (1) A relevant person has a conflict of interest in respect of a matter if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person has a direct interest in a matter if the relevant person has an interest of a kind described in section 77B.
- (3) A relevant person has an indirect interest in a matter if the relevant person has—
 - (a) a close association as specified in section 78; or
 - (b) an indirect financial interest as specified in section 78A; or
 - (c) a conflicting duty as specified in section 78B; or
 - (d) received an applicable gift as specified in section 78C; or
 - (e) become an interested party as specified in section 78D; or
 - (f) a residential amenity that may be altered as specified in section 78E.
- (4) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (5) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest the relevant person holds—
 - (a) is held as a resident, ratepayer or voter and does not exceed the interests generally held by other residents, ratepayers or voters; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (6) A relevant person does not have a conflict of interest in a matter if the relevant person—
 - (a) does not know the circumstances that give rise to the conflict of interest; and

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- (b) would not reasonably be expected to know the circumstances that give rise to the conflict of interest.

77B Direct interest

- (1) A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subsection (1), a person has a direct interest in a matter if—
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.
- (3) A person who has a membership in a club or organisation that has a direct interest in a matter—
 - (a) does not, by reason of that membership, have a direct interest in the matter under subsection (1); and
 - (b) does not have an indirect interest in the matter, by reason of that membership, unless the person has an indirect interest in the matter under section 78A, 78B or 78C.
- (4) In subsection (2), **controlling interest** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**.

78 Indirect interest by close association

- (1) In this section—
 - daughter** means a biological daughter, step-daughter, adopted daughter, or female child for whom the person has custodial responsibilities;
 - direct relative** means the spouse, domestic partner, son, daughter, mother, father, brother or sister of the person;
 - domestic partner** of a person means—
 - (a) a person who is in a registered relationship with the person; or
 - (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
 - (i) for fee or reward; or
 - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

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family member means—

- (a) a spouse or domestic partner of the person; or
- (b) a son, daughter, mother, father, brother or sister that regularly resides with the person;

relative means—

- (a) a direct relative of the person;
- (b) a direct relative of a person who is the direct relative of the person;

son means a biological son, step son, adopted son or male child for which the person has custodial responsibilities.

- (2) A person has an indirect interest by close association in a matter if—
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) For the purposes of the definition of **domestic partner** in subsection (1)—
 - (a) **registered relationship** has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
 - (c) a person is not a domestic partner of another person only because they are co-tenants.

78A Indirect interest that is an indirect financial interest

- (1) A person has an indirect financial interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (2) Without limiting subsection (1), a person has an indirect financial interest that is a conflict of interest if—
 - (a) the person has a beneficial interest in shares of a company or other body that has a direct interest in the matter, except in the circumstances specified in subsection (3);
 - (b) the person is owed money from another person and that other person has a direct interest in the matter.
- (3) If a person, and family members of the person, hold shares in a company or body that has a direct or indirect interest in a matter with a combined total value that does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million, the person's indirect financial interest is not a conflict of interest.
- (4) Subsection (2)(b) does not apply if the other person is an authorised deposit-taking institution.

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- (5) For the purposes of determining the value of shares under this section, the share value is to be taken from—
- (a) the close of business on the most recent of 30 June or 31 December; or
 - (b) if the person has lodged an ordinary return since the most recent of 30 June or 31 December, the close of business on the date the return was submitted.

78B Indirect interest because of conflicting duties

- (1) A person has an indirect interest in a matter because of a conflicting duty if the person—
- (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter;
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter;
 - (c) is a trustee for a person who has a direct interest in a matter.
- (2) A person has an indirect interest in a matter because of a conflicting duty if the person held a position or role specified in subsection (1) and, in that position or role, dealt with the matter.
- (3) A person does not have an indirect interest because of a conflicting duty if—
- (a) the person is, or has been, only an employee in the service of the Crown or of a body established by or under any Act for a public purpose and the person has no current or expected responsibilities as that employee in relation to a matter;
 - (b) the person only holds a position in a not-for-profit organisation for which the person receives no remuneration and the person was appointed to the relevant special committee of the Council to be a representative of the non-for-profit organisation;
 - (ba) the person only holds a position, with the Council's approval as a representative of the Council, in an organisation for which the person receives no remuneration;
 - (c) the person is only a Councillor who holds a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;
 - (ca) the person is only a member of the Planning Application Committee established under Part 4AA of the **Planning and Environment Act 1987** or a member or co-opted member of a subcommittee of that Committee;
 - (d) the person only holds a position that has been prescribed for the purposes of this section.

78C Indirect interest because of receipt of an applicable gift

- (1) In this section, **applicable gift** means one or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person or persons specified in subsection (2) in the 5 years preceding the decision or the exercise of the power, duty or function but does not include—

Councillor Code of Conduct

- (a) reasonable hospitality received by the person at an event or function the person attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee; or
 - (b) a gift, other than an election campaign donation, that was received by the person more than 12 months before the person became a Councillor, a member of Council staff or a member of a special committee.
- (2) A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from—
- (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.
- (3) For the purposes of determining when a person became a Councillor or member of a special committee under subsection (1)(b), if the person is re-elected or reappointed as a Councillor or a member of a special committee, on completion of his or her term of office, the previous term of office served by that person as a Councillor or member of a special committee must be counted as continuous service with any service completed by the person after the person's re-election or reappointment.

78D Indirect interest as a consequence of becoming an interested party

A person has an indirect interest in a matter if the person has become an interested party in the matter by initiating civil proceedings in relation to the matter or becoming a party to civil proceedings in relation to the matter.

78E Indirect interest because of impact on residential amenity

A person has an indirect interest in a matter if there is a reasonable likelihood that the residential amenity of the person will be altered if the matter is decided in a particular way.

79 Disclosure of conflict of interest

- (1) If a Councillor or member of a special committee has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or the special committee, the Councillor or member must, if he or she is attending the meeting, disclose the conflict of interest in accordance with subsection (2).
- (2) A Councillor or member of a special committee who has a conflict of interest and is attending the meeting of the Council or special committee must make a full disclosure of that interest—
- (a) by either—
 - (i) advising the Council or special committee at the meeting of the details required under paragraphs (b) and (c) immediately before the matter is considered at the meeting; or
 - (ii) advising the Chief Executive Officer in writing of the details required under paragraphs (b) and (c) before the meeting; and
 - (b) classifying the type of interest that has given rise to the conflict as either—

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- (i) a direct interest; or
 - (ii) an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, 78D or 78E; and
 - (c) describing the nature of the interest; and
 - (d) if the Councillor or member advised the Chief Executive Officer of the details under paragraph (a)(ii), the Councillor or member must make a disclosure of the class of interest only to the meeting immediately before the matter is considered at the meeting.
- (3) For the purposes of section 79(2)(a)(i), if a Councillor or member of a special committee has a conflict of interest in two or more matters which are to be considered or discussed consecutively at a meeting of the Council or the special committee, the Councillor or member may make a full disclosure of each of those interests immediately before the first matter is considered at the meeting.
- * * * * *
- (5) The Chief Executive Officer must—
- (a) keep written disclosures given to him or her under this section in a secure place for 3 years after the date the Councillor or member of a special committee who made the disclosure ceases to be Councillor or member of a committee; and
 - (b) destroy the written disclosure when the 3 year period referred to in paragraph (a) has expired.
- (6) While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must—
- (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
 - (b) remain outside the room and any gallery or other area in view or hearing of the room.
- (7) The Mayor or the Chairperson of the special committee must cause the Councillor or member of a special committee to be notified that he or she may return to the room after—
- (a) consideration of the matter; and
 - (b) all votes on the matter.
- (8) If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson must record in the minutes of the meeting—
- (a) the declaration of the conflict of interest; and
 - (b) the classification of the interest that has given rise to the conflict, and if the Councillor or member has disclosed the nature of the interest to the meeting, the nature of the interest.
- (9) Unless section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence and liable to a fine not exceeding 120 penalty units.
- * * * * *

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79B Conflicting personal interest

- (1) This section does not apply to a Councillor or member of a special committee who has a conflict of interest in the matter.
- (2) If a Councillor or a member of a special committee considers that he or she has a personal interest in relation to a matter that is in conflict with his or her public duty in relation to the matter, the Councillor or member may, immediately before the matter is considered at the relevant meeting, apply to the Council or special committee to be exempted from voting on the matter.
- (3) If a Councillor or member of a special committee makes an application under subsection (2), he or she must give reasons in support of the application.
- (4) A Council or special committee may consent to an application made under subsection (2) and must not unreasonably withhold consent.
- (5) If a Council or special committee consents to an application under subsection (4), sections 79(6), 79(7), 79(8) and 79(9) apply as if the personal interest that is the subject of an application under subsection (2) were a conflict of interest specified under this Act.

79C Certain situations where Councillor taken to not have a conflict of interest

- (1) A Councillor is taken to not have a conflict of interest for the purposes of this Division if the matter only relates to—
 - (a) the nomination or appointment by the Council of the Councillor to a position for which the Councillor will not be remunerated;
 - (b) the election of the Mayor under section 71 or the appointment of an acting Mayor under section 73(3);
 - (c) a decision in relation to the payment of allowances to the Mayor or Councillors under section 74 or 74C(2);
 - (d) the adoption of a policy under section 75B in relation to the reimbursement of expenses;
 - (e) the adoption of a Councillor Code of Conduct under section 76C;
 - (f) an application to a Councillor Conduct Panel or VCAT under Division 1B;
 - (g) an application for an exemption under section 80;
 - (h) the appointment of members and Chairpersons of special committees;
 - (i) a resolution that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under taxation legislation;
 - (j) the conduct of a Councillor with respect to—
 - (i) an internal dispute that involves the Councillor;
 - (ii) an allegation of misconduct or serious misconduct (as defined in section 81A) by the Councillor;
 - (k) a submission provided to an electoral representation review under section 219F;
 - (l) a submission provided for the purposes of a subdivision review conducted under section 219N.

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- (2) If a budget or revised budget to be approved by a Council includes funding for a matter in respect of which a Councillor has a conflict of interest the Councillor is taken to not have a conflict of interest for the purposes of approving the budget or revised budget if—
 - (a) the Council previously approved the matter and the proposed funding for the matter for inclusion in the budget or revised budget; and
 - (b) the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter and the proposed funding for the matter was previously considered and made.
- (3) If a Council Plan to be approved by a Council includes a matter in respect of which a Councillor has a conflict of interest, the Councillor is taken to not have a conflict of interest for the purposes of approving the Council Plan if—
 - (a) the Council previously approved the matter for inclusion in the Council Plan; and
 - (b) the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter was previously considered and made.
- (4) If a Councillor with a conflict of interest referred to in subsection (2) or (3) notifies the Mayor or Chairperson prior to the consideration of the budget, revised budget or Council Plan of the conflict of interest, the Mayor or Chairperson must allow a prior motion to be put that the matter or funding be considered for inclusion in the budget, revised budget or Council Plan.

79D Person may make submission despite conflict of interest

- (1) Subject to subsection (2), a relevant person who has a conflict of interest in a matter and who has made a written submission under section 223 in respect of the matter, may present his or her submission under section 223(1)(b) to the Council or committee of the Council.
- (2) The relevant person who has a conflict of interest in a matter must not be at the meeting of the Council or committee of the Council any longer than is required for the person to be heard in support of the person's written submission.

80 Exemption by Minister

- (1AA) Despite section 79, the Minister may, of his or her own motion, exempt in writing a person, other than a Councillor, from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit if the Minister is satisfied that—
 - (a) extraordinary circumstances exist that justify the exemption of the person; and
 - (b) it is in the public interest to exempt the person.
- (1AB) In exempting a person under subsection (1AA), the Minister must have regard to the extent of the conflict of interest of the person.
 - (1) Despite section 79—
 - (a) a Council may apply, in writing, to the Minister for an exemption of any Councillor from any or all of the provisions of section 79 if the Council is of the opinion that the transaction of any Council or special committee

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business would be impeded because of the number of Councillors affected by section 79;

- (b) a Chief Executive Officer of a Council may apply, in writing, to the Minister, after receiving written declarations of conflicts of interest from a majority of Councillors, for an exemption of those Councillors from any or all of the provisions of section 79.
- (1A) After reviewing an application received from a Council or a Chief Executive Officer, the Minister may require the Council or Chief Executive Officer to provide additional information in respect of the application, including copies of the written declarations of conflicts of interests made by Councillors under section 79.
- (1B) In considering an application made by a Council or Chief Executive Officer, the Minister must have regard to—
 - (a) the extent of the conflicts of interest of the Councillors; and
 - (b) the public interest.
- (2) The Minister may, after considering an application under subsection (1B), exempt in writing a Councillor from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit.
- (3) The Minister may revoke an exemption.

94A Functions of the Chief Executive Officer

- (1) A Chief Executive Officer is responsible for—
 - (a) establishing and maintaining an appropriate organisational structure for the Council; and
 - (b) ensuring that the decisions of the Council are implemented without undue delay; and
 - (c) the day to day management of the Council's operations in accordance with the Council Plan; and
 - (ca) developing, adopting and disseminating a code of conduct for Council staff; and
 - (d) providing timely advice to the Council; and
 - (da) ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act; and
 - (db) supporting the Mayor in the performance of the Mayor's role as Mayor; and
 - (e) 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 **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013**; and

Note

See section 14AA of the **Accident Compensation Act 1985** and clause 15 of Schedule 1 to the **Workplace Injury Rehabilitation and Compensation Act 2013**.

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- (f) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.
- (2) The Chief Executive Officer may appoint as many members of Council staff as are required to enable the functions of the Council under this Act or any other Act to be carried out and to enable the Chief Executive Officer to carry out her or his functions.
- (3) The Chief Executive Officer is responsible for appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff.
- (3A) The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.
- (4) A reference to Council staff in this section does not include a reference to the Chief Executive Officer.

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ATTACHMENT THREE

STATUTORY DECLARATION OF ELIGIBILITY

I.....{ Full Name}

of.....{Address}

in the State of Victoria.....{Occupation}

do solemnly and sincerely declare that:-

1. I am a Councillor of Stonnington City Council;
2. I am an Australian Citizen;
3. I remain entitled to be enrolled on the voters' roll for Stonnington City Council as I am a resident in Council's municipal district or a ratepayer to the Council;
4. I am not an undischarged bankrupt;
5. my property is not subject to control under the law relating to bankruptcy;
6. I am not of unsound mind;
7. I have previously taken the oath of office of Councillor;
8. I have not been convicted of an offence under the *Local Government Act 1989*;
9. I have not been convicted of an offence committed when I was over 18 years of age which is punishable upon first conviction for a term of imprisonment of 5 years or more under the law of Victoria;
10. I am otherwise capable of continuing to be a Councillor however I undertake to notify Stonnington City Council immediately if I become incapable of continuing to act as a Councillor in the future.

AND I make a solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Act of Parliament of Victoria rendering persons making a false Declaration punishable for wilful and corrupt perjury.

Declared atin the State of Victoria this day of20....

.....Signature of Declarant

.....Signature of Witness

.....Qualification of Witness

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ATTACHMENT FOUR

(Ref: Reforms arising from the Local Government Amendment (Improved Governance) Act 2015 – A guide for councils – Local Government Victoria –DELWP 2015- page14-15)

