

# Councillor Code of Conduct



Endorsed 15 February 2021

This Code of Conduct incorporates the statutory requirements specified for a Code of Conduct in accordance with section 139 of the Local Government Act 2020, (the Act) and was adopted by resolution of the Maroondah City Council at its meeting held on 15 February 2021.

Adopted by Council 15 February 2021

Section 139  
Local Government Act 2020

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Active Prosperous Vibrant Sustainable Accessible Thriving Inclusive Empowered

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### **1. Introduction**

Council must review and adopt a Councillor Code of Conduct under the Act within four months of the general election. In the interim, Councillors must comply with the existing Councillor Code of Conduct, as adopted by Council on 20 February 2017, pursuant to the provisions of section 76C of the old 1989 Local Government Act.

It is noted that an elected Candidate is not capable of acting as a Councillor until they have read the Councillor Code of Conduct and made a declaration stating that they will abide by the Code.

A Councillor Code of Conduct, under the Act, must include the *standards of conduct* expected to be observed by Councillors as prescribed in the Local Government (Governance and Integrity) Regulations 2020, and may include any other matters which Council considers appropriate.

Council's Code of Conduct is intended to ensure all Councilors agree to the *standards* of conduct and behaviour documented within this Code.

It is the personal responsibility of individual Councillors to ensure that they understand, accept and comply with, the provisions of this Code.

#### ***Statement – Maroondah Councillors***

*“As Councillors of Maroondah City Council we are committed to working together in the best interests of the people within our municipality and to discharging our responsibilities to the best of our skill and judgment.*

*Our commitment to working together constructively will enable us to achieve its vision and mission in a manner that is consistent with our values.”*

#### ***Our Community Vision***

A long-term community vision was initially developed in 2013 and 2014 in conjunction with the local community and adopted by Council in September 2014.

A revised Maroondah 2040 Community Vision, adopted by Council on 22 June 2020, captures the latest community aspirations and priorities, emerging themes and trends, and provides the strategic blueprint for Council and the community to continue to work together to shape the future of Maroondah to the year 2040. The revised Vision includes the following statement:

*“In 2040, Maroondah will be a vibrant and diverse city with a healthy and active community living in green leafy neighbourhoods which are connected to thriving and accessible activity centres contributing to a prosperous economy within a safe, inclusive and sustainable environment.”*

#### ***Mission***

Maroondah City Council will be a dynamic and innovative leader, working in partnership to enhance community wellbeing.

### Values

The following core values at Maroondah City Council contribute Council's ability to meet community needs and expectations:

- We are **ACCOUNTABLE** to each other and our community.
- We collaborate in an adaptable and **SUPPORTIVE** workplace.
- We **PERFORM** at our best.
- We are open, honest, **INCLUSIVE** and act with integrity.
- We ensure every voice is heard, valued and **RESPECTED**.
- We are brave, bold and achieve **EXCELLENCE**.

### Acknowledgement of Country Protocol 2020

- We, in the spirit of Reconciliation, acknowledge the traditional custodians of the land, now known as the City of Maroondah, where Indigenous Australians have performed age-old ceremonies. We acknowledge and respect their unique ability to care for Country and their deep spiritual connection to it. We pay our respects to their Elders, past, present and emerging.

### An LGBTQIA+ Inclusive organisation

- Maroondah City Council is an inclusive organisation that recognises and supports the diverse needs of our community.
- Council acknowledges the challenges that can be faced by those who identify as lesbian, gay, bisexual, trans, queer, intersex or asexual (LGBTQIA+), and is committed to providing excellent service to people of all sexualities, gender identities and sex identities.

### Role of Council

- 1.1 The role of the Council is to provide good governance for the benefit and wellbeing of the Maroondah community. Council will provide good governance through:
  - 1.1.1 the performance of its role in accordance with the overarching governance principles and supporting principles of the Act; and
  - 1.1.2 the Councillors of the Council performing their roles in accordance with the requirements of the Act.

In performing its role, Council may:

- 1.1.3 perform any duties or functions or exercise any powers conferred on Council by or under the Act or any other Act; and
- 1.1.4 perform any other functions that Council determines are necessary to enable Council to perform its role.
- 1.1.5 It is necessary to do so for the purpose of performing its role. Council may perform a function outside its municipal district.

*Section 8 of the Act.*

### ***Role of the Mayor***

1.2 The role of the Mayor is to:

- 1.2.1 Chair Council Meetings.
- 1.2.2 Be the principal spokesperson for the Council.
- 1.2.3 Lead engagement with the municipal community on the development of the Council Plan.
- 1.2.4 Report to the municipal community, at least once each year, on the implementation of the Council Plan.
- 1.2.5 Promote behaviour among councillors that meets the 'standards of conduct' set out in the Councillor Code of Conduct.
- 1.2.6 Assist Councillors to understand their role.
- 1.2.7 Take a leadership role in ensuring the regular review of the performance of the CEO.
- 1.2.8 Provide advice to the CEO when the CEO is setting the agenda for council meetings.
- 1.2.9 Perform civic and ceremonial duties on behalf of the Council.

The Mayor also has specific powers:

- 1.2.10 To appoint a councillor to be the chair of a delegated committee
- 1.2.11 To direct a councillor, subject to any procedures or limitations specified in the Governance Rules, to leave a council meeting if the behaviour of the councillors is preventing the council from conducting its business
- 1.2.12 To require the CEO to report to the council on the implementation of a council decision.

*Sections 18 & 19 of the Act.*

### ***Role of the Deputy Mayor***

1.3 Council may establish an office of Deputy Mayor with the role and powers of the Mayor if:

- 1.3.1 The Mayor is unable for any reason to attend a council meeting or part of a council meeting.
- 1.3.2 The Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness.
- 1.3.3 The office of Mayor is vacant.

*Section 21 of the Act*

### ***Role of Councillors***

1.4 The role of a Councillor is to:-

- 1.4.1 Participate in the decision-making of the Council;
- 1.4.2 Represent the local community in that decision-making; and
- 1.4.3 Contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

In performing the role of Councillor, a Councillor must:-

- 1.4.4 Consider the diversity of interests and needs of the local community;
- 1.4.5 Observe principles of good governance and act with integrity;
- 1.4.6 Provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts;
- 1.4.7 Participate in the responsible allocation of the resources of Council through the annual budget; and
- 1.4.8 Facilitate effective communication between the Council and the community.
- 1.4.9 The role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer.

*Section 28 of the Act*

## 2. Councillor Standards of Conduct

Councillors acknowledge and concur with the following Standards of Conduct as specified within Regulation 12 and Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020: as specified within the Act:

### 2.1 Treatment of others

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

- 2.1.1. Takes positive action to eliminate discrimination, harassment, including (but not limited to) sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010.
- 2.1.2 Does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors, and
- 2.1.3 In considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

### 2.2. Role of a Councillor

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

- 2.2.1 Undertakes any training professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor.
- 2.2.2 Diligently uses Council processes to become informed about matters which are subject to Council decisions.
- 2.2.3 Is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity, and

- 2.2.4 Represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

### **2.3 Compliance with good governance measures**

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

- 2.3.1 Any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors.
- 2.3.2 The Council Expenses Policy adopted and maintained by the Council under section 41 of the Act.
- 2.3.3 The Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act.
- 2.3.4 Any directions of the Minister issued under section 175 of the Act.

### **2.4 Councillor must not discredit or mislead Council or public**

In performing the role of a Councillor:

- 2.4.1 A Councillor must ensure that their behaviour does not bring discredit upon the Council.
- 2.4.2 A Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

### **2.5 Standards do not limit robust political debate**

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

*Regulation 12 and Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020.*

## **3. Adherence to Code of Conduct**

All Councillors confirm that they will adhere to these Standards of Conduct in their general conduct as Councillors and specifically by:

### **3.1 Courtesy and Respect**

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

- 3.1.1. Treating members of the community with dignity and ensuring that neither offence nor embarrassment are caused.
- 3.1.2. Treating fellow Councillors with respect, even when disagreeing with their views or decisions.
- 3.1.3. Debating contentious issues without resorting to personal acrimony or insult; and
- 3.1.4. Ensuring their punctual attendance at the Council Meeting and all other meetings associated with Council.

### **3.2 Integrity and Honesty**

Always acting with integrity and honesty, this includes:

- 3.2.1 Being honest in all dealings with the community, with other Councillors and with Council employees.
- 3.2.2 Always acting with impartiality and in the best interests of the community as a whole.
- 3.2.3 Not acting in ways that may damage the Council or its ability to exercise good government.
- 3.2.4 Exercising reasonable care and diligence in performing their functions as Councillors; and
- 3.2.5 Complying with all relevant laws, be they Federal, State or Local Laws.

### 3.3 Position of Trust

Recognising that they hold a position of trust and will not misuse or derive undue benefit from their positions, this includes:

- 3.3.1 Councillors will 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; and
- 3.3.2 Councillors will not exercise undue influence on other Councillors, members of Council employees or members of the public to gain or attempt to gain an advantage for themselves.
- 3.3.3 Councillors must complete the initial and then the Biennial Interest Returns as required by the Act.

*Section 139 of the Act.*

## 4. Council Decision Making

The Council is committed to making all decisions impartially and in the best interests of the whole community.

- 4.1 Council acknowledges that effective decision-making is vital to the democratic process and an essential component of good governance. Accordingly:
  - 4.1.1. Councillors will actively and openly participate in the decision-making process, striving to be informed so as to achieve the best outcome for the community.
  - 4.1.2. Councillors will respect the views of the individual in debate on issues. However, Councillors also accept that decisions are based on a majority vote; and
  - 4.1.3. Accepts that no Councillor can direct another Councillor on how to vote on any decision.

*Section 139 of the Act.*

## 5. Access to and use of Corporate Information.

- 5.1. Councillors are to treat Council information appropriately, by:
  - 5.1.1. Not using information gained by virtue of being a Councillor for any purpose than to exercise their role as a Councillor.
  - 5.1.2. Respecting the Council's process and protocols in relation to public comments and communications with all forms of media (refer section 9).
  - 5.1.3. Recognising the requirements of the *Privacy and Data Protection Act* 2014 regarding the access, use and release of personal information.
    - 5.1.3.1. Councillors do not have unrestricted access to personal information held by Council, nor do they have an unfettered right to use and disclose such



information. In particular, personal information held by Council must not be used for a Councillor's own personal or business purposes, outside of his or her functions as a Councillor.

If Councillors do use personal information in breach of the Information Privacy Principles, they may be individually liable and their actions may mean that Council is also liable.

- 5.1.3.2. When Councillors collect personal information for Council business it is important to note that not only is this information subject to the *Privacy and Data Protection Act*, it is also subject to other legislation such as the *Public Records Act* and *Freedom of Information Act*.

- 5.1.4. Not releasing information deemed 'confidential information' – section 125 of the Act.

- 5.2 It is recognised that information provided to Councillors will often be of a confidential nature and therefore it is essential that the confidentiality of such information be strictly maintained.

- 5.2.1 Councillors acknowledge that they will comply with their obligations under section 77 123 of the Act re: Misuse of position and recognise that this obligation extends to ensuring the safekeeping of confidential information.

- 5.2.2 Breaches of section 123 of the Act carry with it a penalty of up to 600 penalty units or imprisonment for 5 years.

*Section 139 of the Act.*

## 6. Use of Council Resources – Including Funds/Property

- 6.1. Exercising appropriate prudence in the use of Council resources to ensure they are utilised in an effective and economical manner. This includes:
  - 6.1.1. Maintaining appropriate separation between their personal property and Council property in the care of the Council.
  - 6.1.2. Not using Council resources, including employees, equipment and intellectual property for electoral or other personal purposes.
  - 6.1.3. Ensuring that Council resources are always used effectively and economically and for the purposes for which they are provided.
  - 6.1.4. Ensuring that Council resources are not used in a way that creates an impression of Council endorsement; and
  - 6.1.5. Ensuring that claims for out of pocket expenses are accurate and relate strictly to Council business.
- 6.2. Councillors acknowledge their obligation to report on their use of Council funds and property.
  - 6.2.1. Councillors are committed to implementing a transparent, thorough and regular system of reporting on their use of Council funds and property during the course of performing their duties.
- 6.3 Councillors will not use public funds or resources in a manner that is improper or unauthorised.

## 7. Relationship with Council Employees

Councillors will respect the role of the Council's Officers and employees and treat them in a way that engenders mutual respect at all times. This includes:

- 7.1. Working as part of the Council team with the Chief Executive Officer and other employees. There must be respect and understanding between Councillors and Officers in relation to their respective roles, functions and responsibilities.
- 7.2. Recognising that the Councillor role is one of advocacy and leadership rather than management and administration, the Chief Executive Officer is responsible for all employee matters.
- 7.3. Respecting and recognising the functions of the Chief Executive Officer. This includes recognising that the Chief Executive Officer is responsible for managing interactions between Council employees and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council employees and Councillors.
- 7.4. Being aware of the requirements of section 124 of the Act and not intentionally directing, or seek to direct, a Council employee -
  - 7.4.1 In the exercise of a delegated power, or the performance of a delegated duty or function, of the Council; or
  - 7.4.2 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 the Act or any other Act; or
  - 7.4.3 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 this Act or any other Act; or
  - 7.4.4 In relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated Committee.
  - 7.4.5 Breaches of section 124 of the Act carry with it a penalty of 120 penalty units.
- 7.5. Dealing only through the Chief Executive Officer or Director in any instance where a Councillor has a concern about a Council Officer's actions or decisions.
- 7.6. Communicating with the Chief Executive Officer, or Directors, to ensure that dissemination of information occurs on a joint collaborative basis and such will enable the formulation of appropriate actions.
- 7.7. Acting with courtesy towards Council employees and avoiding behaviour that is intimidating and being aware of legislative obligations with respect to equal opportunity, harassment and discrimination:
  - 7.7.1. In general, the legislation prohibits and makes unlawful discrimination on the basis of age, breastfeeding, career status, disability/impairment, gender identity, industrial activity, lawful sexual activity, marital status, parental status, physical features, political belief, pregnancy, race, religious belief, sex, sexual preference or personal association with someone who has one of these characteristics;
  - 7.7.2. Harassment (including but not limited to sexual harassment) is behaviour that is unwelcome, unsolicited and unreciprocated; and
  - 7.7.3. Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety. This is consistent with the definition of bullying used in the *Fair Work Act 2009 (Commonwealth)* and by WorkSafe. Bullying in any form is prohibited at Maroondah City Council.
    - 7.7.3.1. Bullying may also constitute 'serious misconduct' which is a potential trigger for Councillor Conduct Panel – refer section 12 of this Code.

7.8. Refraining from using their position to improperly influence employees in their duties or to gain an advantage for themselves or others.

- 7.8.1. Note any alleged transgression of this may potentially be a breach of section 124 of the Act. Refer to clause 7.4.

*Section 139 of the Act.*

## 8. Communication

Messages communicated through the media must be clear and consistent, and positively portray the Council position reflecting Council as a decisive and responsible governing body.

- 8.1 The Mayor will provide official comment to the media on behalf of Council where the matter is of a political, controversial or sensitive nature. This includes:
- 8.1.2 State-wide political issues affecting Local Government;
  - 8.1.3 Contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community;
  - 8.1.4 Issues pertaining to policy and Council decisions; and
  - 8.1.5 Issues relating to the strategic direction of the Council.
- 8.2 The Mayor may nominate a Councillor to make official comment on behalf of the Council, if appropriate.
- 8.3 The Chief Executive Officer is the official spokesperson for all operational matters pertaining to the Council as an organisation including:
- 8.3.2 Staffing and structure of the organisation; and
  - 9.3.2 Legal or operational matters.
- 8.4 The Chief Executive Officer may nominate a Council officer as spokesperson if appropriate.
- 8.5 Individual Councillors are entitled to express independent views, however Councillors will make it clear that any unofficial comment is a personal view, and does not represent the position of the Council as a whole.

## 9. Conflict of Interest Procedures

Council is committed to making all decisions impartially and in the best interests of the whole community. It therefore recognises the importance of fully observing the requirements of the Act in regard to the disclosure of conflicts of interest.

For the purpose of this Code, **‘General Conflict of Interest’** and **‘Material Conflict of Interest’**, have the meanings specified in the Act, i.e.

**General Conflict of Interest** - a relevant person (as defined in the Act) has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty. A "private interests" means any direct or indirect interest of a relevant person that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief. A "public duty" means the responsibilities and obligations that a relevant person has to members of the public in their role as a relevant person.

Material Conflict of Interest - a relevant person (as defined in the Act) has a material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter. The benefit may arise or the loss incurred (a) directly or indirectly; or (b) in a pecuniary or non-pecuniary form.

Any of the following is an "affected person"; (a) the relevant person (as defined in the Act), (b) a family member of the relevant person, (c) a body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of the governing body, (d) an employer of the relevant person, unless the employer is a public body, (e) a business partner of the relevant person, (f) a person for whom the relevant person is a consultant, contractor or agent, (g) a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee, (h) a person from whom the relevant person has received a disclosable gift.

Disclosable gift means one or more gifts with a total value of, or more than, \$500 or if an amount is prescribed for the purposes of Act, the prescribed amount, received from a person in the 5 years preceding the decision on the matter; (a) if the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received; or (b) if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation but does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a delegated committee.

Exemptions - A conflict of interest does not arise if any of the following applies; (a) the conflict of interest is so remote or insignificant that it could not be reasonably regarded as capable of influencing the actions or decisions of the relevant person in relation to the matter, (b) the interest that would give rise to a conflict of interest is held in common with a substantial proportion of the residents, ratepayers or electors of the municipal district and does not exceed the interest held by the other residents, ratepayers or electors, (c) the relevant person does not know the circumstances that give rise to the conflict of interest, and could not be reasonably expected to know those circumstances, (d) the interest only arises because the relevant person is the representative of the Council on a not-for-profit organisation that has an interest in the matter and the relevant person receives no personal advantage from the not-for-profit organisation, (e) the interest only arises because a family member of the relevant person is a member but not an office-holder of a not-for-profit organisation, (f) the interest only arises because the relevant person is a member of a not-for-profit organisation that has expressed an opinion or advocated for an outcome in regard to the matter, (g) the interest arises in relation to a decision by a Councillor on a matter or in a circumstance that is prescribed to be exempt by the regulations. For the avoidance of doubt, the exemptions stipulated at Regulation 7 of the Local Government (Governance and Integrity) Regulations 2020 apply to this Code of Conduct.

See also current 'Governance Rules' adopted by Council.

### *Sections 126-131 of the Act*

In addition to the requirements of the Act:

9.1 Councillors will give early consideration to each matter to be considered by the Council, Council briefing, or any other meeting held under the auspices of Council at which he or she is present (eg hearing of submissions made following a public consultation process undertaken by Council), to ascertain if they have a conflict of interest.

- 9.2 Councillors recognise that the legal onus to determine whether a conflict of interest exists rests entirely with the individual Councillor.
- 9.1.1 Assistance from Council Officers is limited to aiding understanding of the provisions of the Act. Officers cannot offer any formal advice in relation to a potential conflict.
- 9.2.2 If a Councillor cannot with certainty say that he or she does not have a conflict of interest, the Councillor should declare a conflict of interest and comply with the relevant requirements as if they had a conflict of interest.
- 9.3 If the Councillor considers that they may be unable to vote on a matter because of a conflict of interest, they will notify, as soon as possible, the Mayor as well as the Chief Executive Officer.

## 10. Internal Arbitration Process

### *Overview*

- 10.1 Maroondah believes that Local Government and Good Governance are adversely impacted if differences and disputes are inappropriately aired externally. The community will lose confidence in the Council if disputes are made public.
- 10.2 Before commencing any formal arbitration processes for misconduct issues (see section 12 of this document for definitions), the Councillors who are parties to any disagreement or alleged misconduct will endeavour to resolve their differences in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.
- 10.3 The internal arbitration process to be followed when there are allegations of misconduct against a Councillor, or when Councillors have been unable to resolve an interpersonal conflict and where the situation is unduly-affecting the operation of the Council, is prescribed in section 141 of the Act and Regulation 11 of the Local Government (Governance and Integrity) Regulations 2020.

*Section 141 of the Act.*

## 11. Bodies Able to Investigate Councillor Behaviour

### *Councillor Conduct Panels*

**Councillor Conduct Panels.** Where a matter cannot be resolved internally, an application can be made for a Councillor Conduct Panel to be established - refer section 154 of the Act.

- 11.1 A Panel has the power to consider both “misconduct” and “serious misconduct” of a Councillor as defined in section 3 of the Act.
- 11.1.1 **Misconduct** by a Councillor means any breach by a Councillor of the standards of conduct prescribed under section 139(3)(a) of the Act, as included in this Councillor Code of Conduct;
- 11.1.2 **Serious misconduct** by a Councillor means any of the following -
- (a) The failure by a Councillor to comply with the Council’s internal arbitration process;
  - (b) the failure of a Councillor to comply with a direction given to the Councillor by an arbiter under section 147;
  - (c) the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;
  - (d) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;

- (e) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b);
- (f) bullying by a Councillor of another Councillor or a member of Council staff;
- (g) conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;
- (h) the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;
- (i) conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff;
- (j) the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision-making process when required to do so in accordance with this Act.

*Sections 139-147 and 153-174 of the Act.*

## 12. IBAC

**IBAC – Independent Broad-Based Anti-Corruption Commission.** Established under the Independent Broad-based Anti-Corruption Commission Act 2011 as part of an integrity system for Victoria.

12.1 IBAC has a major role under the provisions of the *Public Interest Disclosure Act 2012* in investigating any possible improper or corrupt conduct of Councillors.

12.1.2 The *Public Interest Disclosure Act 2012* provides that any person that has reasonable grounds to believe that improper or corrupt conduct of Councillors.

12.1.2.1 Disclosures may relate to both Councillors and Officers and employees of Council

12.1.2.2 Any disclosure regarding a Councillor or Councillors is to be made direct to IBAC. Further details are available on the IBAC website [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

## 13. Election Period (Caretaker) Procedures

13.1 Council is committed to fair and democratic elections.

13.2 It is an established democratic principle that elected bodies should not unnecessarily bind an incoming government during an election period. Council therefore commits to the principle that it will make every endeavour to avoid making decisions that inappropriately bind an incoming Council during an election period.

In the lead up to an election the Victorian Local Government sector adopts an Election Period Policy to avoid actions and decisions that may be interpreted as influencing voters or binding an incoming Council. Specific provisions have been incorporated into the Act that prohibits Council making major policy decisions or publishing or distributing electoral matter during the election period.

Accordingly, in accordance with section 69 the Act, Council has prepared and adopted an Election Period Policy, the content of which forms part of the Governance Rules as adopted by Council on 31 August 2020. The Policy includes:

- (1) Procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election.
- (2) Limits on public consultation and the scheduling of Council events.

- (3) Procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.

*Part 8 of the Act.*

### 14. Disclaimer

As stated earlier within this document, Council's Code of Conduct is intended to ensure all Councillors agree to the standards of conduct and behaviour documented within the Code. Councillors have other legal obligations – under the Act, other legislation and at common law – that are not documented or reported in this Code. The Code should be read in the context of those other obligations.

The Act for instance includes requirements in relation to Councillor eligibility, electoral conduct and the election period (caretaker period). 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 are to be directed to the appropriate external body - depending on the nature of the allegation - for investigation and any consequent action.

**15. Endorsement**

This Code of Conduct was adopted by Council at its meeting held on 15 February 2021 and was signed by all Councillors present. Additionally, Councillors made and signed a declaration stating they have read the Code of Conduct and they will abide by the provisions of the Code.

**Signatures**

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**Cr Kylie Spears - Mayor***15 February 2021*

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**Cr Nora Lamont - Deputy Mayor***15 February 2021*

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**Cr Marijke Graham***15 February 2021*

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**Cr Tony Dib OAM JP***15 February 2021*

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**Cr Mike Symon***15 February 2021*

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**Cr Suzy Stojanovic***15 February 2021*

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**Cr Paul Macdonald***15 February 2021*

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**Cr Tasa Damante***15 February 2021*

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**Cr Rob Steane***15 February 2021*



## Appendix 1

### Gifts and Benefits

The gifts and benefits provisions contained within Council's Code of Conduct (which remained in operation prior to the adoption of the revised Code of Conduct on 15 February 2020) shall remain in place until Council adopts the revised Councillor Gift Policy on 24 April 2021. These are:

Gift and benefits provisions which shall remain in place until 24 April 2021 are:

An applicable gift is defined by legislation as one or more gifts with **a total value of \$500 or over** received in the past 5 years by:

- i) a person; or
- ii) an employee, director, contractor or agent of a company or body, having a direct interest in a matter.

It is illegal for a Councillor to accept an anonymous gift valued at \$500 or more.

Councillors are to exercise discretion and care on the matter of gifts and hospitality. Public perception is a key to if a conflict exists or if a Councillor has compromised themselves in any manner. Refer to section 11 for conflict processes.

As a rule of thumb Councillors should err on the side of safety and avoid accepting gifts. Either in their roles as Councillor **or** where it could be perceived to influence the Council.

Exemptions to this are:

Gift of Token Value - where the gift would generally be regarded as only having a modest monetary value and could not be perceived to influence the Councillor's or Council's actions.

Token value for the purposes of this Code is defined as a gift having a monetary value of \$50 or less.

An illustration of this is token gift presented for speaking at an AGM of an organisation eg bottle of wine or say a box of chocolates – both of low dollar value.

A Councillor may make a declaration of a token gift to the Chief Executive Officer.

Instances may occur where refusal of the gift, which is clearly not token in value, may cause offence or embarrassment to the individual Councillor or the organisation presenting it.

In which case the gift may be accepted on behalf of the Council and becomes the property of the Council.

Such gift is to be declared to the Chief Executive Officer who will make immediate arrangements to have the details of the gift recorded in the *Gifts Register – Councillors*.

Advice will be tendered to the provider of the gift that the Councillor was unable to accept it on a personal basis and it is now the property of Council.

Gifts in excess of the token value of \$50 may be self-determined by the individual Councillor.

Noting the legislative requirements the Councillor shall make a declaration of the gift to the Chief Executive Officer.

The Chief Executive Officer will make immediate arrangements to have the details of the gift and the determination as to the fate of the gift recorded in the *Gifts Register – Councillors*.

**Hospitality** – reasonable hospitality provided at a function or event may also be exempt from a conflict. The exemption applies if the Councillor attends in an official capacity as Mayor or Councillor ie representing Maroondah City Council.

It is important that Councillors are familiar with these governance principles.

Being a Councillor involves engendering **public trust and public confidence**. This means that duties must be carried out impartially and with integrity. Consequently, it is not appropriate for Councillors to be offered and to accept gifts and benefits that affect, may be likely to affect or could reasonably be perceived to affect, the performance of their official duties.

Councillors must at all times be mindful of their obligation to maintain and enhance public confidence in the integrity of Council.

Councillors must not seek or encourage the giving of any form of gift or benefit in connection with the performance of official duties.

Any gift or benefit accepted may imply a relationship that could interfere with objectivity and independence. Councillors may decline offers of gifts or benefits courteously by explaining that acceptance would be viewed as transgressing this code of conduct and consequently they have little to no discretion in the matter.