



COUNCILLOR CODE OF CONDUCT

**October 2009
&
March 2010**

***Section 76C
Local Government Act 1989***

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COUNCILLOR CODE OF CONDUCT

This Code of Conduct that incorporates the statutory requirements specified for a Code of Conduct in accordance with section 76C of the Local Government Act 1989, (the Act) was adopted by resolution of the Maroondah City Council on 19 October 2009. In December 2009 a Councillor resigned and a new Councillor was subsequently elected, as a result, Council re-confirmed by resolution its commitment to the Code on 22 March 2010.

1. Introduction

As Councillors of the 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.

Vision

Maroondah will be a vibrant city. It will have an active community, a strong local economy and a diverse cultural life in a prosperous and sustainable environment.

Mission

Maroondah City Council will be an effective and dynamic leader, working in partnership with the community and other spheres of government to foster quality, accessible and sustainable lifestyles for the community.

Workplace Values

- *Co-operation*
Working together, in partnership, to achieve common goals and agreed outcomes.
- *Commitment*
Achieving the best result for the community and the organisation.
- *Communication*
Sharing information and ideas at all levels, the community and the Council.
- *Creativity and Improvement*
Consistently finding better ways of delivering service and value.

Primary Role of Council

The primary role of the Council is to provide leadership for the good governance of Maroondah. In accordance with the Act, the role of the Council includes:

- 1.1. Acting as a representative government by taking into account the diverse needs of the local community in decision making;
- 1.2. Providing leadership by establishing strategic objectives and monitoring their achievement;
- 1.3. Maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;

- 1.4. Advocating the interests of the local community to other communities and governments;
- 1.5. Acting as a responsible partner in government by taking into account the needs of other communities; and
- 1.6. Fostering community cohesion and encouraging active participation in civic life.

2. Councillor Conduct Principles

Councillors endorse and agree to the following Councillor Conduct Principles as specified within the Act:

- 2.1. Councillors in the carrying out of their role will:
 - 2.1.1. Act with integrity;
 - 2.1.2. Exercise their responsibilities impartially in the interests of the local community; and
 - 2.1.3. Not make improper use of their position to advantage or disadvantage any person.
- 2.2. Councillors in the performance of their role will:
 - 2.2.1. Avoid conflicts between their public duties as Councillors and their personal interests and obligations;
 - 2.2.2. Act honestly and avoid making verbal or written statements and avoid actions that may mislead a person;
 - 2.2.3. Treat all persons with respect and will show due respect for the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other people;
 - 2.2.4. Exercise reasonable care and diligence and submit to lawful scrutiny that is appropriate to their office;
 - 2.2.5. Ensure that public resources are used prudently and solely in the public interest;
 - 2.2.6. Act lawfully and in accordance with the trust placed in them as elected representatives of their community; and
 - 2.2.7. Support and promote these principles by leadership and example so as to ensure the public has confidence in the office of Councillor.

3. Adherence to Code of Conduct

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

Courtesy and Respect

- 3.1. 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.

Integrity and Honesty

- 3.2. Always acting with integrity and honesty:
 - 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.

Position of Trust

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

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 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.

5. Confidential Information

Councillors acknowledge that they will comply with their obligations under s77 in relation to confidential briefings or information (as defined under the Act) and recognise that this obligation extends to ensuring the safekeeping of confidential information.

6. Access To and Use of Council Information.

- 6.1. Councillors are to treat Council information appropriately, by:
 - 6.1.1. Not using information gained by virtue of being a Councillor for any purpose than to exercise their role as a Councillor;
 - 6.1.2. Respecting the Council's policies in relation to public comments and communications with the media (refer section 10);
 - 6.1.3. Not releasing information deemed 'confidential information' in accordance with section 77 of the Act (refer section 5); and
 - 6.1.4. Recognising the requirements of the *Information Privacy Act 2000* regarding the access, use and release of personal information.
 - 6.1.4.1. 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.
 - 6.1.4.2. 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.
 - 6.1.4.3. When Councillors collect personal information for Council business it is important to remember that not only is this information subject to the *Information Privacy Act*, it is also subject to other legislation such as the *Public Records Act* and *Freedom of Information Act*.
- 6.2. Councillors acknowledge that all requests (by Councillors) for clarification/explanations or further details on matters should in the first instance be made to either the Chief Executive Officer or the appropriate Director. That same is also applicable to Councillors wishing to provide feedback on a matter.

7. Use of Council Resources – Including Funds/Property

- 7.1. Exercising appropriate prudence in the use of Council resources to ensure they are utilised in an effective and economical manner. This includes:
 - 7.1.1. Maintaining appropriate separation between their personal property and Council property in the care of the Council;
 - 7.1.2. Not using Council resources, including employees, equipment and intellectual property for electoral or other personal purposes;
 - 7.1.3. Ensuring that Council resources are always used effectively and economically and for the purposes for which they are provided;

- 7.1.4. Ensuring that Council resources are not used in a way that creates an impression of Council endorsement; and
- 7.1.5. Ensuring that claims for out of pocket expenses are accurate and relate strictly to Council business.
- 7.2. Councillors acknowledge their obligation to report on their use of Council funds and property.
 - 7.2.1. 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.
- 7.3. Councillors will not use public funds or resources in a manner that is improper or unauthorised.

8. 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:

- 8.1. Working as part of the Council team with the Chief Executive Officer and other members of staff. There must be respect and understanding between Councillors and officers in relation to their respective roles, functions and responsibilities.
- 8.2. Recognising that their role is one of advocacy and leadership rather than management and administration. The Chief Executive Officer is responsible for all staff matters.
- 8.3. Being aware of the requirements of Section 76E of Local Government Act 1989 and must not seek to improperly direct or influence members of Council staff in the exercise of their duties.
- 8.4. Dealing only through the Chief Executive Officer or relevant Director in any instance where a Councillor has a concern about a Council Officer's actions or decisions.
- 8.5. 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.
- 8.6. Acting with courtesy towards Council employees and avoiding intimidatory behaviour and being aware of legislative obligations with respect to equal opportunity and discrimination:
 - 8.6.1. 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 orientation or personal association with someone who has one of said characteristics;
 - 8.6.2. Sexual harassment is behaviour of a sexual nature that is unwelcome, unsolicited and unreciprocated. It is unlawful to sexually harass another person; and
 - 8.6.3. Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety. Bullying is prohibited at Maroondah.

- 8.7. Refrain from using their position to improperly influence employees in their duties or to gain an advantage for themselves or others. Nb any alleged transgression of this may potentially be a breach of section 76E of the Act.

9. Gifts

Councillors will not accept gifts either in their roles as Councillor or where it could be perceived to influence the Councillor except:

- 9.1. 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
- 9.2. 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.

10. 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.

- 10.1. 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:
- 10.1.1. State-wide political issues affecting Local Government;
 - 10.1.2. Contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community;
 - 10.1.3. Issues pertaining to policy and Council decisions; and
 - 10.1.4. Issues relating to the strategic direction of the Council.
- 10.2. The Mayor may nominate a Councillor to make official comment on behalf of the Council, where appropriate.
- 10.3. The Chief Executive Officer is the official spokesperson for all operational matters pertaining to the Council as an organisation including:
- 10.3.1. Staffing and structure of the organisation; and
 - 10.3.2. Issues relating to service provision or the day-to-day business of Council.
- 10.4. The Chief Executive Officer may nominate a Council officer as spokesperson if appropriate.
- 10.5. 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.

11. Conflict of Interest Procedures

The 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, "direct interest", "indirect interest" and "conflicts of interest", have the meanings specified in the Act.

Councillors will comply with all the provisions of the Act in regard to Conflicts of Interest:

- 11.1. If the Councillor considers that they have a **direct or indirect interest** in a matter before the Council or an Assembly of Councillors, they have a conflict of interest.
- 11.2. If a Councillor has a **conflict of interest** in a matter they will comply with the requirements of the Act and ensure they disclose the class and nature of the interest in addition to leaving the room in which the meeting or assembly is being held during any discussion, debate and possible vote on the matter.
- 11.3. If a Councillor has a personal interest in a matter to be considered by the Council that **is not a conflict of interest**, and the Councillor considers that their personal interest **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** under section 79B of the Act immediately before the matter is considered at the relevant meeting and apply to the Council to be exempted from voting on the matter.

In addition to the requirements of the Act:

- 11.4. Councillors will give early consideration to each matter to be considered by the Council or Assembly of Councillors, to ascertain if they have a conflict of interest.
- 11.5. Councillors recognise that the legal onus to determine whether a conflict of interest exists rests entirely with the individual Councillor and that Council officers cannot offer any formal advice in relation to potential conflicts. If a Councillor cannot with certainty say that he or she does not have a conflict of interest, the Councillor will declare a conflict of interest and comply with the relevant requirements as if they had a conflict of interest.
- 11.6. 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.

Flowchart

- 11.7. Refer to flowchart within the Addendum on page 12.

12. Dispute Resolution Procedures

Overview

- 12.1. 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 it brawls in public and therefore Maroondah wishes to settle disputes in-house where possible.
- 12.2. Before commencing any formal dispute resolution process, the Councillors who are parties to any disagreement 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.
- 12.3. This dispute resolution procedure is intended to be used when Councillors have been unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Council. It is not intended to resolve differences in policy or decision-making, which are appropriately resolved through discussion and voting in Council meetings.

Process

- 12.4. The parties to the dispute agree to work together to try to resolve the dispute.

- 12.5. If the parties are unable to resolve the dispute within 28 days then:
- 12.5.1. They will agree to a process for the appointment of a mediator nominated by the Mayor and/or the Chief Executive Officer that is acceptable to both parties; or
 - 12.5.2. Failing agreement, a mediator nominated by the President of the Municipal Association of Victoria and appointed by the Chief Executive Officer.
- 12.6. A “Dispute” will be considered to be declared if the Council resolves that its operation is being impeded because of a dispute between some or all of the Councillors. The resolution will state the reasons why public resources should be allocated to resolve the dispute.
- 12.7. Irrespective of the above, the Council will not undertake a dispute resolution procedure if it appears that the procedure is likely to overlap with an election period for a Council election.
- 12.8. If a mediator is appointed, all Councillors agree to co-operate with the dispute resolution process and use their best endeavours to assist the mediator when requested.
- 12.9. In the event that a dispute cannot be resolved through application of these processes:
- 12.9.1. Council may if it wishes to, depending on the nature of a breach of this code, resolve that a Councillor has failed to comply with the Code of Conduct and may by further resolution:
 - 12.9.1.1. Require the Councillor to apologise to the person concerned;
 - 12.9.1.2. Request a formal apology;
 - 12.9.1.3. Pass a sanction motion at a Council Meeting;
 - 12.9.1.4. Withdraw or withhold the use of any Council provided facilities or privileges made available to the Councillor;
 - 12.9.1.5. Withdraw any Chairperson role held by the Councillor; and
 - 12.9.1.6. Withdraw or re-allocate any appointment of the Councillor to an external body/organisation or to an internal advisory board/consultative committee.
 - 12.9.2. **And/or** Council may by resolution refer the matter to a Councillor Conduct Panel, as per the dispute resolution processes outlined in the Act.
- 12.10. If the dispute relates to an apparent offence under the Act it should be referred to the Minister for Local Government and not be the subject of an application to a Councillor Conduct Panel.
- 12.11. The dispute resolution procedure is not intended to resolve differences in policy or decision-making, which are appropriately resolved through debate and voting in Council meetings.
- 12.12. At the conclusion of the dispute resolution process, the Council will consider a report in a meeting open to the public, that includes:
- 12.12.1. An independent report from the mediator or conciliator (except where the independent report must be considered in a closed meeting);
 - 12.12.2. The recommendations of the mediator or conciliator;
 - 12.12.3. The actions being taken as a consequence of the dispute resolution process; and

12.12.4. An estimate of the full cost to the Council of conducting the mediation process.

13. 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.
- 13.3. Council will adopt (in 2012) a separate Caretaker Policy that will govern the actions of Council and Councillors during the election period prior to the November 2012 elections.
- 13.4. At the date of adoption of this Code of Conduct the election period is a 32-day period prior to Election Day in November 2012.

14. Endorsement

This Code of Conduct was adopted by the Council on 19 October 2009 and signed by all Councillors. In December 2009 a Councillor resigned and a new Councillor was subsequently elected, as a result, Council re-confirmed by resolution its commitment to the Code on 22 March 2010 and was signed by the following Councillors:

Signatures

Signed

Cr Tony Dib

Signed

Cr Paul Macdonald

Signed

Cr Natalie Thomas

Signed

Cr Ann Fraser

Signed

Cr Nora Lamont

Signed

Cr Alex Makin - Mayor

Signed

Cr Michael Macdonald

Signed

Cr Rob Steane

Signed

Cr Les Willmott JP

15. Addendum – Conflict of Interest Flowchart

