



## **Appendix 5**

### **15.5 Councillor Code of Conduct**

*CP005 Councillor Code of Conduct*

# **Ordinary Meeting of Council**

Wednesday 17 February 2021 at 7:000pm

Via videoconference (Zoom)

## COUNCIL POLICY

<b>Councillor Code of Conduct</b>	<b>Adopted By Council:</b>	18/10/11	
	<b>Date/s Revised:</b>	18/10/11 18/09/13, 25/05/16, 16/02/17, 17/02/21	
	<b>Next Review Date:</b>	02/2022*	
	* (subject to legislative requirements)		
	<b>Document No:</b>	CP005	
	<b>Directorate:</b>	Executive	
	<b>Responsible Officer:</b>	Chief Executive Officer	

### CONTEXT

This Councillor Code of Conduct has been developed to incorporate the statutory requirements specified for a Code of Conduct in accordance with section 139 of the *Local Government Act 2020* (the Act).

The key foundation for the development of this Councillor Code of Conduct is the Councillor oath or affirmation of office which all Councillors have made in accordance with section 30 of the Act and part 2 of the *Oaths and Affirmations Act 2018*, declaring that as Councillors they will:

*'... undertake the duties of the office of Councillor in the best interests of the municipal community. I will abide by the Councillor Code of Conduct and uphold the standards of conduct set out in the Councillor Code of Conduct. I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 2020 or any other Act to the best of my skill and judgment.'*

### PURPOSE

The purpose of the Councillor Code of Conduct is to include the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification.

### DEFINITIONS

**Gross Misconduct** by a Councillor is defined in the Act as meaning behaviour that demonstrates that a Councillor—

- (a) is not of good character; or
- (b) is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature.

**Misconduct** as defined in the Act means any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct.

**Serious misconduct** as defined in the Act means any of the following:

- the failure by a Councillor to comply with the Council's internal arbitration process;
- the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147 of the Act;
- the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;
- the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;

- 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) of the Act;
- bullying by a Councillor of another Councillor or a member of Council staff;
- conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;
- the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;
- conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff; and
- 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 the Act.

## **POLICY**

### **1. Introduction**

As councillors of the Borough of Queenscliffe 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 the Borough of Queenscliffe Council vision, which states: *'The Borough remains a safe haven defined by its unique heritage, rich culture and significant natural environment. It is a special and restorative place for an involved and caring community and our visitors.'*

The role of Council is to provide good governance of the Borough of Queenscliffe for the benefit and wellbeing of the community. The role of the council also includes:

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

### **2. Overarching Governance Principles**

**2.1** As councillors of the Borough of Queenscliffe we endorse and agree to the overarching governance principles specified in section 9 of the Act, that is:

- Council decisions are to be made and actions taken in accordance with the relevant law;
- priority is to be given to achieving the best outcomes for the municipal community, including future generations;

- the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
- the municipal community is to be engaged in strategic planning and strategic decision making;
- innovation and continuous improvement is to be pursued;
- collaboration with other Councils and Governments and statutory bodies is to be sought;
- the ongoing financial viability of the Council is to be ensured;
- regional, state and national plans and policies are to be taken into account in strategic planning and decision making; and
- the transparency of Council decisions, actions and information is to be ensured.

In giving effect to the overarching governance principles, we as Councillors acknowledge we must take into account the following supporting principles specified in sections 56, 58, 89, 101 and 106 of the Act:

- a) the community engagement principles;
- b) the public transparency principles;
- c) the strategic planning principles;
- d) the financial management principles; and
- e) the service performance principles.

In carrying out our role as councillors, we will:

- act with integrity; and
- impartially exercise our responsibilities in the interests of the local community; and
- not improperly seek to confer an advantage or disadvantage on any person.

**2.2** In performing our role as councillors, we will:

- avoid conflicts between our public duties as a councillor and our personal interests and obligations;
- act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other councillors, council officers and other persons;
- exercise reasonable care and diligence and submit ourselves to the lawful scrutiny that is appropriate to our office;
- endeavour to ensure that public resources are used prudently and solely in the public interest;
- act lawfully and in accordance with the trust placed in us as an elected representative;
- 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.

### **3. Standards of Conduct**

The Act places obligations on Councillors in relation to way they should act. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions. Section 139 of the Act requires a Councillor code of conduct to include the standards of conduct prescribed by the regulations expected to be observed by Councillors. These standards of conduct are as follows.

### **Treatment of others**

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

- a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*; and
- b) supports the Council in fulfilling its obligation to achieve and promote gender equality; and
- c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

### **Performing the role of Councillor**

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

- a) undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and
- b) diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- c) is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- d) represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

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

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

- (a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;
- (b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- (c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- (d) any directions of the Minister issued under section 175 of the Act.

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

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

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

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

#### **4. Councillor Behaviours**

We confirm that we will adhere to the following principles of behaviour in our general conduct as councillors:

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

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

**4.2** Always acting with integrity and honesty:

- being honest in all dealings with the community, with other councillors and with Council staff
- always acting with impartiality and in the best interests of the community as a whole
- not acting in ways that may damage the Council or its ability to exercise good government
- exercising reasonable care and diligence in performing their functions as councillors
- complying with all relevant laws, be they Federal, State or Local Laws.

**4.3** Recognising that we hold a position of trust which we will not misuse or derive undue benefit from our positions:

- we 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 (refer 16. Conflict of Interests)
- we will not exercise undue influence on other councillors, members of Council staff or members of the public to gain or attempt to gain an advantage.

#### **5. Role of a Councillor**

**5.1** We acknowledge and accept the role of a Councillor as specified in section 28 of the Act which articulates the role is to:

- to participate in the decision making of the Council; and
- to represent the interests of the municipal community in that decision making; and
- to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

**5.2** In performing our role as a Councillor, we acknowledge and accept that we must:

- consider the diversity of interests and needs of the municipal community; and
- support the role of the Council; and
- acknowledge and support the role of the Mayor; and

- act lawfully and in accordance with the oath or affirmation of office; and
- act in accordance with the standards of conduct; and
- comply with Council procedures required for good governance.

**5.3** We also acknowledge and accept that the role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer.

## **6. Role of the Mayor**

**6.1** We acknowledge and agree to the provision in section 18 of the Act that the role of the Mayor is to:

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

**6.2** We acknowledge and agree to the provision in section 19 of the Act that the Mayor has the following specific powers:

- to appoint a Councillor to be the chair of a delegated committee;
- 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 Councillor is preventing the Council from conducting its business;
- to require the Chief Executive Officer to report to the Council on the implementation of a Council decision.

## **7. Council Decision Making**

We are committed to making all decisions impartially and in the best interests of the whole community and acknowledge that effective decision-making is vital to the democratic process and an essential component of good governance. Accordingly:

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

## **8. Improper Conduct**

As Councillors we acknowledge and accept that we must not intentionally misuse our position:

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

and that it is a serious criminal offence to do so.

Misusing our position as Councillor includes, but is not limited to:

- making improper use of information acquired as a result of the position the person held or holds; or
- disclosing information that is confidential information; or
- directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or
- exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or
- using public funds or resources in a manner that is improper or unauthorised; or
- participating in a decision on a matter in which the person has a conflict of interest.

## **9. Confidential Information**

Councillors acknowledge that they will comply with their obligations under section 125 of the Act in relation to confidential information (as defined under the Act) and must not intentionally or recklessly disclose information that the Councillor knows, or should reasonably know, is confidential information and also recognise that this obligation extends to ensuring the safekeeping of confidential information.

## **10. Access to and Use of Council Information**

**10.1** We will treat Council information appropriately, by:

- not using information gained by virtue of our position as a councillor for any purpose than to exercise our role as a councillor.
- respecting the Council's policies in relation to public comments and communications with the media (refer 15. Communication).
- not releasing information deemed 'confidential information' in accordance with section 125 of the Act (refer 9. Confidential Information).
- recognising the requirements of the *Privacy and Data Protection Act 2014* regarding the access, use and release of personal information.

**10.2** Councillors acknowledge that all requests made by councillors for briefings from council officers or access to information on council files should be registered and reported. This obligation does not apply to requests for clarification or explanation of items on a forthcoming council agenda.

## **11. Use of Council Resources (including funds and property)**

Council resources are to be used effectively and economically, and in accordance with Council policies.



- 11.1** We will maintain adequate security over Council property, facilities and resources provided to us to assist in performing our role.
- 11.2** We will 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.
- 11.3** We will not use public funds or resources in a manner that is improper or unauthorised.
- 11.4** We will ensure that internet and email services provided by the Council are used for Council business only. We will abide by the same Information Technology Standard Operating Procedures as that of Council officers.

Refer to Council policy CP018 Councillor Support, Resources & Facilities and CP021 Election Caretaker Period.

## **12. Relationships with Staff**

- 12.1** As councillors we will work as part of the Council team with the Chief Executive Officer and other members of staff. There must be mutual respect and understanding between councillors and officers in relation to their respective roles, functions and responsibilities.
- 12.2** Our role is one of advocacy and leadership rather than management and administration. The Chief Executive Officer is responsible for all staff matters.
- 12.3** As councillors, we will adhere to the requirements of section 124 of the Act and must not intentionally direct or seek to direct a member of Council staff:
  - in the exercise of a delegated power, or the performance of a delegated duty or function, of the Council; or
  - 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 Local Government Act or any other Act; or
  - 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 the Local Government or any other Act; or
  - in relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated committee.

## **13. Gifts**

We will not accept gifts either in our role as councillor or where it could be perceived to influence us in our role as a councillor except:

- 13.1** Where the gift would generally be regarded as only having a token value and could not be perceived to influence our actions as a councillor.
- 13.2** Where refusal may cause offence or embarrassment, in which case we will accept the gift on behalf of the Council and the gift becomes the property of the Council.

All gifts accepted will be recorded on Council's gift register in accordance with Council policy. Anonymous gifts will never be accepted.

Refer to Council policy CP009 Gifts, Benefits & Hospitality.

## **14. Fraud Prevention**

Council is the body responsible for the governance of the municipality. It is responsible for setting the highest standards of honesty and integrity in the provision of services to the community and the management of the organisation.

**14.1** Councillors are committed to the prevention, deterrence, detection and investigation of all forms of fraud.

**14.2** We will ensure that Management has the appropriate measures in place to detect and prevent fraud.

Refer to Council policy CP008 Fraud Prevention.

## **15. Communication**

As representatives of the community, we have a primary responsibility to be responsive to community views and to adequately communicate the attitudes and decisions of Council.

We will endeavour to ensure that the messages communicated through the media are clear, consistent, open and transparent.

**15.1** 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:

- state-wide political issues affecting local government;
- contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community;
- issues pertaining to policy and Council decisions;
- issues relating to the strategic direction of the Council.

The Mayor may nominate another councillor to make official comment on behalf of the Council, where appropriate.

**15.2** The Chief Executive Officer is the official spokesperson for all operational matters pertaining to the Borough of Queenscliffe as an organisation including:

- staffing and structure of the organisation;
- corporate issues relating to service provision or the day-to-day business of Council.

The Chief Executive Officer may nominate a Council officer spokesperson if appropriate.

**15.3** As individual councillors we are entitled to express independent views through the media, however we will make it clear that any unofficial comment is a personal view, and does not represent the position of the Council as a whole.

## **16. Conflict of Interest Procedures**

**16.1** 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 sections 126 to 131 (Part 6, Division 2) of the Act in regard to the disclosure of conflicts of interest.

In addition to the requirements of the Act to disclose general conflicts of interest and material conflicts of interest for ourselves or our family members (as defined in the Act) in respect of Council matters and exclude ourselves from the decision making process in relation to that matter:

- 16.2** We will give consideration to each matter to be considered by the Council, any delegated committee to which we belong, or assembly of councillors, to ascertain if we have a conflict of interest;
- 16.3** We recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each individual councillor and that while Council officers can offer a general view they cannot provide legal advice in relation to potential conflicts. If we cannot confidently say that we do not have a conflict of interest, we will declare a conflict of interest and comply with the relevant requirements as if we had a conflict of interest; and
- 16.4** If we consider that we are unable to vote on a matter because of a conflict of interest, we will notify, as soon as possible, the Mayor or the Committee Chair, depending on whether the matter is to be considered by the Council, a delegated committee, or an assembly of councillors, as well as the Chief Executive Officer.

## **17. Dispute Resolution Procedures**

- 17.1** 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.
- 17.2** In the event of any dispute occurring where councillors are unable to resolve interpersonal conflicts that adversely affect the operation of the Council, the parties to the dispute agree to work together to try to resolve the dispute and will agree to the appointment of a mediator nominated by the Chief Executive Officer and acceptable to both parties, or failing agreement, nominated by the President of the Municipal Association of Victoria and appointed by the Chief Executive Officer, if they are unable to resolve the dispute within 21 days.
- 17.3** It is mandatory that all councillors who are parties to the dispute attend the mediation and participate to the level required by the mediator.
- 17.4** Where a mediator is appointed, all councillors agree to cooperate with the dispute resolution process and use their best endeavours to assist the mediator when requested.
- 17.5** If the dispute remains unresolved, the parties to the dispute will participate in the internal resolution process where an independent suitably qualified arbiter will be appointed by the Chief Executive Officer and/or Councillor Conduct Officer 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 which the arbiter must give to the Council;
  - give a written statement of reasons supporting the findings to the Councillor 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.

- 17.6** An application to commence the internal resolution process must be made in writing and submitted to the Chief Executive Officer and/or Councillor Conduct Officer. The application must:
- specify the name of the Councillor alleged to have contravened the Code;
  - specify the provision(s) of the Code that is alleged to have been contravened;
  - include evidence in support of the allegation;
  - name the Councillor appointed to be their representative where the application is made by a group of councillors; and
  - be signed and dated by the applicant or the applicant's representative.
- 17.7** A Councillor who does not participate in the internal resolution procedure or with a written direction given by the Council at the conclusion of the internal resolution process may be guilty of misconduct. Allegations of misconduct, serious misconduct or gross misconduct will be dealt with in accordance with the provisions of the Act (Part 6, Division 5).
- 17.8** If the dispute relates to an apparent offence under the *Local Government Act 2020* it will be dealt with in accordance with the provisions of that Act.
- 17.9** 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 and Committee meetings.

## **POLICY REVIEW**

This policy will be reviewed annually.

## **OTHER REFERENCES**

*Local Government Act 2020*

*Oaths and Affirmations Act 2018*

*Privacy and Data Protection Act 2014*

CP009 Gifts, Benefits & Hospitality

CP008 Fraud Prevention

CP018 Councillor Support, Resources & Facilities

CP021 Election Caretaker Period

By signing below, I declare to my fellow Councillors and to the community that I have read, understood and will abide by this Councillor Code of Conduct.

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Cr Ross Ebbels

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Cr Fleur Hewitt

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Cr Donnie Grigau

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Cr Susan Salter

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Cr Michael Grout

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Witnessed by Chief Executive Officer, Martin Gill