

## 1. Purpose of the Code of Conduct

Councillors respect and are committed to the stewardship of the City of Port Phillip and will lead in good governance practice. Councillors will embed best practice through a constructive team culture to meet our legislative responsibilities. We will develop and maintain good working relationships between Councillors, and Council and the organisation, to deliver positive outcomes and value to the community. In the interests of the City of Port Phillip community we will uphold the Objectives of the Local Government Act 1989 (“the Act”) in Section 3c, comply with our core legislative responsibilities and uphold Council’s supporting policies and procedures we’ve committed to in this Code of Conduct.

## 2. Our Legislative roles and responsibilities

### 2.1 Primary Principle of Councillor Conduct

Councillors understand and will respect the primary principle of Councillor Conduct prescribed in Section 76B of the Act, which is that 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.

### 2.2 General Councillor Conduct Principles

In addition to the primary principle of councillor conduct, Councillors understand and will respect the general Councillor Conduct Principles prescribed in Section 76BA in performing the role as Councillor. They must therefore:

- 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.

## 2.3 Role of Councillors

Councillors understand and will respect the definition of the role of a Councillor in Section 65 of the Act:

- (1) The role of a councillor is—
  - (a) to participate in the decision-making of the council; and
  - (b) to represent the local community in that decision-making; and
  - (c) to contribute to the strategic direction of the council through the development and review of key strategic documents of the council, including the council plan.
  
- (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 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.

## 2.4 Role of the Mayor

Councillors understand and will respect the definition of the functions of the Mayor in Section 73AA of the Act:

- The functions of the mayor of a council 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.

## 2.5 Role of the CEO

Councillors understand and will respect the responsibilities of the CEO outlined in Section 94A of the Act:

- (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

## 2.6 Conflicts of Interest and Disclosure

Councillors understand and will discharge the responsibility of disclosing conflicts of interest outlined in Sections 77 to 79D of the Act:

- a) If a Councillor has a conflict of interest in a matter which is to be considered at a meeting of the Council, a special committee, audit committee or Section 223 committee or at an assembly of Councillors, the Councillor must disclose the conflict of interest and observe the related obligations in accordance with the provisions of the Act.
- b) Unless an exception applies, a Councillor who has a direct interest in a matter has a conflict of interest. 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 has, or member of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.
- c) Assuming that no exception applies, a conflict of interest also exists where a Councillor has any of the six types of indirect interest. These 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 - 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 - receipt of an applicable gift or gifts from a person or organisation with a direct interest
  - Interested party - 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.
- d) Councillors are encouraged to seek information and share any concerns through the CEO (or a person authorised by the CEO) on any matters related to a potential conflict of interest.
- e) Councillors if attending a meeting of Council, a Special Committee or an Assembly of Councillors must make a full disclosure to the meeting of any conflict of interest and may also advise the Chief Executive Officer in writing (email, letter or through a 'Conflicts of Interest Declaration Form').
- f) Officers will maintain a Conflicts of Interest Register for any written disclosures.

## 2.7 Prohibited Behaviours

Consistent with section 76D of the Act, Councillors must not misuse his or her position to:

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

*Misuse of position will result in a penalty: 600 Penalty units or imprisonment for 5 years or both*

In accordance with Section 76 E of the Act, Councillors 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 exercise 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.

*Contravention of this section will result in a penalty: 120 penalty units*

In accordance with Section 77 of the Act, Councillors will not disclose information that they know, or should reasonably know, is confidential information except 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.

*Contravention of this section will result in a penalty: 120 penalty units*

## 2.8 Sanctions for contravention of the Councillor Code of Conduct

Section 81AB(1) specifies that if, after an internal resolution procedure has been conducted, it is found that a Councillor has contravened the Councillor Code of Conduct, the Council may give any or all of the following written directions to the Councillor;

- a) Direct the Councillor to make an apology in a form or manner specified by the Council;
- b) Direct the Councillor to not attend up to, but not exceeding, two meetings of the Council;
- c) Direct that, for a period of up to, but no exceeding, two months commencing a date specified by the Council, the Councillor will
  - I. Be removed from any position where the Councillor represents the Council and
  - II. To not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

A direction given under Section 81AB (1)(b) must be in respect of the next scheduled meetings of the Council after the direction is made.

## 2.10 Other key legislative responsibilities

In addition to the Act, Councillors understand and will observe their responsibilities under:

<i>Copyright Act 1968</i> (Commonwealth)	Under this Act there are restrictions on publishing and republishing some works. Like everyone else, Councillors are subject to these restrictions
<i>Charter of Human Rights and Responsibilities Act 2006</i>	This Act protects certain human rights. A public authority must, when making a decision, give proper consideration to these human rights
<i>Disability Discrimination Act 1992</i> (Commonwealth)	This Commonwealth Act prohibits discrimination on the ground of disability. To the extent that it binds Council, councillors should not do anything which causes Council to contravene the Act.
<i>Equal Opportunity Act 2010</i>	Section 73 is specifically concerned with discrimination by Councillors. It provides that a Councillor must not discriminate against another Councillor or a member of a Committee. Section 102 of this Act is also specifically concerned with Councillors. It provides that a Councillor must not sexually harass another Councillor or a member of a Committee.
<i>Fair Work Act 2009</i> (Commonwealth)	This is the Act which regulates workplace relations in Australia. Although Councillors are not covered by the Act, their behaviour and conduct can affect Council's responsibilities as an employer of staff. This can have implications for compliance with the Act.
<i>Health Records Act 2001</i>	This Act applies to Council, to the extent to which it provides maternal and child health services (and some other community services). A number of Health Privacy Principles are contained in the Act, and bind Council. Councillors must ensure that they do not do anything which causes Council to contravene any of these principles or the Act more broadly.

<i>Occupational Health and Safety Act 2004</i>	This Act imposes a number of duties on Council. One of the duties is to ensure, so far as is reasonably practicable, that persons other than employees of Council are not exposed to risks to their health or safety. The behaviour and conduct of Councillors can affect Council’s ability to discharge this duty.
<i>Planning and Environment Act 1987</i>	This Act regulates land use in Victoria. As both a Planning Authority and Responsible Authority, Council has various obligations and functions. It is important that Councillors help ensure that Council performs these obligations and functions lawfully.
<i>Privacy and Data Protection Act 2014</i>	This is the Act which applies to the Victorian Public Sector, including local government. A number of Information Privacy Principles are contained in the Act. Council is bound by the Act. The behaviour and conduct of councillors can affect Council’s compliance with the Act.
Procedural Fairness – a common law duty	One of the principles of procedural fairness (or natural justice) is that a decision-maker must not be affected by actual or reasonably apprehended bias. Reasonably apprehended bias can occur when a hypothetical reasonable person might conclude that the decision-maker might not have an open mind or that there might be a conflict of interest on the decision-maker’s part. It is possible that a reasonable apprehension of bias in respect of a single councillor can cause Council to breach this principle of procedural fairness. Hence the need for Councillors to keep an open mind and to avoid conflicts of interest.
<i>Protected Disclosure Act 2012</i>	This Act is concerned with protected disclosures. Certain protected disclosures can be made to Council. This triggers a process, which can lead to IBAC being notified. It is important that Councillors do not do anything to compromise Council’s obligations under the Act.
<i>Racial and Religious Tolerance Act 2001</i>	Under this Act, a person must not incite hatred, serious contempt, revulsion or severe ridicule on the ground of race or religion. Complaints can be made to the Victorian Equal Opportunity and Human Rights Commission.
<i>Racial Discrimination Act 1975 (Commonwealth)</i>	Under section 18C of the Act, a person must not offend, insult, humiliate or intimidate another on the ground of race. Complaints can be made to the Australian Human Rights Commission

### 3 Council's Supporting Policies and Procedures

#### 3.1 Use of Council Provided Resources

- a) Council's *Councillor Support and Reimbursement Policy* details the support provided to Councillors and the basis upon which Councillors will be reimbursed for expenses.

#### 3.2 Gifts and Hospitality

- a) Councillors must be aware of their responsibilities relating to gifts, hospitality and donations. The *Councillor Gift and Hospitality Policy* establishes guidelines to assist Councillors to comply with their responsibilities.

#### 3.3 Media

- a) The Act provides that the Mayor is the principal spokesperson for the Council.
- b) The Mayor may authorise the Deputy Mayor and/or Ward Councillors to be the media spokesperson.
- c) On any internal organisational matters, the CEO is the Council spokesperson.
- d) Councillors may express their individual personal views through the media. When this occurs, it needs to be clear that any such comment is a personal view and does not represent the position of Council. Any such commentary should not include any remarks that could reasonably be construed as being derogatory, offensive or insulting to any person.
- e) Prior to Councillors exercising their right under section d) above, Councillors should endeavour to consult the Mayor and inform the media centre.

#### 3.4 Social Media

- f) Council recognises that social media is an important platform for communication and engagement and, as such, Councillors may establish and maintain their own social media sites.
- g) Council's website is the principal source of Council's public information.
- h) Councillors may link and disseminate key information from official Council social media sources in messaging to the community.
- i) Councillors should not link or disseminate information that is inconsistent with the resolutions of Council.
- j) Councillors should not make social media posts or media statements that contravene this Code of Conduct.

### 3.5 Communication and engagement

- a) Council will, to the maximum extent practicable, be open and transparent in the provision of information and have information readily available to the public. Council encourages community engagement on key issues of significance by actively seeking input through community reference groups, from broad cross-sections of the community and through improved community engagement practices.
- b) Council will, to the maximum extent practicable, be open and transparent in its decision making and encourage community participation in Council meetings. Councillors, as representatives of Council, will communicate and engage with the community on Council's key directions, challenges and opportunities respectfully and in accordance with the resolutions of Council.

### 3.6 Sharing information

While there is a clear separation of powers between Council and the CEO, good governance is dependent upon a shared understanding of Council's priorities and a willingness to work together to achieve outcomes for the community.

- a) Outside of Ordinary Council meetings and briefings, Councillors agree to share information with the organisation in the following ways:

Communication Channel	Purpose
'Helpdesk – Councillor request'	The 'Helpdesk - Councillor request' is the communication channel for all Councillors to log queries. Councillors will receive a weekly councillor request report by email.
Emails	Emails should be directed to the Executive Leadership Team or Managers only and may be logged as 'Helpdesk - Councillor request' if appropriate.
Phone contact	Phone contact should be limited to the Executive Leadership Team and Managers and not other staff.
Face to Face meetings	Meetings will be held with the Executive Leadership Team and Senior Managers. Other officers will attend by invitation from the Executive Leadership Team.
Councillor briefings	Briefings are the primary channel for sharing information about Council's strategic priorities and initiatives in preparation for Council's formal consideration of issues. They are a forum for Councillor questions, consideration of options and providing feedback but are not a decision making forum.
Councillor Notes	A weekly email publication for information on events, key projects and service updates.
Council's website	Council maintains its website to provide transparent and up to date information to the community. The 'Hot Topics' section will provide information on any critical issues of interest to Councillors and community.
CEO performance report	The monthly CEO report provides Council and the community with updates on Council's performance. It focuses on the delivery of the Council Plan and updates on financial and non-financial performance targets.

- b) Council staff will provide the information sought in a considered, responsive and timely manner. Councillors cannot direct staff, set priorities or deadlines.
- c) Councillor requests must be reasonable and consistent with existing policies, budgets, Council resolutions, priorities and resources. Councillors do not have individual authority; only Council, through a formally constituted resolution, can direct the organisation to provide information.

- d) For requests which are considered of interest to the whole of Council, or a subset of councillors, staff will copy any written communication to or from the Councillor to those councillors.

## 4 Council’s Internal Issue Resolution Procedure

The issue resolution procedure has three primary elements. Firstly and most importantly is ‘prevention’. Agreed behaviours and building a team work culture prevent contraventions of the Councillor Code of Conduct and fosters high performance and achievement. Secondly, ‘early intervention’. Through identifying any issues early and taking corrective action, serious contraventions can be avoided. Finally, referral to an independent arbiter, or for serious contraventions, referral to a Councillor Conduct Panel or VCAT, as prescribed by the Act.

Step 1: Prevention		
	Key Actions	Responsible Authority
Preventative steps to avoid a contravention of this Code	<p>Councillors are committed to fostering good working relationships between Councillors and with the organisation. Building a constructive working environment where differences are respected and a collective strategic focus is prioritised are a benefit the community. To enable this, Councillors will commit to:</p> <ul style="list-style-type: none"> <li>• Developing and working to a set of agreed team values and behaviours</li> <li>• Have regular ‘check-ins’ on the team values and behaviours as part of the weekly Councillor meeting time</li> <li>• Holding quarterly workshops to review the team values and behaviours with the support of an external facilitator</li> <li>• respectfully hold each other to account to the agreed values and behaviours</li> </ul> <p>Examples of agreed team behaviours include:</p> <ul style="list-style-type: none"> <li>• Upholding the decisions of Council, even where it is not a unanimous decision and respectfully communicate the decision.</li> <li>• Being willing to learn and being open minded</li> <li>• Respectfully listening and being open to other peoples’ views</li> <li>• Being positive and constructive</li> <li>• Engaging in creative and constructive problem solving</li> <li>• Staying focused on agreed strategic priorities</li> </ul>	Councillors

Step 2: Early Intervention		
Situation	Key Actions	Responsible Authority
a) Concerns with behaviour demonstrated by a Councillor	Councillors will: <ul style="list-style-type: none"> <li>• Use “Councillor Only Time” to respectfully and constructively raise issues for discussion and resolution</li> <li>• Respectfully “call” each other on behaviours “in the moment”</li> </ul>	Councillors
b) Conduct by councillor that is inconsistent with the Code and requires intervention	<ul style="list-style-type: none"> <li>• Mayor is to be notified in writing, providing details of the alleged contravention, when it occurred and who it involved.</li> <li>• Mayor will assess the information</li> <li>• Mayor will speak with relevant councillor/s or concerned parties and provide an opportunity for them to be heard, where appropriate.</li> <li>• Mayor will send a written confirmation to the councillor/s and concerned parties confirming whether the matter was discussed and how it was resolved.</li> </ul>	Mayor
c) If the matter cannot be resolved by the Mayor, or relates to an alleged contravention of the Code by the Mayor which cannot be resolved by other means	<ul style="list-style-type: none"> <li>• Councillor/s to notify the Principal Conduct Officer (PCO) in writing, providing details of the alleged contravention, when it occurred and who it involved.</li> <li>• PCO will carry out a preliminary assessment of the information and speak with relevant councillor/s or concerned parties and provide an opportunity for them to be heard.</li> <li>• If the PCO determines there is need for an external mediator, then one will be appointed. Meetings will be arranged between the parties at a mutually agreeable time and each be given an opportunity to be heard.</li> <li>• The mediator will conduct one or more meetings with the parties at a mutually agreeable time.</li> <li>• The mediator will send all parties, including the PCO, written confirmation of how this matter was resolved.</li> </ul>	PCO

#### Differing roles of mediator and arbiter

*External mediator* – a mediator will facilitate a discussion between parties and can provide suggestions to resolve any matters.

*External arbiter* – a suitably independent arbiter can make a determination and recommendations in resolving a matter. Their findings and recommendations will be reported to Council.

Step 3: Referral to an independent arbiter		
Situation	Key Actions	Responsible Authority
Failure by a Councillor to agree with a mediated agreement or where mediation does not occur or it occurs but does not result in a mediated agreement	<ul style="list-style-type: none"> <li>Councillor/s to notify the Principal Conduct Officer (PCO) in writing, providing details of the alleged contravention, when it occurred and who it involved.</li> <li>PCO will carry out a preliminary assessment of the information and speak with relevant councillor/s or concerned parties and provide an opportunity for them to be heard.</li> <li>The PCO will then appointment an independent arbiter.</li> <li>Meetings with the independent arbiter will be arranged with each of the parties at a mutually agreeable time with an opportunity to each be heard.</li> <li>The arbiter will send all parties, including the PCO, written confirmation of how this matter was resolved with their findings and details of any recommended sanctions which will be reported to Council.</li> </ul>	PCO/Council

Step 4: Referral for misconduct, serious misconduct and gross misconduct	
Degrees of Seriousness	Key Actions
Misconduct (which includes failing to comply with a council’s internal resolution procedure, such as a failure to abide by decision of Council in relation to a contravention of the Code and repeated contraventions of Councillor Conduct Principles)	Following a Council Resolution, the PCO will contact the Principal Councillor Conduct Registrar and apply for a Councillor Conduct Panel
Serious misconduct (which includes failing to comply with a panel process, bullying, improperly directing staff, releasing confidential information and repeated misconduct. Bullying, which is a form of serious misconduct, is defined as repeated unreasonable behaviour that creates a risk to the health and safety of another Councillor or member of Council staff. This is consistent with the definition of bullying used in the <i>Fair Work Act 2009</i> and by WorkSafe).	Following a Council Resolution, the PCO will contact the Principal Councillor Conduct Registrar and apply for a Councillor Conduct Panel
Gross misconduct (which includes behaviour that demonstrates that a councillor is not of good character or is unfit to hold the office of Councillor).	Following a Council Resolution, the PCO will contact the Chief Municipal Inspectorate and request that the matter be referred to VCAT .

## 5 Review Period of the Councillor Code of Conduct

Council may periodically review the Councillor Code of Conduct, in addition to the statutory requirements to review the Code of Conduct after each General Election, to ensure it remains relevant to the operations of Council. Administrative changes that do not materially alter the Councillor Code of Conduct will be made to the

document as needed (for example minor changes to legislation). Any other significant changes will be made through Council resolution.

## **6 Councillor Endorsement**

This Councillor Code of Conduct was adopted by Port Phillip City Council on 28 June 2016 and reviewed by Council at a Special Council meeting held on 15 February 2017. In signing below each Councillor declares in accordance with section 76C(1) of the Local Government Act 1989 that they have read and agree to abide by the Code by signing their declaration in the presence of the Interim Chief Executive Officer.

Attachment I: Councillor Code of Conduct revised

I, Councillor Tim Baxter, declare that I have read the Councillor Code of Conduct for the Port Phillip City Council adopted on 15 February 2017, and declare that I will abide by this Code.

Councillor Tim Baxter

Signature

Date

Witnessed by Carol Jeffs, Interim CEO

Signature

Date

I, Councillor Louise Crawford, declare that I have read the Councillor Code of Conduct for the Port Phillip City Council adopted on 15 February 2017, and declare that I will abide by this Code.

Councillor Louise Crawford

Signature

Date

Witnessed by Carol Jeffs, Interim CEO

Signature

Date

I, Councillor Dick Gross, declare that I have read the Councillor Code of Conduct for the Port Phillip City Council adopted on 15 February 2017, and declare that I will abide by this Code.

Councillor Dick Gross

Signature

Date

Witnessed by Carol Jeffs, Interim CEO

Signature

Date

Attachment I: Councillor Code of Conduct revised

I, Councillor Marcus Pearl, declare that I have read the Councillor Code of Conduct for the Port Phillip City Council adopted on 15 February 2017, and declare that I will abide by this Code.

Councillor Marcus Pearl

Signature

Date

Witnessed by Carol Jeffs, Interim CEO

Signature

Date

I, Councillor Ogi Simic, declare that I have read the Councillor Code of Conduct for the Port Phillip City Council adopted on 15 February 2017, and declare that I will abide by this Code.

Councillor Ogi Simic

Signature

Date

Witnessed by Carol Jeffs, Interim CEO

Signature

Date

I, Councillor Bernadene Voss, declare that I have read the Councillor Code of Conduct for the Port Phillip City Council adopted on 15 February 2017, and declare that I will abide by this Code.

Councillor Bernadene Voss

Signature

Date

Witnessed by Carol Jeffs, Interim CEO

Signature

Date

Attachment I: Councillor Code of Conduct revised

I, Councillor Andrew Bond, declare that I have read the Councillor Code of Conduct for the Port Phillip City Council adopted on 15 February 2017, and declare that I will abide by this Code.

Councillor Andrew Bond

Signature

Date

Witnessed by Carol Jeffs, Interim CEO

Signature

Date

I, Councillor David Brand, declare that I have read the Councillor Code of Conduct for the Port Phillip City Council adopted on 15 February 2017, and declare that I will abide by this Code.

Councillor David Brand

Signature

Date

Witnessed by Carol Jeffs, Interim CEO

Signature

Date

I, Councillor Katherine Copsy, declare that I have read the Councillor Code of Conduct for the Port Phillip City Council adopted on 15 February 2017, and declare that I will abide by this Code.

Councillor Katherine Copsy

Signature

Date

Witnessed by Carol Jeffs, Interim CEO

Signature

Date