



FRANKSTON CITY  
COUNCIL

## **Special Meeting**

# **A G E N D A**

20 February 2017





# COUNCIL CHAMBERS

<b>Dennis Hovenden</b> Chief Executive Officer	<b>Cr. Cunial</b> Mayor	<b>Tim Frederico</b> Director Corporate Development
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Council Core  
Business Support  
Coordinator

Cr. McCormack

Cr. Mayer

Cr. Aitken

Cr. Hampton

Cr Bolam

Cr. O'Reilly

Media

Media

Cr. O'Connor

Cr. Toms

EMT

EMT

Guest Speaker

**Gallery**





# THE COUNCIL MEETING

## Welcome to this Meeting of the Frankston City Council

The Council appreciates residents, ratepayers and other visitors taking their places in the Public Gallery, as attendance demonstrates an interest in your Council and community affairs. Community spirit is encouraged.

This information sheet is designed to help you to understand the procedures of Council and help you to gain maximum value from your attendance.

The law regarding the conduct of Council meetings enables the public to observe the session. However, to ensure the manageability of Council meetings, opportunities for public participation are limited to Question Time and registered submissions in accordance with Council's guidelines, which are available from Council's CEO Office (call 9768 1632) and on our website, [www.frankston.vic.gov.au](http://www.frankston.vic.gov.au). It is not possible for any visitor to participate in any Council debate unless specifically requested by the Chairperson to do so.

If you would like to have contact with Councillors or Officers, arrangements can be made for you to do so separately to the meeting. Call Frankston City Council on 9768 1632 and ask for the person you would like to meet with, to arrange a time of mutual convenience.

## When are they held?

Generally speaking, the Council meets formally every three (3) weeks on a Monday and meetings start at 7.00 pm, unless advertised otherwise.

Council meeting dates are posted in the Davey Street and Young Street entrances to the Civic Centre (upper level) and also on our website, [www.frankston.vic.gov.au](http://www.frankston.vic.gov.au).

## **Governance Local Law No. 1 – Meeting Procedure**

### **34. Chair's Duty**

*Any motion which is determined by the Chair to be:*

- (1) *defamatory of or embarrassing to any Councillor, member of Council staff or other person;*
- (2) *abusive or objectionable in language or nature;*
- (3) *a direct negative of the question before the Chair;*
- (4) *vague or unclear in intention;*
- (5) *outside the powers of Council; or*
- (6) *irrelevant to the item of business on the agenda and has not been admitted as Urgent Business, or purports to be an amendment but is not,*

*must not be accepted by the Chair.*

**88. Chair May Remove**

- (1) *The Chair may order and cause the removal of any person, including a Councillor, who disrupts any meeting or fails to comply with a direction, or cause the removal of any object or material that is deemed by the Chair as being objectionable or disrespectful.*
- (2) *Any person removed from the meeting under sub-clause 0 must not return to the meeting without the approval of the Chair or Council.*

*It is intended that this power be exercisable by the Chair, without the need for any Council resolution. The Chair may choose to order the removal of a person whose actions immediately threaten the stability of the meeting or wrongly threatens his or her authority in chairing the meeting.*

The Penalty for an offence under this clause is 2 penalty units which is \$200

## **The Formal (Ordinary) Meeting Agenda**

The Council meeting agenda is available for public inspection immediately after it is prepared, which is normally on the Thursday afternoon five days before the meeting. It is available from the Reception desk at the Civic Centre (upper level), on our website [www.frankston.vic.gov.au](http://www.frankston.vic.gov.au) or a copy is also available for you in the chamber before the meeting.

The following information is a summary of the agenda and what each section means:-

- **Items Brought Forward**

These are items for discussion that have been requested to be brought forward by a person, or a group of people, who have a particular item on the Agenda and who are present in the Public Gallery. Before the start of the meeting, an Officer will ask those in the Public Gallery whether they wish a matter to be considered early in the meeting.

- **Presentation of Written Questions from the Gallery**

Question Time forms are available from the Civic Centre and our website, [www.frankston.vic.gov.au](http://www.frankston.vic.gov.au). Questions may also be submitted online using the Question Time web form. "Questions on notice" are to be submitted and received by Council before 12 noon on the Friday before the relevant Ordinary Meeting.

"Questions without notice" may be submitted in the designated Question Time box in the public gallery on the evening of the meeting, just prior to its commencement. Forms are available in the Council Chamber.

A maximum of 3 questions may be submitted by any one person at one meeting. There is no opportunity to enter into debate from the Gallery.

More detailed information about the procedures for Question Time is available from Council's CEO Office (call 9768 1632) and on our website, [www.frankston.vic.gov.au](http://www.frankston.vic.gov.au).

- **Presentation of Petitions and Joint Letters**

These are formal requests to the Council, signed by a number of people and drawing attention to matters of concern to the petitioners and seeking remedial action from the Council. Petitions received by Councillors and presented to a Council meeting are usually noted at the meeting, then a report is prepared for consideration at the next meeting.

· **Presentation of Reports**

Matters requiring a Council decision are dealt with through officer reports brought before the Council for consideration. When dealing with each item, as with all formal meeting procedures, one Councillor will propose a motion and another Councillor will second the motion before a vote is taken.

· **Presentation of Delegate Reports**

A Councillor or member of Council staff who is a delegate may present to Council on the deliberations of the external body, association, group or working party in respect of which he or she is a delegate or an attendee at a Council approved conference / seminar.

· **Urgent Business**

These are matters that Councillors believe require attention and action by Council. Before an item can be discussed, there must be a decision, supported by the majority of Councillors present, for the matter to be admitted as "Urgent Business".

· **Closed Meetings**

Because of the sensitive nature of some matters, such as personnel issues or possible legal action, these matters are dealt with confidentially at the end of the meeting.

· **Opportunity to address Council**

Any person who wishes to address Council must pre-register their intention to speak before 4.00pm on the day of the meeting, by telephoning Council's CEO Office (call 9768 1632) or by submitting the online web form or by using the application form both available on the website, [www.frankston.vic.gov.au](http://www.frankston.vic.gov.au).

The submissions process is conducted in accordance with guidelines which are available from Council's CEO Office and on our website. All submissions will be limited to 3 minutes in duration, except for Section 223 submitters, who have a maximum of 5 minutes. No more than ten (10) members of the public are to be permitted to address the Council. Further speakers will be permitted to address the meeting at the discretion of the Chair. All speakers need to advise if they are speaking on behalf of an organisation and it is deemed that they have been appropriately authorised by that said organisation.

Public submissions and any subsequent discussion will be recorded as part of the meeting, and audio recordings of Council meetings are made available to members of the public upon request. If a submitter does not wish to be recorded, they must advise the Chair at the commencement of their public submission.

**Disclosure of Conflict of Interest**

If a Councillor considers that they have, or might reasonably be perceived to have, a direct or indirect interest in a matter before the Council or a special committee of Council, they will declare their interest and clearly state its nature before the matter is considered. This will be done on every occasion that the matter is considered by the Council or special committee.

If a Councillor has an interest in a matter they will comply with the requirements of the Local Government Act, which may require that they do not move or second the motion and that they leave the room in which the meeting is being held during any vote on the matter and not vote on the matter.

If a Councillor does not intend to be at the meeting, he or she will disclose the nature of the interest to the Chief Executive Officer, Mayor or Chairperson prior to the meeting commencing.

## **Agenda Themes**

The Council Agenda is divided into three (3) themes which depict the Council Plan's Strategic Objectives, as follows:

1. Planned City for Future Growth.
2. Liveable City.
3. Sustainable City.

**MAYOR**





## NOTICE PAPER

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### ALL COUNCILLORS

NOTICE is hereby given that a Special Meeting of the Council will be held at the Civic Centre, Davey Street, Frankston, on 20 February 2017 at 6.00pm.

### COUNCILLOR STATEMENT

*All members of this Council pledge to the City of Frankston community to consider every item listed on this evening's agenda:*

- *Based on the individual merits of each item;*
- *Without bias or prejudice by maintaining an open mind; and*
- *Disregarding Councillors' personal interests so as to avoid any conflict with our public duty.*

*Any Councillor having a conflict of interest in an item will make proper, prior disclosure to the meeting and will not participate in the debate or vote on the issue.*

### OPENING WITH PRAYER

*Almighty God, we ask for your blessing upon this Council. Direct and prosper its deliberations to the advancement of your glory and the true welfare of the people of Frankston City. Amen.*

### ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

*We respectfully acknowledge that we are situated on the traditional land of the Boonerwung and Bunurong in this special place now known by its European name, Frankston. We recognise the contribution of all Aboriginal and Torres Strait Islander people to our community in the past, present and into the future.*



**BUSINESS**

**1. APOLOGIES**

Nil

**2. DISCLOSURES OF INTEREST AND DECLARATIONS OF CONFLICT OF INTEREST**

**3. ITEMS BROUGHT FORWARD**

**4. CONSIDERATION OF REPORTS OF OFFICERS**

4.1 Councillor Code of Conduct Review .....2

**5. LATE REPORTS**

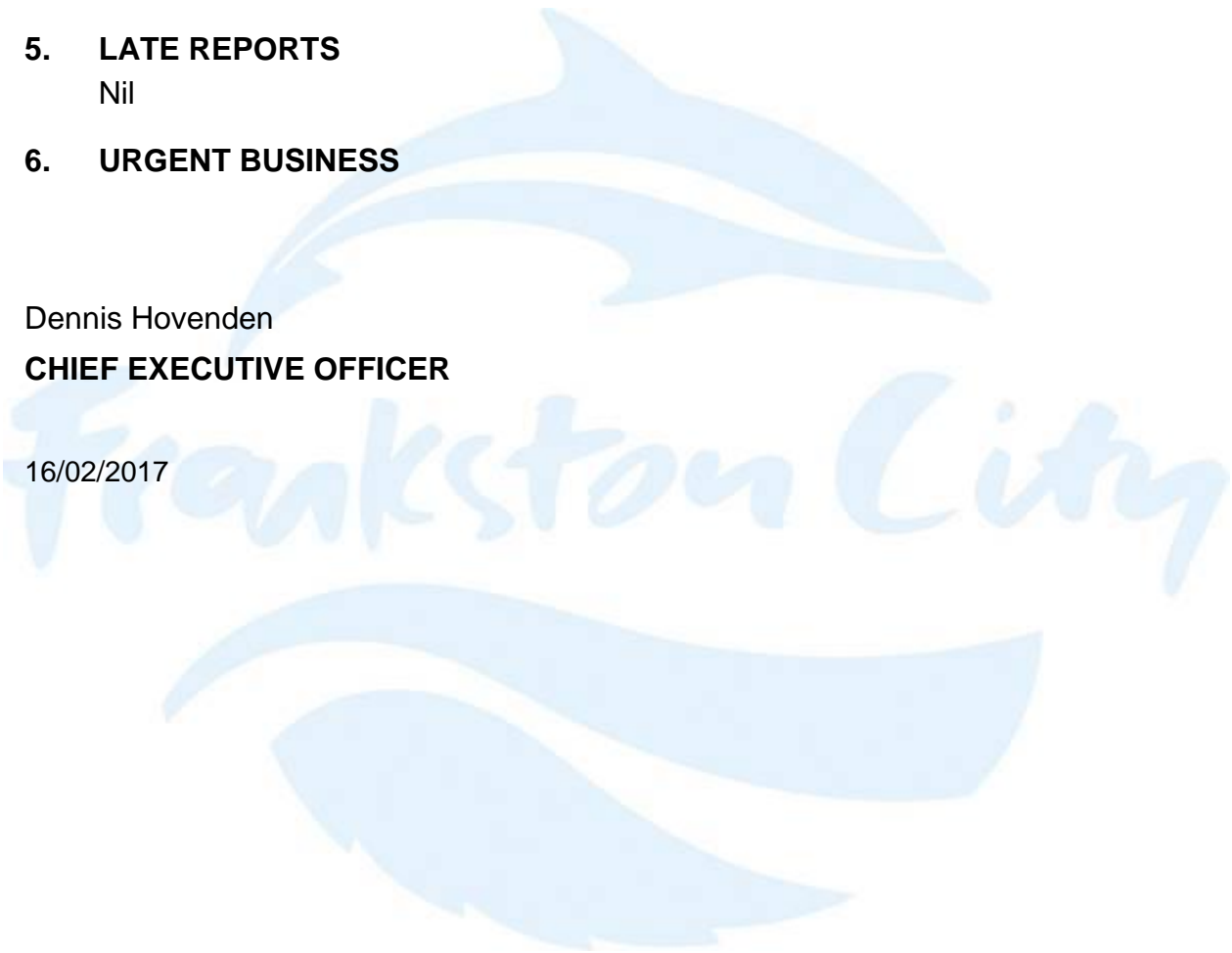
Nil

**6. URGENT BUSINESS**

Dennis Hovenden

**CHIEF EXECUTIVE OFFICER**

16/02/2017





## Executive Summary

### 4.1 Councillor Code of Conduct Review

*Enquiries: (Louise Bugiera: Corporate Development)*

#### Council Plan

Community Outcome:	3. Sustainable City
Strategy:	3.3 Ensure good governance and management of Council resources
Priority Action	3.3.2 Implement a schedule of reviews of services, plans, policies and protocols to ensure good governance

#### **Purpose**

To enable Council to review and approve and adopt any amendments to its Councillor Code of Conduct by resolution, in compliance with the requirements of Section 76C of the *Local Government Act 1989*.

#### **Recommendation (Director Corporate Development)**

That Council:

1. Notes that a full review of the Code of Conduct has been completed;
2. Adopts the *Councillor Code of Conduct 2017* attached to this report; and
3. Notes the requirement that each Councillor, within one month of this meeting, must make a written declaration before the Chief Executive Officer stating that they will abide by the *Councillor Code of Conduct 2017*.

#### **Key Points / Issues**

- Section 76C of the *Local Government Act 1989* (“Act”) requires Council to review and approve any amendments to the Councillor Code of Conduct at a special meeting called solely for that purpose, by 22 February 2017.
- The Councillor Code of Conduct must include an internal resolution process for addressing alleged contraventions of the Councillor Code of Conduct which, amongst other things, provides for the selection of an independent arbiter. Aside from these requirements, each council has discretion to determine the content of its own Councillor Code of Conduct.
- Officers prepared a comprehensive *Draft Councillor Code of Conduct 2017* which was first discussed with Councillors at a briefing session on 12 December 2016. At that briefing Councillors indicated a desire to re-work the document.
- Councillors provided feedback about the draft Code by email, and during briefing ‘workshop’ sessions on 23 and 24 January 2017, 6 February 2017 and 13 February 2017.
- The workshop process involved detailed discussion and redrafting of the provisions in the document, with officers capturing the outcomes of the Councillors’ discussion live on a screen throughout the sessions.
- The outcomes of the workshop process are reflected in the *Councillor Code of Conduct 2017*, which is included as [Attachment A](#) to this report.

**4.1 Councillor Code of Conduct Review****Executive Summary**

- The substantive changes from the previous Code of Conduct are the addition of provisions relating to:
  - descriptions of the role of the Mayor, Deputy Mayor, Councillors and CEO;
  - the acceptance of gifts;
  - Councillors' use of social media;
  - Candidature of Councillors for state or federal elections;
  - A five stage grievance resolution procedure, including the ability for Council to recover the costs involved in responding to a vexatious or frivolous councillor conduct complaint.

**Financial Impact**

For the 2017-2018 financial year, the State Government Minister for Local Government has announced a limit on the amount Victorian councils may increase rates. The cap for the 2017-2018 financial year is 2%. The cap is based on the Consumer Price Index expected for the financial year.

This cap has a significant effect on Council's current Long Term Financial Planning, with rate revenue being \$9 million less than anticipated over the first four years, growing to \$17 million over five years. This reduction will have a severe impact on Council's financial capacity to maintain service levels and deliver key capital projects.

Having a clear and comprehensive Councillor Code of Conduct may reduce the risk of conduct issues occurring and escalating to require time consuming, costly and distractive arbitration hearings of disputes.

**Consultation****1. External Stakeholders**

Guidance material from Local Government Victoria, and from Macquarie Local Government Lawyers (including the dispute resolution procedure from the MAV's Model Councillor Code of Conduct), has been considered during the drafting of the attached Councillors' Code of Conduct, and incorporated where relevant.

Feedback from the arbiters who conducted the arbitration hearings at the end of the last Council term has been incorporated into the amended grievance resolution procedure.

The recommendation from the recent Pitcher Partners audit of Council's operating procedures has also been incorporated into the draft document.

The Code of Conduct has been reviewed by Maddocks Lawyers for compliance with relevant legislation.

**2. Other Stakeholders**

Councillors have demonstrated a keen interest in comprehensively re-working the Councillor Code of Conduct.

**Analysis (Environmental / Economic / Social Implications)**

There are no environmental or economic implications associated with this report.

## 4.1 Councillor Code of Conduct Review

### Executive Summary

The Councillor Code of Conduct is a key element of Council's governance arrangements. It is important that Councillors fully support the content of their Code of Conduct, because the Code articulates the expected standards of behaviour and provides a framework of rules and relationships, systems and processes which contribute to the effective operation of the Council, and assist in the resolution of any issues that might arise.

#### Legal / Policy / Council Plan Impact

##### Charter of Human Rights and Responsibilities

All matters relevant to the Charter of Human Rights and Responsibilities have been considered in the preparation of this report; the report is consistent with the standards set by the Charter.

##### Legal

It is a statutory requirement that Council must, within the period of 4 months after a general election, call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct, and at that special meeting, approve any amendments to the Councillor Code of Conduct. Failure to do so would constitute a breach of section 76C(2) of the Act.

The most relevant provisions of the Act are set out below:

- Section 76C(3) of the Act prescribes that a Councillor Code of Conduct:
  - (a) *must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor;*  
*Note: Section 81AA provides for matters to be addressed by the internal resolution procedure of a Council.*
  - (b) *may set out processes for the purpose of resolving an internal dispute between Councillors;*
  - (c) *must include any provisions prescribed for the purpose of this section;*
  - (d) *must include provisions addressing any matters prescribed for the purpose of this section;*
  - (e) *may include any other matters relating to the conduct of Councillors which the Council considers appropriate.*
- Section 76C of the Act also states that:
  - (6A) *Within one month of amendments to a Councillor Code of Conduct being approved in accordance with this section, a Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct.*
  - (6B) *A declaration by a Councillor under subsection (6A) must be –*
    - (a) *in writing; and*
    - (b) *witnessed by the Chief Executive Officer.*

**4.1 Councillor Code of Conduct Review****Executive Summary**

- Section 29(1)(ea) of the Act makes it a ground for disqualification if a Councillor “has failed to make a declaration stating that he or she will abide by the Councillor Code of Conduct in accordance with section 76C.”
  
- Section 81AA of the Act states that the internal resolution procedure must:
  - (a) *be specified in the Councillor Code of Conduct; and*
  - (b) *incorporate any prescribed processes including any application process; and*
  - (c) *provide for the selection of an arbiter who is suitably independent and able to carry out the role of arbiter fairly; and*
  - (d) *specify the role an arbiter is expected to undertake in the conduct of any internal resolution procedure including that the arbiter must—*
    - (i) *consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor; and*
    - (ii) *make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council; and*
  - (e) *provide processes to ensure that parties affected by an application alleging a contravention of the Councillor Code of Conduct are given an opportunity to be heard by the arbiter; and*
  - (f) *specify that the Council and the Councillor the subject of any application made alleging a contravention of the Councillor Code of Conduct are to be given written reasons for any findings made by an arbiter; and*
  - (g) *address any matters prescribed for the purposes of this section; and*
  - (h) *include any provisions prescribed for the purposes of this section.*
  
- Section 81AB of the Act provides that a council can give any or all of the following sanctions to a Councillor who has been found to have contravened the Councillor Code of Conduct:
  - (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, 2 meetings of the Council;*
  - (c) *direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by the Council, the Councillor—*
    - (i) *be removed from any position where the Councillor represents the Council; and*



**4.1 Councillor Code of Conduct Review****Executive Summary**

- (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.*

Policy Impacts

Not applicable.

Officer's Declaration of Interests

Council officers involved in the preparation of this report have no conflict of interest in this matter.

**Risk Mitigation**

Failure to review and approve any amendments to the Councillor Code of Conduct by the statutory deadline would put Council in breach of section 76C of the Act. To mitigate this risk, Council should review and approve any amendments to the attached *Councillors' Code of Conduct 2017* at a special meeting solely for that purpose, prior to the deadline of 22 February 2016.

**Conclusion**

Section 76C of the Act requires Council to review its Councillor Code of Conduct and approve any amendments at a special meeting called solely for that purpose, by 22 February 2017.

The Councillor Code of Conduct 2017 which is attached to this report has been prepared with a high level of Councillor engagement.

It is recommended that Council resolves to approve the amendments to its Councillor Code of Conduct, in order to comply with the legislative requirements.

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**ATTACHMENTS**

Attachment A: Councillor Code of Conduct 2017

**4.1 Councillor Code of Conduct Review**  
**Officers' Assessment****Background**

The Act requires a council to develop and maintain a Councillor Code of Conduct. Each council must review its Councillor Code of Conduct and approve any necessary amendments at a special meeting called solely for that purpose, by 22 February 2017.

**Issues and Discussion**

The process of reviewing the Councillor Code of Conduct presents an opportunity for Council to consider and articulate what “good governance” and “good conduct” means for Frankston City Councillors, and to set out the standards to which Frankston’s Councillors will aspire and adhere. It is also an opportunity for Council to take a lead role and demonstrate its commitment to open and transparent governance.

**Options Available including Financial Implications**

The legislation sets the minimum requirements for the content that must be included in a Councillor Code of Conduct; however, it is open to a council to include additional content to provide improved standards, clarity and guidance.

It remains open to Council to conduct a further review of its Code of Conduct at a later stage during the term.



Frankston City Council

## **Councillor Code of Conduct 2017**

1. PURPOSE AND COMMITMENT .....	1
2. OBJECTIVES, ROLES AND RESPONSIBILITIES OF THE COUNCIL .....	2
3. ROLE OF THE MAYOR .....	2
4. ROLE OF THE DEPUTY MAYOR .....	3
5. ROLE OF COUNCILLORS .....	3
6. FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER .....	4
7. COUNCILLOR CONDUCT PRINCIPLES.....	5
7.1 Primary Principle.....	5
7.2 General Principles.....	5
7.3 Frankston-Specific Councillor Conduct Principles .....	6
7.3.1 Objectivity and Transparency .....	6
7.3.2 Teamwork.....	6
7.3.3 Meetings with Applicants for Proposed Developments .....	7
7.3.4 Ethical Decision-Making .....	7
8. INTERACTIONS WITH COUNCIL STAFF .....	7
9. OTHER OBLIGATIONS .....	8
9.1 Use of Council resources .....	8
9.2 Gifts and Hospitality .....	9
9.3 Communication .....	9
9.4 Personal Use of Social Media .....	10
9.5 Personal dealings with Council .....	10
9.6 Charter of Human Rights .....	10
9.7 Privacy and the Handling of Personal and Health Information.....	11
9.8 Freedom of Information .....	11
9.9 Candidature of Councillors State or Federal Elections.....	11
9.10 Compliance with Election (Caretaker) Period Policy .....	12
10. PROHIBITED CONDUCT .....	12
10.1 Misuse of position.....	13
10.2 Improper direction.....	14
10.3 Confidential information.....	14
10.4 Conflict of interest .....	15
11. GRIEVANCE RESOLUTION PROCEDURE .....	16
12. SANCTIONS .....	23
13. WRITTEN DECLARATIONS TO ABIDE BY THE COUNCILLOR CODE OF CONDUCT .	24

## 1. PURPOSE AND COMMITMENT

1.1 The performance of the Council and the wellbeing of the Frankston community are directly affected by the conduct of the City's elected Councillors; accordingly, the community is entitled to expect that:

- a) the business of the Council is conducted with efficiency, impartiality and integrity;
- b) Councillors obey the spirit and letter of the law, and in particular, the provisions of relevant statutes, regulations, local laws and other instruments; and
- c) responsibility to the community is always given absolute priority over the private interests of Councillors.

The important leadership role of Councillors is recognised in, the *Local Government Act 1989* (the Act), which describes how the Council is to be accountable in the performance of its functions, the exercise of powers and the use of resources. The Act specifies the role, function and objectives of Council, Councillors and the Chief Executive Officer.

1.2 This Councillor Code of Conduct has been adopted in satisfaction of the requirements of the Act and is binding on all Councillors to:

- a) specify the standard of conduct expected of Frankston City Council's elected representatives;
- b) foster constructive working relationships between Councillors, to enable Councillors to work together in the best interests of the community; and
- c) mandate legal, ethical and appropriate Councillor conduct that will build public confidence in the integrity of local government.

1.3 The Mayor, Deputy Mayor and Councillors commit to carrying out their role to the highest standards of conduct and behaviour. As part of this commitment, all Councillors will adhere to the conduct principles, values and processes outlined in the Councillor Code of Conduct. This will attract the highest level of confidence from Council's community and stakeholders, assist Councillors to carry out their role, and provide a means for dealing with a range of situations which may occur.

1.4 References:

- *Local Government Act 1989* ("Act")
- *Privacy and Data Protection Act 2014*
- *Health Records Act 2001*
- *Protected Disclosure Act 2012*
- *Freedom of Information Act 1982*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Winky Pop v Hobsons Bay City Council* (Victorian Supreme Court, 2007)
- relevant policy documents adopted by Council, eg. Election Period Policy, Councillor Entitlements and Expenses Policy, Communications Policy.

## **2. OBJECTIVES, ROLES AND RESPONSIBILITIES OF THE COUNCIL**

- 2.1 Frankston City is governed by nine Councillors who are democratically elected in accordance with the Act. Collectively, they constitute the Council. The primary objective and role of Council is established in sections 3C and 3D of the Act. Councillors commit to work collaboratively by:
- a) respecting the right of each Councillor to speak and represent their views on the needs of members of the community;
  - b) speaking well of each other and the Council in public, including in social media;
  - c) demonstrating commitment to consult with other Councillors, within the decision making framework and with no surprises;
  - d) respecting the diverse needs, views and nature of the greater Frankston community;
  - e) supporting and having regard for the role of local government as an important level of government within Australia;
  - f) ensuring a consultative approach to solving problems, developing effective decisions and communicating outcomes that build teamwork and cooperation;
  - g) demonstrating leadership by focusing on issues and refraining from personalising matters particularly in relation to making personal remarks regarding other Councillors; and
  - h) respecting each Councillor's right to hold different views and engage in constructive debate on matters of difference, while being united in representing Council decisions.
- 2.2 The role of Councillors is to set the vision for the City which requires a focus on strategy and policy development. The role of the Chief Executive Officer is to implement the decisions and ultimately the vision of Council.

## **3. ROLE OF THE MAYOR**

- 3.1 Section 73AA of the Act describes the functions of the Mayor as including:
- 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;
  - b) acting as the principal spokesperson for the Council;
  - c) supporting good working relations between Councillors; and
  - d) carrying out the civic and ceremonial duties of the office of Mayor.
- 3.2 The governance of the Council is the responsibility of the Councillors collectively. The Mayor is "first-among-equals". While the Mayor does not have executive

authority, Councillors acknowledge and respect that the Mayor has been elected by Councillors to lead the Councillor group and represent the Council. Accordingly Councillors agree to co-operate with the Mayor of the day in the fulfilment of the Mayoral leadership role.

3.3 The Mayor is responsible for chairing Council meetings, and in doing so will:

- a) retain control of the meeting at all times;
- b) be impartial;
- c) preserve order; and
- d) ensure that the business of the meeting is conducted in a proper and efficient manner, and in accordance with any applicable Local Law.

3.4 Accordingly the Mayor:

- a) will first and foremost at all times reflect the will of the Council while in the chair and performing all other official duties;
- b) will not use the position as chair to enter into debate on their personal views on an issue that is before the meeting. However this will not prevent the Mayor while in the chair merely expressing a point of view. Where the Mayor wishes to move or second a motion, he or she must vacate the chair;
- c) is the official spokesperson for the Council regarding decisions made by the Council and advocacy with government.

#### **4. ROLE OF THE DEPUTY MAYOR**

Where the Mayor is absent or otherwise unable to fulfil their duties, the Deputy Mayor will perform the duties ascribed to the Mayor, unless the Deputy Mayor has a conflict of interest or is unavailable.

#### **5. ROLE OF COUNCILLORS**

5.1 Section 65 of the Act provides that the role of a Councillor is:

- a) to participate in the decision-making of the Council;
- 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.

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

- a) consider the diversity of interests and needs of the local community;
- b) observe principles of good governance and act with integrity;

- c) provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under the Act and other Acts;
  - d) participate in the responsible allocation of the resources of the Council through the annual budget; and
  - e) facilitate effective communication between the Council and the community.
- 5.3 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.
- 5.4 Councillors must respect the Chair at all times during a meeting (including an Assembly of Councillors), and must observe any lawful direction given by the Mayor.

## **6. FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER**

- 6.1 The functions of the Chief Executive Officer are specified in section 94 of the Act. The Chief Executive Officer is responsible for—
- a) establishing and maintaining an appropriate organisational structure for the Council;
  - b) ensuring that the decisions of the Council are implemented without undue delay
  - c) the day to day management of the Council's operations in accordance with the Council Plan;
  - d) developing, adopting and disseminating a code of conduct for Council staff
  - e) providing timely advice to the Council;
  - f) ensuring that the Council receives timely and reliable advice about its legal obligations under the Act and any other Act;
  - g) supporting the Mayor in the performance of the Mayor's role as Mayor;
  - h) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013; and
  - i) performing any other function or duty of the Chief Executive Officer specified in the Act or any other Act.
- 6.2 Within the budget parameters set by the Council, the Chief Executive Officer may appoint as many members of Council staff as are required to perform the functions of the Council under the Act and any other Act, and to enable the Chief Executive Officer to carry out her or his functions.
- 6.3 The Chief Executive Officer is responsible for appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff.
- 6.4 The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and



protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

- 6.5 Good governance depends upon a clear understanding and agreement about the different roles and responsibilities within a council. Councillors acknowledge that those who govern and those who manage must work together in order to produce the best outcomes for the community over the long term.
- 6.6 Councillors undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.
- 6.7 The Chief Executive Officer is the official spokesperson for the Council regarding operational matters.

## **7. COUNCILLOR CONDUCT PRINCIPLES**

Councillors will observe and demonstrate the standards of conduct that the community has a right to expect of them. These standards are the 'Councillor Conduct Principles' which are described in the Act and include the following 'Primary Principle' and seven 'General Principles'.

### **7.1 Primary Principle**

Section 76B of the Act sets out the primary principle of Councillor conduct that in performing the role of a Councillor, a Councillor must –

- a) act with integrity;
- 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.

### **7.2 General Principles**

Section 76BA of the Act specifies that in addition to acting in accordance with the primary principle of Councillor Conduct specified in section 76B, in performing the role of a Councillor, a Councillor must:

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

representative; and

- 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.

### **7.3 Frankston-Specific Councillor Conduct Principles**

As community and civic leaders with responsibility for the Council's decision-making structure, Councillors will lead by example and promote the highest standards in the way Council business is conducted.

In carrying out their role, Councillors will embrace and demonstrate Council's values which foster a spirit of working together for Frankston. In challenging and inspiring each other to realise their vision for the City, Councillors will demonstrate and commit to the following additional (Frankston-specific) Councillor Conduct Principles.

#### **7.3.1 Objectivity and Transparency**

Councillors will conduct themselves in all decisions and actions professionally and ethically and will take responsibility for actions in an honest and transparent way. Councillors will:

- a) make all decisions solely on merit; and
- b) be as transparent as possible about their decisions and actions, giving reasons for their decisions, only restricting information as required by law or where the wider public interest requires such restriction.

#### **7.3.2 Teamwork**

There are nine members of the Council, who are democratically elected representatives of the Frankston community. Councillors will:

- a) acknowledge and embrace political, social, cultural and personal diversity. Nothing within the Code of Conduct will in any way impinge on the individual's right to express themselves in keeping with their own personal political, social or cultural beliefs and customs, provided that such expression of individualist belief and actions is at all times consistent with the expectations of a Councillor's behaviour, as stipulated in the Code of Conduct;
- b) contribute towards the Councillor group working its way towards a collective decision;
- c) make decisions in Council meetings, recognising that in discussions leading up to such decisions, for example in Assemblies of Councillors not open to the public, Councillors may explore a range of positions and express a range of views;
- d) not report the views expressed by fellow Councillors in meetings closed to the public, outside of those meetings. To do so would discourage full discussion of developing issues and the ability for Councillors to firm up their views as questions are answered and information provided;
- e) be accountable for their vote and statements in support of their vote at the time that the matter is decided in the Council meeting;

and

- f) encourage and permit all Councillors to develop and grow their personal attributes, skills and expertise in the role of Councillor.

### **7.3.3 Meetings with Applicants for Proposed Developments**

Councillors will ensure that all communications and conversations (including, but not limited to, meetings, emails and telephone calls) with the developer / applicant / consultant for any development proposed within the Frankston municipality, regarding the proposed development, will occur in the presence of at least two members of Council staff.

For the purposes of this clause, “developer / applicant / consultant” means a party with a town planning application under consideration in the Frankston municipality, where the total sum of works exceeds \$100,000.

### **7.3.4 Ethical Decision-Making**

If Councillors are unsure about the ethical issues involving an action or decision, consideration should be given to the following:

- a) Is the decision or conduct lawful?
- b) Is the decision or conduct consistent with the Council’s policies and objectives, and with this Code of Conduct?
- c) What will the outcome be for the community, the Council, a Councillor(s) and any other parties?
- d) Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- e) Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?
- f) In the event of any uncertainty about the ethical nature of any action or decision, Councillors should seek advice in the first instance from the Mayor and/or the Chief Executive Officer, the Chair of the Audit and Risk Management Committee, the Victorian Local Governance Association or Local Government Victoria.

## **8. INTERACTIONS WITH COUNCIL STAFF**

8.1 Councillors acknowledge that section 95 of the Act requires Council staff to:

- a) act impartially;
- b) act with integrity including avoiding conflicts of interest;
- c) accept accountability for results; and
- d) provide responsive service.

8.2 When interacting with Council staff, Councillors will:

- a) recognise that all staff members are accountable to the Chief Executive

Officer;

- b) respect that, pursuant to section 94A of the Act, the Chief Executive Officer is responsible for appointing, directing, managing and dismissing all Council staff, and for all other issues that relate to Council staff;
- c) recognise that a professional and well-managed team of managers and staff is essential to the wellbeing of the community;
- d) not direct, or seek to direct or influence a member of Council staff in the exercise or in the performance of a delegated duty or function, in an office or position the staff member holds, or in relation to advice provided to Council;
- e) interact with staff in a respectful, courteous manner that is not (or not likely to be) intimidatory;
- f) not impede the ability of Council staff to give independent professional advice to Council;
- g) recognise that a resolution of the Council is the appropriate mechanism to establish or amend Council policy. In the case of routine enquiries, however, a relevant member of the Executive Team (or the appropriate Executive Assistant) may be contacted for clarification;
- h) adhere to any adopted Council policy or agreed protocols regarding interactions between staff and Councillors;
- i) direct any concerns about the performance of any staff member or service unit to the Chief Executive Officer; and
- j) agree that workplace bullying can and should be prevented. As a collective, Council will collaborate with staff and unions to institute and uphold policies to facilitate an environment free from physical and psychological violence.

## **9. OTHER OBLIGATIONS**

### **9.1 Use of Council resources**

Councillors undertake to use Council resources effectively and economically, and in accordance with any adopted policy or agreed protocols. Councillors will:

- a) maintain adequate security over Council property, facilities and resources provided to assist in the performance of Councillors' roles, and will comply with any Council policies applying to their use;
- b) declare that any expense claims submitted (including for out of pocket expenses or reimbursement for vehicle use) are accurate and relate strictly to Council business and activities, and comply with the relevant legislative provisions and Council policy;
- c) not use Council resources, including images and services of Council staff, for private or political purposes, unless legally or properly authorised to do so, and payments are made where appropriate; and
- d) not use public funds or resources in a manner that is improper or unauthorised.

## 9.2 Gifts and Hospitality

Notwithstanding any other policy, Councillors will scrupulously avoid situations giving rise to the perception that a person or body, through the provision of gifts or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from the Council.

A **gift** means any disposition of property, other than by a will, made by a person to a Councillor without consideration in money or money's worth or with inadequate consideration, including:

- a) the provision of a service (other than volunteer labour);
- b) the payment of an amount in respect of a guarantee; and
- c) the making of a payment or contribution at a fundraising function.

The **gift disclosure threshold**, currently \$500, applies to a gift or gifts given to a Councillor by any person, company or body but does not include reasonable hospitality received by the Councillor at an event or function attended by the Councillor in an official capacity.

Councillors will:

- (a) where a gift equal to or above the gift disclosure threshold is accepted, ensure for transparency and accountability purposes that the gift is recorded in Council's Gifts Register;
- (b) take all reasonable steps to ensure that their immediate family members (parents, spouse, children and siblings) do not receive gifts or benefits that give rise to the perception of being an attempt to gain favourable treatment;
- (c) recognise that a gift or gifts equal to or above the statutory gift disclosure threshold (currently \$500) received during the period described in section 78C(1) of the Act from a person, company or body that has a direct interest in a matter may give rise to an indirect interest because of receipt of the applicable gift or gifts; and
- (d) record all election campaign donations in their campaign donation return.

Where a gift is received on behalf of the Council, the gift becomes the property of the Council. For transparency and accountability purposes, any such gift will be recorded in Council's Gifts Register with a notation that it is the property of the Council.

## 9.3 Communication

- a) Councillors recognise their responsibility, as representatives of the local community, to be responsive to community views and to adequately communicate the position and decisions of the Council.
- b) Councillors undertake to comply with the Council's communications policy and to respect the roles of the Mayor and Chief Executive Officer as the official spokespersons of the Council.

- c) Although any Councillor is entitled to communicate his or her views to the media, constituents and others, they should not in doing so:
  - (i) criticise or actively seek to undermine any decision or position already taken by the Council;
  - (ii) bring the Council into disrepute; or
  - (iii) purport to speak on behalf of the Council, without authority.
- d) Where an individual Councillor chooses to express a personal opinion through the media, they will:
  - (i) make it clear that any such comment is a personal view and does not represent the position of Council; and
  - (ii) ensure that any such comment could not reasonably be construed as being derogatory, offensive or insulting to any person.

#### **9.4 Personal Use of Social Media**

In addition to the Communication provisions above, the following provisions apply to the use of all forms of social media.

When using any social media which enables them to be identified as a Councillor of the Council, a Councillor will not:

- a) imply that they are authorised to speak on behalf of the Council, or give the impression that their expressed views are those of the Council;
- b) post, make comment or endorse (for example 'like') material that is offensive, obscene, defamatory, damaging, deceptive, threatening, harassing, bullying, discriminatory, hateful, racist, sexist, that infringes copyright or privacy, that constitutes a contempt of court, that breaches a court suppression order or is otherwise unlawful;
- c) use or disclose confidential information obtained in their capacity as a Councillor; or
- d) make any comment, post or endorse any material that might otherwise cause damage to the Council's reputation or bring it into disrepute.

#### **9.5 Personal dealings with Council**

When Councillors deal with the Council in their private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) they will not expect, nor will they request, preferential treatment in relation to any such private matter. Councillors will avoid any action that could lead Council staff or members of the public to believe that they are seeking preferential treatment.

#### **9.6 Charter of Human Rights**

Councillors acknowledge the human rights that are protected under the Victorian *Charter of Human Rights and Responsibilities Act 2006* ("the Charter"), and undertake to exercise their duties, so far as is possible, in a manner that is compatible with these human rights.

### **9.7 Privacy and the Handling of Personal and Health Information**

Councillors acknowledge that the requirements of the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001* apply to handling personal information and health related information about residents, staff and Councillors.

### **9.8 Freedom of Information**

Councillors will fully cooperate with the Council's administration to ensure that the Council can meet its legislative obligations in relation to any request made under the *Freedom of Information Act 1982*.

### **9.9 Candidature of Councillors State or Federal Elections**

In order to avoid community perception of the politicisation of local government resulting from Councillors running for office in state or federal parliament, Councillors will adhere to the provisions set out below:

- a) A Councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as a candidate for a state or federal election ('a prospective candidate') will provide written advice to the Mayor, Councillors and Chief Executive Officer, as soon as practicable after the endorsement or expression of intention.
- b) A Councillor who is a prospective candidate will declare his or her intended candidacy at a meeting of the Council as soon as practicable after notifying the Mayor, Councillors and Chief Executive Officer.
- c) A Councillor who nominates as a candidate for a state or federal election ('a nominated candidate') will apply for leave of absence from the Council. This leave of absence should commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election ('the nomination date') and conclude no earlier than the close of voting for the election. During this period, a Councillor who is on leave of absence will not attend meetings of the Council or otherwise act as a Councillor. If a Councillor who is on leave of absence is invited to attend a private function due to their position as a Councillor, they will not use the function in relation to his or her candidacy.
- d) Council, upon receiving an application for a leave of absence from a Councillor who is a nominated candidate or who intends to become a nominated candidate, will approve that application.
- e) A Councillor who is a prospective candidate or a nominated candidate must take care when making public comment to differentiate between his or her role as a state or federal election candidate and their role as a Councillor.
- f) A Councillor who is a nominated candidate will observe the requirements of the Council's most recent election period policy, from the nomination date until the close of voting for the state or federal election in which they are running.
- g) A Councillor who is a prospective candidate or a nominated candidate will not use Council resources, including Council equipment and facilities, in relation to his or her candidacy.

- h) A Councillor who is a prospective candidate or a nominated candidate must not use Council activities, including committee meetings and Council-related external activities, in relation to his or her candidacy.

**9.10 Compliance with Election (Caretaker) Period Policy**

Councillors are committed to upholding the highest standards of governance during election periods, and therefore agree to abide by the requirements of the Frankston City Council Election Period Policy, as adopted by Council in accordance with section 93B of the Act.

Notwithstanding the above, Councillors acknowledge that an alleged contravention of the provisions in the Act relating to Councillor eligibility, electoral conduct and the election caretaker period would not be dealt with by Council using the Dispute Resolution Procedure in this Councillor Code of Conduct. Such an allegation would instead need to be referred to the Victorian Electoral Commission or the Local Government Investigations and Compliance Inspectorate (depending on the nature of the allegation) for investigation and any consequent action.

**10. PROHIBITED CONDUCT**

Councillors acknowledge that the Act specifies some types of conduct that is expressly prohibited. They relate to specific actions and are unlike the ‘Principles’, which describe how Councillors should conduct themselves in more general terms. These matters can be particularly relevant to considerations of misconduct or serious misconduct by a Councillor Conduct Panel or gross misconduct by the Victorian Civil and Administrative Tribunal. Councillors also acknowledge that, in many cases, a breach of a specific provision in the Act may be subject to prosecution in a Court.

The table below provides guidance about various types of prohibited conduct, and the entities that would be responsible for investigating such allegations against a Councillor:

<b>Allegation</b>	<b>Definition</b>	<b>Who Can Apply / Report</b>	<b>Responsible Entity</b>
Misconduct	Failure to comply with the Council’s internal resolution procedure; or Failure to comply with a written direction given by the Council under section 81AB; or Repeated contravention of any of the Councillor conduct principles.	Council (with Council resolution) A Councillor A group of Councillors	Councillor Conduct Panel
Serious misconduct	Failure to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or Failure to give a Councillor Conduct Panel any information the Councillor Conduct Panel has	Council (with Council resolution) A Councillor A group of Councillors Chief Municipal Inspector	Councillor Conduct Panel



	requested the Councillor to give; or Failure to comply with a direction of a Councillor Conduct Panel; or Continued or repeated misconduct after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or Bullying of another Councillor or member of Council staff; or Conduct in respect of a member of Council staff in contravention of section 76E; or The release of confidential information in contravention of section 77.		
Gross misconduct	Behaviour that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor.	Chief Municipal Inspector	VCAT
Breach of Local Government Act	Conduct including misuse of position; improper direction and improper influence; release or misuse of confidential information; failure to manage a conflict of interest.		Local Government Investigations and Compliance Inspectorate
Corrupt Conduct	Misuse of a person’s position or power to obtain personal gain, either for themselves or others.	Any member of the public or the public sector may make a complaint, including as a protected disclosure.	Independent Broad-Based Anti-Corruption Commission (IBAC)
Breach of privacy or data security	Breach of privacy or data security, including inappropriate collection, release or disclosure of information relating to a person.	Any member of the public may make a complaint.	Commissioner for Privacy and Data Protection or the Health Services Commissioner
Criminal conduct	Suspected criminal conduct, including theft and assault.	Any person may make a complaint.	Victoria Police

**10.1 Misuse of position**

Section 76D of the Act creates the offence of misuse of position, and can apply even after a Councillor ceases to hold office. An offence occurs if a Councillor or former Councillor:

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

Circumstances which would involve a misuse of position by a Councillor include:

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

### **10.2 Improper direction**

Section 76E of the Act states that a Councillor must not improperly direct a member of Council staff in the exercise of any power or in the performance of any duty or function by that staff member. Nor must they attempt to do so.

It is an offence for a Councillor to direct or seek to direct a staff member:

- a) in the exercise of a delegated power, or the performance of a duty or function;
- b) in the exercise of a power, or performance of a duty or function as an authorised officer under any Act;
- c) in the exercise of any power or performance of a duty or function that the staff member exercises in an office or position held under another Act; or
- d) in relation to advice provided to the Council or a special committee.

This rule follows from the nature of local government and the broad range of powers given to Councils under many Acts. These powers are given to the Council as a whole and an individual Councillor only exercises powers when he or she votes in a Council or special committee meeting. An individual Councillor does not have the legal authority to instruct a member of Council staff or to direct the Council administration.

### **10.3 Confidential information**

Section 77 of the Act provides that a Councillor must not release information that he or she knows, or should reasonably know, is confidential.

The section also sets out the ways in which information is made confidential. This includes where:

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

- c) the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.

In accordance with Section 77(1A) a Councillor may disclose information that the he or she knows is confidential information in the following circumstances:

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

#### **10.4 Conflict of interest**

Sections 77A to 80A of the Act require Councillors to disclose conflicts of interest:

- in Council meetings;
- in meetings of special committees;
- in audit committee and section 223 committee meetings; and
- in meetings that are classified as Assemblies of Councillors.

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 and a member or members of the Councillor's family have a controlling interest in a company or other body that has a direct interest in the matter.

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

Close association:	an indirect interest because of a close association with a family member, relative or member of the household who has a direct interest.
Indirect financial interest:	an indirect financial interest, including holding shares above a certain value in a company with a direct interest.
Conflicting duty:	a conflicting duty arising from having particular responsibilities to a person or organisation with a direct interest.
Applicable gift:	receipt of an applicable gift or gifts from a person or organisation with a direct interest.
Interested party:	a party to the matter by having become involved in civil

	proceedings in relation to the matter.
Residential amenity:	this occurs where there is a reasonable likelihood that the person's residential amenity will be altered if the matter is decided in a particular way.

When declaring a conflict of interest at a meeting of a Committee or the Council, a Councillor must make a declaration immediately the item of business is introduced and identify the type and nature of the conflict.

In addition to the provisions contained in the Act relating to Assemblies of Councillors, Councillors will, when attending a meeting at which a Council staff member is present, disclose any conflicts of interest which, had the meeting been an Assembly of Councillors, they would have been required to disclose.

Councillors will also disclose any conflict of interest relating to any matters discussed at Councillor-only Sessions.

## 11. GRIEVANCE RESOLUTION PROCEDURE

This procedure prescribes the manner of dealing with any grievance\* directed at or relating to a Councillor or Councillors, by another Councillor or Councillors.

The procedure takes into account the following principles:

- a) prior to commencing any formal grievance resolution process, the Councillors who are parties to a grievance will endeavour to resolve the issues at the local level, in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.
- b) the grievance should be dealt with expeditiously so as to avoid the potential for escalation and to maximise control and resolution of the matter at the local level.
- c) satisfactory resolution of any grievance will principally arise from:
  - (i) establishing timely and effective communication between the parties;
  - (ii) identifying the basis of the concerns which give rise to the grievance, the symptoms, and the most likely causes;
  - (iii) implementing an agreed or a preferred and realistic action plan;
  - (iv) engaging in a genuine attempt at resolution of the grievance raised in accordance with the principles of natural justice, equity and fair treatment for all parties; and
  - (v) the procedure being mutual and that Councillors must make a genuine and constructive attempt at resolution of the particular grievance issue.

Council's five step grievance resolution process involves:

- Step 1: Negotiation between the parties to the grievance, facilitated by the Mayor;
- Step 2: Councillors-only meeting;

- Step 3: Mediation between the parties to the grievance, facilitated by an independent mediator;
- Step 4: Arbitration involving an independent arbiter;
- Step 5: Referral to an external body.

#### **Definitions**

**\*grievance** means a complaint about the conduct of a Councillor or Councillors lodged by another Councillor or Councillors. A grievance may relate to an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council, or an alleged contravention of the Councillor Code of Conduct.

It does not include a complaint made against a Councillor or Councillors by a member or members of Council staff, or by any other person, or a "disclosure" under the *Protected Disclosure Act 2012*.

**dispute** means a grievance which has not been able to be resolved and is referred to an independent body for investigation and appropriate action.

#### **Step 1 – Facilitated Negotiation**

- a) Before commencing any formal dispute resolution process, the Councillors who are parties to a grievance will exhaustively endeavour to resolve the issue in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

This grievance resolution procedure is intended to be used when Councillors have been unable to resolve a grievance and where the situation is unduly affecting the operation of the Council.

Note: This procedure is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in Council and Committee meetings.

- b) The Councillor raising the matter will prepare a written grievance statement which sets out the circumstances giving rise to the grievance.

The grievance statement is to be provided to the Mayor in the first instance.

If the Mayor is the subject of the grievance, the grievance statement will be provided instead to the Deputy Mayor.

The grievance statement will include:

- (i) the name of the Councillor or Councillors who are the subject of the grievance;
- (ii) the allegations made and the provisions of the Code of Conduct that are alleged to have been contravened (if applicable);
- (iii) evidence in support of the allegations;

The grievance statement will be dated and signed by the Councillor or Councillors who have raised the grievance.

- c) The Mayor will provide a copy of the grievance statement to the Councillor or Councillors who are the subject of the grievance, as soon as practicable after receipt.

If the Mayor is the subject of the grievance, the grievance will be first discussed with a sub-committee of three Councillors, such sub-committee to be appointed annually by Council at its statutory meeting when Council delegates are appointed. The sub-committee will determine a suitable person to perform the functions in this procedure ascribed to the Mayor, in the Mayor's stead.

- d) The Mayor will convene a meeting of the parties at the earliest available opportunity. The Councillors who are parties to the grievance must attend this meeting.

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act, and the observation of the Councillor Conduct Principles and the Councillor Code of Conduct.

- e) The Mayor will document any agreement reached at the meeting. Copies of the agreement are to be provided to the parties to the grievance. Where a party does not comply with the agreement, the grievance will proceed to Step 2.
- f) If the parties cannot resolve the grievance at the meeting, a further meeting may be convened.
- g) If the parties are able to achieve a resolution to the grievance, whether by means of an apology or any other agreed action, the matter will be deemed to have been addressed and completed.
- h) If after exhaustive effort the grievance is not able to be resolved using Step 1, the matter will proceed to Step 2.

#### **Step 2 – Councillors-only Meeting**

- a) The Mayor will convene an informal confidential meeting of Councillors only, to discuss the grievance and exhaustively endeavour to resolve the issues, in a courteous and respectful manner.
- b) If the parties are able to achieve a resolution to the grievance, whether by means of an apology or other agreed action, the matter will be deemed to have been addressed and completed.
- c) If after exhaustive effort, the grievance is not able to be resolved, the matter will proceed to Step 3.

#### **Step 3 – Mediation**

- a) The Mayor will provide a copy of the grievance statement to the Principal Conduct Officer, and request the commencement of Step 3. The grievance statement and request will form the application for a Step 3 Mediation.
- b) The Principal Conduct Officer will nominate three independent mediators to assist in the resolution of the grievance. Each of these nominees will be suitably independent and able to carry out the role of mediator fairly.
- c) The mediator to be appointed will be the nominee agreed on by all parties to the grievance or, failing agreement, the nominee selected by the Chief Executive Officer.

- d) The Principal Conduct Officer will:
  - (i) provide a copy of the application and any other relevant documents to the mediator as soon as practicable after receipt;
  - (ii) obtain from the mediator a fee estimate for the mediation process, and notify the parties and the Council of the mediator's fee estimate;
  - (iii) after consultation with the mediator, advise the parties of the time and place for the mediation;
  - (iv) attend the mediation and assist the mediator in the administration of the process, if requested by the mediator; and
  - (v) keep the Chief Executive Officer abreast of the progress of the mediation process (only if present at the mediation).
- e) The mediator will have responsibility for the oversight of a confidential mediation process.
- f) If the parties are able to achieve a resolution to the grievance, whether by means of an apology or any other agreed action, the matter will be deemed to have been addressed and completed.
- g) If after exhaustive effort the grievance is not able to be resolved using Step 3, the matter will proceed to Step 4.

#### **Step 4 – Hearing Before Arbitrator**

- a) The Mayor will provide a copy of the grievance statement to the Principal Conduct Officer, and request the commencement of Step 4. The grievance statement and request will form the application for a Step 4 Arbitration.
- b) The Principal Conduct Officer will nominate three external arbitrators (at least one of whom will be a member of the MAV panel of appointed arbitrators) to assist in the resolution of the grievance. Each of these nominees will be suitably independent and able to carry out the role of arbitrator fairly.
- c) The arbitrator to be appointed will be the nominee agreed on by all parties to the grievance or, failing agreement, the nominee selected by the Chief Executive Officer.
- d) The Principal Conduct Officer will:
  - (vi) provide a copy of the application and any other relevant documents to the arbitrator as soon as practicable after receipt;
  - (vii) obtain from the arbitrator a fee estimate for the hearing, and notify the parties and the Council of the arbitrator's fee estimate;
  - (viii) after consultation with the arbitrator, advise the parties of the time and place for the hearing;
  - (ix) attend the hearing(s) and assist the arbitrator in the administration of the process; and
  - (x) keep the Chief Executive Officer abreast of the progress of the hearing process.
- e) The arbitrator will have responsibility for the oversight of a confidential grievance resolution process which will include:

- (i) consideration of applications alleging a contravention of the Councillor Code of Conduct by a Councillor; and
  - (ii) making findings in relation to any application alleging a contravention of the Councillor Code of Conduct and the submission of those findings in writing to the Council.
- f) In considering an application alleging a contravention of the Councillor Code of Conduct, an arbiter will:
- (i) in consultation with the Principal Conduct Officer, fix a time and place to hear the application;
  - (ii) authorise the Principal Conduct Officer to formally notify the parties of the time and place of the hearing;
  - (iii) hold as many hearings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing;
  - (iv) have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the application allows;
  - (v) ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
  - (vi) ensure that the parties can submit such documents and call such witnesses as are reasonably required for the hearing;
  - (vii) consider an application by a respondent (ie a Councillor who is the subject of the grievance) to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application;
  - (viii) ensure that the rules of natural justice are observed and applied in the hearing of the application;
  - (ix) ensure that the hearings are closed to the public; and
  - (x) discuss with the parties the confidentiality requirements regarding the arbitration process, and any documents produced in connection with the arbitration.
- g) Where an application to have legal representation is granted by an arbiter, the costs of the respondent's legal representation are to be borne by the party in their entirety.
- h) An arbiter:
- (i) may find that the allegation that a Councillor has contravened the Code is frivolous or vexatious;
  - (ii) may find that a Councillor who is the subject of the grievance has not contravened the Code;
  - (iii) may find that a Councillor who is the subject of the grievance has contravened the Code; and
  - (iv) will suspend consideration of an internal resolution procedure during the election period for a general election.
- i) The arbiter is to give a copy of his or her findings and the statement of reasons to the Principal Conduct Officer, for forwarding to the parties.



- j) The findings of the arbiter will be presented to a formal Closed Council Meeting, to discuss the grievance and exhaustively endeavour to formally resolve on the issue.
- k) If the arbiter has found that the allegation that a Councillor has contravened the Code is frivolous or vexatious, the Council must require the Councillor who made the allegation to reimburse the Council the expenses it has occurred in connection with the hearing before the arbiter.
- l) If the arbiter has 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:
- (i) direct the direct the Councillor to make an apology in a form or manner specified by the Council;
  - (ii) direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (beginning with the next scheduled meeting);
  - (iii) direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by the Council, the Councillor be removed from any position where the Councillor represents the Council and 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.
- m) If the Council determines that the grievance has been resolved, whether by means of an apology or other agreed action, the matter will be deemed to have been addressed and completed.
- n) If after exhaustive effort, the grievance is not able to be resolved, it will proceed to Step 5. Therefore, a "dispute" will be considered to be declared and the Council will formally resolve that its operation is being impeded because of a dispute between Councillors, and/or other aggrieved parties. The Council will further formally resolve to take one of the following options, depending on the nature of the grievance:
- (i) to make an application for a Councillor Conduct Panel under section 81B of the *Local Government Act 1989*, in respect of a Councillor's conduct; and noting that:
    - Such an application can also be made by a Councillor, or a group of Councillors;
    - Such an application must comply with section 81B of the Act;
    - Applications and proceedings made and conducted under this part of the Act must be suspended during the election period for a general election.
- OR
- (ii) to refer the matter to the Local Government Inspectorate.
- o) A Councillor who does not participate in the internal resolution procedure may be guilty of misconduct. In the definitions set out in section 3(1) of the Act, misconduct by a Councillor means any of the following:
- (i) failure by a Councillor to comply with the Council's internal resolution procedure; or
  - (ii) failure by a Councillor to comply with a written direction given by the Council under section 81AB; or

- (iii) repeated contravention of any of the Councillor Conduct Principles.

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

- p) An application for a Step 3 hearing before an arbiter cannot be made during the election period for a general Council election. Any Step 3 procedure that is in progress is to be suspended during the election period for a general Council election.
- q) If the respondent to an application for a Step 3 hearing before an arbiter is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:
  - (i) the application was made by the Council and the Council so resolves; or
  - (ii) the application was made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application; or
  - (iii) the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

#### **Step 5 - Referral**

If the matter remains unresolved after completion of Steps 1, 2, 3 and 4, the matter may then be referred to a Councillor Conduct Panel or the Local Government Inspectorate, as appropriate in the circumstances.

Note: Upon referral to one of the above bodies, the process is effectively out of the control of the Council and Councillors, and becomes subject to the formal processes of the relevant body. It is clearly more desirable for the Council and Councillors to exhaust all efforts to address and resolve any grievance at the level of Steps 1 to 4.

## 12. SANCTIONS

Pursuant to section 81AB of the Act and as noted under Step 4 of Section 10 of the Code, a Councillor who has been found to have contravened the Councillor Code of Conduct may be liable for any or all of the following sanctions, which can be imposed by the Council. The Council may:

- 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, 2 meetings of the Council;
- c) direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by the Council, the Councillor—
  - (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.

**13. WRITTEN DECLARATIONS TO ABIDE BY THE COUNCILLOR CODE OF CONDUCT**

I \_\_\_\_\_ hereby declare that I have read the Councillor Code of Conduct for Frankston City Council adopted on 20 February 2017, and I declare that I will abide by this Code.

Signature of Councillor:	
Date:	

I, Dennis Hovenden, Chief Executive Officer, confirm that I have witnessed the making of this declaration.

Signature of CEO:	
Date:	