



NEW COUNCILLOR RESOURCE GUIDE **2016**

www.mav.asn.au/training

Published by Municipal Association of Victoria
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ABOUT THE NEW COUNCILLOR RESOURCE GUIDE

THE IDEA FOR THIS GUIDE CAME FROM THE COUNCILLORS THEMSELVES, WHO THOUGHT IT WOULD BE A USEFUL TOOL FOR PEOPLE WHO ARE NEW TO THE ROLE. THE GUIDE HAS BEEN PRODUCED FOLLOWING EACH OF THE PAST THREE ROUNDS OF COUNCIL ELECTIONS.

In producing the *New Councillor Resource Guide* and deciding what it should contain, we were strongly guided by the first-hand experiences of fellow councillors.

The main purpose of the guide is to provide practical information that will help you become familiar with the responsibilities of your new role. It briefly outlines some of the key information you will need to know, explains in simple terms some of the issues you may have to deal with, and lists key contacts and some handy hints to help you get through your first few months. Included in this guide is a section on meeting procedures which should provide a valuable additional resource.

The contents of this guide were up to date at the time of publication. Any changes in legislation that affect the content will be provided to all councillors in an addendum.

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WHO IS THE MAV?

The MAV is the legislated peak body for local government in Victoria. Formed in 1879, we have a long and proud tradition of supporting councils and councillors.

How can we help?

One of our roles is to provide support, advice and assistance to councils and councillors on a broad range of issues. With a team of specialist staff we can answer most of your questions. When we don't have the answers, we'll put you in touch with someone who can help you.

Give us a call

Just call us on (03) 9667 5555, explain what your query is and we'll put you in touch with the right person.

WORDS OF WISDOM

WE ASKED EXPERIENCED COUNCILLORS WHAT ADVICE THEY WOULD HAVE LIKED IN THEIR FIRST FEW WEEKS OF OFFICE. THEY'VE COME UP WITH A LIST THAT WILL HELP YOU THROUGH YOUR FIRST FEW MONTHS, AND PERHAPS EVEN MAKE IT ENJOYABLE!

Stop freaking out

No one expects you to know everything on day one.

Don't give up

It may seem very challenging – even overwhelming at the start – but it does get easier and you'll achieve a better work-life balance as time goes on.

Ask for help

It's impossible to be an expert in everything. That's what officers are there for – so use them. It's not a sign of weakness or stupidity, but intelligence.

Pick your issues

Don't use all your political capital immediately. Choose the issues you see as being critical and work on achieving them.

Don't get personal

Council has to work together for four years, so don't personalise issues or go too hard too early. Once council has made a decision, accept it. Even if you disagree, move on and present a unified front.

Explain, don't blame

If you're asked to talk about a council decision you don't agree with, explain but don't blame. It's counter-productive to undermine a decision once it's been made.

Encourage councillor interaction

Make sure the administration creates opportunities and allows time for councillors to get to know each other and become a team.

Be assertive

Just because something has always been done a certain way doesn't mean you can't question it or that it's necessarily right. This not only applies to council, but also to you.

Canvass opinion widely

Don't confuse the 'noise' or views of 'squeaky-wheels' with the views of everyone in the community. While the person in the street may be adamant that their view is commonplace, it's important to canvass opinion thoroughly.

Work as a team

The council is not just councillors but includes the CEO and council staff – one team, one dream!

Pace yourself

As the saying goes, 'Rome wasn't built in a day'. And you have four years to achieve your goals.

Don't promise what you can't deliver

Never promise or over-promise anything before speaking to council or the administration. It's important to understand the broader context and to know what's possible.

Don't burn your bridges

Scoring points by attacking or undermining someone may mean that person won't support you when you need them.

Earn the respect of the community

How you behave affects your credibility with the community and their level of trust in, and support of, council decisions.

Be informed

Don't get pressured into answering questions immediately; there's nothing wrong with taking time to make sure you have the information you need to respond. Off-the-cuff, ill-informed answers can often cause more problems than they solve.

Learn the art of strategic compromise

There'll be times when you have to compromise. So be strategic and identify the issues you're willing to compromise on. You can't win every debate.

Seek support

Remember, you're not alone. A good support network will greatly assist you in your first months. If you're having problems in your new role talk to other new councillors as they're probably experiencing similar difficulties.

“Advice given to me by a very experienced councillor was to familiarise yourself with all of your council’s policies and State Government policies, which local councils are required to administer. Keep your focus on the big picture and the priorities you would like to see worked on or implemented during your term as a councillor. Read extensively, seek information, ask questions and consult widely.”

– Councillor Rod Fyffe, Greater Bendigo City Council

COMING TO GRIPS WITH YOUR NEW ROLE

ADJUSTING TO YOUR NEW ROLE AS COUNCILLOR IS A CHALLENGING TIME. YOU’LL PROBABLY HAVE TO LEARN THE LANGUAGE OF LOCAL GOVERNMENT, PICK UP NEW SKILLS AND DO A WHOLE LOT OF READING – FAST! BUT YOU DON’T HAVE TO DO THIS ALL BY YOURSELF.

Your council runs an induction program or development workshop early on to help you through this learning curve. One of the first things you’ll need to do is gain a clear understanding of your role and responsibilities, and become familiar with the processes and strategies of council. So make use of any resources provided by your council and take advantage of training opportunities to assist you in your first year.

Key documents and processes

There are a number of critical documents you’ll need to become familiar with in your first months as a councillor.

If you don’t receive these documents during your induction, ask your CEO for copies. It’s important you have time to read them and ask questions before you actually need to use them or be involved in their development. These include:

- Council Plan council budget
- Municipal Strategic Statement
- Municipal Public Health and Wellbeing Plan
- Long and medium term financial plans
- Community plan (if your council has one)
- Meeting Procedures Local Law
- Policy documents
- Local laws

Insider Tip: You don’t need to keep all the paper given to you – that’s what the council’s record management systems are for. Try and prioritise what you need to read to inform your decision-making.

Managing your time

When new councillors are asked to reflect on the initial challenges of the role, they always mention three things – workload, overload and trying to manage time. So you’re not alone. Everyone is faced with the same challenges when learning about the role of being a councillor and understanding the huge number of, sometimes complex, issues all in a very short space of time.

There are, however, a couple of practical things you can do to help manage your time more effectively in the first few months:

1. DEVELOP A FILING SYSTEM

Ask for help developing a system for filing emails, paperwork and managing your diary – a good place to start is your councillor support officer or fellow councillors.

2. GET TO KNOW THE SYSTEMS

Get to know and, more importantly, trust the systems that the council has in place to support enquiries, complaints and requests for service. Use your knowledge of the council to direct enquiries or feedback through the right channels or to the right person. You can’t possibly solve every issue that comes your way. So don’t try!

3. TAKE ONE STEP AT A TIME

Try not to take on too much else. Accept that your first three months as a councillor is an information-gathering phase with a steep learning curve. If you’re prepared for this, and can manage your other commitments and activities during this time it will be easier to cope with the huge pile of reading. This will diminish as the months pass and you’ll have more time for other activities and events.

“...as a new councillor, you do need to get to know your fellow councillors, as well as the CEO and senior staff. Get to know their names, positions and responsibilities. It’s important to understand the different roles and accountabilities councillors and officers have, but to understand they all contribute as a team of equals.”

– Cr Pam McLeod, Whittlesea City Council

UNDERSTANDING ROLES

The importance of forging good relationships

Good relationships are crucial to good governance, and are based on a clear understanding of what’s expected of the council, councillors, mayor, CEO and the administration.

A lack of understanding about the various roles and responsibilities in local government can cause communication breakdowns and expectations not being met. In turn, this can lead to tensions at all levels and poor council performance.

One way to ensure that everyone on your council has a common understanding of the key roles and responsibilities is to organise a group discussion amongst councillors and senior officers in the first few months.

“The best advice I can give is to build your relationship with your CEO and management. Because if you understand and respect their crucial role in the decision-making process, they’ll inevitably contribute to your success and satisfaction as a councillor.”
– Cr Ange Kenos, Moonee Valley City Council

Role of the council

A council is elected to provide leadership for the good governance of the municipality. It must take into account the diverse needs of the local community in its decision-making, set and monitor strategic objectives, and ensure resources are managed in a responsible manner. A key objective of a council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.

Council responsibilities include:

- Advocating proposals that are in the best interests of the community now, and in the future
- Planning for and providing services, facilities and infrastructure for the community
- Undertaking strategic land use planning for the municipality
- Making and enforcing local laws
- Raising revenue to enable council to perform its functions.

Role of the councillor

Individual councillors have no decision-making power. This lies with the collective group (the council). The responsibilities of councillors include:

- Strategic planning for the whole municipality to ensure a sustainable future
- Representation of all citizens
- Advocacy on a broad range of issues
- Relationships and coordination with other spheres of government, the private sector, non-government and community sectors
- Facilitation of community participation
- Relationship with, and employment of, the CEO.

The Act clearly sets out the distinct roles of a council and the administration – the council sets policy, the administration implements it under the direction of the CEO.

So a key challenge for councillors is to stay focused and avoid managing day-to-day operations by directing staff. In other words, the councillor’s role is to work on infrastructure strategy and policy, not to tell the works crew what pothole to fix.

Role of the mayor

The mayor, who is elected by fellow councillors, is the leader of the council. The mayor's role should be clearly defined by the council and understood by councillors and officers. It involves chairing council meetings, strengthening the relationship between councillors, responding to the media and ceremonial duties.

Role of the CEO

The role of the chief executive officer is defined in the *Local Government Act 1989* as:

- Establishing and maintaining an appropriate organisational structure for the council
- Ensuring council decisions are implemented without undue delay
- Managing council's day-to-day operations in accordance with the Council Plan
- Providing timely advice to the council
- Appointing, directing, managing and dismissing staff.

Building trust and establishing a good relationship with the CEO is extremely important. Your effectiveness as a councillor, and as a council, will in many ways depend on this relationship.

Insider Tip: Try to respect individual differences – particularly those relating to personal style or a person's ability to understand issues. Some people may require more or less information than you, or need to spend longer discussing issues before reaching a decision.

Role of the administration

The council officers (or the administration) are responsible for implementing council's goals, strategies and services under the direction of the CEO.

The role of council officers and management is to provide relevant and timely information to council. Councillors then evaluate alternative options and assess the impact of decisions before deciding what's in the community's best interest – now and in the future.

The administration then implements the policy direction that has been decided on by council.

It is therefore crucial that councillors and the administration have strong and effective working relationships. After all, it's your council officers who will drive the implementation of your decisions.

Council's delegation powers

The *Local Government Act 1989* allows councils to delegate powers, duties or functions to a member of the council staff. However, there are certain things that a council can't delegate to a member of staff.

These are the power to:

- Declare a rate or charge
- Borrow money
- Approve any expenditure not contained in a budget approved by the council
- Hear submissions to council on statutory issues

Councils often delegate a range of powers, duties and functions to the CEO. This is done under an instrument of delegation that specifies what is being delegated and the conditions attached to it.

Council must keep a register of delegations, and is required to review all those that are in force within 12 months of being elected. As a councillor, you'll need to be aware of the delegations within your council.

Insider Tip: Because council (not individuals) sets the policy direction and strategy, councillors and officers need to work as a team to make effective decisions on behalf of all your communities. Be open and honest in your views. But also be considerate of, and listen to, the views and advice of others.

“For new councillors, there’s no doubt that planning is one of the most challenging disciplines to master. For me, strategic planning is the most stimulating – setting long-term directions about appropriate land uses and developments that will affect ratepayers who aren’t even born yet! It’s also challenging because it can be controversial and you need to balance competing current interests with future needs.”

– Cr Micaela Drieberg, Monash City Council

PLANNING – THE BASICS

PLANNING IS THE AREA WHERE COUNCILLORS CAN, AND DO, SET THE STRATEGIC POLICY DIRECTION FOR THEIR MUNICIPALITY. IT IS ALSO ONE OF THE MOST CONTENTIOUS AREAS IN LOCAL GOVERNMENT.

For councillors, it’s a challenging and important responsibility. Planning decisions affect communities, the environment and quality of life; and they usually have long lasting consequences.

Key elements of Victoria’s planning system

The planning system in Victoria is determined by the *Planning and Environment Act 1987* which sets out the:

- Objectives of planning and the planning framework.
- Councils’ responsibilities to administer the planning system.
- Content and structure of the planning scheme.
- Process for amending the planning scheme.
- Planning permit application process.
- Right of review to the Victorian Civil and Administrative Tribunal (VCAT).
- Responsibilities of the Minister for Planning enforcement provisions for breaches of the planning scheme.

Note: The Act is currently being reviewed.

Councils planning functions

Council has two key functions under the *Planning and Environment Act 1987*:

- Setting the strategic policy framework
- Administering the planning scheme through the consideration of planning applications, and enforcing breaches of the scheme and planning permits.

These functions bring with them many statutory obligations, including:

- Developing and reviewing the planning scheme, including the Municipal Strategic Statement (MSS)
- Developing strategies and policies
- Implementing State Government planning policy implementing local planning policies through the planning scheme
- Deciding applications for planning permits (less contentious ones may be decided by officers under delegation)
- Preparing and processing changes to the planning scheme.

Planning scheme

The planning scheme sets out the key issues facing the municipality, what council wants to achieve, and how it plans to achieve this using the tools available to it to guide land use and development decisions. For example, concerns about unemployment may prompt the council to set aside land available for industrial uses, making the municipality more attractive to industry by applying an industrial zone to that area.

The planning scheme is based on an overarching State Planning Policy Framework, the Municipal Strategic Statement, local planning policies, and tools known as ‘zones’ and ‘overlays’ to control the use and development of land. The council is usually responsible for the day-to-day administration of the planning scheme. The scheme must be reviewed at least every four years.

Changing the planning scheme

The planning scheme can be changed to reflect new strategies, new policies or planning circumstances, or a review of the Municipal Strategic Statement. A council can initiate a change to the scheme. The Minister for Planning is generally responsible for approving any amendments.

Municipal Strategic Statement

The Municipal Strategic Statement (MSS) describes the council's vision for land use and development in the municipality, as well as policies and programs to achieve this. The MSS is reviewed as part of the review of the planning scheme every four years.

Planning permits

Planning permits authorise the use and/or development of land. The council decides whether to grant a planning permit based on: an assessment of the proposal against the strategies, policies and decision guidelines in the planning scheme; the planning merits; and any objections received. These decisions are most often made under delegation. Council or its delegate can either approve, approve with conditions, or refuse a planning permit application.

Planning permit process

The main steps in the planning permit application process are:

1. Discuss the proposal with the council planner
2. Lodge application
3. Confirm information provided and any referrals
4. Advertise proposal, if warranted
5. Consult, negotiate and assess
6. Prepare report and recommendation
7. Make decision
8. Review by the Victoria Civil and Administrative Tribunal (VCAT), if required.

Note: It is important not to pre-judge planning permit applications or zoning requests until all relevant policy has been considered.

Insider Tip: Never make an early commitment on a planning application. It's best to refer queries to your planning officers who ensure that the applicant is given good early advice and that any application is assessed against existing policies. It is also a good idea to wait and see what issues arise from consultation with the applicants and any objectors.

Consultation process

Victoria's planning system provides opportunities for councils to let people in the community know about development proposals. Notice is usually given to people who may be affected by the proposed development. Council must ensure that the notice provides enough information about the development proposal, and that the decision is ultimately based on the planning merits of the application.

Delegating planning decision-making

Delegating decision-making to council planners is essential for the efficient operation of the planning system. Council's main role is to develop the policy and strategic plans that applications will be assessed against. Council planners can then decide if applications are consistent or inconsistent with policy and strategic plans and make a decision on the application.

Reviewing planning decisions

In cases where there have been objections to a planning application, council will issue a Notice of Decision (NOD) which permit applicants or objectors can appeal to VCAT for review. VCAT operates independently and is administered by the Department of Justice. The Minister for Planning is not responsible for VCAT.

Complying with the planning scheme

The *Planning and Environment Act 1987* includes enforcement provisions that a council can use to remedy a breach of the planning scheme or obtain compliance with a planning permit. Formal enforcement proceedings involve VCAT or the Magistrates' Court.

Where can I get more information?

The *MAV Land Use Planning in Victoria: a guide for councillors* provides essential information about the planning system in Victoria and the roles and responsibilities that they, and other key agencies, have in the operation of our planning system. The guide can be downloaded from the planning and building policy and services section of the MAV website, www.mav.asn.au.

“Local government is the only level of government providing an open and transparent budget-setting process that seeks community discussion and input into the development of council spending initiatives and priorities for the coming year.”

– Cr Jeff Amos, Wellington Shire Council

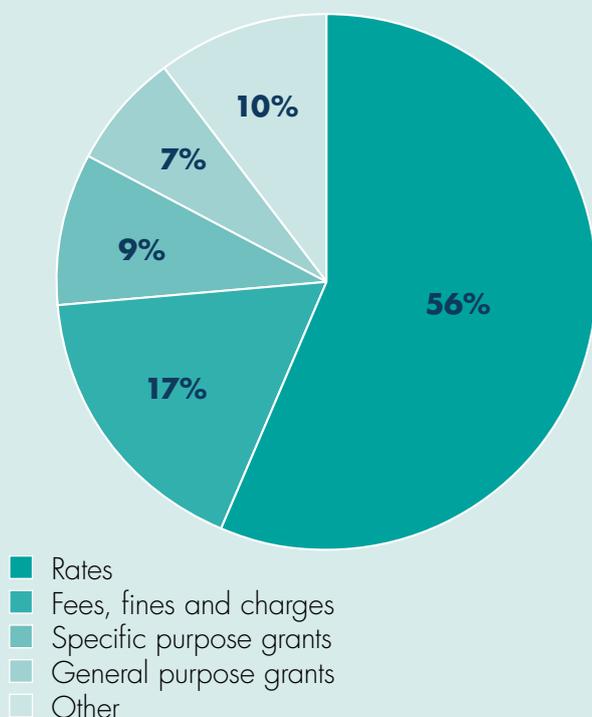
LOCAL GOVERNMENT FINANCE

Local government revenue

In Victoria, local government raises revenue from a range of sources, including rates, fees, fines and charges, and grants from other spheres of government.

The pie chart below shows the revenue for Victorian councils. The percentage of funding does, however, vary from council to council, with inner metropolitan councils generating a higher percentage of revenue from fees, fines and charges, and rural councils predominately from rates and grants.

Victorian Local Government Revenue Sources



Financial responsibilities and accountability

Section 136 of the *Local Government Act 1989* specifies that a council must implement the principles of sound financial management.

This means a council must ensure it:

- Manages financial risks prudently taking into account economic circumstances
- Pursues spending and rating policies that are consistent with a reasonable degree of stability in the level of the rates burden
- Ensures its decisions and actions take into account the financial effects on future generations
- Ensures full, accurate and timely disclosure of financial information.

The responsibility and accountability for financial management rests with the council. It's therefore extremely important that financial decisions and management are priorities.

As part of their financial management role, councils must appoint an audit committee made up of an independent chairperson and a majority of independent members. For more information see section 139 of the *Local Government Act 1989*, and become familiar with the practices of your council.

Financial risks

There's always risk associated with any level of financial responsibility. In local government risks include:

- Level of council debt/gearing
- Commercial and entrepreneurial activities of the council management and maintenance of assets
- Management of current and future liabilities
- Changes in the structure of the rates and charges base.

Financial risks typically occur when recurrent deficits are being reported with no trend of improvement, or capital is underspent to fund operating expenses. The high risk areas are usually:

- Physical services – capital works, costings, plant acquisitions and disposals, and maintenance.
- Human services – grant-funded services and, in particular, areas with casual employees.

Questions to ask

Is there an operating surplus?

This is critical for long-term survival.

Is working capital positive?

In other words, do current assets less current liabilities = working capital.

Is there adequate cash available?

This is critical to short-term survival. At the end of each financial year there must be at least enough cash to cover the provision for long service leave.

Is debt in control?

Ensure debt is used to create value, not to fund operating costs.

Is depreciation increasing due to the lack of maintenance?

This leads to long-term problems.

Are capital works completed on time and to budget? If not, why not?

What are the contingent liabilities, if any?

And what do they mean for council's long-term financial viability?

Financial planning and reporting

There are three key documents that are central to managing the financial performance of the council – the council plan, the council budget and the annual report.

Council plan

The council plan is where everything begins. If it's not in the council plan, then it won't be budgeted for and will not be actioned!

Councils identify their municipality's particular requirements, issues and service provision needs through the council plan. A council plan is a statutory requirement and describes the objectives and strategies that will be implemented by council for the following four years.

An important aspect of the council plan is the strategic resource plan which sets out the financial and human resources required to achieve all the objectives. The council plan must be prepared by 30 June after a general election and each following year. Each council issues a public notice seeking community input into its draft plan 14 days before the plan is finalised and adopted by council for submission to the Minister for Local Government.

Council budget

While each council budget differs according to local community needs and priorities, there's a common legislated framework for setting a budget that each council must follow.

The budget process involves councils setting their priorities, identifying measures and allocating funds that will show how the key strategic objectives outlined in the council plan are to be achieved in the coming year.

Through the budget process, councils specify the annual maintenance needs of their assets and infrastructure, as well as the community services and facilities they'll provide in the next financial year, and how much these will cost.

The council budget also estimates the revenue that will be collected from other sources, such as State and Federal government funding and loans. By using these estimates, councils can then determine how much revenue needs to be collected in rates to meet the financial responsibilities for the coming year.

This information is adopted as a draft budget, which is advertised and open to public comment for a minimum of 28 days according to a statutory process. Councils must submit their budget to the Minister for Local Government before 30 June each year.

Annual report

The annual report is published at the end of each financial year. It records the activities and financial transactions of the year. The publication of the annual report and submission to the Minister for Local Government is a statutory requirement.

What's the connection?

This table shows the connection between the council plan, the council budget and the annual report for setting and monitoring the strategic direction, allocating and reviewing resources needed to achieve that direction and reporting on progress for achieving objectives.

Critical documents	Council plan	Budget	Annual Report
All contain	Must be signed off by council by 30 June each year.	Must be adopted by 30 June each year and submitted to the Minister within 28 days.	Must be signed off by council by 30 September each year.
	Strategic objectives	Activities and initiatives	Report of operations
Directions and actions	The key goals or imperatives for council in the next four years. Reviewed and updated annually.	To be funded in the annual budget and state how they contribute to strategic objectives.	Description of activities, achievement and financial performance of council. Produced annually.
	Strategic indicators	Key strategic activities	Performance statement
Monitoring progress	To monitor the achievement of strategic objectives.	With specified targets and measures.	Listing key strategic activities, targets and measures, and outcomes against those targets and measures.
	Strategic resource plan	Standard statements	Standard statements (explaining material variances)
Resourcing	Comprising Standard Statement and non-financial resources required to achieve strategic objectives.	Rates and charges information	Financial statements

“Good governance is about understanding roles and responsibilities and about having respectful relationships with other councillors. It is about openness, honesty and trust. It doesn’t mean you will agree all the time, but it does mean you have a shared understanding of how you manage difference.”

– Cr Barbara Murdoch, Indigo Shire Council

THE ART OF GOVERNING WELL

Good governance, why bother?

As your community’s elected representative, you’re responsible for ensuring decisions are made for the betterment of the whole community. Put simply, good governance is about making decisions on behalf of your community and implementing those decisions effectively. It should, in fact, be at the heart of everything local government does.

It’s all about making decisions

Making strategic and effective decisions is central to your role as councillor. Strategic decision-making is the key responsibility of council. It underpins policy formulation and review, the council plan, asset management plans and the Municipal Strategic Statement.

Effective decision-making ensures that the decisions council makes are:

- Relevant and important to the community
- Linked to the council plan and consistent with council policy
- Made with due consideration of options and impacts in line with relevant legislation and statutes
- Financially responsible and sustainable
- The result of open, transparent and accountable processes.

Constructive debate vs. destructive conflict

Healthy, constructive debate is an integral part of good decision-making. It not only ensures that the widest possible range of views is heard but that every aspect of an issue is considered before decisions are made.

Councils rarely make good decisions when there is either extreme conflict or continuous unquestioning agreement.

Councillor code of conduct

The *Local Government Act 1989* requires that all Victorian councils have a code of conduct for councillors. The code of conduct can be tailored to suit councils but must, at the very least, include:

- Councillor Conduct Principles (specified in the *Local Government Act 1989* section 76C)
- Expected councillor behaviour
- Conflict of interest procedures
- Dispute resolution procedures
- A statement of caretaker procedures.

The code of conduct is a good tool for helping councils govern more effectively. As a newly elected council, you’ll be required to review your current code of conduct. This is a perfect opportunity to discuss how you’ll work together, and what behaviour and practice is expected in the council environment.

Your behaviour matters

As a leader in your community and a public figure, you have a responsibility to behave with integrity and honour. Your behaviour not only affects the way council is viewed by the general public, but it sets the tone for other councillors – both inside and outside the council chamber.

Your conduct in the council chamber is fundamental to your role as a councillor. It’s where you and your fellow councillors have the power to make decisions as a council which will affect the shape and direction of your municipality, now and into the future.

Governance and the community

As soon after a council election as possible you should sit down with your fellow councillors and senior management to discuss what 'community' and 'governance' actually means. This discussion should be informed by a good understanding of the demographic profile of your municipality, as this will help you determine priorities.

The term 'community' may change depending on the issue you're dealing with. Consultation, and the role the public plays, is often inadequately described or understood by both the community and council itself. This can lead to cynical and disconnected groups using council consultations to further their own agendas – agendas that are not necessarily those of the whole community.

It will only be a matter of time until you come across what's known as the squeaky-wheel syndrome.

This is where you're constantly subjected to views from the same well-organised and vocal groups in your community. While a sign of good governance is listening to the views of your community, it's not good governance to only listen to the most vocal.

Insider Tip: While it can be pretty scary to contribute to council discussions and decisions as a new councillor, your silence can be interpreted as compliance. On the other hand if you are too vocal, you risk isolating yourself. Finding a balance between the two extremes is the key to successful participation.

Where can I get more information?

YOUR COUNCIL

Your CEO can answer questions and provide you with the information you need about governance.

MUNICIPAL ASSOCIATION OF VICTORIA

Phone the general number (03) 9667 5555, explain what your query is and we'll put you in touch with the right person.

OTHER COUNCILLORS

Experienced councillors can be a wonderful source of information and support. It's a great idea to use any opportunities you have to develop a peer support network. The MAV runs several professional development events during the year, where you'll be able to meet other new and more experienced councillors.

Helpful resources

Some useful publications are described below. Others are available on the MAV website.

GOOD GOVERNANCE GUIDE

This guide was produced in 2012 by the Municipal Association of Victoria, the Victorian Local Governance Association (VLGA), Local Government Professionals (LGPro) and Local Government Victoria (LGV) to assist councillors in understanding some of the issues and challenges involved in good governance. It is available at www.goodgovernanceguide.org.au

MAYOR AND COUNCILLOR ENTITLEMENTS INFORMATION GUIDE

Assists councils, council staff and the community understand the entitlements of mayors and councillors with respect to reimbursement of expenses, and the provision of facilities and resources support. The guide contains information on supporting awareness, policy and legislative requirements, principles and approval arrangements. It is available at www.knowyourcouncil.vic.gov.au/guide-to-councils/how-councils-work/the-system-of-government

ENSURING UNBIASED DEMOCRATIC COUNCIL DECISION-MAKING: PRINCIPLES TO GUIDE GOOD PRACTICE

Local Government Victoria, with the assistance of the Municipal Association of Victoria, produced this guide to assist councillors in understanding the rule of bias as it relates to their role as decision-makers. The guide also provides advice on how to ensure that councillors' actions are free from bias, and offers suggestions on steps to take if bias may be relevant to a proposed decision. It is available at www.dtpli.vic.gov.au/local-government/publications-and-research/council-governance

Insider Tip: Your greatest attribute as a councillor is your integrity. Always remember that the silent majority in your community is relying on this to ensure council decisions are honest and fair.

“Apart from the exchange of ideas and developing new ways to look at problems, one of the highlights of attending professional development opportunities is the fantastic network of other councillors you meet who support you over your term on council.”

– Cr Helen Harris, Whitehorse City Council

COUNCILLOR TRAINING AND PROFESSIONAL DEVELOPMENT

AS A NEW COUNCILLOR YOU’LL BRING A HUGE AMOUNT OF SKILL AND EXPERIENCE TO YOUR ROLE. HOWEVER, THERE ARE BOUND TO BE AREAS WHERE YOU’LL NEED TO DEVELOP NEW SKILLS AND KNOWLEDGE, PARTICULARLY IN THE FIRST FEW YEARS.

One of the challenges that all councillors face is finding time for learning and development while managing a large workload. This is particularly true when you’re new to the job. But it’s worth making the time to do what you have to do to grow professionally and personally. It makes it so much easier to fulfil your responsibilities and be a better councillor.

Where do I begin?

The MAV offer essentials to advanced level training and professional development options for councillors.

The MAV workshop series is designed to provide fundamental skill development and enhancement of knowledge and abilities in a range of areas including:

- Decision making and strategic planning
- Council finances
- Public speaking
- Meeting procedures
- Lobbying
- Land use planning

The councillor development programs also provide further study pathways and leadership development opportunities for councillors and council staff as demonstrated below.

DIPLOMA OF LOCAL GOVERNMENT (ELECTED MEMBERS)

This program is nationally accredited and delivers modules and skill sets that when fully completed the Diploma of Local Government

(Elected Members) is awarded. Participants not only gain an understanding of critical issues and develop important skills, but also have an opportunity to meet other councillors and build support networks.

THE COMPANY DIRECTORS’ COURSE

The MAV in partnership with the Australian Institute of Company Directors (AICD) offers councillors the opportunity to participate in the popular AICD Company Directors Course. Many councillors have previously taken up this program. Now the MAV and AICD partnership provides councillors with access to the program, with an emphasis on local government needs, run specifically for a dedicated local government audience.

MCARTHUR LOCAL GOVERNMENT SCHOLARSHIP

An annual scholarship is available for a Victorian councillor to travel overseas to study a matter of importance to local government and produce a report on their findings to present to the sector. The award is currently set at \$12,000. The award is sponsored by McArthur Management Services.

CRANLANA COLLOQUIUM

Twice a year the MAV sponsors a councillor to attend the Cranlana Colloquium. The program is a week-long leadership and development opportunity focusing on the issue of what makes a just society. The program is conducted for senior leaders in corporate and non-government organisation roles by the Myer Foundation. The award is valued at \$5,500.

MAV MAYORAL PROGRAM

The MAV conduct an annual program for mayors in early December each year to assist them to fully come to grips with their new and challenging roles. This program deals with mayoral roles and responsibilities, providing practical advice and enhancing the leadership skills required, in order to get the best out of the role as mayor.

MAV/SWINBURNE UNIVERSITY GRADUATE PROGRAM

The MAV and Swinburne University offer the opportunity for councillors to take up the Swinburne University Graduate Diploma in Management as a part time program at the MAV offices in Melbourne.

MAV COUNCILLOR DEVELOPMENT WEEKEND

This event is held each year in a regional location and is usually attended by up to 200 councillors from across the state. The program features a mix of keynote speakers and workshops addressing current sector issues. There's also a number of social events designed to maximise opportunities for informal interaction. Councillors are encouraged to bring their families and a range of activities for partners and children are offered throughout the weekend.

MAV ANNUAL CONFERENCE AND DINNER

The MAV Annual Conference is the peak forum for local government in Victoria, bringing together councillors, CEOs and senior managers from around the state. The program features high profile speakers addressing key local government issues currently confronting the sector. Speakers regularly propose confronting ideas to stimulate discussion, extend the thinking of the sector, inspire new practices and improve performance.

Insider Tip: Finding a more experienced councillor (preferably from another council) to act as your mentor is probably one of the best things you can do in the first few months. Mentors can help you develop in your role as a councillor by offering you support, advice and, when you need it, a completely different perspective.

For information on these programs go to www.mav.asn.au

TOP 10 MEETING TIPS

WHEN YOU FIRST BECOME A COUNCILLOR, COUNCIL MEETINGS CAN BE VERY INTIMIDATING WITH RULES THAT CONFUSE AND APPEAR IMPOSSIBLE TO UNDERSTAND. IT'S A BIT LIKE BEING THROWN ONTO A FOOTBALL FIELD TO PLAY WITHOUT KNOWING THE RULES OF THE GAME.

Of course the best way to ensure you're able to effectively contribute to council meetings is to practise, practise, practise. To get you started, we've put together the top 10 things you need to make sure you do:

1. KNOW COUNCIL MEETING PROCEDURES

All councils are required by the *Local Government Act 1989* to have a meeting procedures local law. It's important that you familiarise yourself with the requirements of this local law as it will dictate how you operate in the council chamber. While meeting procedures are an effective tool, they can sometimes be used by more experienced councillors to control debate in the council chamber. Understanding the procedures and how you can use them to ensure your views are heard is obviously very important.

2. PREPARE, PREPARE, PREPARE

Read all the material that is provided to you before the meeting. This includes the agenda, briefing papers, the minutes from the previous meeting and any other supporting documentation.

3. UNDERSTAND THE ISSUES AND ASK QUESTIONS

Good governance is essentially about how decisions are made. It's important that decisions made in the council chamber are informed decisions. Identify issues you're not familiar with, and would like clarification, or need further information, on. Research the issues you're unclear about and ask questions. It's also important to understand the position of your fellow councillors. Talk to them, listen to their views and try to understand their concerns.

4. LEARN ABOUT COUNCIL PROCESSES

All councils have processes and protocols to guide and assist councillors in obtaining information. Many councils have briefing sessions to allow questions and issues to be discussed in a less formal manner. These briefings are helpful but should never be allowed to be decision-making meetings or be used for straw polls. The council meeting is where decisions are made. Special rules apply to meetings of three or more councillors wherever a council officer is present if the topic of discussion may be subject to a decision of the council or its delegate. Councils also have defined processes for communicating and seeking information from staff. So it's a good idea to make sure you understand the processes at your council.

5. UNDERSTAND THE RULES OF DEBATE

The meeting procedures local law governs the way debate is conducted in your council chamber. It describes who can move and second motions, and how long and how often a person can speak on an issue. Voting processes and requirements are also outlined, along with a range of formal motions that help keep meetings on track.

To be effective in the council chamber you need to be able to speak clearly and concisely about the issue at hand. To do this you need to understand the rules and be well informed about all aspects of the issue.

6. GET YOUR ISSUE ON THE AGENDA

The meeting procedures local law provides mechanisms for getting items on the agenda or considered at the meeting. These include:

- Notices of motion
- Rescission motions
- General business
- Urgent business.

There'll be rules, requirements and restrictions around each of these, so you do need to understand them.

7. TAKE A WHOLE-OF-COUNCIL APPROACH

Once elected, you must consider the interests of the whole municipality, not just the ward (if applicable) that elected you. Sometimes you'll need to make difficult decisions. Sometimes (some would even say often) council and councillors won't be popular with the community. Like it or not, this is just part of the job and it's important that all councillors take responsibility for decisions made in the council chamber. You can't please everyone.

8. FOLLOW YOUR COUNCIL'S CODE OF CONDUCT

The meeting procedures local law governs the conduct of councillors in the chamber. Your council's code of conduct describes how councillors should conduct themselves and resolve disputes. It's important that you treat your fellow councillors, council staff and members of the community with respect. It's also crucial that you always act in an ethical, open and transparent way.

9. LEAVE DISAGREEMENTS IN THE CHAMBER

There'll be times when you may not agree with a fellow councillor's point of view. Harboursing resentment can destroy teams, harm relationships and ultimately undermine good governance. Make sure that differences of opinion on issues debated in the council chamber are left there. After a meeting, you might find it useful to clear the air or resolve any remaining tensions in an informal way.

10. ASK FOR TRAINING, DEVELOP YOUR NETWORKS

As a new councillor you may not be all that familiar with council meeting procedures and processes. Training for councillors is available, so take advantage of it as soon as you can. Try developing networks with councillors in other municipalities. They may be able to offer guidance and support during your term. The MAV can also provide advice and support.

MEETING PROCEDURES

THIS PART OF THE NEW COUNCILLOR RESOURCE GUIDE IS DESIGNED TO PROVIDE GENERAL GUIDANCE FOR NEWLY ELECTED COUNCILLORS ON COUNCIL MEETING PROCEDURES.

PURPOSE

The guide is based on the relevant procedures and provisions of the *Local Government Act 1989* (the LG Act) and is intended to complement the meeting procedures local laws of individual councils.

WHAT IS A COUNCIL?¹

A council is defined by the LG Act as a body which consists of its councillors, who are democratically elected under the LG Act.² The council is a body corporate with perpetual succession, and:

- Must have a common seal
- May sue or be sued in its corporate name
- Is capable of acquiring, holding, dealing or disposing of property for the purpose of performing its functions exercising its powers³
- Is capable of doing and suffering all acts and things which bodies corporate may by law do and suffer, and which are necessary or expedient for performing its functions and exercising its powers.

The LG Act also sets out the purpose, objectives, role, functions and powers of a council in the preamble, and in the local government charter at sections 3A-3F.

HOW COUNCIL MEETINGS ARE GOVERNED

The LG Act lays down the fundamental requirements of council meetings.⁴ This includes the requirement that each council must make a local law to govern the conduct of its council meetings and special committee meetings.⁵

Council meetings are governed by the procedures set out in its meeting procedure local law and the LG Act, but where these are silent or make no provision for a particular matter, the conduct of a council meeting is at the discretion of the council. This means the council should determine the procedure for a matter (as distinct from the mayor).⁶ These rules also apply to the conduct of a special committee meeting.

Therefore when conducting a meeting, the council (and councillors) should consider:

- Part 4, divisions 1 and 2 (being sections 63-93) of the LG Act
- The council's local law on meeting procedures
- Any other applicable council policies and protocols.

Meeting procedures local law

Each council is required under section 91(1) to have a local law which governs the conduct of council meetings and special committees. It is important that newly elected councillors obtain a copy of their council's meeting procedures local law and become familiar with it. Typically the meeting procedures local law will cover:

- Notices of meetings
- Procedure for the agendas
- Apologies
- Quorums minutes
- Business at meetings
- Urgent business
- Confidential business
- Question time
- Forms of motions
- Procedures for motions and amendments
- Rescission and amendment of motions
- Points of order
- Time limits for debate

The meeting procedure local law may also cover other matters such as:

- Procedure for the statutory meeting of council
- Election of the mayor and deputy mayor
- If applicable establishment of special committees of council and application of the meeting procedures local law to such meetings
- Declaration of interests (i.e. an interest being either a direct interest or indirect interest and conflict of interest).

¹Sections 3 and 5 ²Section 3B ³Section 5(2)

⁴Section 3(5), and Division 1 and 2 of Part 4 of the LG Act (Sections 63-93)

⁵Section 91(1) ⁶Section 91(3)

A council must be careful to ensure that the meeting procedures local law is consistent with any applicable provisions in the LG Act. Where the local law is inconsistent with a legislative provision, it is inoperative.⁷

PRECEDENCE OF THE MAYOR

The mayor takes precedence at all municipal proceedings within the municipal district and takes the chair at all meetings of the council at which he/she is present.⁸

Acting mayor

If there is a vacancy in the office of mayor or the mayor is absent, incapable of acting or refusing to act, the council must appoint a councillor to be acting mayor⁹.

Deputy mayor

With the exception of the City of Melbourne and the City of Greater Geelong, the LG Act does not provide for the statutory position of deputy mayor for councils. Councils may choose to elect one of the councillors to hold the position of deputy mayor, bearing in mind that the deputy mayor will not have any function or powers under the LG Act. If a council chooses to elect a deputy mayor, it will also need to determine the role of the deputy mayor.

TYPES OF MEETINGS¹⁰

A council may hold two kinds of meetings:

- Ordinary meetings at which general business of the council may be transacted
- Special meetings at which only the business specified in the notice calling the meeting may be transacted.

Ordinary meetings

The LG Act does not make provision for, or state, what the general business of the council is to comprise of. However, the meeting procedures local law will generally stipulate how the items on the agenda for an ordinary council meeting are to be specified and determined. As a matter of good practice a council should only consider those items listed on the agenda and which the public and members of council are on notice about. This is especially the case in regard to contentious or complex matters. Nevertheless, a council's meeting procedures local law may provide and set out the pre-requirements for the consideration of urgent items of business.

Special meetings

The LG Act sets out the procedure by which a special meeting¹¹ of council may be convened and conducted. These are:

- The mayor, or at least three councillors, may by written notice call a special meeting of the council
- The notice must specify the date and time of the special meeting and the business to be transacted
- The CEO must call the special meeting as specified in the notice
- Unless all councillors are present and unanimously agree to deal with another matter, only the business specified in the notice is to be transacted.

First meeting after a general election

The LG Act makes a special provision for the first meeting of a council following a general election.¹² The CEO is empowered to call a special meeting of the council within 14 days of the public declaration of the election results.

Assemblies of Councillors

The LG Act provides for informal sessions at which councillors may be briefed on matters that are intended or likely to be the subject of a decision of the council; or subject to the exercise of a function, duty or power of the council that has been delegated to a person or committee. Such sessions are known as Assemblies of Councillors¹³. As Assemblies of Councillors are not meetings of the council, no decisions can be made.

The Assembly of Councillors is defined in the LG Act as a meeting of an advisory committee of the council if at least one councillor is present; or a planned or scheduled meeting of at least half of the councillors and one member of council staff is in attendance.

⁷Section 111(3) ⁸Section 73(2) ⁹Section 73(3) ¹⁰Section 83

¹¹Section 3(5) ¹²Section 91(1) ¹³Section 91(3)

SPECIAL COMMITTEES¹⁴

The LG Act allows a council to establish a special committee of the council. These special committees have a specific statutory role and will have, in some cases, powers delegated to them by council.

A special committee may be made up of councillors, staff, other persons or any combination thereof.

The council must appoint the members of the special committee and may at any time remove a member from a special committee. The distinctive feature of a special committee is that under the LG Act the council may delegate some of its functions, duties or powers to a special committee. A delegation of functions, duties or powers must be done by an instrument of delegation which will specify the nature of the delegation and any qualifications, time limit or reporting that the delegation is subject to. The LG Act prohibits the delegation of certain powers.¹⁵

Where a council has delegated certain powers, functions or duties to a special committee it effectively grants to that special committee the decision-making in respect of that matter vested with the council.¹⁶

In such cases, it is not necessary for the council to re-make or ratify the special committee's decision. The legal effect of the delegation enables that council decision to be made by the special committee on behalf of the council. This is why the LG Act subjects special committees to the same statutory procedures and conduct as the council.

If a special committee determines matters that are not contained in the instrument of delegation, these matters cannot be given effect until separately decided by the council.

A council may also establish other committees whose purpose is to look into, advise and report back to the council on matters referred to it. In such cases where there is no formal delegation of powers to a committee, any determination or decision of the committee will have no effect. The council will need to ratify any decision or recommendation of these committees.

Where the council has delegated any functions, powers or duties to a special committee it must keep a register of those delegations.¹⁷

MEETINGS TO BE OPEN TO PUBLIC¹⁸

Any meeting of a council, or a special committee, must be open to members of the public.

There are specific circumstances when a council or special committee can resolve that the meeting be closed to members of the public.¹⁹ These circumstances are outlined in the LG Act as follows:

- personnel matters
- the personal hardship of any resident or ratepayer
- industrial matters contractual matters
- proposed developments
- legal advice matters affecting the security of council property
- any other matter which the council or special committee considers would prejudice the council or any person
- a resolution to close the meeting to members of the public.

If a council or special committee decides that it needs to consider or discuss any item that falls within the above categories it must:

- Formally resolve to close the meeting to members of the public; and
- the reason must be recorded in the minutes of the meeting.

¹⁴Sections 86, 87 and 88 ¹⁵Section 86(4) ¹⁶Section 87(7) ¹⁷Section 87(1)
¹⁸Section 89(1) ¹⁹Section 89(2)

CONFIDENTIAL INFORMATION

Section 77 of LG Act makes specific provision for confidential information. The provision deems information to be confidential in three circumstances:

- a. At a closed meeting: when information is provided at a closed council/special committee meeting and there is no resolution that the information is not confidential.²⁰
- b. By resolution under section 89(2): where information is designated confidential by a resolution of council/special committee under section 89(2) and there is no resolution that the information is not confidential.²¹
- c. Designated by the CEO as confidential: where the CEO designates in writing that information is confidential under one of the grounds in Section 89(2) and there is no resolution that the information is not confidential.²² Although such information will cease to be confidential after 50 days, unless it is subsequently dealt with by council at a closed meeting or is designated by resolution to fall within Section 89(2).²³

Each of the provisions states a qualification that if the council/special committee 'has not passed a resolution that the information is not confidential'. The inclusion of this means the council/special committee will need to determine whether all of the information considered is to remain confidential.

For the information to be released to the public, the council/special committee will need to pass a resolution identifying which of the matters and information is not confidential. Once this resolution has been passed, councillors will be able to communicate only that information which is the subject of the resolution.

Disclosure of confidential information

Section 76D of the LG Act, which deals with the misuse of position, makes it clear that circumstances involving the misuse of a position by a councillor includes, amongst other things, disclosing information that is confidential.

The penalty for a breach of Section 76D is 600 penalty units²⁴ and/or five years imprisonment. If a councillor or member of a special committee is convicted of an offence under this provision, they will be disqualified from becoming or continuing to be a councillor for a period of eight years after the conviction.²⁵

The disclosure of confidential information is also an offence under Section 77. The Chief Municipal Inspector can prosecute a councillor for this offence (penalty: 120 penalty units) or seek a finding of serious misconduct by a Councillor Conduct Panel (one of the other, not both).

PUBLIC NOTICE OF MEETINGS²⁶

A council must give public notice of all council meetings. The chairperson of a special committee must give public notice of meetings of the special committee.²⁷

The public notice must be given at least seven days before the meeting. The public notice must be a notice published in a newspaper generally circulating in the municipal district of the council chosen for this purpose.

VOTING

Councils make decisions at meetings by councillors voting on motions, after having considered reports and debated the merits of the matter before the council.

Section 90 of the LG Act sets out the procedure for voting. A question before a meeting of a council or special committee is to be determined as follows:

- a. Each councillor present at a meeting of the council and each member of a special committee present at a meeting of the special committee who is entitled to vote is entitled to one vote.
- b. Unless otherwise prohibited by the LG Act (for example by reason of a conflict of interest in the matter at hand), each councillor or member of the special committee present may vote.
- c. Unless the procedure/local law of a council or special committee otherwise provides, voting must be by a show of hands.
- d. Voting at a meeting that is open to members of the public must not be in secret.
- e. The question before the council/special committee is determined by a majority of the votes of the councillors and members of the special committee present at the meeting at the time the vote is taken.
- f. If there is an equality of votes the chairperson has a second vote unless an issue arises under the following provisions in which case that matter is to be determined by lot (90(2):
 - the election of the mayor;²⁸
 - the appointment of a chairperson to a special committee;²⁹ or
 - where the chairperson is not present at a special committee, the election of another chairperson.³⁰

²⁰Section 77(2)(a) ²¹Section 77(2)(b) ²²Section 77(2)(c) ²³Section 77(3)

²⁴For the period 1 July 2016 to 30 June 2017, a penalty unit, as set under the Monetary Units Act 2004, is \$155.46. ²⁵Section 29 ²⁶Section 89 ²⁷Section 89(4) ²⁸Section 71(1) ²⁹Section 87(2) and 88(3) ³⁰Section 87(3) and 88(4)

INTERESTS AND THEIR DISCLOSURE³¹

A councillor must be conscious at all times that if he/she has a direct or indirect interest in a matter that is before council, he/she has an obligation to disclose a conflict of interest. In which case, he/she will not be able to participate in the debate and vote on the matter that is before the council for a decision. The obligation on a councillor to disclose a conflict of interest arises at council meetings (both ordinary and special), meetings of a special committee and assemblies of councillors. Interests are defined as being either a direct interest or an indirect interest.³²

Direct interests³³

A councillor is considered to hold a direct interest if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the councillor would be directly altered (either for better or worse) if the council decides the decision matter in a particular way.

A councillor is also considered to hold a direct interest if:

- There is a reasonable likelihood the councillor will receive a direct benefit or loss measurable in financial terms if the decision is made by the council in a particular way
- The councillor, together with his/her members of family, have a controlling interest in a company/other body (e.g. a Trust) that has a direct interest in the matter that is before the council for decision.

Membership of a club/organisation

Often councillors will also be a member of a local club (e.g. the football, cricket, netball, or tennis club) or an organisation (e.g. Rotary, Lions Club, RSL). In the instance that the club/organisation has a direct interest in a matter that is before council for decision, the councillor with a membership in that club/organisation is deemed not to have:

- A direct interest by reason of that membership;³⁴ and
- An indirect interest by reason of that membership unless he/she separately has an indirect interest that is either an indirect financial interest, indirect interest because of conflicting duties, or an indirect interest because of an applicable gift.³⁵

Indirect interests³⁶

The LG Act defines six classes or categories of indirect interests:

- By close association³⁷
- Indirect financial interest³⁸
- Conflicting duties³⁹
- Receipt of an applicable gift⁴⁰
- As a consequence of becoming an interested party⁴¹
- Impact on residential amenity⁴²

Indirect interest by close association

A councillor is deemed to have an indirect interest by close association if a member of the councillor's family, or a relative of the councillor, or a member of the councillor's household has a direct interest (in the case of the family member it could also be an indirect interest) in a matter that is before the council.

Indirect interest that is an indirect financial interest

A councillor is deemed to have an indirect financial interest in a matter before the council if he/she is likely to receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.

A councillor has an indirect financial interest that is a conflict of interest if:

- He/she has a beneficial interest in shares of a company that has a direct interest in a matter (excluding companies where the value of the councillor's shareholding is under \$10,000 and the total value of issued shares of the company exceeds \$10 million where the councillor is deemed not to have a conflict of interest)
- He/she is owed money from another person (excluding banks, credit unions and so on) and that other person has an interest in the matter.

³¹For further information refer to the *Conflict of Interest – A Guide for Councillors, June 2011*.

³²Section 77A ³³Section 77B ³⁴Section 77(3)(a) ³⁵Section 77B(3)(b)

³⁶Sections 78, 78A, 78B, 78C, 78D and 78E ³⁷Section 78 ³⁸Section 78A

³⁹Section 78B ⁴⁰Section 78C ⁴¹Section 78D ⁴²Section 78E

Indirect interest because of conflicting duties

A councillor is deemed to have an indirect interest because of a conflicting duty if he/she is a:

- Manager or member of the governing body of a company, association or club that has a direct interest in a matter.
- Partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter.
- Trustee for a person who has a direct interest in a matter.

A councillor should also note, that even though he/she had resigned from the positions noted above, he/she still has an indirect interest by conflicting duty if he/she, whilst holding such a position, dealt with the matter in that capacity.

There are a number of exclusions whereby the councillor is deemed not to have an indirect interest because of conflicting duties. These instances are set out in section 78B of the LG Act.

Indirect interest because of an applicable gift

A councillor is deemed to have an indirect interest because of an applicable gift with a total value of \$500 or more, received directly or indirectly from a person who has a direct interest in a matter, or a director/contractor/consultant/agent/employee of a person or company that the councillor knows has a direct interest in a matter; or a person who gives the applicable gift on behalf of a person or company with a direct interest in the matter.

Applicable gifts can be in money or in kind and include electoral campaign donations. The total value of the applicable gift is calculated over a five year period preceding the matter coming before the council.

The applicable gift excludes reasonable hospitality received by the councillor at an event of function attended in an official capacity as the mayor or councillor, as well as gifts (excluding election campaign donations) received more than 12 months before the councillor was elected.

Indirect interest as a consequence of becoming an interested party.

A councillor has an indirect interest in a matter if he/she has become an interested party in the matter by initiating civil proceedings in relation to the matter or becoming a party to civil proceedings in relation to the matter.

Indirect interest because of impact on residential amenity.

A councillor has an indirect interest in a matter if there is a reasonable likelihood that his/her residential amenity will be altered if the matter is decided in a particular way.

CONFLICTING PERSONAL INTEREST

If a councillor considers that he/she has a personal interest in relation to a matter that is in conflict with his or her public duty in relation to the matter, the councillor may, immediately before the matter is considered at the relevant meeting, apply to the council, giving reasons in support of the application, to be exempted from voting on the matter.

The council may consent to such an application and must not unreasonably withhold consent. If the council consents to such an application, the personal interest must be treated as a conflict of interest.

What must a councillor do if he/she has a conflict of interest?

Councillors and committee members must disclose all conflicts of interest. The procedure for the disclosure of a conflict of interest is set out in section 79 of the LG Act. This procedure is summarised in the next section.

Disclosure of the conflict of interest⁴³

A councillor or member of a special committee who is attending a meeting at which a matter for which he/she has a conflict of interest must disclose that conflict of interest in accordance with the procedure set out in section 79 of the LG Act.

The councillor or member of the special committee must make a full disclosure of that interest by either advising the council or special committee at the meeting or the CEO in writing before the meeting, of the details of the class (i.e. whether it is a direct or indirect interest) and nature of the interest (i.e. specific details about the interest itself).

The LG Act does not set the time for the disclosure of the conflict of interest. A councillor or member of the special committee disclosing a conflict of interest may therefore do so either at the start of the meeting or just before the matter for which the conflict of interest arises is discussed.

Councillors and members of special committees are also recommended to refer to the meeting procedures local law as the timing of the disclosure of a conflict of interest may have been specified in the local law.

If the councillor or member of the special committee advised the CEO in writing of the details of the class and nature of the interest, that councillor or member of the special committee must make a disclosure of the class of interest only to the meeting immediately before the matter is considered at the meeting.

Once disclosed, what next?

While the matter for which a conflict of interest has been disclosed is being considered, or any vote in relation to this matter is taken, the councillor and member of the special committee must:

- Leave the room, notifying the mayor or chairperson of the special committee that he/she is doing so; and
- Remain outside the chamber/room and any gallery or other area in view or hearing of the room.

Not only must the councillor or member of special committee disclosing the conflict of interest be physically outside the chamber/room, he/she must also not be in a place from which he/she can view or hear the proceedings.

What is the consequence of a failure to disclose a conflict of interest?

A failure to disclose a conflict of interest could result in a prosecution for a breach of section 79 of the LG Act. A councillor who is found guilty of an offence is liable to a fine not exceeding 120 penalty units.⁴⁴ If convicted, he/she will be disqualified from office and will not be capable of becoming or continuing to be a councillor for a period of eight years after the conviction.⁴⁴

Situations where a councillor is taken not to have a conflict of interest

The LG Act provides for a number of situations where a councillor is taken not to have a conflict of interest:⁴⁵

- a. The nomination or appointment by the council of the councillor to a position for which the councillor will not be remunerated.
- b. The election of the mayor or the appointment of an acting mayor.
- c. A decision in relation to the payment of allowances to the mayor or councillors.
- d. The adoption of a policy in relation to the reimbursement of expenses.
- e. The adoption of a councillor code of conduct.
- f. An application to a councillor conduct panel or Victorian Civil and Administrative Tribunal (VCAT).
- g. An application to the Minister for Local Government for an exemption to enable a councillor to vote on a matter for which he/she has a conflict of interest.
- h. The appointment of members and chairpersons of special committees.
- i. A resolution that has the effect of making the councillors eligible or ineligible for the superannuation guarantee under taxation legislation.
- j. The conduct of a councillor with respect to an internal dispute that involves the councillor or an allegation of misconduct or serious misconduct by the councillor.
- k. A submission provided to an electoral representation review.
- l. A submission provided for the purposes of a subdivision review conducted.

The LG Act also deems a councillor as not having a conflict of interest where the council is approving a budget or revised budget which includes funding for a matter for which that councillor had previously disclosed a conflict of interest, if the council had previously approved the matter and the proposed funding.⁴⁶

The LG Act also deems a councillor as not having a conflict of interest where the council is approving a council plan which includes funding for a matter for which that councillor had previously disclosed a conflict of interest, if the council had previously approved the matter for inclusion in the council plan.⁴⁷

⁴³Section 79 ⁴⁴Section 29(2)(a) ⁴⁵Section 79C(1) ⁴⁶Section 79C(2) ⁴⁷Section 79C(3)

MINUTES

The business conducted at all meetings of the council and special committees must be recorded in minutes, which must be submitted to the next appropriate meeting for confirmation.⁴⁸ The minutes must:⁴⁹

- Contain details of the proceedings
- Contain details of the resolutions made be clearly expressed
- Be self-explanatory
- Incorporate relevant reports or a summary of the relevant reports considered in the decision-making process
- The minutes must be available for public inspection for 12 months after the meeting.

The chairperson of a special committee must arrange for minutes of each meeting of the committee to be kept, and submit these to the next meeting of the committee for confirmation. If the minutes are confirmed, the chairperson at the meeting must sign the minutes and certify that they have been confirmed.

VALIDITY OF THE PROCEEDINGS OF A COUNCIL⁵⁰

The proceedings of a council or committee are not invalidated because of any:

- vacancy in the number of councillors or members
- defect in the election or appointment of a councillor or member
- incapacity to be a councillor or member
- failures of council meetings to be open to the public or the giving of public notice.

QUORUM

Quorum means the minimum number of councillors required to be present for a valid meeting of council. Section 91(3a) of the Act provides that a quorum at a meeting of the council or special committee must be a least a majority of the members of the council or its special committee.

APOLOGIES

Councillors knowing they will be unable to attend a meeting should convey their apology either to the CEO or another councillor. A councillor may seek leave of absence from the council, which the council must not unreasonably refuse to grant.⁵¹

A councillor who is absent from four consecutive ordinary meetings without leave is automatically disqualified under the Local Government Act as a councillor; which creates an extraordinary vacancy.⁵²

MOTIONS/RESOLUTIONS

A motion is a proposal formally made to the meeting and, if adopted will represent the actual decision (or resolution) of the council which is to be enacted. There are two provisions that deal with the nature and function of a resolution.

Section 3 of the LG Act provides:

- Where a council is empowered to do any matter or thing, the decision to do the act, matter or thing is to be made by a resolution of the council.
- The resolution of council/special committee must clearly state the intentions and effect of the resolution.

Typically, the council's local law will provide for the procedure for moving a motion and passing a resolution.⁵³

⁴⁸Section 93 ⁴⁹Section 93(6) ⁵⁰Section 92 ⁵¹Section 69(1)(g)
⁵²Section 69(1) ⁵³Section 91(4) ⁵⁴Section 85

Rescission and alteration of resolutions

The LG Act does not make provision for the un-making of a council resolution or decision. Nevertheless there is a common law procedure that enables a body, such as a council to rescind a decision/resolution. Under these rules, a council should only rescind a decision if it has not been acted upon or communicated. Rescission means to revoke, annul, repeal or abrogate a decision.

An alternative to rescission may be a motion, which amends an earlier decision such as varying a policy adopted by council. However, where the original decision relates to a particular person or entitlement, for example where a permit has been granted and a right has been provided, once the decision has been communicated or acted on, an amendment should be avoided.

Generally a council's local law will make provision for the rescission of a decision of council. A resolution should only be rescinded by adherence to the procedure set out in the meeting procedures local law. A council should take a cautious approach to amending decisions that have been taken and acted on as technically a decision cannot be unmade unless formally rescinded.

Councillors should also be aware that in some instances a resolution cannot be rescinded or subsequently amended, even if the council had not yet acted on the resolution. An example of this is where the council is exercising a statutory function which does not provide a mechanism for a subsequent revision to a decision once it is taken, for instance, to recommend an amendment to the Planning Scheme to the Minister for Planning.

ADJOURNMENT

The LG Act makes no provision for the adjournment of a meeting, however, this may be addressed in meeting procedure local laws.

CALL OF THE COUNCIL⁵⁴

If a quorum of council cannot be formed or maintained due to the absence of councillors the Minister or CEO may require all councillors to attend a call of the council meeting. This meeting is to be treated as a special meeting.

The Minister must be advised in writing by the CEO if a councillor is more than 30 minutes late for the meeting or does not attend the meeting. The councillor may submit reasons for lateness or non-attendance to the Minister. If the Minister is not satisfied that the councillor had a reasonable excuse, the Minister may order that the councillor is incapable of remaining a councillor.

Disclaimer: This publication is intended to provide a general outline and is not intended to be, and is not, a complete or definitive statement of the law on the subject matter.

GLOSSARY

Amendment – a change that is consistent with the original intent.

Lot (as on page 21) – drawn out of hat or similar process to split a tied vote.

MAV – Municipal Association of Victoria.

Penalty unit – used to define the amount payable for fines for offences under statute.

Quorum – the minimum number of councillors required to be present for a valid meeting of council (see page 24).

Rescission – to revoke, annul, repeal or abrogate a decision.

Resolution – Formal decision of the council determined by majority vote.

Squeaky-wheel – loudest complaint gets attention.

Straw Polls – indication of intended vote.

VCAT – Victorian Civil and Administrative Tribunal.



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