



Produced by the Municipal Association of Victoria (MAV), Victorian Local Governance Association (VLGA), Local Government Victoria (LGV) and Local Government Professionals (LGPro).

www.goodgovernanceguide.org.au

TABLE OF CONTENTS

About this site.....	4
About good governance.....	6
What is good governance?.....	7
Why is good governance important?.....	9
What is local government?.....	11
Functions of local government.....	13
Governance & advocacy.....	14
What does 'community' mean?.....	15
Roles & relationships.....	16
Roles in local government.....	17
Mayor.....	18
Council.....	20
Councillors.....	22
CEO.....	24
Administration.....	25
Relationships in local government.....	26
Mayor & councillors.....	27
Mayor & CEO.....	29
Councillor & councillor.....	30
Councillors & CEO.....	31
Council & administration.....	32
Decision making.....	35
How decisions are made.....	36
Guiding principles.....	37
Getting the balance right.....	38
Council powers.....	39
Natural justice.....	40
The decision-making process.....	41
Setting the agenda.....	42
Gathering information.....	43
Forming an opinion.....	47
Making the decision.....	49
Implementing the decision.....	52
Conduct.....	53
What is good conduct?.....	54
Conduct issues.....	55
Misuse of position.....	56
Conflict of interest.....	57
Accessing confidential information.....	59
Improper direction & influence.....	60
Use of council resources & facilities.....	61
Councillor liabilities.....	62
Codes of conduct.....	63
For councillors.....	64
For council officers.....	65
Addressing breaches.....	66
Financial governance.....	68
Who is responsible?.....	69
Strategic Resource Plan.....	71
Annual budget.....	73
Financial reporting.....	74
Planning & governance.....	76
Why is good governance important for planning?.....	77
Planning & councillor roles.....	78
Scenarios.....	80
Dealing with disaffected councillors.....	81

Forcing council decisions.....	82
Lacking financial accountability.....	83
Reacting to the loudest voices in the community.....	84
New councillor confusion over CEO loyalties.....	85
Councillor & officer relationship breakdown.....	86
Split voting on key council decisions.....	87
Leaking information to media.....	88
Community outrage at planning decision.....	89
Influencing recommendations to council.....	90
Leading debate from the council chair.....	91
Making decisions at council briefings.....	92
Glossary.....	93

ABOUT THIS SITE

The Good Governance Guide is a practical resource for anyone involved in the decision-making process in Victoria's local government sector.

Rather than try to cover every aspect of local government activity, it focuses on the areas where good governance has the most impact and offers suggestions for how it can work.

ABOUT THE GOOD GOVERNANCE GUIDE

What's in the Good Governance Guide?

- information about good governance and why it's important
- information about the functions of local government
- descriptions of the key roles and relationships which are so important to good governance
- the main stages of the decision-making process from a best practice perspective
- an outline of good conduct and areas where issues can occur
- a look at how good governance works in speciality areas, such as land use planning and finance
- scenarios where things have gone wrong and suggestions for how to tackle the situation.

The Good Governance Guide also has tips on every page and links to useful resources on other sites.

Who is the Good Governance Guide for?

- current councillors and council officers
- anyone thinking about being councillor or working for council
- organisations supporting local government.

How can it help?

The Good Governance Guide is designed to be a helpful reference that will be used in a number of ways, such as:

- new councillors who want to understand how the process for making decisions works
- experienced councillors who are hoping to achieve more in this term by fostering good relationships within council and the administration
- council officers who want to have a better understanding of councillors' roles and their need for support and information
- Chief Executive Officers who are planning to introduce governance training throughout the administration
- mayors who want to run better council meetings
- councillors who want information on conflict of interest, pre-apprehension ('Winky Pop'), how to get more value out of briefings, what their financial accountability is and more.

CREDITS

The Good Governance Guide has been produced by the Municipal Association of Victoria (MAV), Victorian Local Governance Association (VLGA), Local Government Victoria (LGV) and Local Government Professionals (LGPro). Each of these organisations nominated a representative to sit on the Good Governance Guide management committee. The content was compiled and drafted by Ron Exiner, Director Governance VLGA acting as Project Officer for this project.

The partners would like to thank John Rantino, Partner at Maddocks Lawyers for providing pro bono legal advice. They also wish to acknowledge the project reference group which reviewed and provided valuable input to the content and approach. Members of this group were councillors Barbara Murdoch (Indigo Shire Council), Micaela Drieberg (Monash City Council) and John Doull (Greater Geelong City Council), Margaret Abbey CEO (Murrindindi

Shire Council), Lidia Harding Manager Governance (Moreland City Council), local government consultant Michael Ulbrick and Greg Johnson (former mayor and councillor, Nillumbik Shire Council).

The committee would also like to thank Michael Ulbrick and local government consultant Mark Davies for their specific input into the content on financial governance, and Bill Forrest, Director Advocacy (Wyndham Shire Council) for his contribution to the material on planning and governance. Finally, they wish to acknowledge Philippa Costigan for her work as content editor and Laura Cornhill and her colleagues at Studio Binocular for website design and development.

ABOUT GOOD GOVERNANCE

Good governance is about the good processes for making and implementing decisions. Having good processes generally leads to better outcomes for local governments and their communities.

This section of the Good Governance Guide website looks at what good governance means, why it's important and how it relates to local government.

WHAT IS GOOD GOVERNANCE?

Good governance is about the processes for making and implementing decisions. It's not about making 'correct' decisions, but about the best possible process for making those decisions.

Good decision-making processes, and therefore good governance, share several characteristics. All have a positive effect on various aspects of local government including consultation policies and practices, meeting procedures, service quality protocols, councillor and officer conduct, role clarification and good working relationships.

WHAT ARE THE MAIN CHARACTERISTICS OF GOOD GOVERNANCE?

Good governance is accountable

Accountability is a fundamental requirement of good governance. Local government has an obligation to report, explain and be answerable for the consequences of decisions it has made on behalf of the community it represents.

Good governance is transparent

People should be able to follow and understand the decision-making process. This means that they will be able to clearly see how and why a decision was made – what information, advice and consultation council considered, and which legislative requirements (when relevant) council followed.

Good governance follows the rule of law

This means that decisions are consistent with relevant legislation or common law and are within the powers of council. In the case of Victorian local government, relevant legislation includes the Local Government Act 1989 and other legislation such as the Public Health and Wellbeing Act 2008, and the Equal Opportunity Act 2010.

Good governance is responsive

Local government should always try to serve the needs of the entire community while balancing competing interests in a timely, appropriate and responsive manner.

Good governance is equitable and inclusive

A community's wellbeing results from all of its members feeling their interests have been considered by council in the decision-making process. This means that all groups, particularly the most vulnerable, should have opportunities to participate in the process.

Good governance is effective and efficient

Local government should implement decisions and follow processes that make the best use of the available people, resources and time to ensure the best possible results for their community.

Good governance is participatory

Anyone affected by or interested in a decision should have the opportunity to participate in the process for making that decision. This can happen in several ways – community members may be provided with information, asked for their opinion, given the opportunity to make recommendations or, in some cases, be part of the actual decision-making process.

It is important to remember that under the *Local Government Act 1989* the council is required to either

make decisions or delegate the decision-making power to officers or Special Committees. For more information see [How decisions are made](#).

WHY IS GOOD GOVERNANCE IMPORTANT?

Good governance is important for several reasons. It not only gives the local community confidence in its council, but improves the faith that elected members and officers have in their own local government and its decision-making processes.

It also leads to better decisions, helps local government meet its legislative responsibilities and importantly provides an ethical basis for governance.

BENEFITS OF GOOD GOVERNANCE

Promotes community confidence

People are more likely to have confidence in their local government if decisions are made in a transparent and accountable way.

This helps people feel that local government will act in the community's overall interest, regardless of differing opinions.

It also encourages local governments to remember that they are acting on behalf of their community and helps them to understand the importance of having open and ethical processes which adhere to the law and stand up to scrutiny.

Encourages elected members and council officers to be confident

Elected members and council officers will feel better about their involvement in local government when good governance is practised.

Councillors will be more confident that they are across the issues, that they can trust the advice they are given, that their views will be respected even if everyone doesn't agree with them, and that the council chamber is a safe place for debate and decision making.

Officers will feel more confident in providing frank and fearless advice which is acknowledged and respected by councillors.

Leads to better decisions

Decisions that are informed by good information and data, by stakeholder views, and by open and honest debate will generally reflect the broad interests of the community.

This does not assume that everyone will think each decision is the right one. But members of the community are more likely to accept the outcomes if the process has been good, even if they don't agree with the decision. They will also be less tempted to continue fighting or attempting to overturn the decision. So even the most difficult and controversial decisions are more likely to stick.

Helps local government meet its legislative responsibilities

If decision-making is open and able to be followed by observers, it is more likely that local governments will comply with the relevant legal requirements. They will also be less likely to take shortcuts or bend the rules.

Supports ethical decision making

Good governance creates an environment where elected members and council officers ask themselves 'what is the right thing to do?' when making decisions.

Making choices and having to account for them in an open and transparent way encourages honest consideration of the choices facing those in the governance process. This is the case even when differing moral frameworks between individuals means that the answer to 'what is the right thing to do' is not always the same.

WHAT IS LOCAL GOVERNMENT?

In Australia, there are three levels of government: local, state and federal. Local government is the first level and is responsible for matters close to local communities.

Victorian local governments are established under the provisions of the Local Government Act 1989. Each local government consists of the elected members (councillors) who form the council and council officers (the administration) who are paid employees.

HOW DOES LOCAL GOVERNMENT OPERATE?

Council and the elected members

Councillors are democratically elected either on a single-councillor ward, multi-councillor ward or whole-of-municipality basis. Their authority can only be exercised once they've taken the Oath (or affirmation) of Office and when they meet as a council at a properly constituted meeting.

Outside the council meeting, individual councillors (including the mayor, other than at Melbourne and Greater Geelong City councils) have very limited powers. Under Section 84 (1) of the Local Government Act mayors, or at least three councillors, have the power to call a special council meeting. Councillors have the power under Section 81 B (b) and (c) to make an application to a Councillor Conduct Panel.

The council meeting is a formal process, defined by both the *Local Government Act* and by each local government's local law.

The CEO and the administration

The Chief Executive Officer (CEO) is directly accountable to council and also has specific authorities, including managing the day-to-day operations and the organisational structure, under the *Local Government Act*.

The administration is formally accountable to the CEO. It provides advice, usually as written reports, to council to assist decision making. It is also responsible for implementing council decisions and provision of services.

WHAT MAKES LOCAL GOVERNMENT UNIQUE?

At the state and federal levels of government, there are formal structures that govern the roles and relationships of parliamentarians. There is a head of government and cabinet of ministers with executive powers, a formal governing party and opposition, and a speaker in the legislature. These structures help to manage the behaviour and processes at the state and federal levels. For example, the role of the speaker is seen as independent from the government and the opposition, and has the authority and the power to enforce standards of parliamentary behaviour.

By contrast, in local government the mayor is not only the leader of the councillors, but is also responsible for managing both the council meeting and the conduct of councillors, as well as discharging their responsibilities as a councillor. When there is a contentious issue that has divided council opinion, the mayor may be trying to achieve a particular outcome while managing the meeting processes in a way that maximises the opportunity for everyone to participate and be engaged. In these situations, the mayor may be seen to have conflicting objectives. And this has the potential to undermine the mayor's authority and expected impartiality.

Members of parliament at the state and federal levels also have a range of administrative supports and services that are not available to councillors in local government who instead must rely on the goodwill of the council administration. This can lead to misunderstandings between councillors and council officers about appropriate roles and relationships and acceptable good conduct.

This lack of supporting structures and services places unique pressures on councillors and the administration and

has considerable implications for the practice of good governance in local government.

FUNCTIONS OF LOCAL GOVERNMENT

Under the *Local Government Act 1989*, the function of local government is very broad. Section 1 of the Act and Section 3A of the Act state that local government's purpose is '...the peace, order and good governance...' of their municipal district.

In practice, this means that individual councils can determine what they need to do to ensure "...the peace, order and good governance..." of their municipalities. Essentially each council makes its own decisions based on its collective beliefs, the advice it receives, various financial considerations, legislative powers and so on.

If a council restricts its activities to 'roads, rates and rubbish' and its various statutory obligations, it's the result of a series of political decisions rather than a legal determination which is based on the Act. And whatever decisions a council makes in this regard are ultimately reflected in the Council Plan and other key strategic documents.

WHAT DOES LOCAL GOVERNMENT DO?

Councils achieve their goals and fulfil their functions in various ways:

Planning & monitoring

Local governments set the overall direction for their municipalities through long-term planning. Examples include council plans, financial plans, municipal strategic statements and other strategic plans. Setting the vision, and then ensuring that it is achieved, is one of the most important roles of local government.

Service delivery

Local government is responsible for managing and delivering a range of quality services to their communities, such as public health and recreational facilities, local road maintenance, and public libraries.

Lawmaking & enforcement

Local governments legislate and make decisions in areas over which they have legislative authority. Local laws are not allowed to replicate or be inconsistent with state and federal laws or the operative planning scheme.

The laws made by local governments are called local laws and cover issues such as the activities permitted on public land, animal management, and use of infrastructure.

Local governments are also responsible for enforcing local laws and other legislation over which they have authority.

Policy development

The activities of local governments are guided by policies. Developing and implementing these policies are key functions.

Representation

Councils often represent their local community on matters of concern to those constituents.

Advocacy

Local governments have a role in advocating on behalf of their constituencies to state and federal levels of government, statutory authorities and other sectors.

GOVERNANCE & ADVOCACY

Councils and councillors have an important role advocating on a broad range of issues on behalf of their communities.

WHO IS OFFICIALLY RESPONSIBLE FOR ADVOCACY?

An important good governance issue relating to advocacy is that the responsibility and accountability for advocacy needs to be clear.

In its formal decision-making role, council can officially advocate to external bodies or levels of government on behalf of the community and municipality. Public statements are usually made by the mayor or the Chief Executive Officer (CEO), although some councils have internal protocols which empower particular councillors to issue statements on matters within their portfolios or allow individual councillors to advocate on issues which affect their wards.

One of the roles of individual councillors as representatives is to advocate to council on behalf of their constituents. This is legitimate, as long as it's done within the framework of good governance in terms of language, using appropriate forums and focussing on issues rather than personalities.

For more information about the differing roles of councils, councillors and the CEO see Roles and relationships.

WHAT DOES 'COMMUNITY' MEAN?

Community is a term frequently used in local government that means different things to different people.

Sometimes it will mean everyone who lives, works or is involved in some sort of activity in a municipality. In other words, a homogenous entity which has single interest, need or demand. At other times, it will mean separate smaller groups which have specific interests that may compete with others in the municipality.

WHAT DOES THE ACT SAY?

The Local Government Act 1989, section 1A (4), defines 'local community' as those who live in the municipal district, people and bodies who are ratepayers (in the municipal district), and people and bodies who conduct activities in the municipal district. This really means that the 'local community' is in fact a large number of communities which includes:

- **Residents**
includes both landowners and tenants
- **Ratepayers**
includes owner-occupiers, investors and businesses – the latter two may or may not live in the municipal district
- **People and bodies who conduct activities**
includes people who come to the municipality for work, tourism, leisure or for other reasons.

All of these groups are made up of smaller groups. The business community for example includes large business owners, small business people, farmers, manufacturers, retailers and those in the services industries. Often such diverse groups do not share the same aspirations, goals or interests.

Community can also mean future generations as their interests should also be accommodated in decisions.

CHALLENGES FOR LOCAL GOVERNMENT

One of the challenges for all levels of government is how to ensure that different, and often competing, interests are recognised, addressed and responded to. This is particularly relevant for local government which regards itself as being closest to 'the community'.

When a councillor says that 'the community wants a particular outcome', the implication is that the outcome is universally supported and therefore should be implemented. In fact, it is likely that one or more of the many sub-communities which make up a 'local community' support the outcome. This, of course, should be taken into account in the decision-making process.

ROLES & RELATIONSHIPS

Creating successful working relationships and fostering a sophisticated understanding of role differences are critical to good governance.

In this section, you'll find out why roles and relationships are so important to good governance.

ROLES IN LOCAL GOVERNMENT

The mayor, council, councillors, Chief Executive Officer and administration all play an important role in the successful operation of a local government. Having a good understanding of these roles contributes significantly to good governance.

This section looks at the purpose of these roles in local government, how each relates to and interacts with other roles and what the key responsibilities are.

ROLE OF THE MAYOR

The mayor is the leader of the council and has a number of roles which are both legislative and functional. The legislative requirements are outlined in Section 73 of the Local Government Act 1989.

The Act states that the mayor not only takes precedence at all municipal proceedings within the municipality but must also take the chair at all meetings of the council at which he or she is present.

The mayor's role, however, extends well beyond officiating at council meetings or other municipal proceedings. Additional important roles are providing leadership, promoting positive relationships, and modelling good governance.

FUNCTIONAL POWERS OF THE MAYOR

Apart from the roles stated in the legislation, the mayor is usually the council spokesperson and has a significant ceremonial role at particular events, including citizenship ceremonies.

The mayor is also an important community leader and is often the spokesperson for the community on economic issues (such as commenting on the impact of jobs lost or gained in the municipality) or when the community is put under stress (such as disaster management and socio-economic issues).

The mayor's leadership role is different to that of a premier or prime minister. Because there is no formal government or opposition within the council, the mayor is not the formal leader of a majority party within the parliament. For more information about the structure of local government see [What is local government?](#)

While the mayor has been elected by at least a majority vote, the position becomes the leader of all the councillors whether they supported an individual or not. What this means is that the mayor has responsibilities towards, and is accountable to, all councillors. And the mayor's leadership style should reflect this.

KEY GOVERNANCE ROLES

Chairing council meetings

The way in which the mayor chairs council meetings makes a significant contribution to good governance. A well-run meeting that is inclusive and has high standards of governance relies on the mayor's approach to being chair. Mayors should have a good knowledge of meeting procedures and their council's meetings local law.

Effective chairing also ensures that all councillors have the opportunity to be heard. While not every councillor can get his or her way on an issue, they are more likely to accept a decision if they feel that they have been included in the process. More often than not, this means that even controversial and difficult decisions are more 'stickable'.

If the mayor takes sides in a council meeting and actively suppresses minority views, this will give dissenters the ammunition not only to attack the outcome, but also the process. The mayor should ensure that all councillors have had the opportunity to express their views, even if their proposals are defeated.

Group facilitation concepts such as participation, communication, involvement, consensus, mutual respect and listening are all important in promoting the success of the councillor group.

Promoting good relationships

Good relationships are the glue for good governance. Councillors particularly rely on the cooperation and support of colleagues and the administration to achieve their goals. This cooperation is based on good relationships, and an understanding and acceptance of each role.

The mayor is in an ideal position to foster positive relationships between the various elements of local government

by setting a good example. This includes relationships between the mayor and councillors, council and the administration, and the mayor and Chief Executive Officer.

Managing and modelling good conduct

The mayor also has considerable influence in establishing standards of good governance behaviour and ethics.

As the leader of council, the mayor has an important formal role to play in promoting good conduct and managing poor conduct. In some Victorian local government councillor codes of conduct, the mayor is central to the dispute resolution process. In those cases, the mayor must oversee the internal processes which deal with any alleged misbehaviour, as well as be involved in recommending referrals to external bodies when necessary.

It is critical that the mayor's role in these proceedings is characterised by fairness, an appreciation of natural justice, and the awareness of being the leader of all councillors, not just those who are supporters.

All these roles require the mayor to have great skills and experience. As such, the mayor's position should go to the councillor best suited to the role. It should not be a reward for long service or the result of 'deals' between councillors (for example, 'I'll support you this year, if you support me next year...') or factional manoeuvring.

DEPUTY MAYOR

The *Local Government Act* does not deal with the election of a deputy mayor. Accordingly, councils may choose to appoint a deputy mayor if they believe this will assist their governance. The Act does not prescribe a role or permit a level of remuneration over and above that available to councillors.

For councils that have a deputy mayor, the position is in name only. Unlike the roles of deputy premier or prime minister, a deputy mayor is not able to automatically step into the role of mayor if this becomes necessary. An acting mayor must be appointed when the role is required and this does not have to be the deputy mayor.

There are arguments for and against having a deputy mayor and each council must make its own decision.

ROLE OF COUNCIL

The council consists of democratically elected members. Council's role is to ensure '...the peace, order and good governance...' of its municipalities.

This broadly covers a range of legislative and functional activities including strategic planning, advocacy, representation, policy development and law making. Good governance underpins all of these activities.

WHAT DOES THE ACT SAY?

Both the council functions (section 3E) and council powers (section 3F) are set out in the *Local Government Act 1989*. When undertaking the functions described in the Act, councils:

- must make decisions on matters affecting their municipality and community
- should delegate some decisions to committees or officers and monitor how these are exercised
- should oversee the performance of the administration and the delivery of services and programs.

Councils also have responsibilities under other legislation such as the *Planning and Environment Act 1987*, the *Road Management Act 2004* and the *Equal Opportunity Act 2010*. These acts are listed on the useful links page on this website.

Council decisions can only be made by a majority vote in the council meeting.

COUNCIL'S ROLE AND GOOD GOVERNANCE

The approach that council takes to fulfilling its role is important for good governance. Its focus should be high level – strategic and policy oriented, rather than operational. For example, council should set the policies and priorities for road maintenance rather than spend time on discussing what materials should be used on a specific road.

At any given time, councillors need to understand which function their council is performing. This will change depending on whether council is setting the vision, developing policy, preparing the budget or managing the Chief Executive Officer's performance. See Role of councillors for more information.

Each of these functions requires different skills and different forms of leadership. Recognising and articulating this can help council in various ways. It can ensure that council has the appropriate skills and support readily available. It may help to increase the confidence of both the council and its administration, as well as reduce misunderstandings.

ROLE OF COUNCIL AND THE 'BIG' STRATEGIC PLANS

Council's main responsibilities are to set the overall directions and goals for the municipality and then monitor their implementation and success. The tools for setting these directions and goals are the major strategic plans.

These include the council plan, the strategic resources plan, the municipal strategic statement and the municipal public health plan. From a good governance perspective, the most important of these are the council plan and the Strategic Resource Plan.

The council plan and the Strategic Resource Plan

The council plan and the Strategic Resource Plan are four-year plans which set the objectives and strategies of the council and calculate how these may be resourced. Some councils also incorporate annual plans or action plans in their council plan. These annual plans and the annual budget state what will be done during the year to achieve the council plan, what the performance targets and measures will be, and how the activities are going to be financed.

Good governance means that council must 'own' these plans by being involved in their development – from start to finish – and be committed to the outcomes. Merely rubber-stamping a draft put in front of it by an administration will not result in ownership. Plans that are 'owned' by council are more likely to be adhered to and will also better accommodate issues and ideas that can arise from time to time during the year, and which warrant consideration.

Strategic planning challenges for council

Council planning is a particular challenge for democratic local government. Councils are a combination of individuals who have been elected on the basis of promises they made to their constituents. Councillors will therefore try to implement the promises which they believe have been mandated.

Finding a way to deal with perceived individual mandates, managing community input, responding to issues which come up from time to time and ensuring continuity and stability is a peculiar challenge for successful council planning. However, there is no magic formula for success other than following a process which ensures that everyone has a chance to be heard.

Council planning and local government elections

While an election may result in the introduction of new councillors, the council as a legal entity will continue unchanged.

The strategic plans, policies and budgets that were put in place by the previous councillors (as council) will continue until they are amended by the new councillors (as council). Just because new councillors may have different ideas from their predecessors doesn't mean that the policies of the previous council and their associated strategies will change. And the administration will also continue to implement them until they are amended by council resolution.

Sometimes new councillors will mistakenly believe that because the administration does not immediately change policies to respond to the ideas of the new councillors, it is not sympathetic to their policy ideas. Good induction processes and advice from the administration can help to minimise any misunderstandings. Giving new councillors the opportunity to discuss their policy ideas can also help address their concerns.

Good strategic planning processes contribute to good governance

Open and inclusive processes are critical for good governance. These will help to ensure that:

- councillors understand what policies are ongoing and where flexibility exists
- councillors' issues are discussed and considered by council
- appropriate exchanges between elected members and the administration increase knowledge and understanding
- community input is considered early in the process
- councillors understand the what is possible from a financial perspective.

When good governance processes are followed, councillors, administrations and the community are more likely to 'own' council decisions.

ROLE OF COUNCILLORS

Councillors have a number of different roles that must incorporate the interests of the whole municipality and those of their constituents. They play a vital leadership role in creating and implementing their community's vision, strategic direction and values.

WHAT DOES THE ACT SAY?

While the Local Government Act 1989 doesn't specify roles for individual councillors, it does state that they must adhere to particular standards of good conduct. It also states that their legal authority as councillors only exists when they are participating, as a member of the council, in a formal council meeting. Significantly, outside of the council meeting individual councillors have no such authority.

WHAT DOES A COUNCILLOR DO?

As part of the council, councillors guide the development of local policies, set service standards and priorities, and monitor the performance of the organisation.

Councillors' responsibilities include:

- strategic planning for the whole municipality and a sustainable future
- determining the financial strategy and allocating resources via the council budget
- representing ratepayers and residents
- advocating on a broad range of issues
- liaising and coordinating with other levels of government, non-government, community groups and the private sector
- overseeing the management of community assets
- facilitating community participation
- managing the relationship with, and employment of, the chief executive officer.

COUNCILLOR ACCOUNTABILITY AND REPRESENTATION

Councillors are accountable to both the community and to their own constituents.

As members of council, where the focus is necessarily on governing in the best interests of the entire municipality, councillors are accountable in multiple ways. These include acting in their roles as legislators, policy makers, strategists and financial overseers (see financial governance).

Councillors also have to represent their constituents on a wide range of issues. In doing so, councillors must obey the law, including the principle of natural justice. Councillors must also deal with a range of requests and complaints from their constituents which they need to find ways to deal with, preferably in conjunction with the administration.

Both these types of accountability and need to be accommodated.

OTHER CHALLENGES FOR COUNCILLORS

Another challenging aspect of a councillor's role can occur when council is the Responsible Authority under the *Planning and Environment Act 1987*. In this instance council, and therefore councillors, are in a quasi-judicial role making planning permit decisions based on the interpretation of the relevant legislation. This not only increases pressure on councillors but can also be difficult to navigate.

For example, if council has to decide on a particular statutory planning matter, a councillor may need to meet with constituents who are concerned about the application (representative). They may also have to chair a consultation

meeting about the application (mediator) and then sit as a member of the Responsible Authority which will make a decision according to the details of the application and whether it meets the requirements of the council's planning scheme (quasi-judicial/administrative).

Communities can place strong pressures on councillors to act in their representative roles – that is, to represent their constituents' views in the decision-making process. Mediation has its own set of pressures, requirements and responsibilities, as does the administrative role as a member of the Responsible Authority. For more information see Planning & councillor roles.

THE GOOD GOVERNANCE APPROACH

Accommodating all of these complex, and at times competing, roles is ongoing and constant. So it is important, from a good governance perspective, that these pressures are recognised and managed.

It can be helpful for councillors to be aware of and very clear about the particular role they are undertaking at any point in time – for the councillors, the administration and the community. For example, when dealing with a planning decision councillors should overtly state when they are moving from a representative role (consulting over a planning issue) to a quasi-judicial one (such as being part of a determination as the Responsible Authority).

This approach not only helps to foster productive relationships, but can also reduce misunderstandings and frustration for everyone.

ROLE OF THE CHIEF EXECUTIVE OFFICER

The Chief Executive Officer has a significant role in promoting good democratic governance. This is mainly seen in the way the Chief Executive Officer helps the council and councillors govern effectively.

THE CEO'S RESPONSIBILITIES

The Chief Executive Officer (CEO) has a number of responsibilities which are set out in Section 94 A of the Local Government Act 1989. These include establishing and maintaining an appropriate organisational structure for the council, ensuring that council decisions are implemented promptly, overseeing the daily management of council operations following the council plan, developing a code of conduct for council staff and providing timely advice to the council. The CEO is also the main person to which council delegates powers.

THE CEO AND GOOD GOVERNANCE

The CEO's most important role is to promote a positive culture of good governance in the council administration. When the CEO is committed to the principles of democratic governance, council officers are far more likely to support good governance.

The CEO must help the administration understand the critical role of councillors and its council – councillors sit at the top of the local government structure and council is the legitimate decision-maker. If the CEO reinforces this idea, it will help council officers recognise that they are operating within the context of democratic governance.

Councillors should not be seen as simply an addition or, for that matter, an impediment to efficiency. Instead the administration needs to acknowledge that councillors have been elected by the community to represent its vision and goals.

How does the CEO promote good governance?

The CEO can support a culture of good democratic governance in various ways. These include:

- regularly providing councillors with the information they need to fulfil their roles
- ensuring that advice from the administration considers the political context which doesn't mean playing politics but recognises that advice can have political implications
- ensuring that council officers and councillors understand the structure of local government and their roles in it
- providing support to the mayor and councillors when dealing with councillor conduct issues
- helping ensure that all councillors have equal access to information and resources
- providing appropriate support for good decision-making processes
- developing processes for the major strategic planning exercises which ensure councillors have plenty of opportunities for input
- Recognising that councillors have a 'representation' role and that they will be advocating for individuals or communities at different times to ensure that the appropriate and legitimate support and structures are in place (this does not mean assisting councillors in any way with electioneering).

ROLE OF THE COUNCIL ADMINISTRATION

The primary role of the administration is to support the council. This includes implementing council's goals and strategies, managing the delivery of municipal services, and providing advice and support. Unlike other areas of local government, the role of the council administration is not set out in the Local Government Act 1989.

The administration can enhance good governance by recognising and supporting the governance role of the council.

HOW DOES THE ADMINISTRATION SUPPORT COUNCILLORS?

Councillors rely on the administration (which is the equivalent of the state and federal public service) for support, advice and assistance with the day-to-day activities of council. They also need help dealing with concerns raised by constituents.

This is quite different to what happens at state and federal levels where support structures for parliamentarians and the government are separated. On the one hand electoral officers and other staff deal with specific constituent issues. On the other, the public service manages the activities of governments as a whole, regardless of political affiliations. Find out more about local government structure.

By contrast, at the local government level, the main role of the administration is to support the council as a whole, however there will be demands on council officers to provide councillors with support relating to their constituents. For example, a resident may contact their councillor about problems with the road outside their property. The councillor will then turn to the administration for help resolving this matter.

It is important for the administration to recognise that elected members are not only accountable to the municipality as a whole, but also to their constituents. For this reason councillors often need the support to manage the various community pressures which are a normal part of council life.

HOW DOES THE ADMINISTRATION SUPPORT GOOD GOVERNANCE?

Providing advice and support on consultation and engagement, establishing robust systems that refer complaints and queries to the relevant area, and maintaining responsive services and processes all help to further good governance.

It is also important that council officers are able to help individual councillors where appropriate, without becoming involved in political activity or acting outside approved practices. Councillors for their part need to understand that the administration is fundamentally the public service of local government and is not there to promote the re-election prospects of individual councillors.

Some council officers also have statutory obligations that don't fall under the Local Government Act. Legislation such as the Public Health and Wellbeing Act 2008 and the Building Act 1993 mean that certain activities carried out by the administration may not be directly accountable to council and are therefore not necessarily subject to overall council direction.

RELATIONSHIPS IN LOCAL GOVERNMENT

Relationships are key to good governance in local government. This is due to the lack of governance structures found at the state and federal levels such as the existence of a formal governing party, an opposition, a cabinet of ministers and a speaker to manage the legislature.

Good relationships, which are based on understanding and agreements around roles, help the different elements of a local government to work together effectively.

This section features the most important local government relationships which help to promote good governance practices.

MAYOR & COUNCILLOR RELATIONSHIP

The relationship between the mayor and councillors is very important because good leadership and good relationships contribute to effective participation of councillors and good governance.

As the leader of the council and of all councillors, the mayor's role is particularly important in facilitating good relationships.

HOW DOES THE MAYOR FACILITATE GOOD RELATIONSHIPS?

The mayor requires great skill and expertise to encourage all the councillors to work together in the interests of the municipality as a whole, to provide guidance and support to individual councillors, and to assist in resolving disputes.

Leading the councillors

The mayor is the leader of all councillors, regardless of whether they supported the mayoralty candidate or not. The mayor must encourage all the councillors to work together as a cohesive governing body.

Councillors must, in turn, show respect for the mayor despite differences of opinion or political allegiances. The mayor's success in leading council depends greatly on being empowered by the councillor group as the position of mayor has no statutory authority over the rest of the councillors (except in limited matters in the cities of Melbourne and Greater Geelong).

Helping the councillor group work together

The mayor plays a crucial role encouraging councillors to express their opinions both within and outside the council chamber. If councillors feel that their points of view are being heard, acknowledged and respected, they are more inclined to accept decisions that they don't agree with. They will also remain active and involved members of the group.

In this role, the mayor can manage potential conflict and differing opinions in a constructive way. Because councillors reflect the complex and diverse opinions of the community, it's important that this be managed in a way which benefits the broader interests of the municipality.

Helping individual councillors

The mayor may also be a first point of contact for councillors who have particular goals they want to achieve on behalf of their constituents. This is particularly true for new councillors. One aspect of developing council and annual plans involves the need to bring together many diverse and sometimes conflicting goals.

The mayor can considerably assist this process by providing advice and support to individual councillors, and by facilitating communication and negotiations between councillors themselves and councillors and the administration. This ultimately helps councillors to represent the interests of their constituents and do their best to deliver on their election promises.

Helping resolve disputes

The mayor is often the first point of contact when a dispute between councillors occurs. In some Victorian councillor codes of conduct, the mayor is responsible for overseeing dispute resolution procedures. These procedures, and their implementation, should be characterised by fairness, natural justice and lack of bias.

The mayor can also help to determine whether an issue should be viewed as a dispute (that is, a personal difference between councillors) or an allegation of a breach of the council's code of conduct. The former requires a mediation process. The latter may require an investigation of the alleged breach before looking at how

the breach may be remedied. Helping to distinguish between the two types of dispute can clarify what should be done. For more information see Codes of conduct.

MAYOR & CHIEF EXECUTIVE OFFICER RELATIONSHIP

When the mayor and Chief Executive Officer have a good working relationship, it helps to promote good understanding and communication between the elected members and the administration. And this, in turn, promotes good governance.

Good relationships help the administration and councillors to anticipate, identify and resolve issues, contribute to good planning and create a positive organisational culture.

THE IMPORTANCE OF BUILDING TRUST

Trust is fundamental to the relationship between the mayor and Chief Executive Officer (CEO). It is not necessarily automatic and must be built using communication, understanding of each other's roles and open sharing of information.

Establishing good communication

Both the mayor and CEO should ideally share information that helps each other to do their jobs. Through discussion, they should gain a clear understanding about which kind of information is important, as well as what each needs to know from the other.

Setting up regular meetings, in addition to those which occur around specific issues or when problems arise, will enhance planning and communication. Following the 'no surprises' principle is also a good idea. Because the mayor and CEO are in a position to brief each other, neither should be surprised by information or issues that are raised in other forums.

Clarifying each other's roles

Both the mayor and CEO need to understand and respect the other's role. The mayor may spend a considerable length of time in the council offices each week so it's important for both to have a clear understanding of their different roles. And this should be an ongoing discussion.

The power differential between each role needs to be acknowledged. While the mayor has status and is the leader of the council and councillors, the position has no direct authority outside the council chamber. The CEO, on the other hand, has direct authority under Section 94 (A) of the Local Government Act 1989. It can be frustrating for the mayor and councillors that they can't just 'fix' some problems that come to their attention, while the CEO has this capacity.

A good relationship between the two roles will recognise that the mayor's position is one of 'first among equals' – that is, the mayor is one of the democratically elected councillors who has slightly more responsibility or power during their term, but once the term is over will become one of those equals again. While building the relationship with the new mayor, the CEO is in a position to support the former mayor in their transition back to the role of councillor.

Keeping an outward focus

The mayor and CEO should ensure that their relationship is outwardly, rather than inwardly, focussed. Together they can promote good communication and information sharing, not only between each other, but also to and between the council and the administration. The focus should be to keep councillors and the administration in the loop rather than hanging on to information and using it to strengthen their own positions.

COUNCILLOR & COUNCILLOR RELATIONSHIP

Relationships between councillors are ideally characterised by mutual respect and an acknowledgement that they are all doing complex and important work.

Because of the nature of a councillor's role, they all have individual agendas and issues on which they would like to pursue during their term. Despite their differences of opinion, councillors need to work together as members of the council to achieve the best outcomes for the municipality.

Good governance and the capacity for councillors to get things done depend on the quality of the relationships between them.

THE COUNCIL STRUCTURE REQUIRES GOOD RELATIONSHIPS

All councillors have their individual agendas and issues on which they wish to make an impact. They cannot rely on an institutionalised majority (that is the government) to get their issues up. So they need to be able to persuade sufficient numbers of their colleagues to support them and this depends significantly on having good ongoing relationships with each other.

The structure of council – consisting of a relatively small group of independently elected councillors – is an environment in which good relationships, mutual respect and a constructive appreciation of differences are required for good decision making and the capacity of councillors to deliver on their various election platforms.

MANAGING CONFLICT WELL

Given the way local government operates, it is inevitable that there will sometimes be conflict. However, from a good governance perspective, it's the way that conflict is addressed that's significant. The role of the mayor is particularly important during these times, as is the ability for councillors to appreciate the dynamics that are at play. Good, robust debate is part of local government, but the focus should always be on the issues, not the personalities.

When it comes to behaviour in the council chamber, councillors should model good constructive relationships and show personal respect for one another at all times. Understanding the key elements of good conduct and having solid processes in place to manage behaviour is also important for good governance.

COUNCILLORS & CHIEF EXECUTIVE OFFICER RELATIONSHIP

The relationship between the Chief Executive Officer and councillors includes formal roles and day-to-day working interactions. Both are important to good governance.

THE EMPLOYER-EMPLOYEE RELATIONSHIP

On the one hand, the Chief Executive Officer (CEO) is formally accountable to the council as its employee. Councillors, sitting as council, are therefore responsible for both employing the CEO and managing performance. On the other hand, the CEO is a source of valuable support and assistance to councillors, particularly when there are issues in their wards.

While the formal relationship is very important, it is equally important for councillors and the CEO to create positive working relationships. They are generally in regular contact to share information, discuss issues and manage problems. As with the relationship between the mayor and CEO, there needs to be trust between both. And this trust should be based on good communication and an understanding of each others' roles and functions.

MANAGING THE RELATIONSHIP

Employment

The council is responsible for employing and formally managing the performance of the CEO. As such, the CEO is formally accountable to council and therefore to the councillors.

During their terms, it is very likely that councils will either have to appoint a CEO or make a decision about renewing the CEO's contract. And all councils will have to manage their CEO's performance. This gives councillors considerable power and can put substantial pressure on those who haven't necessarily had experience managing complex and high-level employment relationships.

Successful employment relationships are based on good recruitment processes, shared expectations and good performance management processes. If these have been well articulated and managed, the decision to renew a contract should be straightforward.

All relationships and particularly those between the CEO and councillors will be tested when a new council is elected and has to work with a CEO appointed by a previous council. There is sometimes a temptation for a council to want to appoint its own CEO. It shouldn't matter, however, which council made the appointment. Good communication and performance management will ensure the CEO has a clear idea of councillors' expectations and how they can and should be met. And that then is the CEO's responsibility.

Performance management

The CEO is the only officer directly accountable to council and it is the only position that is appointed by councillors. As such, councillors are accountable for setting the CEO's performance plan and monitoring performance. Most commonly this focuses on the CEO's annual performance assessment.

In the past, problems have occurred when expectations have not been clearly articulated at the beginning of a CEO's term. When this happens councillors may then feel that the CEO has not delivered what was expected and this can in turn lead to problems in the relationship.

As much time should be put into setting goals and expectations of the CEO as is usually put into the annual review of performance. If expectations are communicated and agreed, they're more likely to be met.

Ongoing communication and feedback between the CEO and the council will help to ensure these problems don't occur.

COUNCIL & ADMINISTRATION RELATIONSHIP

This is one of the most complex relationships in local government, and is critical to achieving good governance.

A number of factors will contribute to a good relationship between the council and the administration. These include goodwill, understanding of roles, communication, protocols and a good understanding of legislative requirements.

FACTORS CONTRIBUTING TO A GOOD RELATIONSHIP

Commitment and goodwill leads to better relationships

Both the administration and the council need to believe that it's only possible to become a high-achieving municipality with a 'good council' and a 'good administration'.

Because the relationship between council and the administration is complex and fragile, it requires commitment from both sides to make it work. It also requires the tenacity and will to work through the more complex and difficult issues, as well as the many smaller or even trivial matters which can and do arise.

Understanding roles is critical for good governance

The elected body and the administration must have a clear and sophisticated understanding of their different roles, and the fact that these operate within a hierarchy.

The administration is accountable to the CEO, who in turn, is accountable to the council. While the functions of the administration, which should be based on mutual respect and cooperation, complement the work of the council, it is not a partnership of equals.

A good understanding of the different roles in local government will contribute to good governance. The council's role is firstly to develop the vision and then come up with the strategies and policies to achieve it.

The administration's role is to advise the council, implement council decisions and to oversee service delivery.

It helps if the administration recognises the complex political environments in which elected members operate and acknowledge that the whole system is based on democratic governance. Councillors similarly need to understand that it is a highly complex task to prepare information and provide quality advice on a very wide range of issues.

Understanding roles helps local government function better

It is the natural inclination for both the council and the administration to fill any gaps which the other side leaves in the performance of its functions. This can lead to role confusion and stress. For example, if councillors don't believe the administration has a good system in place for recording and addressing residents' complaints, they will raise residents' complaints at council meetings rather than focussing on more strategic matters. If the administration believes there is an inadequate policy framework to deal with an issue, it will try to create one by delivering services and addressing issues in a particular way. Neither approach is ideal. It is far more desirable for each to perform their functions properly in the first place.

While the elected body and the administration have different roles, this doesn't mean that they don't have a legitimate interest in each other's role. The elected body will be interested in the organisational structure and how effectively it can implement the council's policies. While the Local Government Act 1989 clearly states that the organisational structure is the CEO's responsibility, if the CEO does not properly consult the elected body before implementing or changing a structure, the council is likely to find some way of expressing its opinions. And most of these will not promote good governance.

Similarly, if the administration is not properly involved in policy or strategy development (for example, if proposed new policies are tabled without notice by council at council meetings), the administration will look for ways to have an impact. Apart from the new policies not having the benefit of professional input from the administration, there is

likely to be confusion and delays in implementing the policy.

Open communication will enhance good governance

Finding ways to ensure that both the administration and the council are able to legitimately discuss issues, and seek information from each other is important for good governance.

There needs to be ongoing discussion between both areas about the functions of local government and how it works. This is particularly important for the administration's senior management.

When the administration and councillors develop a shared understanding of how their roles work both in local government as a whole and in the individual municipality, this will also enhance good governance.

Being clear about non-statutory roles

Some councils give individual councillors specific responsibilities for projects, portfolios or issues. This can help to facilitate good communication, positive relationships and understanding between the elected members and the administration. However, if these arrangements are in place, they do not in any way lessen the accountability of councillors to inform themselves about the issues on which they are making decisions. For example, having a portfolio councillor for finance does not lessen the accountability of councillors to satisfy themselves that the financial reports are in order before voting to accept them.

These non-statutory roles can contribute to planning and advisory processes, but they also don't replace the formal advice processes, nor in any way impact on the decision-making authority of council. In local government individual councillors don't have executive authority. The council is also unable to delegate any decision-making powers to individual councillors.

Roles such as these should be based on discussion and consultation between the elected members and the administration and should also be documented in the form of protocols or position descriptions.

Managing contact between councillors and council officers

Many councils debate whether individual councillors and staff should have direct contact or whether all contact should be through the CEO and directors. Any decision should take the following into account.

Councillors need to understand that:

- Accountable advice needs to go through an organisational process which usually involves approval by a director or the CEO. Speaking directly to lower-level staff may result in councillors not being fully informed or receiving advice that hasn't been formally endorsed by the administration.
- Staff are not accountable to them individually, and that it is illegal in most situations for a councillor to try and direct council staff.
- They are classified as employers under the *Occupational Health and Safety Act 2004* and, as such, can be liable for staff Workcover claims.

Council officers need to understand that:

- They are not accountable to individual councillors and are not required to take direction from them. They are accountable to the whole council, through the management structure.
- They should not provide advice to councillors unless it has been approved by the senior management or CEO.

Some councils can be successful in channelling all communications between council and the administration through the CEO or directors. However this can be impractical and can lead to resentment and misunderstandings. Councillors also generally don't like to be told that they can't talk to staff.

An alternative approach is to develop appropriate protocols to guide interactions and communication can help both sides understand how they can assist each other and where there may be potential problems. Providing training and support for staff how to manage direct communication with councillors is a more positive approach than simply telling councillors that they aren't allowed to talk to certain people.

DECISION MAKING

Decision making is an important part of local government. Most decisions are made by councillors at formal council meetings, although certain decisions can be delegated to other areas.

Councillors are elected to make decisions on behalf of their communities. As such, they have a responsibility to represent the interests of their constituents, as well as those of the entire community.

This section covers the general principles underpinning good decision-making, looks in more detail at the local government decision-making process and briefly discusses some of the tools available to help councillors make decisions.

HOW DECISIONS ARE MADE

Council decisions are made in several ways, but the central decision-making process happens in council meetings. With council approval, certain decisions can also be made under delegation by council officers or by special committees.

The Local Government Act 1989 states that a council decision may only be made at a properly constituted council meeting or under council delegation. Neither the mayor nor individual councillors have the legal authority to act or make decisions on behalf of the council.

DECISIONS AT COUNCIL MEETINGS

Council decisions are made by the votes of the majority of councillors present at a meeting. Most of the requirements for council meetings are set out in the Act or in local laws.

Meetings are open to the public unless they are held *in camera* for specific reasons which are outlined in Section 89 (2) of the Act.

DECISIONS BY DELEGATION

As it is impractical for every issue to go to a full council meeting, councils delegate many matters to special committees and council officers. This allows a council to use its formal meetings to deal with the most important and strategic decisions.

The council cannot direct its delegate to make a decision in a particular way. However, if the council considers that a delegated decision requires higher-level consideration it can 'call-in' the decision. When this happens, the council makes the decision instead of the delegate. Councils usually have formal procedures for this.

Special committees

Special committees can include any combination of councillors, council staff and other people. Some committees with significant responsibilities are comprised partly or entirely of councillors (for example, planning committees). Other committees, which are comprised largely of community members, have lower-level responsibilities such as the management of community halls.

The decision-making powers of a special committee are established under Section 86 of the Local Government Act. The committee must also operate under other provisions of the Act, including conflict of interest.

Council officers

Councils delegate many lower-level and operational decisions to council officers. This is mostly done by delegating powers to the Chief Executive officer who then passes the delegation on to the appropriate officer. These delegations are usually subject to the policies and procedures adopted by the council.

PRINCIPLES GUIDING DECISION MAKING

As part of the decision-making process, elected representatives need to consider the interests of their constituents, as well as those of the entire community. At the same time, they also need to ensure that decisions are made in an equitable, impartial and legal way.

This section looks at three important principles which underpin local government decision making.

GETTING THE BALANCE RIGHT

Accommodating the interests of constituent groups with those of the whole community is an important and challenging issue for local government generally, and for councillors specifically.

One of the complexities of the role of councillors is to legitimately represent the interests of the people who elected them as well as operate in the interests of the whole community.

Good governance processes allow councillors to put forward their constituents' issues for formal consideration by council. They also ensure that councillors represent the interests of the whole municipality.

BALANCING COMMUNITY AND MUNICIPAL INTERESTS

Under Section 76B (b) of the Local Government Act 1989, a councillor is required to '...impartially exercise his or her responsibilities in the interests of the local community'. While this may be self-evident, in practice it's far more complex.

The capacity of individual councillors to get particular local issues considered seriously by council is sometimes regarded by constituents as a measure of how effective that councillor is. Council processes should ideally include opportunities for elected members to raise issues. And this should be supported by the mayor.

Councillors should treat the interests of groups in the community, and the people who advocate those views, with respect. As democratically elected members, councillors must represent their constituents' views regardless of their personal opinions or whether they're likely to attract votes. This can sometimes mean that a councillor will convey the views of a group of constituents to the council, even when he or she does not support those views.

ROLE OF THE STRATEGIC PLANNING PROCESS

The strategic planning process is intended to bring together council and community interests in a coherent plan for the whole municipality. Ensuring that all councillors have had the opportunity to be involved in the process and voice their views will result in a stronger council plan. The plan will also then be more useful as a tool for setting priorities. For more information about the strategic planning process see Role of council.

Even if councillors are successful in representing their community's issues in the planning process, they won't always be supported by council. When this happens, councillors may have to explain to their constituency that while they supported a particular issue, the council, as the decision-making body, supported another.

Good planning and governance allows for the inevitable diversity of opinion in the municipality. Good governance provides opportunities for councillors to represent the interests of their constituents.

FINANCIAL IMPLICATIONS OF DECISION MAKING

An important factor in decision making is that decisions have to be affordable and financially realistic. Council plans, strategic resource plans and annual budgets are the key tools which determine whether the proposal is both priority and is affordable. See Financial Governance for more information.

COUNCIL POWERS

Council can only make decisions that are within its powers. These are set out in Section 3F (1) of the Local Government Act 1989, as well as in other state and federal legislation.

Under the Act, councils have broad powers to achieve the objectives of local government and perform their functions. This is subject, of course, to any limitations or restrictions imposed by the Local Government Act, or any other relevant act.

SCOPE OF COUNCIL POWERS

Councils can do whatever is reasonably necessary to fulfil the terms of the Act. As long as they don't stray into areas that are the responsibility of other levels of government, they can undertake a wide range of functions for their local community.

For example, while local government has the power to tax its constituents (such as the capacity to raise rates), it cannot levy an income tax (which is a federal power) or another land tax (which is a state power). Councils also are not allowed to take over state powers such as policing, road rules or public transport regulation.

Local government legislation (local laws) is subordinate to state and federal legislation. Any laws made by councils must not replicate, or be inconsistent with, state and federal legislation. See Functions of local government for more information.

When carrying out their functions, councils must also comply with administrative law principles which affect a person's rights or legitimate expectations.

NATURAL JUSTICE

The principle of natural justice, which is fundamental to good governance, should underpin every council decision.

Natural justice is a doctrine which seeks to protect those affected against arbitrary exercise of power by ensuring fair play. It's particularly relevant to decisions which clearly affect individuals' rights, for example planning permit applications.

THE RULES OF NATURAL JUSTICE

There are two fundamental rules for natural justice:

- all sides of an argument should be given a fair opportunity to be heard before a decision is made
- the decision maker must not have predetermined the matter or be perceived as having predetermined the matter.

IMPLICATIONS FOR LOCAL GOVERNMENT

The principles of natural justice have implications for all councillors. Regardless of their political views, councillors must ensure that they consider all the available arguments and information before finally making up their minds on an issue.

Councillors must be able to demonstrate that they are 'capable of being persuaded' by the advice they receive. This doesn't mean, however, that they must follow the advice. Instead they must, at the very least, be able to demonstrate that they have considered it.

Councillors must also adhere to conflict of interest requirements as set out in the *Local Government Act 1989*. This is a legal requirement.

Local Government Victoria's publication, *Ensuring Unbiased Democratic Council Decision Making* is a useful guide.

WHEN IS A PERSONAL OPINION OKAY?

Natural justice shouldn't prevent councillors from having opinions on upcoming matters and stating their views during election campaigns. Having a view on something doesn't mean that a councillor is incapable of delivering on natural justice doctrines. They just need to ensure that they will impartially consider the evidence and advice, which may or may not support their view, during the formal decision-making process.

When councillors give the impression that they will never change their views on an issue regardless of the evidence or advice, they are at severe risk of breaching the natural justice doctrine. In such cases, the council decision is then at risk of being set aside by a court or tribunal.

THE DECISION-MAKING PROCESS

When decision-making processes are not working well, complaints about lack of information, inadequate consultation or rowdy behaviour usually occurs. When this happens, it's worth looking at the whole process to see where problems are and how they can be addressed.

This section looks at each stage of the decision-making process, identifies potential issues and makes suggestions about good governance processes.

STAGE 1: SETTING THE AGENDA

In the first stage of the decision-making process council must determine which issues will be considered during the year or term. While some issues will be considered for statutory reasons, many others end up on the agenda because they are either council policies and priorities or issues that individual councillors have put forward for discussion.

GETTING ISSUES ON THE AGENDA

Using the strategic planning processes

The processes for developing the council plan, annual plan and the annual budget are how councils anticipate the future, set directions and priorities, and determine what will and won't be done.

These processes are one of the main ways that councillors address community needs and their constituents' concerns. This can require significant negotiation and compromise as councillors strive to get decisions implemented on the issues they are most concerned about.

It's important for councils to have good processes for these major strategic exercises. These processes should allow for early input from councillors and provide the time and space for the necessary discussions and negotiations to take place.

Using other processes

From time to time, issues do arise outside of the strategic planning processes. While in some cases, it's quite reasonable to defer these to the following year, there does need to be a way for councillors to get their issues considered outside of the planning timeframe. The mayor and the CEO can play an important role in this regard by providing leadership and advice to councillors. Setting up regular meetings with councillors can be one way to manage this.

Frustration at not being able to get their issues considered can be a key reason for councillor's difficult behaviour or misuse of meeting procedures. Councillors, for example, should not use council meeting agenda items, such as urgent business or notices of motion, to prove to their constituents that they are addressing issues.

STAGE 2: GATHERING INFORMATION

The second stage of the decision-making process involves compiling and preparing information for the councillors. This information will help councillors make an informed decision about each of the issues that have been put forward for consideration.

IMPORTANCE OF THE COUNCIL REPORT

The council report is the way of providing councillors with advice and information. These are prepared by the council administration and should contain relevant data, issues and options which help councillors to consider the matter at hand and make a decision. The report should be well written, clear and concise.

The advice contained in the reports needs to be well researched and accurate. It should provide factual information and include policy, financial and other implications, as well as state which consultative processes have occurred or are planned for the future.

The advice shouldn't be biased or deliberately oriented to the political views of the council officers who are writing the report or the councillors who are reading it. It should nonetheless be mindful of the political environment in which the council is operating and recognise that many council decisions have political implications. See Council & administration relationship for more information on the impact of politics on decision making.

Reports are usually produced by the Chief Executive Officer (CEO), department directors or third-level managers, however the CEO is formally accountable for all advice which goes to council from the administration.

Complex issues often impact on the responsibilities of more than one local government department. When this happens the advice should reflect this. Sometimes the entire senior management team will review significant reports before they are handed to the council.

STRUCTURE OF THE COUNCIL REPORT

While individual local governments should structure their reports to best serve their specific needs, it is useful to include the following elements:

Author

The CEO is ultimately accountable for all reports. When another author is listed, a formal endorsement should be incorporated that acknowledges this accountability.

Purpose

The report will ideally include a statement answering the following questions: What is the purpose of the report? Why is it being put to council?

Policy implications

This section needs to show whether the issues covered and directions proposed are consistent with council policy, as seen in the council plan and individual policies.

Background

This provides information about the background or context of the report and explains why it is being put forward.

Issues

This is where the main content sits and includes the relevant facts and arguments.

Financial and resources implications

Councillors need to be aware of the resource implications of any proposal, including the money, people and equipment that may be needed. The report also needs to outline whether the proposal should be incorporated in the budget.

If not, the report will need to state how the proposal will be financed and whether there are staffing implications. If this proposal is successful, the report will need to consider whether there are any current activities or programs that will be affected.

Sometimes environmental and social implications are also covered in this section.

Internal/external consultation

Decision making should be based on appropriate consultation. This section should outline what consultation which has been undertaken, both outside and inside the council. Consultation within the council should show that all relevant parts of the administration have had the opportunity to provide input into the report.

Options

This section outlines the relevant options and their implications.

Conclusion

This should logically draw conclusions from the arguments which will lead to the proposed recommendations.

Recommendations

The recommendations should clearly and concisely state what council is being asked to decide. Recommendations should be able to be read by councillors, without having to refer to the body of the report.

The first and preferred example below explains why council have not adopted a program, whereas the second asks the reader to read another part of the report:

'Council adopt the proposed weed clearing program as it is financially viable and environmentally sound.'

'Council adopt the proposed weed clearing program for the reasons outlined in Section 4 of this report.'

Recommendations usually form the basis of council meeting minutes. The minutes are the main way that the public is informed about the decision. Minutes that are clear and easy to understand contribute to higher levels of accountability and transparency.

COUNCIL REPORTS AND GOOD GOVERNANCE

The administration should ensure that the report contains professional and 'frank and fearless' advice. The report should not reflect the personal views of those providing or receiving advice, nor try to manipulate councillors' opinions in a particular direction. It should genuinely and impartially evaluate the effectiveness of the proposed recommendations.

Councillors must also not try to influence recommendations in order to further their own aims. Their challenge is to persuade a sufficient number of their fellow councillors to support their ideas, rather than trying to influence council officers to make favourable recommendations. If councillors try to unduly influence council officers they could be in breach of the improper influence clauses of the *Local Government Act*.

CONSULTATION WITH STAKEHOLDERS

Finding out what stakeholders think about a particular issue is an important part of the decision-making process. Understanding the views of stakeholders helps to inform council's decision. This is important for good decision

making for the following reasons:

- when council knows what stakeholders are thinking about an issue, it is better able to consider the consequences and implications of a decision
- if stakeholders feel that their opinions have been heard as part of the process, they're more likely to accept a decision, even when they don't agree with it
- if good processes are followed, unpopular decisions are less vulnerable to ongoing challenges and possible reversal on the grounds of poor process.

Consultation does not detract from the decision-making powers of councillors or their accountability for those decisions, nor does it mean that councils are bound to follow the majority position on an issue. It is also not another name for government by referendum.

ADVISORY COMMITTEES

Another way in which councils can get the information they need is via advisory committees or working groups.

Unlike special committees, an advisory committee doesn't have any formal delegated powers to act on the council's behalf. Advisory committee recommendations or decisions have no legal standing unless they are adopted by the council at a formal council meeting. A council is also not bound to accept the recommendation of an advisory committee.

An advisory committee will often operate under a terms of reference document which sets out the committee's purpose and how it will function. As with special committees, the council retains control over the membership and purpose of the committee.

Advisory committees can help to spread a council's workload. It also gives council the opportunity to recruit particular expertise as well as access community resources and opinions to help guide the decisions.

Short-term advisory committees (which are sometimes called working groups or ad hoc groups) may be created for one particular purpose and will be disbanded when that purpose is achieved.

STAGE 3: FORMING AN OPINION

The third stage of the decision-making process gives councillors the opportunity to form their opinions on the proposals before them. This stage allows them to debate the issues effectively in the council meeting as part of the decision-making process. A key part of this stage is the council briefing.

WHAT ARE COUNCIL BRIEFINGS?

Briefings are information sessions involving councillors and senior officers in the administration. These sessions ensure that councillors are well informed and in the best possible position to debate the issues effectively once they're at a council meeting. Briefings can happen at various stages in the process leading up to the council meeting.

Briefings help councillors determine whether they have enough information and advice to help them form an opinion about the matters in question. These meetings are generally held in private so that councillors are able to openly question council officers about the information they have been given, seek further information and float ideas. For example, they may want to know more about the consultation process to ensure that it adequately represents stakeholder views.

Briefings should not feature debates and councillors taking a collective position on issues. The appropriate place for this to occur is in the council meeting. In briefing sessions there is generally a one-way information flow from the administration to councilors who will ask questions and identify information shortfalls. Some councils have their Chief Executive Officers chairing briefings so that every councillor has the opportunity to identify and meet their information requirements.

Although briefings are not decision-making forums, councillors must still comply with the Local Government Act's conflict of interest requirements as part of the briefing process. This is because briefings are considered 'assemblies of councillors' under the Act.

Well-managed councillor briefing sessions usually make the decision-making stage more efficient. If the briefing works well, councillors are less likely at the council meeting to have reason to complain that they haven't received sufficient information or the consultation process has been inadequate.

GETTING INFORMATION OUTSIDE OF THE BRIEFING MEETINGS

While councillors will get most of the information they require via formal advice and briefings, there will be times when they may require more information from the administration (usually from the Chief Executive Officer or directors).

When this happens it's important that councillors ask for information in a suitable way. It's equally important that council officers are appropriately responsive as councillors largely rely on the administration for information and other kinds of support.

Requests must be legitimate

Councillors should ensure that any requests for information or reports are legitimate, lawful, related to their role and directed to the appropriate officer (depending on the protocols of the individual council).

Requests which fall under the category of file trawling or 'fishing' expeditions are neither appropriate nor generally legal. The administration as a whole, and council officers specifically, should be wary of providing fuel for internecine political disputes between councillors. If a councillor is requesting information about another councillor's activities, the administration should find ways to deal with the situation without exacerbating it.

Information requests and good governance

If the administration view most requests as legitimate, then one way of managing councillor requests is to assess them according to the following criteria:

- how much work will be involved in meeting the request?
- what kind of information is required?

If a legitimate request can be easily met without much extra resourcing it should be. On the other hand, if it is resource intensive, it should become the subject of a council report.

This can become a governance problem when a 'minority' councillor makes continual requests for information claiming that it is essential for his or her role. This is often seen as troublemaking and is overruled by the majority of councillors which can also have a negative impact on relationships.

In these situations, the mayor's role in communicating with the councillor is very important, as is having a good relationship between the council and the administration.

The council and the administration can develop protocols to ensure that everyone understands when and what kind of information will be provided to individual councillors. Some councils also use self-regulation such as a register that logs all the information requests by individual councillors.

Finally, in the interests of transparency, any information that is made available to one councillor should be available to all councillors.

STAGE 4: MAKING THE DECISION

The fourth stage of the process is when councillors finally make the decision. This happens at formal council meetings as defined by the *Local Government Act 1989*.

OPEN AND CLOSED COUNCIL MEETINGS

Council meetings are open to the public. There are, however, certain circumstances which are described in Section 89 (2) of the Act, when a council meeting may be closed. This should be avoided when possible to preserve transparency and accountability – the key aspects of good governance.

Meetings should be conducted in a way that clearly reinforces the reason why they are open to the public. That is, council meetings allow the public to be informed and, where appropriate, involved in the government of their community.

GOOD GOVERNANCE AND COUNCIL MEETING PROCEDURES

Councils are required to have a local law which covers meeting procedures. These laws are generally based on well-accepted procedures that are intended to ensure meetings are run fairly and productively. All councillors should be familiar with their council's local law.

While these local laws provide a broad framework for running orderly and constructive meetings, good governance processes add meaning to the framework. They ensure meetings are run in such a way that helps good decision-making.

A well-run meeting should have a clear and informative agenda, be well chaired and facilitated, follow meeting procedures appropriately, and adhere to statutory requirements.

Exhibiting good conduct in council meetings

The meetings local law is intended to help the mayor chair and manage the meeting. However it is the responsibility of individual councillors to exhibit good conduct in meetings. The mayor should not have to spend time enforcing good behaviour.

Councillors should listen while others are speaking, avoid interrupting, use reasonable and temperate language in debates (no matter how contentious the topic may be), and refrain from texting or tweeting during meetings.

When councillors behave in this way, it helps to maintain public respect for the council in particular, and local government in general. See the Conduct section for more information.

Leading meetings with skill and impartiality

The mayor can facilitate good decision-making through skilful chairing of the council meeting. The role of the mayor is particularly important in making councillors feel that they are part of the process by ensuring they have the opportunity to get their viewpoint across.

Mayors should be very familiar with the council meetings local law so that they are confident in chairing meetings and making rulings where necessary.

Having a strong position on a specific issue while chairing the debate on that issue can represent slightly conflicting roles. However, as long as the mayor ensures that all councillors have the opportunity to express their views and manages other aspects of the meeting fairly, this does not have to be a problem.

In these circumstances, the mayor should ideally not be an active participant in the debate, but should instead

focus on managing the issue through to a decision. If the mayor feels the need to express a particular view, this can happen after all the other councillors have had their chance to state their opinion, and before the matter is put to the vote. If the mayor wishes to play an active part in the debate, then he or she should consider vacating the chair for that item.

Focussing debate on the issues

Robust debates about complex issues are a feature of a healthy democracy. However, it is important for good governance and for the reputation of local government that debates focus on the content of issues, not on the councillors debating them (or the officers providing advice on them). 'Playing the ball, not the person' is a very important part of good governance in council meetings.

Every council has codes of conduct which require councillors to treat each other with respect. They shouldn't simply do this because they have to, but because that's how they'd like to be treated themselves. Good behaviour especially during debates makes for better governance and a better all-round experience of being involved in local government.

Treating advice with respect

Apart from the information and advice received in council briefings councillors are also provided with advice at meetings via council reports or presentations from officers who attend the meeting. Councillors are not required to follow the advice, but nevertheless should consider it with due respect.

It's good practice, particularly for complex issues, if officers introduce their reports themselves. This enables a body of information including the relevant facts, options and advice to be articulated at the meeting, prior to the debate commencing. This provides a good platform for the debate which necessarily involves opinions, interpretations, statements of values, and so on.

Taking voting seriously

Councillors are elected for the primary purpose of making decisions on behalf of the community. It's therefore important that councillors take this role seriously, actively participating in all aspects of the meeting. This means:

- attending formal council meetings and other related meetings, such as councillor briefings
- participating in debate and discussion of matters affecting the community
- voting on all matters, except where there is a conflict of interest.

From a good governance perspective even complex and difficult issues should be worked through until councillors are able to make a decision.

Committing to transparency

Council meetings should be characterised by transparency. This means that observers can follow and understand the decision-making process and the reasons why a particular decision has been made. This not only helps support accountability, but also keeps legislators and administrators honest. Transparent processes are usually good processes because they stand up to scrutiny. See *Why is good governance important?* for more information.

Holding the meeting in public is one way that transparency can be achieved. Having a proper debate is another. By observing a debate, onlookers are able to see how and why council came to make a decision.

This does not mean that all decisions will be made in public. Some decisions need to be made *in camera* (that is, closed to the public) for legal or commercial-in-confidence reasons, or because a privacy or council staff matter is being considered.

Using notices of motion appropriately

From time to time, councillors use notices of motion to raise issues in a public forum (the council meeting).

When councillors want to formally let their colleagues know that they intend to move a particular matter at an

upcoming meeting, they will do this via a notice of motion (however titled). Councils will have a procedure incorporated into their meetings local law for this to occur.

This can be a useful way for a councillor to raise an issue, which doesn't require advice or a lot of consideration on a council agenda. For example, it might involve asking the council to recognise a significant achievement of a local community member which is already generally well-known.

The downside of using notices of motion for significant issues is that it doesn't generally allow the second (gathering information) and third stages (forming an opinion) of the decision-making process to work effectively. If a notice of motion is seeking a decision, this doesn't allow adequate time for advice to be provided or for councillors to consider and determine what extra information they may need. If a councillor uses a notice of motion for a significant item, it's best that the motion request a report for a subsequent meeting.

Understanding the nature of urgent business

Like notices of motion, councillors sometimes use urgent business as a way to get things onto the agenda. Urgent business has a particular purpose on council meeting agendas. It is there for issues that have arisen since the agenda was published, urgently require council's attention, but can't be safely held over until the next meeting. This decision is usually made by the Chief Executive Officer (CEO) in consultation with the mayor.

Urgent business should only ever be used for this purpose. It is the urgency of the matter, as determined by the CEO and mayor, that justifies the sidestepping of normal decision-making processes.

STAGE 5: IMPLEMENTING THE DECISION

The final stage of the decision-making process is what occurs after the actual decision is made. There are two key elements to this stage. The first is working out how the administration will provide reports to council on the implementation of the decision. The second is telling constituents about the decision.

KEY ELEMENTS

Progress reports for council

One aspect of the Chief Executive Officer's role is to ensure that council decisions are implemented in an effective and timely fashion.

Part of this phase is to establish a process for regularly reporting to council on how the implementation is progressing. This not only allows the administration to demonstrate its accountability to the council, but also provides the council with the information it needs to meet its accountability to its community.

Talking publicly about council decisions

A unique feature of local government is that all decisions are taken in the name of the whole council. Councillors are bound by the council decision, regardless of whether they were in favour of it or not. This is how councillors' accountability to the council works.

The councillors' role means that they are also accountable to their constituents who may have voted for them on the basis of a pledge to achieve a particular outcome. When a council decision contradicts a promise made by a councillor during an election, they need to be able to indicate to their constituents that they did not agree with the decision.

If this needs to be done, it should be done in such a way that it doesn't undermine the council decision. The councillor should focus on the content of the decision rather than resorting to inflammatory statements which can be both destructive and undermining. For example, stating that 'the council has done X, even though I support Y' is preferable to saying 'the council has done X because they don't care about the community'.

CONDUCT

Good conduct is essential to good governance. So understanding how to promote good behaviour and good conduct in local government is important for councillors and council officers.

This sections focuses on the key elements of good conduct, issues relating to conflict of interest and misuse of position, the different codes of conduct and how councils manage misconduct.

WHAT IS GOOD CONDUCT?

Good conduct in local government means that councillors should act with integrity and impartiality. They should be honest and diligent, avoid conflicts of interest, treat people with respect, act lawfully and show leadership.

Good conduct or behaviour is an important part of a civil society. It is also the basis for good relationships which are, in turn, crucial for good governance.

PRINCIPLES OF GOOD CONDUCT

The principles for good conduct are set out in the section 76 B and section 76 BA of the *Local Government Act 1989*. The Act also defines several other requirements for the conduct of councillors and council officers.

Some forms of conduct are considered to be criminal and can result in prosecution.

IMPORTANCE OF GOOD CONDUCT

Good conduct and good relationships are particularly significant in local government because it relies on councillors working together as the government to make decisions in the name of the council (regardless of whether individuals agree with a decision or not).

Good relationships are characterised by mutual respect and courtesy which is especially important when there are differences of opinion. Equally important is the need for councillors to listen to each other, and focus debate and discussion on the issues rather than on personalities.

Good reasons for good conduct

There are three main reasons why councillors should follow the principles of good conduct:

- Councillors' behaviour reflects on the council and on local government as a whole. If councils are seen to be acting fairly and ethically their decisions will be better respected and are much more likely to be accepted by the community.
- The conduct of individual councillors affects the ability of the council to function properly. If councillors behave badly, it can negatively affect the quality of their relationships with each other. This can lead to a lack of trust which will undermine the effectiveness of the council as a whole.
- As community leaders, councillors should recognise their position as role models. Just like leaders at the state and federal levels of government and other prominent citizens, councillors' conduct sets the standard for other people to follow.

GOOD CONDUCT, GOODWILL AND GOOD GOVERNANCE

An important foundation of good governance in local government is goodwill.

While there are various mechanisms to guide and manage councillor behaviour (such as codes of conduct, conduct panels and the Victorian Civil Administration Tribunal), good governance depends on the capacity and preparedness of councillors to behave well and do whatever is necessary to build and maintain good working relationships, the administration supporting this, and councillors committing to repairing working relationships when things come unstuck as they may do from time to time.

COUNCILLOR CONDUCT ISSUES

Good governance depends in part on councillors and council officers having a good understanding of what they can and can't do under the *Local Government Act 1989*.

This section looks at some of the areas where poor conduct may occur, including misuse of position and power, using information and resources inappropriately, and conflict of interest.

MISUSE OF POSITION

Councillors are elected to represent their communities. They must not use their positions to gain or attempt to gain an advantage for themselves, or anyone else. Similarly, they must not disadvantage or seek to disadvantage council or anyone else.

WHAT IS MISUSE OF POSITION?

A number of behaviours are outlined in the Act that can give rise to misuse of position. These can include improperly using information, misusing public funds or seeking to improperly influence a member of council staff.

Councillors need to be aware of these from both a legal perspective and because they impact on good governance. They can also impact on relationships within the local government and relationships between the local government and its communities and stakeholders.

PENALTIES FOR MISUSE OF POSITION

There are serious penalties for councillors who misuse their position. These are outlined in Section 76D of the Local Government Act 1989 which include substantial fines and up to five years imprisonment. A person convicted of misusing their position is also disqualified from being a councillor.

CONFLICT OF INTEREST

Conflict of interest is about being transparent. Understanding what this means in the context of local government is essential to good governance.

Sections 77A to 81 of the Local Government Act 1989 define the specific circumstances that lead to a conflict of interest and describe what councillors and council officers must do if they believe there is a conflict. This includes direct and indirect interests, disclosure requirements, exemptions, provision of advice and registers of interest.

CONFLICT OF INTEREST AND LOCAL GOVERNMENT

Councillors and council officers should always be aware of the potential for conflict of interest.

In their roles as elected members and employees, they have been entrusted to govern on behalf of their communities. As such, they must ensure that they do not gain personal benefit from their positions in local government.

If they have personal interests in any of the decisions that they are part of as a government, public body or private enterprise, they must declare their interests and withdraw from the decision-making process. It is therefore very important for councillors and officers to understand and adhere to the legislative requirements.

Conflict of interest requirements apply to council meetings, special committee meetings, audit committees, and Section 223 Committees and Assemblies of Councillors.

Local Government Victoria has three useful guides on conflict of interest for councillors, council staff and council committees.

GOOD GOVERNANCE AND CONFLICT OF INTEREST

The following points are important for good governance.

Individuals must make their own decisions

Councillors and council staff must individually take responsibility for assessing whether they have conflicts of interest in any matter relating to their formal council roles. If the answer is yes, then they must act appropriately. This includes making a proper disclosure and not participating in the relevant decision.

Seeking advice is appropriate

Councillors and council staff should seek assistance or advice from other people when they think they may have a conflict of interest. These can include the mayor, fellow councillors, the Chief Executive Officer or other qualified officers. In some circumstances councillors may also need to obtain their own independent legal advice.

Individuals are accountable

Councillor or officers must ultimately assess whether they have a conflict of interest. Each councillor or officer is accountable for that assessment and the obligation to make the relevant declaration. This is regardless of any assistance or advice they may have received.

Conflict of interest is not a political weapon

Councillors should not use conflict of Interest as a weapon against each other. No councillor can determine that another councillor has a conflict of interest. That is for the individual alone (and a court if that councillor is charged with an alleged breach of the legislation). Using conflict of interest as a political weapon diminishes its importance

as a principle of good conduct and natural justice.

CONFLICT OF INTEREST AND COMMUNITY REPRESENTATION

Sometimes councillors will be in a position where they are required to declare a conflict of interest even though their constituents expect them to participate in a decision. For example, a councillor may have a conflict of interest in a local planning decision which the community feels strongly about.

Because conflict of interest can impact on governance and perceptions of governance, it's important that:

- councillors ensure they thoroughly analyse the situation (and seek appropriate advice) to determine what is required by the legislation
- councillors clearly explain the situation to their constituents
- the council and administration provide support to councillors, when required, to explain conflict of interest requirements to constituents.

Councillors should not, however, hide behind conflict of interest as a way of avoiding a vote on difficult issues in which they don't have a conflict.

ACCESSING CONFIDENTIAL INFORMATION

Accessing and using information appropriately is an important aspect of good conduct in local government.

Section 77 of the Local Government Act 1989 states that councillors must not disclose confidential information. The legislation outlines how information becomes confidential, and what limits and time periods can be applied.

KEEPING SOME INFORMATION CONFIDENTIAL

Councillors need to have good information to do their jobs properly. So it's important that councils have robust processes and systems in place for providing councillors with information – whether as formal advice, in briefings or through individual requests. This is particularly important when it comes to confidential information.

Local government needs to be able to keep certain information confidential, especially when it relates to important commercial issues or the privacy of individuals. While it's usually obvious which information should be made confidential, there can sometimes be genuine disagreement or political debate around the exact meaning of certain information.

Sometimes council may need to discuss particular issues or information in a meeting that is closed to the public. Section 89 of the Act lists the types of information that the council may need to deal with in closed meetings.

For more detail about the different ways that councillors can access information see [Forming an opinion](#).

CONFIDENTIALITY AND GOOD GOVERNANCE

Local government can ensure that confidential information is identified and treated appropriately in the following ways:

- Information should only be classified as confidential if it's strictly necessary according to the Act. Just because information may be embarrassing or awkward for the council is not a reason for declaring it confidential. It's much easier to enforce the provisions if they cover only what is really required.
- Protocols which not only state how information can be used and accessed should be created. These protocols should clearly emphasise that leaking is not appropriate under any circumstances.

LEAKING INFORMATION

Leaking confidential information is both illegal and damaging to the council. It not only affects the ability of council to perform its functions, but undermines the trust that external organisations and individuals may have in council to keep certain information confidential.

A councillor who discloses confidential information may be brought before a Councillor Conduct Panel or the Victorian Civil Administration Tribunal for a misconduct or serious misconduct hearing. See [Addressing breaches of conduct](#) for more information.

IMPROPER DIRECTION & INFLUENCE

Improper direction and influence essentially means that councillors are not allowed to tell members of the administration what to do or try and influence them in any way outside of their role as decision makers in council meetings.

This is outlined in Section 76E of the Local Government Act 1989 which clearly states that a councillor must not attempt to direct or influence a council officer while performing their duties as an elected member of local government.

DEFINING DIRECTION AND INFLUENCE

The legislation is quite clear that councillors, either as individuals or as a group, do not have the power to direct (improperly or otherwise) council officers.

It is sometimes less clear what improper influence means. This is because there can be a fine line between robust discussions and improper influence. As a general rule, any attempt by a councillor to influence the way a member of staff performs an important function, other than through formal council processes, is probably improper influence.

Attempts to improperly influence officers also suggest a lack of understanding of roles and responsibilities within a local government.

Councillors should understand that their challenge is to persuade sufficient numbers of their fellow councillors to support them in achieving a particular outcome rather than try to influence members of the administration (which is in breach of the Act).

PROTOCOLS CAN HELP

Councils should have protocols which help councillors and council staff understand who they can communicate with and what sort of communication is appropriate.

Each council will make its own decisions about the protocols around staff and councillor communication. Some require councillors to communicate only with the Chief Executive Officer and directors. Others allow for communication across multiple levels of the administration. This is often the case in smaller rural councils where there is likely to be more day-to-day contact between councillors and staff, in and outside of the local government.

PENALTIES FOR IMPROPER DIRECTION AND INFLUENCE

A councillor who improperly directs a member of staff may have to face misconduct or serious misconduct charges at a Councillor Conduct Panel or the Victorian Civil Administration Tribunal.

USE OF COUNCIL RESOURCES & FACILITIES

As part of their role as elected members, councillors are supplied with items such as stationery, mobile phones and computers so that they are able to do their jobs.

This is covered in Section 75C of the Local Government Act 1989 which states that local governments supply councillors with the resources and facilities necessary for them to undertake their duties.

USING RESOURCES FOR NON-COUNCIL BUSINESS

Each council will specify and pay for the resources and facilities that councillors need to do their jobs. Councils should not pay for non-council business use. It's therefore important that councils have systems in place which allow councillors to track and pay for any private use of council-supplied equipment.

Councillors must not use other council resources or facilities for personal benefit either. This includes using council equipment and facilities for electoral purposes or enlisting staff to help with private business.

Using council resources for personal benefit may be subject to prosecution if it constitutes a misuse of position.

COUNCILLOR LIABILITY FOR ACTIONS AND STATEMENTS

Councillors, unlike state and federal members of parliament, do not have parliamentary privilege. A councillor can be subject to civil action by a person who considers that the councillor has defamed them or has acted in a way that improperly harms them, whether this occurs in the council chamber or not.

COUNCILLOR INDEMNITY

Section 76 of the Local Government Act 1989 requires that each council indemnify its councillors against actions and claims made while conducting their duties in good faith. This is not the same as parliamentary privilege and cannot be relied upon as a general protection.

CIVIL ACTION AND COUNCILLOR LIABILITY

Councillors should be very careful, especially in the heat of a council debate, not to make defamatory statements which could give rise to a civil action.

If a councillor is subject to a civil action, he or she will have to deal with the matter as an individual even if the council is paying the legal costs. In some cases the council, or its insurers, may refuse to provide indemnity for the councillor's actions or statement. This is because the councillor's action or statement was either not considered to have occurred in the course of performing a council duty or to be done in good faith.

CODES OF CONDUCT

Codes of conduct for both councillors and staff are required under the *Local Government Act 1989*. They help councils identify and agree on the desired standard of behavior. They also clearly state the consequences of any breaches of the code. Having good codes of conduct that are understood and supported by councillors and council staff is important for good governance.

This section briefly looks at councillor and staff codes of conduct, their impact on good governance and how alleged breaches are dealt with.

CODES OF CONDUCT: FOR COUNCILLORS

The councillor code of conduct sets out the principles underpinning good behaviour and good relationships. All Victorian councils are required to adopt a councillor code of conduct, which includes prescribed principles of councillor conduct, under Section 76C of the Local Government Act 1989.

WHY IS A COUNCILLOR CODE OF CONDUCT IMPORTANT?

The code of conduct is an opportunity for local government to articulate what it means by good conduct and good governance. It also creates the standards to which councillors must adhere. Alleged breaches of the code of conduct can result in councillors having to appear before a Councillor Conduct Panel or the Victorian Civil Administration Tribunal. See Addressing breaches for more information about conduct panels.

A good process for preparing the code of conduct allows councillors to think about what they mean by terms such as 'courtesy' and 'respect'. Councillors can then agree on a common understanding of such terms.

It can be surprising how different interpretations can be. For some, 'respect' can mean uncompromising honesty. For others such uncompromising honesty can mean rudeness and a lack of respect.

Each council needs to develop a code that matches its specific circumstances. Some councils prefer to create relatively simple codes of conduct, while others choose to use the process to elaborate on their ideas around good governance. Some councils also include detailed procedures in their codes of conduct for dealing with internal disputes between councillors.

CODES OF CONDUCT: FOR COUNCIL OFFICERS

The council's Chief Executive officer is required to develop and implement a code of conduct for council officers. This is specified in Section 95AA of the Local Government Act 1989.

WHY IS A CODE OF CONDUCT IMPORTANT FOR OFFICERS?

Codes of conduct help councils and the administration think about their culture and articulate the desired standards of good behaviour. Preparing a code of conduct is an opportunity for Chief Executive Officers (CEO) and council staff to think about what conduct issues are important for them. Good processes for preparation and review help raise awareness and ownership of the code.

Codes of conduct also clearly state the consequences of any breaches of conduct. Council staff who do not comply with the code of conduct may be subject to disciplinary action or even dismissal.

Local Government Victoria has published a framework for the development and review of council staff codes of conduct which is available from their website. This framework is designed to help CEOs and other council officers develop and implement codes of conduct.

ADDRESSING BREACHES OF CONDUCT

While most councillors behave appropriately and in accordance with their council's codes of conduct, some do not. Sections 81A to 81S of the *Local Government Act 1989* describes misconduct, serious misconduct and gross misconduct. The Act also sets out processes for dealing with each level of misconduct and outlines the appropriate sanctions.

LEVELS OF MISCONDUCT

Misconduct

Misconduct primarily refers to breaches of a councillor code of conduct. Many councils will initially deal with instances of misconduct internally, using their dispute resolution procedures. However, sometimes a council (or individual councillors) may refer a breach to a Councillor Conduct Panel (CCP).

If a panel finds the councillor did engage in misconduct, it may apply a range of sanctions. These can include a reprimand, a public apology or a request that a councillor take leave of absence for up to two months. A panel may also direct a councillor to undertake training or counselling.

Serious misconduct

Serious misconduct refers to behaviour that is more disruptive to good governance at a local level. It includes repeated misconduct or conduct that breaches specified laws relating to the proper functioning of a council. It also includes failure to comply with a direction of a Councillor Conduct Panel following a finding of misconduct.

Serious misconduct complaints are dealt with by Victorian Civil Administrative Tribunal (VCAT). The Tribunal may suspend a councillor for up to six months or may rule that a councillor cannot hold certain positions, including that of mayor, for up to four years.

Gross misconduct

This is the most serious category. If a councillor is found guilty of gross misconduct it reflects very badly on their character and suitability to hold the office.

Gross misconduct includes breaches of the councillor conduct principles and certain sections of the *Local Government Act*. It also shows that a councillor is not of good character and is not a fit and proper person to hold the office of councillor.

The only person who can make an application to VCAT for a gross misconduct hearing is the Secretary for the Department of Planning and Community Development (or his or her delegate). If VCAT finds that the allegation has been proven, it may order a councillor to be disqualified from holding office for up to four years, suspended for up to six months or ineligible to hold the office of mayor for up to four years.

PROSECUTION

Where a councillor breaches a section of the *Local Government Act*, or any other Act for which an offence is prescribed, the councillor may be charged with a criminal offence and prosecuted in court.

If a person is convicted of certain specified offences under the *Local Government Act* or a criminal offence with a maximum penalty of at least five years imprisonment, he or she will be disqualified from being a councillor for seven years following the conviction. If that person is a councillor at the time, he or she will cease that role immediately.

COUNCILLOR CONDUCT PANELS

A Councillor Conduct Panel can address many issues. These generally relate to allegations of breaches of a council's code of conduct and disputes between councillors. A council or individual councillors can refer issues to a CCP.

Many councils have dispute resolution procedures within their code of conduct. These usually involve various levels of mediation which should always be the first step, when possible, to deal with disputes.

This frequently requires the mayor or the Chief Executive Officer (CEO) to act with impartiality and use processes which are underpinned by natural justice. If a process is not seen to be fair, it will not be seen to produce fair outcomes.

WHEN IS A DISPUTE ACTUALLY A BREACH?

It's not always easy to determine the difference between a dispute and what may actually be a breach of a code of conduct.

A dispute can be mediated while an allegation of a code of conduct breach requires some level of investigation to determine if a breach actually occurred. Mediation and investigation processes can be quite different. It's not always easy to work out, for instance, if an alleged failure to treat a fellow councillor with respect is a breach of a code of conduct or a dispute involving rudeness and bad manners. Getting as much clarity as possible in the code of conduct and any actions arising from it will help.

WHAT DOES THIS MEAN FOR GOOD GOVERNANCE?

Dealing with misconduct creates problems for councillors and CEOs who have to manage disputes and breaches while also promoting goodwill and good conduct, both of which are so necessary for good governance.

The negative impacts on good governance can be minimised when:

- councillors adhere to their codes of conduct because this makes governance work better and councils a better place to work
- disputes are handled internally as much as possible and with the good processes and goodwill which are necessary for good governance
- referrals to CCPs are not used as a political weapon – they are not intended for this purpose and it's difficult to maintain good governance in a council while CCP processes are underway, especially if these have been politically motivated.

FINANCIAL GOVERNANCE

Financial governance is important for good governance because the consequences of failure can be so devastating for a council. No matter how good the rest of a council's governance may be financial failure can bring it undone.

This section focuses on financial governance mainly from the councillor's perspective and highlights how the council can meet its accountability requirements. The areas covered include where the responsibility and accountability lie for council finances, the role of the Strategic Resource Plan and annual budget, and the importance of rigorous financial reporting.

WHO IS RESPONSIBLE FOR FINANCE?

The council is ultimately accountable for the financial management of the local government. While it should not have a hands-on role in financial management, the council needs to have sufficient information to satisfy itself that the finances are in order and that budgetary and financial planning goals are being met. The difference between the role of the council and the administration is important in this area.

ROLE OF COUNCIL

Councillors, sitting as council, have an overall accountability for the council's finances.

Under Section 126 of the Local Government Act 1989, the council is required to prepare and periodically review its longer term financial plan, the Strategic Resource Plan (SRP).

Section 127 of the Act also specifies that council should prepare and adopt the annual budget.

The council must insist on regular financial reporting by the administration and ask questions that will provide it with the information it requires to meet its financial accountability responsibilities. The council should not, however, micro-manage the finances.

At the very minimum, a council must receive quarterly financial reports comparing actual and budget revenues and expenses as specified in Section 138 of the Act. More regular financial reports allow any necessary corrective action to be undertaken on a timely basis.

Six months into the financial year, the council should ensure that a rigorous review of the current financial position is carried out. The review should include a reforecasting of the budget based on the known performance over the first six months of the financial year. The report should cover both general operations and capital expenditure on major works and projects.

ROLE OF THE CEO AND CFO

A key accountability of the Chief Executive Officer (CEO) and the Chief Financial Officer (CFO) is financial management. While council has the overall accountability, the administration and its key players have critical responsibilities for financial planning and management, and for providing regular reports to council.

ROLE OF AUDIT COMMITTEE

Section 139 of the Local Government Act 1989 states that councils are also required to appoint an audit committee. These committees play a very important role in ensuring that an appropriate governance regime is nurtured and maintained.

Typical duties undertaken by an audit committee will help council to:

- properly discharge its financial management and reporting responsibilities
- develop and maintain adequate risk assessment procedures and management of those risks
- comply with applicable laws and regulations
- manage the various internal and external audit processes
- provide general advice on specific matters which may be referred to them by council
- advise council that the annual financial and performance statements are able to be signed off.

While audit committees have broader responsibilities than just finances, they can assist with the financial governance of the council, both through the committee's activities and its existence as a source of review and comment.

Most audit committees include external members and individual councillors. In certain circumstances the committee can be used as a sounding board for sensitive issues. Best practice is to have an external and

independent member of the committee as chair.

Local Government Victoria's publication *Audit committees: A guide to good practice for local government* looks at this topic in greater depth. To obtain a copy contact Local Government Victoria.

WHAT IS NEEDED FOR GOOD FINANCIAL MANAGEMENT?

In order to fulfil its financial management role, council must ensure that the following staff, systems and functions are in place:

- modern and robust computer-based financial systems
- suitably qualified and experienced staff available to manage the finances
- suitably qualified and appropriately independent internal audit functions and/or audit committee are operating.

Council is ultimately accountable for all of this.

THE STRATEGIC RESOURCE PLAN

The Strategic Resource Plan is a key part of good financial management. It ensures that the council plan is properly resourced and that the council remains financially viable.

The Strategic Resource Plan and the council plan are clearly interdependent. This is because the goals in the council plan must be influenced by what is financially possible.

SETTING UP AND UPDATING THE STRATEGIC RESOURCE PLAN

Section 126 of the Local Government Act 1989 states that the Strategic Resource Plan (SRP) must be set for a period of four years. The SRP must also be updated each year to ensure that it includes the annual budget year and the following three years. In practice, the council should prepare a five-to-ten year financial plan, for both the operating and capital budgets, to assist with internal planning and augment the SRP.

What should the Strategic Resource Plan contain?

The SRP should normally include:

- analysis of council's current financial position
- consideration of various assumptions (population growth, CPI trends and economic development) and strategies that underpin an overall financial plan (rating and grants), and expenditure (labour, capital works, asset management, borrowings and debt management, service levels and so on)
- sensitivity analyses on these assumptions and strategies
- development of options
- determination and assessment of preferred model
- supporting documentation.

COUNCILLORS' ROLE IN DEVELOPING THE STRATEGIC RESOURCE PLAN

Because councillors (sitting as council) are responsible for the SRP, they must:

- ensure there is a good process for developing the SRP – this process should involve councillors at an early stage to ensure their visions and views are taken into account prior to being endorsed (they are less likely to 'own' a draft plan which has been fully developed by the administration)
- understand the assumptions and strategies underpinning the SRP – it's particularly important that council understand the key factors contributing to costs and income
- determine the extent of, oversee and be involved with, community input into the SRP – the development of key strategic and policy positions should incorporate a community consultation plan
- ensure that the SRP is reviewed annually.

Key issues for councillors

Councillors should focus on the important strategic and policy issues encompassed by the SRP. Some of the questions they need to ask include:

- Is the council financially viable into the future?
- Are our rating levels and rating mix acceptable and appropriate for our municipality? Do they reflect how our community is developing?
- Is our community satisfied with current service levels?
- Do we have appropriate user charges?
- Are we recovering costs appropriately?
- Are we complying with government policy?
- Have we exhausted all avenues of grant and other non-rate funding?
- Should we borrow for capital works and/or fund them from revenue? What are the implications of our decision

for the level of capital works and infrastructure maintenance?

- Can the current level of debt management be sustained?
- Do we meet legislative and financial reporting requirements?

THE ANNUAL BUDGET

A prime responsibility of council is to set the annual budget. The budget shows how the activities in the council plan will be resourced for a particular year. This is outlined in Section 127 of the Local Government Act 1989.

Because the budget is the annual articulation of the Strategic Resource Plan, many of the issues which apply to this plan, are also relevant to the annual budget.

ROLE OF COUNCILLORS AND THE ANNUAL BUDGET

Councillors need to endorse a budget preparation process and be involved early on to ensure that they have the appropriate high-level input into budget development. The budget preparation process should meet statutory and strategic timelines. A well-managed process will ensure that the next year's budget is adopted by the end of the current financial year.

Because the annual budget should link with the council plan and the Strategic Resource Plan (SRP), councillors need to be aware when there are significant differences and understand how this will affect both plans.

There should also be early discussions with the administration about the assumptions around issues such as debt management, rates strategy, charges strategy and capital works.

While the councillors' role is to primarily focus on the strategic and policy elements of the budget, they will also naturally be interested in specific projects and issues. This can result in tensions which need to be recognised and given the adequate time to be addressed.

Key questions for councillors

Some of the questions that councillors should ask themselves during the process of preparing the budget:

- Do we have a budget preparation timetable and process that meets statutory requirements and gives us enough time to resolve major issues?
- Has the budget been prepared within the framework provided by the SRP? If not, what are the consequences for the SRP? Will it be reworked to incorporate the long-term impact of current decisions?
- How will information be presented to enable us to make the appropriate informed decisions?
- Is the proposed level of debt management appropriate?
- What opportunities will we have to work through the key issues?
- Will the community have opportunities to provide input into the budget early in the process?
- Is the income from the rates which was envisaged in the SRP, still acceptable?
- Does the budget deliver the council plan outcomes that were envisaged?

FINANCIAL REPORTING

Regular financial reports to council are required by Section 138 of the Local Government Act 1989 and are a critical part of good management. They are the prime means by which council receives the information it needs to meet its accountability requirements.

WHY IS FINANCIAL REPORTING IMPORTANT?

Councillors need to be confident that the information is robust and accurate. It should be presented to them in a way that is simple and easy to understand. It should also be supported by appropriate independent advice and evidence.

Well functioning and independent internal auditing helps provide validity and assurance to the financial monitoring process. It also ensures there are no surprises for either council or the administration.

COUNCILLORS' RESPONSIBILITY FOR FINANCIAL REPORTING

Councillors are collectively responsible for the overall financial viability of the council. They exercise this accountability through careful review of any variances in the budget. Council's accountability is for the big picture and this should be its focus.

Councillors cannot simply rely on the assurance from the administration that all is well. As they are ultimately accountable, they must ensure they understand what 'all is well' means. If it turns out that all is not well, then councillors will be under scrutiny.

Council may establish a committee or nominate a councillor to provide leadership on financial accountability. This may improve the management of financial matters, but does not reduce the individual and collective accountability of elected members.

MONITORING PERFORMANCE AGAINST BUDGET

The *Local Government Act* states that financial reporting must occur at least every quarter. Each council can determine the frequency of reporting so that it not only meets the accountability requirements but also takes into account what is feasible given the available resources. As a general guide, monthly reporting is considered to be good practice. The key measures should be cash resources, operating results, balance sheets and financial Key Performance Indicators (KPIs).

Getting the big picture

Reporting should have a whole-of-council focus. In other words, council should be getting the big picture. Favourable and unfavourable variances need to be highlighted in a way which helps councillors understand the impact of the variances on the budget and what remedial action can be taken. The report should also include analysis and insightful commentary on the key variances, as well as a statement about their impact on the full-year's figures.

The council also needs to ensure that the budget has been properly adjusted to take into account monthly patterns in expenditure and income. Being told that every variance is a timing issue is just an excuse and should raise questions about the veracity of the financial information provided. As a general rule, the budget needs to be reforecasted at least every six months, although three months is desirable.

Checking figures

Councillors need to check that the actual figures are reconciled and prepared on an accrual basis. While these are accounting concepts, councillors need to satisfy themselves that the information they are given reflects the real

situation. A handy prompt is cash in the bank. If this is fluctuating wildly or reducing over time without proper explanation, councillors are entitled to be concerned.

A financial report should not be reviewed in isolation. It should be seen in the context of other KPIs, which relate to achievement of council's goals. It's not simply enough to come in on budget, if there are significant shortcomings in the achievement of goals.

ANNUAL FINANCIAL STATEMENT

The annual financial statement is an important reflection of the council's stewardship of financial resources over the past year. It is one of a series of important components of the annual report that measure council's performance.

Councillors should not have to be accountants to understand the financial reports. They need to be certain that the report will help them understand what is happening by asking the following questions:

- Is it based on reliable data? Are there lots of end-of-year adjustments? Are the explanations for these acceptable?
- Are appropriate strategies being put forward for addressing significant end-of-year variances when future budgets are prepared?
- Are councillors confident in the audit process?
- Are the auditors raising lots of important issues?
- Is a consistent reporting framework being used?

PLANNING & GOVERNANCE

Planning decisions are some of the most significant and complex in local government. Because councillors often take on different roles during the planning application process, it is crucial for good governance that they understand each stage of the process and the associated responsibilities.

This section looks at some of the important elements affecting the way planning application decisions are made and the different roles councillors play during the decision-making process.

WHY IS GOOD GOVERNANCE IMPORTANT FOR PLANNING?

Planning can be one of the most important and challenging areas for councillors. Strategic land use planning is a vital part of how a municipality will develop now and into the future.

Statutory planning decisions are complex and often controversial. They demand high levels of knowledge and understanding about the processes, the statutory requirements and the different roles that a councillor has to play. This is important because good governance involves good decision-making processes and being clear about the different roles.

STATUTORY AND STRATEGIC PLANNING

Participation in the land use planning process is one of the major tasks of a councillor. Land use planning is also often a key pressure point between councillors and their communities.

Statutory planning involves administering the planning scheme and assessing permit applications. Strategic planning is used to describe activities relating to the future planning and development of the municipality.

These activities are outlined in the Municipal Association of Victoria's Land use planning in Victoria guide. This publication also highlights a number of good governance issues relating to councillors' involvement in land use planning.

NATURAL JUSTICE AND KEEPING AN OPEN MIND

As decision-makers on planning applications, councillors should not make up their minds (or appear to have made up their minds) before they have reviewed all the available information and advice. This is particularly relevant when councillors make public statements or promises during election campaigns.

Councillors can of course have opinions, but they must be able to show that while they believe something based on what they know at a particular point in time, they're still able to be persuaded to change their minds if provided with further advice or information.

See natural justice for more information about how it underpins local government decision making.

THE IMPORTANCE OF STRATEGIC PLANNING

The most significant contribution of councillors to the planning process is when they establish the strategic framework in which decisions get made. Their participation in the development and review of municipal strategic statements, local planning policy frameworks and local other policies allows them to shape the vision for the municipality and how it will look in the future.

For this reason, councillors should ensure that they put sufficient energy and time into policy development and review. While this may not have the intensity of a controversial local planning application, it has greater impact on the future than any single decision on a specific planning application.

PLANNING & COUNCILLOR ROLES

Most statutory planning decisions are made by council officers (under delegation), but a certain proportion go to the council for a decision. These can often be large applications or applications which have received objections. Councillors can be involved at various stages of a planning application process and can play different roles at different times.

DECISION MAKER

Councillors, sitting as council (or a council planning committee with delegated powers), are members of the Responsible Authority charged with making decisions in individual applications. These decisions are made according to the planning scheme and other relevant local policies.

While there's scope for interpretation, the decisions are administrative (in judicial terminology) because they are based on a legislative framework. Councillors' individual opinions about a proposed development are only relevant in that they may impact on their interpretation of the legislation. Councillors must base their decisions on the legislative framework. This is also the basis for review of a council decision by the Victorian Civil Administration Tribunal (VCAT).

COMMUNITY REPRESENTATIVE

Members of the community may lobby councillors about individual planning applications. These community members often expect their elected representative to act according to their wishes at all stages of the application process.

Councillors may be in a position to ensure that the decision makers are aware of their constituents' views. However, their statutory obligations as members of the Responsible Authority, sometimes mean that they cannot act on these views.

Community members may not understand that councillors are not always able to vote in favour of the constituents' position. They also may not understand that when a decision is inconsistent with the local planning requirements, it can be overturned by VCAT if the applicant appeals. Both of these situations can have negative political consequences for the councillor.

MEDIATOR

Councillors may become involved in the planning consultation process prior to the council making a decision on an application. The consultation process usually looks for common ground between the applicant and objectors. Ideally the process will result in a mutually acceptable proposal which can then go to council for approval and, if not, at least a narrowing of the points of difference.

In these circumstances, councillors (who often chair as well as participate in consultation meetings) are playing a mediating role, which is quite different to the roles of representative and decision maker.

ROLE CLARITY IS IMPORTANT

It is therefore important that councillors understand what role they are playing when they participate in different stages of the planning process. While they're only required to participate in the decision-making stage, if they do become involved in other stages of the process, they must be very clear about the role they are playing.

Their representative role means that there will be considerable pressure on them to engage with their constituents over applications which have generated local interest. Depending on the protocols that have been established between fellow councillors and the council administration, they are able to choose whether they attend, observe, participate in or chair consultation meetings. However they also need to be aware of the changing roles and how

this might appear to their constituents.

Councillors should communicate with their constituents and other stakeholders about the requirements of these different roles. A useful approach for councillors can be to:

- explain what their role will be in the early stages of the process
- listen to the views of constituents
- consider the views of the applicant and objectors
- be mindful of those who, for whatever reason, have chosen not to make a representation on the planning application.

As the application proceeds to a decision, councillors move from what is essentially a listening and possibly mediating role, to focussing on the legislation and the rules that determine what can be legitimately considered in determining the application.

When participants and stakeholders understand how and why a councillor's role can change at different stages, the decision-making processes are more transparent and accountable.

SCENARIOS

These fictitious scenarios show a range of potential situations that councils may face where good governance has broken down.

This section outlines twelve different scenarios, highlights where things have gone wrong and provides suggestions for how to tackle the various situations.

DEALING WITH DISAFFECTED COUNCILLORS

ISSUE

Disaffected councillors can affect relationships between councillors, undermine the reputation of council, and disrupt decision-making processes.

SCENARIO

John is a councillor in an outer urban municipality. He's recently been on the losing side of a series of votes including the council plan, the budget and some key projects. Now he's feeling marginalised and has started to publicly criticise the council and its processes. The majority of his fellow councillors respond in-kind which has led to poor behaviour, both inside and outside the chamber.

WHAT'S THE PROBLEM?

If councillors believe their views are not being considered in the decision-making process, they will look for alternative ways to have an impact. Public or private criticism of other councillors and the administration, leaking of information, and failing to distinguish between the views of the council and individual opinions can all make the process of decision making more difficult, as well as undermine the council's reputation in the local community.

HOW TO TACKLE THIS SITUATION

- the mayor needs to determine whether the councillor's motivations are legitimate or deliberately destructive – the outcome may be the same, but the way the issue is handled can vary considerably
- as the leader of the council, the mayor's role is to ensure every councillor feels that they have a meaningful part to play in the processes and that their views are being heard
- both the mayor and the Chief Executive Officer should talk to the councillor and hopefully agree on a more productive way of dealing with the situation
- if confidential information has been leaked, the councillor must be made aware of the provisions and penalties contained in the *Local Government Act 1989* and told that they will be enforced
- local government associations may be able to provide mediation or impartial advice to resolve the issue.

FORCING COUNCIL DECISIONS

ISSUE

Councillors who insist that a council decision is nothing more than 'common sense' prevent proper discussion and debate.

SCENARIO

Mary who has been a councillor for a number of years, is insisting that council make a particular decision on the hotly contested issue of the location for the new municipal offices. Her main argument in support of her position is that 'it's just common sense'.

WHAT'S THE PROBLEM?

There can often be a number of legitimate views on an issue even when there is good information and advice. Labelling one view as 'common sense' can imply that all the other views are not valid and that their proponents lack common sense. The debate then often focuses on the meaning of 'common sense' and personalities rather than on the issue itself.

HOW TO TACKLE THIS SITUATION

- ensure there is good process in place for making decisions
- base the decision on advice and information, rather than on subjective views, such as 'it's just common sense'
- ensure there is a good consultation process to find out what stakeholders really think
- focus on the issues rather than on personal opinion
- provide opportunities for all councillors to voice their opinion – the mayor's role is important in providing leadership in the council.

LACKING FINANCIAL ACCOUNTABILITY

ISSUE

Councillors who accept the advice of their portfolio councillor without question are not doing the work they should do.

SCENARIO

An inner urban council has a system of portfolio councillors. Lily is the portfolio councillor for finance. She has assured her fellow councillors that they don't really need to worry about studying the financial accounts this year because she has been through them with the CEO and can guarantee that they are all well and truly in order.

WHAT'S THE PROBLEM?

Council is collectively responsible for the council's finances and each councillor is responsible for their own vote. All councillors must ensure that they have all the information they need so that they can make informed decisions and vote accordingly on financial matters.

HOW TO TACKLE THIS SITUATION

- financial reports need to be presented in the most accessible way possible so that all councillors can understand the information
- councillors must ask questions about any information that is not clear
- council needs to ensure the portfolio system (if applicable) is seen as a means of improving information exchange and communication, not as a means of outsourcing accountability.

REACTING TO THE LOUDEST VOICES IN THE COMMUNITY

ISSUE

Councillors who make decisions to keep the most vocal quiet are not necessarily representing the views of everyone in the community.

SCENARIO

The council plan has identified a small branch library for closure because patronage has been falling significantly in recent years. During the same period, pressure on the main branches has increased. The local Friends of the Library group has been running an active media campaign. There have also been noisy demonstrations at council meetings. In the face of this, council has decided, yet again, to defer a decision.

WHAT'S THE PROBLEM?

Council seems to regularly placate the most active and the noisiest elements of the community when making decisions. Because of this, the interests of every section of the community are not being taken into account.

HOW TO TACKLE THIS SITUATION

- councillors should acknowledge that this is happening and consider which feedback from constituents, community groups and the media is relevant
- councillors need to have another look at the council plan outside of the normal review process
- the mayor should play a leadership role as the leader of all councillors
- councillors must pay attention to the consultation processes – everyone affected by important decisions should be listened to, not just those who shout the loudest
- council should have been aware of stakeholder views before making the decision
- council should review the decision-making processes for their openness and transparency
- the administration needs to ensure the advice reflects all the issues, consequences and options
- councillors need to be reminded that placating the 'loudest voices' not only creates precedents which can be difficult to break, but also impacts badly on the public perception of local governments.

COUNCILLOR CONFUSION OVER CEO LOYALTIES

ISSUE

Councillors who believe the CEO's loyalties are with the previous council, need to understand that policies don't automatically change after an election.

SCENARIO

Following recent local government elections in a regional municipality, a new group of councillors have come into office with quite different policy ideas to those of the previous council. These councillors have become frustrated because the policies of the previous council continue unchanged for some time. They begin to express dissatisfaction with the Chief Executive Officer (CEO) and believe that things won't happen until they can appoint their own CEO.

WHAT'S THE PROBLEM?

Councillors don't believe that the CEO is committed to helping them achieve their goals. This sometimes happens when a new council has to work with a CEO who was appointed by a previous council. Councillors think things should change automatically as a result of their election, but don't understand that the CEO is required by the Local Government Act 1989 to implement the policies which are in place 'without delay', and cannot put them on hold or implement a different policy until they are changed by council.

HOW TO TACKLE THIS SITUATION

- councillors and the CEO need to find a way to work together because it is not appropriate for every new council to appoint a CEO
- councillors need to understand that policies only change as a result of a majority vote at a council meeting
- new councillors should be briefed on how policies can be changed or implemented
- councillors and the administration both need to understand the role of the council – it sets the strategic goals and the administration helps to achieve them
- councillors need to understand the role of the administration – the relationship between the mayor and CEO is important in achieving this
- everyone needs to understand that the entity of council continues unchanged from one council term to the next and it takes time and good processes to change policies and directions
- councillors and the administration need to devote time and energy to the council planning process so that goals are understood and owned by all
- council and the CEO need to agree on what the CEO is expected to deliver – this should provide a fair platform for the CEO's performance appraisal

COUNCILLOR & OFFICER RELATIONSHIP BREAKDOWN

ISSUE

A divisive and dysfunctional relationship between councillors and council officers can seriously affect the operation of local government.

SCENARIO

Communication between councillors and council officers has completely broken down in a large suburban council. Councillors regularly make inflammatory statements to the local media claiming that they have no power because council officers are really making all decisions.

WHAT'S THE PROBLEM?

If councillors and the administration don't understand each other's roles or the processes for making decisions, this can lead to serious misunderstandings and dysfunctional relationships. When this happens the relationship is characterised by public criticism of each other and a general lack of respect.

HOW TO TACKLE THIS SITUATION

- the mayor and Chief Executive Officer (CEO) must work together to provide leadership, as well as model respect for the administration and elected members
- expectations need to be clarified to avoid bad feelings – councillors and senior management need to discuss the issues and how they can be addressed
- roles need to be reviewed, redefined and understood by all – everyone should be given the opportunity to contribute on aspects that affect their role
- the quality of advice, systems and processes – particularly on the hot issues – should be reviewed
- protocols should be developed to handle criticism – public outbursts should not be tolerated and all sides need to be open to constructive feedback
- the CEO should ensure that the administration's culture supports democratic governance – this involves leadership from senior management and training for staff
- the mayor and CEO need to ensure that councillors understand what can reasonably be expected from the administration and how contact can be made (protocols can help)
- local government associations should be contacted for assistance if a serious breakdown occurs.

SPLIT VOTING ON KEY COUNCIL DECISIONS

ISSUE

Consistently split votes on key council decisions can leave the 'losing' councillors feeling powerless and alienated.

SCENARIO

An inner urban council has seven councillors. Four are pro-development and three are pro-environment. All major decisions are made on a 4:3 vote reflecting these divisions. The environmentalists feel like they have no power and have started to become publicly critical of the council's processes and decisions. As a result council's reputation is suffering.

WHAT'S THE PROBLEM?

When there's a pattern of split or close votes on key issues, the councillors on the 'losing' side start to feel alienated and powerless. It can be very frustrating for councillors if they believe their opinions have not been taken into consideration in the decision-making process. It can also mean that diversity of community views are not being fully represented by council. Decision making simply becomes a numbers game which is not good for the municipality in the long run.

HOW TO TACKLE THIS SITUATION

- the mayor and councillors need to find ways to bring the 'losing' councillors back into the governance loop
- the mayor, who may be on the 'winning' side, needs to actively engage with the minority councillors, both within and outside the council chamber
- part of the mayor's role is to ensure that debate and decision making is open and inclusive
- part of the Chief Executive Officer's role is to ensure that information and advice takes into account all councillors, not just the group which appears to have the numbers
- the council plan and other important strategic documents should be reviewed to see if there is a basis for the majority and minority views – the council plan should ideally reflect the diversity of community views.

LEAKING INFORMATION TO THE MEDIA

ISSUE

Councillors who leak confidential information to the media for their own political purposes undermine the democratic decision-making process.

SCENARIO

A regional council is considering a major and expensive sports ground redevelopment. Chris, a longstanding councillor, opposes the project but doesn't think he has the numbers to win the vote. So he leaks confidential briefing material, which focuses on the downsides of the proposal, to generate media interest and provoke community outrage.

WHAT'S THE PROBLEM?

Individual councillors are using the local media to score points and pursue political goals. Using the media to force particular decisions, attack colleagues and undermine the council is neither appropriate nor legitimate. It deliberately subverts the democratic decision-making process. Leaking confidential information is a breach of the *Local Government Act 1989* and is punishable. It also reduces the confidence and willingness of external bodies to deal with the council.

HOW TO TACKLE THIS SITUATION

- councillors need to understand the nature of confidential information – it should be very clear if it is not intended for public airing because publicising confidential information is illegal and punishable under the *Local Government Act 1989*
- councils should make sure that a good level of information is available to the public through various channels – this will help to prevent leaking
- councillors need to use the media appropriately as it is an important channel for councils to communicate with their communities and for communities to become informed about local issues
- council should recognise and support the legitimacy of ward councillors getting publicity on local issues
- the difference between the views of the council and individual councillors needs to be understood by everyone – councillors who liaise with the media must reinforce this
- council should develop protocols for working with the media which improve understanding.

COMMUNITY OUTRAGE ON PLANNING

ISSUE

When a councillor appears to support constituents' views, but then votes the other way, the community can become angry and distrustful.

SCENARIO

Steve's constituents are furious because he's voted in favour of a major apartment development which many in the community have opposed. They believe they made this very clear in meetings with him, as well as during consultations with the applicant which he chaired.

WHAT'S THE PROBLEM?

Councillors can often have multiple roles on planning applications, which can be difficult for constituents to understand. While councillors are obliged to consider their community's views this doesn't mean that they can vote in favour of those views. Councillors have to make decisions based on whether the application is consistent with the local planning scheme. This can reduce the scope for councillors to vote according to their personal opinions or reflect the views of their constituents.

HOW TO TACKLE THIS SITUATION

- councillors need to be clear what role they are playing in different stages of the application process
- councillors should try to ensure that their constituents understand these roles
- councillors need to understand their administrative role as part of the local planning authority
- councillors should ensure that they are able to be persuaded by the information and advice they receive at the decision making stage.

INFLUENCING RECOMMENDATIONS TO COUNCIL

ISSUE

Councillors who want to 'win' on an issue can inappropriately exert pressure on the administration to recommend supporting a particular view.

SCENARIO

Susan strongly believes that a new housing development should contain expensive environmentally sustainable features. She thinks her fellow councillors will support the idea if the administration makes the recommendation. She's been calling the relevant director and various council officers constantly trying to persuade them that the environmental features should be included in the recommendations to council. She's also attempted to put pressure on them at task group and public meetings.

WHAT'S THE PROBLEM?

The administration's role is to provide 'frank and fearless' advice to the council. This should be based on information, consultation and professional opinion. It should not be the result of pressure from councillors. Councillors will expect to be given high-quality, impartial advice and information, which will help them to form an opinion and make a decision in the council meeting. The challenge for councillors, who are pushing strongly for a particular decision, is to persuade their fellow councillors to support their view. They should not try to influence the final decision by pressuring the administration to support a particular view via its recommendation.

HOW TO TACKLE THIS SITUATION

- the mayor and Chief Executive Officer (CEO) need to ensure that everyone has a clear understanding of roles – the administration's role is to advise and implement, the council's role is to consider the advice and make the decision
- the mayor and CEO should provide leadership to reinforce these roles
- the mayor and CEO should encourage good relationships between councillors and the administration so that communication does not spill over into undue influence
- councillors and council officers should be clear that improper or undue influence is against the law
- the administration and council need to ensure there are plenty of opportunities (as part of briefing sessions or in other ways) for councillors to investigate all the available options.

LEADING DEBATE FROM THE COUNCIL CHAIR

ISSUE

A mayor who runs the council meeting in a way that favours the adoption of a particular recommendation undermines good decision-making processes.

SCENARIO

David, who is mayor of a suburban council, strongly supports a recommendation which is currently being discussed at the council meeting. A vigorous debate is taking place as a number of councillors are not in support of the recommendation. David provides extra time for those arguing in favour, while restricting those arguing against to the precise time limit set out in the local law. He comments unfavourably on every speech which argues against the recommendation, and also takes the opportunity to make a speech in its favour from the chair.

WHAT'S THE PROBLEM?

The mayor has an important role in managing the meeting so that all councillors get a chance to present their views and be heard by their colleagues. Taking a partisan position during a debate can detract from the mayor's capacity to manage the meeting in the interests of fairness and participation by all. Even the perception of partisan management of the meeting can negatively impact on the decision-making process and can ultimately affect the degree to which a decision is 'owned' by all councillors. Members of the community may also think the mayor is not being impartial which can undermine confidence in the council.

HOW TO TACKLE THIS SITUATION

- the mayor must manage the council meeting in a way which facilitates good decision-making processes and the participation and engagement of all councillors
- the mayor should be impartial and fair in managing the meeting, allowing all councillors to have the same opportunity to present their views
- if the mayor chooses to participate in the debate, they should make it clear that they are speaking in their capacity as councillor, and not as mayor of the council
- if the mayor is required to use a casting vote, they should be aware that they are voting in a different capacity (this time as leader of the council) and should therefore consider the customs associated with the use of the casting vote (the mayor's casting vote need not be the same as their collaborative vote).

MAKING DECISIONS AT BRIEFINGS

ISSUE

When a council uses briefings to discuss key issues and reach consensus, the decision-making process is no longer open and transparent.

SCENARIO

A council regularly uses briefings to work through the draft agenda for the next council meeting. In these sessions councillors develop a consensus position on all the key issues in the agenda. There is little or no debate at the next council meeting as the councillors already know all the outcomes.

WHAT'S THE PROBLEM?

Briefings should be used to ensure that councillors have all the information they need to develop an opinion on key issues. This information can consist of research, background information and the results of any consultation processes. Briefings should not be used to debate or develop a collective position on issues. This should happen in council meetings where the decision-making process is transparent and open.

HOW TO TACKLE THIS SITUATION

- councillors and the administration should understand and agree on the role of briefings in the decision-making process
- the administration should provide information to councillors in briefings
- councillors should ask questions in briefings to satisfy themselves that they have sufficient information to form an opinion on the issues in question
- councils might consider whether the Chief Executive Officer should chair the briefings so that every councillor has the opportunity to clarify information and ask questions
- while conflict of interest requirements apply to briefings (via Assembly of Councillors provisions) this does not imply that briefings are decision-making forums.

GLOSSARY

A list of the terms used on this website which relate to good governance in local government.

Administration

The paid staff of the local government including the Chief Executive Officer.

Annual budget

A council must prepare a budget for each financial year and adopt its budget by 31 August each year unless granted an extension by the Minister for Local Government.

The budget must include information such as the standard statements for the budget year, a description of the activities and initiatives to be funded in the budget, a statement of how those activities and initiatives will contribute to the strategic objectives in the council plan, a statement of council rate levels, borrowings, debts and so on.

Annual plan

The activities and programs that a local government will deliver in any particular year as part of the four-year council plan.

Chief Executive Officer (CEO)

The most senior position in the administration. The CEO is directly accountable to the council.

Common law

Derived from English laws which are based on custom or court decisions as opposed to legislated law or statutes.

Community

The entire population of a municipality which is made up of many different local and shared interest groups and individuals.

Conflict of interest

This refers to situations where a councillor or council officer has personal interests in the decisions that they are part of. For more information see Conflict of Interest.

Constituents

People within a councillor's electoral area (whether single, multi or whole of municipality) who are voters.

Council

The group of elected members of the local government.

Councillor

An individual who is elected to council.

Council meeting

The elected members (councillors) meeting formally as council as set out in the Local Government Act 1989.

Council officers

A paid member of staff (see administration above).

Council plan

The strategic plan of the council which must include the objectives, the strategies for achieving these objectives for at least four years, as well as the strategic indicators for monitoring the achievement of these objectives. The council plan must also include the Strategic Resource Plan (see definition below).

Elected members

See councillors above.

Governance

This is the process for making and implementing decisions. For more information see *What is good governance?*.

In camera

Latin term meaning in the chamber or in private. On this website it refers to holding a council meeting which is closed to the public.

Local government

This is used in two ways on this website. 'A local government' is a corporate entity for each municipality which is made up of elected members (councillors) and the administration (council officers). 'Local government', by contrast, is a collective reference to the sector comprising all the local governments.

Local Government Act

This is the state government Act under which local government operates.

Local laws

A piece of legislation enacted by a council.

Municipality

The geographic area of a local government.

Natural justice

This is a doctrine which ensures that decisions are made in a decent, fair and honest way by protecting against the arbitrary exercise of power. For more information see *Natural Justice*.

Responsible Authority

The body responsible for administering the planning scheme in a particular geographical area. For municipalities, the council is the Responsible Authority.

Resources

Refers to the equipment, people and money needed for local government programs and services.

Special committee

A formal committee of the council as defined in Section 86 of the Local Government Act 1989. Councils may delegate some decision-making powers to these committees which can include just councillors or any combination of councillors, council staff and other people.

Statutory planning

Statutory planning involves administering the planning scheme and assessing permit applications.

Strategic Resource Plan

The Strategic Resource Plan is a four-year plan (at the very least) which identifies the resources required to achieve the strategic objectives in the council plan.

Wards

The geographical areas within a municipality which councillors are elected to represent. Wards can be single councillor, multi-councillor or can comprise the whole municipality.