

Governance Rule

Decision-making Policy

Version Number	1
Approved by	Council
Approval date	August 2020
Effective date	1 September 2020
Date of last revision	
Date of next review*	August 2024
Responsible Manager	Executive Manager Governance, Communications and Engagement

*Unless replaced, this policy will still apply beyond the review date.

Related internal policies, procedures and guidelines	<ul style="list-style-type: none"> • Governance Rules • Public Transparency Principles • Councillor Code of Conduct • Code of Conduct for Members of Council Staff
Related legislation	<ul style="list-style-type: none"> • <i>Charter of Human Rights and Responsibilities Act 2006</i> • <i>Local Government Act 2020</i> • <i>Equal Opportunity Act 2010</i>

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Introduction

In accordance with the *Local Government Act 2020* (the Act), Council's role is to provide governance and leadership for the Nillumbik community through advocacy, decision-making and action.

Adherence to Governance Rules will assist Council in achieving this role.

This Governance Rule has been developed to meet Council's goal of good governance in its municipal district for the benefit and wellbeing of the municipal community. It incorporates those overarching and supportive governance principles to which Council is committed.

Council has a separate Councillor Code of Conduct in accordance with section 139 of the Act which includes the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment and vilification.

Definitions

When the following terms are used they mean:

Administration	The paid employees of the Council, headed by the Chief Executive Officer
CEO	Chief Executive Officer, the most senior position in the Administration. This position is directly accountable to Council.
Councillor	Elected community representative
Council	Elected representatives sitting as Council
Mayor	The elected leader of the Councillors
The Act	<i>Local Government Act 2020</i> , one of the two primary pieces of State Government legislation under which local government operates, the other being the <i>Local Government Act 1989</i> .
Local Law	Under the Act, local governments have the power (and in some cases the requirement) to develop local legislation to cover certain areas.

Key roles

We believe that an understanding and agreement of the different roles within a local government helps us govern better. At Nillumbik, the key roles are as follows.

Council

The Act defines the role of a Council as:

1. A Council is elected to provide leadership for the good governance in its municipal district for the benefit and wellbeing of the municipal community.
2. The Council provides good governance if it performs in accordance with the overarching governance principles and supporting principles summarised as:
 - a) Valid decision making and implementation
 - b) Best outcomes for the municipal community
 - c) Economic, social and environmental sustainability

- d) Engagement of the municipal community in strategic planning and strategic decision making
- e) Innovation and continuous improvement
- f) Collaboration with other Councils and governments, and statutory bodies
- g) Ongoing financial viability
- h) Strategic planning and decision making must consider regional, state and national plans and policies
- i) Transparency of Council decisions, actions and information

Mayor

At Nillumbik, we recognise that the Mayor is the leader of Council and the local government as a whole. We also understand that the Mayor does not have any statutory authority over other Councillors and that the leadership roles of the position can only exist if all Councillors accept this role.

Sections 18 & 19 of the Act describe the role and special powers of the Mayor as including:

- Providing **advice** to the CEO about the agenda for Council meetings
- Appointing a Councillor to be the chair of a delegated committee, **overriding any prior Council appointment**
- Directing a misbehaving Councillor to leave a Council meeting (subject to the governance rules)
- Requiring the CEO to report to Council on the implementation of a Council decision

Councillors

Section 28 of the Act provides that the role of a Councillor is:

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

In performing the role of Councillor, a Councillor must:

- Consider the diversity of interests and needs of the local community
- To participate in Council decision making
- To represent the interests of the municipal community (not personal) in that decision making
- To acknowledge and support the role of the Mayor
- To act in accordance with the standards of conduct
- To comply with procedures required for good governance
 - Not involve themselves in the CEO's responsibilities and functions – particularly operational matters

The role of Councillor does not include the performance of any responsibilities or functions that are specified as functions of the Chief Executive Officer.

Councillors agree to comply with the requirements of section 28 of the Act.

Deputy Mayor

The Deputy Mayor's roles are:

- To deputise for the Mayor in his/her absence
- To provide support for the Mayor as agreed between the Mayor and Deputy Mayor and by the Council.
- To perform the role of the Mayor and may exercise any of the powers of the Mayor if—
 - the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting
 - the Mayor is **incapable** of performing the duties of the office of Mayor for any reason, including illness
 - the office of Mayor is vacant

Chief Executive Officer

The CEO is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate Governance Rules, policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

Councillors undertake to respect the functions of the CEO and to comply with the Governance Rules, policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the CEO.

The Act describes the responsibilities of the CEO as:

- establishing and maintaining an appropriate organisational structure for the Council
- ensuring that the decisions of the Council are implemented without undue delay
- the day to day management of the Council's operations in accordance with the Council Plan
- developing, adopting and disseminating a code of conduct for Council staff
- providing timely advice to the Council
- ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act
- supporting the Mayor and the Councillors in the performance of their roles
- carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the *Workplace Injury Rehabilitation and Compensation Act 2013*
- performing any other function or duty of the CEO specified in this Act or any other

The functions of the CEO include –

- Setting the agenda for Council meetings after consulting the Mayor
- Managing interactions between Councillors and staff

- Maintaining a workforce plan which:
- Describes the organisational structure
- Specifies the projected staffing requirements for a period of at least 4 years
- Promotes gender equity, diversity and inclusiveness

In addition to these functions, s46 of the Act states that the CEO in the Workplace Plan to operate from 1 January 2022:

- may appoint as many members of Council staff as are required to enable the functions of the Council under the Act or any other Act to be carried out and to enable the CEO to carry out her or his functions
- is responsible for appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff
- is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate Governance Rules policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

Administration

Key roles of the Administration are:

- Delivery of programs and services (within budgets)
- Through the CEO, providing support, advice and information to Council and Councillors
- Implementing Council decisions
- Ensuring compliance with relevant legislation.

The Administration recognises that its functions should support good governance and will always strive to do so.

Key relationships

At Nillumbik, we believe that good working relationships are a key factor in helping us govern well. All relationships at Nillumbik should be characterised by our values and an understanding of everyone's different roles. The key relationships and their characteristics are as follows.

Mayor/Councillors

A good relationship between the Mayor and Councillors will help us work together to deliver the Council Plan. It will also increase the public credibility of the organisation.

The role of the Mayor is to:

- Chair Council meetings; and
- Be the principal spokesperson for the Council; and
- Lead engagement with the municipal community on the development of the Council Plan; and
- Report to the municipal community, at least once each year, on the implementation of the Council Plan; and

- Assist Councillors to understand their role; and
- Take a leadership role in ensuring the regular review of the performance of the CEO; and
- Provide advice to the CEO when the CEO is setting the agenda for Council meetings; and
- Perform civic and ceremonial duties on behalf of the Council.
- The Mayor should be an early contact point if there are disputes between Councillors and has the responsibility for promoting behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct.

Councillors/Councillors

Councillors need to work with each other to achieve their individual and collective goals. Good relationships between Councillors will assist in achieving a successful Council, a pleasant working environment and a Council with public credibility.

- While they may have different views, Councillors should treat each other with respect and courtesy.
- Disagreements, if they must be aired, should be expressed in a way that causes no detriment to individual Councillors or the Council as a whole.
- Councillors should adhere to the 'no surprises' principle in their relationships with each other.
- Debate and discussions should focus on issues and not on personalities.

Mayor/CEO

This important relationship can assist in the smooth running of the local government through good communication and anticipation of issues. It should be outward looking – that is focused on how the elected representatives and the organisation can be supported to best achieve Nillumbik's goals.

- The Mayor and CEO need to work closely together and must strive for a good working relationship.
- The relationship between the Mayor and CEO needs to be characterised by consistency, openness and good communication. Each has the responsibility to keep the other informed about important and relevant issues. Good communication should ensure that an understanding develops about what is important and relevant.
- The Mayor and the CEO understand that each has different roles and authorities. At Nillumbik, we understand that, while the Mayor is the leader of the local government, this position has no statutory authority (other than to chair meetings of Council) while the CEO has specific authorities. The relationship between the Mayor and the CEO is sensitive to this issue.
- The CEO is conscious of the Mayor's role in assisting Councillors to address their issues and achieve their goals and should always be looking to support this.
- At Nillumbik, the relationship between the Mayor and the CEO aims to facilitate involvement and inclusion amongst the elected representatives and the Administration. It does not seek to concentrate power in the relationship.

- At Nillumbik, the Mayor and the CEO recognise the importance of consistent communication, and to support, this will have regular meetings.

Councillors/CEO

Good relationships between Councillors and the CEO assist good governance. The CEO is often able to assist Councillors in addressing constituent issues. Councillors can help keep the CEO informed about what is happening in the community. Good relationships between the CEO and Councillors can improve liaison between Councillors and the Administration.

The CEO is also accountable to Councillors when they sit as Council. Councillors sitting as Council are also responsible for performance management of the CEO.

- At Nillumbik, we recognise that performance management of the CEO is important to Nillumbik achieving its goals. We understand that setting the goals for the CEO as leader of the administration and assessing performance against these goals is very important. Councillors commit themselves to spending the necessary time to set the goals as well as assessing their achievement;
- We understand that the relationship between Councillors and the CEO is based on a good understanding of each other's roles
- Councillors understand that the CEO can be a source of advice and support and that good communication between Councillors and the CEO can assist the CEO's role; and
- Councillors and the CEO will make time to meet periodically (usually monthly).

Councillors/Administration

At Nillumbik an open organisation is encouraged, with good communication and understanding between Councillors and the Administration. Everyone should have a good understanding of overall goals. However, good and open relationships require that the nature of the relationships and communication are well understood and backed by accountability and responsible conduct.

Councillor/Administration relationships should incorporate the following understandings:

- An understanding of the complexity of both the elected representatives and Administration's roles. Every effort should be made to understand where the other is coming from
- Although the CEO and senior management recognise that Councillors will contact staff on routine matters, Councillors need to understand that formal advice to elected representatives and Council should only come from the CEO and/or senior management. This is the only advice against which the Administration can be held accountable
- Communication on important matters will always involve the Mayor and/or Councillors and the CEO and/or General Managers
- Communication should be characterised by straight talking
- It is preferable that, if Councillors are dissatisfied with the outcome of an initial contact, the issue be escalated upwards, either through the organisation, or to the Mayor
- Relationships between Councillors and the Administration should incorporate the 'no surprises' principle

- Councillors do not have the authority to direct staff members
- Communication will be based on respect for each other and will not be used to undermine other Councillors or staff members (refer to the Councillor Code of Conduct developed in accordance with section 139 of the Act)
- Any information which is provided to an individual Councillor should be such that it is, or could be, copied to all Councillors
- Staff members should inform their Manager about any contacts with Councillors at which policies or programs were discussed in order to ensure that Councillors are receiving validated information
- A Councillor who wishes to discuss an officer's conduct should speak only with the CEO or the relevant senior manager
- As a principle, officers will discuss all significant conversations with Councillors (including emails) with their Managers beforehand to ensure accountability requirements are met
- Staff approaching Councillors about organisational issues should be referred to their Manager and reminded about Nillumbik's complaints policy and public interest disclosures procedures
- If staff, in dealing with Councillors, feel any discomfort resulting from the nature of the Councillors' enquiries, relative to what might be expected in dealing with a member of the public, then the staff member will refer the Councillor to senior management.

Councillors and the Administration recognise the importance of appropriate and productive relationships and will always strive to support and maintain these relationships.

Councillor Portfolios

Council assigns individual portfolio responsibilities to individual Councillors. The primary point of contact with the Administration on matters relating to each portfolio is with senior management and undertaken in accordance with the relationship set out above between Councillors/Administration.

The portfolio areas are:

- Community Services
- Economic Development and Marketing
- Environment and Sustainability
- Finance and Governance
- Infrastructure
- Planning.
- Social Infrastructure

The Future Nillumbik Committee, a delegated committee established under sections 11 and 63 of the Act, has responsibilities that include all matters within portfolio areas. The Terms of Reference for the Committee contains detailed portfolio descriptions.

The agenda for the Committee identifies which items of business relate to the respective portfolio. The Chairperson for each particular item shall be the Councillor with the

relevant portfolio responsibility. Once the items for each portfolio have been concluded, the meeting will then be chaired by the Councillor with portfolio responsibility for the subsequent items.

This section should be read in conjunction with the Future Nillumbik Committee Terms of Reference.

Decision-making process

Nillumbik recognises that good decisions are more likely to be made if good decision-making processes are used.

The key features of Nillumbik's decision-making process are:

Agenda setting

- Councillors understand that the main way of having issues considered by Council is through the Council Plan and Budget processes together with the development and review of policies and strategies.
- If issues arise during the year which Councillors believe require Council consideration, Councillors can work with each other, the Mayor and the Administration to put them forward for Council's consideration. If Councillors are seeking assistance in getting their issues up for consideration, they should approach senior management, the CEO or the Mayor.
- If Councillors wish to put items onto the Agenda as notices of motion, the procedures of Nillumbik's Governance Rule – Meeting Procedure are to be followed.

Councillors and the Administration will use appropriate channels to raise issues. They will adhere to the 'no surprises' principle and ensure that no attempt is made to 'ambush' anyone.

Information gathering

- Councillors recognise that they will seek and obtain information from various sources including community members, and understand the difference between formal advice from the Administration and community members and other stakeholders and take this into account in assessing the information received.
- Councillors believe that decisions should be based on the best possible data and expect the Administration to provide Council with quality research.
- Councillors understand that the views of those affected by their decisions are an important source of information for elected members and that is why any person whose rights will be directly affected by a Council decision are entitled to communicate their views and have their interests considered.

Councillors recognise the importance of acting on the basis of validated information and will make every attempt to ensure that they do.

Opinion formation

Officer briefings of Councillors

- At Nillumbik briefing sessions are used to help Councillors make up their minds about important issues.

- Briefing sessions offer Councillors the opportunity to ask questions, seek further information and float issues and options which are necessary for them to form their opinions on issues.
- The Administration must ensure that the necessary accurate information is made available to Councillors at briefing sessions.
- Discussion at briefing sessions is in no way a substitute for debate in open Council meetings. In order to fully explore options, issues and information needs, it is necessary for briefing sessions to be closed to the public. Briefing papers are not intended for public distribution. Transparency requirements are met through the way in which issues are openly addressed by Council at its formal meetings.
- Briefing sessions should prevent the necessity for Council to defer issues which are on the Agenda due to Councillors feeling that they do not have enough information to make a decision.
- Appropriate use of briefing sessions should result in no surprises occurring at Council meetings or other public forums.
- Minutes of discussions and matters presented at briefing sessions will be kept by the relevant senior manager or the CEO and filed on the corresponding file.
- Briefing sessions build trust and respect among Councillors and between the administration and can be used as brainstorming opportunities with all views being accepted and worked through, such is the nature of opinion forming. Councillors and staff will therefore participate fully in briefing sessions. It is the responsibility of Councillors to raise all of their information requests and any other matters which are necessary for them to make up their minds.
- Briefings are run according to the Officer Briefings of Councillors Protocol, (see **Attachment 1** to this Policy).

Pre-meeting briefings

- Pre-meetings scheduled prior to the Council and Committee meetings will aim to be completed 15 minutes prior to the scheduled break for a meal. This will allow any final informal discussion amongst Councillors in respect to forming their opinion and if necessary making final amendments to any draft motions that they wish to use for the purpose of debate during the meeting.
- Council officers should clarify information in officer reports and provide relevant background information if required, but should not participate in pre-meeting Councillor persuasive discussions about Council motions. These discussions should be held in private by Councillors. When required, input from the CEO or senior managers can assist with the final drafting of Councillor motions.
- Officers when requested will assist Councillors to draft motions. These draft motions are the responsibility of the Councillor to distribute to colleague Councillors should they wish to use them.

Decision-making

- Councillors understand that their decision-making needs to be transparent. The community needs to understand how they come to the decisions they make. Therefore, while Councillors may have discussed an important issue in a briefing session, they will fully debate these matters when they come before Council at the formal Council meeting.

- Councillors recognise that, at times, different Councillors will interpret the same set of information in different ways. Councillors will respect the differences and will treat each other with courtesy at Council meetings.
- Council decisions should be made in such a way that Councillors are as participative as possible. Chairing and meeting procedures should recognise and encourage participation by all Councillors.
- Councillors will maximise participation of all Councillors in decision-making. In debating, Councillors will focus on the issues rather than on each other.

Implementation

- Once Council has made a decision, it becomes the collective decision of Council. While it is recognised that some Councillors may not have supported the decision, it is highly desirable that Councillors do not seek to undermine or publicly denigrate the decision
- If a Councillor believes that their accountability to constituents requires an expression of dissent this should be done carefully and with respect. Councillors must bear in mind that post-decision dissent weakens the Council in the eyes of the community
- Council decisions should be implemented promptly and professionally by the Administration.

The Administration will implement all Council decisions promptly and professionally. Councillors will not denigrate or undermine Council decisions once made, even if they disagree with them.

Confidential information

- Councillors receive confidential information in accordance with section 66(2) and section 125 of the Act.
- Section 125 directs that a person who is, or has been, a Councillor, a member of a delegated committee, or of Council staff must not disclose information that the person knows, or should reasonably know, is confidential information, save that a Councillor may disclose that information
- For legal proceedings arising out of the Act.
- To a court or tribunal.
- Due to a court or tribunal order.
- In and for the internal arbitration process.
- In and for a Councillor Conduct Panel hearing.
- To a Municipal Monitor, Chief Municipal Inspector, Commission of Inquiry, or law enforcement agency.
- **Confidential** information means:
 - Council business information, that is, information that would prejudice the Council's position in commercial negotiations if prematurely released;
 - Security information, that is, information that if released is likely to endanger the security of Council property or the safety of any person;

- Land use planning information, that is, being information that if prematurely released is likely to encourage speculation in land values;
- Law enforcement information;
- Legal privileged information;
- Personal information, that is, information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
- Private commercial information, that is, information provided by a business, commercial or financial undertaking that:
 - Relates to trade secrets; or
 - If released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
- Confidential meeting information, that is the records of meetings closed to the public;
- Internal arbitration information;
- Specified information related to a Councillor Conduct Panel;
- And, under the *Local Government Act 1989* still includes:
 - Information provided to the Council or a special committee in relation to a matter considered by the Council or special Committee at a meeting closed to members of the public and the Council or special committee had not passed a resolution that the information was not confidential.
 - Information designated as confidential information by a resolution of the Council or special committee which specified the relevant ground or grounds applying under section 89(2) of that Act and the Council or special committee had not passed a resolution that the information was not confidential.
 - Information designated in writing as confidential information by the CEO specifying the relevant ground or grounds applying under section 89(2) of that Act and the Council had not passed a resolution that the information was not confidential.

Officer Briefings of Councillors Protocol

Purpose

Officer briefings of Councillors are intended to:

- Provide complex information to Councillors.
- Provide Councillors with the opportunity to ask questions and comment on issues.
- Give Councillors the opportunity to discuss complex and controversial issues in an environment which enables a free and frank exchange of views.
- Inform the Administration of Councillor views to assist in the preparation of formal advice to Council.

Process

The process being undertaken at briefings is in the first instance, the CEO or their delegate providing information to Councillors. Councillors then have the opportunity to ask questions, put forward their views and discuss the issue/s.

Agenda

The briefing agenda should be determined by the CEO, in consultation with the Mayor. This includes items, order of presentation and time allocation.

Chairing

Briefings should be chaired by the Mayor or his or her delegate.

Outcomes

The range of possible outcomes of briefings includes:

- Councillors having greater knowledge and understanding of the issue/s in question.
- Officers being more aware of the range of Councillor views.
- An understanding around further advice or information which is required before a decision can be made.
- A common understanding of the processes to be followed to bring an issue to decision.

They are not intended to provide a means to reach consensus or make a decision on issues. This is more properly done in Committee or Council meetings.

Attendance

Councillors, Directors, Managers and other staff as required. Consultants and any other presenters as invited.

Conduct

- Conduct in all Council forums should be based on the Councillor Code of Conduct and Governance Rules and the values they contain. There should be respect all round to the individuals at the briefing.
- The Administration has a responsibility to provide concise, relevant and comprehensive briefing material in a way which provides the maximum opportunity for Councillors to absorb and consider the information. Time should be used efficiently and time limits adhered to.

- Briefing material is provided on behalf of the CEO and the Administration. It is not put to a briefing without at least the endorsement of the relevant Director or and CEO. A manager providing a briefing is doing so on behalf of the Administration.
- Councillors should have every opportunity to ask questions and make comments. These are fundamental to the briefing process. However, there should be prior agreement as to whether this occurs during or at the end of a presentation by officers.
- Questions and discussions should be characterised by respect, honesty, thoughtfulness and the desire to achieve the best possible outcomes.
- Non-presenting senior managers can participate in discussions as appropriate.
- It is everyone's responsibility to ensure that there is appropriate conduct and respect in the briefings and to speak up if they believe breaches are occurring.

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