

5.3.2 Councillor Code of Conduct

Authorised by General Manager Business Excellence

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

The *Local Government Act 2020* (the Act) requires Councillors to adopt a Code of Conduct within four months of the general election. Council must adopt a Councillor Code of Conduct by the 24 February 2021. The Code must address the standards of conduct set out in the Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020 (the Regulations).

The Code of Conduct is required to be adopted by Council via a formal resolution passed at a Council meeting by at least two-thirds of the total number of Councillors elected to Council.

Recommendation

That Council:

- 1. receives and notes this report and the attachment pertaining to this report, and**
- 2. adopts the Councillor Code of Conduct at Attachment 1**

Background

Council is required to adopt a Councillor Code of Conduct that addresses the standards of conduct prescribed in the Regulations, these are:

- Treatment of others;
- Performing the role of Councillor;
- Compliance with good governance measures;
- Councillors not discrediting or misleading Council or the public; and
- Standards not limiting robust discussion.

Councillors provided specific instructions to a consultant regarding the format and content that they required in the development of the draft Councillor Code of Conduct.

Legislation

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). Provisions from the new Act are being commenced in four stages. The first tranche of provisions commenced on 6 April 2020 with other tranches commencing on 1 May 2020 and 24 October 2020. All remaining provisions are commencing on 1 July 2021. The *Local Government Act 1989* applies in circumstances where the new Act has not commenced.

The East Gippsland Shire Council is required to make decisions under both Acts as the transition occurs. Council has implemented mechanisms to ensure decisions are made according to the relevant provisions of either the *Local Government Act 1989* or the *Local Government Act 2020* as in force at the date of the decision.

Section 139 of *Local Government Act 2020* requires Council to adopt a Councillor Code of Conduct within four months of a general election, that is on or before 24 February 2021. The purpose of the Code as outlined in section 139 is to include standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification. The Local Government (Governance and Integrity) Regulations 2020 prescribe the standards of conduct to be included in the Code.

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's Charter of *Human Rights and Responsibilities Act 2006*.

Collaboration

As this report does not involve procurement there is no requirement to consider opportunities for collaboration.

Council Plan

This report has been prepared and aligned with the following goals set out in the Council Plan 2017-2021:

Good Governance Goal 1 - East Gippsland Shire Council is inclusive, engaged and open.

Council Policy

The new Councillor Code of Conduct replaces the existing Code that Councillors swore to uphold when they took the oath or affirmation of office. Given the legislative requirement for Council to formally resolve to adopt the new Code there is no requirement for Councillors to again pledge to abide by the Code. Once adopted it will apply to all Councillors.

Options

As the Act requires Council to review and adopt the Councillor Code of Conduct within four months of the general election there are no other options for consideration.

Resourcing

Financial

The adoption of the new Code does not require any further financial investment from Council.

Plant and equipment

There are no implications for plant and equipment with the adoption of the new Code.

Human Resources

The implementation of the new Code does not require any additional human resources.

Risk

The adoption of a Councillor Code of Conduct by the 24 February 2021 will meet the legislative requirement.

Economic

Adopting a Councillor Code of Conduct demonstrates the Council's compliance with legislative requirements.

Social

By adopting the Councillor Code of Conduct Councillors have demonstrated to the community, the standards of conduct under which they will perform their roles.

Environmental

Climate change

This report has been prepared and aligned with the following Climate Change function/category:

This report is assessed as having no direct impact on climate change.

Engagement

Councillors have instructed the consultant on the preparation of the Councillors Code of Conduct to meet the minimum legislative requirements.

Attachments

1. Draft Councillor Code of Conduct - minimum requirements - formatted by EGSC [5.3.2.1 - 8 pages]



Councillor Code of Conduct

DRAFT

TABLE OF CONTENTS

1	Purpose	1
2	Scope	1
3	Code Context	1
4	Code Statement	1
5	Key roles and responsibilities.....	1
	5.1 Overarching governance principles.....	1
	5.2 Role of Councillor	2
	5.3 Role of Mayor	2
	5.4 Role of CEO	3
6	Treatment of others.....	4
7	Performing the role of the Councillor.....	4
8	Compliance with good governance.....	4
9	Councillor must not discredit or mislead Council or public.....	5
10	Standards do not limit robust debate.....	5
11	References and Supporting Documents.....	5
	11.1 Applicable Legislation:.....	5
12	Privacy and Human Rights Consideration.....	5
13	Definitions	5
14	Revision History and Review	6

1 Purpose

The purpose of this Code of Conduct (**Code**) is to set out the standards of conduct that will guide Councillors collectively and individually in undertaking their roles, duties and obligations as set out in the *Local Government Act 2020* (the **Act**).

The Code fulfils the Council's statutory obligation to develop and adopt a Councillor Code of Conduct under section 139 of the Act.

2 Scope

All Councillors are required to comply with the obligations in this Code.

3 Code Context

The Act requires Council, under section 139(4), to review and adopt the Code within four months of the general election. Further, section 139(5) requires Council to adopt the Code by a formal resolution at a Council meeting of at least two-thirds of the total number of Councillors elected to Council. That is, the Code must be adopted by at least six of the nine East Gippsland Shire Councillors.

The Code has been developed to reflect the standards of conduct established in schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020* (the **Regulations**) with each section focussed on one of the following standards of conduct:

1. Treatment of others;
2. Performing the role of Councillor;
3. Compliance with good governance measures;
4. Councillors not discrediting or misleading Council or the public; and
5. Standards not limiting robust discussion.

4 Code Statement

The Code endeavours to foster good working relationships to enable Councillors to work constructively together and with the Chief Executive Officer and Council Staff, where required, in the best interests of the municipal community.

5 Key roles and responsibilities

5.1 Overarching governance principles

The primary role of the Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. Council must perform its role in accordance with the Overarching Governance Principles as set out in section 9 of the Act, which is extracted below.

Section 9 Overarching governance principles and supporting principles

- (1) A Council must in the performance of its role give effect to the overarching governance principles.
- (2) The following are the overarching governance principles—
 - (a) Council decisions are to be made and actions taken in accordance with the relevant law;
 - (b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;

- (c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
 - (d) the municipal community is to be engaged in strategic planning and strategic decision making;
 - (e) innovation and continuous improvement is to be pursued;
 - (f) collaboration with other Councils and Governments and statutory bodies is to be sought;
 - (g) the ongoing financial viability of the Council is to be ensured;
 - (h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
 - (i) the transparency of Council decisions, actions and information is to be ensured.
- (3) In giving effect to the overarching governance principles, a Council must take into account the following supporting principles—
- (a) the community engagement principles;
 - (b) the public transparency principles;
 - (c) the strategic planning principles;
 - (d) the financial management principles;
 - (e) the service performance principles.

5.2 Role of Councillor

The role of a Councillor is set out in section 28 of the Act, which is extracted below.

Section 28 Role of a Councillor

- (1) The role of every Councillor is—
- (a) to participate in the decision making of the Council; and
 - (b) to represent the interests of the municipal community in that decision making; and
 - (c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.
- (2) In performing the role of a Councillor, a Councillor must—
- (a) consider the diversity of interests and needs of the municipal community; and
 - (b) support the role of the Council; and
 - (c) acknowledge and support the role of the Mayor; and
 - (d) act lawfully and in accordance with the oath or affirmation of office; and
 - (e) act in accordance with the standards of conduct; and
 - (f) comply with Council procedures required for good governance.
- (3) The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer.

5.3 Role of Mayor

The role of Mayor is set out in section 18 of the Act, which is extracted below.

Section 18 Role of the Mayor

- (1) The role of the Mayor is to—
- (a) chair Council meetings; and
 - (b) be the principal spokesperson for the Council; and
 - (c) lead engagement with the municipal community on the development of the Council Plan; and

- (d) report to the municipal community, at least once each year, on the implementation of the Council Plan; and
 - (e) promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct; and
 - (f) assist Councillors to understand their role; and
 - (g) take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer; and
 - (h) provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and
 - (i) perform civic and ceremonial duties on behalf of the Council.
- (2) The Mayor is not eligible to be elected to the office of Deputy Mayor.

5.4 Role of CEO

The functions of the CEO are set out in section 46 of the Act, which are extracted below.

Section 46 Functions of the Chief Executive Officer

- (1) A Chief Executive Officer is responsible for—
- (a) supporting the Mayor and the Councillors in the performance of their roles; and
 - (b) ensuring the effective and efficient management of the day to day operations of the Council.
- (2) Without limiting the generality of subsection (1)(a), this responsibility includes the following—
- (a) ensuring that the decisions of the Council are implemented without undue delay;
 - (b) ensuring that the Council receives timely and reliable advice about its obligations under this Act or any other Act;
 - (c) supporting the Mayor in the performance of the Mayor's role as Mayor;
 - (d) setting the agenda for Council meetings after consulting the Mayor;
 - (e) when requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;
 - (f) 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.
- Note: See clause 15 of Schedule 1 to the Workplace Injury Rehabilitation and Compensation Act 2013.
- (3) Without limiting the generality of subsection (1)(b), this responsibility includes the following—
- (a) establishing and maintaining an organisational structure for the Council;
 - (b) being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff;
 - (c) managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between members of Council staff and Councillors are developed and implemented;
 - (d) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.
- (4) For the purposes of subsection (3)(a), a Chief Executive Officer must—
- (a) develop and maintain a workforce plan that—

- (i) describes the organisational structure of the Council; and
 - (ii) specifies the projected staffing requirements for a period of at least 4 years; and
 - (iii) sets out measures to seek to ensure gender equality, diversity and inclusiveness; and
 - (b) inform the Council before implementing an organisational restructure that will affect the capacity of the Council to deliver the Council Plan; and
 - (c) consult members of Council staff affected by a proposed organisational restructure, before implementing the organisational restructure.
- (5) A Council and the Chief Executive Officer must, in giving effect to gender equality, diversity and inclusiveness, comply with any processes and requirements prescribed by the regulations for the purposes of this section.
- (6) A Chief Executive Officer must ensure that the Mayor, Deputy Mayor, Councillors and members of Council staff have access to the workforce plan.
- (7) A Chief Executive Officer must develop the first workforce plan under this section within 6 months of the commencement of this section.

6 Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council Staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor:

- takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*; and
- supports the Council in fulfilling its obligation to achieve and promote gender equality; and
- does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council Staff and Councillors; and
- in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

7 Performing the role of the Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor:

- undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and
- diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

8 Compliance with good governance

A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following—

- any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council Staff and Councillors;
- the Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- any directions of the Minister issued under section 175 of the Act.

9 Councillor must not discredit or mislead Council or public

- In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.
- In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

10 Standards do not limit robust debate

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

11 References and Supporting Documents

11.1 Applicable Legislation:

Local Government Act 2020

Local Government (Governance and Integrity) Regulations 2020

Equal Opportunity Act 2010

Charter of Human Rights and Responsibilities Act 2006

12 Privacy and Human Rights Consideration

All personal information collected by East Gippsland Shire Council in connection with this Code will be handled in accordance with all applicable privacy legislation and will be used only for the purpose of compliance with the Act and the Regulations.

Personal information about an individual held by Council must only be used to carry out the primary or directly related purpose of collection. Furthermore, Council must not collect personal information unless the information is necessary for one or more of its functions.

Individuals have the right to make a complaint to the Commissioner for Privacy and Data Protection if they believe their privacy has been breached.

The Councillor Code of Conduct has been assessed as compliant with the obligations and objectives of the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

13 Definitions

Any terms which are used in the *Local Government Act 2020* or *Local Government (Governance and Integrity) Regulations 2020* and are not defined in this Code have the meaning provided in the *Local Government Act 2020* or *Local Government (Governance and Integrity) Regulations 2020*, as applicable.

Term	Meaning
Act	The <i>Local Government Act 2020</i> .
Contractor	Person or company engaged to undertake works for Council, including service providers and/or service partners.
Council	East Gippsland Shire Council.
Councillor	Person who has been elected to the office of "Councillor" of East Gippsland Shire Council.
Regulations	The <i>Local Government (Governance and Integrity) Regulations 2020</i> .
Staff	All staff engaged by East Gippsland Shire Council, including all full-time, part-time and casual employees, labour hire agency staff, Contractors and Volunteers.
Volunteer	A formally recognised, unpaid member of the public who assists with the provision of Council services e.g. Visitor Information Centre, Library.

14 Revision History and Review

Version Control	Approved Amended Rescinded	Date Effective	Approved By	ECM Document Reference	Summary of Changes