



Councillor Code of Conduct

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	4
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
	Schedule 1 – Dispute Resolution Process.....	7
	General	7
	1. Direct negotiation with Mayoral assistance	7
	2. External Mediation	8
	3. Internal Arbitration.....	10
	Councillor Conduct Panels for serious misconduct	12

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.

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.

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.

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.

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
Councillor Code of Conduct Dispute Resolution Procedure

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
1	Approved	23/02/2021	Council	8883678	New Code
2	Approved	16/12/2021	Council	9316645	Dispute resolution process included as Schedule 1

Schedule 1 – Dispute Resolution Process

General

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute will use their best endeavours to resolve the matter between themselves in a courteous and respectful manner.

While all Councillors are committed to resolving disputes in the most conciliatory and least disruptive manner possible, there may be times when assistance is required to reach a satisfactory outcome. In these situations, Councillors have agreed to follow a dispute resolution process that features:

- direct negotiation between the parties in dispute with facilitation and guidance from the Mayor and as required, the Chief Executive Officer;
- mediation by an external mediator engaged by the Chief Executive Officer; and
- internal arbitration.

An outline of the three components of the process is provided below. Additional, procedural information about each is set out in the Councillor Code of Conduct Dispute Resolution Procedures, which can be accessed via this [link](#).

1. Direct negotiation with Mayoral assistance

If the Councillors who are parties to a disagreement cannot resolve their differences in a courteous and respectful manner, one or both parties may make a written request to the Mayor (or if the Mayor is a party to the dispute, the Deputy Mayor; or if both the Mayor and Deputy Mayor are involved in the dispute, the Chief Executive Officer), to convene a direct negotiation meeting to attempt to resolve the dispute. The Mayor may seek support from a third party, following discussion with and approval by the Chief Executive Officer, to assist with facilitating the process.

The Mayor will then convene up to two meetings (as considered necessary) between the parties and attend those meetings to facilitate proceedings and provide guidance about the process and what is expected of Councillors, including in relation to the role of a Councillor under section 28 of the Act and the observation of the Councillor Code of Conduct.

If resolution of the dispute is not possible through the Mayor's intervention, the Mayor or one or more of the other parties involved in the dispute can make a written application to the Chief Executive Officer for an external mediator to be appointed.

Direct negotiation with Mayoral assistance - Flowchart

Step 1. Applicant must submit written request with various information.



Step 2. Within 5 days, Mayor will provide acknowledgement of receipt to applicant.



Step 3. Mayor will convene meeting to resolve dispute between parties.
(A further meeting may be convened, where required).

Note: *If dispute remains unresolved, the parties are encouraged to progress to External Mediation but may choose to omit this step and move straight to internal arbitration.*

2. External Mediation

A Councillor or a group of Councillors can make written application to the Chief Executive Officer for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for direct negotiation.

Once it has been ascertained that the parties agree to participate in an external mediation, the Chief Executive Officer will engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The parties may have a support person with them at the mediation. However, in the spirit of mediation, legal representation is not appropriate during this process.

The mediator will document any agreement reached through the mediation process.

Where an agreement cannot be reached, or one party does not adhere to the agreement, the other party can request arbitration.

NOTE:

It is not a contravention of this Councillor Code of Conduct for a party to decline to participate in an external mediation. However, the reasons provided for declining to participate may be taken into account if the matter subsequently becomes the subject of an application for internal arbitration.

External Mediation - Flowchart

Where direct negotiation with Mayoral assistance is unsuccessful or written application* is made to the Chief Executive Officer for a dispute to be referred for external mediation. (Written application* must include various information).

Step 1. A Councillor or a group of Councillors (applicant) will lodge a written application with Chief Executive Officer (CEO) requesting an external mediator be appointed.



Step 2. The applicant to notify other parties of request and provide a copy of application at the same time it is submitted to CEO.



Step 3. The CEO will write to other parties to check whether willing to attend external mediation. (If other parties decline to participate, must provide reasons in writing to CEO, who advises the Mayor).



Step 4. If other parties agree to participate, the CEO to advise applicant and Mayor.



Step 5. The CEO to engage an external mediator at earliest opportunity.



Step 6. Mediator to document agreement reached at meeting/s and provide copies to all parties, Mayor and Chief Executive Officer).

Note: *If a party does not comply with agreement or dispute remains unresolved, the applicant has recourse to the Internal Arbitration Process (only where matter relates to an alleged breach of Councillor Code of Conduct or involves a breach of standards of conduct imposed by section 139(3)(a) of the Local Government Act 2020 and Schedule 1 of the regulations).*

3. Internal Arbitration

If Mayoral assistance and/or external mediation fail to resolve a dispute involving an alleged contravention of this Councillor Code of Conduct, or if the dispute involves a breach or potential breach of the standards of conduct imposed by section 139(3)(a) of the Act and Schedule 1 of the regulations, Council (following a resolution of Council to do so), a Councillor (including the Mayor), or a group of Councillors may make a written application under section 143 of the Act to the Principal Councillor Conduct Registrar for arbitration, alleging that a Councillor has contravened this Councillor Code of Conduct.

On receiving an application, the Principal Councillor Conduct Registrar will undertake a process that includes:

- considering whether an internal arbitration process is warranted; and
- identifying an arbiter to hear the application from the panel list of eligible persons from which an arbiter must be selected (as established by the Secretary).

The role of the arbiter is to:

- consider matters alleging a contravention of the Councillor Code of Conduct by a Councillor;
- make findings in relation to any matters alleging a contravention of the Councillor Code of Conduct, which the arbiter must give to Council along with reasons supporting the findings;
- give a written statement of the findings and the reasons supporting them to the Councillor who is alleged to have breached the Councillor Code of Conduct at the same time the findings and reasons are provided to Council;
- recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct; and
- in all respects comply with their obligations under the Act.

In considering an alleged contravention of the Councillor Code of Conduct, an arbiter will (among other things):

- hold as many meetings as he or she considers necessary to properly consider the matter, including directions hearings if required;
- have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the matter allows;
- ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
- consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and, in his or her discretion (subject to section 141(2)(b) of the Act), grant the application or deny the application;
- ensure that the rules of natural justice are observed and applied in the hearing of the application; and
- ensure that the hearings are closed to the public.

Where an application by a Councillor to have legal representation is granted by an arbiter, the costs of that legal representation will be borne in its entirety by the Councillor.

An arbiter:

- may find that a Councillor who is a respondent to an internal arbitration procedure application has not contravened the Code and/or the standards of conduct prescribed in Schedule 1 of the regulations;

- may find that a Councillor who is a respondent to an internal arbitration procedure has contravened the Code and/or the standards of conduct prescribed in Schedule 1 of the regulations; and
- will suspend consideration of an internal arbitration procedure during the Election Period for a General Municipal Election.

Where a Councillor has been found to have contravened the standards of conduct prescribed in Schedule 1 of the regulations, the arbiter will recommend an appropriate sanction or sanctions for the contravention as provided in section 147 of the Act. Where a Councillor has been found to have contravened the Code but not the standards of conduct prescribed in Schedule 1 of the regulations, the arbiter may recommend any of the possible sanctions set out in section 147 of the Act for a contravention of the standards of conduct prescribed in Schedule 1 of the regulations.

A copy of the arbiter's findings, statement of reasons and any recommended sanctions will be submitted to the next Council meeting. The matter will be listed for consideration during the closed session of the meeting. Council will determine whether the findings, statement of reasons and any sanctions to be applied should be retained in confidence or made public either wholly or in part, in accordance with the Act.

If an arbiter has found that a contravention of the Code has occurred, Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, resolve to do any or all of the following:

- direct the Councillor to make an apology in a form or manner specified by Council;
- direct the Councillor to not attend up to, but not exceeding, two meetings of Council (in respect of the next scheduled meetings of the Council);
- direct that, for a period of up to, but not exceeding two months on a date specified by Council, the Councillor:
 - be removed from any position where the Councillor represents Council; and
 - to not chair or attend any delegate committee meetings or any other meeting specified in the direction.

NOTE: An applicant may withdraw an application for an internal resolution procedure. However, once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

Internal Arbitration - Flowchart

Step 1. Council (following a resolution of Council to do so), a Councillor (including the Mayor) or a group of Councillors to make application to Principal Councillor Conduct Registrar (PCCR) with various information provided.
(Must be made within 3 months of alleged misconduct occurring).



Step 2. PCCR will examine application and if satisfied, will undertake a range of administrative matters including advise the Mayor and Chief Executive Officer of the application; arrange for a copy of the application to be provided to the Councillor who is the subject of the allegation; and appoint an Arbiter to hear the matter.



Step 3. Appointed Arbiter to convene a hearing and give all parties to the application an opportunity to be heard. (Not open to the public).
(The appointed arbiter may hold as many meetings as required to properly consider the matter and will ensure that the rules of natural justice are observed).



Step 4. Appointed Arbiter will –

A. Determine matter and provide findings and statement of reasons to the Mayor, Chief Executive Officer, all parties and the PCCR (confidential information). If appropriate, at the same time the arbiter will recommend appropriate sanctions.

OR

B. If matter deemed to involve serious misconduct, will refer the matter in writing to the PCCR. (PCCR will inform all parties, where a referral is made by Arbiter).

Councillor Conduct Panels for serious misconduct

Allegations of “serious misconduct” as defined by section 3 of the Act may be heard on application by a Councillor Conduct Panel in accordance with the process set out in the Act.

Request for Councillor Conduct Panel - Flowchart

Step 1. Application with supporting information made to PCCR to establish a panel.
(An application alleging serious misconduct must be made within 12 months of alleged misconduct occurring).



Step 2. If satisfied, the PCCR will establish a panel to consider matter.