

Councillor Code of Conduct

Adopted on 24 February 2021

Contents

1. Introduction and Purpose	3
2. Governance Principles	4
3. Behaviours.....	4
4. Decision Making	5
5. Roles and Responsibilities.....	6
Role of Councillors.....	6
Role of the Mayor	7
Role of Deputy Mayor	8
Role of the Chief Executive Officer	8
Role of Council Staff	9
6. Standards of Conduct.....	10
1. Treatment of others	10
2. Performing the role of Councillor	10
3. Compliance with good governance measures.....	11
4. Councillor must not discredit or mislead Council or public.....	11
5. Standards do not limit robust political debate	11
7. Specific Councillor Conduct Obligations	11
Use of Council Resources.....	11
Elections	12
Conflict of Interest.....	12
Human Rights and Equal Opportunity.....	12
Sexual Harassment	12
Fraud and Corruption.....	12
Misuse of Position	13
8. Dispute Resolution Procedures	13
Self Resolution	14
Mayoral Negotiation.....	14
External Mediation.....	15
9. Breaches of the Prescribed Standards of Conduct.....	16
Internal Arbitration	16
Serious Misconduct.....	16
Gross Misconduct	17
Other Penalties.....	17
Suspension during Election Period.....	18
10. Legislative Context.....	18
11. Human Rights Charter compatibility.....	18
12. Endorsement.....	18

1. Introduction and Purpose

As the elected representatives of the Shire of Towong, we have an important role in providing leadership to the municipality. While we may sometimes have different viewpoints, it is critical that we work together in the best interests of the municipality as a whole.

In doing this we are committed to living the vision and values of Towong Shire Council (Council) while adhering to the requirements of the Local Government Act 2020 (LGA 2020).

Vision

We will be a World Class small Council and Towong Shire will be the ideal place to live.

Mission

To provide leadership and service to the Towong Shire community that adds value and enhances social, economic and environmental wellbeing now and in the future.

Values

Respect

We will listen and consider other perspectives and treat each other with courtesy.

Integrity

We will seek the common good.

Pride

We will always take care in what we do.

Teamwork

We will help others to achieve by being positive, enthusiastic and confident.

The purpose of this Councillor Code of Conduct is to outline the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors.

2. Governance Principles

The primary role of the Council is to provide good governance to the municipal district for the benefit and wellbeing of the municipal community. As required by LGA 2020 we will in the performance of our roles give effect to the overarching governance principles of LGA 2020:

- (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.*

In giving effect to the overarching governance principles, we will also take into account the following supporting principles of the LGA 2020:

- (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.*

3. Behaviours

As community leaders we are committed to leading by example and promoting the highest standard of behavior in adherence to the following behaviours:

Respectful

We respect each other, each other's time, and each other's right to put forward a viewpoint. We are courteous, polite and value one another's ideas even if we don't agree.

United

We put forward a united front even if a decision hasn't gone the way that some of us might have wanted. We don't have to agree with one another, but we don't undermine our collective decisions.

Strategic

We represent the best interest of the whole shire, and strive together towards our bigger-picture goals, rather than representing specific geographical areas or community groups.

Supportive

We support one another in learning, share information and skills, contribute to the debate, and respect different experience levels.

Discreet

We maintain confidentiality of Councillor discussions and do not quote private conversations unless it is understood that the content may be discussed publicly.

4. Decision Making

We are committed to making good decisions impartially and in the best interest of the community. We understand that in line with the requirements of LGA 2020 decisions are to be made by a resolution of the Council. A resolution of the Council may include:

- A resolution at a Council meeting
- A resolution made at a meeting of a delegated committee
- The exercise of a duty, function or power made by a member of Council staff or a Community Asset Committee under delegation.

In making decisions we are committed to:

- Transparent processes in line with our *Public Transparency Policy*
- Good community engagement in line with our *Community Engagement Policy*
- Sound participative meeting practices in line with our *Governance Rules*
- Adhering to all relevant legislation and regulation
- Seeking appropriate technical advice and expertise from the Administration.

As issues arise that may require Council consideration we will work together and with the administration to develop an approach to forming a decision. Decisions are to be made with due consideration to the time required to seek the necessary inputs and

hold the necessary discussions; urgent business should only be raised if the matter cannot be addressed through this process due to time constraints.

While significant work and discussion may occur prior to a Council meeting where a decision is made, we are committed to ensuring that the community understands all of the factors that contribute to the decision when it is presented at the Council meeting.

Once Council has made a decision, it becomes the collective decision of Council. While it is recognised that some Councillors may not support a decision, it is highly desirable that we present a united front to the public once the decision has been made. Dissent may be expressed but with due care to the reputation of Council and Councillors as an effective leadership team. In line with the requirements of LGA 2020 Councillors are not to publicly discredit or actively undermine the Council.

5. Roles and Responsibilities

Towong Shire Council consists of democratically elected Councillors, including the Mayor; and the administration, consisting of the Chief Executive Officer and their staff.

Good governance relies on good relationships between all people who form part of the Council, and an understanding and respect for one another's roles.

Role of Councillors

Councillors are the democratically elected representatives of the community and play a key advocacy and leadership role. They are critical in facilitating community engagement with the activities and decisions of Council. There is an expectation that Councillors will make decisions that benefit the long term interest of the whole community.

In line with the requirements of LGA 2020 we will uphold the role of Councillors:

- (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.*

In performing the role of a Councillor, we will:

- (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.*

Further we will respect that:

The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer.

Councillors, sitting as Council, are responsible for appointing the Chief Executive Officer and developing and maintaining a *Chief Executive Officer Employment and Remuneration Policy*. We are effectively responsible for performance management of the Chief Executive Officer and set and monitor their progress against goals.

We will maintain an excellent working relationship with the Chief Executive Officer and keep them informed about relevant issues.

Role of the Mayor

The Mayor is the elected leader of the Council and this role is to be respected by all Councillors. The Mayor facilitates an inclusive approach to decision-making and involvement in Council activities, and supports good relationships amongst the Councillor team and between Councillors and the Administration. The Mayor sets the tone and style of behaviour, practice and projection of the Council working with, supporting and coordinating the team of Councillors.

In line with the requirements of LGA 2020 we will respect the role of the Mayor 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.*

The Mayor facilitates resolution of any Councillor disputes and is responsible for Councillors' training and development.

The Mayor maintains regular open communication regarding relevant issues with the Chief Executive Officer and with due regard to their respective roles.

Role of Deputy Mayor

The primary role of the Deputy Mayor is to play the role of the Mayor in the absence of the Mayor. In line with LGA 2020:

The Deputy Mayor must perform the role of the Mayor and may exercise any of the powers of the Mayor if—

- (a) the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting; or*
- (b) the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or*
- (c) the office of Mayor is vacant.*

The Deputy Mayor will take responsibility for the internal resolution process when the matter relates to the Mayor.

Role of the Chief Executive Officer

The Chief Executive Officer (CEO) is accountable to the Mayor and the Councillors for delivering Council's strategies and services. The CEO maintains the organisational structure and fosters a positive culture, while helping to manage the relationship between the Councillors and the Administration.

In line with LGA 2020 the role of the CEO is:

- (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.*

Without limiting the generality of this role, this responsibility includes the following—

- (c) ensuring that the decisions of the Council are implemented without undue delay;*
- (d) ensuring that the Council receives timely and reliable advice about its obligations under this Act or any other Act;*
- (e) supporting the Mayor in the performance of the Mayor's role as Mayor;*
- (f) setting the agenda for Council meetings after consulting the Mayor;*
- (g) when requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;*
- (h) 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.*

Role of Council Staff

Council staff provide support, advice and information to Council and Councillors through the CEO to support the democratic process and ensure good governance. They are responsible for delivering programs and services (within budgets), exercising their Council delegations, implementing Council decisions and ensuring compliance with relevant legislation.

If we require information or need to provide feedback to Council staff we will direct the enquiry through the CEO or a Director to best support consistent communication, accountability and appropriate task management. This also helps to avoid a Councillor unintentionally directing a member of staff in contravention of the misuse of position requirements of LGA 2020, or being perceived to do so.

Council staff are to inform their Director about any contacts with Councillors where Council business including operational matters were discussed.

If we receive a complaint from an officer about organisational issues we will direct them to Council's *Issue Resolution Policy* in the first instance.

If we wish to complain about a member of Council staff we will direct the complaint to the Chief Executive Officer or the relevant Director.

6. Standards of Conduct

LGA 2020 places obligations on Councillors in relation to way they should act. It also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions.

In line with the requirements of LGA 2020 and supporting regulations we will respect the following standards:

1. *Treatment of others*

- (a) 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—*
- (b) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010; and*
- (c) supports the Council in fulfilling its obligation to achieve and promote gender equality; and*
- (d) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and*
- (e) 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.*

2. *Performing the role of Councillor*

- (a) 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—*
- (b) 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*
- (c) diligently uses Council processes to become informed about matters which are subject to Council decisions; and*
- (d) is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and*
- (e) 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.*

3. Compliance with good governance measures

- (a) 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—*
- (b) 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;*
- (c) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;*
- (d) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;*
- (e) any directions of the Minister issued under section 175 of the Act.*

4. Councillor must not discredit or mislead Council or public

- (1) In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.*
- (2) 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.*

5. Standards do not limit robust political debate

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

7. Specific Councillor Conduct Obligations

Gifts, Benefits or Hospitality

We will avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment. We will respond to offers of gifts or hospitality in line with Council's *Gift Policy* and the requirements of LGA 2020.

Use of Council Resources

We will use Council resources effectively and economically and in line with the requirements of Council's *Councillor Support and Expenses Policy*. Council resources are only to be used for the purposes of duties as a Councillor and not for private

purposes unless authorised to do so. We will maintain adequate security over Council property and information.

Elections

We are committed to fair and democratic Council elections and therefore adopt and endorse the practices and legislative requirements set out in Council's *Election Period Policy* that forms part of Council's *Governance Rules* and the provisions of LGA 2020.

Conflict of Interest

We will identify, manage and disclose any conflicts of interest that we may have in line with the requirements of Council's *Governance Rules* and the provisions of LGA 2020. We will give early notice to the Mayor and the Chief Executive Officer as to the conflict and seek advice from the Chief Executive Officer if we need assistance on interpretation.

We recognise that the legal onus to determine whether the conflict exists rests entirely with each individual Councillor. If we cannot confidently say whether a conflict exists, we will declare the potential conflict.

Human Rights and Equal Opportunity

We will take positive action to eliminate discrimination and bullying in accordance with the *Equal Opportunity Act 2010* and support Council in fulfilling its obligation to achieve and promote gender equality. We will treat all people with dignity and respect and have due regards for the opinions, beliefs, rights and attributes of others. We will not discriminate against, bully, vilify or victimise any individual.

Sexual Harassment

Sexual harassment is against the law and will not be tolerated under any circumstances. We will take positive action to eliminate sexual harassment in accordance with the *Equal Opportunity Act 2010*. We will not engage in any unwelcome conduct of a sexual nature towards another individual where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the individual would be offended, humiliated or offended.

Fraud and Corruption

We will take positive action to eliminate fraud or corrupt behaviour and support Council's obligations under the *Public Interest Disclosures Act 2012*. We will

immediately report to the Chief Executive Officer and / or an appropriate integrity body any suspected, potential or actual fraudulent, criminal, unethical or corrupt behaviour in line with Council's *Public Interest Disclosures Policy*.

Misuse of Position

In line with section 123 of LGA 2020, we will not intentionally misuse our position to gain an advantage for ourselves or any other person, or to cause detriment to the Council or another person. Offences under this section of LGA 2020 are indictable. Circumstances including misuse of position include:

- a) making improper use of information acquired as a result of the position the person held or holds; or*
- b) disclosing information that is confidential information; or*
- c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or*
- d) exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or*
- e) using public funds or resources in a manner that is improper or unauthorised; or*
- f) participating in a decision on a matter in which the person has a conflict of interest.*

8. Dispute Resolution Procedures

We have an individual and collective responsibility to try every avenue possible to resolve such disputes in house and from allowing them to escalate further. This dispute resolution procedure is intended to be used:

1. When Councillors have been unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Council;
2. To manage complaints or concerns regarding the behaviour of Councillors from the public or Council staff, where a Councillor or group of Councillors takes up the complaint on behalf of the complainant.

It is not intended to resolve differences in policy or decision-making, which are appropriately resolved through discussion and voting in Council and Committee Meetings.

Council's dispute resolution procedure comprises four components, namely:

- 1) Self Resolution
- 2) Mayoral Negotiation
- 3) External Mediation
- 4) Internal Arbitration

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation or internal arbitration regardless of whether self-resolution or Mayoral negotiation have been attempted, however it is preferred that these options are exhausted first.

Self Resolution

Councillors must take personal responsibility and endeavour to resolve their differences in an informal, but at all times, courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

Mayoral Negotiation

If the informal resolution process between the Councillors is unsuccessful, the Mayor should be involved as soon as practically possible to convene a meeting of the parties.

The party requesting the Mayoral negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a "Mayoral negotiation" dispute resolution process.

Within 5 working days of receipt of the complaint, the Mayor will:

- provide written acknowledgment of receipt of the complaint to the Complainant;
- provide a copy of the complaint to the Councillor concerned; and
- attempt to facilitate a resolution and convene a meeting.

The Mayor may call upon the Councillor Conduct Officer for advice and guidance at this point in the process.

The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the parties should progress to external mediation.

In the event that the dispute involves the Mayor, the Deputy Mayor or other Councillor nominated by Council resolution will perform the role of the Mayor in facilitating discussions between the parties in dispute and liaising with the Councillor Conduct Officer.

External Mediation

If reconciliation of the dispute is not possible after Mayoral negotiation, it is the responsibility of the Mayor to seek assistance from an external mediator to resolve the dispute, preferably with the active support of the parties to the dispute, who must be informed of such a decision in any circumstance.

The applicant is to submit a written application to the Councillor Conduct Officer setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an "external mediation". The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time or as soon as practical thereafter.

The Councillor Conduct Officer is to ascertain (in writing) whether or not the other party is prepared to attend an "external mediation". If the other party declines to participate in an external mediation, he or she is to provide their reasons for doing so in writing to the Councillor Conduct Officer. When the other party declines to participate in an external mediation, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party agrees to participate in an external mediation, the Councillor Conduct Officer is to advise the applicant, the Mayor and Chief Executive Officer immediately, and engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure

where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the Mayor may recommend a resolution unless the dispute involves an allegation of a breach of the prescribed standards of conduct, in which case the matter must be referred for internal arbitration.

9. Breaches of the Prescribed Standards of Conduct

Internal Arbitration

If a Councillor is suspected of breaching the prescribed standards of conduct, an internal arbitration process may be pursued in line with section 141 of LGA 2020.

An application for internal arbitration may be made by the Council, following a resolution of the Council; a Councillor; or a group of Councillors. It must be made within three months of the alleged misconduct occurring, and is to be given to the Principal Councillor Conduct Registrar as specified by section 149 of LGA 2020.

Councillors may refer to the Councillor Conduct Officer appointed by the CEO to assist in the implementation of the arbitration process.

If the Principle Councillor Conduct Registrar is satisfied that the matter warrants arbitration given the evidence at hand, they will appoint an arbiter from the state's panel list. If the arbiter believes at any stage that the subject of the application involves serious misconduct as defined by LGA 2020, it will be referred to the Principal Councillor Conduct Registrar for hearing by a Councillor Conduct Panel.

The arbiter will ensure that parties involved are given an opportunity to be heard. If after completing the arbitration process, the arbiter determines that there has been a breach of the prescribed standards of conduct, they may make a finding of misconduct and direct the Councillor to make an apology, suspend the Councillor from office for up to one month, and / or direct a Councillor to attend training or counselling.

Serious Misconduct

A Councillor Conduct Panel may be appointed in the case that the application alleges serious misconduct by a Councillor. An application to make a finding of serious

misconduct may be made by the Council following a resolution of Council; a Councillor or a group of Councillors; or the Chief Municipal Inspector.

An application regarding serious misconduct must be made within 12 months of the alleged misconduct occurring. The application must satisfy the form prescribed by section 154 of LGA 2020 and is to be made to the Principle Councillor Conduct Registrar.

If the Registrar is satisfied that the application warrants the appointment of a Panel given the evidence at hand, they will form a Councillor Conduct Panel from the state panel list. The Panel may request persons to attend a hearing, request information from the applicant, the respondent of the Council, and may direct a Councillor to attend a hearing. They must provide the respondent with an opportunity to be heard.

If the Councillor Conduct Panel finds that a Councillor has committed an offence, they will notify the Chief Municipal Inspector and may reprimand the Councillor, direct them to make an apology, suspend them from office for a period of up to 12 months, and / or make them ineligible to chair a delegated committee of Council for the remainder of the Council term. The Councillor becomes ineligible from holding the office of Mayor or Deputy Mayor for the remainder of the Council term unless the Panel decides otherwise.

The Panel may also determine that remedial action is required such as mediation, training or counselling.

A person who is affected by the decision made by a Councillor Conduct Panel may apply to VCAT for review of the decision.

Gross Misconduct

If the Chief Municipal Inspector determines that a Councillor has engaged in gross misconduct as specified by LGA 2020 they may refer an application to VCAT. If VCAT supports the finding they may order that the Councillor is disqualified from continuing as a Councillor for up to 8 years.

Other Penalties

Other penalties such as fines and indictment may occur depending on the nature of the breach in accordance with any relevant legislation and regulation.

Suspension during Election Period

All applications and proceedings are suspended during the election period for a general election. If the Councillor is not returned to office the application lapses, unless it is for an application for gross misconduct in which case it must resume after the election is held regardless of whether the person is returned to office.

10. Legislative Context

Section 139 of the *Local Government Act 2020* requires a council to develop a Councillor Code of Conduct which contains the standards of conduct as prescribed by the regulations and any other prescribed matters.

11. Human Rights Charter compatibility

This policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006 [Vic]*.

12. Endorsement

This Code of Conduct was adopted by Council on 24 February 2021 and is signed by the following Councillors:



Cr David Wortmann (Mayor)



10/3/2021

Cr Peter Dikschei (Deputy Mayor)



Cr Denise Anderson



Cr Aaron Scales



Cr Andrew Whitehead