

PYRENEES SHIRE COUNCIL COUNCILLOR CODE OF CONDUCT 2021

Adopted by Council – February 2021



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PART 1 - INTRODUCTION

As custodians of the Pyrenees Shire, Councillors hold a unique and important role within Victoria. They have been democratically elected to provide leadership for the good governance of the municipality and the local community as recognised in the *Local Government Act 2020* (the Act). The Act describes how the Council will be accountable in the performance of its functions, the exercise of expected standards of conduct and behaviour and the use of Council resources.

The community expects its Council to provide fair, accurate and unbiased advice, to act responsibly and respectfully, and to manage assets efficiently. Accordingly, Pyrenees Shire Council operates under two codes of conduct: one for Councillors and one for staff. The two codes are linked, with common principles, but they also distinguish the expectations of Councillors as elected representatives, from those of staff who are employees of the Council.

1 PURPOSE AND COMMITMENT

The Councillor Code of Conduct is made under Section 139 of the *Local Government Act 2020* (the Act) and the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations).

At Pyrenees Shire Council, elected Councillors are committed to working together in the best interests of the people within the Pyrenees Shire municipality to the highest standard of behaviour and to discharge their responsibilities to the best of their skill and judgement.

As part of this commitment, all Councillors will adhere to conduct principles, values and behaviours outlined in the Councillor Code of Conduct (the Code). A commitment to working together constructively will enable the development and achievement of the Pyrenees Shire Community Vision and the Council Plan in a manner that is consistent with the core values.

By signing this document at the end, Councillors are committed to the Standards of Conduct outlined in this Code.

The Code details:

1. Governing Principles
2. Conduct, values and behaviour
3. Roles and responsibilities
4. Dispute resolution processes
5. Breaches of the Councillor Code of Conduct

The purpose of the Councillor Code of Conduct is to include the standards of conduct expected to be observed by Councillors while performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification.

This Code of Conduct includes obligations regarding child safety and gender equality, diversity and inclusiveness.



1.1 Legislative context

Division 5 Section 139 of the *Local Government Act 2020* (the Act) requires Council to develop a Councillor Code of Conduct. Council must review and adopt the Councillor Code of Conduct within 4 (four) months after a general election. The last general election was held on 24th October 2020.

This Code of Conduct has been developed by Council to comply with the requirements of the Act and supporting Regulations. A Councillor Code of Conduct must include:

- a) the standards of conduct prescribed by the regulations expected to be observed by Councillors, and
- b) any provisions prescribed by the regulations for the purpose of section 139 of the Act, and
- c) provisions addressing any matters prescribed by the regulations for the purpose of this section, and
- d) any other matters which the Council considers appropriate, other than any other standards of Conduct.

The Code also recognises obligations upon Councillors in relation to the Victorian Child Safe Standards in creating a Child Safe Organisation, and principles of gender equality, diversity and inclusiveness and as defined under the *Gender Equality Act 2020*.

In developing this Code of Conduct, the subject matter has been considered to determine if it raises any human rights issues; in particular whether the scope of any human right established under the Victorian *Charter of Human Rights & Responsibilities Act 2006* is in any way limited, restricted or interfered with by the contents of this Policy. It is considered that the Councillor Code of Conduct is consistent with the rights outlined in the Charter, including those human rights most relevant to this Policy:

- Recognition and equality before the law (section 8)
- Right to life (section 9)
- Protection of privacy and reputation (section 13)
- Right to freedom of thought, conscience, religion and belief (section 14)
- Right to freedom of expression (section 15)
- Right to protection of families and children (section 17)

1.2 Related policies and procedures

- Council Expenses Policy
- Councillor and Staff Interaction Procedure
- Fraud & Corruption Control Plan
- Conflict of Interest Procedure
- Acceptance of Gifts, Benefits and Hospitality Policy & Procedure

1.3 Failure to comply

Failure of a Councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the Act. The Act provides for a range of actions and penalties that may be imposed on Councillors for misconduct, including suspension from civic office.



1.4 Version history

Version Number	Issue date	Description of change
1.0	November 2016	Initial release
1.1	September 2018	Re-signing following by-election
2.0	Adopted 16 February 2021	Full review and revision, inclusion of new legislative provisions and new template

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PART 2 - DEFINITIONS

In this code the following terms have the following meanings:

Bullying	By a Councillor means the Councillor repeatedly behaves unreasonably toward another person and that behaviour creates a risk to the health and safety of that other person.
Councillor Conduct Officer	The person appointed in writing by the Chief Executive Officer to be the Councillor Conduct Officer for the Council. The Pyrenees Shire Council Councillor Conduct Officer is the Director Corporate & Community Services.
Financial risk	Includes any risk relating to the following – a) the financial viability of the Council, b) the management of current and future liabilities of the Council and/or c) the beneficial enterprises of the Council.
Misconduct	Any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct.
Gross misconduct	Behaviour that demonstrates that a Council – a) is not of good character, or b) is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature.
Serious misconduct	Means any of the following – a) the failure by a Councillor to comply with the Council’s internal arbitration process, b) the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor, c) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel, d) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel, e) bullying by a Councillor of another Councillor or a member of Council staff, f) conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff, g) the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information, h) conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff,



-
- i) the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision-making process when required to do so in accordance with the Act.
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Standards of
Conduct

The standards of conduct prescribed under section 139(3)(a) of the Act to be included in a Councillor Code of Conduct.

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PART 3 – GOVERNING 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 and supporting principles.

2 OVERARCHING GOVERNANCE 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 considered 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 consider 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.

3 SUPPORTING PRINCIPLES

3.1.1 Community engagement principles

The following are the community engagement principles –

- a) a community engagement process must have a clearly defined objective and scope,
- b) participants in community engagement must have access to objective, relevant and timely information to inform their participation,



- c) participants in community engagement must be representative of the persons and groups affected by the matter that is the subject of the community engagement,
- d) participants in community engagement are entitled to reasonable support to enable meaningful and informed engagement,
- e) participants in community engagement are informed of the ways in which the community engagement process will influence Council decision-making.

3.1.2 Public transparency principles

The following are the public transparency principles –

- a) Council decision-making processes must be transparency except when the Council is dealing with information that is confidential by virtue of this Act or any other Act,
- b) Council information must be publicly available unless –
 - i. the information is confidential by virtue of this Act or any other Act, or
 - ii. public availability of the information would be contrary to the public interest,
- c) Council information must be understandable and accessible to members of the municipal community,
- d) public awareness of the availability of Council information must be facilitated.

3.1.3 Strategic planning principles

A Council must undertake the preparation of its Council Plan and other strategic plans in accordance with the strategic planning principles.

The following are the strategic planning principles –

- a) an integrated approach to planning, monitoring and performance reporting is to be adopted,
- b) strategic planning must address the Community Vision,
- c) strategic planning must consider the resources needed for effective implementation,
- d) strategic planning must identify and address the risks to effective implementation,
- e) strategic planning must provide for ongoing monitoring of progress and regular reviews to identify and address changing circumstances.

3.1.4 Financial management principles

The following are the financial management principles –

- a) revenue, expenses, assets, liabilities, investments and financial transactions must be managed in accordance with a Council's financial policies and strategic plans,
- b) financial risks must be monitored and managed prudently having regard to economic circumstances,
- c) financial policies and strategic plans, including the Revenue and Rating Plan, must seek to provide stability and predictability in the financial impact on the municipal community,
- d) accounts and records that explain the financial operations and financial position of the Council must be kept.

3.1.5 Service performance principles

A Council must plan and deliver services to the municipal community in accordance with the service performance principles.



The following are the service performance principles –

- a) services should be provided in an equitable manner and be responsive to the diverse needs of the municipal community,
- b) services should be accessible to the members of the municipal community for whom the services are intended,
- c) quality and costs standards for services set by the Council should provide good value to the municipal community,
- d) a Council should seek to continuously improve service delivery to the municipal community in response to performance monitoring,
- e) service delivery must include a fair and effective process for considering and responding to complaints about service provision.



PART 4 – CONDUCT

4 STANDARDS OF CONDUCT

1. 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 –

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

- a) 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,
- b) diligently uses Council processes to become informed about matters which are subject to Council decisions,
- c) is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity, and
- d) 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 Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following –

- a) 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,
- b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act,
- c) The Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act, and



- d) 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.

5 VALUES

As community and civic leaders, Councillors commit to lead by example and promote the highest standard in the way Council business is conducted.

1. **Service:** Our citizens, community and service users are the focus of all our actions.
2. **Accountability:** We are responsible for our actions, which are open for review.
3. **Innovation:** We encourage and seek new ideas in finding solutions.
4. **Teamwork:** We share our skills, knowledge and experience as part of a team and work together towards achieving Council's goals.
5. **Recognition:** We promote the achievements and efforts of others.
6. **Safety:** We look after our environment and the welfare of others.
7. **Integrity:** We are open and honest and work to the best of our ability.
8. **Respect:** We acknowledge the opinions of others and their rights and differences.

6 BEHAVIOUR

6.1 Workplace health, safety and wellbeing

All Councillors owe statutory duties under the *Occupational Health & Safety Act* (the OHS Act). Councillors must comply with their duties under the OHS Act and responsibilities under any policies or procedures adopted by the Council to ensure workplace health, safety and wellbeing. Councillors must –

- take reasonable care for their own health and safety,
- take reasonable care that their acts or omissions do not adversely affect the health and safety or any other persons,
- comply, as far as is reasonably practicable, with any reasonable instruction given to ensure compliance with the OHS Act and Council policies and procedures implemented to ensure workplace health, safety and wellbeing, and
- report incidents, accidents, near misses to the CEO or other nominated staff members and take part in any incident investigations.



6.2 Fairness and equity

Councillors will consider issues consistently, promptly and fairly, dealing with matters in accordance with established procedures in a non-discriminatory manner.

Decision-making should take all relevant facts known, or should be reasonably aware of, into consideration and have regard to the merits of each case. Irrelevant matters or circumstances should not be taken into consideration when making decisions.

6.3 Harassment and discrimination (including sexual harassment)

Councillors must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of age, disability, race (including colour, national or ethnic origin or immigrants status), sex, pregnancy, marital or relationship status, family responsibilities or breastfeeding, sexual orientation, gender identity or intersex status or political, religious or other affiliation.

For the purposes of this section, 'harassment' is any form of behaviour towards a person that –

- is not wanted by that person,
- offends, humiliates or intimidates the person, and
- creates a hostile environment.

'Harassment' includes sexual harassment.

6.4 Bullying

Councillors must not engage in bullying behaviour towards others.

For the purposes of this section, 'bullying behaviour' is any behaviour in which –

- A person or a group of people repeatedly behaves unreasonably towards another person or a group of persons, and
- The behaviour creates a risk to health, safety and wellbeing.

Bullying behaviour may involve, but it not limited to, any of the following types of behaviour –

- aggressive, threatening or intimidating conduct
- belittling or humiliating comments
- spreading malicious rumours
- teasing, practical jokes or 'initiation ceremonies'
- exclusion from work-related events
- unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
- displaying offensive material
- pressure to behave in an inappropriate manner

Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this section.



6.5 Gender equality

Council must implement and operate in accordance with gender equality principles, imposed by the Gender Equality Act 2020, primarily allowing for:

- All Victorians should live in a safe and equal society, have access to equal power, resources and opportunities and be treated with dignity, respect and fairness.
- Gender equality is a human right and precondition to social justice.
- All human beings, regardless of gender, should be free to develop their personal abilities, pursue their professional careers and make choices about their lives without being limited by gender stereotypes, gender roles or prejudices.

Part 2 of the Gender Equality Act 2020 imposes a positive duty upon Council to promote gender equality: “A defined entity must, in developing policies and programs and in delivering services that are to be provided to the public, or have a direct and significant impact on the public to consider and promote gender equality and take necessary and proportionate action towards achieving gender equality.

6.6 Interacting with children and young people

Council prides itself on being a child safe organisation and has zero tolerance for child abuse. Council adheres to the Victorian Child Safe Standards and related legislation, including failure to disclose, failure to protect, and grooming offences.

Councillors should be aware of their responsibilities outlined in Council’s Child Safe Policy and be clear about processes for reporting and acting on concerns or reports of abuse or neglect of a child or young person under 18 years of age.

Councillors will respect, listen to and promote the rights of children and young people and ensure behaviour and interactions with children are age appropriate, respectful and adhere to the behavioural expectations outlined in the Child Safe Standards.

6.7 Obligations in relation to meetings

Councillors must:

1. Comply with Council’s Governance Rules and rulings by the Mayor or Chair at Council and Committee meetings or other proceedings of the Council unless a motion dissenting from the ruling is passed.
2. Not engage in bullying behaviour towards the Mayor, Chair, other Councillors, Council Officers or any members of the public present during Council or committee meetings or other proceedings of the Council (e.g. briefings, workshops).
3. Not engage in conduct that disrupts Council or committee meetings or other proceedings of the Council, or that would otherwise be inconsistent with the orderly conduct of meetings.
4. Not engage in any acts of disorder or other conduct intended to prevent the proper and effective functioning of the Council, or a committee of council. Without limiting this section, Councillors must not –
 - a. Leave a meeting of the Council or a committee for the purposes of depriving the meeting of a quorum, or



- b. Submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another Councillor from submitting a rescission motion with respect to the same decision, or
- c. Deliberately seek to impede the consideration of business at a meeting.

6.8 Binding caucus votes

Councillors must not participate in binding caucus votes in relation to matters to be considered at a Council or committee meeting.

For the purposes of this section, a binding caucus vote is a process whereby a group of Councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the Council or committee, irrespective of the personal views of individual members of the group on the merits of the matter before the Council or committee.

This section does not prohibit Councillors from discussing a matter before the Council or committee prior to considering the matter in question at a Council or committee meeting, or from voluntarily holding a shared view with other Councillors on the merits of a matter.

This section does not apply to a decision to elect the mayor, or to nominate a person to be a member of a Council committee or a representative of the Council on an external body.

7 SPECIFIC CONDUCT OBLIGATIONS

7.1 Communications and decision-making

As representatives of the community, Councillors have a primary responsibility to be responsive to community views and to accurately communicate the position and decisions of Council.

Council will be open and transparent in its decision-making and encourage community participation.

There may be times when individual Councillors disagree with a majority decision of Council. Individual Councillors are entitled to express their own independent views, however this should not be done in a way that is disrespectful or reflects negatively on other Councillors or the Council.

To ensure construction decision-making and communications, Councillors will –

- commit to making all decisions impartially and in the best interests of the community,
- make fair and unbiased decisions by adhering to the principles of natural justice,
- consider an individual's interests that may be affected by a Council decision,
- regularly attend meetings of Council, actively and openly participating in the decision-making process, striving to achieve the best outcome for the community,
- seek approval of Council for leave of absence from Council meetings,
- observe Council's policies and procedures relating to social media, media comment and press releases,
- respect the views of the individual in debate, however, also accept that decisions are based on a majority vote,



- not make allegations that are personal offensive, derogatory or defamatory, and
- treat all matters on individual merit and base decision-making on facts.

7.1.1 Personal dealings with Council

When dealing with Council in a private capacity (e.g. as a ratepayer, recipient of a Council service or application for a permit) Councillors must not expect or request preferential treatment in relation to any such private matter. Councillors will avoid any action that could lead Council staff or members of the public to believe that preferential treatment is being sought.

7.2 Gifts, benefits and hospitality

Councillors should 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 from an individual Councillor or from the Council.

Councillors should take all reasonable steps to ensure that family members do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

Where a gift is received on behalf of the Council, the gift becomes the property of the Council. For transparency and accountability purposes, such gifts will be recorded in the Gifts Register with a notation that it is the property of the Council.

Councillors should recognise that gifts equal to or above the gift disclosure threshold, detailed in Council's Acceptance of Gifts, Benefits & Hospitality Policy & Procedure, may give rise to an indirect interest and receipt of any such gift must be recorded in the Gifts Register.

All Campaign Donations will be recorded in Councillors in their campaign donation return forms.

7.3 Disclosure - conflicts of interests

Individual Councils are required to identify, manage and disclose any conflicts of interest they may have, in accordance with the provisions of the Act, Council's Governance Rules and Conflicts of Interest Procedure. Division 2, sections 126 to 131 of the Act provide obligations pertaining to conflicts of interest.

As part of the procedural requirements, Councillors will –

1. give early consideration and notify the Mayor and CEO if a conflict of interest exists on any matter to be considered at a Council meeting, briefing, delegated or advisory committee of which the Councillor is a member,
2. consider whether a conflict of interest exists,
3. recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each individual Councillor,
4. if a Councillor is uncertain as to whether a conflict of interest exists, the Councillor should declare a conflict of interest and comply with the relevant requirements as if they had a conflict of interest,
5. notify, as soon as possible, the Mayor or Committee Chair if they are unable to vote on a matter because of a conflict of interest.

A Councillor has a direct interest in a matter if there is a reasonably likelihood that the benefits, obligations, opportunities or circumstances of the Councillor would be directly altered if the matter is decided in a



particular way. This includes where there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms and where the Councillor, or together with a member or members of a person's family have a controlling interest in a company or other body that has a direct interest in the matter.

A conflict of interest also exists where a Councillor has any of the six types of indirect interest. These indirect interests are –

1. Close association – an indirect interest because of a close association with a family member, relative or member of the household who has a direct interest.
2. Indirect financial interest – including holding shares above a certain value in a company with a direct interest.
3. Conflicting duty – arising from having responsibilities to a person or organisation with a direct interest.
4. Applicable gift – receipt of an applicable gift or gifts from a person or organisation with a direct interest.
5. Interested party – a party to the matter by having become involved in civil proceedings in relation to the matter.
6. Residential amenity – this occurs where there is a reasonable likelihood that the person's residential amenity will be altered if the matter is decided in a particular way.

7.4 Use of Council resources

Councillors recognise the need to exercise appropriate prudence in the use of Council resources and that they are to be used solely in the public interest. Councillors will use Council resources effectively and economically and will –

1. maintain adequate security over Council property, facilities and resources provided to assist them in performing their role,
2. adhere and comply with any Council policies or guidelines established for the use of Council resources and facilities,
3. not use public funds or resources in a manner that is improper or unauthorised,
4. not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so and payments are made where appropriate,
5. not use Council resources, including staff, equipment and/or intellectual property for electoral or other purposes outside of normal Council business, and
6. ensure that all expense claims are accurate, are supported by the relevant documentation and strictly relate to Council business.

Council's Expenses Policy provides further guidance on the use of Council resources.

7.5 Land use planning, development assessment and other regulatory functions

Councillors must ensure that land use planning, development assessment and other regulatory decisions are properly made and that all parties are dealt with fairly. Councillors must avoid any occasion or situation that may lead to a suspicion or perception of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.



In exercising land use planning, development assessment and other regulatory functions, Councillors must ensure that no action, statement or communication between themselves and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly favourable / unfavourable treatment.

7.6 Elections

Councillors are committed to fair and democratic Council elections and adopts practices and legislative requirements as set out in Council's Election Period Policy incorporated in the Pyrenees Shire Council Governance Rules and the Act respectively.

8 IMPROPER CONDUCT

The Act expressly prohibits specific types of conduct.

8.1 Misuse of position

Councillors must not misuse their position –

- a) To gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person, or
- b) To cause or attempt to cause detriment to the Council or another person.

An offence against these requirements is an indictable offence.

For the purposes of this section, circumstances involving the misuse of a position include –

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

8.2 Directing a member of Council staff

Councillors must not use their position to influence Council staff in the performance of their public or professional duties to obtain a private benefit for themselves or for somebody else.

Councillors must not take advantage (or seek to take advantage) of their status or position with Council in order to obtain a private benefit for themselves or for any other person or body.

8.3 Confidential information

Councillors have access to information necessary for them to effectively carry out their roles. A Councillor must remain impartial and not use Council information to gain advantage for themselves or any other person. Information is confidential if it is –



- provided for a closed Council or delegated committee meeting,
- designated confidential by resolution of a Council or delegated committee, and/or
- designated confidential by the CEO.

Information discussed at a closed meeting is confidential. Unless the information is already publicly available, Councillors must not talk about anything discussed at the meeting with anyone not present.

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PART 5 – ROLES AND RELATIONSHIPS

9 ROLES

An understanding and agreement of the different roles within Council helps achieve good governance and respectful relationships.

The primary role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.

9.1 Role of a Councillor

The role of a Councillor is defined in section 28 of the Act. Councillors are an integral link between the community and Council and are key to facilitating communication and encouraging engagement with Council activities.

Councillors establish and maintain the good governance of the Council, determine Council policies and set its strategic direction. In doing this they have a key advocacy and leadership role.

Councillors appoint, manage and support the Chief Executive Officer of the organisation to deliver the strategic objectives of the Council. Councillors should respect the functions of the CEO and not be involved in the operational decisions of the organisation or delivery of its services.

The role of every Councillor is –

1. to participate in the decision-making of the Council,
2. to represent the interests of the municipal community in that decision-making, and
3. 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, a Councillor must –

1. consider the diversity of interests and needs of the municipal community,
2. support the role of the Council,
3. acknowledge and support the role of the Mayor,
4. act lawfully and in accordance with the oath or affirmation of office,
5. act in accordance with the standards of conduct, and
6. comply with Council procedures required for good governance.

The role of a Councillor does not include any responsibilities or functions of the CEO.

9.2 Role of the Mayor

The Mayor is the elected leader of the Council. The Mayor provides guidance to Councillors in establishing and promoting appropriate standards of conduct, and facilitates good relationships between Councillors, Councillors and the CEO and executive leadership team.



Section 18 of the Act details the role of the Mayor is to –

1. chair Council meetings,
2. be the principal spokesperson for the Council,
3. lead engagement with the municipal community on the development of the Council Plan,
4. report to the municipal community, at least once per year, on the implementation of the Council Plan,
5. promote behaviour among Councillors that meets the standard of conduct set out in the Councillor Code of Conduct,
6. assist Councillors to understand their role,
7. take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer,
8. provide advice to the CEO when the CEO is setting the agenda for Council meetings, and
9. perform civic and ceremonial duties on behalf of the Council.

9.3 Role of the Chief Executive Officer

The Chief Executive Officer (CEO) has several statutory responsibilities and is accountable to the Mayor and Councillors for delivery of Council's strategic objectives and services.

Section 46 of the Act details the responsibilities and functions of the CEO –

1. Supporting the Mayor and the Councillors in the performance of their roles, including 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 their 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, and
 - f. carrying out the Council 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*.
2. Ensuring the effective and efficient management of the day-to-day operations of the Council, including the following –
 - a. establishing and maintaining an organisation 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, and
 - d. performing any other function or duty of the CEO specified in this Act or any other Act.



PART 6 – DISPUTE RESOLUTION

Councillors have an individual and collective responsibility to try every avenue possible to resolve disputes in-house and prevent them escalating further.

Dispute resolution processes are intended to be used –

- a) when Councillors are unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Council or
- b) to manage complaints or concerns regarding the behaviour of Councillors from the public or Council staff.

Dispute resolution processes are not intended to resolve differences in policy or decision-making, which should be more appropriately resolved through discussion and voting in Council or committee meetings.

Where a dispute arises from a complaint generated by a member of the public or Council staff, access to the dispute resolution process is only possible where a Councillor or group of Councillors takes up the complaint about another Councillor on behalf of the complainant.

10 Dispute resolution processes

Pyrenees Shire Council's internal process for dispute or grievance resolution relating to Councillors comprises of three components – Self-resolution, Mayoral negotiation and external mediation.

Where disputes relating to breaches of the prescribed Standards of Conduct cannot be resolved through these components, more formal processes will be followed, as detailed in Part 7 of this Code.

10.1 Informal Self-resolution

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

10.2 Mayoral negotiation

If the informal self-resolution process between Councillors is unsuccessful, the Mayor may be involved to convene a meeting of the interested parties. This should be done as soon as is reasonably practicable. A dispute referred for Mayoral negotiation may relate to –

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council, or
- an alleged contravention of the Councillor Code of Conduct.

The party requesting the Mayoral negotiation meeting must provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request should indicate that it is for a Mayoral negotiation dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must –



- specify the name of the Councillor alleged to have contravened the Code,
- specify the Code provision that is alleged to have been contravened,
- include evidence in support of the allegation,
- name the Councillor appointed to be the representative where the request is made by a group of Councillors, and
- be signed and dated by the requestor or the requestor's representative.

Within 5 (five) working days of receipt of the complaint, the Mayor will –

- provide written acknowledgement 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 Director of Corporate & Community Services is the Pyrenees Shire Council's Councillor Conduct Officer.

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor (including the 'Role of a Councillor' as detailed in section 28 of the Act), and the observation of the Councillor Standards of Conduct and the Councillor Code of Conduct.

The Mayor should document any agreement reached at the meeting. Copies of the agreement will 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.

10.2.1 Dispute between Councillors and the Mayor

Where a dispute involves the Mayor, another Councillor nominated by Council resolution will perform the role of the Mayor in facilitating discussions and resolution between the parties in dispute and liaising with the Councillor Conduct Officer.

10.3 External mediation

If dispute resolution by Mayor negotiation is unsuccessful, the Mayor should seek assistance from an external mediator to resolve the dispute. It is preferable that this involve the active support of the parties to the dispute who must be informed of such a decision in any circumstance.

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation regardless of whether the dispute has been the subject of an application for Mayoral negotiation.

The application should submit a written application to the Councillor Conduct Officer setting out the name of the Councillor and the details of the dispute. The application must indicate that the application is for an



external mediation. Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must –

- specify the name of the Councillor alleged to have contravened the Code,
- specify the Code provision that is alleged to have been contravened,
- include evidence in support of the allegation,
- name the Councillor appointed to be the representative where the request is made by a group of Councillors, and
- be signed and dated by the requestor or the requestor's representative.

The applicant must notify the other party of the request and provide them with a copy of the application either at the same time submitted to the Councillor Conduct Officer or as soon as practicable thereafter.

The Councillor Conduct Officer will ascertain (in writing) whether the other party is prepared to attend an external mediation. If the other party declines, they should provide their reasons in writing to the Councillor Conduct Officer. These reasons may be considered if the matter is, subsequently, referred as an application for a Councillor Conduct Panel.

Where 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 will advise the applicant, Mayor and Chief Executive Officer immediately. The Councillor Conduct Officer will engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The mediator must document any agreement reached at the meeting. Copies of the agreement must 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 applicant may resort to formal processes applicable for breaches of the prescribed Standards of Conduct.



PART 7 – BREACHES OF THE PRESCRIBED STANDARDS OF CONDUCT

11 Internal Arbitration Process

Section 141 of the Act provides for an internal arbitration process to apply to any breach of the prescribed standards of conduct.

A panel of eligible persons will be appointed to act as an arbiter when required.

Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information.

11.1 Application for an internal arbitration process

An application for an internal arbitration process must relate to alleged misconduct by a Councillor. An application may be made by –

- The Council following a resolution of the Council, or
- A Councillor or a group of Councillors.

An application must be made within 3 (three) months of the alleged misconduct occurring. The application must include:

- The name of the Councillor alleged to have breached the standards of conduct,
- The clause of the standards of conduct that the Councillor is alleged to have breached, and
- The misconduct that the Councillor is alleged to have engaged in that resulted in the breach.

Section 11 of the Regulations requires the Councillor Conduct Officer to submit the application to the Principal Councillor Conduct Registrar and to provide a copy of the application to the Councillor who is the subject of the application.

11.2 Consideration of the application

The Principal Councillor Conduct Registrar, after examining the application, will appoint an arbiter to the Council to hear the matter if the Registrar is satisfied that –

- The application is not frivolous, vexatious, misconceived or lacking in substance, and
- There is enough evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application.

If the Registrar is not satisfied, the application will be rejected. A rejection by the Registrar does not prevent a further application being made.



11.3 Arbiter actions

An arbiter appointed to hear a matter subject to an application must –

- Conduct the hearing with as little formality and technicality as the proper consideration of the matter permits, and
- Ensure that the hearing is not open to the public.

An arbiter –

- May hear each party to the matter in person or solely by written or electronic means of communication,
- Is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit,
- May at any time discontinue the hearing if they consider that –
 - The application is vexatious, misconceived, frivolous or lacking in substance, or
 - The applicant has not responded, or has responded inadequately, to a request for further information.

If at any time before, during or after the hearing of an application for an internal arbitration process the arbiter believes that the conduct that is the subject of the application appears to involve serious misconduct and would more appropriately be dealt with as an application to a Councillor Conduct Panel, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.

Upon receipt of a referral to a Councillor Conduct Panel, the Registrar will notify all parties of the referral by the arbiter.

11.4 Sanctions imposed by an internal arbitration process

If, after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the prescribed standards of conduct, the arbiter may make a finding of misconduct against the Councillor.

After making a finding of misconduct, the arbiter may do any one or more of the following –

- Direct the Councillor to make an apology in a form or manner specified by the arbiter,
- Suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month,
- Direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter,
- Direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter,
- Direct a Councillor to attend or undergo training or counselling as specified by the arbiter.

11.5 Notification and reporting

The arbiter must provide a written copy of their decision and statement of reasons to –

- The Council,
- The applicant or applicants,



- The respondent, and
- The Principal Councillor Conduct Registrar.

A copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the Council received a copy of the decision and must be recorded in the minutes of the meeting. If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled at the Council meeting.

12 Request for Councillor Conduct Panel

The Principal Councillor Conduct Registrar¹ manages the establishment of Councillor Conduct Panels. A Councillor Conduct Panel may hear an application that alleges serious misconduct by a Councillor.

All applications, supported with evidence, to establish a panel to hear allegations of misconduct or serious misconduct must go to the Registrar. The panel will be established if the Registrar is satisfied that the application is not frivolous, misconceived or lacking in substance. Applications must be supported by evidence and Council processes must have been fully exhausted or not be appropriate.

An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by –

- The Council following a resolution of the Council to make an application to a Councillor Conduct Panel in respect of a Councillor's conduct,
- A Councillor or a group of Councillors, or
- The Chief Municipal Inspector.

An application for a Councillor Conduct Panel that alleges that the Councillor has failed to disclose a conflict of interest may only be made by the Chief Municipal Inspector.

An application must be made within 12 (twelve) months of the alleges serious misconduct occurring.

An application must –

- Specify the ground or grounds for the application, and
- Set out –
 - The circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting serious misconduct, and
 - The particulars of any evidence of those circumstances, actions or inactions of the Councillor that are alleged as constituting the serious misconduct, and
- Specify –
 - Any steps taken by Council to resolve the matter that is the subject of the application and the reason why the matter was not resolved by the taking of those steps, or

¹ The Registrar is appointed by the Secretary to the Department.



- ii. If the Council did not take any steps to resolve the matter that is the subject of the application, the reason why Council did not take any steps to resolve the matter.

If an application is made by the Council or a group of Councillors, the application must state the name and address of the Councillor whom the Council or group of Councillors has appointed as representative of the Council or the group of Councillors.

The Principal Councillor Conduct Register will examine an application received. The Registrar may reject an application, or refer a matter back to the Council, if they satisfied that the matter has been, or is being, dealt with by the Council or another body.

12.1 Councillor Conduct Panel

The Registrar form a Councillor Conduct Panel comprising of 2 people from the panel list.

After a Councillor Conduct Panel has conducted a hearing, the Panel may make a finding of serious misconduct or misconduct against a Councillor. If a Panel makes a finding of serious misconduct against a Councillor, the Councillor becomes ineligible to hold the office of Mayor or Deputy Mayor for the remainder of the Council's term unless the Panel directs otherwise.

If the Panel makes a finding of serious misconduct against a Councillor, the Panel may do any one or more of the following –

- Reprimand the Councillor,
- Direct the Councillor to make an apology in a form or manner determined by the Councillor Conduct Panel,
- Suspend the Councillor from office for a period specified by the Councillor Conduct panel not exceeding 12 months,
- Direct that the Councillor is ineligible to chair a delegated committee of the Council for a period specified by the Panel not exceeding the remainder of the Council's term.

If the Panel makes a finding of misconduct against a Councillor, the Panel may do any one or more of the following –

- Direct the Councillor to make an apology in a form or manner specified by the Panel,
- Suspend the Councillor from the office of Councillor for a period not exceeding one month,
- Direct that the Councillor be removed from any position representing the Council for the period determined by the Panel,
- Direct that the Councillor be removed from being chair of a delegated committee for the period determined by the panel.

If a Councillor Conduct Panel makes a finding that remedial action is required, the Councillor may be directed to attend mediation, training and/or counselling.

12.2 Confidential information

Unless otherwise determined by a Councillor Conduct Panel, the following information is confidential information –



- Information provided to or produced by a Principal Councillor Conduct Registrar for the purposes of an application for a Councillor Conduct Panel to be formed.
- Information, other than a decision or reasons for a decision, that is provided to or produced by, a Councillor Conduct Panel for the purposes of conducting the Panel hearing,
- Any part of a statement of reasons or any other document under the control or possession of the Councillor Conduct Panel that the Panel determines contains confidential information.

13 No applications during an election period

Any applications for an internal arbitration process or Councillor Conduct Panel must be suspended during the election period for a local government general election.

If the respondent to an application is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if –

- The application was made by the Council and the Council so resolves,
- The application was made by a group of Councillors and any one or more of those Councillors who have been returned to office wishes to proceed with the application, or
- The individual Councillor applicant is returned to office and wishes to proceed with the application.

14 VCAT review

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

A person is not entitled to apply for review of a decision to dismiss an application because it is frivolous, vexatious, misconceived or lacking in substance.

An application for review must be made within 28 days of the Panel giving a statement of reasons.



PART 8 – COUNCILLOR ENDORSEMENT






This Councillor Code of Conduct was adopted at the Council Meeting of the Pyrenees Shire Council held on 16th February 2021.

All Councillors below-signed commit to the following:

1. As Councillors in good faith we undertake to comply with the various provisions of the Local Government Act 2020, its supporting Regulations, all other applicable legislation, and this Code of Conduct.
2. As Councillors we will –
 - a. respect and recognise the role of the Mayor and will work cooperatively with the Mayor in the performance of that role,
 - b. undertake to respect the functions of the Chief Executive Office and comply with policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are implemented,
 - c. respect and promote the human rights set out in the Charter of Human Rights and Responsibilities and understand how they apply to my role and duties,
 - d. contribute to ensure the workplace remains an environment where people are treated fairly, equitable and with respect – free from all forms of unlawful discrimination and inappropriate workplace behaviours, such as sexual harassment, victimisation, bullying, harassment and occupational violence – and will refrain from any form of conduct which may cause a reasonable person unwarranted offence or embarrassment,
 - e. be fair, objective, and respectful in our dealing with other Councillors, staff and the community. Any grievances or differences of opinion will be raised in an appropriate forum and in accordance with Council policy,
 - f. perform our duties diligently, impartially, and responsibly, acting in good faith, in accordance with the principles of good governance, and in the interests of Council and the community,
 - g. honestly and impartially exercise my responsibilities in the interests of the local community without seeking to deceive, mislead or improperly confer an advantage or disadvantage on any person,
 - h. accept individual differences, values, culture, and beliefs, and
 - i. contribute and debate items with respect in the Council Chamber and accept the final Council decision.



Signed this day 16th March 2021:

 Cr Damian Ferrari	 Cr Tanya Kehoe
 Cr Ronald Eason	 Cr Robert Vance
 Cr David Clark	

In the presence of Mr. Jim Nolan – Chief Executive Officer: 

