



CODE OF CONDUCT FOR COUNCIL MEMBERS, COMMITTEE MEMBERS & CANDIDATES

May 2021



Division 1 – Preliminary Provisions

1. CITATION

This is the *Shire of Gingin Code of Conduct for Council Members, Committee Members and Candidates*.

2. TERMS USED

(1) In this code –

Act means the *Local Government Act 1995*;

candidate means a candidate for election as a council member;

complaint means a complaint made under clause 11(1);

publish includes to publish on a social media platform.

(2) Other terms used in this code that are also used in the Act have the same meaning as they have in the Act, unless the contrary intention appears.



Division 2 – General Principles

3. OVERVIEW OF DIVISION

This Division sets out general principles to guide the behaviour of council members, committee members and candidates.

4. PERSONAL INTEGRITY

- (1) A council member, committee member or candidate should –
 - (a) act with reasonable care and diligence; and
 - (b) act with honesty and integrity; and
 - (c) act lawfully; and
 - (d) identify and appropriately manage any conflict of interest; and
 - (e) avoid damage to the reputation of the local government.
- (2) A council member or committee member should –
 - (a) act in accordance with the trust placed in council members and committee members; and
 - (b) participate in decision-making in an honest, fair, impartial and timely manner; and
 - (c) actively seek out and engage in training and development opportunities to improve the performance of their role; and
 - (d) attend and participate in briefings, workshops and training sessions provided or arranged by the local government in relation to the performance of their role.

5. RELATIONSHIP WITH OTHERS

- (1) A council member, committee member or candidate should –
 - (a) treat others with respect, courtesy and fairness; and
 - (b) respect and value diversity in the community.
- (2) A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment.

6. ACCOUNTABILITY

A council member or committee member should –

- (a) base decisions on relevant and factually correct information; and
- (b) make decisions on merit, in the public interest and in accordance with statutory obligations and principles of good governance and procedural fairness; and



- (c) read all agenda papers given to them in relation to council or committee meetings; and
- (d) be open and accountable to, and represent, the community in the district.



Division 3 – Behaviour

7. OVERVIEW OF DIVISION

This Division sets out –

- (a) requirements relating to the behaviour of council members, committee members and candidates; and
- (b) the mechanism for dealing with alleged breaches of those requirements.

8. PERSONAL INTEGRITY

- (1) A council member, committee member or candidate –
 - (a) must ensure that their use of social media and other forms of communication complies with this code; and
 - (b) must only publish material that is factually correct.
- (2) A council member or committee member –
 - (a) must not be impaired by alcohol or drugs in the performance of their official duties; and
 - (b) must comply with all policies, procedures and resolutions of the local government.

9. RELATIONSHIP WITH OTHERS

A council member, committee member or candidate –

- (a) must not bully or harass another person in any way; and
- (b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and
- (c) must not use offensive or derogatory language when referring to another person; and
- (d) must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and
- (e) must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.

10. COUNCIL OR COMMITTEE MEETINGS

When attending a council or committee meeting, a council member, committee member or candidate –

- (a) must not act in an abusive or threatening manner towards another person; and
- (b) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and



- (c) must not repeatedly disrupt the meeting; and
- (d) must comply with any requirements of a local law of the local government relating to the procedures and conduct of council or committee meetings; and
- (e) must comply with any direction given by the person presiding at the meeting; and
- (f) must immediately cease to engage in any conduct that has been ruled out of order by the person presiding at the meeting.

11. COMPLAINT ABOUT ALLEGED BREACH

- (1) A person may make a complaint, in accordance with subclause (2), alleging a breach of a requirement set out in this Division.
- (2) A complaint must be made –
 - (a) in writing in the form approved by the local government; and
 - (b) to a person authorised under subclause (3); and
 - (c) within 1 month after the occurrence of the alleged breach.
- (3) The local government must, in writing, authorise 1 or more persons to receive complaints and withdrawals of complaints.

12. DEALING WITH COMPLAINT

- (1) After considering a complaint, the local government must, unless it dismisses the complaint under clause 13 or the complaint is withdrawn under clause 14(1), make a finding as to whether the alleged breach the subject of the complaint has occurred.
- (2) Before making a finding in relation to the complaint, the local government must give the person to whom the complaint relates a reasonable opportunity to be heard.
- (3) A finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.
- (4) If the local government makes a finding that the alleged breach has occurred, the local government may –
 - (a) take no further action; or
 - (b) prepare and implement a plan to address the behaviour of the person to whom the complaint relates.
- (5) When preparing a plan under subclause (4)(b), the local government must consult with the person to whom the complaint relates.
- (6) A plan under subclause (4)(b) may include a requirement for the person to whom the complaint relates to do 1 or more of the following –
 - (a) engage in mediation;
 - (b) undertake counselling;
 - (c) undertake training;



- (d) take other action the local government considers appropriate.
- (7) If the local government makes a finding in relation to the complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of –
 - (a) its finding and the reasons for its finding; and
 - (b) if its finding is that the alleged breach has occurred – its decision under subclause (4).

13. DISMISSAL OF COMPLAINT

- (1) The local government must dismiss a complaint if it is satisfied that –
 - (a) the behaviour to which the complaint relates occurred at a council or committee meeting; and
 - (b) either –
 - (i) the behaviour was dealt with by the person presiding at the meeting; or
 - (ii) the person responsible for the behaviour has taken remedial action in accordance with a local law of the local government that deals with meeting procedures.
- (2) If the local government dismisses a complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of its decision and the reasons for its decision.

14. WITHDRAWAL OF COMPLAINT

- (1) A complainant may withdraw their complaint at any time before the local government makes a finding in relation to the complaint.
- (2) The withdrawal of a complaint must be –
 - (a) in writing; and
 - (b) given to a person authorised under clause 11(3).

15. OTHER PROVISIONS ABOUT COMPLAINTS

- (1) A complaint about an alleged breach by a candidate cannot be dealt with by the local government unless the candidate has been elected as a council member.
- (2) The procedure for dealing with complaints may be determined by the local government to the extent that it is not provided for in this Division.

16. DRESS STANDARDS

- (1) When attending Council meetings, council members are required to wear appropriate business attire.
- (2) When representing the local government on other occasions, council members will dress in a manner that is appropriate to the occasion.



17. POLICE CLEARANCE

Council members are required to provide a current Police Clearance within 1 month of being elected, and thereafter throughout their term of office if required or requested to so by the President or the CEO.

18. ADMINISTRATIVE ENQUIRIES

Council members shall direct all enquiries to the CEO or relevant Executive Manager, unless the CEO has specifically identified that an alternative employee may be contacted.

19. DISCLOSURE OF INTERESTS AT BRIEFING SESSIONS AND ANNUAL MEETINGS OF ELECTORS

Council members shall disclose at a Briefing Session or Annual Meeting of Electors any Financial Interest (direct or indirect), Proximity Interest or Impartiality Interest which may arise on any matter in which they would ordinarily disclose an interest if that same matter were to arise during the course of an ordinary council or committee meeting.

20. COMMUNICATING DECISIONS OF THE COUNCIL

- (1) Council members will respect the decision-making processes of council and will not publicly reflect adversely on any decision of the council or the local government's employees.
- (2) Information relating to decisions of the local government on approvals, permits and so on may only be communicated in an official capacity by a designated officer of the local government.

21. QUASI-JUDICIAL ROLE AND PRINCIPLES

- (1) Role

Quasi-judicial functions are those which involve the making of a decision by the Council in the exercise of a discretionary power. The Shire performs quasi-judicial functions when deciding to approve or refuse applications for planning approval and for other approvals, licences, consents and permits.

- (2) Principles

- (a) The community expects council members to act in a quasi-judicial manner when exercising discretionary power. To act in a quasi-judicial manner, a council member must apply the principles of natural justice and, without bias or conflict of interest, make decisions in a judicial manner based on:
 - (i) the law and council policies as they exist; and
 - (ii) the facts and the merits of the case.
- (b) Applicants submitting approval documents may attempt to persuade individual council member to support their proposals. A council member must remain objective and deal with applicants or affected persons impartially.
- (c) Decisions must be based on sound legislative rationales, rather than the opinions of particular interest groups that do not represent the wider community.
- (d) All council members are to have equal access to relevant information and the opportunity to participate effectively throughout the decision-making process.



- (3) Procedures for council members
 - (a) When acting in a quasi-judicial role, a council member must not actively gather information independent of the official process by canvassing, liaising or initiating site visits with an applicant or an affected person.
 - (b) If contacted by an affected person, a council member will:
 - (i) listen and endeavour to understand the reason for the applicant or affected person making contact;
 - (ii) advise the applicant or affected person of the role and principles of a council member as a quasi-judicial decision maker (refer to clauses 3.1 and 3.2 above);
 - (iii) encourage the applicant or affected person to make their views known through the relevant formal local government and statutory processes, such as through public submission periods, contacting the local government's administration, a deputation to council or public question time at a council meeting; and
 - (iv) ensure that they do not commit their vote or give the impression that they have committed their vote to the matter. Council members may offer support or not, but are obliged to consider all relevant facts and have regard to debate at the council meeting at which a matter is considered, prior to making their decision.
 - (c) A council member will contact the CEO if they believe a site visit would be beneficial, or if they have been requested by an applicant or an affected person to visit a site. Where appropriate and if circumstances permit, a site visit will be arranged to provide an opportunity for all council members and at least one employee of the local government to attend.
 - (d) Where an applicant or affected person provides information to a council member that is relevant to the decision-making process, the council member must communicate that information to all other council members and the CEO prior to the meeting where a decision is proposed on the matter.
 - (e) If a council member believes that additional information is required to make an informed decision, such information must be sought in a written request or obtained by resolution of council. Where so requested, the CEO will consider requests for additional information in light of its relevancy to the decision and determine whether or not the information should be provided.

22. MEDICATION WITH POTENTIAL SIDE EFFECTS

Council members who have been prescribed medication by a medical practitioner, or who purchase over the counter medication that could interfere with their ability to safely carry out their role or cause other council members to be impaired must inform the Shire President or CEO as soon as possible and disclose any side effects that the medication they are taking may cause.

23. SOCIAL MEDIA

- (1) Council members do not have to obtain authorisation to contribute to the local government's social media platform, although contributions are not encouraged.
- (2) Councillors cannot post any new content onto the Shire of Gingin's social media platform. Council members can only 'comment', 'like' or 'share' existing content, and must disclose that they are a council member, and that the views expressed are their own.
- (3) Council members cannot post any material on the social media platform concerning a council decision unless the local government has previously released the information on the social media platform or to the media or the public in some other format, or the official Minutes have been made public.



- (4) Council members may establish personal social media accounts at their own discretion to engage with the community, but the local government will not provide administration or moderation support for these accounts. Council members must bear in mind that personal communications and statements made privately in conversation, written, recorded, emailed or posted in personal social media have the potential to be made public, whether intended or not.
- (5) Council member comments which become public and breach Division 4 of this Code will be considered to be a Minor Breach and may be referred to a standards panel for investigation.
- (6) The local government will not be held liable for any loss or damage, however caused, suffered by council members or others in connection with the use of a council member's personal social media accounts.

24. APPOINTMENTS TO EXTERNAL COMMITTEES

When appointed to represent the local government on external bodies, council members must:

- (a) clearly understand the basis of their appointment; and
- (b) provide regular reports on the activities of the external body.

25. DEALING WITH COUNCIL PROPERTY

Council members will:

- (a) be scrupulously honest in their use of local government property and shall not misuse it or permit its misuse by any other person or body.
- (b) use local government property entrusted to them effectively and economically in the course of their duties.
- (c) not use local government resources (including the services of the local government's employees) for private purposes unless properly authorized to do so, and where appropriate payments have been made as determined by the CEO.



Division 4 – Rules of conduct

Notes for this Division:

1. Under section 5.105(1) of the Act a council member commits a minor breach if the council member contravenes a rule of conduct. This extends to the contravention of a rule of conduct that occurred when the council member was a candidate.
2. A minor breach is dealt with by a standards panel under section 5.110 of the Act.

16. OVERVIEW OF DIVISION

- (1) This Division sets out rules of conduct for council members and candidates.
- (2) A reference in this Division to a council member includes a council member when acting as a committee member.

17. MISUSE OF LOCAL GOVERNMENT RESOURCES

- (1) In this clause –
electoral purpose means the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the *Electoral Act 1907* or the *Commonwealth Electoral Act 1918*;
resources of a local government includes –
 - (a) local government property; and
 - (b) services provided, or paid for, by a local government.
- (2) A council member must not, directly or indirectly, use the resources of a local government for an electoral purpose or other purpose unless authorised under the Act, or by the local government or the CEO, to use the resources for that purpose.

18. SECURING PERSONAL ADVANTAGE OR DISADVANTAGING OTHERS

- (1) A council member must not make improper use of their office –
 - (a) to gain, directly or indirectly, an advantage for the council member or any other person; or
 - (b) to cause detriment to the local government or any other person.
- (2) Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or *The Criminal Code* section 83.

19. PROHIBITION AGAINST INVOLVEMENT IN ADMINISTRATION

- (1) A council member must not undertake a task that contributes to the administration of the local government unless authorised by the local government or the CEO to undertake that task.
- (2) Subclause (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.



20. RELATIONSHIP WITH LOCAL GOVERNMENT EMPLOYEES

- (1) In this clause –
local government employee means a person –
 - (a) employed by a local government under section 5.36(1) of the Act; or
 - (b) engaged by a local government under a contract for services.
- (2) A council member or candidate must not –
 - (a) direct or attempt to direct a local government employee to do or not to do anything in their capacity as a local government employee; or
 - (b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a local government employee in their capacity as a local government employee; or
 - (c) act in an abusive or threatening manner towards a local government employee.
- (3) Subclause (2)(a) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.
- (4) If a council member or candidate, in their capacity as a council member or candidate, is attending a council or committee meeting or other organised event (for example, a briefing or workshop), the council member or candidate must not orally, in writing or by any other means –
 - (a) make a statement that a local government employee is incompetent or dishonest; or
 - (b) use an offensive or objectionable expression when referring to a local government employee.
- (5) Subclause (4)(a) does not apply to conduct that is unlawful under *The Criminal Code* Chapter XXXV.

21. DISCLOSURE OF INFORMATION

- (1) In this clause –
closed meeting means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;
confidential document means a document marked by the CEO, or by a person authorised by the CEO, to clearly show that the information in the document is not to be disclosed;
document includes a part of a document;
non-confidential document means a document that is not a confidential document.
- (2) A council member must not disclose information that the council member –
 - (a) derived from a confidential document; or
 - (b) acquired at a closed meeting other than information derived from a non-confidential document.
- (3) Subclause (2) does not prevent a council member from disclosing information –



- (a) at a closed meeting; or
- (b) to the extent specified by the council and subject to such other conditions as the council determines; or
- (c) that is already in the public domain; or
- (d) to an officer of the Department; or
- (e) to the Minister; or
- (f) to a legal practitioner for the purpose of obtaining legal advice; or
- (g) if the disclosure is required or permitted by law.

22. DISCLOSURE OF INTERESTS

- (1) In this clause –
 - interest** –
 - (a) means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest; and
 - (b) includes an interest arising from kinship, friendship or membership of an association.
- (2) A council member who has an interest in any matter to be discussed at a council or committee meeting attended by the council member must disclose the nature of the interest –
 - (a) in a written notice given to the CEO before the meeting; or
 - (b) at the meeting immediately before the matter is discussed.
- (3) Subclause (2) does not apply to an interest referred to in section 5.60 of the Act.
- (4) Subclause (2) does not apply if a council member fails to disclose an interest because the council member did not know –
 - (a) that they had an interest in the matter; or
 - (b) that the matter in which they had an interest would be discussed at the meeting and the council member disclosed the interest as soon as possible after the discussion began.
- (5) If, under subclause (2)(a), a council member discloses an interest in a written notice given to the CEO before a meeting, then –
 - (a) before the meeting the CEO must cause the notice to be given to the person who is to preside at the meeting; and
 - (b) at the meeting the person presiding must bring the notice and its contents to the attention of the persons present immediately before any matter to which the disclosure relates is discussed.
- (6) Subclause (7) applies in relation to an interest if –



- (a) under subclause (2)(b) or (4)(b) the interest is disclosed at a meeting; or
 - (b) under subclause (5)(b) notice of the interest is brought to the attention of the persons present at a meeting.
- (7) The nature of the interest must be recorded in the minutes of the meeting.

23. COMPLIANCE WITH PLAN REQUIREMENT

If a plan under clause 12(4)(b) in relation to a council member includes a requirement referred to in clause 12(6), the council member must comply with the requirement.



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