



# **Shire of Derby / West Kimberley**

## **Code of Conduct**

**For Council Members, Committee Members  
and Candidates**

Version 1.0

## Adoption

Adopted by	Date Approved	References
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# CODE OF CONDUCT

## Division 1 – Preliminary provisions

### 1. Citation and Introduction

This is the *Shire of Derby/West Kimberley Code of Conduct for Council Members, Committee Members and Candidates*.

The Council of the Shire of Derby/West Kimberley (the Shire) is the elected body responsible for the administration of the Shire in the best interests of its residents. The Council is committed to providing open, responsive and accountable government. The Local Government Act 1995 requires every Western Australian local government to prepare and adopt a code of conduct to be observed by Council Members, Committee Members (and Candidates where applicable).

The Code of Conduct provides Council Members, Committee Members and Candidates of the Shire of Derby/West Kimberley with the minimum standard of professional conduct and behaviour in carrying out their functions and responsibilities.

The Code addresses ethical responsibility and encourages greater transparency and accountability. It encourages a commitment to ethical and professional behaviour and outlines principles upon which individual and collective local government behaviours are to be based. The Code should be read in conjunction with the Local Government Act 1995 and other legislation that affect Council Members, Committee Members and Candidates. The Code does not override or affect those provisions or requirements.

The Code is complementary to the principles adopted in the Local Government Act 1995 which incorporate four fundamental aims:

- a. Better decision making by local governments;
- b. Greater community participation in the decisions and affairs of local governments;
- c. Greater accountability of local governments to their communities; and
- d. More efficient and effective local government In order to ensure that the Code remains current and relevant, it will be reviewed and presented to Council for readoption no more than three months after each Ordinary Council Election.

### 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 40(1);

**publish** includes to publish on a social media platform.

**CEO** means the *Chief Executive Officer of the Shire of Derby/West Kimberley*;

**Code** means *this Code of Conduct adopted by the Council*;

**Committee** means *a committee established by the Council under Local Government Act 1995*;

**Council** means *the council of the Shire of Derby/West Kimberley*;

**Council Member** means *a person who holds the office of Shire President or Councillor*;

**Employee** means a person employed by the Shire of Derby/West Kimberley;

**Social media** includes: Social networking sites, Video and Photo Sharing Sites, Blogs, Microblogs, Wikis, Online Collaboration Forums, Instant Messaging, Geo-Spatial Tagging.

- (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.

### 3. Organisational Values

The organisational values and culture are an important part of working at the Shire of Derby/West Kimberley. Council Members, Committee Members and Candidates are expected to work within Shire of Derby/West Kimberley values and display the following behaviours:

#### **Honesty and Integrity**

Treating others with respect, fairness, consistency, courtesy and honesty.

#### **Excellence & Service**

Providing a high level of customer service. Striving to learn. Actively seeking and evaluating new ways of doing things. Leading by example.

#### **Teamwork & Commitment**

Work as a team and assist each other for the betterment of the Shire, its residents and visitors.

#### **Caring and Empathy**

Being considerate of others and believing in their ability. Encouraging and acknowledging effort and initiative.

#### **Innovation & Diversity**

Encouraging creativity, innovation and initiative to realise the vibrancy and diversity of our vision.

### 4. Principles

As a general principle, a person in his or her capacity as Council Members, Committee Members and Candidates should:

- a. Act with reasonable care and diligence;
- b. Act with honesty and integrity;
- c. Act lawfully;
- d. Avoid damage to the reputation of the local government;
- e. Be open and accountable to the public;
- f. Ensure they are as informed as possible about matters relating to their role;
- g. Base decisions on relevant and factually correct information;
- h. Treat others with respect and fairness;
- i. Not be impaired by mind affecting substances.

Council Members, Committee Members and Candidates must avoid behaviour and conduct that:

- a. Contravenes the Local Government Act 1995 and the Shire's relevant administrative requirements;
- b. Is improper or unethical;
- c. Is an abuse of power or otherwise amounts to misconduct;
- d. Causes, comprises or involves intimidation, harassment or verbal abuse;

- e. Causes, comprises or involves discrimination or adverse treatment in relation to employment; or
- f. Causes, comprises or involves prejudice in the provision of a service to the community.

## **5. Fraudulent and Corrupt Conduct**

Fraud is a dishonest activity that causes actual or potential financial loss to a person or the Shire. Corrupt conduct is behaviour that lacks virtue or integrity, including when a Council Members, Committee Members and Candidates uses or attempts to use their position for personal advantage. The Criminal Code makes it illegal for a public officer (including a Council Member, Committee Member or Candidate) to engage in fraud and/or corruption.

## **6. Performance of Duties**

Council and Committee Members have a legal duty of fidelity to act in the best interests of the Shire. Council and Committee Members must exercise reasonable care and diligence in the performance of their duties, being consistent in their decision-making and treating all matters on individual merits. Council and Committee Members will be as informed as possible to enable them to perform their role including attendance at meetings, briefings and workshops.

## **7. Role of the Council, Shire President, and Council Members**

The role of the Council, Shire President, and Council Members is set out in the *Local Government Act 1995*.

In fulfilling the various roles, Council Members' activities will focus on:

- a. Achieving a balance in the diversity of community views to develop an overall strategy for the future of the community;
- b. Achieving sound financial management and accountability in relation to the Shire's finances;
- c. Ensuring that appropriate mechanisms are in place to deal with the prompt handling of residents' concerns;
- c. Working with other governments and organisations to achieve benefits for the community at both a local and regional level; and
- e. Being aware of the statutory obligations imposed on Council Members and on local governments.

## **8. Relationships Between Council Members, Committee Members and Employees**

Council and Committee Members must have mutual respect for the role that each party plays to achieve the Shire's corporate goals and implement the Shire's strategies. All parties should understand each other's role as specified in the *Local Government Act 1995* and other legislation. To achieve this, Council Members and Committee Members must:

- a. Accept that their role is one of leadership, and not a management or administrative role;
- b. Acknowledge that they have no capacity to individually direct employees and contractors to carry out particular functions;
- c. Refrain from publicly criticising employees in a way that casts aspersions on their professional competence or credibility;

- d. Ensure that no restriction or undue influence is placed on the ability of employees to give professional advice to Council.

## **9. Health and Safety**

Council and Committee Members must take responsibility for preventing workplace related injuries and illnesses and adhering to all relevant regulations, policies and procedures. Leaders are accountable for the implementation of these requirements within the span of their control and for ensuring that supporting systems are in place.

## **10. Alcohol and Drug Use**

Council and Committee Members must refrain from carrying out their official duties or responsibilities while affected by alcohol or drugs. The possession or use of illegal substances at Shire of Derby/West Kimberley workplaces, functions or in conjunction with Shire of Derby/West Kimberley business is strictly prohibited.

## **11. Equality in Employment**

Equal Employment Opportunity ensures that all employment and management practices operate in a way that gives everyone the same opportunities in the workplace. This includes decisions relating to recruitment, remuneration, conditions of employment, development, promotion, and termination of employment. The Shire will maintain, identify and resolve issues relating to equity, and recognise opportunities for improvement. It will also require that all employees and contractors and potential employees and contractors are reviewed according to job related skills, qualifications, abilities and attitude and not with regard to non-work-related factors.

## **12. Harassment and Bullying**

The Shire of Derby/West Kimberley does not tolerate any form of harassment or bullying. Our values support a culture where people are treated fairly, respectfully and with dignity.

“Harassment” is an action, conduct or behaviour that is viewed as unwelcome, humiliating, intimidating or offensive by the recipient. “Sexual harassment” is any deliberate verbal or physical sexual conduct that is unwelcome and uninvited and that a reasonable person having regard to all the circumstances would regard the behaviour as offensive, humiliating or intimidating. “Bullying” is repeated verbal, physical, social or psychological abuse by a person or group of people at work.

Council and Committee Members are expected to be inclusive, collaborative and supportive and are not to engage in any activity that could be considered to be harassment or bullying. It is important that everyone considers the implications of their behaviours and supports colleagues to raise concerns.

## **13. Discrimination**

“Discrimination” means treating someone unfairly due to their race, sex, marital status, pregnancy, impairment, religious or political conviction, age, family responsibility or family status. This includes, but is not limited to discrimination, on the grounds of sex, pregnancy, age, race (including their colour, nationality, descent, ethnic or religious background), political affiliation, marital status, disability, sexual orientation or transgender.

Council and Committee Members must not engage in actions or behaviours that discriminate against, or support others who discriminate against, any person.



The Shire will ensure compliance with the principles and provisions of the *Equal Opportunity Act 1984 (WA)*.

This commitment extends to recruitment and selection, promotion and advancement activities which will be solely on the basis of equity and fairness. Appointments will be based solely on merit. All people have a right to work in an environment that is free from sexual harassment. Sexual harassment will not be tolerated in the Shire of Derby/West Kimberley.

#### **14. Access to Information – Council Members**

Council Members are to be given access to all information for them to properly perform their civic functions and to make reasonable and informed decisions on matters before the Council. Council Members have an obligation to properly examine all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter.

Council Members who have a personal (as distinct from civic) interest in a document of the Shire have the same rights of access as any member of the public.

#### **15. Access to Information – Personal Interest**

Council and Committee Members must not use confidential information gained through their official position for the purpose of securing a private benefit for themselves or for any other person. When making an enquiry on a matter being considered by the Shire in which they have a personal/financial interest, they shall seek the information only from the CEO or relevant Director, in writing.

#### **16. Improper Use of Information**

Council and Committee Members must not make improper use of any information acquired by the person in the performance of his or her functions under the *Local Government Act 1995* or any other written law. Due discretion must be exercised by all those who have access to confidential or sensitive information. This applies not only to the proper disclosure of that information, but also to the appropriate measures to be taken to ensure that the security of the information is not compromised.

*Section 5.93 of the Local Government Act 1995 prohibits an Elected Member, Committee Member or employee from making improper use of any information acquired in the performance by the person of*

*his or her functions under the Local Government Act 1995 or any other written law:*

- a. *to gain directly or indirectly an advantage for themselves or for any other person; or*
- b. *to cause detriment to the Shire or any other person. The penalty, on conviction, is a fine of \$10,000 or imprisonment for 2 years.*

#### **17. Confidential Information**

Council and Committee Members must only access information needed for official business and use confidential information only for the purpose it is intended to be used. They have a duty to protect confidential information and must only release confidential information if they have authority to do so.

#### **18. Communication and Public Relations**

As a representative of the community, Council Members need to be responsive to community views, and shall communicate decisions of Council or a committee adequately, with good faith and not adversely reflect on those decisions externally.

Council and Committee Members must:

- a. Respect the decision-making processes of the Shire which is based on decisions of the majority of the Council or a committee;
- b. Not communicate confidential information;
- c. Convey information concerning adopted policies, procedures and decisions of the Shire accurately; and
- d. Recognise that the spokespersons for the Council are the Shire President and, with the Shire President's authorisation, the Chief Executive Officer, either of whom may make a statement on behalf of the Council.

## **19. Expression of Personal Views**

Council Members are free to make their own personal position known about any matter which is pertinent to the business of the Shire, including Council decisions provided that it cannot be construed to be a statement on behalf of the Council.

Council and Committee Members will refrain from making personal statements to the media without clearly prefacing such remarks that they are personal views and not those of the Council and in any case will not adversely reflect on a Council decision.

## **20. Social Media**

Council and Committee Members are free to state their position/role with the Shire publicly on social media (e.g. on Facebook, LinkedIn, etc.), however, as with any other form of communication, they must ensure their behaviour on social media adheres to the Shire of Derby/West Kimberley's values, policies and the other provisions of this Code.

While using social media Council and Committee Members must:

- a. Take care that their online behaviour does not reflect adversely on the Shire;
- b. Be polite and respectful of the opinions of others at all times, especially if publicly identifying themselves as a staff member of the Shire; and
- c. Ensure that any comments made about the Shire, Council, Council Members, its staff or stakeholders are factually correct and not confidential, divisive or negative in nature.

Council and Committee Members are encouraged to use social media channels throughout their term to help communicate the Shire's programs and initiatives and create an open channel with residents and community members. Such communication should always be conducted in a positive manner, should not discredit or reflect adversely on the Shire, its staff or its initiatives.

Council and Committee Members should take care to ensure that work related communication with each other occurs through official channels, not through social media.

All use of social media must be in accordance with Council's Social Media Policy.

## **21. Defamation**

Comments by Council Members are covered only by qualified privilege against defamation. A Council Member can only rely on the defence of qualified privilege whilst exercising the proper

discharge of their duties, and doing so in the public interest. In order to maintain qualified privilege, a Council Member should ensure that comments made are pertinent to the business of local government and they are not made maliciously or without due regard to whether they represent the truth.

## 22. Keeping of True and Correct Records

All elected members, staff and contractors will create full and accurate records, in the appropriate format, of the Shire of Derby/West Kimberley's business decisions and transactions to meet all legislative, business, administrative, financial, evidential and historical requirements.

The State Records Commission Policy relating to Councillor Records is:

*"In relation to the recordkeeping requirements of local government, elected members' records must be created and kept which properly and adequately record the performance of member functions arising from their participation in the decision making processes of Council and Committees of Council. This requirement should be met through the creation and retention of records of meetings of Council and Committees of Council of local government and other communications and transactions of elected members which constitute evidence affecting the accountability of the Council and the discharge of its business. Local governments must ensure that appropriate practices are established to facilitate the ease of capture and management of elected members' records up to and including the decision making processes of Council."*

## 23. Gifts and Benefits

It is the Shire's position that Council and Committee Members should not seek or accept (either directly or indirectly) any immediate or future gift (including any financial benefit, reward, donation or hospitality) for themselves, or for any other person or body, as a result of their role with the Shire. However, it is acknowledged that there may be instances when receiving a gift is unavoidable or when refusal of a gift may be inappropriate. In these circumstances, Council and Committee Members must comply with the provisions of the rest of this section. In order to ensure transparency, the CEO maintains a register of notifiable gifts which is published on the Shire's website in accordance with the requirements of the *Local Government Act 1995*.

For the purposes of this Code, a gift has the extended meaning set out in section 5.82(4) of *Local Government Act 1995*. Section 5.82(4) of the *Local Government Act 1995* defines a gift as:

*"gift means any disposition of property, or the conferral of any other financial benefit, made by one person in favour of another otherwise than by will (whether with or without an instrument in writing), without consideration in money or money's worth passing from the person in whose favour it is made to the other, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or other contribution to travel."*

## Division 2 – General principles

### 24. Overview of Division

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

### 25. 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.

## **26. 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.

(3) A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment.

## **27. 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**

### **28. 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.

### **29. 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.

### **30. 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.

### **31. 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.

### **32. Appointments to External Boards, Committees and Working Groups**

Council and Committee Members representing the Shire on external organisations, boards, committees and working groups are to ensure that they clearly understand the basis of their appointment, provide regular reports on the activities of the organisation in accordance with the

confidentiality requirements of that organisation and represent the Shire's interests on all matters relating to that organisation while maintaining the confidentiality requirements of the Shire.

### 33. Decision Making

Council and Committee Members have a duty to ensure that decisions are properly made and that parties involved in are dealt with fairly. Care must be taken to avoid impropriety and also to avoid any occasion for suspicion and any appearance of improper conduct.

When making decisions, it is essential that Council and Committee Members are highly conscious of the potential for even the slightest impropriety to lead to suspicion of misconduct. This means Council and Committee Members must ensure that no action, statement or communication between themselves and a third party conveys any suggestion of willingness to provide concessions or preferential treatment.

### 34. Lobbying

"Lobbying" is used to cover those types of communication between local government Council Members and the community and include representations to Council Members by special interest groups, by individuals with a direct interest in a council decision and by advocates acting on behalf of others.

Lobbying is common in local government. The most common form occurs when a group or individual makes direct contact with a Council Member in an attempt to influence a council decision.

Appropriate lobbying of Council Members is considered normal. In many cases lobbying is part of the democratic process and is an acceptable feature of the relationship between citizens and their elected representatives.

### 35. Inappropriate Lobbying

It is in the public interest that lobbying is fair and does not undermine public confidence in impartial decision-making. Lobbying is a two-way process between Council Members and lobbyists. Council Members should take care that their duty to consider issues fairly and properly is not compromised by participating in lobbying practices that are outside the bounds of appropriate or lawful behaviour. Generally, inappropriate or unlawful conduct on the part of someone lobbying a Council Member usually involves an attempt to obtain preferential consideration or treatment based on factors other than the merits of the matter. Examples include:

1. Accepting undisclosed payments or benefits while making a decision that affects the gift giver's interests;
2. Accepting a political donation in return for the favourable exercise of discretion during decision-making;
3. Granting access to a particular individual or group while unreasonably denying similar access requested by another party;
4. Fettering discretion by giving undertakings to an interested party prior to considering all the information relevant to a decision;
5. Acting in a manner that exceeds the role of a Council Member as defined in section 2.8, 2.9 or 2.10 of the *Local Government Act*;
6. Disclosing confidential information while being lobbied;

7. Being unduly influenced by factors that are irrelevant to the merits of the matter under consideration; and
8. Lobbying of by tenderers about the outcome of a tender process.

### **36. Transparency**

Council Members should exercise judgement when deciding whether to be involved in private meetings with people seeking to influence a council decision. Suspicions or inappropriate lobbying can occur when lobbying is not open to public scrutiny. Regardless of whether such suspicions are justified, they still have the potential to undermine public confidence in council decision-making and adversely affect a Council Member's reputation.

Transparency is a useful means of governing accountability and perceptions of fairness in lobbying processes. There are a number of ways Council Members can help ensure transparency whilst being lobbied. These include:

- a. Documenting meetings with proponents;
- b. Generally conducting meetings in official locations, such as Council premises;
- c. Having other people present during meetings;
- d. Inviting applicants who have approached them for a meeting to discuss significant developments, to write to the Shire seeking a meeting with all Council Members and relevant employees;
- e. Providing copies of information presented during lobbying meetings to Shire employees for consideration and assessment (if required), distribution to other Council Members and filing as part of Council's records;
- f. Asking people who have requested a meeting to put their arguments in writing; and
- g. Making a declaration at a Council meeting about lobbying activities they have been engaged in that are not part of Council's formal processes.

### **37. Reimbursement of Expenses**

Council and Committee Members may claim reimbursement of expenses only in accordance with the relevant legislative provision, policy or administration procedures. Claimants shall be diligent in ensuring that the expenses claimed in accordance with Council policy relate to their function and are appropriately acquitted.

### **38. Council Member Accessibility**

Council Members shall ensure that they make themselves accessible to the Shire of Derby/West Kimberley community through publication of at least one of the following on the Shire's website.

Selection of the following will be at the discretion of the Council Member:

- a. Private and/or Shire address or PO Box;
- b. Business telephone number;
- c. Mobile telephone number; and
- d. Email address.

### 39. Compliance with Local Laws and Policies

Council Members, Committee Members and Candidates must comply with local laws and Council policies. Council and Committee Members are to consider the administrative policies and procedures of the Shire to guide them in their decision-making responsibilities.

### 40. 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 one month after the occurrence of the alleged breach.
- (3) The local government must, in writing, authorise one or more persons to receive complaints and withdrawals of complaints.

### 41. Dealing with complaint

- (1) After considering a complaint, the local government must, unless it dismisses the complaint under clause 42 or the complaint is withdrawn under clause 43 (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 one 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).



#### **42. 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.
- (3) 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.

#### **43. 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 40(3).

#### **44. 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.

#### **45. Reporting Misconduct to the Corruption And Crime Commission**

The CEO, being a 'principal officer of a notifying authority' (for the purposes of the Corruption and Crime Commission Act 2003) has a statutory obligation to report to the Corruption and Crime Commission any allegation of misconduct, or any situation that otherwise comes to his or her attention involving misconduct, where it is of relevance or concern to the CEO in his or her official capacity.

Notwithstanding, any Council Member, Committee Member, employee, contractor or any other person may report directly to the Corruption and Crime Commission any matter which that person suspects on reasonable grounds may concern misconduct that has occurred, is occurring, or may occur.

#### **46. Protection of Persons Reporting Unacceptable or Illegal Behaviour**

The CEO is to ensure that Council Members, Committee Members, employees and contractors who report unacceptable or illegal behaviour (that is, whistle-blowers) are not in any way disadvantaged or victimised because of their actions. The CEO's action is limited to matters for which he/she has responsibility and/or jurisdiction to act.

##### *Public Interest Disclosure Act 2003*

The Public Interest Disclosure Act 2003 facilitates the reporting of public interest information and provides protection for those who report this information under that Act. Council Members,

Committee Members, employees and contractors are encouraged to contact the Shire’s nominated Public Interest Disclosure Officer to seek guidance on their disclosure and to lodge completed Public Interest Disclosure forms. A person who makes an appropriate disclosure of public interest information to the Shire’s nominated Public Interest Disclosure Officer under section 5 of the Public Interest Disclosure Act 2003:

- (a) incurs no civil or criminal liability for doing so, (b). is not, for doing so, liable:
  - (i) to any disciplinary action under a written law;
  - (ii) to be dismissed;
  - (iii) to have his or her services dispensed with or otherwise terminated; or
  - (iv) for any breach of duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by a written law) applicable to the person (Section 13).

## 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.*

### 47. 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.

### 48. Misuse of local government resources

Council and Committee Members will be scrupulously honest in their use of the local government’s resources and shall not misuse them or permit their misuse by any other person or body. Local government resources should be used effectively and economically and are not to be used for private purposes unless properly authorised to do so.

The interests of a Council Member in their re-election is considered to be a personal interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. In addition, Council letterhead, the Shire’s logo and other information that could give the impression it is official council material must not be used for these purposes.

Council and Committee Members must not use the Shire’s computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

- (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.

#### 49. 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.

#### 50. 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.

#### 51. 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.

#### 52. 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.

### 53. Disclosure of interests

A conflict of interest occurs when a Council or Committee Member's position within the Shire of Derby/West Kimberley, or their financial or other personal interests affect, has the potential to affect, or could have the appearance of affecting, their judgement, objectivity or independence.

No activities of Council or Committee Members should conflict with their responsibilities or compromise the quality of work performance, commitment to work, or the ability to make impartial business decisions.

Council and Committee Members must declare any actual, or perceived conflict of interest between their personal interests and the impartial fulfilment of their professional duties.

Council or Committee Members must comply with the laws governing financial interests, including the disclosure of financial interests, set out in the Local Government Act 1995. The onus is on Council and Committee Members to identify possible financial interests (including proximity interests and non-financial interests), to determine whether an interest exists and whether any statutory exemption applies. Council or Committee Members must provide primary and annual returns in accordance with the requirements of the Local Government Act 1995.

- (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.

**54. Compliance with plan requirement**

If a plan under clause 41(4)(b) in relation to a council member includes a requirement referred to in clause 41(6), the council member must comply with the requirement.

**Notes**

The *Local Government (Model Code of Conduct) Regulations 2021* was Gazetted on 3 February 2021 and its adoption repeals the *Local Government (Rules of Conduct) Regulations 2007*.