



Shire of Derby/West Kimberley Code of Conduct



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1 – INTRODUCTION

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 employees.

The Code of Conduct provides Council Members, Committee Members, employees and contractors 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, the Local Government (Rules of Conduct) Regulations 2007 and other legislation that affect Council Members, Committee Members and employees and 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 re-adoption no more than three months after each Ordinary Council Election.



2 – VALUES, PRINCIPLES AND BEHAVIOUR

ORGANISATIONAL VALUES

The organisational values and culture are an important part of working at the Shire of Derby/West Kimberley. Council Members, Committee Members, employees and contractors 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.

PRINCIPLES

As a general principle, a person in his or her capacity as a Council Member, Committee Member, employee or contractor 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, employees and contractors 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; and
- f. Causes, comprises or involves prejudice in the provision of a service to the community.

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 Member, Committee Member, employee or contractor 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 employee) to engage in fraud and/or corruption.

PERFORMANCE OF DUTIES

Council Members, Committee Members and employees have a legal duty of fidelity to act in the best interests of the Shire. While on duty, employees and contractors must give their time and attention to the Shire's business and ensure that their work is carried out efficiently and effectively, so that their standard of work reflects favourably both on them and on the Shire. Council Members, Committee Members, employees and contractors 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 Members and Committee Members will be as informed as possible to enable them to perform their role including attendance at meetings, briefings and workshops.

ROLE OF THE COUNCIL, SHIRE PRESIDENT, COUNCIL MEMBERS AND CEO

The role of the Council, Shire President, Council Members and CEO is set out in the *Local Government Act 1995*, sections 2.7 – 2.10. 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
- d. Working with other governments and organisations to achieve benefits for the community at both a local and regional level
- e. Being aware of the statutory obligations imposed on Council Members and on local governments

RELATIONSHIPS BETWEEN COUNCIL MEMBERS, COMMITTEE MEMBERS AND EMPLOYEES

Council Members, Committee Members and employees 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 Employees ought to recognise that a Council Member's views and opinions often reflect valid community viewpoints that should be considered in conjunction with professional opinion.

Employees are to make every effort to assist Council Members in the performance of their role and to achieve the satisfactory resolution of issues that may arise in the performance of that role.

Regulations 9 and 10 of the *Local Government (Rules of Conduct) Regulations 2007* apply to Elected Members in respect of involvement in the Shire's administration and relationships with employees:

9. Prohibition against involvement in administration

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

10. Relations with local government employees

1. A person who is a council member must not —
 - a. direct or attempt to direct a person who is a local government employee to do or not to do anything in the person's 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 person who is a local government employee in the person's capacity as a local government employee.
2. Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.
3. If a person, in his or her capacity as a council member, is attending a council meeting, committee meeting or other organised event and members of the public are present, the person must not, either orally, in writing or by any other means —
 - a. make a statement that a local government employee is incompetent or dishonest; or
 - b. use offensive or objectionable expressions in reference to a local government employee.
4. Subregulation (3)(a) does not apply to conduct that is unlawful under The Criminal Code Chapter XXXV.

COMPLIANCE WITH LOCAL LAWS AND POLICIES

Council Members, Committee Members and employees and contractors must comply with local laws and Council policies. Employees and contractors must also comply with all administrative policies and procedures of the Shire. Council Members and Committee



Members are to consider the administrative policies and procedures of the Shire to guide them in their decision-making responsibilities.

APPOINTMENTS TO EXTERNAL BOARDS, COMMITTEES AND WORKING GROUPS

Council Members, Committee Members employees and contractors 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.

DECISION-MAKING

Council Members, Committee Members and employees 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 Members, Committee Members and employees are highly conscious of the potential for even the slightest impropriety to lead to suspicion of misconduct. This means Council Members, Committee Members and employees 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.

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.

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.

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.

REIMBURSEMENT OF EXPENSES

Council Members, Committee Members, employees and contractors 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.

Section 5.98(2) of the Local Government Act 1995 states an Elected Member who incurs an expense of a kind prescribed as being an expense:

- a. to be reimbursed by all local governments or
- b. which may be approved by any local government for reimbursement and which has been approved by the local government for reimbursement, is entitled to be reimbursed for the expense in accordance with section 5.98(3) of the Local Government Act 1995.



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
- d. Email address

3 - HEALTH AND SAFETY

Every person within the Shire of Derby/West Kimberley 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. All employees and contractors must understand and follow the health and safety requirements in each Shire of Derby/West Kimberley workplace, and promptly report any circumstances that represent a threat to the safety of themselves or others.

ALCOHOL AND DRUG USE

Council Members, Committee Members, employees, contractors and visitors 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. All employees and contractors must adhere to the requirements of the Shire's Work Health and Safety Policy.

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.

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 Members, Committee Members, employees and contractors 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.

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.

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

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.



4 - INFORMATION AND COMMUNICATION

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.

Employees and contractors have an obligation to provide full and timely information to Council Members about matters that they are dealing with, in accordance with council procedures.

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.

ACCESS TO INFORMATION – PERSONAL INTEREST

Any Council Member, Committee Member, employee or contractor 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.

IMPROPER USE OF INFORMATION

Council Members, Committee Members, employees and contractors 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.

CONFIDENTIAL INFORMATION

Council Members, Committee Members, employees and contractors 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.

Regulation 6 of the *Local Government (Rules of Conduct) Regulations 2007* prohibits an Elected Member from disclosing confidential information, or information acquired at a closed meeting:

6. Use of information

1. In this regulation — 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 to clearly show that the information in the document is not to be disclosed; non-confidential document means a document that is not a confidential document.
2. A person who is a council member must not disclose —
 - a. information that the council member derived from a confidential document; or
 - b. information that the council member acquired at a closed meeting other than information derived from a non-confidential document.
 3. Subregulation (2) does not prevent a person who is 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.

COMMUNICATION AND PUBLIC RELATIONS

All aspects of communication by employees and contractors (including verbal, written, electronic or personal), involving the Shire's activities must be accurate, polite and professional.

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 Members, Committee Members, employees and contractors 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.

Section 2.8(1)(d) of the *Local Government Act 1995* states the Mayor is to speak on behalf of the local government. Section 5.41(f) of the *Local Government Act 1995* states the CEO can speak on behalf of the local government if the Mayor agrees.

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 Members, Committee Members, employees and contractors 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.

SOCIAL MEDIA

Council Members, Committee Members and employees are free to state their position / role with the Shire publicly on social media (e.g. on Facebook, LinkedIn), 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 Members, Committee Members and employees must:

- Take care that their online behaviour does not reflect adversely on the Shire;
- 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
- 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.

Employees must not:

- Use social media to complain about their employment or to criticise the Shire or other Shire employees;
- Use their work email address to register social media accounts or post your work email address on social media outside of a work capacity; and
- Create a social media account or page that appears to "represent" the Shire, in relation to the Shire or any of its initiatives, unless approved to do so.

Council Members 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 Members, Committee Members and employees 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.

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.



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."

5 - USE OF LOCAL GOVERNMENT RESOURCES

Council Members, Committee Members, employees and contractors 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 Members, Committee Members, employees and contractors 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.

Regulation 8 of the *Local Government (Rules of Conduct) Regulations 2007* states the following in respect of Elected Members using Shire resources:

8. Misuse of local government resources

A person who is a council member must not either directly or indirectly use the resources of a local government —

- a. for 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; or
- b. for any other purpose, unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose.



6 - CONFLICT OF INTEREST

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

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

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

Employees must excuse themselves from any decision-making process where there is an interest that influences, or may be perceived as influencing, their ability to make objective decisions and to fulfil the responsibilities to the Shire.

Employees will not engage in private work with or for any person or body with an interest in a proposed or current business dealing with the local government, without first making disclosure to the CEO, or in the case of the CEO, to the Shire President. In this respect, it does not matter whether advantage is in fact obtained, as any appearance that private dealings could conflict with performance of duties must be scrupulously avoided.

Employees who exercise a recruitment, regulatory, inspectorial or other discretionary function must make a disclosure before dealing with closely associated persons, close relatives or close friends and, whenever possible, or in doubt, should disqualify themselves from dealing with those persons. This disclosure must be made in writing to their Director and/or CEO. In the case of the CEO, disclosure to the Shire President is required.

FINANCIAL INTERESTS

Council Members, Committee Members, employees and contractors must comply with the laws governing financial interests, including the disclosure of financial interests, set out in the Local Government Act 1995. Sections 5.59-5.90 of the Local Government Act 1995 establish the requirements for disclosure by Council Members, Committee Members, employees and contractors of financial interests (including proximity interests). The onus is on Council Members, Committee Members, employees and contractors to identify possible financial interests (including proximity interests and non-financial interests), to determine whether an interest exists and whether any statutory exemption applies.

IMPARTIALITY INTERESTS

For the purposes of the Code, an impartiality interest means: "an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association" (see regulation 34(C)(1) of the *Local Government (Administration) Regulations 1996* and regulation 11(1) of the *Local Government (Rules of Conduct) Regulations 2007*). An 'impartiality interest' does not include a 'financial interest' that is subject to the requirements of the *Local Government Act 1995*.

An employee who has an impartiality interest in any matter to be discussed at a Council or committee meeting attended by that person must disclose the nature of the impartiality interest in a written notice given to the CEO before the meeting, or at the meeting immediately before the matter is discussed.



In addition, an employee who has given, or will give, advice in respect of any matter to be discussed at a Council or committee meeting not attended by the employee must disclose the nature of any impartiality interest he or she has in the matter in a written notice given to the CEO before the meeting, or at the time the advice is given.

An employee is excused from the requirement to disclose an impartiality interest if the failure to disclose occurs because the person did not know he or she had an impartiality interest in the matter, or did not know the matter would be discussed at the meeting and the person discloses the interest as soon as possible after becoming aware of the discussion.

Regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007* contain the provisions relating to Elected Members disclosing impartiality interests:

11. Disclosure of interest

1. In this regulation - interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.
2. A person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the 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. Subregulation (2) does not apply to an interest referred to in section 5.60 of the Act.
4. Subregulation (2) does not apply if –
 - a. a person who is a council member fails to disclose an interest because the person did not know he or she had an interest in the matter; or
 - b. a person who is a council member fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.

DISCLOSURE OF INFORMATION IN RETURNS

Council Members and 'designated employees' must provide primary and annual returns in accordance with the requirements of Division 6 of Part 5 of the Local Government Act 1995. For these purposes, a designated employee is defined in section 5.74 of the Local Government Act 1995 to mean:

- a. The CEO;
- b. An employee, other than the CEO, to whom any power or duty has been delegated under Division 4 of the Local Government Act 1995;
- c. An employee who is a member of a committee comprising Council Members and employees; and
- d. An employee nominated by the Shire to be a designated employee.



7 - GIFTS AND BENEFITS

GENERAL PROVISIONS

It is the Shire's position that Council Members, Committee Members and employees 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 circumstance, Council Members, Committee Members, employees 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.”

However, a gift does not include*:

- a. a gift from a relative as defined in section 5.74(1) of the Local Government Act 1995
- b. a gift that must be disclosed under regulation 30B of the Local Government (Elections) Regulations 1997 or
- c. a gift from a statutory authority, government instrumentality or non-profit association for professional training.

**Taken from regulation 34B of the Local Government (Administration) Regulations 1996.*

Section 5.74(1) of the *Local Government Act 1995* defines a relative as:

relative, in relation to a relevant person, means any of the following:

- a. a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant of the relevant person or of the relevant person's spouse or de facto partner;
- b. the relevant person's spouse or de facto partner or the spouse or de facto partner of any relative specified in paragraph (a), whether or not the relationship is traced through, or to, a person whose parents were not actually married to each other at the time of the person's birth or subsequently, and whether the relationship is a natural relationship or a relationship established by a written law.



PROHIBITED GIFTS

A Committee Member or employee must not accept a prohibited gift from a person who:

- a. is undertaking or seeking to undertake an activity involving a local government discretion; or
- b. it is reasonable to believe is intending to undertake an activity involving a local government discretion.

For these purposes:

a. prohibited gift means:

- (i) a gift worth \$300.00 or more; or
- (ii) a gift that is one of two or more gifts given to the member or employee by the same person within a period of six months that are in total worth \$300.00 or more.

b. activity involving a local government discretion is an activity:

- (i) that cannot be undertaken without an authorisation from the Shire or
- (ii) by way of a commercial dealing with the Shire.

Any gift valued at \$300.00 or more should be declined. If it is considered inappropriate to reject a gift worth \$300.00 or more (such as in the case of a gift from a foreign dignitary), the gift should be received on behalf of the Shire and provided to the CEO at the first possible opportunity.

If it is believed its value approaches \$300.00, the precise value of the gift should be ascertained before accepting to ensure compliance with this Code. It is also important to ensure that the full value of the gift is taken into account including all hidden costs in association with acts of hospitality.

Regulation 12 of the Local Government (Rules of Conduct) Regulations 2007 prohibits an Elected Member from accepting a prohibited gift (see section 8.4 below).

NOTIFIABLE GIFTS

A Committee Member or employee may accept a 'notifiable gift.' However, if he or she accepts a notifiable gift from a person who:

- a. is undertaking or seeking to undertake an activity involving a local government discretion; or
- b. it is reasonable to believe is intended to undertake an activity involving a local government discretion.

He or she must notify the CEO within 10 days of accepting the gift.

For these purposes:

a. a notifiable gift means:

- (i) a gift worth between \$50.00 and \$300.00 or
- (ii) a gift that is one of two or more gifts given to an Elected Member, Committee Member or employee by the same person within a period of six months that are in total worth between \$50.00 and \$300.00

b. activity involving a local government discretion is an activity:



- (i) that cannot be undertaken without an authorisation from the Shire or
- (ii) by way of a commercial dealing with the Shire.

The notification to the CEO of the acceptance of a notifiable gift must be in writing and must include:

- a. the name of the person who gave the gift
- b. the date on which the gift was accepted
- c. a description, and the estimated value, of the gift
- d. the nature of the relationship between the person who is a member or employee and the person who gave the gift
- e. if the gift is a notifiable gift

Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* contains similar requirements relating to the acceptance and notification of a 'notifiable gift' by an Elected Member (see section 8.4 below).

ACCEPTANCE AND NOTIFICATION OF GIFTS BY A COUNCIL MEMBER

Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* contain the requirements relating to the acceptance and notification of gifts by a Council Member:

12. Gifts

1. In this regulation —

activity involving a local government discretion means an activity —

- a. that cannot be undertaken without authorisation from the local government; or
- b. by way of a commercial dealing with the local government;

gift has the meaning given to that term in section 5.82(4) of the Act except that it does not include:

- a. a gift from a relative as defined in section 5.74(1) of the Act; or
- b. a gift that must be disclosed under regulation 30B of the Local Government (Elections) Regulations 1997; or
- c. a gift from a statutory authority, government instrumentality or non profit association for professional training;
- d. a gift from WALGA, the Australian Local Government Association Limited (ABN 31 008 613 876) or the Local Government Managers Australia WA Division Incorporated (ABN 91 208 607 072);

notifiable gift, in relation to a person who is a council member, means —

- a. a gift worth between \$50 and \$300; or
- b. a gift that is one of 2 or more gifts given to the council member by the same person within a period of 6 months that are in total worth between \$50 and \$300;

prohibited gift, in relation to a person who is a council member, means —

- a. a gift worth \$300 or more; or
- b. a gift that is one of 2 or more gifts given to the council member by the same person within a period of 6 months that are in total worth \$300 or more.



2. A person who is a council member must not accept a prohibited gift from a person —
 - a. who is undertaking or seeking to undertake; or
 - b. who it is reasonable to believe is intending to undertake, an activity involving a local government discretion.
3. A person who is a council member and who accepts a notifiable gift from a person —
 - a. who is undertaking or seeking to undertake; or
 - b. who it is reasonable to believe is intending to undertake, an activity involving a local government discretion must, within 10 days of accepting the gift, notify the CEO of the acceptance in accordance with sub regulation (4).
4. Notification of the acceptance of a notifiable gift is to be in writing and is to include —
 - a. the name of the person who gave the gift; and
 - b. the date on which the gift was accepted; and
 - c. a description, and the estimated value, of the gift; and
 - d. the nature of the relationship between the person who is a council member and the person who gave the gift; and
 - e. if the gift is a notifiable gift under paragraph (b) of the definition of “notifiable gift” (whether or not it is also a notifiable gift under paragraph (a) of that definition) —
 - (i) a description; and
 - (ii) the estimated value; and
 - (iii) the date of acceptance of each other gift accepted within the 6 month period.
5. The CEO must maintain a register of gifts in which details of notices received under sub regulation (4) are recorded.

DISCLOSURE OF GIFTS – COUNCIL MEMBERS AND DESIGNATED EMPLOYEES

Council Members and ‘designated employees’, as defined in section 5.74 of the *Local Government Act 1995*, should also remember to disclose gifts that are received and valued at over \$200.00, that are not covered by the Local Government (Rules of Conduct) Regulations 2007 (for Council Members) or this Code (for employees).

DISCLOSURE OF ELECTION CAMPAIGN CONTRIBUTIONS

All electoral candidates must comply with the *Local Government Act 1995* and the *Local Government (Elections) Regulations 1997* in disclosing electoral donations or ‘gifts’. A candidate must disclose to the CEO information about any electoral or related gift with a value of \$200.00 or more that is promised or received within six months before the relevant Election Day. Requirements relating to the disclosure of electoral gifts are set out in the *Local Government (Elections) Regulations 1997*, particularly Part 5A.



8 - BREACHING THE CODE

BREACHES OF THE CODE BY EMPLOYEES OR CONTRACTORS

Any person who has reason to believe that the personal behaviour of an employee breaches the standards of conduct set out in the Code, may refer the matter to the CEO or the Manager Human Resources, who will consider the matter and deal with it in accordance with the management protocols, procedures or practices of the Shire and any applicable law concerning employees or contractors.

Any person who has reason to believe that the personal behaviour of the CEO breaches the standards of conduct set out in the Code, may refer the matter to the Shire President. Each report of a breach is to be dealt with quickly and fairly in accordance with the principles of procedural fairness.

BREACHES OF THE CODE BY COUNCIL MEMBERS AND COMMITTEE MEMBERS

A breach by a Council Member of the *Local Government (Rules of Conduct) Regulations 2007* may be reported to the Shire's Complaints Officer (the CEO) in accordance with the prescribed Complaints Form as determined from time to time. Such complaints will be dealt with under Division 9 of Part 5 of the *Local Government Act 1995*.

Any person who has reason to believe that the personal behaviour of a Council Member breaches the standards of conduct set out in the Code, other than those matters set out in the *Local Government (Rules of Conduct) Regulations 2007*, may refer the matter to the CEO.

Any person who has reason to believe that the personal behaviour of a Committee Member breaches the standards of conduct set out in the Code, may refer the matter to the CEO.

All complaints and allegations will:

- a. Be treated as confidential and will ensure that the principles of natural justice and procedural fairness are followed at all times
- b. For employees be dealt with in accordance with the Council Policy Complaint Management and Procedures – to be developed
- c. For Council Members, be dealt with in accordance with *Local Government Act 1995*, or where applicable, with the "Council Policy - Complaint Management and Procedures" – to be developed.

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.

Section 4 of the *Corruption and Crime Commission Act 2003* defines the instances when 'misconduct' occurs:

4. Term used: misconduct Misconduct occurs if —



- a. a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment
- b. a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;
- c. a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment; or
- d. a public officer engages in conduct that —
 - (i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;
 - (ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;
 - (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
 - (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person, and constitutes or could constitute —
 - (v) a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

Section 3 of the Corruption and Crime Commission Act 2003 defines 'serious misconduct' as misconduct of a kind described in section 4(a), (b) or (c) of the *Corruption and Crime Commission Act 2003*.

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)

9 - DEFINITIONS

In this Code, unless the contrary appears:

“CEO” means the Chief Executive Officer of the Shire

“Code” means the 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

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