



Code of Conduct

July 2020

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PREAMBLE

The Code of Conduct provides Councillors, Committee Members and Employees with consistent guidelines for an acceptable standard of professional conduct. The Code addresses in a concise manner the broader issue of ethical responsibility and encourages greater transparency and accountability in individual local governments.

The Code is complementary to the principles adopted in the *Local Government Act 1995* and Regulations which incorporates four fundamental aims to result in:

1. *“better decision-making by local governments;*
2. *greater community participation in the decisions and affairs of local governments;*
3. *greater accountability of local governments to their communities; and*
4. *more efficient and effective local government.”*

The Code provides a guide and a basis of expectations for Councillors, Committee Members and Employees. It encourages a commitment to ethical and professional behaviour and outlines principles in which individual and collective local government responsibilities may be based.

STATUTORY ENVIRONMENT

The Code of Conduct observes the statutory requirements of the *Local Government Act 1995* (Section 5.103 – Codes of Conduct) and *Local Government (Administration) Regulations 1996* (Regulations 34B and 34C).

Councillors acknowledge their activities, behaviour and statutory compliance obligations may be scrutinised in accordance with prescribed rules of conduct as described in the *Local Government Act 1995* and *Local Government (Rules of Conduct) Regulations 2007*.

ROLES

Role of Council

The Role of the Council is in accordance with Section 2.7 of the *Local Government Act 1995* which states:

“(1) The council –

- (a) governs the local government’s affairs; and*
- (b) is responsible for the performance of the local government’s functions.*

(2) Without limiting subsection (1), the council is to –

- (a) oversee the allocation of the local government’s finances and resources;*
and
- (b) determine the local government’s policies.”*

Role of Councillor

The primary role of a Councillor is to represent the community, and the effective translation of the community's needs and aspirations into a direction and future for the local government will be the focus of a Councillor's public life.

The Role of Councillors as set out in Section 2.10 of the *Local Government Act 1995* follows:

"A Councillor –

- (a) Represents the interests of electors, ratepayers and residents of the district;*
- (b) provides leadership and guidance to the community in the district;*
- (c) facilitates communication between the community and the council;*
- (d) participates in the local government's decision-making processes at council and committee meetings; and*
- (e) performs such other functions as are given to a Councillor by this Act or any other written law."*

A Councillor is part of the team in which the community has placed its trust to make decisions on its behalf and the community is therefore entitled to expect high standards of conduct from its elected representatives. In fulfilling the various roles, Councillors' activities will focus on:

1. achieving a balance in the diversity of community views to develop an overall strategy for the future of the community;
2. ensuring that the wider goals and priority outcomes of the broader community are the focus of decisions, despite any impact on personal circumstances;
3. achieving sound financial management and accountability in relation to the local government's finances;
4. ensuring that appropriate mechanisms are in place to deal with the prompt handling of residents' concerns;
5. working with other governments and organisations to achieve benefits for the community at both a local and regional level; and
6. having an awareness of the statutory obligations imposed on Councillors and on local governments.

In carrying out its functions a local government is to use its best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity.

Role of Employees

The role of Employees is determined by the functions of the Chief Executive Officer as set out in Section 5.41 of the *Local Government Act 1995* which states:

"The Chief Executive Officer's functions are to –

- (a) advise the council in relation to the functions of a local government under this Act and other written laws;*
- (b) ensure that advice and information is available to the council so that informed decisions can be made;*
- (c) cause council decisions to be implemented;*
- (d) manage the day to day operations of the local government;*
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;*
- (f) speak on behalf of the local government if the mayor or president agrees;*

- (g) *be responsible for the employment, management supervision, direction and dismissal of other employees (subject to Section 5.37(2) in relation to senior employees);*
- (h) *ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and*
- (i) *perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the Chief Executive Officer.”*

Principles affecting the Employment of Employees by the Shire

The following principles, set out in Section 5.40 of the *Local Government Act 1995*, apply to the Shire’s Employees:

- “(a) employees are to be selected and promoted in accordance with the principles of merit and equity; and*
- (b) no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage; and*
- (c) employees are to be treated fairly and consistently; and*
- (d) there is to be no unlawful discrimination against employees or persons seeking employment by a local government on a ground referred to in the Equal Opportunity Act 1984 or on any other ground; and*
- (e) employees are to be provided with safe and healthy working conditions in accordance with the Occupational Safety and Health Act 1984; and*
- (f) such other principles, not inconsistent with this Division, as may be prescribed.”*

Relationships between Councillors and Employees

As mentioned above, the roles of Councillors and Employees are prescribed in the *Local Government Act 1995*. In summary:

1. Councillors, through their membership of Council, are responsible for the strategic leadership of the Shire; and
2. the Chief Executive Officer is responsible for implementing the decisions of Council and managing Employees.

Consequently, Councillors and Committee Members shall not direct or instruct employees and are specifically prohibited from involvement in the Shire Administration by the *Local Government (Rules of Conduct) Regulations 2007*, unless authorised by the Council or the Chief Executive Officer.

Councillors and Committee Members shall undertake their day-to-day communications with the Shire Administration directly through the Chief Executive Officer or relevant Managers, unless the Chief Executive Officer has established a protocol for communications on particular matters to occur directly with specified Employees.

Employees may only undertake direct communications with Councillors where they are acting within the functions and responsibilities of their position or are acting under the direction of the Chief Executive Officer or Manager.

Councillors, Committee Members and Employees will ensure that in their dealings with each other, they:

1. work together as part of the Shire's corporate team;
2. maintain an environment of mutual respect and cooperation; and
3. are respectful, frank and honest in their communications.

The President and the Chief Executive Officer will ensure that, in their dealings with each other, they:

1. maintain open and frank communications;
2. maintain regular contact;
3. exchange information in a timely manner;
4. have regard for their individual leadership responsibilities; and
5. understand each other's views and opinions.

Councillors, Committee Members and Employees will endeavour to fairly and quickly resolve any serious conflict that arises between themselves and either another Councillor, Committee Member or Employee, promptly and directly with that party in the first instance.

CONFLICT AND DISCLOSURE OF INTEREST

Conflict of Interest

Councillors, Committee Members and Employees will ensure that there is no actual (or perceived) conflict of interest between their personal interests and the impartial fulfilment of their professional duties.

Employees will not engage in private work with or for any person or body with an interest in a proposed or current contract with the local government, without first making disclosure to the Chief Executive Officer. 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.

Councillors, Committee Members and Employees shall notify the Chief Executive Officer (or the President in the case of the Chief Executive Officer) in writing, prior to either themselves or a closely associated person (as defined within the *Local Government Act 1995*) undertaking a dealing in land within the Shire (other than purchasing the principal place of residence).

Councillors, Committee Members and Employees who exercise a regulatory, recruitment, management or other discretionary function will make disclosure to the Chief Executive Officer (or in the case of the Chief Executive Officer, to the President) before dealing with relatives or close friends and wherever possible will disqualify themselves from dealing with those persons.

Employees will refrain from partisan political activities which could cast doubt on their neutrality and ability to act in a professional capacity. An individual's rights to maintain their own political convictions are not impinged upon by this clause. It is recognised that such convictions cannot be a basis for discrimination and this is supported by anti-discriminatory legislation.

Financial Interest

Councillors, Committee Members and Employees will adhere to the disclosure of interest requirements as prescribed in Division 6 of the *Local Government Act 1995*.

Impartiality Interest

Councillors & Committee Members

Regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007* prescribe the provisions relating to Councillors and Committee Members disclosing impartiality interests.

Employees

An Employee who has an impartiality interest (as defined in the *Local Government (Administration) Regulations 1996*) in any matter to be discussed at a Council or Committee Meeting attended by that person must disclose the nature of the impartiality interest:

1. in a written notice given to the Chief Executive Officer before the meeting; or
2. 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:

1. in a written notice given to the Chief Executive Officer before the meeting; or
2. at the time the advice is given.

However, an interest referred to in Section 5.60 of the *Local Government Act 1995* is excluded from the above impartiality interest disclosure requirements.

An Employee is also excused from the requirement to disclose an impartiality interest if the failure to disclose occurs because the person:

1. did not know he or she had an impartiality interest in the matter; or
2. did not know the matter in which he or she had an impartiality interest would be discussed at the meeting and the person discloses the nature of the impartiality interest as soon as possible after becoming aware of the discussion of that matter.

Where an impartiality interest is disclosed in a written notice given to the Chief Executive Officer before a meeting, then:

1. before the meeting the Chief Executive Officer is to ensure that the notice is given to the person presiding at the meeting; and
2. at the meeting, the person presiding is to bring the notice and its contents to the attention of the persons present immediately before the matter to which the disclosure relates is discussed.

Where an impartiality interest is disclosed or brought to the attention of the persons present at a meeting, the nature of the impartiality interest must be recorded in the minutes of the meeting.

PERSONAL BENEFIT

Use of Information

Councillors, Committee Members and Employees shall not use information, whether assigned confidential status or not:

1. to gain improper advantage for themselves or for any other person or body;
2. in ways which are inconsistent with the requirement to treat others with respect and fairness and the obligation to act impartially and in good faith; and
3. to avoid improperly causing harm, detriment or impairment to any person, organisation, or the Shire.

Due discretion shall be exercised by all those who have access to confidential or sensitive information. Every matter dealt with by, or brought before, a meeting sitting behind closed doors, shall be treated as strictly confidential, and shall not without the authority of the Council be disclosed to any person other than the Councillors and/or Employees of the Shire (and in the case of Employees only so far as may be necessary for the performance of their duties) prior to the discussion of the matter at a meeting of the Council held with open doors.

Nothing in this section prevents a Councillor or Employee from disclosing confidential information:

1. to a legal practitioner for the purpose of obtaining legal advice; or
2. if the disclosure is permitted by law.

Intellectual Property

'Intellectual Property' is defined as all present and future rights to each of the following used by or on behalf of the Shire, or developed in connection with the business or operations of the Shire, before, during or after the employment:

1. know-how;
2. trade marks, whether registered or unregistered;
3. inventions and improvements;
4. domain or business names;
5. confidential information;
6. concepts, ideas and information;
7. processes, data and formula;
8. copyright, moral rights, inventions, patents, patent applications, designs; and
9. any other intellectual property.

The title to Intellectual Property in all official duties will be assigned to the Shire upon its creation unless otherwise agreed by separate contract. Councillors, Committee Members and Employees shall not make unauthorised use of information and other intellectual property, produced or registered by Employees or other external contractors for the Shire.

Improper or Undue Influence

Councillors, Committee Members and Employees will not take advantage of their position to improperly influence other Councillors, Committee Members or Employees in the

performance of their duties or functions, in order to gain undue or improper (direct or indirect) advantage or gain for themselves or for any other person or body.

Councillors, Committee Members and Employees shall not take advantage of their position to improperly influence any other person in order to gain undue or improper (direct or indirect) advantage or gain, pecuniary or otherwise, for themselves or for any other person or body.

Similarly, Councillors, Committee Members and Employees shall not take advantage of their positions to improperly disadvantage or cause detriment to the local government or any other person.

Gifts and Benefits

Councillors, Committee Members and Employees must be mindful of the legislative requirements to disclose gifts and contributions to travel and comply with these. This includes completing the relevant forms prepared by the Shire.

The Chief Executive Officer is to maintain a register of gift notifications in accordance with the legislative requirements, and to publish an up-to-date version of the register on the Shire's website.

Councillors, Committee Members and the Chief Executive Officer

The obligation of Councillors, Committee Members and the Chief Executive Officer to disclose gifts is prescribed in Sections 5.87A and 5.87B of the *Local Government Act 1995*.

Employees

An Employee is to refrain from accepting a prohibited gift (as defined in the *Local Government (Administration) Regulations 1996*) from a person who:

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

An Employee who accepts a notifiable gift (as defined in the *Local Government (Administration) Regulations 1996*) from a person who is undertaking or seeking to undertake an activity involving a local government discretion, or it is reasonable to believe is intending to undertake an activity involving a local government discretion, is to notify the Chief Executive Officer within 10 days of accepting the gift, of the acceptance.

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

1. the name of the person who gave the gift;
2. the date on which the gift was accepted;
3. a description and the estimated value of the gift;
4. the nature of the relationship between the Employee and the person who gave the gift; and
5. 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) a description, the estimated value and the date of acceptance of each other gift accepted within the 6 month period.

Gifts and benefits with a value of less than \$50 received from a person or business undertaking, or who may, in the future, seek to undertake an activity which involves a local

government discretion are not required to be declared by law. However, Employees are encouraged to submit a gift declaration form voluntarily in these circumstances.

In addition, Employees must:

1. refuse all offers of money, gift vouchers or items easily converted to money, such as shares, which are made as a result of their position with the Shire; and
2. refuse bribes and report bribery attempts to the Chief Executive Officer and to the West Australian Police and/or the Corruption and Crime Commission.

CONDUCT REQUIRED

Personal Behaviour

The following behaviours are to be adopted by Councillors, Committee Members and Employees:

1. act with reasonable care and diligence;
2. act with honesty and integrity;
3. act lawfully and in accordance with this Code, Council policies and any applicable delegation;
4. act in the interests of the Shire and the community;
5. avoid damage to the reputation of the local government;
6. be open and accountable to the public;
7. base decisions on relevant and factually correct information and avoid bias;
8. be polite and treat others with respect and fairness avoiding behaviour which may harass or intimidate;
9. not be impaired by mind affecting substances while conducting Shire business;
10. make no allegations which are improper or derogatory;
11. avoid causing any reasonable person unwarranted offence or embarrassment;
12. respect decisions made;
13. refrain from publicly criticising either a Councillor, Committee Member or an Employee in a way that casts aspersions on competence or credibility;
14. be mindful of their behaviour in public, particularly where it is easy to ascertain the person is associated with the Shire of Dowerin;
15. maintain the confidentiality of documents and information assigned with this status;
16. report any suspected misconduct or breaches of this Code in accordance with the requirements in Section 8 of the *Local Government Act 1995*;
17. be innovative and take risks where the consequences of those risks are understood and accepted at an appropriate level; and
18. challenge the status quo and traditional approaches in a considerate and respectful manner.

These principles mirror, and expand on, those contained in the *Local Government (Rules of Conduct) Regulations 1996* which apply to Councillors.

Councillor and Committee Member Obligations

Legislation obligates Councillors and Committee Members to act in certain ways. Key legislative obligations include, but are not limited to the following:

1. representing the interests of the community as a whole and not just special interest groups;
2. participating in local government decision making and voting; and
3. acting in a quasi-judicial manner when considering planning applications and other requests for approvals and licences.

To ensure Councillors and Committee Members are acting in the interests of the Shire, and basing decisions on relevant and factually correct information, they must:

1. read agendas and associated meeting papers to be adequately informed;
2. treat matters on their individual merits; and
3. act impartially.

Honesty and Integrity

Councillors, Committee Members and Employees will:

1. observe the highest standards of honesty and integrity and avoid conduct which might suggest any departure from these standards;
2. bring to the notice of the President any dishonesty or possible dishonesty on the part of any other Councillor, and in the case of an Employee to the Chief Executive Officer; and
3. be frank and honest in their official dealings with each other.

Performance of Duties

While on duty, Employees will give their time and attention to the local government's business and ensure that their work is carried out efficiently, economically and effectively in accordance with Council policies, and that their standard of work reflects favourably on both themselves and the Shire.

Employees will deal with customers courteously, objectively and impartially.

Councillors and Committee Members will at all times exercise reasonable care and diligence in the performance of their duties, being consistent in their decision making but treating all matters on individual merits. Councillors and Committee Members will be as informed as possible about the functions of the Council and treat all members of the community honestly and fairly.

Compliance with Lawful Orders

Councillors, Committee Members and Employees will comply with any lawful order given by any person having authority to make or give such an order, with any doubts as to the propriety of any such order being taken up with the superior of the person who gave the order and, if a resolution cannot be achieved, with the Chief Executive Officer.

Councillors, Committee Members and Employees will give effect to the lawful decisions and policies of the local government, whether they agree with and/or approve of them, or not.

When a decision has been effected by a majority decision of Council, all Councillors, whether they supported the decision or not, must respect the decision of Council.

Administrative and Management Practices

Councillors, Committee Members and Employees will ensure compliance with proper and reasonable administrative practices and conduct, and professional and responsible management practices.

Corporate Obligations

Standard of Dress

Councillors, Committee Members and Employees are expected to comply with neat and responsible dress standards at all times. Accordingly:

1. Councillors and Committee Members will dress in a manner appropriate to their position, in particular when attending meetings or representing the local government in an official capacity; and
2. Management reserves the right to adopt policies relating to corporate dress and to raise the issue of dress with individual Employees.

Communication and Public Relations

All aspects of communication by Employees (including verbal, written or personal), involving the local government's activities should reflect the status and objectives of the local government. Communications should be accurate, polite and professional.

As a representative of the community, Councillors need to be not only responsive to community views, but also adequately communicate the attitudes and decisions of the Council. In doing so Councillors should acknowledge that:

1. as a member of the Council there is respect for the decision making processes of the Council which are based on a decision of the majority of the Council;
2. information of a confidential nature ought not be communicated until it is no longer treated as confidential;
3. information relating to decisions of the Council on approvals, permits and so on ought only be communicated in an official capacity by a designated officer of the Council; and
4. information concerning adopted policies, procedures and decisions of the Council is conveyed accurately.

Committee Members accept and acknowledge it is their responsibility to observe any direction the local government may adopt in terms of advancing and promoting the objectives of the Committee to which they have been appointed.

Record Keeping Responsibilities

Councillors, Committee Members and Employees shall comply with the *State Records Act 2000*, the Shire's Record Keeping Plan and any other policies on Information and Record Management to ensure adequate records are kept to evidence the performance of their duties.

Appointments to Committees

As part of their representative role Councillors are often asked to represent the Council on external organisations. In doing so it is important that Councillors:

1. clearly understand the basis of their appointment; and

2. provide regular reports on the activities of the organisation.

DEALING WITH COUNCIL PROPERTY

Use of Local Government Resources

Councillors and Employees will:

1. be scrupulously honest in their use of the local government's resources and shall not misuse them or permit their misuse (or the appearance of misuse) by any other person or body;
2. use the local government resources entrusted to them effectively, economically and lawfully in the course of their duties; and
3. not use the local government's resources (including the services of Employees during normal working hours) for private purposes (other than when supplied as part of a contract of employment), unless properly authorised to do so, and appropriate payments are made (as determined by the Chief Executive Officer).

Travel and Sustenance Expenses

Councillors, Committee Members and Employees will only claim or accept travel and sustenance expenses arising out of travel-related matters which have a direct bearing on the services, policies or business of the Shire in accordance with Council policy, relevant industrial awards and the provisions of the *Local Government Act 1995*.

Access to Information

Employees will ensure that all Councillors are given equal access to all information necessary for them to properly perform their functions and comply with their responsibilities.

Councillors will ensure that information provided will be used properly and to assist in the process of making reasonable and informed decisions on matters before the Council.

BREACHES AND MISCONDUCT

Breaches of this Code will be treated seriously.

Councillors and Committee Members

Complaints will be managed in accordance with the *Local Government (Rules of Conduct) Regulations 2007* if they relate to a breach of a Rule of Conduct. A Councillor or Committee Member who is suspected of breaching the Rules of Conduct may be reported to the Shire's Complaints Officer. Investigations will be conducted in accordance with Part 5, Division 9 of the *Local Government Act 1995*.

Complaints will be managed in accordance with natural justice and procedural fairness if the complaint relates to a breach of this Code but the breach is not, at the same time, a breach of the Rules of Conduct (note: as this Code is not a law, no penalty can apply in such circumstances).

Employees

A complaint alleging that an Employee has breached this Code shall be made in writing. Complaints regarding:

1. an Employee will be made to the Employee's relevant Manager;
2. a Manager will be made to the Chief Executive Officer; or
3. the Chief Executive Officer will be made to the President.

The complaint will be investigated in a manner that is in accordance with the Shire's Complaint Handling Procedure, Disciplinary Policy, Public Interest Disclosure Procedures and the principles of procedural fairness and natural justice.

Misconduct

For the purposes of this Code, misconduct is defined in accordance with Section 4 of the *Corruption, Crime and Misconduct Act 2003*.

The Chief Executive Officer has a statutory obligation to report reasonable suspicion of serious misconduct to the Corruption and Crime Commission and reasonable suspicion of minor misconduct to the Public Sector Commission.

As public officers, Councillors, Committee Members and Employees are required to immediately report to the Chief Executive Officer any instance where there is a reasonable suspicion that misconduct has occurred.

Public Interest Disclosure

The Shire has a Public Interest Disclosure Guideline, available on the Shire's website, that provides confidential mechanisms for reporting and investigating misconduct allegations or improper conduct in accordance with the *Public Interest Disclosure Act 2003*.

ACKNOWLEDGEMENT & COMMITMENT

I certify that I have read and understood this Code of Conduct and commit to adhering to and upholding its principles. I understand that a breach of this Code of Conduct may have serious implications.

Signed: _____

Name: _____

Date: _____