

Shire of Esperance

Code of Conduct

PREAMBLE

The Code of Conduct provides Elected Members, Committee Members and staff of the Shire of Esperance 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 Local Government (Rules of Conduct) Regulations 2007 which incorporates 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.

The Code provides a guide and a basis of expectations for Elected Members, Committee Members and staff. It encourages a commitment to ethical and professional behaviour and encourages greater transparency and accountability within the Shire of Esperance.

STATUTORY ENVIRONMENT

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

RULES OF CONDUCT

Elected Members 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.

1. ROLES

1.1 Role of Council

The Role of the Council is in accordance with S 2.7 of the Local Government Act 1995 :

“(1) the council —

(a) Directs and controls 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.”

1.2 Role of Elected Members

The primary role of an Elected Member is to represent the community, with their focus to effectively translate the communities needs and aspirations, to provide direction for the Local Government.

The Role of Elected Members as set out in S 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 Elected Member 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, Elected Members activities will focus on:

- achieving a balance in the diversity of community views to develop an overall strategy for the future of the community;
- achieving sound financial management and accountability in relation to the Local Government’s finances;
- ensuring that appropriate mechanisms are in place to deal with the prompt handling of residents’ concerns;

- working with other governments and organisations to achieve benefits for the community at both a local and regional level;
- Having an awareness of the statutory obligations imposed on Elected Members 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.

1.3 Role of Staff

The role of staff is determined by the functions of the CEO as set out in S 5.41 of the Local Government Act 1995 : -

“The CEO’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 S 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 CEO.”*

For clarity, all volunteers registered to the Shire of Esperance will have the same expectations and obligations as employees and/or staff as detailed in this Code of Conduct.

1.4 Relationships between Elected Members and Staff

An effective Councillor will work as part of the Council team with the Chief Executive Officer and other members of staff. That teamwork will only occur if Elected Members and staff have a mutual respect and cooperate with each other to achieve the Council’s corporate goals and implement the Council’s strategies. To

achieve this Elected Members and staff need to observe their statutory and professional obligations which include, but are not limited to, the following :

Councillors

- accept that their role is a leadership, not a management or administrative one;
- acknowledge that they have no capacity to individually direct members of staff to carry out particular functions;
- refrain from publicly criticising staff in a way that casts aspersions on their professional competence and credibility

Staff

- respect the role and position of Councillors and implement to their best ability the decisions of Council;
- acknowledge that individual Councillors have no capacity to direct staff or become involved in day to day operations of the Shire of Esperance;
- will not actively involve Councillors in any work instruction, direction, conflict, dispute or issue arising from their employment with the Shire of Esperance;
- refrain from publicly criticising Council decisions and/or individual Councillors in public forums or in situations where their personal views could be reasonably be misinterpreted as the views of the Shire's Management and/or Administration.

2. CONFLICT AND DISCLOSURE OF INTEREST

2.1 Conflict of Interest

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

Staff 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.

Elected Members, Committee Members and staff will lodge written notice with the Chief Executive Officer describing an intention to undertake a dealing in land within the local government area or which may otherwise be in conflict with the Council's functions (other than purchasing the principal place of residence).

Elected Members, Committee Members and staff who exercise a recruitment or other discretionary function will make disclosure before dealing with relatives or close friends and will disqualify themselves from dealing with those persons.

Staff will refrain from partisan political activities which could cast doubt on their neutrality and impartiality in acting in their 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.

2.2 Financial Interest

Elected Members, Committee Members and staff will adopt the principles of disclosure of financial interest as contained within the Local Government Act 1995.

2.3 Disclosure of Interest

Definition :

In this clause, and in accordance with Regulation 34C of the Local Government (Administration) Regulations 1996 -

“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.

(a) A person who is an employee and who has an interest in any matter to be discussed at a council or committee meeting attended by the person is required to disclose the nature of the interest -

(i) in a written notice given to the CEO before the meeting; or

(ii) at the meeting immediately before the matter is discussed.

(b) A person who is an employee and 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 person is required to disclose the nature of any interest the person has in the matter -

(i) in a written notice given to the CEO before the meeting; or

(ii) at the time the advice is given.

(c) A requirement described under items (a) and (b) exclude an interest referred to in S 5.60 of the Local Government Act 1995.

(d) A person is excused from a requirement made under items (a) or (b) to disclose the nature of an interest if-

(i) the person's failure to disclose occurs because the person did not know he or she had an interest in the matter; or

(ii) the person's failure to disclose occurs 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 discloses the nature of the interest as soon as possible after becoming aware of the

discussion of a matter of that kind.

(e) If a person who is an employee makes a disclosure in a written notice given to the CEO before a meeting to comply with requirements of items (a) or (b), then -

(i) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and

(ii) immediately before a matter to which the disclosure relates is discussed at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present.

(f) If -

(i) to comply with a requirement made under item (a), the nature of a person's interest in a matter is disclosed at a meeting; or

(ii) a disclosure is made as described in item (d)(ii) at a meeting; or

(iii) to comply with a requirement made under item (e)(ii), a notice disclosing the nature of a person's interest in a matter is brought to the attention of the persons present at a meeting,

the nature of the interest is to be recorded in the minutes of the meeting.

2.4 Independent Legal advice to be sought if in doubt

If an Elected Member is in doubt whether a conflict of interest exists, they should seek independent legal or other appropriate advice, including but not limited from the Department of Local Government or the Western Australian Local Government Association (WALGA).

3. PERSONAL BENEFIT

3.1 Use of Confidential Information

Elected Members, Committee Members and staff will not use confidential information to gain improper advantage for themselves or for any other person or body, in ways which are inconsistent with their obligation to act impartially and in good faith, or to improperly cause harm or detriment to any person or organisation.

3.2 Intellectual Property

The title to Intellectual Property in all duties relating to contracts of employment will be assigned to the Local Government upon its creation unless otherwise agreed by separate contract.

3.3 Improper or Undue Influence

Elected Members and staff will not take advantage of their position to improperly influence other Elected Members or staff 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.

3.4 Gifts

Definitions :

In this clause, and in accordance with Regulation 34B of the Local Government (Administration) Regulations 1996 -

“activity involving a local government discretion” means an activity -

- (a) that cannot be undertaken without an 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 S 5.82(4) except that it does not include -

- (a) a gift from a relative as defined in S 5.74(1); 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;*

“notifiable gift”, in relation to a person who is an employee, means -

- (a) a gift worth between \$50 and \$300; or*

(b) a gift that is one of 2 or more gifts given to the employee 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 an employee, means -

(a) a gift worth \$300 or more; or

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

A person who is an employee is to refrain from accepting 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.

A person who is an employee and who 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 intending to undertake an activity involving a local government discretion,

notify the CEO, in accordance with item (c) and 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 -

- 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 an employee and the
- e) person who gave the gift; and
- f) if the gift is a notifiable gift under paragraph (b) of the definition of “notifiable gift”
- g) (whether or not it is also a notifiable gift under paragraph (a) of that definition) –
 - (1) a description; and
 - (2) the estimated value; and
 - (3) the date of acceptance,
- h) of each other gift accepted within the 6 month period.

The CEO is to maintain a register of notifiable gifts and record in it details of notifications given to comply with a requirement made under item (c).

This clause does not apply to gifts received from a relative (as defined in S 5.74(1) of the Local Government Act) or an electoral gift (to which other disclosure provisions apply).

This clause does not prevent the acceptance of a gift on behalf of the local government in the course of performing professional or ceremonial duties in circumstances where the gift is presented in whole to the CEO, entered into the Register of Notifiable Gifts and used or retained exclusively for the benefit of the local government.

3.5 Personal dealings with Council

Elected Members and staff will inevitably deal personally with their council (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). They must not expect or request preferential treatment for themselves or their family because of their position. They must avoid any action that could lead members of the public to believe that they are seeking preferential treatment.

4. BEHAVIOUR OF ELECTED MEMBERS, COMMITTEE MEMBERS AND STAFF

4.1 Personal Behaviour

Elected Members, Committee Members and staff will:

- a) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;
- b) perform their duties impartially and in the best interests of the Local Government uninfluenced by fear or favour;
- c) act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the Local Government and the community;
- d) make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and
- e) always act in accordance with their obligation of fidelity to the Local Government.

Elected Members will represent and promote the interests of the Local Government, while recognising their special duty to their own constituents.

4.2 Honesty and Integrity

Elected Members, Committee Members and staff will:

- a) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards;
- b) bring to the notice of the Shire President any dishonesty or possible dishonesty on the part of any other member, and in the case of an employee to the Chief Executive Officer.
- c) be frank and honest in their official dealing with each other.

4.3 Performance of Duties

While on duty, staff will give their whole time and attention to the Local Government's business and ensure that their work is carried out efficiently, economically and effectively, and that their standard of work reflects favourably both on them and on the Local Government.

Elected Members 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. Elected Members and Committee Members will be informed about the functions of the Council, and treat all members of the community honestly and fairly.

4.4 Compliance with Lawful Orders

Elected Members, Committee Members and staff 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 resolution can not be achieved, with the Chief Executive Officer.

Elected Members, Committee Members and staff will give effect to the lawful policies of the Local Government, whether or not they agree with or approve of them.

4.5 Administrative and Management Practices

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

4.6 Corporate Obligations

Standard of Dress & Personal Presentation

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

- a) Elected Members 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.
- b) Management reserves the right to adopt policies relating to corporate dress and to raise the issue of dress and/or appearance with individual staff.
- c) In considering what is an appropriate standard of dress or personal presentation, consideration will be made relating to:
 - a. Type of work to be performed;
 - b. Interaction with the public;
 - c. Occupation health and safety needs; and
 - d. Religious beliefs.

Communication and Public Relations

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

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

- a) 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;
- b) information of a confidential nature ought not be communicated until it is no longer treated as confidential;
- c) 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;
- d) 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.

4.7 Appointments to Committees

As part of their representative role Elected Members are often asked to represent the Council on external organisations. It is important that Elected Members :

- a) clearly understand the basis of their appointment;
- b) provide regular reports to Council on the activities of the organisation; and
- c) represent the views and decisions of Council.

4.8 Quasi Judicial Roles

When acting in a Quasi Judicial role Elected Members and Staff:

- a) must recognise that this is a decision making function and not an information gathering function, Elected Members and staff will make each decision based on the relevant information before them and other relevant decision makers.
- b) will not gather information by liaising with applicants or opponents or conducting site visits, other than:
 - a. through an official site visit or briefing endorsed by the Chief Executive Officer or the Council; or
 - b. as part of their normal work duties.

If a Elected Member considers that they do not have enough information to make an informed decision then they are required to ask for any further information that they may require. Additional information will be provided subject to its availability and the organisation's capability to provide the additional information.

4.9 Harassment and Discrimination

Elected Members, Committee Members and Officers shall not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination, on the grounds of sex, pregnancy, age, race (including their colour, nationality, descent, ethnic or background), religion, political affiliation, marital status, disability, sexual preference or transgender.

4.10 Anonymous Communication

An Elected Member or staff will under no circumstances distribute anonymous correspondence received by them other than that they shall cause such correspondence (which includes any printed or electronic communication) to be given immediately to the Chief Executive Officer.

5. DEALING WITH COUNCIL PROPERTY

5.1 Use of Local Government Resources

Elected Members and staff will:

- a) 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;
- b) use the Local Government resources entrusted to them effectively and economically in the course of their duties; and
- c) not use the Local Government's resources (including the services of Council staff) 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).
- d) Local Government Resources include, but not limited to, any physical, human, intellectual, electronic and promotional resource owned, leased, licenced, and/or contracted by the Shire of Esperance.

5.2 Travelling and Sustenance Expenses

Elected Members, Committee Members and staff will only claim or accept travelling and sustenance expenses arising out of travel-related matters which have a direct bearing on the services, policies or business of the Local Government in accordance with Local Government policy and the provisions of the Local Government Act.

5.3 Access to Information

Staff will ensure that Elected Members are given access to all information necessary for them to properly perform their functions and comply with their responsibilities.

Elected Members 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.

6 REPORTING BREACHES AND MISCONDUCT

6.1 Reporting breaches of the code of conduct

An Elected Member, Committee Member or staff has an obligation to report suspected breaches of the code of conduct to the Chief Executive Officer, who will liaise with the Shire President, if the suspected breach involves an Elected Member. If a suspected breach of the code of conduct is reported to the Shire President, the Shire President has an obligation to refer this to the Chief Executive Officer for investigation. Elected Members should refrain from making allegations at open Council Meetings.

6.2 Investigation procedures – Officers’ conduct (excluding the Chief Executive Officer)

The Chief Executive Officer will investigate breaches of the code of conduct regarding Officers of Council and others engaged by the Council and will facilitate a report to the Council.

Each complaint will be dealt with quickly and fairly in accordance with the principles of procedural fairness.

6.3 Investigation procedures – Elected Member and Chief Executive Officer conduct

Where an Elected Member believes that the Chief Executive Officer or another Elected Member has failed to comply with the code, the Elected Member should report the matter to the Shire President, who will report the matter to the Council, if the Shire President believes the alleged breach warrants investigation.

Council is to create a Governance Committee of no less than three (3) members to investigate any alleged breach an Elected Member or the Chief Executive Officer.

The Governance Committee will be responsible for the investigation of allegations of breaches of the code of conduct by Elected Members and the Chief Executive Officer and must either:

- a) investigate the alleged breach; or
- b) engage an independent person to investigate the allegation.

An investigation conducted by the Chief Executive Officer, or the Council will follow the rules of procedural fairness. The investigator must:

- a) inform the person/s against whose interests a decision may be made of any allegations against them and the substance of any adverse comment in respect of them
- b) provide the person/s with a reasonable opportunity to put their case
- c) hear all parties to a matter and consider submissions
- d) make reasonable enquiries before making a decision
- e) ensure that no person is involved in enquiries in which they have a direct interest

6.4 Misconduct

The Chief Executive Officer has a statutory obligation to report, to the Corruption and Crime Commission:

- (a) any allegation of misconduct; or
 - (b) any situation that otherwise comes to his or her attention involving misconduct,
- where the CEO considers on reasonable grounds that misconduct may have occurred.

Name: _____

Signature: _____

Date: _____