

Shire of Mundaring

POLICY

CODE OF CONDUCT ELECTED MEMBERS, EXTERNAL COMMITTEE MEMBERS AND EMPLOYEES

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PURPOSE

To set out the standards of ethical and professional behaviour expected of Shire of Mundaring Elected Members, External Committee Members and Employees.

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PART 1 - INTRODUCTION

1.1 Application

This Code of Conduct applies to:

- Elected Members
- External Committee Members who are not Elected Members or Employees
- Employees.

1.2 Definitions

In this Code of Conduct:

CEO	means the Chief Executive Officer of Shire of Mundaring
Shire	means Shire of Mundaring
Clear intention	in relation to a “ dealing in land ” occurs when an individual concerned either: <ul style="list-style-type: none">a) accepts an offer; orb) makes an offer; orc) enters into any contract for a dealing in land.
Closely associated person	has the meaning given in section 5.62 of the <i>Local Government Act 1995</i>
Committee	means a committee established by Council
Council	means the council of Shire of Mundaring
Dealing in land	means, for the purpose of clause 6.1, a dealing of a person that involves: <ul style="list-style-type: none">a) acquiring or selling real property;b) acquiring or selling a lease or other interest in real property; orc) a proposal to develop land or a building that is within the Shire, other than a dealing relating to the person’s principal place of residence
Designated employee	has the meaning given in section 5.74 of the <i>Local Government Act 1995</i>
Elected Member	means a councillor of Shire of Mundaring
Employee	means an employee of Shire of Mundaring and includes temporary agency staff
External Committee Member	means a member of a committee other than an elected member
Secondary Employment	means any work, employment or engagement in a business unconnected to an employee’s role at Shire of Mundaring

1.3 Rules of Conduct

This Code must be read together with the Rules of Conduct made under the *Local Government (Rules of Conduct) Regulations 2007*, which apply to all elected members in Western Australia. The Rules of Conduct have their own enforcement regime. A breach by an Elected Member of a Rule of Conduct may be reported to the Shire's Complaints Officer (the CEO) and will be dealt with under Part 5, Division 9 of the *Local Government Act 1995*.

However, it is important to note that a breach or suspected breach of this Code of Conduct by an Elected Member can be the subject of a complaint to the Local Government Standards Panel.

1.4 Legislative Obligations

This Code is not a complete statement of the obligations that Elected Members, External Committee Members and Employees must observe. Legislative obligations such as those included in the *Local Government Act 1995* and its subsidiary legislation must be complied with.

PART 2 - VALUES AND ETHICAL PRINCIPLES

2.1 Values

Elected Members, External Committee Members and Employees of the Shire must conduct themselves in a manner that reflects the Shire's corporate values:

Respect

Care of yourself and others, whilst supporting diversity of skills, backgrounds and perspectives.

Integrity

Being who you say you are, telling the truth and being consistent and reliable.

Team Spirit

Helping others, sharing knowledge, celebrating milestones, and working towards a common goal.

Excellence in Customer Service

Total commitment to informing, educating, consulting and responding to customer needs in a respectful and professional way.

Innovation

A willingness to seek ideas, share knowledge and remain flexible to new ways of doing things. It also means taking risks, making mistakes and making time to reflect to allow new solutions to surface.

Continuous Improvement

A continual openness to learning, sharing, reflecting, challenging and improving the way things are done.

2.2 Rules of Conduct Guiding Principles

The following principles in the *Local Government (Rules of Conduct) Regulations 2007* should be used to guide Elected Members, External Committee Members and Employees in their conduct:

- 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) base decisions on relevant and factually correct information;
- g) treat others with respect and fairness; and
- h) not be impaired by mind affecting substances.

In carrying out their respective functions, Elected Members, External Committee Members and Employees of the Shire will use their best endeavours to meet the needs of current and future generations through the integration of environmental protection, social advancement and economic prosperity.

PART 3 - CONDUCT OF ELECTED MEMBERS, EXTERNAL COMMITTEE MEMBERS AND EMPLOYEES

3.1 Objectives

High standards of professional conduct are required of Elected Members, External Committee Members and Employees, to ensure that a positive image of the Shire is conveyed when the Shire interacts with its stakeholders and the general public. The conduct displayed should encourage fair, equitable and lawful management and operation of the Shire.

3.2 Personal behaviour

Elected Members, External Committee Members and Employees must:

- a) act with reasonable care and diligence;
- b) act with honesty and integrity;
- c) act lawfully and in accordance with the terms of this Code;
- d) act in the interests of the Shire and the community, uninfluenced by fear or favour;
- e) avoid damage to the reputation of the Shire;
- f) be open and accountable to the public;
- g) base decisions on relevant and factually correct information;
- h) treat others with respect and fairness;
- i) not be impaired by mind affecting substances;
- j) make no allegations which are improper or derogatory and refrain from any form of conduct, in the performance of their official or professional duties, which may cause, or is likely to cause any reasonable person unwarranted offence or embarrassment; and
- k) always act in accordance with their obligation of fidelity to the Shire and not publicly reflect adversely upon any decision of Council or the Executive Leadership Team.

Regulation 10(3) of the *Local Government (Rules of Conduct) Regulations 2007* prohibits an Elected Member from:

- a) making a statement that a local government employee is incompetent or dishonest; or
- b) using offensive or objectionable expressions in reference to a local government employee.

An elected member's primary obligation is to represent and promote the interests of the community as a whole. The interests of special interest groups or individuals should be considered only in the context of contributing to the good governance of the Shire.

Elected members must attend meetings of Council and committees to which they are appointed, and fulfil their statutory responsibility to participate in the meeting and cast their vote, noting that failure to fulfil these duties may be an offence against the *Local Government Act 1995* and *Shire of Mundaring Meeting Procedures Local Law*.

An elected member who is unable to attend a meeting of Council or a committee to which they are appointed or is unable to be in attendance for the full duration of the meeting must:

- a) for reasons of illness, tender an apology in writing to the Presiding Member or the Chief Executive Officer;
- b) for extended absences of two or more consecutive ordinary Council meetings, ensure that they have previously been granted by Council resolution a leave of absence; or
- c) when required to leave a meeting for a convenience break, emergency or unavoidable circumstance, ensure they have first sought acknowledgement from the Presiding Member.

An elected member who is unable to attend a meeting of a committee to which they are appointed must ensure that they inform the deputy delegate in reasonable time to facilitate attendance.

3.3 Honesty and Integrity

Elected Members, External Committee Members and Employees must:

- a) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards;
- b) be frank, honest and fair in performing their functions and in their official dealings with each other;
- c) bring to the notice of the Shire President any dishonesty or possible dishonesty on the part of the CEO; and
- d) bring to the notice of the CEO any dishonesty or possible dishonesty on the part of any Elected Member, External Committee Member or Employee (other than the CEO).

A notice under paragraph 3.3(c) or 3.3(d) must be given strict confidentiality and the Shire will give appropriate support to all parties during any investigation.

3.4 Performance of Duties

3.4.1 Employees

While on duty, Employees must give their whole time and attention to Shire business. They must ensure that their work is of a high standard, carried out efficiently and effectively in accordance with the Shire's policies, procedures and strategic direction.

In addition, Employees must:

- a) act within the limits of their delegation and/or authority; and
- b) ensure recommendation to Council or Committees are made with due diligence and care taken in the collation and inclusion of relevant information.

3.4.2 Elected Members and External Committee Members

Elected Members and External Committee Members must at all times exercise reasonable care and diligence in the performance of their duties, be consistent in their decision making and treat all matters on their relevant individual merits. They must ensure they are well informed on matters before Council or the Committee by reading all agendas and reports provided.

3.5 Quasi-Judicial Role and Principles

3.5.1 Role

'Quasi-judicial' functions are those which involve the making of a decision by the Council or an Employee in the exercise of a discretionary power. The Shire performs quasi-judicial functions when deciding to approve or not approve applications for planning approval, and for other approvals, licences, consents and permits. Elected Members, Committee Members and Employees must therefore act in a judicial manner (eg. judge-like) when performing quasi-judicial functions.

3.5.2 Principles

- a) The community expects Elected Members, External Committee Members and Employees to act in a quasi-judicial manner when exercising discretionary power.
- b) To act in a quasi-judicial manner, Elected Members, External Committee Members and Employees must apply the principles of natural justice and without bias or conflict of interest, make decisions in a judicial manner based on:
 - i. the law and Council policies as they exist; and
 - ii. the facts and merits of the case.
- c) Applicants submitting approval documents may attempt to persuade individual Elected Members, External Committee Members or Employees in favour of their proposals. Elected Members, External Committee Members and Employees must remain objective and deal with applicants or affected persons impartially.

- d) Decisions must be made on sound legislative rationale and not based on small public interest groups that do not represent the wider community.
- e) All Elected Members are to have equal access to relevant information and the opportunity to participate effectively throughout the decision making process.

3.5.3 Non-compliance

Non-compliance with quasi-judicial principles could result in Council decisions being invalidated. An Elected Member, acting when biased and without disclosing an interest affecting impartiality, may breach regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007*.

3.5.4 Procedures for Elected Members

When acting in a quasi-judicial role:

- a) Elected Members must not actively gather information independent of the official process by canvassing, liaising or initiating site visits with an applicant or affected person;
- b) if contacted by an applicant or an affected person, Elected Members will:
 - i. listen and endeavour to understand the reason for the applicant or affected person making contact;
 - ii. advise the applicant or affected person of the principles that apply where an Elected Member undertakes the role of quasi-judicial decision maker [refer to clauses 3.5.1 and 3.5.2 above];
 - iii. encourage the applicant or affected person to make their views known through the relevant formal Shire and statutory processes, such as through question time, deputations and public submission periods, in writing or direct to the Shire's administration; and
 - iv. ensure that they do not commit their vote, or give an impression that they have committed their vote, on the matter. Elected Members may offer support or otherwise, but are obliged to consider all relevant facts and have regard to the debate at the meeting, prior to making their decision;
- c) Elected Members must contact the CEO if they believe a site visit would be beneficial or if they have been requested by an applicant or an affected person to visit a site. Where appropriate and if circumstances permit, a site visit shall be arranged to facilitate the opportunity for all Elected Members to attend as well as at least one Employee. Elected Members visiting sites must ensure they comply with clause 3.5.2;
- d) where an applicant or affected person provides information to an Elected Member which is substantive to the decision making process, the Elected Member must communicate that information to all other Elected Members and the CEO prior to the meeting where a decision is proposed on the matter; and

- e) if an Elected Member believes that additional information is required to make an informed decision, such information must be sought in a written request to the CEO or obtained by resolution of Council. Where requested, the CEO will consider requests for additional information in light of its relevancy to the decision and determine whether or not the information should be provided.

3.6 Compliance with Local Laws and Policies

Elected Members, External Committee Members and Employees must comply with the adopted local laws and policies of the Shire.

3.7 Record Keeping Responsibilities

Elected Members, External Committee Members and Employees must at all times be responsible for the creation and maintenance of full and accurate records to evidence the performance of their functions.

Employees must maintain accurate and trustworthy records and ensure information is recorded accurately and in accordance with the Shire's recordkeeping plan, procedures and legislative requirements.

3.8 Access to and Use of Information

Elected Members must be provided with access to information held by the Shire, subject to:

- a) a request for access to the information being made to the CEO in writing, detailing the information sought and purpose for which the information is required;
- b) the CEO being of the view the information sought is relevant to the performance of the Elected Member's statutory functions as prescribed by section 5.92 of the *Local Government Act 1995*; and
- c) the information being used by the Elected Member solely for the purpose for which it was provided.

PART 4 - PERSONAL BENEFIT

4.1 Disclosure of Confidential Information

An Elected Member, External Committee Member or Employee must not disclose to another person, unless it is required for the performance of their duties at the Shire, written or oral information that is provided to them, or obtained by them, in confidence or, in the case of a document, is marked by the CEO to be confidential.

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

4.2 Improper Use of Information

An Elected Member, External Committee Member or Employees must not make improper use of any information acquired in the performance by the person of any of his or her functions under the *Local Government Act 1995* or any other written law. Elected Members, External Committee Members and Employees shall use discretion with information and avoid improperly causing harm or detriment to any person, organisation or the Shire.

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.

Elected Members, External Committee Members and Employees must not use information, whether assigned confidential status or not, to gain improper advantage for themselves or for any other person or body, or in ways which are inconsistent with their obligation to act impartially.

Section 5.93 of the *Local Government Act 1995* prohibits an Elected Member, External Committee Member or Employee from making 'improper use of any information acquired in the performance by the person of any of his or her functions under this Act or any other written law:

- (a) to gain directly or indirectly an advantage for the person or any other persons;
- or
- (b) to cause detriment to the local government or any other person.

The penalty, on conviction, is a fine of \$10,000 or imprisonment for two years.

4.3 Improper Use of Position

An Elected Member, External Committee Member or Employee must not make improper use of his or her office or position:

(a) to gain directly or indirectly an advantage for him or her, or for any other person;

or

(b) to cause detriment to the Shire or any other person.

Regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007* prohibits, in similar terms, the improper use by an Elected Member of his or her office.

4.4 Improper or Undue Influence

An Elected Member, External Committee Member or Employee must not take advantage of their office or position to improperly influence other members or employees in the performance of their duties or functions. They must not act to gain undue or improper (direct or indirect) advantage or gain, pecuniary or otherwise, for themselves or for any other person or body.

Similarly, an Elected Member, External Committee Member or Employee must not take advantage of their office or position to improperly disadvantage or cause detriment to the Shire or any other person.

Regulation 10(1) and (2) of the *Local Government (Rules of Conduct) Regulations 2007* prohibit an Elected Member from:

(a) directing or attempting to direct a local government employee; or

(b) attempting to influence, by means of a threat or the promise of a reward, the conduct of a local government employee.

PART 5 - CORPORATE OBLIGATIONS

5.1 External Communications and Public Relations

External communications and public relations by Elected Members, External Committee Members and Employees must:

- (a) respect the decision making processes of the Shire;
- (b) be accurate, polite and professional;
- (c) refrain from publicly criticising either an Elected Member, an External Committee Member or an Employee in a way that casts aspersions on their competence or credibility;
- (d) maintain the confidentiality of information that has been assigned that status, until the status is removed by either a decision of Council or advice from the CEO;
- (e) ensure that information relating to quasi-judicial decisions (for example approvals, licences, permits) is communicated only in an official capacity by an authorised Employee;
- (f) ensure that information concerning adopted policies, procedures and decisions of the Shire is conveyed accurately; and
- (g) be undertaken in a manner that promotes understanding, participation, accountability and responsibility.

5.2 Public Statements

With the exception of the President and CEO, Elected Members, External Committee Members and Employees must not make a public statement that purports to be made, or could reasonably be seen as being made, on behalf of the Shire.

Employees expressly authorised by the CEO may communicate with the media on behalf of the CEO on specific issues.

5.3 Relationships between Elected Members and Employees

An effective Elected Member will work as part of the Shire's team with the CEO and other Elected Members and Employees. That teamwork will occur only if Elected Members and Employees have mutual respect for, and co-operate with, each other to achieve the Shire's corporate goals and implement the Shire's strategies. To achieve that position all parties need to understand each other's roles as specified in the Act and any relevant agreements.

To achieve this effectiveness in teamwork, all Elected Members must:

- a) accept that their role is one of leadership, and not a management or administrative role;
- b) refrain from criticising an Employee in a way that casts aspersions on their professional competence or credibility, except where that criticism is directed to the CEO in a confidential manner;

- c) ensure that no restriction or undue influence is placed on the ability of an Employee to give professional advice to the Council;
- d) undertake their day-to-day communications with the Shire directly through the CEO or relevant Director, unless the CEO has established a protocol for communications on particular matters to occur directly with specified Employees;
- f) not undertake a task that contributes to the administration of the local government, unless the task is undertaken in relation to a meeting or the express authority of the Council or the CEO has been obtained prior to undertaking the task; and
- g) when entering a Shire business location, elected members seek approval from the Chief Executive Officer or the relevant Director, through their Personal Assistant, before engaging in discussion with employees.

At the same time, Employees recognise that an Elected Member's views and opinions often reflect valid community viewpoints that should be considered in conjunction with professional opinion. Employees must therefore make every effort to assist Elected Members in the performance of their role, and to achieve the satisfactory resolution of issues that may arise in the performance of their role.

All Elected Members, External Committee Members and Employees must acknowledge that the Shire of Mundaring is a safe workplace where everyone has a duty of care to ensure that bullying and other hazards to wellbeing do not occur. This duty of care should inform the behaviour and relations between all Elected Members, Members and Employees.

Regulations 9 and 10 of the *Local Government (Rules of Conduct) Regulations 2007* prohibit an Elected Member from:

- (a) undertaking a task that contributes to the administration of the local government, unless authorised by the Council or by the CEO to undertake that task;
- (b) directing or attempting to direct a local government employee;
- (c) attempting to influence, by means of a threat or the promise of a reward, the conduct of a local government employee;
- (d) making a statement that a local government employee is incompetent or dishonest; or
- (e) using offensive or objectionable expressions in reference to a local government employee.

5.4 Appointments to External Organisations

An Elected Member, External Committee Member or Employee representing the Shire on an external organisation is to ensure that they:

- (a) clearly understand the basis of their appointment;
- (b) provide regular reports on the activities of the organisation in accordance with the confidentiality requirements of that organisation;
- (c) represent the Shire's interests on all matters relating to that organisation, while maintaining the confidentiality requirements of the Shire; and
- (d) communicate the resolved position of Council to the external organisation as determined from:
 - i. resolutions of Council dealing generally or specifically with the matter involving the external organisation; and
 - ii. relevant statements of the Council's positions contained in adopted Council policies or the Shire's Strategic Community Plan.

5.5 Defamation

Comments by an Elected Member or Employee at a meeting of the Council or Committee may be covered by qualified privilege against defamation. Qualified privilege does not apply where a comment is made maliciously, or without due regard for whether it represents the truth.

An Elected Member or Employee is able to rely on the defence of qualified privilege only while exercising the proper discharge of their duties, and doing so in the public interest.

An Elected Member, External Committee Member or Employee may also be protected by the provisions of section 9.56(2) of the *Local Government Act 1995* in relation to all tort actions (including defamation). The provision applies to anything a person has, in good faith, done in the performance or purported performance of a function under the *Local Government Act 1995* or any other written law.

5.6 Standards of Attire

The appearance and dress of Elected Members, External Committee Members and Employees, whilst conducting Shire business, should be in accordance with the standards appropriate to their duties and the people with whom they are dealing.

Elected Members, External Committee Members and Employees are required to behave in a way that upholds the good reputation of the Shire, and as such, they are required to dress professionally, reflecting pride in the Shire and respect for those that they deal with, particularly the public.

In some circumstances, Elected Members, External Committee Members and Employees may be required to adopt a particular dress standard, which may include wearing a uniform, safety clothing or formal attire. Where such standards are required, they must be complied with.

When attending a Council meeting, elected members and employees are required to wear appropriate business attire.

5.7 Conflict Resolution

In the case of a serious conflict between or among Elected Members or Employees:

- a) the parties concerned should endeavour to fairly and quickly resolve the conflict directly with each other; and
- b) if after genuine efforts, the matter cannot be resolved, it must be referred, in the case of:
 - i. an Employee - to their immediate supervisor;
 - ii. an Elected Member - to the Shire President; or
 - iii. if an Elected Member is in conflict with the Shire President - to the Chief Executive Officer.

5.8 Personal Communications and Social Media

- a) Personal communications and statements made privately in conversation, written, recorded, emailed or posted in personal social media, have the potential to be made public, whether they were intended to be made public or not.

Therefore, on the basis, that personal or private communications may be shared or become public at some point in the future, Elected Members, External Committee Members and Employees must ensure that their personal and private communications do not breach the requirements of this Code of Conduct and for Elected Members, the *Local Government (Rules of Conduct) Regulations 2007*.

- b) Employees must not, unless specifically authorised to do so, disclose information, make comments or engage in communication activities about or on behalf of the Shire, its elected members, employees or contractors, which breach this Code of Conduct.
- c) Elected Member comments which become public and breach the *Local Government (Rules of Conduct) Regulations 2017* may constitute a serious breach of the *Local Government Act 1995* and may be referred for investigation.
- d) Employee comments which become public and breach this Code of Conduct or any other operational practice or procedure, may constitute a disciplinary matter and may also be determined as misconduct and be reported under the *Corruption, Crime and Misconduct Act 2003*

5.9 Use of Shire Resources

Elected Members, External Committee Members and Employees must:

- a) be scrupulously honest in their use of Shire resources (including facilities, funds, employee time, materials and equipment) and must not misuse them or permit their misuse (or the appearance of misuse) by any person or body;
- b) use Shire resources entrusted to them effectively, economically and lawfully in the course of their duties and not otherwise;
- c) not use Shire resources (including the services of Shire employees during normal working hours) for private purposes (other than when supplied as part of a contract of employment), unless expressly authorised by the Chief Executive Officer to do so;
- d) not make unauthorised use of information and other intellectual property, produced or registered by employees or external contractors for the Shire. The title to intellectual property created in the course of performing a function for or on behalf of the Shire must be assigned to the Shire upon its creation; and
- e) promote the concept of pride in public property, fostering an awareness of the community's ownership of the Shire's natural and built environment.

Regulation 8 of the *Local Government (Rules of Conduct) Regulations 2007* prohibits an Elected Member from using the resources of a local government for electoral purposes, or for any other purpose, unless authorised under the *Local Government Act 1995* or by the Council or the CEO.

5.10 Reimbursement of Expenses

Elected Members, External Committee Members and Employees may claim for reimbursement of expenses only in accordance with the Shire's policies, the *Local Government Act 1995* and relevant industrial awards or agreements.

PART 6 - CONFLICT AND DISCLOSURE OF INTERESTS

6.1 Conflict of Interests

Elected Members are bound by the provisions of the *Local Government (Rules of Conduct) Regulations 2007* and the *Local Government Act 1995* in relation to conflicts of interests and must comply with those provisions. Employees are bound by the provisions of the *Local Government Act 1995* and the provisions of this Code in relation to conflicts of interest and must comply with those provisions.

All Elected Members, External Committee Members and Employees must ensure that there is no actual, potential or perceived conflict of interest between their personal interests or those of closely associated persons and the impartial fulfilment of their public or professional duties and functions.

In applying this principle, Elected Members, External Committee Members, and Employees must:

- (a) familiarise themselves with the different types of interests that are regulated by legislation and this Code and the disclosure requirements that apply to them;
- (b) understand in what circumstances gifts, benefits and hospitality may be accepted or rejected in accordance with legislation, this Code and the Shire's policies and procedures;
- (c) exercise diligence in identifying and making timely disclosure of any interests requiring disclosure as they perform their duties;
- (d) not engage in private work with or for any person or body with an interest in a proposed or current contract with the Shire, without first making written disclosure to the CEO. Elected Members, External Committee Members and Employees undertaking private works shall under no circumstances use Shire equipment, premises, time, resources or consumables to conduct or undertake activities associated with private works;
- (e) lodge written notice with the CEO describing an intention to undertake a dealing in land which either occurs within the district or which may otherwise be in conflict with the Shire's functions. The notice must be received within 10 days of the individual concerned forming a clear intention to undertake a dealing in land. It is intended that the Elected Member, External Committee Member, or Employee will be removed by the Shire from any Shire process related to that dealing and should act accordingly;
- (f) if they exercise a discretionary function, make written disclosure to the CEO before dealing with any matter where they have an interest that could affect, or could reasonably be perceived to affect, their impartiality. This includes interests arising from kinship, friendship, or membership of an association, and will disqualify themselves from dealing with the matter unless the CEO has authorised their continued involvement and there is no other prohibition under law or the Code, which precludes their involvement. Where the CEO has authorised an Employee who has an actual or perceived conflict of interest in the matter to continue acting in some capacity, that Employee must follow all conditions and limitations that the CEO has placed on their involvement; and

- (g) if disclosure is required under any law or this Code, complete a disclosure form in writing and submit it to the CEO, or where the disclosure is by the CEO to the Shire President.

In addition, an Employee must:

- (h) refrain from partisan political activities associated with Shire of Mundaring local government elections, which could cast doubt on their neutrality and impartiality in carrying out their public duties and functions. This does not include non-partisan activity such as work associated with the administration of a local government election; and
- (i) seek approval from the CEO prior to undertaking any Secondary Employment. An Employee must not undertake secondary employment without CEO approval. If an Employee is already undertaking secondary employment they must ensure a request for approval is lodged immediately.

6.2 Financial Interests

Elected Members must comply with the laws governing financial interests, including the disclosure of financial interests, as set out in the *Local Government Act 1995*. Elected Members must also comply with the laws governing the disclosure of impartiality interests, as set out in the *Local Government (Rules of Conduct) Regulations 2007*.

External Committee Members and Employees must comply with the laws governing financial interests, including the disclosure of financial interests, set out in the *Local Government Act 1995*. External Committee Members and Employees must also comply with the rules governing the disclosure of impartiality interests, as set out in this Code, which are consistent with Part 6 of the *Local Government (Administration) Regulations 1996*.

The onus is on Elected Members, External Committee Members and Employees to identify possible financial interests and other interests (such as proximity interests and non-financial interests), to determine whether an interest exists, what disclosure is required by this Code or applicable laws and whether any statutory exemption applies.

6.3 Proximity Interests

Sections 5.59 to 5.90 of the *Local Government Act 1995* establish the requirements for disclosure by Elected Members, External Committee Members or Employees of financial interests, non-financial interests, indirect financial interests and proximity

Section 5.60B of the *Local Government Act 1995* states a person has a proximity interest if the matter concerns:

- (a) a proposed change to a planning scheme affecting land that adjoins the person's land; or
- (b) a proposed change to the zoning or use of land that adjoins the person's land; or
- (c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land.

Land is considered to adjoin the person's land if it:

- (a) has a common boundary with the person's land; or
- (b) any part of the land is directly across a thoroughfare from the person's land.

The term land includes any land owned by the person or in which the person has any estate or interest.

A proximity interest is defined by section 5.60B of the *Local Government Act 1995*. Elected Members, External Committee Members and Employees, are bound by the disclosure requirements of the Act.

6.4 Impartiality interests

Elected Members are bound by the impartiality provisions of the *Local Government (Rules of Conduct) Regulations 2007*. This Code is intended to accurately reflect those provisions and Elected Members must also comply with the impartiality interest provisions contained within the Code.

External Committee Members and Employees must comply with the impartiality interest provisions set out in this Code.

6.4.1 Meaning of Impartiality Interest

For the purposes of this 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*.

6.4.2 Requirement to Disclose

An Elected Member, External Committee Member or 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:

- a) in a written notice given to the CEO before the meeting; or
- b) at the meeting immediately before the matter is discussed.

In addition, an External Committee Member or 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 External Committee Member or Employee must disclose the nature of any impartiality interest he or she has in the matter:

- a) in a written notice given to the CEO before the meeting; or
- b) at the time the advice is given.

An Elected Member, External Committee Member or Employee is excused from the requirement to disclose an impartiality interest if the failure to disclose occurs because the person:

- a) did not know he or she had an impartiality interest in the matter; or
- b) 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.

The disclosure of an impartiality interest does not necessarily affect the ability of the Elected Member or External Committee Member to discuss or vote on the matter.

Where a verbal disclosure is made at a meeting without a prior written disclosure being made, a written disclosure form must be completed in relation to the impartiality interest disclosed. The completed disclosure form must be submitted as soon as practicable following the meeting.

6.4.3 Notice and Recording

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

- a) before the meeting the CEO is to ensure that the notice is given to the person who is to preside at the meeting; and
- b) 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.

Regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007* contains detailed provisions relating to the disclosure by Elected Members of impartiality interests.

An Elected Member who does not comply with an impartiality interest provision would be in breach of this regulation.

Employees and External Committee Members who do not comply with an impartiality interest provision would be in breach of this Code of Conduct.

6.5 Disclosure of Information in Returns

Elected 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*.

PART 7 – GIFTS

7.1 Definitions

In essence, a 'gift' is:

- any disposition of property, or the conferral of any other financial benefit
- made by one person in favour of another
- without 'fully adequate' consideration passing from the recipient to the donor.

7.2 Application

This Part of the Code of Conduct applies to all gifts that are offered from a person who:

- (a) is undertaking or seeking to undertake an activity involving Shire discretion; or
- (b) it is reasonable to believe is intending to undertake an activity involving Shire discretion.

Gifts offered to Elected Members, External Committee Members or Employees under the circumstances described above must be refused.

Gifts and contributions to travel offered to Elected Members, External Committee Members or Employees in all other circumstances are to be declared where the provisions of sections 5.82 and 5.83 of the *Local Government Act 1995* apply.

The acceptance of any gift or benefit by Elected Members, External Committee Members or Employees has the potential to secure the influence or favour of an Elected Member, External Committee Member or Employee in the performance of their duties and thus give rise to an actual, potential or perceived conflict of interest. At the extreme, it could amount to a bribe, which is a criminal offence.

It is therefore unacceptable for an Elected Member, External Committee Member or Employee:

- under any circumstance, to accept money from any party other than a wage, salary or allowance received from the Shire for the performance of their work duties
- to solicit or accept any gift or benefit, the receipt or expectation of which does or might in any way influence, or appear to tend to influence, the Elected Member, External Committee Member or Employee in their official capacity
- to offer a gift or benefit to another Elected Member, External Committee Member or Employee.

To avoid a conflict of interest, the appearance of a conflict of interest or the need for an Elected Member, External Committee Member or Employee to examine the ethics

of acceptance or not of accepting gifts, Elected Members, External Committee Members and Employees must not accept gifts from vendors, suppliers, customers, potential Elected Members, External Committee Members and Employees and potential vendors or suppliers.

The Shire's Code of Conduct requires that all Elected Members, External Committee Members and Employees demonstrate our organisation's commitment to impartially treating all people and organisations with which we come into contact or conduct business and demonstrating the highest standards of ethics and conduct.

Elected Members, External Committee Members and Employees must practice and demonstrate equal treatment, unbiased professionalism, and non-discriminatory actions in relation to all vendors, suppliers, customers, Elected Members, External Committee Members or Employees, potential Elected Members, External Committee Members or Employees and potential vendors or suppliers.

To demonstrate our commitment to these standards and behaviour, all Elected Members, External Committee Members and Employees must abide by the following no-gift policy requirements:

- With the exception of those circumstances outlined below, no gifts of any kind that are offered by vendors, suppliers, customers, potential Elected Members, External Committee Members and Employees and potential vendors or suppliers, no matter the value, will be accepted by any Elected Member, External Committee Member or Employee, at any time, on or off the Shire premises.
- No vendor or potential vendor or supplier-provided food, beverages, meals, or entertainment such as sporting events is to be accepted.
- No business courtesy offered such as a product discount or any other benefit if the benefit is not extended to the general public, is to be accepted.

This Part of the Code of Conduct does not apply to genuinely personal gifts and benefits from friends and family which have no connection to an Elected Member, External Committee Member or Employee's role at the Shire. However, the disclosure requirements of sections 5.82 and 5.83 of the *Local Government Act 1995* do need to be considered in these circumstances.

No matter how well-meaning or well-intentioned a gift, the potential exists for impropriety or the appearance of impropriety to be present because of the existence and acceptance of the gift. Under no circumstances are Elected Members, External Committee Members or Employees to solicit gifts or benefits.

All Elected Members, External Committee Members and Employees have a duty to strictly adhere to this Code of Conduct. If you become aware of a breach of this policy, you have a duty to report it to the CEO. Non-compliance may constitute misconduct and may result in disciplinary action. This applies regardless of your role or position on the corporate structure.

If it is not possible or practical to refuse the gift, it may be accepted on behalf of the Shire. Such offers must be must be declared on the Shire's Gift Declaration Form and transferred to the Shire.

7.3 Procedure for Elected Members, External Committee Members and Employees

Elected Members, External Committee Members and Employees are required to professionally inform vendors, potential vendors and others of this no-gift policy, and the reasons the Shire has adopted the policy. Elected Members, External Committee Members and Employees will request that vendors respect the Shire policy and not purchase or deliver any gift for our Elected Members, External Committee Members and Employees, a department, an office or the Shire, at any time, for any reason.

All offers of gifts and benefits must be politely declined and reported on the Gift Declaration Form as declined, unless they are on the exceptions list below.

7.4 Exceptions

Exempted from this Code of Conduct are gifts such as t-shirts, pens, trade show bags and all other trinkets that Elected Members, External Committee Members or Employees obtain as attendees at events such as conferences, training events, seminars, and trade shows that are offered equally to all attending the event.

Ceremonial gifts are official gifts that are offered by an organisation to representatives of the Shire when conducting official business with delegates from another organisation. Although these gifts may sometimes be offered to express gratitude, the gratitude usually extends to the work of several people in the Shire, and therefore the gift is considered to be for the Shire, not a particular individual.

7.5 Prizes

Prizes won at event competitions are exempt as the benefit is considered a prize from a game of chance, rather than a gift. As the beneficiary is not able to be known until drawn, and the transfer of property is by chance, rather than transferred by a decision of the donor to the recipient, a gift is not bestowed. Prizes from games of chance (ie. raffles, lucky door prizes, business card draw etc.) need not be disclosed as gifts.

7.6 Guidance for particular types of gifts/benefits

7.6.1 Hospitality, functions and events

Other than token hospitality given as a matter of course to all function and event attendees (usually during a meeting or training course), offers of hospitality must be declined. Invitations to events such as sports matches and the theatre, as well as meals paid for by companies must be declined.

7.6.2 Reward points

Reward points and gifts/benefits earned through purchases, travel etc. paid by Shire of Mundaring must not be used for the personal benefit of Elected Members, External Committee Members or Employees.

7.6.3 Sponsored travel

Sponsorship offered by a non-commercial association or professional body, such as Federal or State Government departments or agencies, LG Professionals or WALGA can be accepted as long as it is not linked to a private organisation or product sponsorship.

The purpose of the travel and/or conference attendance must have a benefit to the Shire and/or the community. It would however be within the disclosable 'gift' requirement of both section 5.82 of the *Local Government Act 1995* and regulation 34B of the *Local Government (Administration) Regulations 1996* – unless it is worth less than \$200 (cumulatively over 12 months) or unless "fully adequate consideration" is provided by the employee to the sponsor organisation.

Offers of free conference registration (particularly where the Elected Member, External Committee Member or Employee is a speaker) may be acceptable, but the Shire must generally pay for all travel and accommodation requirements.

7.6.4 Gifts/benefits offered to Elected Members, External Committee Members or Employees who are office bearers of an external organisation

These gifts/benefits must be treated in accordance with the other organisation's policies. However, all such gifts/benefits must be declared on the Shire's Gift Declaration Form, as they have a real potential to influence decisions made by the Elected Member, External Committee Member or Employee.

7.6.5 Gifts/benefits offered to Elected Members, External Committee Members or Employees as conference presenters by an external organisation

These gifts/benefits must be declined and must be declared on the Shire's Gift Declaration Form, as they have the real potential to influence decisions made by the Elected Member, External Committee Member or Employee.

7.6.6 Trade samples from an external organisation

Suppliers of equipment will from time to time offer samples of various equipment to enable evaluation of such equipment, which is useful before decisions are made on actual purchase. Trade samples offered to the Shire can be accepted. Trade samples that are offered directly to Elected Members, External Committee Members or Employees are to be declined.

7.6.7 Family members

Elected Members, External Committee Members and Employees must take reasonable steps to ensure that immediate family members do not receive gifts or benefits that may be perceived as attempts to influence your behaviour or decision making. Such offers must be declared on the Shire's Gift Declaration Form.

7.7 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 or more that is promised or received within 6 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.

PART 8 - TRAVEL CONTRIBUTIONS

8.1 General

Elected Members and Employees must disclose, within 10 days of receipt, any financial or other contribution made towards any travel undertaken unless that contribution is exempt from disclosure under section 5.83(2) of the *Local Government Act 1995*.

'travel' includes 'accommodation incidental to a journey' (as defined in section 5.83(4) of the *Local Government Act 1995*).

'travel contribution', in relation to a person, means a financial or other contribution that has been made to any travel undertaken by the person.

A contribution to travel will be something that facilitates such a journey(s) and may include the following:

- Airline ticket price
- Visa fees
- Travel insurances
- Accommodation
- Taxi costs.

Travel contribution does not need to be disclosed in the following cases:

- the contribution was made from Commonwealth, State or local government funds
- the contribution was made by a 'relative' of the person (as defined in section 5.74(1) of the *Local Government Act 1995*)
- the contribution was made in the ordinary course of an occupation of the person which is not related to his or her duties as an Elected Member or Employee
- the contribution was made by a political party of which the person was a member and the travel was undertaken for the purpose of political activity of the party, or to enable the person to represent the party. A political party is defined as a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the Parliament of the Commonwealth or of the State of a candidate or candidates endorsed by it or by a body or organisation of which it forms part.
- the value of the contribution does not exceed the prescribed amount (\$200) or where there are multiple contributions from the same donor in a year, the aggregate value does not exceed \$200. The amount of a contribution (other than a financial contribution) is to be treated as being an amount equal to the value of the contribution at the time the contribution was made.

The disclosure must be made in writing to the CEO and include:

- a) a description of the contribution;
- b) the name and address of the person who made the contribution;
- c) the date on which the contribution was received;
- d) the estimated value of the contribution at the time it was made;
- e) the nature of the relationship between the relevant person and the person who made the contribution;
- f) a description of the travel; and
- g) the date of travel.

8.2 Third Party Travel Contributions

Any travel contribution from a third party related to the Shire of Mundaring or an individual's role (as an Employee, External Committee Member or Committee Member) must be approved by Council prior to acceptance. The recipient must ensure the travel contributions register is updated with the details of their travel.

PART 9 - BULLYING AND INAPPROPRIATE BEHAVIOUR

9.1 Bullying

Bullying is repeated unreasonable, inappropriate or aggressive behaviour that is directed towards an individual or group and creates a risk to health or safety. The Shire is committed to providing a safe work environment that is free from bullying and encourages the reporting of any evidence of bullying.

Bullying behaviour breaches this Code and is also prohibited by the *Occupational Safety and Health Act 1984* (in relation to conduct within a workplace or during the course of employment) and other legislation. Bullying includes both direct and indirect actions and both are in breach of this Code. An Elected Member, External Committee Member or Employee must not engage in bullying.

It is important to note that bullying does not include reasonable management of an Employee (such as allocating tasks or providing performance feedback) when undertaken in a reasonable manner.

Direct bullying refers to obvious public acts. Examples include:

- Physical or sexual assault
- Name calling or other abusive, offensive, frightening, or degrading language
- Beginning or spreading rumours
- Teasing someone in an offensive manner or subjecting them to regular practical jokes.

Indirect bullying refers to subtle behaviour that undermines, treats less favourably or disempowers others. Examples include:

- Ignoring or excluding a person
- Denying access to information or resources
- Preventing a person from expressing their opinion or ridiculing their contribution
- Setting tasks that are beyond or below a person's skill level.

9.2 Single Instances

To be considered bullying, repeated behaviour is required. However, while behaviour may not be considered bullying where it violates legislation, Shire policies or procedures, or other provisions in this Code it will still be considered a breach of the Code and will be treated accordingly.

9.3 Discrimination

Discrimination is dealt with by the *Equal Opportunity Act 1984* (and other legislation) and means treating someone less favourably than another, in circumstances that are the same (or are not materially different), on the basis of a ground such as race, sex, impairment, age, religious or political conviction, family status, pregnancy or gender history.

An Elected Member, External Committee Member or Employee must not discriminate against or harass any person.

PART 10 - BREACHES AND MISCONDUCT

10.1 Reporting Breaches

A person may internally report a breach, or suspected breach, of this Code:

- a) by an Elected Member, External Committee Member or an Employee (other than the CEO) – to the CEO; or
- b) by the CEO – 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.

As indicated at clause 1.3, the *Local Government (Rules of Conduct) Regulations 2007* have their own enforcement regime. A breach by an Elected Member of a Rule of Conduct may be reported to the CEO. If so, it will be dealt with under Part 5, Division 9 of the *Local Government Act 1995*.

It is important to note that an alleged breach, or suspected breach, of this Code of Conduct by an Elected Member can be the subject of a complaint to the Standards Panel.

10.2 Internal Referral to Mediation

The CEO, may, in appropriate cases, refer an alleged breach of this Code relating to values or conduct (other than an alleged breach of any law) by an Elected Member to an independent mediator who will attempt to resolve the matter via a mediation process. For example, this may occur where mediation may assist in resolving an alleged case of rudeness.

If a matter is referred for mediation, each party is to engage in the process in good faith.

10.3 Internally Reporting Misconduct – Public Interest Disclosure

When an Elected Member, External Committee Member or Employee believes or suspects that misconduct may occur, is occurring, or has occurred, he or she should report the matter to the CEO.

Alternatively, if the matter falls within the ambit of the *Public Interest Disclosure Act 2003*, the internal or external process for making a public interest disclosure may be followed.

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

The Shire:

- a) does not tolerate corrupt or other improper conduct, including mismanagement of public resources, in the exercise of the public functions of the Shire, by its Elected Members, External Committee Members, or Employees;
- b) is committed to the aims and objectives of the *Public Interest Disclosure Act 2003*;
- c) strongly supports disclosures being made by an Elected Member, External Committee Member or Employee as to corrupt or other improper conduct;
- d) will take all reasonable steps to provide protection for an Elected Member, External Committee Member or Employee who makes a public interest disclosure from any detrimental action in reprisal for the making of a the disclosure; and
- e) does not tolerate any of its Elected Members, External Committee Members or Employees engaging in acts of victimisation or reprisal against a person who makes a public interest disclosure.

Elected Members, External Committee Members and Employees are encouraged to contact one of the Shire's nominated Public Interest Disclosure Officers to seek guidance on reporting misconduct, 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; and
- 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).

10.4 Externally Reporting Misconduct

The CEO, being the Complaints Officer, can report the alleged misconduct of Elected Members to the Local Government Standards Panel. The Standards Panel has the authority to make binding decisions to resolve allegations of minor misconduct submitted by a local government. It deals with complaints about Elected Members who it is alleged have committed a breach of one or more of the provisions of the Rules of Conduct Regulations. The Standards Panel also has the jurisdiction to deal with misconduct allegations that relate to conduct at meetings under the provisions of a local government's Meeting Procedures Local Law. The standards panel has no jurisdiction to deal with complaints made against local government employees.

All persons have the option to report a matter of misconduct directly to the Corruption and Crime Commission (CCC) or the Public Sector Commissioner (PSC) under the *Corruption and Crime, and Misconduct Act 2003*:

Section 25:

Any person may report to the CCC any matter, which that person suspects, on reasonable grounds, concerns or may concern serious misconduct that:

- i. has or may have occurred; or
- ii. is or may be occurring; or
- iii. is or may be about to occur; or
- iv. is likely to occur.

Section 45E:

Any person may report to the PSC any matter, which that person suspects, on reasonable grounds, concerns or may concern minor misconduct that:

- i. has or may have occurred; or
- ii. is or may be occurring; or
- iii. is or may be about to occur; or
- iv. is likely to occur.

Please refer to the *Corruption and Crime, and Misconduct Act 2003* section 4 for detailed definitions of misconduct, serious misconduct and minor misconduct.

Referrals to the PSC can only be about Employees, while referrals to the CCC can be about Elected Members and Employees.

10.5 CEO Obligation to Report Misconduct

The CEO has a statutory obligation to report to the CCC:

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

The CEO has a statutory obligation to report to the PSC:

- a) any allegation of minor misconduct; or
- b) any situation that otherwise comes to his or her attention involving minor misconduct of employees, but not minor misconduct by an Elected Member.