

Shire of Donnybrook Balingup



Code of Conduct

for

Elected Members, Committee Members and Employees

Reviewed July 2017
Amendments adopted August 23, 2017

CODE OF CONDUCT

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PREAMBLE

The Code of Conduct (the Code) provides Elected Members, Committee Members and Employees in the Shire of Donnybrook Balingup 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.

The Code is complementary to the principles adopted in the *Local Government Act 1995* and regulations which incorporate 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 elected 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 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

Council 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*.

IMPORTANT MESSAGE FOR ELECTED MEMBERS

Councillors should be aware of the obligations placed on them under the *Local Government (Official Conduct) Amendment Act 2007* and the *Local Government (Rules of Conduct) Regulations 2007* and the penalties for non-compliance.

The Rules of Conduct - which apply only to elected members - deal with:

- disclosure of confidential information;
- improper use of the position of councillor to gain a personal advantage or cause detriment to the local government or others;
- the misuse of local government resources;
- unauthorised involvement in administration matters;
- improperly directing, influencing or making offensive or objectionable statements about a local government employee;
- disclosure of “impartiality” interests; and
- notifiable and prohibited gifts.

1 ROLES

1.1 Role of Elected Member

An Elected Member's primary role is to represent the community, and the effective translation of the community's needs and aspirations into a strategic direction and future planning for the Local Government will be the focus of the Elected Member's role and public life.

The Role of Council Members is set out in S 2.10 of the *Local Government Act 1995*:

"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."

An 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 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) Achieving sound financial management and accountability in relation to the Local Government's finances;
- (3) Ensuring that appropriate mechanisms are in place to deal with the prompt handling of residents' concerns;
- (4) Working with other governments and organisations to achieve benefits for the community at both a local and regional level; and
- (5) Having an awareness of the statutory obligations imposed on Elected Members and on Local Governments.

1.2 Role of Employees

The role of employees 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."*

1.3 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) 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."*

1.4 Principles affecting the employment of employees by the Shire

The following principles, set out in section 5.40 of the Act, apply to the employment of 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 the Shire 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.

1.5 Relationships between Council Members and Employees

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 Council Members and employees have a mutual respect and co-operate with each other to achieve the Council's corporate goals and implement the Council's strategies. To achieve that position, Council Members need to observe their statutory obligations which include, but are not limited to, the following –

- 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 employees in a way that casts aspersions on their professional competence and credibility.

2 CONFLICT AND DISCLOSURE OF INTEREST

2.1 Conflict of Interest

- (1) 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.
- (2) 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.
- (3) Elected Members, Committee Members and Employees will lodge written notice with the Chief Executive Officer, before any meeting, describing an intention to undertake a dealing in land within the municipality or which may otherwise be in conflict with the Council's functions (other than purchasing the principal place of residence).
- (4) Elected Members, Committee Members and Employees 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.
- (5) Employees 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-discrimination 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.

- (1) 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 an Elected Member, Committee Member or Employee must disclose the nature of the interest –
 - (a) in a written notice to the Chief Executive Officer before the meeting; or
 - (b) at the meeting immediately before the matter is discussed.

- (2) Subregulation (1) does not apply if –
 - (a) a person who is an Employee fails to disclose an interest because the person did not know he or she had an interest in the matter; or
 - (b) a person who is an employee fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.

- (3) If, under subregulation (1)(a) , a person who is an Employee discloses an interest in a written notice given to the Chief Executive Officer before a meeting then –
 - (a) before the meeting the Chief Executive Officer is to cause the notice to be 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 a matter to which the disclosure relates is discussed.

- (4) If –
 - (a) under subregulation (1)(b) or (4)(b) a person’s interest in a matter is disclosed at a meeting; or
 - (b) under subregulation (4)(b) notice 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.

Any disclosure is to be made on the prescribed form and handed to the Chief Executive Officer prior to the meeting and declared by the Chief Executive Officer at the agenda item on Declaration of Interest.

3 PERSONAL BENEFIT

3.1 Use of Confidential Information

Elected Members, Committee Members and employees 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, or to improperly cause harm or detriment to any person or organisation.

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 Council members 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 Council member or officer from disclosing confidential information:

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

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, 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, Council members, 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.

3.4 Misuse of Local Government Resources

A person who is an Elected Member, Committee Member or Employees member must not either directly or indirectly use the resources of a Local Government –

- (a) for the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the *Electoral Act 1907* or the *Commonwealth Electoral Act 1918*; or
- (b) for any other purpose,

unless authorised under the *Local Government Act 1995*, or authorised by the Council or the Chief Executive Officer, to use the resources for that purpose.

3.5 Gifts - Employees

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) A person who is an employee is to refrain from accepting a prohibited gift from a person who -

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

(b) A person who is an employee and who accepts a notifiable gift from a person who -

- (i) is undertaking or seeking to undertake an activity involving a local government discretion; or
- (ii) it is reasonable to believe is intending to undertake an activity involving a local government discretion,

is to notify the CEO, in accordance with item (c) and within 10 days of accepting the gift, of the acceptance.

(c) The notification of the acceptance of a notifiable gift must be in writing and include -

- (i) the name of the person who gave the gift; and
- (ii) the date on which the gift was accepted; and
- (iii) a description, and the estimated value, of the gift; and
- (iv) the nature of the relationship between the person who is an employee and the person who gave the gift; and
- (v) 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) –

- (1) a description; and
- (2) the estimated value; and
- (3) the date of acceptance,

of each other gift accepted within the 6 month period.

- (d) 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).
- (e) 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).
- (f) 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.

4 CONDUCT OF ELECTED MEMBERS, COMMITTEE MEMBERS AND EMPLOYEES

4.1 Personal Behaviour

- (1) Elected Members, Committee Members and Employees 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 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.
- (2) Elected Members and Committee 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 President any dishonesty or possible dishonesty on the part of any other Elected Member or Committee Member, and in the case of an employee to the Chief Executive Officer; and
- (c) be frank and honest in their official dealing with each other.

4.3 Performance of Duties

- (1) While on duty, Employees 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.
- (2) 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 and treating all matters on individual merits.
- (3) In respect to defined activities and roles, Elected Members will be as informed as possible about the functions of the Council, and treat all members of the community honestly and fairly.

4.4 Compliance with Lawful Orders

- (a) Elected Members, 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 resolution cannot be achieved, with the Chief Executive Officer.
- (b) Elected Members, Committee Members and Employees 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

(a) Standard of Dress

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

- (i) 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.
- (ii) Management reserves the right to adopt policies relating to corporate dress and to raise the issue of dress with individual employees.

(b) *Communication and Public Relations*

- (i) All aspects of communication by employees (including verbal, written or personal), involving Local Government's activities should reflect the status and objectives of the Shire of Donnybrook Balingup. Communications should be accurate, polite and professional.
- (ii) As a representative of the community, Elected Members need to be not only responsive to community views, but to adequately and accurately communicate the decisions of the Council. In doing so, Elected Members must acknowledge that:
 - 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;
 - information of a confidential nature shall not be communicated until it is no longer treated as confidential;
 - information relating to decisions of the Council on approvals, permits etcetera ought only be communicated in an official capacity by a designated officer of the Council; and
 - information concerning adopted policies, procedures and decisions of the Council is conveyed accurately.
- (iii) 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 Council Members are often asked to represent the Council on external organisations. It is important that Council Members :

- clearly understand the basis of their appointment; and
- provide regular reports on the activities of the organisation.

5 DEALING WITH COUNCIL PROPERTY

5.1 Use of Local Government Resources

Elected Members, Committee Members and employees 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 employees) 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).

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 provision of the *Local Government Act 1995*.

5.3 Access to Information

- (a) Employees will ensure that Elected Members and Committee Members are given access to information necessary for them to properly perform their functions and comply with their responsibilities as Elected Members and Committee Members.
- (b) 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.

Code of Conduct:

Adopted	24/02/2010
Reviewed	2011, 2012, 2013, 2014, 2015, 2016, 2017
Amended	23/08/2017
Next review due	July 2018