



Code of Conduct

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Contents

1. Introduction

Message from the Chief Executive Officer
Statutory Framework

2. Values, principles and behaviour

3. General conduct – Councillors & Committee Members

- 3.1 Obligations
- 3.2 Quasi-judicial decisions (Planning matters)
- 3.3 Meeting attendance

4. General conduct – Councillors & Employees

- 4.1 Record keeping responsibilities
- 4.2 Use of information
- 4.3 Relationships between Councillors and Employees
- 4.4 Use of Shire resources
- 4.5 Travel and sustenance expenses
- 4.6 Employee obligations

5. Conflict of Interest

- 5.1 Meetings – Councillors, Committee Members and Employees
- 5.2 Dealings with land – Councillors, Committee Members and Employees
- 5.3 Private work - Employees
- 5.4 Personal associations – Employees

6. Personal benefit

- 6.1 Gifts and benefits
- 6.2 Shire sponsored competitions
- 6.3 Improper or undue influence

7. Breaches and misconduct

- 7.1 Councillors & Committee Members
- 7.2 Employees – Breach of Code
- 7.3 Employees - Misconduct
- 7.4 Public Interest Disclosure

Attachment – Disclosure of Interest Form

1. Introduction

Message from the Chief Executive Officer

This Code of Conduct provides Councillors, Committee Members and Employees of the Shire of Capel with consistent guidelines for an acceptable standard of professional conduct. It addresses the broader issue of ethical responsibility and encourages transparency and accountability.

The Code provides clear guidelines for the standards of behaviour and ethical and accountable decision-making expected in our dealings with each other and the community.

It does not establish a rule for every situation, but provides guidance and a basis of expectation for sound and ethical public administration.

This Code details explanatory matters around key areas of:

- Professional conduct
- Communication and official information
- Use of Shire resources and information
- Conflict of interest
- Management of gifts and benefits
- Reporting suspected breaches of this Code.

Statutory Framework

This Code should be read in conjunction with the *Local Government Act 1995*, the *Local Government (Rules of Conduct) Regulations 2007* and relevant sections of the *Local Government (Administration) Regulations 1996*.

The Code of Conduct applies to Councillors, Committee Members and employees. For the purpose of this Code, 'employee' refers to any direct employee, labour hire employed through contract arrangement and volunteers under direct control of a Shire officer.

Shire of Capel Code of Conduct

2. Values, principles and behaviour

Councillors, Committee Members and employees of the Shire of Capel are to:

- Act with reasonable care and diligence.
- Act with honesty and integrity.
- Act lawfully and in accordance with legislation, this Code, Shire Policies, any applicable Delegations and lawful orders given by a person having authority to make or give such an order.
- Act in the best interests of the Shire and the community.
- Avoid damage to the reputation of the Shire of Capel.
- Be open and accountable to the public.
- Ensure there is no actual (or perceived) conflict between their personal interests and the impartial fulfilment of their professional duties, and complete a 'Disclosure of Interest' form when required (attached at the end of this Code).
- Avoid bias, and base decisions on relevant and factually correct information.
- Be polite and treat others with respect and fairness.
- Present for work fit to undertake their role, including but not limited to being unimpaired by mind affecting substances whilst conducting Shire business.
- Make no allegations which are improper or vexatious.
- Avoid causing any reasonable person unwarranted offence or embarrassment.
- Respect decisions made by Council.
- Refrain from publicly criticising either a Councillor, Committee Member or employee in a way that casts aspersions on their competence or credibility.
- Respect the title of elected office by referring to Councillors with their formal title in any situation where a Councillor is representing the Shire of Capel.
- Be mindful of their behaviour in public, particularly where it is easy to ascertain the person is associated with the Shire of Capel.
- Maintain the confidentiality of documents and information assigned with this status.
- Report any suspected misconduct or breaches of this Code in accordance with the requirements of Section 7 of the Code.

3. General conduct - Councillors and Committee Members

2.1 Obligations

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

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

Councillors must act in the best interests of the Shire and base decisions on relevant and factually correct information. In order to facilitate this, Councillors must:

- read agendas and be adequately informed;
- treat matters on their individual merits; and
- act impartially.

2.2 Quasi-judicial decisions (Planning matters)

When making quasi-judicial decisions in matters of Planning, Council is acting on behalf of the WA Planning Commission. Councillors must base their decisions on the:

- law and Council Policies as they exist; and
- facts and merits of the case.

In matters of Planning, Councillors must not:

- act with bias or a conflict of interest; or
- initiate site visits directly with an applicant or affected person. If a site visit is desired, a request should be made to the Chief Executive Officer. The Chief Executive Officer will coordinate a site visit if appropriate and if circumstances permit. This will enable all Councillors to attend and have the same information when making decisions.

If contacted by an applicant or affected person, Councillors will:

- endeavour to understand the reason for the applicant or affected person making contact;
- advise the applicant or affected person of the role and principles of a Councillor in the role of quasi-judicial decisions maker;
- encourage the applicant or affected person to make their views known through processes such as deputations and presentations to Council, or making submissions during a public consultation period; and
- ensure that they do not commit their vote, or give an impression that they have committed their vote on the matter.

Shire of Capel Code of Conduct

Councillors 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 quasi – judicial decision.

If an applicant or affected person provides information to a Councillor which is substantive to the decision making process, the Councillor must communicate that information to all other Councillors and the Chief Executive Officer prior to the meeting where a decision is proposed on the matter.

2.3 Meeting attendance

Councillors make a commitment to attend meetings when elected or appointed to Committees. If a Councillor or Committee Member is unable to attend a meeting:

- an apology should be given, or
- a leave of absence should be sought.

If a Councillor has a deputy delegate for the relevant body, the Councillor who is unable to attend the meeting should inform the deputy delegate to ensure that person's attendance if possible.

4. General conduct - Councillors and Employees

4.1 Record keeping responsibilities

Councillors, Committee members and employees shall comply with the *State Records Act 2000* and the Shire's policy on Records Management (Policy 2.20) to ensure adequate records are kept to evidence the performance of their duties. This means:

- actions, decisions and transactions will be recorded appropriately to ensure transparency and accuracy;
- information will recorded, managed and stored in accordance with record keeping procedures and legislative requirements; and
- no records will be falsified, altered, damaged, backdated or destroyed.

4.2 Use of information

Councillors, Committee members and employees shall not use information, whether assigned confidential status or not:

- to gain improper advantage for themselves or for any other person or body;
- in ways which are inconsistent with the requirement to treat others with respect and fairness and the obligation to act impartially; or
- to cause harm or detriment to any person, organisation or the Shire of Capel.

Councillors, Committee members and employees shall not make unauthorised use of information and other intellectual property, produced or registered by employees or

Shire of Capel Code of Conduct

external contractors for the Shire. The title to intellectual property in all official duties shall be assigned to the Shire upon its creation.

4.3 Relationships between Councillors & Employees

The roles of Councillors and employees are prescribed in the *Local Government Act 1995*. In summary:

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

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

Councillors shall undertake their day to day communication with the Shire directly with the Chief Executive Officer or relevant Executive Manager as per the requirements of the Shire of Capel Protocol for Councillor / Staff Contact.

Employees may only undertake direct communications with Councillors when approved by the Chief Executive Officer or relevant Executive Manager.

Councillors, Committee members and employees will ensure that in their dealings with each other, they:

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

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

- maintain open and frank communication;
- maintain regular contact;
- exchange information in a timely manner;
- have regard for their individual leadership responsibilities; and
- understand each other's views and opinions.

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

Shire of Capel Code of Conduct

4.4 Use of Shire resources

Councillors, Committee members and employees shall:

- be scrupulously honest in their use of the Shire's resources, and shall not misuse them or permit their misuse (or the appearance of misuse) by any other person or body;
- use the Shire resources entrusted to them accountably, effectively and economically in the course of their duties;
- not directly or indirectly use Shire resources (including the services of Shire employees) for private purposes; and
- report any damage or loss of property or equipment to the appropriate person immediately.

4.5 Travel and sustenance expenses

Councillors, Committee members and employees shall only claim or accept conference, training, travelling and sustenance expenses arising out of travel related matters which have a direct bearing on the services, policies or business of the Shire in accordance with the Shire of Capel's Policies 1.3, 1.6 and 3.10; the provisions of the *Local Government Act 1995* s5.98(2) and relevant industrial awards.

4.6 Employee obligations

While at work, employees will give their time and attention to Shire business and ensure that their work is carried out efficiently and effectively in accordance with Council policies, procedure and direction, and that their standard of work reflects favourably on themselves and the Shire of Capel.

Employees will:

- ensure that information provided to one Councillor is provided to all Councillors; and
- deal with customers courteously, objectively and impartially.

5. Conflict of Interest

The nature of Shire business is conducive to conflicts of interest arising between the personal interests of Councillors, Committee members and employees, and the performance of their public or professional duties.

Conflicts of interest may arise from a number of sources, including friends, relatives, close associates, financial investments and past employment. They may result if a reasonable person would think that the behaviour or decision in question would result in a conflict between a person's private interests and the interests of the Shire of Capel.

Shire of Capel Code of Conduct

A conflict can be financial or non-financial, or confer a material benefit or advantage. It may be actual, perceived or potential.

5.1 Meetings – Councillors, Committee members and Employees

Councillors, Committee members and employees must, at all times be mindful of the financial, proximity and impartiality interest provisions which are contained in local government legislation and comply with these.

In particular, an employee who has an impartiality interest in any matter to be discussed at a Council or Committee meeting attended by the person must disclose the nature of the interest:

- in a written notice given to the Chief Executive Officer before the meeting; or
- at the meeting immediately before the matter is discussed,

so that the Chief Executive Officer may inform the person presiding, and that person may inform others at the meeting before the item is discussed.

An employee who has given or will give advice in respect of any matter to be discussed at a Council or Committee meeting not attended by the employee is to disclose the nature of any interest the person has in the matter:

- in a written notice given to the Chief Executive Officer before the meeting; or
- at the time the advice is given,

so that the Chief Executive Officer may inform the person presiding, and that person may inform others at the meeting before the item is discussed.

An employee is excused from disclosing an interest as referred to above if:

- they did not know they had an interest in a matter; or
- did not know the matter would be discussed at a meeting; and
- they disclose their interest as soon as possible.

These disclosures and associated actions in relation to disclosures should be in accordance with all provisions of Regulation 34C of the *Local Government (Administration) Regulations 1996*.

5.2 Dealings with land – Councillors, Committee members and Employees

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

Shire of Capel Code of Conduct

5.3 *Private work - Employees*

Additional (secondary) employment external to the Shire may place employees at risk of being conflicted or impeded in their ability to carry out their duties.

Secondary employment includes paid employment with another organisation, running a business, maintaining a professional practice or consultancy and being the director of an organisation. It may include voluntary activities if those activities have the potential to affect employment with the Shire of Capel.

Where an employee wishes to engage in secondary work outside their employment with the Shire of Capel, approval must be requested in writing from the Chief Executive Officer if the proposed work involves:

- the provision of goods or services to the Shire;
- work that may require a statutory approval by the Shire;
- the delivery of services already provided by the Shire; or
- work that may result in an actual, perceived or potential conflict of interest between the employee's obligations to the Shire and private work.

The Chief Executive Officer retains the right to:

- refuse approval; or
- to grant approval with conditions,

for an employee to engage in secondary work additional to their employment with the Shire of Capel.

Employees who are approved to undertake secondary work shall under no circumstances use Shire equipment, premises, time, resources or consumables to conduct or undertake activities associated with their private work.

Councillors and employees shall not undertake private work to assist external agencies in the development or lodgement of funding submissions that may compete with similar submissions by the Shire.

5.4 *Personal associations - Employees*

Employees who exercise a regulatory, recruitment or management function shall make disclosure to the Chief Executive Officer before dealing with relatives or close friends, and wherever possible, disqualify themselves from dealing with those persons.

Employees will refrain from partisan political activities which could cast doubt on their neutrality or ability to act in a professional capacity.

6. Personal benefits

6.1 Gifts and benefits

In general, Councillors, Committee members and employees must not seek or accept (either directly or indirectly) any immediate or future gift (including any financial benefit, reward, donation or hospitality) for themselves or any other person or body as a result of their role with the Shire of Capel.

There are some circumstances however when it is possible to accept a gift, however Councillors, Committee members and employees must be mindful of the legislative requirements of the *Local Government (Administration) Regulations 1996* and *Local Government (Rules of Conduct) Regulations 2006* to disclose receipt of such gifts and contributions to travel and comply with the requirements. This includes completing the relevant declaration forms provided by the Shire.

In addition, Councillors, Committee members and employees should:

- refuse all offers of money, gift vouchers or items easily converted to money such as shares which are made as a result of their position with the Shire;
- refuse bribes; and
- report bribery attempts to the Chief Executive Officer or President.

6.1.1 Notifiable & Prohibited Gifts – Councillors and all employees

Councillors, Committee members and employees should not accept a gift worth \$300 or more, and must notify the Chief Executive Officer of gifts accepted with a value of between \$50 and \$299 in circumstances where the gift is received from a person who:

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

The timeline for notification and the content of the notification are to accord with the provisions of r12 of the *Local Government (Rules of Conduct) Regulations 2007* (for Councillors) and r34B of the *Local Government (Administration) Regulations 1996* for employees.

The Chief Executive Officer will maintain Registers for gift notifications in accordance with the requirements of the Act and Regulations.

Gifts and benefits with a commercial value of less than \$50 received from a person or business undertaking, or who may in the future seek to undertake an activity which involves local government discretion are not required to be declared by law. However, Councillors, Committee members and employees are encouraged to submit a gift declaration voluntarily in these circumstances.

Shire of Capel Code of Conduct

6.1.2 Gifts and travel contributions - Councillors & Designated Employees

Councillors and Designated Employees must declare the receipt of gifts (other than those received from relatives) valued at \$200 or more to the Chief Executive Officer within 10 days of receipt so that the relevant details may be included in the Shire of Capel Gift Register. *The Local Government Act 1995* s5.82 provides additional detail.

Councillors and Designated Employees must also declare to the Chief Executive Officer any contribution to travel (or accommodation incidental to travel) worth more than \$200. *The Local Government Act 1995* s5.83 provides further detail of when such contributions are exempt from the declaration requirement.

If a person covered by this Code is unsure of how to respond to an offer of a gift, benefit or hospitality, they seek advice from the Governance Officer or Chief Executive Officer.

6.2 Shire sponsored competitions

Councillors, Committee members, employees and their spouses / partners are not eligible to benefit from Shire sponsored competitions, except where authorised by the Chief Executive Officer.

6.3 Improper or undue influence

Councillors, Committee members and employees shall not take advantage of their office or position to improperly influence other members or employees in the performance of their duties or functions, in order to gain undue or improper (direct or indirect) advantage or gain, pecuniary or otherwise, for themselves or for any other person or body. Similarly, Councillors and employees shall not take advantage of their office or position to improperly disadvantage or cause detriment to the Shire or any other person.

7. Breaches and misconduct

Breaches of this Code will be treated seriously.

7.1 Councillors and Committee members

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

Complaints that concern a breach of this Code but not a breach of the Rules of Conduct Regulations will be managed in accordance with natural justice and procedural fairness.

7.2 Employees – Breach of this Code

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

- an employee may be made firstly to the relevant Manager, or alternatively to the relevant Executive Manager or Manager Human Resources;
- an Executive Manager will be made to the Chief Executive Officer; and
- the Chief Executive Officer will be made to the President.

The complaint will be investigated in a manner that is in accordance with the Shire Policies 3.16 Grievances, Investigations & Resolutions and 3.17 Performance Management & Disciplinary Action; Public Interest Disclosure procedures and the principles of procedural fairness and natural justice.

7.3 Employees - Misconduct

For the purposes of this Code, misconduct is defined in accordance with s4 of the *Corruption, Crime and Misconduct Act 2003*.

Misconduct generally occurs when a public officer abuses authority for personal gain, causes detriment to another person or acts contrary to the public interest.

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

7.3.1 Minor misconduct

This is misconduct that is of a significance that could potentially result in termination of an officer's employment. In summary it could occur if an officer engages in conduct that:

Shire of Capel Code of Conduct

- adversely affects or could adversely affect the honest, impartial performance of duties;
- constitutes a breach of trust placed in the officer; or
- involves misuse of information or material; and
- could potentially provide reasonable grounds for termination of employment.

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

7.3.2 Serious misconduct

Serious misconduct refers to conduct by a public officer that is wilful, planned and deliberately corrupt, and could potentially result in a penalty of 2 or more years imprisonment.

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

7.4 Public Interest Disclosure

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

The Shire has a public interest disclosure (PID) procedure that provides confidential mechanisms for reporting and investigating misconduct allegations or improper conduct in accordance with the Act.

Councillors, Committee members and employees are encouraged to contact the Shire's nominated PID Officer (Governance Officer, 9727 0222) to seek guidance on disclosure and lodgement of completed disclosure forms.

Document History		
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Employee Disclosure of Interest



A Conflict of Interest occurs when there is a conflict (actual, perceived or potential) between an Officer's private interests and their duties at the Shire of Capel. A Conflict of Interest may arise if a reasonable person would think that the behaviour would result in a conflict (see reverse side for a useful assessment tool).

A conflict can be financial or non-financial, or confer a material benefit or advantage.

A Conflict of interest includes personal advantage to an officer, their family, close relatives or business associates and outside business interests.

- **Actual conflict** – a direct, existing conflict of interest between an officer's duties and a competing interest or third party.
- **Perceived conflict** – it could reasonably be perceived, or give the appearance that a competing interest could improperly influence an officer in the performance of their duties.
- **Potential conflict** – arises where a staff member has an interest or obligation that could conflict at some stage in the future with duties and responsibilities at the Shire.

Conflict Details			
Officer	_____		
Position	_____		
Conflict	Actual <input type="checkbox"/>	Perceived <input type="checkbox"/>	Potential <input type="checkbox"/>
I am declaring	_____ _____ _____		
Date range of conflict	_____		

Officer Declaration	
I declare that the details above of my private interests are correct to the best of my knowledge and that I am aware of my responsibility to take reasonable steps to avoid any actual, perceived or potential conflict of interest in connection with my employment at the Shire of Capel.	
Signed _____	Date _____

Chief Executive Officer	
Signed _____	Date _____

Form to Governance Officer when signed by both the officer and CEO.

Shire of Capel Code of Conduct

Do I have a conflict of interest?

Public duty versus private interest

Do I have personal or private interests that may conflict or be perceived to conflict with my public duty?

Potential

Could there be benefits for me now or in the future that could cast doubt on my objectivity?

Perception

Remembering that perception is important, how will my involvement in the decision or action be viewed by others? Are there risks associated for me or my organisation?

Proportion

Does my involvement in this decision or action appear fair and reasonable in all the circumstances?

Presence of mind

What are the consequences if I ignore a conflict of interest? What if my involvement was questioned publicly?

Promises

Have I made any promises or commitments in relation to this matter? Do I stand to gain or lose from the proposed action or decision?

(WA Integrity Coordinating Group)
