



Shire of
Katanning
Heart of the Great Southern

Code of Conduct



Contents

PREAMBLE	3
DEFINITIONS:	3
ROLES.....	4
1.2 Role of Council Member	4
1.4 Role of Deputy Shire President	5
1.5 Role of the CEO and Employees.....	5
The CEO is responsible for the effective and efficient implementation of Council decisions and in turn all employees of the Shire are subject to the direction of the CEO.	5
Employees enable the functions of the Shire and Council to be performed, and they have an obligation to	5
(a) give their attention to the business of Council while on duty;	5
(b) ensure that their work is carried out efficiently, economically and effectively;	5
(c) carry out lawful directions given by any person having authority to give such directions; and ...	5
(d) give effect to the lawful policies, decisions and practices of the Council, whether or not the employee agrees or approves of them	5
The role of employees is determined by the functions of the Chief Executive Officer as set out in section 5.41 of the Local Government Act 1995	5
2. Conflict and Disclosure of Interest.....	7
2.1 Conflict of Interest	7
2.2 Types of Interest	8
2.2.1 Financial Interest	8
2.2.2 Proximity Interest.....	8
2.2.3 Impartiality Interest.....	9
3. Information and Personal Benefit.....	12
3.3 Intellectual Property	13
3.4 Improper or Undue Influence	13
5.10 Use of Council Property	19
5.12 Defamation.....	20
5.13 Duty of Care.....	20
5.14 Volunteer Activities	20
6. Report Breaches and Suspected Breaches of the Code	20
6.1 Alleged Breaches of the Code by Employees	21
6.2 Alleged Breaches of the Code by Council and Committee Members	21
6.3 Reporting Alleged Misconduct to the Corruption and Crime Commission	21

PREAMBLE

This Code of Conduct (Code) provides Shire of Katanning (Shire) Council Members, Committee & Working Group Members and employees with consistent guidelines for an acceptable standard of professional conduct. The Code addresses in a concise manner the broader issue of ethical responsibility and encourages greater transparency and accountability. This Code is complementary to the principles and aims of the Local Government Act 1995 and Local Government Regulations and incorporates four fundamental aims to result in:

- (i) better decision making;
- (ii) greater community participation in the decisions and affairs of the Shire;
- (iii) greater accountability;
- (iv) a more efficient and effective Local Government.

This Code provides a guide and a basis of expectations for Council Members, Committee & Working Group 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

This Code observes statutory requirements of the Local Government Act 1995 (section 5.103 – Codes of Conduct), Local Government (Administration) Regulations 1996 (Regulations 34B and 34C) and Local Government (Rules of Conduct) Regulations 2007.

RULES OF CONDUCT

Council Members acknowledge their activities, behaviour and compliance with statutory 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. (Refer Annexure 1).

It is intended to provide an elementary guide to:-

- (i) complying with statutory duty to act honestly and exercise due diligence and a high degree of care
- (ii) identifying and resolving situations which could result in:-
 - (i) conflict of interests;
 - (ii) impropriety;
 - (iii) improper use of their positions;
 - (iv) improper use of the Shire's resources.
- (iii) acting in ways which enhance both public perception and confidence in the Shire's administration and the system of Local Government in Western Australia

DEFINITIONS:

Chief Executive Officer

The Chief Executive Officer of the Shire of Katanning appointed by the Council

Committee Member

A person elected or nominated to be a member of Committee acting for or on behalf of the Shire of Katanning

Council

The Council of the Shire of Katanning which consists of Elected Members

Councillor

A person who holds the office of Councillor at the Shire of Katanning

Elected Member

A Councillor of the Shire of Katanning who has been elected by the electors of the district

Intellectual Property

Property that can be protected under federal law, including copyrightable works, ideas, discoveries, and inventions. Such property would include novels, sound recordings, a new type of mousetrap, or a cure for a disease, including the knowledge the individual gains who has access to privileged information which is the property of the Local Government and is not to be used for personal gain or application.

Local Government Act

Refers to the Western Australian Local Government Act 1995, all regulations and subsidiary legislation as amended from time to time.

President

A person who has been elected to the position of President of the Shire of Katanning by the Elected Members

Shire

The Local Government authority known as the Shire of Katanning

Staff / Employee

An employee of the Shire of Katanning including the Chief Executive Officer

ROLES

1.1 Role of Council

The Council of the Shire of Katanning is elected by the electors of the district and consists of 9 Councillors, including the Shire President who is elected by the Council. The primary role of the Council is to represent the community and the effective translation of the Community's needs and aspirations into a direction and future for our Shire. The role of the Council is in accordance with section 2.7 of the Local Government Act 1995:

2.7 Role of Council

(i) The Council-

- (i) governs the local government's affairs; and*
- (ii) is responsible for the performance of the local government's functions.*

(ii) Without limiting subsection (1) the Council is to –

- (i) oversee the allocation of the local government's finances and resources; and*
- (ii) determine the local government's policies.*

1.2 Role of Council Member

A Councillor is part of the team in which the community has placed its trust to make decisions on its behalf, and the community is therefore entitled to expect high standards of conduct from its elected representatives. Specifically a Councillor's role as set out in Section 2.10 of the Local Government Act 1995 is to:

- (i) represent the interests of electors, ratepayers and residents of the district;*
- (ii) provide leadership and guidance to the community of the district;*
- (iii) facilitate communication between the community and the Shire;*
- (iv) participate in the Shire of Katanning's decision making processes at council and committee meetings;*
and
- (v) perform such other functions as are given to a Councillor by this Act or any other written law.*

In fulfilling the various roles a Councillor's activities will focus on:-

- (i) achieving a balance in the diversity of community views to develop an overall strategy for the future of the community;*
- (ii) achieving sound financial management and accountability in relation to the Shires finances;*

- (iii) working with other governments and organisations to achieve benefits for the community at both a local and regional level;
- (iv) ensuring that appropriate mechanisms are in place to deal with the prompt handling of residents concerns; and
- (v) having an awareness of the statutory obligations imposed on Councillors and on Local Governments.

1.3 Role of Shire President

The President is elected by Council to undertake the roles and duties of that position. Specifically the President, in addition to performing the role of a Council Member, performs the functions as set out in section 2.8 of the Local Government Act 1995:

2.8 Role of mayor or president

- (i) *The mayor or president-*
 - (i) *presides at meetings in accordance with this Act; and*
 - (ii) *provides leadership and guidance to the community in the district; and*
 - (iii) *carries out civic and ceremonial duties on behalf of the local government; and*
 - (iv) *speaks on behalf of the local government; and*
 - (v) *performs such other functions as are given to the mayor or president by this Act or any other written law; and*
 - (vi) *liaises with the CEO on the local government's affairs and the performance of its functions.*
- (ii) *Section 2.10 applies to a councillor who is also the mayor or president and extends to a mayor or president who is not a councillor.*

1.4 Role of Deputy Shire President

The Deputy President is elected by the Council to undertake the roles and duties of that position. Specifically the Deputy President, in addition to performing the role of a Council Member, performs the functions of the President when authorised to do so. The Role of the Deputy Shire President is in accordance with section 2.9 of the Local Government Act 1995:

2.9 Role of deputy mayor or deputy president

The deputy mayor or deputy president performs the functions of the mayor or president when authorised to do under section 5.34.

1.5 Role of the CEO and Employees

The CEO is responsible for the effective and efficient implementation of Council decisions and in turn all employees of the Shire are subject to the direction of the CEO.

Employees enable the functions of the Shire and Council to be performed, and they have an obligation to:

- (i) give their attention to the business of Council while on duty;
- (ii) ensure that their work is carried out efficiently, economically and effectively;
- (iii) carry out lawful directions given by any person having authority to give such directions; and
- (iv) give effect to the lawful policies, decisions and practices of the Council, whether or not the employee agrees or approves of them.

The role of employees is determined by the functions of the Chief Executive Officer as set out in section 5.41 of the Local Government Act 1995:

5.41 Functions of CEO

The CEO's functions are to -

- (i) *advise the council in relation to the functions of a local government under this Act and other written laws; and*
- (ii) *ensure that advice and information is available to the council so that informed decisions can be made; and*
- (iii) *cause council decisions to be implemented; and*
- (iv) *manage the day-to-day operations of the local government; and*

- (v) *liaise with the mayor or president on the local government's affairs and the performance of the local government's functions; and*
- (vi) *speak on behalf of the local government if the mayor or president agrees; and*
- (vii) *be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees); and*
- (viii) *ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and*
- (ix) *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.*

1.6 Relationships between Council Members and Employees

An effective Councillor works as part of the Council team with the Chief Executive Officer and other employees. 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:

- accepting that their role is one of strategic leadership, not a management or administrative one;
- acknowledging that they have no capacity to individually direct employees to carry out particular functions;
- refraining from publicly criticising employees in a way that casts aspersions on their professional competence and credibility.

Regulations 9 and 10 of the Local Government (Rules of Conduct) Regulations 2007 apply to Council Members in respect of involvement in the Shire's administration and relationships with employees:

9. *Prohibition against involvement in administration*
- (i) *A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task.*
 - (ii) *Sub-regulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.*
10. *Relations with local government employees*
- (i) *A person who is a council member must not —*
 - (i) *direct or attempt to direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee; or*
 - (ii) *attempt to influence, by means of a threat or the promise of a reward, the conduct of a person who is a local government employee in the person's capacity as a local government employee.*
 - (ii) *Sub-regulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.*
 - (iii) *If a person, in his or her capacity as a council member, is attending a council meeting, committee meeting or other organised event and members of the public are present, the person must not, either orally, in writing or by any other means —*
 - (i) *make a statement that a local government employee is incompetent or dishonest; or*
 - (ii) *use offensive or objectionable expressions in reference to a local government employee.*
 - (iv) *Sub-regulation (3)(a) does not apply to conduct that is unlawful under The Criminal Code Chapter XXXV.*

2. Conflict and Disclosure of Interest

Guiding principles

The nature of the Shire's business is conducive to conflicts of interest between a Council Member, Committee & Working Group Member and an employee's personal interests and the performance of their public or professional duties.

Genuine or perceived conflicts of interests may arise from a number of sources, including friends, relatives, close associates, financial investments, past employment and the like.

In determining whether there may be, or there may be a perception of, a conflict of interest, a good starting point is to consider the following principles:

- **Public duty versus private interests**
Do I have personal or private interests that may conflict, or be perceived to conflict with my public duty?
- **Potentialities**
Should there be benefits for me now, or in the future, that could cast doubt on my objectivity?
- **Perception**
How will my involvement in the decision/action be viewed by others? Are there risks associated for me/my organisation?
- **Proportionality**
Does my involvement in the decision appear fair and reasonable in all circumstances?
- **Presence of mind**
What are the consequences if I ignore a conflict of interest? What if my involvement was questionable publicly?
- **Promises**
Have I made any promises or commitments in relation to the matter? Do I stand to gain or lose from the proposed action/decision?

2.1 Conflict of Interest

- (i) Elected Members and Employees should ensure that there is no actual or perceived conflict or incompatibility between the impartial fulfillment of their public or professional duties and either their personal interests, business interests, or those of their immediate family members, business partners or close associates.
- (ii) Elected Members and Employees are to disclose any interest affecting impartiality that they have in any matter to be discussed at a Council or Committee meeting that they will be attending in the course of their duties.
- (iii) Employees will not engage in private work with or for any person or organisation with an interest in a proposed or current contract with the Shire, 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.

Should such private works be undertaken, the respective employee shall provide their own equipment and consumables, for under no circumstances are either Council equipment or consumables to be used or such private works to be conducted on Council premises

- (iv) Elected Members and Employees who exercise recruitment or other discretionary functions will make disclosure before dealing with relatives or close friends and will disqualify themselves from dealing with those persons. Such disclosure shall be in writing and forwarded to the President or Chief Executive Officer as appropriate.
- (v) Employees wishing to undertake additional employment or other paid duties outside of Local Government should first obtain the written approval of the Chief Executive Officer. No other employment or paid duties should compromise the activities performed by the Shire.

Where the Chief Executive Officer wishes to undertake additional employment or other paid duties outside of Local Government written approval must be obtained from the President.

Such approvals will be reviewed annually.

- (vi) 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 right to maintain their own political convictions are not impinged upon by this clause. It is recognised that such convictions cannot be a basis for discrimination and this is supported by anti-discriminatory legislation.

2.2 Types of Interest

2.2.1 Financial Interest

The Local Government Act 1995, s5.60A provides that:

A person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government in a particular way, result in a financial gain, loss, benefit or detriment for the person.

In addition, an Elected Member or Committee Member is *deemed* to have a financial interest in a matter if a person with whom that Member is closely associated has a financial interest or proximity interest. It is not necessary for there to be a financial effect directly on the Member.

- (i) Elected Members who have a direct or indirect financial interest within the meaning of the Local Government Act 1995, in a matter to be considered by the Shire are required to disclose in writing the nature of the interest and are not to take part in discussion or vote on the issue except to the extent that the Local Government Act specifically allows on resolution of the Council, Committee or decision of the Minister.
- (ii) Employees who have a direct or indirect financial interest within the meaning of the Local Government Act 1995, in a matter to be considered by the Shire are required to disclose in writing the nature of the interest and are not to take part in discussion or vote.
- (iii) Employees who have a financial interest in any matter in respect of which the Staff member is providing advice or a report directly to the Council, Shire or a Committee must disclose in writing the nature of the interest when giving the advice or report.
- (iv) The onus is on Elected Members and Employees to identify conflicts of interest, and to determine whether such interest exists, and whether any statutory exemption applies.

2.2.2 Proximity Interest

The Local Government Act 1995, s5.60B provides that:

A person has a proximity interesting a matter if that matter concerns;

- (i) a proposed change to a planning scheme affecting land that adjoins the person's land;*
- (ii) a proposed change to the zoning or use of land that adjoins the person's land; or*
- (iii) a proposed development (as defined in s5.63(5)) of land that adjoins the person's land.*

Reference to 'a person's land' is a reference to any land owned by the person or in which the person has any estate or interest.

In addition, an Elected Member or Committee Member is *deemed* to have a proximity interest in a matter if a person with whom that Member is closely associated has a financial interest or proximity interest. It is not necessary for there to be a financial effect directly on the Member.

- (i) Elected Members who have a proximity interest within the meaning of the Local Government Act 1995, in a matter to be considered by the Shire are required to disclose in writing the nature of the interest and are not to take part in discussion or vote on the issue except to the extent that the Local Government Act specifically allows on resolution of the Council, Committee or decision of the Minister.
- (ii) Employees who have a proximity interest within the meaning of the Local Government Act 1995, in a matter to be considered by the Shire are required to disclose in writing the nature of the interest and are not to take part in discussion or vote.
- (iv) Employees who have a proximity interest in any matter in respect of which the Staff member is providing advice or a report directly to the Council, Shire or a Committee must disclose in writing the nature of the interest when giving the advice or report.
- (iv) The onus is on Elected Members and Employees to identify potential conflicts of interest, and to determine whether such interest exists, and that no statutory exemption applies.

2.2.3 Impartiality Interest

For the purpose of requiring disclosure, the Local Government (Administration) Regulations 1996, s34C defines an interest affecting impartiality as;

An interest that would give rise to a reasonable belief that the impartiality of the person having the interest would be adversely affected but does not include an interest as referred to in section 5.60 of the Act (financial or proximity interest).

The important element of this section is the words *reasonable belief* and relates to whether there would be a likely public perception that there may be an interest that could affect impartiality.

- (i) Elected Members who have an interest affecting impartiality in a matter to be considered by the Shire are required to disclose in writing the nature of the interest, however, they may still participate in discussion and voting in relation to the matter.
- (ii) Employees who have an interest affecting impartiality in a matter to be considered by the Shire are required to disclose in writing the nature of the interest but may still participate in discussion and vote (if/where eligible to do so).

- (iii) Employees who have an interest affecting impartiality in any matter in respect of which the employee is providing advice or a report directly to the Council, Shire or a Committee must disclose in writing the nature of the interest when giving the advice or report.
- (v) The onus is on Elected Members and Employees to identify conflicts of interest, and to determine whether such interest exists, and whether any statutory exemption applies.

Regulation 34C relates to determining and disclosing an interest affecting impartiality:

(i) *In this regulation —*

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.

(ii) *A code of conduct is to contain a requirement that a person who is an employee and who has an interest in any matter to be discussed at a council or committee meeting attended by the person disclose the nature of the interest —*

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

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

(iii) *A code of conduct is to contain a requirement that a person who is an employee and who has given, or will give, advice in respect of any matter to be discussed at a council or committee meeting not attended by the person disclose the nature of any interest the person has in the matter —*

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

(ii) *at the time the advice is given.*

(iv) *A code of conduct is to exclude from a requirement made under sub-regulation (2) or (3) an interest referred to in section 5.60.*

(v) *A code of conduct is to excuse a person from a requirement made under sub-regulation (2) or (3) to disclose the nature of an interest if —*

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

(ii) *the person's failure to disclose occurs because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person discloses the nature of the interest as soon as possible after becoming aware of the discussion of a matter of that kind.*

(vi) *A code of conduct is to require that if, to comply with a requirement made under sub-regulation (2) or (3), a person who is an employee makes a disclosure in a written notice given to the CEO before a meeting then —*

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

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

(vii) *If —*

(i) *to comply with a requirement made under sub-regulation (2), the nature of a person's interest in a matter is disclosed at a meeting; or*

(ii) *a disclosure is made as described in sub-regulation (5)(b) at a meeting; or*

(iii) *to comply with a requirement made under sub-regulation (6)(b), a notice disclosing the nature of a person's interest in a matter is brought to the attention of the persons present at a meeting, the nature of the interest is to be recorded in the minutes of the meeting.*

[Regulation 34C inserted in Gazette 21 Aug 2007 p. 4192-3.]

2.4 Disclosure of information in returns.

Council Members and ‘designated employees’ as defined in section 5.74 must make disclosures in primary and annual returns in accordance with the requirements of Part 5 Division 6 of the Local Government Act 1995.

5.74. *designated employee means —*

- (i) *a CEO; and*
- (ii) *an employee, other than the CEO, to whom any power or duty has been delegated under Division 4; and*
- (iii) *an employee who is a member of a committee comprising council members and employees; and*
- (iv) *an employee nominated by the local government to be a designated employee.*

Section 5.75 and 5.76 of the Local Government Act 1995 contain the requirements for Council Members and “Designated Employees” to complete Primary and Annual Returns.

5.75. *Primary returns*

- (i) *A relevant person other than the CEO must lodge with the CEO a primary return in the prescribed form within 3 months of the start day.*
- (ii) *A CEO must lodge with the mayor or president a primary return in the prescribed form within 3 months of the start day.*
- (iii) *This section does not apply to a person who —*
 - (i) *has lodged a return within the previous year; or*
 - (ii) *has, within 3 months of the start day, ceased to be a relevant person.*

Penalty: \$10 000 or imprisonment for 2 years.

5.76. *Annual returns*

- (i) *Each year, a relevant person other than the CEO must lodge with the CEO an annual return in the prescribed form by 31 August of that year.*
- (ii) *Each year, a CEO must lodge with the mayor or president an annual return in the prescribed form by 31 August of that year.*

Penalty applicable to subsections (1) and (2): \$10 000 or imprisonment for 2 years. [Section 5.76 amended by No. 1 of 1998 s. 18; No. 66 of 2006 s. 12.]

Disclosures made by Council Members and “designated employees” in the above returns relating to gifts must comply with the requirements of Section 5.82 of the *Local Government Act 1995* :

5.82. *Gifts*

- (i) *A relevant person is to disclose in an annual return —*
 - (i) *the description and the amount of each gift received by the person at any time during the return period; and*
 - (ii) *the name and address of the person who made each gift to which paragraph (a) applies.*

Nothing in this Subdivision requires a relevant person to disclose in a return a gift received by the person if —

- (iii) *the amount of the gift did not exceed the prescribed amount unless —*
 - (i) *the gift was one of 2 or more gifts made by one person at any time during the return period; and*
 - (ii) *the sum of those 2 or more gifts exceeded the prescribed amount; or the donor was a relative of the person.*

For the purposes of this section, the amount of a gift comprising property, other than money, or the conferral of a financial benefit is to be treated as being an amount equal to the value of the property or the financial benefit at the time the gift was made.

In this section —

gift means any disposition of property, or the conferral of any other financial benefit, made by one person in favour of another otherwise than by will (whether with or without an instrument in writing), without consideration in money or money's worth passing from the person in whose favour it is made to the other, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or other contribution to travel.

3. Information and Personal Benefit

3.1 Access to Information

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

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

The Local Government Act 1995 provides for access to information by Council Members which is detailed in sections 5.91 and 5.92:-

5.91. Interpretation

A reference in this Division to a council member, a committee member or an employee performing a function under a written law other than this Act does not include a reference to a council member, a committee member or an employee performing a function in a capacity other than that of council member, a committee member or an employee, as the case may be, under this Act.

5.92. Access to information by council, committee members

(i) A person who is a council member or a committee member can have access to any information held by the local government that is relevant to the performance by the person of any of his or her functions under this Act or under any other written law.

Without limiting subsection (1), a council member can have access to —

- (i) all written contracts entered into by the local government; and*
- (ii) all documents relating to written contracts proposed to be entered into by the local government.*

3.2 Improper Use of Information

Council Members, Committee Members and employees must not make improper use of any information acquired in the performance of his or her functions under the *Local Government Act 1995* or any other written law.

Improper use of information also applies to Working Groups, workshops, informal meeting groups, Concept Forums or any other body formed for the purpose of assisting the Shire in whatever capacity whether they are a Council member, employee or other person. Specifically:

- (i) Elected Members and Employees will not use confidential information of the Shire or Council to gain any improper advantage for themselves or for any other person or body. Elected Members and Employees will not use confidential information:
 - (i) Contrary to the provisions of the Local Government Act or Freedom of Information Act;
 - (ii) in ways which are inconsistent with the obligation to act impartially; or
 - (iii) to improperly cause harm or detriment to any person, body, the Shire or Council.

- (ii) Confidential information to the Chief Executive Officer will remain confidential unless and until the Chief Executive Officer agrees to the contrary.
- (iii) Confidential information to the Council will remain confidential unless and until the Council resolves to the contrary.
- (iv) Clauses (b) and (c) above are subject to the provisions of the Freedom of Information Act.
- (v) The deliberate release of confidential or sensitive information to unauthorised persons is considered a breach of the Code.
- (vi) The Chief Executive Officer will keep all Elected Members and relevant employees informed of any matter, which the Chief Executive Officer considers to be controversial or sensitive.
- (vii) Elected Members and employees will ensure that confidential information, or information that is protected under the Act or any other legislation, cannot be accessed by unauthorised persons.

Due discretion must be exercised by all those who have access to confidential or sensitive information. This discretion applies to the proper disclosure of that information, and also to the appropriate measures to be taken to ensure that the security of the information is not compromised.

Section 5.93 of the *Local Government Act 1995* prohibits a Council member, Committee Member or employee from making improper use of any information acquired in the performance by the person of his or her functions under the *Local Government Act 1995* or any other written law.

5.93 *Improper use of information*

A person who is a council member, a committee member or an employee must not make 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 —

- (i) to gain directly or indirectly an advantage for the person or any other person; or*
- (ii) to cause detriment to the local government or any other person. Penalty: \$10,000 or imprisonment for 2 years*

3.3 Intellectual Property

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

3.4 Improper or Undue Influence

Elected Members and employees will not take advantage of their position to improperly influence other Elected Members or employees in the performance of their duties or functions, in order to gain undue or improper (direct or indirect) advantage or gain for themselves or for any other person or body.

4. Gifts

In relation to acceptance of gifts, Council Members and employees are required to comply with the provisions of the relevant Regulations. For Employees Regulation 34B of the *Local Government (Administration) Regulations 1996* applies. For Council Members Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* applies.

4.1 Gifts – Employees

Regulation 34B of the *Local Government (Administration) Regulations 1996* requires that a Code of Conduct is to contain specific requirements in relation to employees and gifts with the following principles to be adhered to:

- (i) *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.*
- (ii) *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, must notify the CEO, in accordance with item (c) and within 10 days of accepting the gift, of the acceptance.*
- (iii) *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) –*
 - (i) *a description; and*
 - (ii) *the estimated value; and*
 - (iii) *the date of acceptance, of each other gift accepted within the 6 month period.*
- (iv) *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).*
- (v) *This clause does not apply to gifts received from a relative (as defined in section 5.74(1) of the Local Government Act 1995), or an electoral gift (to which other disclosure provisions apply under Regulation 30B of the Local Government (Elections) Regulations 1997), or a gift from a statutory authority, government instrumentality or non-profit association for professional training.*
- (vi) *This clause does not prevent the acceptance of a gift on behalf of the Shire 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 Shire.*

34B *Codes of conduct about gifts, content of (Act s. 5.103(3))*

- (i) *In this regulation —*

activity involving a local government discretion means an activity —

- (i) *that cannot be undertaken without an authorisation from the local government; or*
- (ii) *by way of a commercial dealing with the local government;*

gift has the meaning given to that term in section 5.82(4) except that it does not include —

- (i) *a gift from a relative as defined in section 5.74(1); or*
- (ii) *a gift that must be disclosed under regulation 30B of the Local Government (Elections) Regulations 1997; or*
- (iii) *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 —

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

- (i) a gift worth \$300 or more; or
 - (ii) 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.
- (ii) A code of conduct is to contain a requirement that a person who is an employee 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.
- (iii) A code of conduct is to contain a requirement that 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, notify the CEO, in accordance with sub-regulation (4) and within 10 days of accepting the gift, of the acceptance.
- (iv) A code of conduct is to require that the notification of the acceptance of a notifiable gift 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** in sub-regulation (1) (whether or not it is also a notifiable gift under paragraph (a) of that definition) —
 - (i) a description; and
 - (ii) the estimated value; and
 - (iii) the date of acceptance, of each other gift accepted within the 6 month period.
 - (v) A code of conduct is to require that the CEO maintain a register of notifiable gifts and record in it details of notifications given to comply with a requirement made under sub-regulation (3).
- [Regulation 34B inserted in Gazette 21 Aug 2007 p. 4190-1.]

4.2 Gifts - Council Members

Gifts received by Council Members are covered by Regulation 12 of the Local Government (Rules of Conduct) Regulations 2007:

12. Gifts

- (i) In this regulation —
 - activity involving a local government discretion** means an activity —
 - (i) that cannot be undertaken without an authorisation from the local government; or
 - (ii) by way of a commercial dealing with the local government;
 - gift** has the meaning given to that term in section 5.82(4) of the Act except that it does not include —
 - (i) a gift from a relative as defined in section 5.74(1) of the Act; or
 - (ii) a gift that must be disclosed under regulation 30B of the Local Government (Elections) Regulations 1997; or

(iii) a gift from a statutory authority, government instrumentality or non-profit association for professional training;

notifiable gift, in relation to a person who is a council member, means —

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

(ii) a gift that is one of 2 or more gifts given to the council member 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 a council member, means —

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

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

(ii) A person who is a council member must not accept a prohibited gift from a person —

(i) who is undertaking or seeking to undertake; or

(ii) who it is reasonable to believe is intending to undertake, an activity involving a local government discretion.

(iii) A person who is a council member and who accepts a notifiable gift from a person —

(i) who is undertaking or seeking to undertake; or

(ii) who it is reasonable to believe is intending to undertake,

an activity involving a local government discretion must, within 10 days of accepting the gift, notify the CEO of the acceptance in accordance with subregulation (4).

(iv) Notification of the acceptance of a notifiable gift is to be in writing and is to 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 a council member 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) —

(i) a description; and

(ii) the estimated value; and

(iv) the date of acceptance, of each other gift accepted within the 6 month period.

(v) The CEO must maintain a register of gifts in which details of notices received under subregulation (4) are recorded.

5. CONDUCT OF COUNCIL MEMBERS, COMMITTEE & WORKING GROUP MEMBERS AND EMPLOYEES

High standards of professional conduct displayed by Council Members, Committee & Working Group Members and employees, ensures that a positive image of the Shire is conveyed when interacting with stakeholders and the community. The conduct displayed should encourage fair, equitable and lawful operation of the Shire.

5.1 Personal Behaviour

(i) Council Members, Committee & Working Group Members and employees will:

(i) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;

- (ii) perform their duties impartially and in the best interests of the Shire uninfluenced by fear or favour;
 - (iii) act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the Shire and the community;
 - (iv) make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and
 - (v) always act in accordance with their obligation of fidelity to the Shire.
- (ii) Councillors shall attend all meetings of Council and committees to which they are appointed, unless they have previously been granted absence by resolution of Council, or for reasons of illness or other unforeseen circumstances. Council Members will represent and promote the interests of the Shire, while recognising their special duty to their own constituents.
 - (iii) With the exception of a convenience break, a Councillor shall not withdraw from duly constituted meetings prior to its closure without first seeking leave of the Presiding Member. There is an expectation that Councillors will remain until the completion of committee or ordinary Council Meetings.

5.2 Honesty and Integrity

Elected Members, Committee & Working Group Members and Employees will: -

- (i) Observe the highest standards of honesty, integrity and propriety and avoid conduct which might suggest any departure from these standards:
 - (i) Honesty is being fair and just in character or behaviour and not cheating or stealing;
 - (ii) Integrity refers not only to knowing what is the right thing to do but having the moral strength and courage to act on one's convictions and on principle rather than expediency;
 - (iii) Propriety is to behave correctly as befits the duties of one's professional responsibilities and role.
- (ii) Bring to the notice of the Chief Executive Officer any alleged dishonesty on the part of any Elected Member, Committee Member or Staff member, and when the alleged breach pertains to the Chief Executive Officer to the notice of the President.
- (iii) Be frank, honest, fair and objective in their official dealings with others and in the performance of their official duties.
- (iv) Advise the President or Chief Executive Officer of any charge or conviction brought against them, which is, or could be perceived to be, in conflict with their position or responsibility.

5.3 Performance of Duties

- (i) While on duty, employees will give their whole time and attention to the Shire'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 Shire.
- (ii) Council Members and Committee & Working Group Members will at all times exercise reasonable care

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

5.4 Compliance with Lawful Orders

- (i) Council Members, Committee & Working Group 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.
- (ii) Elected Members and Staff will give effect to the lawful policies of the Shire, whether or not they agree with or approve of them.

5.5 Compliance with local laws and policies

Employees must give effect to the adopted local laws and policies of the Shire. Council Members and Committee Members are to consider the policies of the Shire to guide them in their decision making responsibilities.

5.6 Administrative and Management Practices

Council Members, Committee & Working Group Members and employees will ensure compliance with proper and reasonable administrative practices and conduct, and professional and responsible management practices.

5.7 Corporate Obligations

- (i) **Standard of Dress**
Council Members, Committee & Working Group Members and employees are expected to comply with neat and responsible dress standards at all times. Accordingly:
 - (i) Council Members and Committee & Working Group Members will dress in a manner appropriate to their position, in particular when attending meetings or representing the Shire 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.
- (ii) **Communication and Public Relations**
 - (i) All aspects of communication by employees (including verbal, written or personal), involving the Shire's activities should reflect the status and objectives of the Shire. Communications should be accurate, polite and professional.
 - (ii) As a representative of the community, Council Members need to be responsive to community views, and adequately communicate the attitudes and decisions of the Council. In doing so Council Members should 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 ought not be communicated until it is no longer treated as confidential;
 - information relating to decisions of the Council on approvals, permits and so on ought only be communicated in an official capacity by a designated officer of the Council;
 - information concerning adopted policies, procedures and decisions of the Council is conveyed accurately.

- (iii) Elected Members and Employees are not to make any official comment to the media on Shire matters unless delegated or authorised to do so by the President or Chief Executive Officer.

5.8 Appointments to external boards, committees and working groups

As part of their representative role, Elected Members and Staff often asked represent the Shire on external committees and/or organisations. It is important that:

- (i) Elected Members are nominated to a committee through a resolution of Council; or that Staff have written approval to be a member of the committee from the Chief Executive Officer;
- (ii) each clearly understand the basis of their appointment;
- (iii) regular reports on the activities of the organisation or committee are provided in accordance with the confidentiality requirements of that organisation or committee; and
- (iv) each represent the Council's interest on all matters relating to that organisation or Committee whilst maintaining confidentiality requirements of the Shire of Katanning; and

5.9 Forums of Council (Concept Forums, Agenda Forums and Workshops)

Forums of Council include Concept Forums, Agenda Forums and Workshops and are scheduled and held in accordance with Council Policy 1.2.13 – Forums of Council.

If a conflict of interest exists Council Members and employees shall make a disclosure of that interest in writing through the Chair to the members at any Concept Forum, Agenda Forum or Workshop. Where the declaration is a Financial or a Proximity Interest, the Council Member or employee shall leave the room for the duration of the discussion relating to their declaration.

5.10 Use of Council Property

Elected Members and Staff shall:

- (i) be scrupulously honest in their use of Council facilities, funds, employees, materials and equipment and shall not permit their misuse, or the appearance of misuse by any other person or body;
- (ii) use Council resources entrusted to them effectively, economically and lawfully in the course of their duties, and not otherwise;
- (iii) not use the Council resources (including the services of Staff) for private purposes (other than when supplied as part of a contract of employment), unless properly authorised to do so, and appropriate payments are made (as determined by the Chief Executive Officer).
- (iv) not make unauthorised use of information and other intellectual property produced or registered by employees or external contractors for the Council. The ownership of Intellectual Property that is produced a result of employment in official duties shall be assigned to the Shire of Katanning upon its creation; and
- (v) promote the concept of pride in public property, fostering an awareness of the community's ownership of the Shires natural and built environment.

5.11 Travelling and Sustenance Expenses

Council Members, Committee Members and employees 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 Shire in accordance with Shire policy and the provisions of the *Local Government Act 1995*.

5.12 Defamation

Comments by Elected Members at meetings of the Council and/or Committees of the Council are covered only by qualified privilege against defamation and this qualified privilege may not extend to comments by Staff.

An Elected Member can only rely on the defence of qualified privilege whilst exercising the proper discharge of his or her duties, and in doing so in the public interest.

In order to maintain qualified privilege, an Elected Member should ensure that comments made are pertinent to the business of Local Government and, they are not made maliciously, or without due regard to whether they represent the truth.

5.13 Duty of Care

(i) Elected Members and Staff shall take reasonable care:-

(i) to ensure their own safety and health at work; and when on Council business;

(ii) to avoid adversely affecting the safety and health of any other person through any act or omission at work.

(Refer to Section 20, Occupational Safety and Health Act (WA) 1984)

(ii) Staff should ensure that the Council's premises and places of work (including vehicles) are adequate to ensure the health, safety and well-being of employees and members of the public. Potential risks or hazards to employees or the public are to be reported according to existing procedures.

5.14 Volunteer Activities

This clause is not intended to limit or discourage the volunteer activities of Elected Members or Staff however, when Staff do, in their own time, volunteer the following guidelines will apply;

(i) Whilst employees are encouraged to undertake volunteer activities outside council this must be done in such a way as to strictly avoid encumbering council with any liability relating to such activities.

(ii) Volunteer activities and paid work are to remain strictly separated. The use of council resources for communication, or any other purpose relating to the volunteer activities should be avoided wherever possible.

(iii) Where there is no alternative than to correspond through council channels such correspondence is to be clearly marked as being in the employees 'Private Capacity'.

(iv) No employee, whilst undertaking volunteer activities, is to create the perception, real or otherwise, that they are representing the Shire in their volunteer work. Staff are to make it clearly known to other members of the committee or organisation that they are present in a private capacity, and where possible this appear in writing (ie: in committee minutes or via a letter to the Chairperson).

6. Reporting Breaches and Suspected Breaches of the Code

(i) The Shire will ensure that an Elected Member or Employee that reports unacceptable or alleged illegal behavior of other Elected Members or Employee(s) is not disadvantaged or victimised as a result of their report, or their action in providing a report.

- (ii) Elected Members will report unacceptable or alleged illegal behavior to the President.
- (iii) Employees will report unacceptable or alleged illegal behavior to the Chief Executive Officer.
- (iv) Elected Members and Employees will be aware of the Anti - Corruption Commission Act that provides for the voluntary reporting of unacceptable or alleged illegal behavior to the Commission. If such behavior is brought to the attention of the Chief Executive Officer then the Chief Executive Officer has a legal obligation to notify the Commission of any possible corrupt conduct.
- (v) Elected Members and Employees have an obligation to report unacceptable or alleged illegal behavior to the President and Chief Executive Officer respectively. Where an Elected Member or employee feels unable to make a report to the President or Chief Executive Officer then that person should make a report to an appropriate authority.

6.1 Alleged Breaches of the Code by Employees

Any person who has reason to believe that the personal behaviour of an employee breaches the standards of conduct set out in the Code, may refer the matter to the CEO, who will consider the matter and deal with it in accordance with the management protocols, procedures and any applicable law concerning employees.

Any person who has reason to believe that the personal behaviour of the CEO breaches the standards of conduct set out in the Code, may refer the matter to the Shire President, who will investigate the alleged breach and confer with Elected Members in considering the matter and deal with it in accordance with the management protocols, procedures and any applicable law. If deemed appropriate by Council the matter will be referred by the President to the Department of Local Government.

6.2 Alleged Breaches of the Code by Council Members and Committee Members

Any alleged breach by a Council Member under the *Local Government (Rules of Conduct) Regulations 2007* may be reported to the CEO and will be dealt with under Part 5 Division 9 of the *Local Government Act 1995*.

Any person who has reason to believe that the personal behaviour of a Council Member breaches the standards of conduct set out in the Code, other than those matters set out in the *Local Government (Rules of Conduct) Regulations 2007*, may refer the matter to the CEO, who will consider the matter and deal with it accordingly as he or she sees fit.

6.3 Reporting alleged Misconduct to the Corruption and Crime Commission

Misconduct means misconduct as defined in section 4 of the *Corruption and Crime Commission Act 2003*. It can involve activities such as improper handling of conflicts of interest, abuse of position, unauthorised access to or disclosure of confidential information, biased or preferential employment practices, allegations involving improper practices concerning contracts and tendering and misappropriation of public funds or property.

Section 4 of the Corruption and Crime Commission Act 2003:

Misconduct occurs if —

- (i) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment; or
- (ii) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or
- (iii) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment; or
- (iv) a public officer engages in conduct that —
 - (i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or
 - (ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or
 - (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
 - (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,

and constitutes or could constitute —

- (v) an offence against the Statutory Corporations (Liability of Directors) Act 1996 or any other written law; or
- (vi) a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

The CEO, being the 'principal officer of a notifying authority' (for the purposes of the *Corruption and Crime Commission Act 2003*) has a statutory obligation to report to the Corruption and Crime Commission:-

- (i) any allegations of misconduct, or
- (ii) any situation that otherwise comes to his or her attention involving misconduct or where the CEO suspects on reasonable grounds concerns or may concern misconduct and is of relevance or concern to the CEO in his or her official capacity.

Signature: _____

Date: ____/____/20____

To be signed by employee and returned to go on personnel file:

Name: _____

I have read and understood the code of conduct and agree to abide by it.