



# **APPENDICES**

## **Ordinary Council Meeting**

**Monday, 16 December 2019**



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Our Ref: E1931176

TO ALL LOCAL GOVERNMENTS

CIRCULAR N<sup>o</sup> 11-2019

### **NEW GIFTS FRAMEWORK**

On 20 October 2019, the new gifts framework contained within the *Local Government Legislation Amendment Act 2019* will come into operation.

The *Local Government Regulations Amendment (Gifts) Regulations 2019* are being gazetted on 18 October. These amend the *Local Government (Administration) Regulations 1996*, the *Local Government (Audit) Regulations 1996* and the *Local Government (Rules of Conduct) Regulations 2007*. The proclamation of the associated sections of the *Local Government Legislation Amendment Act 2019* is also being gazetted on that day.

This new gift framework has been simplified, with the focus on transparency and accountability. This has been achieved by considering the nature of the relationship between the recipient and the donor of the gift and focusing the disclosure requirements on why the person has received the gift and dealing with possible influence created by the gift via the conflict of interest provisions.

### **Receipt of Gifts**

In accordance with sections 5.87A and 5.87B of the Act, council members and CEOs are required to disclose gifts that are received in their capacity as a council member (or CEO) and –

- are valued over \$300; or
- are of a cumulative value that exceeds \$300 where the gifts are received from the same donor in a 12-month period.

Additionally, a gift given by two or more related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) is considered to have been given by a single corporation (donor).

Contributions to travel costs, whether financial or otherwise, will no longer be treated separately. These are now incorporated within the definition of gift.

The decision on whether a gift is received in the capacity of a council member or CEO must be made by the recipient of the gift. The question is whether the gift would have been given (or a gift of that value given) if the recipient were not a member of the council (or CEO). If the answer is no, it must be disclosed if the value of the gift (or aggregated value) is over \$300. The onus is on the recipient to prove that it was not received in that capacity (and that the value of the gift(s) is not greater than \$300).



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Real time reporting of gifts is achieved through requirements to disclose all gifts within 10 days of receipt, for the CEO to update the register within 10 days, and for an up-to-date version of the register to be published on the local government's official website.

To assist council members and CEOs with complying with the new gift framework, a flowchart has been prepared and is attached to this circular (**Attachment A**).

To remove complexity from the gift disclosure framework, the minor breach provisions that relate to the declaration of gifts (which set two different thresholds in addition to the gift declaration thresholds above) have been removed. That is, Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* has been deleted. The removal of these provisions does not prevent a council member from being prosecuted for failing to disclose a gift or the Departmental CEO referring a serious breach of the Act (related to gifts) to the State Administrative Tribunal. The maximum penalty for failure to disclose a gift is a fine of \$10,000 or imprisonment for two years.

### **Conflicts of Interest – Interests relating to a gift**

Receipt of a gift – any gift, whether or not in a person's capacity as council member or CEO – will create a relationship of a closely associated person and therefore an interest (sections 5.60 and 5.62).

The following situations are specifically excluded from the interest provisions:

- where the gift (or gifts over a 12-month period from the one donor) do not exceed \$300 in value;
- where the gift is a ticket to, or otherwise relates to attendance at an event and the local government approves the person's attendance in accordance with their Attendance at Events policy (see below); or
- where the gift is received from one of the following organisations:
  - WALGA (but not LGIS)
  - Local Government Professionals Australia (WA)
  - Australian Local Government Association
  - A department of the public service
  - A government department of another State, a Territory or the Commonwealth
  - A local government or regional local government.

(The gifts referred to in the second and third dot points must still be disclosed in accordance with sections 5.87A and 5.87B as described above.)

This interest creates a perceived or actual conflict which prevents the council member from participating in the meeting or the CEO from providing advice or a report on the matter to be discussed (sections 5.67 and 5.71A), unless approval has otherwise been given.

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If the amount of the gift(s) is less than \$1,000, under section 5.68 the council may allow the disclosing council member to participate if:

- The council member discloses the extent of the interest they have; and
- Council decides that the interest is so trivial or insignificant as to be unlikely to influence the disclosing person's conduct in relation to the matter; or
- The interest is common to a significant number of other electors or ratepayers.

The interest, the council's decision and the reasons for that decision must be recorded in the minutes.

If an interest valued at over \$1,000 is disclosed, under section 5.69 the council or CEO may apply to the Minister to allow the disclosing member to participate in meetings or parts of meetings relating to that matter. In this case, the Minister must consider that it is in the best interests of the electors or ratepayers for this to happen, or that approval is necessary to provide a quorum. The Minister's decision and the reasons for that decision must be recorded in the minutes of the meeting where the matter is discussed.

Similar provisions are contained in sections 5.71A and 5.71B in relation to the CEO providing advice or a report, directly or indirectly, to the council or a committee.

To assist council members and CEOs with understanding how the interests relating to gifts operate, a flowchart is attached to this circular (**Attachments B and C**).

#### *Attendance at Events policy*

Local governments must prepare and adopt a policy that relates to the attendance of council members and CEOs at events such as concerts, conferences and functions. This policy must address the provision of tickets to events, payments in respect of attendance and approval of attendance by the local government and criteria for approval. New section 5.90A relates.

In essence, the policy deals with a council member's or CEO's attendance at events as a representative of the council. Tickets or the invitation to the event must be made to the council directly, not to the council member or CEO personally. If a council member or CEO attends an event in accordance with the local government's policy, then no conflict of interest arises.

Guidance material to support the development of the Attendance at Events policy is being prepared and will be available on the Department's website at [www.dlgsc.wa.gov.au/lgareview](http://www.dlgsc.wa.gov.au/lgareview).

*Local Government Operational Guidelines* are being updated to include these provisions.

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For further information, please contact the Strategic Initiatives team via email at [actreview@dlgsc.wa.gov.au](mailto:actreview@dlgsc.wa.gov.au).

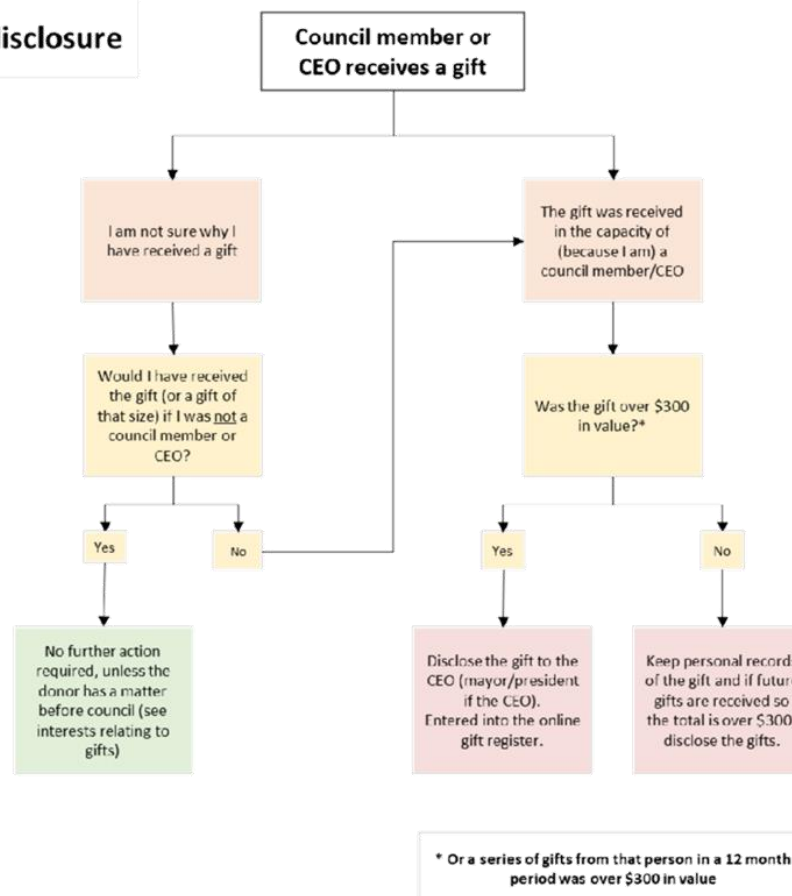


Duncan Ord OAM  
DIRECTOR GENERAL

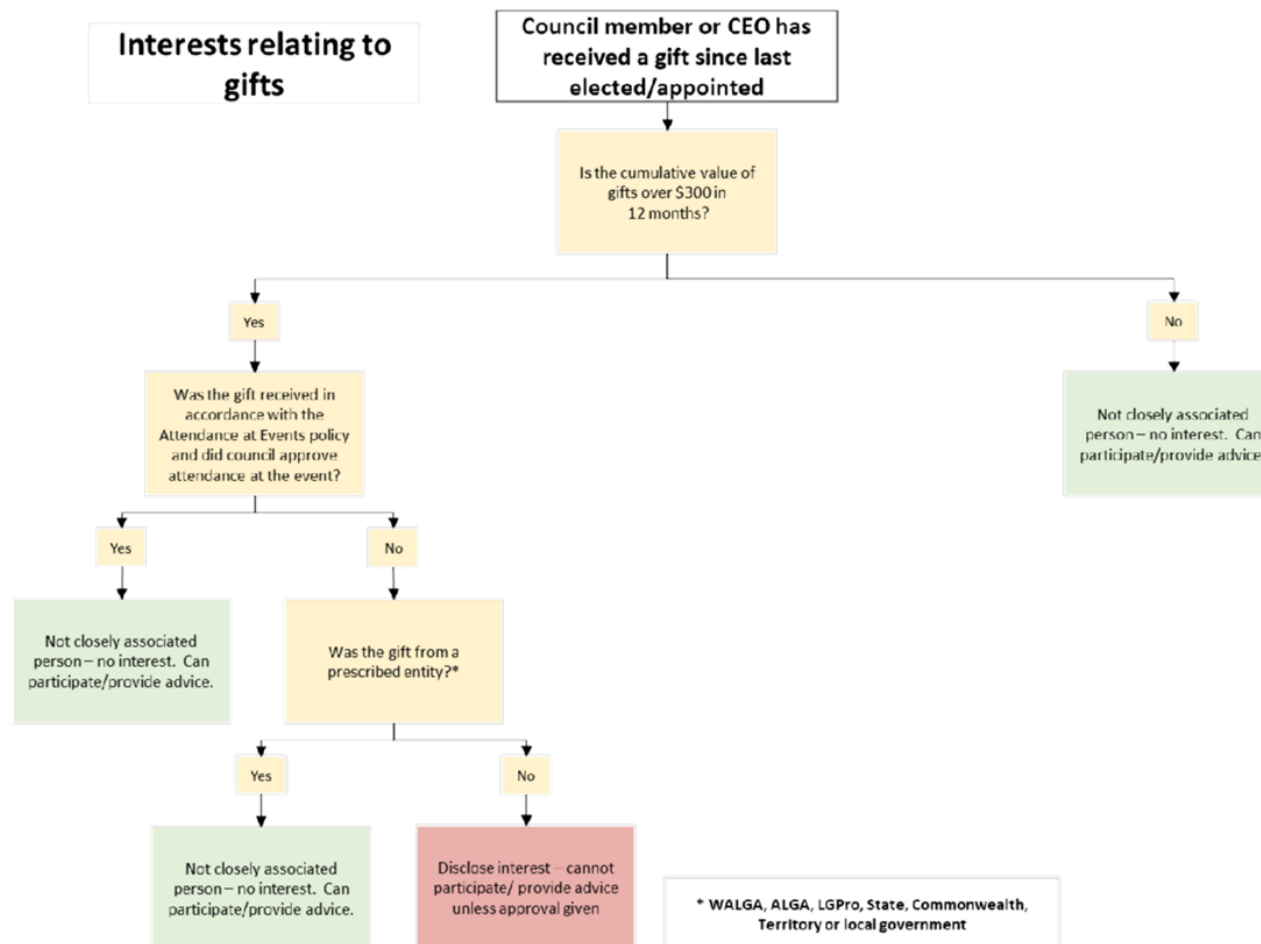
October 2019

Attachment A

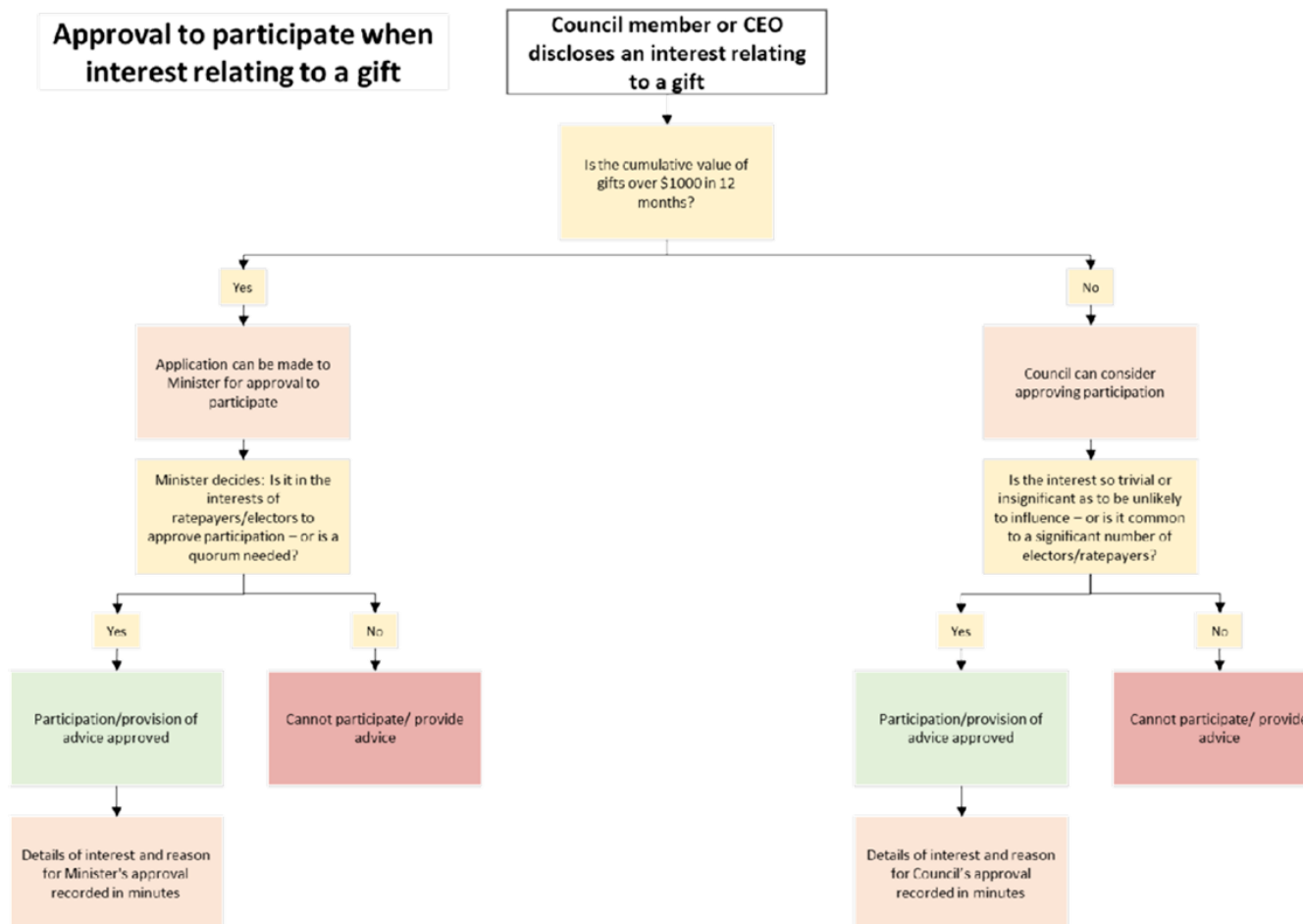
Gift framework - disclosure



Attachment B



Attachment C





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## G 1.1 CODE OF CONDUCT: COUNCILLORS, COMMITTEE MEMBERS AND EMPLOYEES

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### **Policy Objective:**

To set out the expected standards for the behaviour of local government officials in the discharge of their roles and responsibilities.

### **Policy Scope:**

This policy applies to Councillors and Employees of the Shire of York and to any person appointed to a committee of the Council. It is complementary to, and should be read in conjunction with, the Local Government (Rules of Conduct) Regulations 2007.

Generally the provisions of this Code apply equally to all people who are Councillors, members of Committees or Employees. In some cases a provision of this Code may apply to one or other of these categories. Where that is the case it is identified in the relevant provision.

### **Policy Statement:**

#### **Introduction**

Every local government is required to adopt a Code of Conduct to be observed by Councillors, Committee Members and Employees<sup>1</sup>. The Council must review the Code of Conduct within 12 months of each ordinary election.

The Code is intended to give effect to the objectives adopted in the Local Government Act 1995 (and regulations) which are to achieve:

- better decisions by local governments;
- greater community participation in the decisions and affairs of local governments;
- greater accountability of local governments to their communities; and
- more efficient and effective local government.

A central focus of the Code is on probity and accountability and the nature and quality of interactions with other Councillors, Employees and the community.

The Code encourages a commitment to ethical and professional behaviour on the part of Councillors, Committee Members and Employees.

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<sup>1</sup> S.5.103 Local Government Act 1995.

**Principles**

This Code of Conduct is based on a set of principles set out below.

Councillors, Committee Members and Employees:

- (a) are committed to giving effect to the requirements of the Local Government (Rules of Conduct) Regulations (Reg 3) in all aspects their roles. These are:  
acting with reasonable care and diligence
  - acting with honesty and integrity
  - acting lawfully
  - avoiding damage to the reputation of local government
  - being open and accountable to the public
  - basing decisions on relevant and factually correct information
  - treating others with respect and fairness
  - not being impaired by mind affecting substances
- (b) do not place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties;
- (c) make decisions solely on the basis of public interest, merit and in accordance with statutory obligations. This includes the making of appointments, awarding of contracts or recommending individuals for awards or benefits.
- (d) are open and transparent about their decisions and actions, and the reason for them.
- (e) always act honestly. They will declare private interests that may be relevant to their public duties and take steps to resolve any conflicts in such a way that protects the public interest.
- (f) treat each-other and members of the community with respect at all times. People are treated fairly and without discrimination or bias.
- (g) lead by promoting the involvement of people in local government processes and in developing trust between the Shire and the community.

**Provisions****1. Statutory Framework**

- 1.1 This Code of Conduct complies with and is developed within the provisions of the Local Government Act 1995 (Section 5.103 – Codes of Conduct) and the Local Government (Administration) Regulations 1996 (Regulations 34B). The Code complements these statutory requirements but should any conflict arise between this Code of Conduct and the Local Government Act (LG Act) and Regulations, the latter prevail.
- 1.2 Councillors, acknowledge their activities, behaviour and statutory compliance obligations are subject to the Local Government (Rules of Conduct) Regulations 2007.



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## **2. Role of a Councillor**

### **2.1 The role of a Councillor is to:**

- represent and advocate on behalf of the community;
- resolve a preferred strategic direction taking into account the widest possible understanding of community needs and aspirations;
- make robust and effective decisions in relation to services and initiatives intended to deliver on community expectations and strategic direction;
- act as a careful steward of the community's assets owned, held and managed on behalf of the community.

### **2.2 This is underpinned by the provisions of the Local Government Act which provides that:**

A Councillor:

- (a) Represents the interest 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 council;
- (d) Participates in the Shire'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 Act.

## **3. Role of the CEO and Employees**

The role of employees is determined by the functions of the Chief Executive Officer as set out in s5.41 of the Local Government Act 1995:

The functions of the CEO are to:

- (a) advise the council in relation to the functions of a local government under this Act and other written laws; and
- (b) ensure that advice and information is available to the council so that informed decisions can be made; and
- (c) cause council decisions to be implemented; and
- (d) manage the day to day operations of the local government; and
- (e) liaise with the president on the local government's affairs and the performance of the local government's functions; and
- (f) speak on behalf of the local government if the president agrees; and

- (g) 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
- (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.

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 the Council to be performed, and they have an obligation to:

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

#### **4. General Conduct Obligations**

Councillors, Committee Members and Employees:

- 4.1 acknowledge that they are subject to the provisions of the Local Government Act 1995 and in addition they will act in accordance with their obligation of fidelity to the Shire: to act honestly, in good faith and to the best of their abilities in the interest of the Shire.
- 4.2 will comply with the requirements of the Local Government Act 1995, the Local Government (Rules of Conduct) Regulations 2007 and the Local Government Administration Regulations 1996 (Regulations 34B and 34C).
- 4.3 will perform their roles impartially and in the public interest and act in good faith.
- 4.4 will make clear in any forum whether they are representing the Shire or whether they are acting on an individual basis. If they are acting as an individual they cannot speak on behalf of the Shire.
- 4.5 will be as informed as possible about the functions of the Council and be familiar with all Council Agenda reports and associated documents prior to a meeting where the items are to be considered.

Councillors:

- 4.6 will make every endeavour to attend all Council meetings and Forums and working and advisory groups to which they are appointed unless they have previously been granted leave of absence by resolution of Council, are ill and/or have provided an apology to the Chair for being unavailable for other reasons.
- 4.7 will make every endeavour to remain until the completion of business at Council meetings and forums, working and advisory groups unless there is an overriding reason for leaving early.
- 4.8 must not harass, discriminate, or support others who support or discriminate against any person, colleague, Council employee or member of the public.<sup>1</sup>
- 4.9 will respect the local law regulating Council meetings at all times and the role of the Presiding Member in managing the conduct of a meeting, forum, working or advisory group.

**5. Interactions with Employees**  
Councillors

- 5.1 An effective Councillor will work as part of the Council team with the Chief Executive Officer and other Councillors and Employees. The team approach will occur if Councillors and Employees have a mutual respect and work with each other to achieve the Council's goals and implement the Council's policies and strategies.
- 5.2 Councillors are responsible for setting the future direction of the Shire and making decisions in the best interest of the community. Councillors acknowledge they:
  - have no role in the day-to-day administration, management of and delivery of services
  - have no capacity to individually direct employees to carry out particular functions;
  - must refrain from publicly criticising employees (including whether in a Council meeting or via the media) in a way that casts aspersions on their professional reputation, character, ability, integrity, competence or credibility; and
  - ensure that no restrictions or undue influence are placed on the ability of employees to give professional advice to the Council.
- 5.3 Councillors have the right to raise issues and requests with the Chief Executive Officer.
- 5.4 Councillors must not contact employees on Shire related business other than in accordance with any procedures authorised by the CEO. Councillors shall not approach employees on the following matters:
  - other than Chief Executive Officer, for information on sensitive or controversial matters;
  - discussion of Council business outside the Council building or outside hours of work

- 5.5 Councillors must not attend on-site inspection meetings with lawyers and/or consultants engaged by the Shire associated with current or proposed legal proceedings (other than those where approval has been granted by the Council to participate).

5.6 *Access to Council Buildings*

Councillors are entitled to have access to all areas of Council buildings but must not enter employee-only areas of Shire buildings without the approval of the Chief Executive Officer, or as provided for in any Protocol.

Employees

- 5.7 Employees are responsible for advising the Council, and implementing the decisions made by the Council. In undertaking these functions employees:

- will comply with all relevant Council policies, codes and resolutions of which they have been made aware, relevant to their particular role;
- provide accurate information to the Council and the public at all times;
- will take all reasonable steps to ensure that the information upon which employees make decisions or actions are based is factually correct and that all information has been obtained and is considered;
- will not release or divulge information that the Council or Chief Executive Officer has ordered to be kept confidential, or that the employee should reasonably know is information that is confidential;
- will not make improper use of information, including confidential information, acquired by virtue of their position;
- will ensure that relationships with external parties do not amount to interference by improper influence, affecting judgement, decisions and/or actions;
- will comply with all lawful and reasonable directions given by a person with authority to give such directions;
- will only make public comment in relation to their duties when specifically authorized so to do;
- will not make any public criticism of a personal nature of fellow Council employees or Councillors

6. **Conflicts of Interest: Avoidance and Disclosure**

Conflicts of Interest are dealt with in the Local Government Act 1995, the Local Government (Rules of Conduct) Regulations 2007 and the Local Government (Administration) Regulations 1996.

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6.1 *Avoiding Conflicts of Interest*

Councillors, Committee Members and Employees will ensure that there is no real or perceived conflict of interest between their personal interests and the impartial fulfilment of their public duties. The onus for identifying and disclosing a conflict of interest rests with the individual.

- 6.2 Councillors will lodge a written notice with the Chief Executive Officer describing an intention to undertake a dealing in land within the Shire (other than their principal place of residence).

6.3 *Dealing with Lobbying*

When a Council is dealing with a town planning matter that is the subject of a formal application, it does so under the powers conferred by the State planning legislation. Council assumes the role of a planning authority and a Councillor the role of a planning commissioner. It is essential that in that role, the objectivity and the perceived objectivity of the participating Councillors is maintained and protected, so as not to put any decision process at risk.

"Lobbying" is a term used to cover those types of communication between Councillors and the community that include representations to Councillors by special interest groups, by individuals with a direct interest in a council decision and by advocates acting on behalf of others. Lobbying is common in local government. The most common form occurs when a group or individual makes direct contact with a Councillor in an attempt to influence a council decision.

\*In many cases lobbying is part of the democratic process and is an acceptable feature of the relationship between citizens and their elected representatives. It is in the public interest that lobbying is fair and does not undermine public confidence in impartial decision-making.

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It is not possible to define every type of activity that could constitute inappropriate or unlawful lobbying. Generally, however, inappropriate or unlawful conduct on the part of someone lobbying a Councillor usually involves an attempt to obtain preferential consideration or treatment based on factors other than the merits of the matter.

Examples include:

- accepting undisclosed payments or benefits while making a decision that affects the gift giver's interests;
- accepting a political donation in return for the favourable exercise of discretion during decision-making;
- granting access to a particular individual or group while unreasonably denying similar access requested by another party;
- fettering discretion by giving undertakings to an interested party prior to considering all the information relevant to a decision;
- acting in a manner that exceeds the role of a Council Member as defined in section 2.8, 2.9 or 2.10 of the Local Government Act 1995;
- disclosing confidential information while being lobbied; and

- being unduly influenced by factors that are irrelevant to the merits of the matter under consideration.

Suspensions of inappropriate lobbying can occur when lobbying is not open to public scrutiny. Regardless of whether such suspicions are justified, they still have the potential to undermine public confidence in council decision-making and adversely affect a Councillor's reputation.

6.4 Councillors should exercise judgement when deciding whether to be involved in private meetings with people seeking to influence a council decision.

6.5 In making a decision as to whether be involved in private meetings, Councillors will:

- have regard for protecting the integrity of Council's decision-making and perceptions of Council objectivity
- have particular regard for implications for town planning application processes.

In this circumstance the following general approach shall be pursued:

- documenting meetings with proponents;
- generally conducting meetings in official locations, such as Council premises;
- having other people present during meetings;
- inviting applicants who have approached them for a meeting to discuss significant developments, to write to the Shire seeking a meeting with all the full Council and relevant employees
- providing copies of information presented during lobbying meetings to Shire employees for consideration and assessment (if required), distribution to other Councillors and filing as part of Council's records;
- asking people who have requested a meeting to put their arguments in writing;
- making a declaration at a Council meeting about lobbying activities involved in that are not part of Council's formal processes.

6.6 Lobbying of Councillors in relation to tenders is not permissible. If a Councillor is approached by anyone in relation to a tender process that is either proposed or underway, they must immediately inform the Chief Executive Officer.

#### 6.7 *Disclosure of Interests*

Councillors, Committee Members and Employees must comply with the laws governing disclosures of interests, as set out in the Local Government Act 1995 (Division 6 Sections 5.59-5.90). Any Councillor who has disclosed an interest may not participate in or be present during any discussion or decision making procedure relating to the matter unless the remaining councillors decide that the interest disclosed is so trivial or insignificant as to be unlikely to influence the disclosing councillors conduct in relation to the matter (see section 5.68 and 5.69).

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6.10 Where an employee has an interest in any matter to be discussed at a Council or Committee meeting attended by the employee then that employee is required to disclose the nature of the interest:

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

6.11 Where an employee has an interest in any matter to be discussed at a Council or Committee meeting NOT attended by the employee then that employee is required to disclose the nature of any interest:

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

6.12 Employees will not engage in any additional business or employment outside of the Council, whether paid or voluntary, without the prior written approval of the CEO.

6.13 It is recognised that employees lead full lives in a small community and from time to time they will have occasion to submit applications to the Shire for lawful activities. In some instances approvals (or not) may require the exercise of a discretion by another officer. Where such an application is received the CEO is to be advised by the applicant employee and the officer handling the application. The CEO will determine any additional review process that may be required to ensure appropriate levels of probity and transparency.

## 7. Personal Benefit<sup>2</sup>:

### 7.1 Gifts, and Contributions to Travel

Councillors, the Chief Executive Officer, employees with delegated powers and duties under Part 5, Division 4 of the Local Government Act, employees who are members of committees comprising elected members and employees; and any other employees nominated by the Council to be a designated employee must disclose all gifts, hospitality and contributions to travel according to the requirements set out under the Local Government Act 1995 and the Local Government (Rules of Conduct) Regulations.

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Under the Local Government Act 1995 s5.57,

gift means —

<sup>2</sup> NOTE: the legal requirements for 'Gifts' and 'Contributions to travel' are complex. This section of the Code provides a summary of the requirements. A person described in 7.1 who is offered a gift or contribution to travel is strongly encouraged to seek advice on their obligations.

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**Deleted:** 6.8 *Disclosure of Impartiality Interests*<sup>¶</sup>  
Councillors must disclose any impartiality interest as set out under Regulation 11 of the Local Government (Rules of Conduct) Regulations 2007.<sup>¶</sup>

6.9 Where an impartiality or proximity interest has been disclosed, the Councillor who has made the disclosure shall leave the room where the Council meeting is being held while the Council considers whether the matter disclosed is of a scale or significance such that the Councillor should not participate in the debate or cast a vote. Should the Council resolve that participation in the matter is not appropriate, the Councillor will remain outside the meeting until the matter has been discussed and dealt with. Once completed the Councillor will return to the meeting. If the Council decides that the interest disclosed is not significant to the matter being dealt with, the Councillor may return to the meeting and participate in both debate and voting on the matter.<sup>¶</sup>

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**Deleted:** 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

**Deleted:** 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

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(a) a conferral of a financial benefit (including a disposition of property) made by one person in favour of another person unless adequate consideration in money or money's worth passes from the person in whose favour the conferral is made to the person who makes the conferral; or

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(b) a travel contribution;

*travel* includes accommodation incidental to a journey;

*travel contribution* means a financial or other contribution made by one person to travel undertaken by another person.

[Section 5.57 inserted: No. 16 of 2019 s. 27.]

#### Receipt of Gifts

In accordance with sections 5.87A and 5.87B of the Act, council members and CEO's are required to disclose gifts that are received in their capacity as a council member (or CEO) and –

- are valued over \$300; or
- are of a cumulative value that exceeds \$300 where the gifts are received from the same donor in a 12-month period.

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'notifiable gift', in relation to a person who is a council member means¶  
(a) a gift worth between \$50 and \$300; or¶  
(b) a gift is one of 2 or more gifts given to the council member by the same person within

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#### Excluded Gifts

The following situations are specifically excluded from the interest provisions:

- where the gift (or fits over a 12-month period from the one donor) do not exceed \$300 in value;
- where the gifts is a ticket to, or otherwise relates to attendance at an event and the local government approves the person's attendance in accordance with their Attendance at Events policy;
- or where the gift is received from one of the following organisations:
  - WALGA (but not LGIS)
  - Local Government Professionals Australia (WA)
  - Australian Local Government Association
  - A department of the public service
  - A government department of another State, a Territory or the Commonwealth

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

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A local government or regional local government.7.2 Acceptance of a notifiable gift must be notified to the Chief Executive Officer within 10 days of accepting the gift. The notification must include:

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- a) the name of the person who gave the gift
- b) the date on which the gift was accepted
- c) a description, and the estimated value, of the gift; and
- d) the nature of the relationship between the person who is a council member and the person who gave the gift

7.3 Acceptance of contributions to travel must be notified to the Chief Executive Officer within 10 days of accepting the contribution. The notification must include:



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

- 7.4 The Chief Executive Officer will maintain a Register of disclosures in which details of notices of gifts and contributions to travel received are to be recorded.

The register is to be published on the Council's official website as well as made available for public inspection at the Council offices.

In addition to the statutory requirements the following policies apply.

- 7.5 Gifts of token value may be accepted by a Councillor, Committee Member, and Employee provided that the gift does not create a real or perceived sense of obligation that may lead to a perception of preferential service as a result of the gift. The following should be used as a guide for an Elected Member and/or Employee in determining whether to accept token gifts. Such gifts may be accepted only when the following have been considered:

- such a gift is offered in an open or public forum and refusal would be obviously discourteous;
- acceptance would not cause any potential perceived or actual compromise or conflict of interest;
- the gift does not have a significant monetary value (as a guide, less than \$10); and
- the gift is not offered on a regular basis.

- 7.6 Any gift over \$10 in value must be registered (note that this value threshold is lower than the relevant Regulation and was inserted by the Council in the interests of Transparency).

- 7.7 Councillors, Committee Members and Employees must not solicit demand or request gifts or any personal benefit for themselves or another person by virtue of their position and must not seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably perceived by an impartial observer as intended or likely to influence them to act in particular way (including making a particular decision).

- 7.8 A person or organisation wishing to demonstrate their appreciation for services received from Council should not present a gift or provide a benefit. Acceptable alternatives may include a letter of thanks or a thank-you card, as these are considered less likely to result in a situation that may compromise, or be perceived to compromise either party.

- 7.9 Councillors, Committee Members and Employees in an official capacity will from time to time receive invitations of hospitality to attend various functions and events. Where hospitality is only modest in nature and provides an opportunity to network or undertake business of a common purpose, it may be appropriate to accept such invitations.

Where there is benefit to the organization issuing the invitation in having a Council representative in attendance at the function or event this may constitute a 'consideration' in that the Council is contributing the cost in time and travel of the attendance of the Council representative thus negating the value of the hospitality. In such situations there is no disclosable gift.

In other ~~cases~~, the hospitality may constitute a gift and should be disclosed in accordance with the provisions of the Act and Regulations. Such hospitality should be disclosed on the basis of a reasonable calculation or assessment of value of attendance as a member of the 'paying public'.

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- 7.10 In the case of invitations to events, the thresholds for registration of such a gift set out in Clause 7.1 to 7.4 apply.
- 7.11 If acceptance of the hospitality is likely to create the impression that an attempt is being made to compromise the impartiality of the Councillor, Committee Member and Employee, or could be perceived as a conflict of interest, the offer of hospitality should be politely declined and recorded. Where possible any offer of hospitality made to a Councillor, Committee Member or Employee should be declared and approved prior to the event.

7.12 *Use of Shire Resources*

Councillors, Committee Members and Employees will:

- be scrupulously honest in their use of the local government's resources and shall not misuse them or permit the misuse (or the appearance of misuse) by any other person or body;
- use the local government resources entrusted to them effectively and economically in the course of their duties;
- 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).

7.13 *Travel and Sustenance*

Councillors, 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 local government in accordance with local government policy and the provisions of the Local Government Act 1995. (See also: G1.3 Governance: Travel and Accommodation)

- 7.14 Councillors, Committee Members and Employees shall be diligent in ensuring that the expenses claimed in accordance with Council policy relate to their functions and responsibilities and are appropriately acquitted.

7.15 *Use of Confidential Information*

Councillors, Committee Members and Employees will not use confidential information to gain improper advantage for themselves or for or any other person or body.

**8. Councillors Access to and Disclosure of Information**

- 8.1 In accordance with the Local Government Act 1995, Councillors are entitled to have access to all information necessary to properly perform their functions and comply with their responsibilities as Councillors.
- 8.2 Councillors 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.
- 8.3 Councillors who have a personal (as distinct from civic) interest in a document of the Shire have the same rights of access as any member of the public.
- 8.4 Councillors have an obligation to properly examine all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter.

8.5 *Use and Security of Information*

Councillors must comply with the Local Government (Rules of Conduct) Regulations 2007 in relation to the use and disclosure of information. The following extract is from Regulation 6 of the Rules of Conduct.

*Use of Information*

- (1) **Confidential document** means a document marked by the CEO to clearly show that the information in the document is not to be disclosed.
- (2) A person who is a Council member must not disclose –
- (a) Information that the council member derived from a confidential document;
  - or
  - (b) Information that the council member acquired at a closed meeting, other than information derived from a non-confidential document
- (3) Subregulation (2) does not prevent a person who is a council member from disclosing information –
- (a) at a closed meeting

- (b) to the extent specified by the council and subject to such other conditions as the council determines; or
- (c) that is already in the public domain; or
- (d) to an officer of the Department; or
- (e) to the Minister; or
- (f) to a legal practitioner for the purpose of obtaining legal advice; or
- (g) if the disclosure is required or permitted by law.

8.6 Councillors should:

- only release confidential information if they have authority to do so;
- only use confidential information for the purpose it is intended to be used.
- abide by the Shire of York's Record Keeping Policy

8.7 A Councillor making an enquiry on a matter being considered by the Shire's administration or the Council, in which that Councillor has a personal/financial interest shall seek the information only from the Chief Executive Officer and if required by the Chief Executive Officer, the request shall be in writing.

8.8 *Anonymous Communication*

A Councillor shall under no circumstances distribute anonymous documents or correspondence which contains offensive, derogatory, defamatory or false information and/or which may cause any reasonable person unwarranted offense. When received by them they shall cause such correspondence (which includes any printed or electronic communication) to be given immediately to the Chief Executive Officer or other appropriate authority or affected person, who will deal with such correspondence in an appropriate manner.

**9. Councillors Communications and Public Relations**

9.1 Unless on approved leave of absence or unavailable for other reasons, Councillors shall acknowledge receipt of all written, electronic and verbal enquiries as soon as practicable, or within 5 working days. An adequate response includes delegation to the CEO for comment, response and action directly to the enquirer.

**Deleted:** respond to

**Deleted:** any agreed response protocols

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9.2 *Shire President to Speak on Behalf of the Council*

In accordance with the Local Government Act 1995, the spokespersons for the Council are the Shire President and with the President's authorisation, the Chief Executive Officer, either of whom may make a statement on behalf of the Council.

9.3 The Shire President will only express the view or position of the Council, where the Council has formally determined a view or position. Where the Council has not determined the matter or has no clear view/position, the Shire President may express a view, providing he or she clearly prefaces such remarks as being their own personal views and not those of the Council.

#### 9.4 General Obligations

Councillors need to adequately communicate the attitudes and decisions of the Council. In doing so Councillors should acknowledge that:

- as a Councillor ~~there~~ is respect for the decision making processes of the Council which are based on a decision of the majority of the Council;
- information relating to decisions of the Council on approvals, permits licensing etc. ought be communicated in an official capacity by a designated employee of the Shire ;
- information concerning adopted policies, procedures and decisions of the Council is conveyed accurately; and
- information of a confidential nature shall not be communicated until it is no longer treated as confidential

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#### 9.5 Councillors shall ensure that they make themselves accessible to the Shire of York community through publication of at least one of the following. Selection of the following will be at the discretion of the Councillor:

- Private and/or Shire address or PO Box and Shire provided telephone/facsimile number;
- Business telephone number,
- Mobile telephone number
- Facsimile number, or
- Mail address

(Note: Any telephone/facsimile or mobile phone number provided by the Shire will automatically be made available to the public and will be widely published.) Councillor contact details will be published in a range of Council communications (e.g.: Council publications)

#### 9.6 Expression of Personal Views

Councillors will not adversely reflect on a Council decision. This shall not prejudice a Councillor's right to express a personal opinion on issues of public interest.

#### 9.7 Councillors are free to make their own personal position known about any matter, which is pertinent to the business of the Shire of York, including Council decisions provided that it cannot be construed to be a statement on behalf of the Council.

#### 9.8 Councillors will refrain from making personal statements to the media without clearly prefacing such remarks that they are personal views and not those of the Council.

#### 9.9 Comment During a Formal Public Consultation Period

Councillors will:

- refrain from making public comment expressing a personal opinion which is biased, or may be perceived as biased or prejudging a matter whilst the matter is being advertised for public comment and/or is yet to be considered and determined by the Council
- clearly preface any of their remarks as being their own personal views and not those of the Council or in a way that could possibly be construed to be on behalf of the Council; and
- encourage members of the public to participate in community engagement and consultation processes and to make a written submission to the Shire.

9.10 The Shire President and/or the Chief Executive Officer may take appropriate action (including issuing a statement to the media) to correct any misinformation or erroneous information on a matter which is in the public area.

9.11 *Defamation*

Councillors should note that:

- comments by them at meetings of the Council and/or Committees, Forums, Working or Advisory Groups of the Council are covered only by qualified privilege against defamation.
- a Councillor can only rely on the defence of qualified privilege whilst exercising the proper discharge of their duties, and doing so in the public interest.
- in order to maintain qualified privilege, a Councillor 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.

**10. Councillors Standard of Dress**

10.1 Councillors are expected to dress in a manner appropriate to their position, in particular, when attending meetings or representing the Shire in an official capacity.

**11. Implementation, Review, Compliance and Annual Reporting**

11.1 The Council will review the Code of Conduct after each Ordinary Council Election (i.e. every 2 years) or any other time as required and any amendments to the Code will be subsequently communicated to Councillors, Committee Members, employees and the community.

**12. Enforcement of the Code**

12.1 Councillors are required to make a declaration to comply with the Council's Code of Conduct upon being sworn in.

12.2 Any Councillor having concerns with regard to an actual, perceived, potential, intended or unintended breach of either the specific provisions or the spirit of the Code of Conduct, or any provisions of the Local Government Act, Regulations or Local Laws, should discuss those concerns with the Chief Executive Officer.

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- 12.4 Employees will be required to confirm that they understand and will abide by the Code of Conduct. Any breach of the Code of Conduct will be dealt with by the CEO in accordance with the organisation's human resources disciplinary processes.

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**Deleted:** the Local Law regulating Council meeting where the circumstances warrant a 'Motion of Censure' may be moved against the Councillor with the reasons for such an action recorded in the minutes of the meeting.

**Key Terms/Definitions**

Not applicable

**Policy Administration**

Responsible Directorate/Division: Chief Executive Officer

Author/Contact Officer Position: Chief Executive Officer Relevant

Delegation: Not Applicable

Relevant Legislation: Local Government Act 1995 (Section 5.103 – Codes of Conduct)  
Local Government Act 1995 (Section 5.59-5.90)  
Local Government (Administration) Regulations 1996 (Section 34B)  
Local Government (Rules of Conduct) Regulations 2007

Date Adopted: Adopted 16 July 2001  
Adopted 19 May 2003

Reviews/Amendments: Reviewed and Adopted 19 November 2007  
Reviewed and Adopted 18 October 2010  
Reviewed and Adopted 17 September 2012  
Reviewed and Adopted 28 January 2016  
Reviewed and Adopted 25 July 2016  
Reviewed 24 October 2016

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