



# SHIRE OF VICTORIA PLAINS

INTERIM EMPLOYEE CODE OF  
CONDUCT  
2021

**OBJECTIVE**

To provide guidance and management of the conduct of local government employees, including consultants and contractors.

**STATUTORY CONTEXT**

Local Government Act 1995 –

- S.51A – Code of Conduct for Employees
- s.5.94(a) – Public inspection of any Code of Conduct

Local Government (Administration) Regulations 1996 –

- Part 4A – Codes of Conduct for Local Government Employees:

**Division 1 – Terms used**

19AA. Terms used 25

**Division 2 – Content of codes of conduct**

19AB. Prohibited gifts

19AC. Recording, storing, disclosure and use of information relating to gifts

19AD. Conflicts of interest

19AE. Other matters codes of conduct must deal with

**CORPORATE CONTEXT**

None

**POLICY STATEMENT**

- a) Nil

**APPLICATION**

- 2. The Code of Conduct applies to –
  - a) all employees.

**NOTES**

The Code of Conduct applies to contractors and suppliers, and must be stipulated in the contract / tender / engagement of the contractor.

**HISTORY**

Office Use Only				
Responsible Officer	Governance Officer (with assistance from HR Advisor)			
Initial CEO implementation	Date	<i>Alfred</i>	SMT Meeting #	
Last reviewed	Date	N/A	SMT Meeting #	
Next review due	Date	30 April 2021		

## **Introduction – Code of Conduct**

The CEO of a local government, in accordance with Section 5.51A of the *Local Government Act 1995*, prepare and implement a Code of Conduct to be observed by local government employees of the local government. The Code of Conduct is to contain matters as prescribed by Regulations and can also make further provision for expectations of employees.

The Code of Conduct is a statement of guidance and specific requirements to be observed by employees of the Shire.

The Code of Conduct is to apply, insofar as it is applicable to each type of person, to every employee of the Shire. Any provision in this Code of Conduct is of effect only to the extent that it is not inconsistent with the Act and Regulations, and any other statutory power.

This Code of Conduct does not seek to replicate the role of or requirements for employees contained in other legislation, including but not limited to the *Local Government Act 1995* and the *Local Government (Administration) Regulations 1996*. The Guiding Statements of Responsibility section of the Code requires individuals to be aware of their obligations.

### **Definitions**

**Employee** means local government employee i.e.:

- (a) employed by a local government under section 5.36(1); or
- (b) engaged by a local government under a contract for services.

Employee does not include the CEO regarding:

r.19AB – Prohibited Gifts

r.19AC – Recording, storing, disclosure and use of information relating to gifts

## **1. Obligation to Observe Code of Conduct**

### **Employees**

The obligation for employees to observe a Code of Conduct arises from –

- the *Local Government Act 1995 s.5.51A*,
- the *Local Government (Administration) Regulations 1996 Part 4A*, and
- the terms and conditions of their employment with the Shire.

### **Breach of Code of Conduct**

The observance of the Shire's Code of Conduct is a key responsibility of any employee and any breach of those responsibilities could incur disciplinary action, including termination, via the management framework established in accordance with the CEO's responsibilities under Section 5.41 of the *Local Government Act 1995*. The CEO has appropriate Industrial Relations and Human Resources policies and procedures in place regarding the disciplinary process.

### **Breach of certain provisions – Role of Other Organisations**

Where a requirement in the Code of Conduct is prescribed in an Act or Regulations, any alleged breach of such misconduct may be investigated by another statutory body, including but not limited to –

- Department of Local Government, Sport and Cultural Industries,
- The Public Sector Commission;
- Corruption and Crime Commission.

This may also include breaches of the Criminal Code of WA and matters regarding fraud as per the Criminal Code and the Local Government Act.

## **Induction**

All local government employees must undergo an induction regarding the Code of Conduct.

## **2. Guiding statements of responsibility**

### **Principles**

- a) In acting in the capacity of an employee of the Shire, all persons shall observe the following principles –
  - Act with care and diligence;
  - Act with honesty and integrity;
  - Act lawfully;
  - Avoid damage to the reputation of the local government;
  - Be open and accountable;
  - Base decisions on relevant and factually correct information;
  - Treat others with respect and fairness;
  - Not be impaired by mind affecting substances.
  
- b) Additionally, all employees shall –
  - Provide relevant and factually correct information to decision-makers;
  - Fulfil their public and professional duties in a manner that is ethical, impartial, objective, responsible and in the best interests of the local government uninfluenced by fear or favour;
  - Act in accordance with their obligation of fidelity to the local government;
  - Not use or attempt to use their positions for personal benefit or the personal benefit of others, either by influencing others, the improper use of information gained in the performance of their duties, or otherwise;
  - Contribute to the good governance and strategic priorities of the Shire in accordance with the adopted vision, values, plans and budget as amended by Council from time to time ;
  - Understand and be mindful of their role, responsibilities, empowerment and limitations and act within those parameters:
    - *Local Government Act 1995* Sections 5.41;
    - *Local Government (Administration) Regulations 1996* Part 4A;
    - Employee Position Descriptions;
    - Shire Policies (Policies of Council);
    - CEO Executive Management Policies;
    - Delegations, Authorisations et al.
  - Refrain from making allegations which are improper or derogatory, unless true, in the public interest and in an appropriate forum;

- 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.

### **Achievement of priorities**

The local government framework of: the Council, the CEO and the staff body and any Committees that the Council resolves to constitute, is established to ensure the Shire's corporate goals are achieved, its strategies are implemented and its statutory obligations met. The achievement of these requirements, in accordance with adopted plans and strategies, requires teamwork, cooperation and respect for the unique role of each component of that framework.

## **3. Matters of conduct**

### **General – Applicable to Employees**

#### a) Lawful actions -

It is the responsibility of all employees to act in a manner that is lawful and in accordance with the Acts, Regulations, codes and other policies and procedures that are relevant to their particular position.

Any omission of a specific requirement from this Code of Conduct does not negate a person's responsibility to observe and comply with provisions that are applicable to their position.

#### b) Compliance with orders and policies

i) Employees will comply with any lawful and reasonable order given by any person having authority to make or give such an order.

Any doubts as to the propriety of any such order shall be taken up with the superior of the person who gave the order and, if resolution cannot be achieved, with the CEO.

ii) Employees will give effect to the lawful policies of the local government and/or have due regard for the lawful policies of the local government in decision making, whether or not they agree with or approve of them.

#### c) Conflicts of interest

An important consideration for any employee is to ensure that there is no actual (or perceived) conflict of interest between their personal interests and the impartial fulfilment of their statutory or contracted civic or professional duties –

i) Any Employee intending to undertake a dealing in land within the local government area that involves an application for planning consent or subdivision approval, or which may otherwise be in conflict with the Shire's functions, shall provide written notice of this intention to the CEO. The notice shall be provided as soon as practicable in all circumstances, but where an application is to be lodged with the local government or another statutory body for approval, then within 7 days of the

lodgement of that application. This requirement does not extend to the purchase of the principal place of residence.

- ii) Where a relative of an employee with that person's knowledge is intending to undertake a dealing in land within the local government area that involves an application for planning consent or subdivision approval, or which may otherwise be in conflict with the Shire's functions, written notice shall also be provided in accordance with section 3 c) i). Relative has the same meaning as in section 3 d).
- iii) Where it is the CEO or a relative of the CEO intending to undertake a dealing in land in accordance with this section, the written notification required is to be provided to the President.
- iv) When an application is made by an employee or a relative of any of those persons, the employee has no greater or lesser rights than those of any other member of the public in relation to access to information and access to Shire officers. Employees shall observe the requirements of seeking information through the usual local government process for a member of the public and booking appointments in their own time to meet with officers of the Shire.
- v) In receiving a written notice on a matter where a local government decision is required, the CEO or the President as the case may be, shall consult with the most senior officer having responsibility for planning matters who is not otherwise the dealing in land as to the requirement or otherwise of an assessment of the application by a suitably qualified independent person and as to the appropriateness of determining the application under delegation or referring it to Council for a decision.

Nothing in this section negates or replaces the disclosure requirements of any person in accordance with –

- Part 5 Division 6 of the *Local Government Act 1995* - Disclosure of Financial Interests;
- Part 4A and Part 6 of the *Local Government (Administration) Regulations 1996*; or
- any other disclosure requirements in this code.

It is not the intention of this requirement to disadvantage any person due to their election to office or their employment. The requirement is to ensure there is minimum potential for perceptions of or actual undue influence, advantage or disadvantage for an employee.

d) Gifts

**It is now at the discretion of the CEO how they choose to manage acceptance and disclosure of gifts by employees that are not prohibited – Effective 3 February 2021**

**DEFINITIONS**

***activity involving a local government discretion*** means any activity that cannot be undertaken without an authorisation from the local government or by way of a commercial dealing with the Shire.

***associated person*** means a person who –

- (a) is undertaking or seeking to undertake an activity involving a local government discretion;
- or

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

***gift (as per section 5.57 of the Local Government Act 1995)***

means —

(a) a conferral of a financial benefit (including a disposition of property) made by 1 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

(b) a travel contribution;

**travel** includes accommodation incidental to a journey;

**travel contribution** means a financial or other contribution made by 1 person to travel undertaken by another person.

This definition excludes —

Relative

As per the definition of a relative in this section below.

Entity

For the purposes of section 5.62(1B)(b) a gift is an excluded gift if the gift is made by any of the following entities —

- (a) WALGA;
- (b) Australian Local Government Association Limited (ABN 31 008 613 876);
- (c) Local Government Professionals Australia WA (ABN 91 208 607 072);
- (ca) LG Professionals Australia (ABN 85 004 221 818);
- (d) a department of the Public Service;
- (e) a government department of another State, a Territory or the Commonwealth;
- (f) a local government or regional local government.

***notifiable gift*** in relation to an employee means —

- a gift given to the employee that is worth between the relevant minimum threshold and \$300, or
- a gift that is one of 2 or more gifts given to the employee by the same person within a period of 12 months that are in total worth between the relevant minimum threshold and \$300.

***prohibited gift*** - means;

(a) A gift worth \$300 or more or a gift that is one of 2 or more gifts given to the employee by the same person within a period of 12 months that are in total worth \$300 or more.

(b) An employee cannot accept a prohibited gift from an associated person.

(c) The moment an employee is aware they have received a prohibitive gift, the employee must notify the CEO immediately. Failing to do so is a breach of this Code of Conduct.

The above does not include the CEO as separate legislation applies regarding this requirement **relative** - a parent, grandparent, brother, sister, uncle, aunt, nephew, niece or lineal descendent of the person or of the person's spouse or de facto partner, the person's spouse or de facto partner or the spouse or de facto partner of the other specified relatives, whether or not the relationship is traced through, or to, a person whose parents were not actually married to each other at the time of the person's birth or subsequently, and whether the relationship is a natural relationship or a relationship established by written law.

**token gift** is not defined in the Acts or Regulations, and for the purposes of this Code of Conduct is taken to mean a gift or multiple gifts that are less than the minimum **notifiable gift** threshold.

#### EVALUATION AND REGISTRATION OF GIFT

<b>Donor / Giver of gift</b>	<b>token gift</b>	<b>notifiable gift</b>	<b>prohibited gift</b>
<b>IS or is likely to be</b> undertaking an activity involving a local government discretion	Less than \$50	Between \$50 and \$300	More than \$300
Exclusions from requirement to notify	n/a	As per the exclusions listed in the definition for gift	Nil
Disclosure requirements	None	To be notified to CEO within 10 days. This will then be entered in an internal Gift Register by the Office Manager. This does not include the CEO as their gifts are registered on the publicly available register on the Shire's website	n/a

- i) The notification of the acceptance of a notifiable gift is required to be in writing and include details of –
- The name of the person who gave the gift;
  - The date on which the gift was accepted;
  - A description and the estimated value of the gift;
  - The nature of the relationship between the employee and the person who gave the gift.

#### 4. **Specific Directions**

*The following sections of the Code of Conduct will address specific matters of conduct and, as necessary, provide specific direction on actions that must be taken when and as a matter*



*arises by a person acting in a specific role.*

## **Employees**

- a) Disclosure of interest

**Interest** – Any 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.

This section does not apply to interests referred to in Section 5.60 of the *Local Government Act 1995* (in that a financial interest or a proximity interest must be disclosed in the manner described in Division 6 of Part 5 of that Act).

An employee is excused from a requirement under (i) or (ii) to disclose the nature of an interest if –

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

Any interest that arises for an employee on a matter before the Council or a Committee for determination is required to be disclosed in the manner specified in (i) or (ii). However, in recognition of the requirements discharged by employees during the course of their employment, including but not limited to the exercise of delegated authority, purchasing and tender evaluation, recruitment and selection, inspection and regulation, interests shall also be disclosed in other circumstances.

Disclosures are required to be made to the CEO in these circumstances –

- i) An employee who has an interest in any matter to be discussed at a Council or Committee meeting attended by the employee is required to disclose the nature of the interest –
  - in a written notice to the CEO before the meeting; and/or
  - at the meeting immediately before the matter is discussed.
- ii) An employee who has given, or will give, advice in respect of any matter to be discussed at a Council or Committee meeting not attended by the employee is required to disclose the nature of any interest the employee has in the matter –
  - in a written notice given to the CEO before the meeting; and/or
  - at the time the advice is given.
- iii) If in order to comply with the requirements of (i) or (ii) an employee makes a disclosure in a written notice given to the CEO before a meeting, then –
  - before that meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting;
  - 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.
- iv) If in order to comply with the requirements of the section –
  - the nature of an employee's interest in a matter is disclosed at a meeting; or

- a disclosure is made at a meeting if it is realised that an employee has an interest in a matter that they had not previously realised was for discussion at that meeting; or
  - the presiding member brings to the attention of those present at the meeting a written disclosure; then the nature of the interest is to be recorded in the minutes of the meeting.
- v) If during the course of discharging the requirements of their employment, an employee becomes aware of an interest or a potential interest, that interest or potential interest is to be disclosed in a prompt and full manner to the CEO and direction sought on the ability to continue to discharge the requirements of their employment in this case.
- vi) If an employee is intending to engage in private work outside of their employment with the Shire, either with a person or body with an interest in a proposed or current contract with the local government, or if the arrangement could, or could reasonably be perceived to, either immediately or in the future, result in an interest for the employee arising in their employment with the Shire, the intention to engage in this work shall be disclosed in a prompt and full manner to the CEO and direction sought on the appropriateness of the arrangement.
- b) Gifts
- i) Employees are required to refrain from accepting a prohibited gift from a person who –
- is undertaking or seeking to undertake an activity involving a local government discretion; or
  - it is reasonable to believe is intending to undertake an activity involving a local government discretion.
- ii) An employee is required to notify the CEO of the acceptance within 10 days of accepting the gift, when the gift is a notifiable gift from a person who –
- is undertaking or seeking to undertake an activity involving a local government discretion; or
  - it is reasonable to believe is intending to undertake an activity involving a local government discretion;

c) Confidential information

Confidential information must only be disclosed by an employee to another person to the extent that is necessary for the employee to do so in the performance of his or her duties.

Confidential information is that which is discussed during a meeting or that part of a meeting that is closed to members of the public in accordance with the provisions of the *Local Government Act 1995*, or that is in a document of the local government that is marked confidential, or any other information obtained during the performance of duties that could reasonably be considered to be confidential or of a sensitive nature.

Nothing in this section enables the disclosure of any confidential or sensitive information to any Council member or Committee member if the information does not directly relate to a confidential matter that is on the agenda for a meeting of the Council or the Committee, nor

to any employee who is not empowered or required by virtue of their position in the organisation to have that information.

The handling of confidential or sensitive information is a significant responsibility for employees with authorised access to such information. Any imparting of such information must be undertaken in strict accordance with the requirements of this code. Where there is any doubt as to the requirement to impart confidential or sensitive information, caution is urged as any unauthorised disclosure of such information is considered a serious breach of the employee's responsibilities.

d) Use of local government resources

An employee shall make proper use of the Shire's resources and shall not use them for personal or private purposes, unless the use is otherwise provided for in a contract of employment, or authorised by the CEO by some other means.

It is acknowledged that minor incidental (not primary and not majority) use of certain resources will be provided for in operational requirements. An example of this would be to conduct an internet search or check a personal email account on a Shire computer during a designated break. This type of minor incidental use is provided for in the Shire's email and internet practice, whereby it is stated these facilities are for almost exclusive business use.

e) Relationships with Council Members and Committee Members

Employees are employed by and responsible to the CEO. While their direction, supervision and management is the sole responsibility of the CEO in accordance with Section 5.41(g) of the *Local Government Act 1995*, it is also recognised that the CEO has a responsibility to the Council to ensure employees provide it with relevant and quality advice.

Employees shall therefore be aware of their duty to, via the CEO, provide relevant and quality advice to the Council and Committees. They shall also act courteously and with due respect during their dealings with the Council, any Committee, any Council member or Committee member. It is expected that employees will deal with each other, Council members and Committee members in an honest and respectful manner.

f) Administrative practices

As an overarching principle of employment, employees, in attending to their duties for the Shire in their required and normal hours of employment including approved overtime, shall give their full attention to their duties and requirements throughout that time to ensure that their work is carried out efficiently and effectively. Employees shall comply with any lawful and reasonable order given by any person having the authority to make or give such an order, noting the restrictions on elected members or Committee members in relation to directing local government employees. They will also give effect to the lawful decisions of the Council in a prompt and effective manner.