

CODE OF CONDUCT

(ELECTED MEMBERS)

Adopted by the Council 18 March 2014

Policy CP-041

Code of Conduct – Elected Members

Note: Any reference to Elected Members includes a reference to Committee Members

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1. PREAMBLE

The *Local Government Act 1995 (the Act)* requires every council to prepare or adopt a code of conduct to be observed by all council members, committee members and employees. The City of Melville has decided that it will have separate codes of conduct for Elected Members and employees.

It is the personal responsibility of Elected Members to comply with the standards in the code and regularly review their understanding of the code to ensure ongoing compliance.

This City of Melville Code of Conduct – Elected Members (the Code) provides a guide to good governance and a basis for the behaviours expected to be demonstrated by Elected Members of the City of Melville. It encourages a commitment to ethical and professional behaviour and outlines principles on which individual and collective local government responsibilities are based. It should be read in conjunction with, and does not replace, the obligations set out in the *Local Government Act 1995*, any other Act or Regulation and the City of Melville's Standing Orders.

The Code is complementary to the following four fundamental aims or objectives expressed in Section 1.3 (2) of the *Act* –

- (a) better decision-making by local governments;
- (b) greater community participation in the decisions and affairs of local governments;
- (c) greater accountability of local governments to their communities; and
- (d) more efficient and effective local government.

Elected Members by taking the declaration (oath) of office pursuant to Section 2.29 (1) of the Act takes upon themselves, amongst other things, to abide by, at all times, the provisions of the Rules of Conduct, and by implication to the provisions of this Code. By adopting this Code of Conduct the Elected Members bind themselves to abide by this code.

1.1 APPLICATION

This Code, including the Annexures, applies to Elected Members and Committee Members of the City of Melville. Elected Members and Committee Members will be alerted to the Code of Conduct in the induction process.

1.2 STATUTORY ENVIRONMENT

The Code is made under the statutory requirements of the *Local Government Act 1995* (S5.103 – Codes of Conduct).

The Code must be read in conjunction with the *Local Government (Rules of Conduct) Regulations 2007* which are made under section 5.104 of the Act, as well as the City's Local Law relating to Standing Orders.

1.3 GENERAL PRINCIPLES AND ETHICAL STANDARDS

1.3.1 The local community and the public in general are entitled to expect that the following general principles will be used to guide Elected Members in their behaviours –

- a) *act with reasonable care and diligence; and*
- b) *act with honesty and integrity; and*
- c) *act lawfully; and*
- d) *avoid damage to the reputation of the local government; and*
- e) *be open and accountable to the public; and*
- f) *base decisions on relevant and factually correct information; and*
- g) *treat others with respect and fairness; and*
- h) *not be impaired by mind affecting substances(regulation 3(1)(a)-(h) of the Local Government (Rules of Conduct) Regulations 2007);*

The general principles referred to above are for guidance of those governed by the Code. Whilst the general principles are for guidance and are not separate rules of conduct, any non-observance may be a breach of one or more of the rules of conduct, including regulation 7(1):

- (1) *A person who is a council member must not make improper use of the person's office as a council member*
 - (a) *to gain directly or indirectly an advantage for the person or any other person; or*
 - (b) *to cause detriment to the local government or any other person.*

(Local Government Act (Rules of Conduct) Regulations 2007 Regulation 7.(1))

1.3.2 Elected Members will ensure that they represent the interests of “*electors, ratepayers and residents of the district of the City of Melville.*” Refer *Local Government Act 1995 section 2.10(a)*

1.4 KEY PRINCIPLES SPECIFIC TO THE CITY

Within the context of the above general principles, the following key principles, underpinned by the values as set out in Annexure 5 also apply to City of Melville Elected Members:

1.4.1 Selflessness and Honesty

To act with care and diligence and make decisions that place the responsibility for the welfare, health and safety of the community before your own and/or sectional interests .

1.4.2 Justice

Treat others fairly and equitably and make decisions for the common good of the community, whilst avoiding discrimination, abuse or exploitation of others.

Decisions made must consider, but are not limited to the following:

- Intergenerational equity (*the provision of equity within and between generations*).
- Upholding and enhancing the honour, integrity and dignity of the City of Melville.
- Competitive neutrality principles (*The elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities. It requires that government businesses operating in a market in which there are actual or potential competitors should not enjoy any net competitive advantages simply as a consequence of their public ownership.*)
- Consider all relevant factual information with rigour, honesty, fairness and impartiality.

1.4.3 Accountability, Openness and Objectivity

- (a) To use the resources of the City of Melville in a responsible and accountable manner that ensures the efficient, effective and appropriate use of human, natural, financial, and physical resources, property and information;
- (b) To have a duty to be as open as possible about decisions and actions, giving reasons for decisions;
- (c) To make decisions solely on merit and in accordance with statutory obligations when carrying out public business;
- (d) To consider what is in the best interests of the electors, ratepayers and residents of the City of Melville as a whole.

1.4.4 Leadership

To promote and support the key principles through leadership which incorporates leading by example so as to maintain and strengthen the public's trust and confidence in the integrity of the City of Melville.

Community Leaders are Stewards (stewardship is generally recognised as the acceptance or assignment of responsibility to shepherd and safeguard the valuables of others). The Minister for Local Government stated that there are "Higher expectations now on Elected Members to be more strategic, more Board-like and less operational". (Western Councillor Issue 66 June/July 2013, page 3) Elected Members will:

- Seek to accomplish organisational objectives by helping each other get the desired results for our residents and stakeholders.
- Work as a collegiate body with Council and Administration - The council of a local government is an organised body of people performing certain common functions and sharing special privileges noting that the power of this collegiate body comes from the collective decisions made by the Council, rarely do individual Elected Members have any power under the Act to commit Council to any course of action.

- Not be operational, involved in administration, attempt to influence employees, and/or direct employees (*Local Government Act (Rules of Conduct) Regulations 2007 part 2*)
- Stay strategic and at a policy level (*Local Government Act 1995, section 2.7*).

1.4.5 Collegiate Body

The council of a local government is an organised body of people performing certain common functions and sharing special privileges. Accordingly:

- (a) The council of a local government is a collegiate body and a collegiate decision maker, with its members voluntarily elected by willing eligible electors from the community for whom they make decisions; and
- (b) The council's members are a group of colleagues; and
- (c) The council of a local government is also a cooperative unit of people linked in a common purpose – namely, the fulfilment of the council's role pursuant to section 2.7 of the Act.
- (d) Council members, as the members of a collegiate body and a team, are expected, where appropriate and in an appropriate forum, to appropriately challenge the views of their fellow councillors on a matter, until such time as the local government has made its decision on the matter; and
- (e) A council member, as a member of a collegiate decision-maker, the council, and as an obligation of the office of council member, has an obligation of fidelity (or loyalty) to his/her local government's decisions (particularly those made by its council), irrespective whether:
 - the decision was made at a regularly held meeting of the council or a relevant committee; or
 - the council member was present when the decision was made; or
 - the council member voted for or against the decision; or
 - the council member agreed or not with the decision or the reason or any of the reasons for the decision; or
 - the decision was made, under delegation, by his/her local government's CEO or another employee person.

1.4.6 Respect

To treat people with respect, courtesy and sensitivity and recognise their interests, rights, safety and welfare.

1.4.7 Social Responsibility and Duty of Care

To contribute to the well being of the individual and society by exercising due diligence and a duty of care to others and to uphold the rights of those they deal with, to recognise the special needs of minority groups whilst considering the societal and community benefit of the residents of the District when making decisions.

1.4.8 Economic Guardianship

To protect and responsibly manage the resources of the City of Melville to ensure they are applied in a sustainable way.

To minimise duplication of government services.

1.4.9 Safety and Security

Promote the safety, security and health of all who work for the City of Melville, reside in the City of Melville or visit the City of Melville.

The City of Melville has a statutory obligation under the *Occupational Health and Safety Act 1984* to 'provide and maintain a working environment in which the [City's] employees are not exposed to hazards. These provisions apply to physical and psychological health and wellbeing.

The City's Code of Conduct is therefore a key approach for achieving a safe, supportive and productive work environment; and complying with statutory requirements. This can only happen when everyone cooperates and agrees to suitable standards of conduct so as to ensure cooperative, professional and positive interactions that enhance the City of Melville as a whole:

1.4.10 Environment

Endeavour to avoid that which could harm or pollute the environment.
Council Policy

CP – 030 Environmental Policy states the City's environmental position.

2. CONDUCT OF ELECTED MEMBERS

2.1 PERSONAL BEHAVIOUR

Elected Members will:

- (a) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;
- (b) perform their duties impartially and in the best interests of the City of Melville uninfluenced by political persuasion, fear or favour;
- (c) act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the City of Melville and the community;

- (d) 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
- (e) always act in accordance with their obligation of fidelity to the City of Melville; and
- (f) act in observance of the General and Key Principles (Sections 1.3 and 1.4 of this Code).

2.2 HONESTY AND INTEGRITY

Elected Members will –

- (a) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards;
- (b) bring to the notice of the Mayor any dishonesty or possible dishonesty on the part of any other member, and in the case of employees, to the Chief Executive Officer.
- (c) be professional, frank, honest and respectful in their official dealing with each other.

2.3 PERFORMANCE OF DUTIES

Elected Members and Committee Members will at all times exercise reasonable care and diligence in the performance of their duties, being consistent in their decision making but treating all matters on individual merits. Elected 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.
(2.7, 2.8, 2.9 and 2.10 of the Local Government Act 1995)

The office of an elected member is not a discretionary one that can be relinquished when inconvenient and reclaimed when convenient to the holder. The office is carried with the individual all times.

2.4 COMPLIANCE WITH LAWFUL ORDERS

Elected Members and Committee Members will comply with any lawful order given by any person having authority to make or give such an order.

Elected Members and Committee Members will give effect to the lawful policies of the Local Government, whether or not they agree with or approve of them.

2.5 ADMINISTRATIVE AND MANAGEMENT PRACTICES

Elected Members and Committee Members will ensure compliance with proper and reasonable administrative practices and protocols of conduct, as well as professional and responsible management practices.

2.6 CORPORATE OBLIGATIONS

(1) *Standard of Dress*

Elected Members and Committee Members are expected to comply with neat and responsible dress standards at all times. Accordingly, Elected Members and Committee Members will dress in a manner appropriate to their position, in particular when attending meetings or representing the Local Government in an official capacity in which case they shall be dressed in business attire.

(2) *Communication and Public Relations*

- (a) As a representative of the community, Elected Members need to be not only responsive to community views, but to adequately communicate the attitudes and decisions of the Council. In doing so Elected Members should acknowledge that –
- (i) 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;
 - (ii) information of a confidential nature shall not be communicated until it is no longer treated as confidential;
 - (iii) information relating to decisions of the Council on approvals, permits and so on shall only be communicated in an official capacity by a designated officer of the Council;
 - (iv) information concerning adopted policies, procedures and decisions of the Council is conveyed accurately.
- (b) Committee Members accept and acknowledge it is their responsibility to observe any direction the Local Government may adopt in terms of advancing and promoting the objectives of the Committee to which they have been appointed.

2.7 APPOINTMENTS TO COMMITTEES

As part of their representative role Elected Members are often asked to represent the Council on external organisations. It is important that Elected Members –

- (a) clearly understand the basis of their appointment; and
- (b) provide regular reports on the activities of the organisation to which they have been appointed.
- (c) understand that in the event of a conflict arising between the City of Melville and the external organisation that:
 - i. The interest of the Elected Member rests with the City of Melville;*
 - ii. Consequent on the above, the Elected Members will not need to recuse themselves from any meeting of Council or a Committee of Council dealing with the issue of conflict.*
 - iii. The Elected Members would recuse themselves from the meetings of the external organisation as the choice of recusal should a conflict arise.*

3. GENERAL CONDUCT OBLIGATIONS

3.1 ETHICAL AND BEHAVIOURAL OBLIGATIONS

- (a) The additional ethical and behavioural obligations imposed by this code of conduct are based on the ethics principles which are contained in the Western Australian Public Sector Code of Ethics. These obligations are in addition to any statutory obligation.
- (b) The principles that must be met by additional obligations set out in this Code are as follows –
 - (i) **Integrity of local government**

It is vital that the public has confidence in a local government's ability to ensure the good rule and government of its area. Elected Members must conduct themselves in a way that promotes and maintains the public's trust and confidence in the integrity of the local government and the good rule and government of its area.
 - (ii) **Primacy of the public interest**

Elected Members are elected to act in the public interest and to make decisions solely in terms of the public interest. Elected Members must take steps to avoid, resolve or disclose conflicts of interest.
 - (iii) **Independence of action**

Elected Members must not place themselves under any financial obligation that may influence them in discharging of their duties and responsibilities as Elected Members of the City of Melville.
 - (iv) **Appropriate use of information**

Elected Members who in the course of carrying out their duties receive information that is not available to the general public must not misuse this information, particularly for personal gain.
 - (v) **Transparency and scrutiny**

It is vital that the public has confidence in the integrity of a local government's decision-making processes. To ensure transparency and public scrutiny of, and public confidence in those processes, Elected Members must disclose the nature and extent of their financial interests.
 - (vi) **Appropriate use of entitlements**

Elected Members must comply with the requirements about using entitlements provided for under the local government's policies.

3.2 OBLIGATIONS DURING MEETINGS

Elected Members must act in accordance with Council's Standing Orders Local Law during Council and committee meetings.

Elected Members must respect the chair, each other, employees and any members of the public present during Council and committee meetings or other formal proceedings of the Council.

3.3 FAIRNESS AND EQUITY

Elected Members have an obligation to consider issues consistently, promptly and fairly. This involves dealing with matters in accordance with established procedures, in a non-discriminatory manner.

Elected Members must take all relevant facts known to them or that they should be reasonably aware of, into consideration and have regard to the particular merits of each case.

3.4 QUASI JUDICIAL ROLE

When acting in a Quasi Judicial (Council Policy CP-052 Quasi Judicial role Elected Members must recognise that this is a decision making function and not an information gathering function, Elected Members will make each decision based on the relevant information before them.

When acting in a Quasi Judicial role, Elected Members will not gather information by liaising with applicants or opponents or conducting site visits, other than through an official site visit or briefing endorsed by the CEO or the Council. Elected Members will ensure that they abide by the City's adopted Policy on acting in the Quasi Judicial Role.

If an Elected Member considers that they do not have enough information to make an informed decision then they are required to ask for any further information that they may require. Additional information will be provided subject to its availability and the organisation's capability to provide the additional information.

3.5 BEHAVIOUR OF MEMBERS

- (a) All Elected Members should insist on the respect and dignity of their office in their dealings with each other, employees and the public. Elected Members should remember that they have no personal power to commit the Council to any particular policy or course of action or expenditure. That can only be done by resolution at a meeting of the Council or a committee with delegated authority.
- (b) Elected Members should act in good faith (ie. honestly, for the proper purpose, and without exceeding their powers) in the interests of the Council and the residents of the district.
- (c) Elected Members, not employees, bear the ultimate responsibility for decisions made by themselves and the City. Elected Members should ensure that the anonymity of individual employees is preserved and shall not comment publicly on the management or employees of the City of Melville.

Elected Members are not entitled to make public statements expressing their opinion on matters before the Council that would indicate a predetermined voting position. Statements on matters not before Council should clearly state that they represent the personal opinion of the Elected Member and are not made on behalf of the Council. No such statements should criticise the conduct of the Council, other Elected Members or employees of the Council, nor should it undermine any existing policy or

decision of the Council. Extreme caution should be exercised in expressing views on matters that may likely come before Council at some future stage as such statements may be impacted by the general principles of Administrative Law relating to Bias and Conflict of Interest. Elected Members should always be mindful of the provisions of the *Local Government Act 1995* as read with the Rules of Conduct Regulations that provide for decisions are made at Council or Committee meetings and based on relevant and factually correct Information (i.e. the latest and up to date information).

- (d) Elected Members should make no allegations which are improper or derogatory. In the performance of their official duties they should refrain from any form of conduct which may cause any reasonable person unwarranted offence or embarrassment.
- (e) The Mayor and CEO may deal with the media and make public statements on behalf of the Council. Where the views expressed by the Mayor are his own views, this must be clearly stated. No statements made in this capacity shall undermine the City of Melville or any existing policy or decision of the Council.
- (f) Generally -
 - (i) The Mayor is authorised to make statements accurately reporting decisions of Council meetings or Council Policy.
 - (ii) Committee Chairpersons are authorised to make statements accurately reporting decisions of their committees, and factual statements relating to decisions of the Council or its committees.
 - (iii) The Chief Executive Officer is authorised to make statements relating to any of the areas for which the Chief Executive Officer has statutory or operational responsibility.Otherwise the Chief Executive, Mayor, or any Elected Member may make specific statements on behalf of the Council only with the specific authority of Council.
- (g) Elected Members who have concerns regarding management matters should not raise them with any employee other than the Chief Executive Officer, and at all times their dealing should be through the Chief Executive Officer. Should an Elected Member have a concern and not be satisfied with the response of the Chief Executive Officer, other established council process should be used to address the concern. This will ensure Elected Members will be properly informed, particularly if any public explanation or comment is required. Statements that are contentious or may cause conflict should be discussed and clarified first with the Chief Executive Officer to ensure all facts on the matter are known before being raised.

3.6 HARASSMENT AND DISCRIMINATION

Elected Members and Committee Members shall not bully, harass, intimidate, discriminate against, or support others who bully, harass, intimidate and discriminate against colleagues, employees or members of the public. This includes, but is not limited to harassment and discrimination, on the grounds of sex, pregnancy, age, race (including their colour, nationality, descent, or ethnic background), religion, political affiliation, marital status, disability, sexual preference or transgender. The relevant prohibitions contained in the *Equal Opportunity Act 1994* apply in all dealings.

4. CONFLICT OF INTERESTS

4.1 CONFLICT OF INTEREST

Elected Members and Committee Members will ensure that there is no actual (or perceived) conflict of interest between their personal interests and the impartial fulfilment of their professional duties.

Elected Members and Committee Members will lodge written notice with the Chief Executive Officer advising a dealing in land within the local government area or which may otherwise be in conflict with the Council's functions (other than purchasing the principal place of residence).

Elected Members and Committee Members who exercise a recruitment or other discretionary function will make disclosure before dealing with relatives or close friends and will disqualify themselves from dealing with those persons.

4.2 FINANCIAL INTEREST

Elected Members [and Committee Members] must comply with the disclosure and other requirements relating to financial interests and proximity interests, as set out in Part 5, Division 6 of the *Local Government Act 1995*.

4.3 DISCLOSURE OF INTEREST

Definition :

In this clause, and in accordance with Regulation 11 of the Local Government (Rules of Conduct) Regulations 2007 –

“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.

- (2) A person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the member must 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.*
- (3) *Subregulation (2) does not apply to an interest referred to in section 5.60 of the Act.*
- (4) *Subregulation (2) does not apply if —*
 - (a) *a person who is a Council member fails to disclose an interest because the person did not know he or she had an interest in the matter; or*
 - (b) *a person who is a Council member fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.*

- (5) *If, under subregulation (2)(a), a person who is a Council member discloses an interest in a written notice given to the CEO before a meeting then —*
 - (a) *before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and*
 - (b) *at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before a matter to which the disclosure relates is discussed.*
- (6) *If —*
 - (a) *under subregulation (2)(b) or (4)(b) a person's interest in a matter is disclosed at a meeting; or*
 - (b) *under subregulation (5)(b) notice of a person's interest in a matter is brought to the attention of the persons present at a meeting, the nature of the interest is to be recorded in the minutes of the meeting.*

4.4 INDEPENDENT LEGAL ADVICE TO BE SOUGHT IF IN DOUBT

If an Elected Member is in doubt whether a conflict of interest exists, they should seek independent legal or other appropriate advice.

5. PERSONAL BENEFIT

5.1 USE OF CONFIDENTIAL INFORMATION

Elected Members and Committee Members will not use confidential information to gain improper advantage for themselves or for any other person or body, in ways which are inconsistent with their obligation to act impartially and in good faith, or to improperly cause harm or detriment to any person or organisation.

5.2 INTELLECTUAL PROPERTY

Any intellectual property arising from the performance by an Elected Member of his or her functions as an Elected Member must be assigned to the City of Melville on its creation, or as required by the City, unless otherwise expressly agreed by the parties.

5.3 IMPROPER OR UNDUE INFLUENCE

Elected Members 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.

5.4 POLITICAL SUPPORT

Elected Members should note that matters which amount to “political support” before council elections may give rise to a non-financial conflict of interest if matters, which effect any person or entity that gave such support, come before Council for discussion and /or decision. (Refer to *Local Government (Rules of Conduct) Regulations 2007* clause 11 (1))

5.5 PERSONAL DEALINGS WITH COUNCIL

Elected Members will inevitably deal personally with their council (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). They must not expect or request preferential treatment for themselves or their family because of their position. They must avoid any action that could lead members of the public to believe that they are seeking preferential treatment.

As stated in section 2.3 [PERFORMANCE OF DUTIES] above the office of an Elected Member is not a discretionary one that can be relinquished when inconvenient and reclaimed when convenient to the holder. The office is carried with the individual all times.

5.6 GIFTS

“12. Gifts

(1) *In this regulation —*

activity involving a local government discretion means an activity —

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

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

- (a) *a gift from a relative as defined in section 5.74(1) of the Act; or*
- (b) *a gift that must be disclosed under regulation 30B of the Local Government (Elections) Regulations 1997; or*
- (c) *a gift from a statutory authority, government instrumentality or non-profit association for professional training;*

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

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

- (a) a gift worth \$300 or more; or
 - (b) 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.”
- (2) A person who is a council member must not accept a prohibited gift from a person —
- (a) who is undertaking or seeking to undertake; or
 - (b) who it is reasonable to believe is intending to undertake, an activity involving a local government discretion.
- (3) A person who is a council member and who accepts a notifiable gift from a person —
- (a) who is undertaking or seeking to undertake; or
 - (b) 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).
- (4) Notification of the acceptance of a notifiable gift is to be in writing and is to include —
- (a) the name of the person who gave the gift; and
 - (b) the date on which the gift was accepted; and
 - (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; and
 - (e) 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.

- (5) The CEO is to maintain a register of notifiable gifts and record in it details of notifications given to comply with the requirement made under subclause (3) above.
(Refer to *Local Government (Rules of Conduct) Regulations 2007* clause 12)

This clause does not apply to gifts received from a relative (as defined in s. 5.74(1) of the *Local Government Act 1995*) or an electoral gift (to which other disclosure provisions apply).

This clause does not prevent the acceptance of a gift on behalf of the local government in the course of performing professional or ceremonial duties in circumstances where the gift is presented in whole to the Elected Member, entered into the Register of Notifiable Gifts and used or retained exclusively for the benefit of the local government.

6. ACCESS TO INFORMATION AND COUNCIL RESOURCES

6.1 Access to Information

Any information that is given to a particular Elected Member in the performance of their functions must also be available to any other Elected Member who requests it.

Elected Members who have an interest in a document of council, that relates to them personally, (as distinct from the exercise of their functions as an Elected Member), have the same rights of access as any member of the public.

Employees have an obligation to provide full and timely information to Elected Members about matters that they are dealing with before Council and that are relevant to them in the performance of their functions under the *Local Government Act 1995*.

Elected Members 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 in accordance with their statutory requirements.

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

6.2 Security of information

An Elected Member must take care to maintain the integrity and security of confidential documents or information in their possession, or for which they are responsible. Elected Members must not release information that they know, or should reasonably know, is confidential to the local government other than to authorities or persons with a right of access to such information. An Elected Member must not disclose any information discussed during a confidential session of a council meeting unless and until it ceases to be confidential.

An Elected Member must not use City of Melville information for personal purposes. Elected Members must use council information in a way that promotes and maintains the public's trust and confidence in the integrity of the local government. In using council information they must give primacy to public interests over private interests.

Elected Members in the course of their duties must not cause harm to the local government, another person or organisation, for instance by misrepresenting council policy or using City information improperly to gain advantage for someone.

Elected Members must ensure all e-mails form part of the document control system of the City of Melville. Copying emails and attachments would mean the City loses control of documentation and could mean the City may not comply with its statutory role to keep proper records. Elected Members must therefore use City of Melville e-mail addresses for all Elected Member and City of Melville related matters, and not transfer data to non-City of Melville email addresses and/or any form of storage devices.

6.3 Anonymous Communication

An Elected Member will under no circumstances distribute anonymous correspondence received by them other than that they shall cause such correspondence (which includes any printed or electronic communication) to be given immediately to the Manager Information & Technology who will deal with such correspondence in accordance with the policy of the City of Melville.

7 DEALING WITH COUNCIL PROPERTY

7.1 Use of Local Government Resources

Elected Members will:

- (a) be scrupulously honest in their use of the Local Government's resources and shall not misuse them or permit their misuse (or the appearance of misuse) by any other person or body;
- (b) use the Local Government resources entrusted to them effectively and economically in the course of their duties; and
- (c) not use the Local Government's resources (including the services of Council employees) for private purposes.

7.2 Travelling and Sustenance Expenses

Elected Members and Committee Members 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*.

7.3 Elected Member access to City buildings

As Elected Members of the Council, Elected Members are entitled to have access to the Council chamber, committee room, and public areas of the City's buildings during normal business hours and for meetings. Should Elected Members desire access to these facilities at other times, authority is required from the CEO in order that appropriate use may be determined and necessary arrangements can be made. Refer Council Policy CP – 004 Council Chamber, Committee Rooms, Conference Room and Member's Reception Lounge.

Elected Members must not enter employee-only areas of the City's buildings without the approval of the CEO.

Elected Members must ensure that when they are within an employee designated area they are cognisant of potential conflict or pecuniary interest matters and/or a perception that they may bring influence to bear on council employee decisions and should conduct themselves accordingly.

8 REPORTING BREACHES AND MISCONDUCT

8.1 Reporting breaches of the Code of Conduct

An Elected Member has an obligation to report suspected breaches of the code of conduct to the Chief Executive Officer or to the Mayor. If a suspected breach of the code of conduct is reported to the Mayor, the Mayor has an obligation to refer this to the Chief Executive Officer for investigation. Elected Members should refrain from making allegations at council meetings open to the public.

All investigations will be conducted with procedural fairness.

8.2 Investigation procedures – Elected Member and Chief Executive Officer conduct

Where an Elected Member believes that the Chief Executive Officer has failed to comply with the code, the Elected Member should report the matter to the Mayor who will report the matter to the Governance Committee.

Council's Governance Committee will be responsible for the investigation of allegations of breaches of the code of conduct by Elected Members and the CEO and must either:

- Investigate the alleged breach; or
- Engage an independent person to investigate the allegation.

If a breach of the Code is found then the Governance Committee must recommend to Council the sanction(s), if deemed necessary, for Council's consideration.

An investigation conducted by the Chief Executive Officer, or the Governance Committee will follow the rules of procedural fairness. The investigator must:

- inform the person/s against whose interests a decision may be made of any allegations against them and the substance of any adverse comment in respect of them;
- provide the person/s with a reasonable opportunity to put their case;
- hear all parties to a matter and consider submissions;
- make reasonable enquiries before making a decision;
- ensure that no person is involved in enquiries in which they have a direct interest;
- ensure that any decision is effectively communicated to the relevant interested parties.

8.3 Misconduct

The CEO has a statutory obligation to report to the Corruption and Crime Commission.

- (a) any allegation of misconduct; or
- (b) any situation that otherwise comes to his or her attention involving misconduct,
- (c) any situation that otherwise comes to his or her attention involving a breach of the *Local Government Act 1995*, Regulations and/or the Rules of conduct;

where the CEO considers on reasonable grounds that misconduct may have occurred.

Elected Members should be cognizant that the *Corruption and Crime Commission Act 2003* requires that Council members must be aware that matters of misconduct and/or corruption may be reported to the Corruption and Crime Commission (CCC) and protections are afforded under the CCC's legislation to persons who make such reports. It is an offence to:

- (a) victimise any person who has given evidence to or helps the CCC;
- (b) dismiss or prejudice any person for having appeared before or having given evidence to the CCC;
- (c) cause injury or detriment to any person for having appeared before or having given evidence to the CCC.

Note

The *Local Government (Rules of Conduct) Regulations 2007* have their own enforcement regime. A breach by an Elected Member of a Rule of Conduct may be reported to the City's Complaints Officer. If so, it will be dealt with under Part 5, Division 9 of the *Local Government Act 1995*.

8.4 Public Interest Disclosure

The City of Melville has implemented a public interest disclosure process to provide a confidential mechanism for investigating misconduct allegations or improper conduct and other 'public interest information' as defined in the *Public Interest Disclosure Act 2003*.

Elected Members will immediately report to the CEO or to the appointed public interest disclosure officer any instance of misconduct or improper conduct that they suspect may have occurred.

Note

The *Local Government (Rules of Conduct) Regulations 2007* have their own enforcement regime. A breach by an Elected Member of a Rule of Conduct may be reported to the City's Complaints Officer. If so, it will be dealt with under Part 5, Division 9 of the *Local Government Act 1995*.

ANNEXURE 1

RESPECTIVE RESPONSIBILITIES ROLE OF AN ELECTED MEMBER

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

The Role of Elected Members as set out in S 2.10 of the *Local Government Act 1995* follows:

"A Councillor —

- (a) Represents the interests of electors, ratepayers and residents of the district;*
- (b) provides leadership and guidance to the community in the district;*
- (c) facilitates communication between the community and the council;*
- (d) participates in the local government's decision-making processes at council and committee meetings; and*
- (e) performs such other functions as are given to a Councillor by this Act or any other written law."*

An Elected Member is part of the team in which the community has placed its trust to make decisions on its behalf and the community is therefore entitled to expect high standards of conduct from its elected representatives. In fulfilling the various roles, Elected Members activities will focus on:

- achieving a balance in the diversity of community views to develop an overall strategy for the future of the community;
- achieving sound financial management and accountability in relation to the Local Government's finances;
- ensuring that appropriate mechanisms are in place to deal with the prompt handling of residents' concerns;
- working with other governments and organisations to achieve benefits for the community at both a local and regional level;
- having an awareness of the statutory obligations imposed on Elected Members and on Local Governments.

In carrying out its functions a local government is to use its best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity.

ROLE OF MAYOR

In addition to performing the role of a councillor, the Mayor –

- (a) presides at meetings in accordance with the Act;
- (b) provides leadership and guidance to the community in the district;
- (c) carries out civic and ceremonial duties on behalf of the City of Melville
- (d) speaks on behalf of the City of Melville;
- (e) performs such other functions as are given to the Mayor or President by the Act or any other written law; and
- (f) liaises with the CEO on the City's affairs and the performance of its functions.

ROLE OF THE DEPUTY MAYOR

The deputy mayor performs the functions of the mayor when authorised to do so under section 5.34 of the *Local Government Act 1995*.

ROLE OF THE CEO

The role of employees is determined by the functions of the CEO as set out in S 5.41 of the *Local Government Act 1995*—

“The CEO’s functions are to —

- (a) advise the council in relation to the functions of a local government under this Act and other written laws;*
- (b) ensure that advice and information is available to the council so that informed decisions can be made;*
- (c) cause council decisions to be implemented;*
- (d) manage the day to day operations of the local government;*
- (e) liaise with the mayor or president on the local government’s affairs and the performance of the local government’s functions;*
- (f) speak on behalf of the local government if the mayor or president agrees;*
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to S 5.37(2) in relation to senior employees);*
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and*
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.”*

ROLE OF COUNCIL

The Role of the Council is in accordance with S 2.7 of the *Local Government Act 1995*—

“(1) The council —

- (a) directs and controls the local government’s affairs; and*
 - (b) is responsible for the performance of the local government’s functions.*
- (2) Without limiting subsection (1), the council is to —*
- (a) oversee the allocation of the local government’s finances and resources; and*
 - (b) determine the local government’s policies.”*

RELATIONSHIPS BETWEEN ELECTED MEMBERS AND OFFICERS

An effective Elected Member will work as part of the Council team with the Chief Executive Officer and other senior Officers. That teamwork will only occur if Elected Members and Officers 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, Elected Members need to observe their statutory obligations which include, but are not limited to, the following –

- (a) accept that their role is a leadership, not a management or administrative one;
- (b) acknowledge that they have no capacity to individually direct employees to carry out particular functions;
- (c) refrain from publicly criticising employees in a way that casts aspersions on their professional competence or credibility.

ANNEXURE TWO

Local Government (Rules of Conduct) Regulations 2007

Part 1 — General

1. Citation

These regulations are the *Local Government (Rules of Conduct) Regulations 2007*.

2. Commencement

These regulations come into operation as follows:

- (a) Regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the Regulations — on the day on which the *Local Government (Official Conduct) Amendment Act 2007* section 11 comes into operation.

3. General principles to guide the behaviour of council members

- (1) General principles to guide the behaviour of council members include that a person in his or her capacity as a council member should —
 - (a) act with reasonable care and diligence; and
 - (b) act with honesty and integrity; and
 - (c) act lawfully; and
 - (d) avoid damage to the reputation of the local government; and
 - (e) be open and accountable to the public; and
 - (f) base decisions on relevant and factually correct information; and
 - (g) treat others with respect and fairness; and
 - (h) not be impaired by mind affecting substances.

- (2) The general principles referred to in subregulation (1) are for guidance of council members but it is not a rule of conduct that the principles be observed.

4. Contravention of certain local laws

- (1) In this regulation —
local law as to conduct means a local law relating to conduct of people at council or committee meetings.
- (2) The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Local Government Act (the Act).

Part 2 — Rules of conduct

5. Rules of conduct

- (1) This Part contains the rules of conduct referred to in section 5.104(1) of the Act.
- (2) The rules of conduct apply to a council member whether or not acting as a committee member.

6. Use of information

- (1) In this regulation —
- closed meeting** means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;
- confidential document** means a document marked by the CEO to clearly show that the information in the document is not to be disclosed;
- non-confidential document** means a document that is not a confidential document.
- (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; or
 - (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.

7. Securing personal advantage or disadvantaging others

- (1) A person who is a council member must not make improper use of the person's office as a council member —
- (a) to gain directly or indirectly an advantage for the person or any other person; or
 - (b) to cause detriment to the local government or any other person.
- (2) Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or *The Criminal Code* section 83.

8. Misuse of local government resources

- A person who is a council member must not either directly or indirectly use the resources of a local government —
- (a) for the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the *Electoral Act 1907* or the *Commonwealth Electoral Act 1918*; or
 - (b) for any other purpose, unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose.

9. Prohibition against involvement in administration

- (1) 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.
- (2) Subregulation (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

- (1) A person who is a council member must not —
 - (a) 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
 - (b) 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.
- (2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.
- (3) 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 —
 - (a) make a statement that a local government employee is incompetent or dishonest; or
 - (b) use offensive or objectionable expressions in reference to a local government employee.
- (4) Subregulation (3)(a) does not apply to conduct that is unlawful under *The Criminal Code* Chapter XXXV.

11. Disclosure of interest

- (1) 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.
- (2) A person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the member must 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.
- (3) Subregulation (2) does not apply to an interest referred to in section 5.60 of the Act.
- (4) Subregulation (2) does not apply if —
 - (a) a person who is a council member fails to disclose an interest because the person did not know he or she had an interest in the matter; or
 - (b) a person who is a council member fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.

- (5) If, under subregulation (2)(a), a person who is a council member discloses an interest in a written notice given to the CEO before a meeting then —
 - (a) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
 - (b) at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before a matter to which the disclosure relates is discussed.
- (6) If —
 - (a) under subregulation (2)(b) or (4)(b) a person's interest in a matter is disclosed at a meeting; or
 - (b) under subregulation (5)(b) notice of a person's interest in a matter is brought to the attention of the persons present at a meeting, the nature of the interest is to be recorded in the minutes of the meeting.

12. Gifts

- (1) In this regulation —

activity involving a local government discretion means an activity —

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

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

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

 - (a) a gift worth between \$50 and \$300; or
 - (b) 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 —

 - (a) a gift worth \$300 or more; or
 - (b) 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.
- (2) A person who is a council member must not accept a prohibited gift from a person —
 - (a) who is undertaking or seeking to undertake; or
 - (b) who it is reasonable to believe is intending to undertake, an activity involving a local government discretion.
- (3) A person who is a council member and who accepts a notifiable gift from a person —
 - (a) who is undertaking or seeking to undertake; or
 - (b) 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).

- (4) Notification of the acceptance of a notifiable gift is to be in writing and is to include —
- (a) the name of the person who gave the gift; and
 - (b) the date on which the gift was accepted; and
 - (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; and
 - (e) 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.
- (5) The CEO must maintain a register of gifts in which details of notices received under subregulation (4) are recorded.

ANNEXURE 3

VALUES OF THE CITY OF MELVILLE

The City of Melville has identified a set of basic values. Although these are current, the City may add new values or review the present values to ensure that they reflect the underlying principles of good governance and those of the Public Sector Standards.

Relationships	teamwork, flexibility, empathy, integrity, openness, ethical, trust, listening, support, honesty
Excellence	achievement, results, governance, innovation, accountability, leadership, customer service
Vibrancy	excitement, growth, opportunities, learning, creativity, fun
Wellbeing	safe workplace & community, sustainability, work/life balance

Elected Members, Committee Members and employees are expected to apply the current values in all their activities associated with the business of the City.