

CODE OF CONDUCT

For Council Members, Committee Members (Councilors)

and

Staff Members and Contractors (Employees)

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1 Preamble

The Local Government Act 1995 requires every council to adopt a code of conduct for observance by all Councillors, Committees, Employees and delegates representing the Council. It is the personal responsibility of Council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind.

This Code is complementary to the principles adopted in the Local Government Act 1995 which incorporates four fundamentals that aim to result in:

This Code is complementary to the principles adopted in the Local Government Act 1995 which incorporates four fundamentals that aim to result in:

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

The Code provides a guide and a basis of expectations for Councillors and Employees. It encourages a commitment to ethical and professional behaviour and outlines principles on which individual and collective Regional Council responsibilities may be 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 Council's Standing Orders.

The parties to this code agree to abide by its provisions at all times having regard to the declaration of office and Council policy.

1.1 Application

This Code applies to Councillors, all Committees whether or not Councillors or Employees, and Employees of the Pilbara Regional Council. Annexure 1 outlines the official roles and responsibilities of Councillors and Employees and the relationship between the two. Council contractors and volunteers are also required to observe the Council's code of conduct insofar as the provisions relate to their area of operation. Councillors will be alerted to the Code of Conduct in the induction process.

Employees will be bound by the Code of Conduct being incorporated in their employment contract. Contractors will be bound by the Code of Conduct being incorporated in their agreement with the Council. Volunteers will be informed during an induction process.

1.2 Application

The Code of Conduct reflects statutory requirements of the Local Government Act 1995 (S 5.103 – Codes of Conduct) and Local Government (Administration) Regulations 1996 (Regs 34B and 34C). This Code must be read with the Rules of Conduct, which are made under the Local Government (Rules of Conduct) Regulations 2007, and which apply to all Councillors.

1.3 General Principles and Ethical Standards

The local community and the public in general are entitled to expect that the following general principles should be used to guide Councillors and Employees of the Pilbara Regional Council in their behaviours:

- act with reasonable care and diligence;
- act with honesty and integrity;
- act lawfully;

- avoid damage to the reputation of the Pilbara Regional Council;
- be open and accountable to the public;
- base decisions on relevant and factually correct information;
- treat others with respect and fairness;
- not be impaired by mind affecting substances such as drugs and alcohol; and
- ensure that decision making takes into account the interests of the all of the Pilbara Regional Councils four member Councils ratepayers and residents as a whole is paramount.

1.4 Key Principles

Within the context of these general principles the key principles which also apply to the Pilbara Regional Council, underpinned by the values as set out in Annexure 2 attached hereto, are:

Selflessness and Honesty

To act with care and diligence and make decisions that places the responsibility for the welfare, health and safety of the Pilbara community before the responsibility of yourself and to sectional or private interests.

Justice

To treat others fairly and equitably and to make decisions for the common good of both individuals and society; and avoid discrimination, abuse or exploitation of others. Decisions made must consider, but are not limited to the following:

- Intergenerational equity, Intergenerational equity means the provision of equity within and between generations.
- Upholding and enhancing the honour, integrity and dignity of the Council.
- Competitive neutrality principles.

Competitive neutrality is 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 information with honesty, fairness and impartiality.

Accountability, Openness and Objectivity

- a. To use the resources of the Council 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 best for the residents of the Pilbara Regional Council as a whole.

Respect

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

Social Responsibility and Duty of Care

To contribute to the wellbeing 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, and to consider the societal and community benefit when making decisions.

Economic Guardianship

To protect and responsibly manage the resources of the Pilbara Regional Council to ensure they are applied in a sustainable way and to minimise duplication of government services.

Safety and Security

Promote the safety, security and health of all who work for the Pilbara Regional Council; reside in the four councils represented by the Pilbara Regional Council.

Environment

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

2 Conduct of Councillors and Employees

2.1 Personal Behaviour

Councillors and Employees 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 Regional Council uninfluenced by 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 Regional Council and the communities of the Pilbara;
- 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 Regional Council.

2.2 Honestly and Integrity

Councillors and Employees 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 Chairperson any dishonesty or possible dishonesty on the part of any other member, and in the case of an Employee to the Chief Executive Officer; and
- c. be frank and honest in their official dealing with each other.

2.3 Performance of Duties

Employees will:

While on duty, give their whole time and attention to the Regional Council's business and ensure that their work is carried out efficiently, economically and effectively, and that their standard of work reflects favourably both on them and on the Regional Council.

Councillors will:

Be as informed as possible about the functions of the Council, and treat all members of the Pilbara communities honestly and fairly.

Councillors and Employees 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.

2.4 Compliance with Lawful Orders

Councillors and Employees will:

- a. Comply with any lawful order given by any person having authority to make or give such an order, with any doubts as to the propriety of any such order being taken up with the superior of the person who gave the order and, if resolution cannot be achieved, with the Chief Executive Officer or the Chairperson in the case of Employees and the Chairperson in the case of Councillors; and
- b. Give effect to the lawful policies of the Regional Council, whether or not they agree with or approve of them.

2.5 Compliance with Lawful Orders

Councillors and Employees will:

- Ensure compliance with proper and reasonable administrative practices and conduct, and professional and responsible management practices.

2.6 Corporate Obligations

Councillors and Employees will:

- Standard of Dress
 - a. Are expected to comply with neat and responsible dress standards at all times. Accordingly:
 - Councillors will dress in a manner appropriate to their position, in particular when attending meetings or representing the Regional Council in an official capacity in which case they shall be dressed in business attire.
 - The Chief Executive Officer reserves the right to adopt policies relating to corporate dress and to raise the issue of dress with individual Employees. Employees should dress with modesty and tidiness.
- Communication and Public Relations
 - a. All aspects of communication by Employees (including verbal, written or personal), involving the Regional Council's activities should reflect the status and objectives of this Regional Council. Communications should be accurate, polite and professional; and
 - b. As a representative of the community, Councillors need to be not only responsive to community views, but to adequately communicate the attitudes and decisions of the Council. In doing so Councillors should acknowledge that:
 - as a member of the Council there is respect for the decision making processes of the Council which are based on a decision of the majority of the Council;

- information of a confidential nature shall not be communicated until it is no longer treated as confidential; and
 - information concerning adopted policies, procedures and decisions
- Committee Members accept and acknowledge it is their responsibility to observe any direction the Regional Council 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 Councillors are often asked to represent the Council on external organisations. It is important that Councillors:
 - clearly understand the basis of their appointment;
 - provide regular reports on the activities of the organisation to which they have been appointed; and
 - understand that in the event of a conflict arising between the Pilbara Regional Council and the external organisation that:
 - The interest of the Councillor rests with the Pilbara Regional Council;
 - Consequent on the above, the Councillors will not need to excuse themselves from any meeting of Council or a Committee of Council dealing with the issue of conflict.
 - The Councillors would excuse themselves from the meetings of the external organisation should a conflict arise.
- Officials and contractors will be bound by the same provisions of this Clause should they represent the Pilbara Regional Council on the boards or committees external organisations.

3 General Conduct Obligations

3.1 Ethical and Behavioural Obligations

- 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.
- The principles that must be met by additional obligations set out in this code are as follows:
 - Integrity of Regional Council - It is vital that the public has confidence in the Regional Council's ability to ensure the good rule and government of its area. Councillors and Employees must conduct themselves in a way that promotes and maintains the public's trust and confidence in the integrity of the Regional Council and the good rule and government of its area.
 - Primacy of the public interest - Councillors are elected to act in the public interest and to make decisions solely in terms of the public interest. Councillors must take steps to avoid, resolve or disclose conflicts of interest.
 - Independence of action - Councillors and Employees must not place themselves under any financial obligation that may influence them in discharging of their duties and responsibilities as Councillors and Employees of the Council.
 - Appropriate use of information - Councillors and Employees 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.
 - 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, Councillors and Employees must disclose their financial interests.
 - Appropriate use of entitlements - Councillors and Employees must comply with the requirements about using

3.2 Obligations during Meetings

Councillors and Employees will:

- a. Act in accordance with Council's Standing Orders during Council and Committee Meetings; and
- b. Respect the Chair, each other, Employees and any member of the public present during Council and Committee meetings or other formal proceedings of the Council.

3.3 Fairness and Equity

Councillors and Employees:

- c. 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; and
- d. 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 role Councillors and Employees must recognise that this is a decision making function and not an information gathering function. Councillors and Employees will make each decision based on the relevant information before them and other relevant decision makers.

When acting in a Quasi Judicial role, Councillors and Employees 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. Councillors and Employees will ensure that they abide by the Council's adopted Policy on acting in the Quasi Judicial Role.

If a Councillor 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 Quasi-Judicial Role

Councillors:

- a. Should insist on the respect and dignity of their office in their dealings with each other, management and the public.
- b. 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 Committee with delegated authority.
- c. Should act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the council and the community.
- d. Bear the ultimate responsibility for decisions made by themselves and by Employees.
- e. Should ensure that the anonymity of individual Employees is preserved and should not comment publicly on the management or Employees of the Council.
- f. Are not entitled to make public statements expressing their opinion on matters before the Council. Statements on matters not before Council should clearly state that they represent the personal opinion of the Councillor and are not made on behalf of the Council. No such statements should criticise the conduct of the Council, other Councillors or Employees of the Council nor should it undermine any existing policy or decision of the Council.
- g. 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.
- h. The Chairperson and CEO may deal with the news media and make public statements relevant to the non-statutory role as a community leader, only where it is clearly stated that the views expressed are the

Chairperson's own and are not made on behalf of the Council. No statements made in this capacity shall undermine any existing policy or decision of the Council.

- i. The Chief Executive Officer should not comment publicly on the performance of the Council or Councillors.
- j. Generally -
 - a. The Chairperson is authorised to make statements accurately reporting decisions of Council meetings or Council Policy.
 - b. 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. 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.
 - c. 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 Officer, Chairperson, or any Councillor may make specific statements on behalf of the Council only with the specific authority of Council.

- Councillors who have concerns regarding management matters should not raise them with any Employee other than the CEO, and at all times their dealing should be through the CEO.
- Should a Councillor have a concern and not be satisfied with the response of the CEO then other established council processes should be used to address the concern.
- That way Councillors will be properly informed, particularly if any public explanation or comment is required.
- Statements that are contentious should be raised only after consultation with the CEO.

3.6 Harassment and Discrimination

Councillors and Employees:

- Shall not harass, discriminate against, or support others who harass and discriminate against colleagues 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, ethnic or background), religion, political affiliation, marital status, disability, sexual preference or transgender.

4 Conduct of Councillors and Employees

4.1 Conflict of Interest

Councillors and Employees:

- a. Will ensure that there is no actual (or perceived) conflict of interest between their personal interests and the impartial fulfilment of their professional duties.
- b. Those 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.

Employees:

- a. Will not engage in private work with or for any person or body with an interest in a proposed or current contract with the Regional Council, without first making disclosure to the Chief Executive Officer. In this respect, it does not matter whether advantage is in fact obtained, as any appearance that private dealings could conflict with performance of duties must be scrupulously avoided.
- b. Will refrain from partisan political activities which could cast doubt on their neutrality and impartiality in acting in their professional capacity. An individual's rights to maintain their own political convictions are not impinged upon by this clause. It is recognised that such convictions cannot be a basis for discrimination and this is supported by anti- discriminatory legislation.

4.2 Financial Interest

Councillors and Employees:

- Who have a Financial Interest in any matter to be discussed at a Council or Committee Meeting, that will be attended by the member, must disclose the nature of the interest:
 - a. In a written notice given to the Chief Executive Officer or Chairperson before the Meeting or;
 - b. At the Meeting, immediately before the matter is discussed.
- Who makes a disclosure in respect to an interest, must not:
 - Preside at the part of the Meeting, relating to the matter or;
 - Participate in, or be present during any discussion or decision-making procedure relative to the matter, unless to the extent that the disclosing member is allowed to do so under Section 5.68 or Section 5.69 of the Local Government Act 1995.

4.3 Disclosure of Interest – Impartiality (Councillors and Employees)

Definition:

In this clause, and in accordance with Regulation 34C of the Local Government (Administration) Regulations 1996:

“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.

- a. A person who is a Councillor or an Employee and who has an interest in any matter to be discussed at a council or committee meeting attended by the person 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.
- b. A person who is an Employee and who has given, or will give, advice in respect of any matter to be discussed at a council or committee meeting not attended by the person is required to disclose the nature of any interest the person has in the matter:
 - in a written notice given to the CEO before the meeting; or
 - at the time the advice is given.
- c. A requirement described under items (a) and (b) exclude an interest referred to in s. 5.60 of the Local Government Act 1995.
- d. A person who is an Councillor or an Employee is excused from a requirement made under items (a) or (b) to disclose the nature of an interest if –
 - the person's failure to disclose occurs because the person did not know he or she had an interest in the matter; or
 - the person's failure to disclose occurs because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person discloses the nature of the interest as soon as possible after becoming aware of the discussion of a matter of that kind.

- If a person who is a Councillor or an Employee makes a disclosure in a written notice given to the CEO before a meeting to comply with requirements of items (a) or (b), then:
 - before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
 - 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.

- If:
 - a. to comply with a requirement made under item (a), the nature of a person's interest in a matter is disclosed at a meeting; or
 - b. a disclosure is made as described in item (d) (ii) at a meeting; or
 - c. to comply with a requirement made under item (e) (ii), a notice disclosing the nature of a person's interest in a matter is brought to the attention of the persons present at a meeting, the nature of the interest is to be recorded in the minutes of the meeting.

The following sample disclosure is provided as guide to Councillors and Employees wishing to make an interest disclosure of an impartiality nature, ie.

"With regard to(the matter under discussion)..... , I disclose that I have an association with(applicant or person/organisation under discussion) As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will set aside this association, consider the matter on its merits and vote accordingly."

- Independent Legal Advice to be sought if in doubt

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

5 Personal Benefit

5.1 Financial Interest

Councillors and Employees:

- a. 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

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

5.3 Improper or Undue Influence

Councillors and Employees will:

- Not take advantage of their position to improperly influence other Councillors 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

Councillors should note that matters which amount to “political support” before Council may give rise to a non-financial conflict of interest.

5.5 Gifts

Definitions:

In this clause, and in accordance with Regulation 34B of the Local Government (Administration) Regulations 1996:

“activity involving a local government discretion” means an activity –

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

“gift” has the meaning given to that term in S 5.82(4) except that it does not include –

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

“notifiable gift”, in relation to a person who is an employee, means –

- a gift worth between \$50 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 6 months that are in total worth between \$50 and \$300;

“prohibited gift”, in relation to a person who is an Employee, means –

- 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 6 months that are in total worth \$300 or more.

- A person who is an Employee is to refrain from accepting a prohibited gift from 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.
- A person who is an Employee and who accepts 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, notify the CEO, in accordance with item (c) and within 10 days of accepting the gift, of the acceptance.
- The notification of the acceptance of a notifiable gift must be in writing and 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 an Employee 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) –
 - a description; and
 - the estimated value; and
 - the date of acceptance, of each other gift accepted within the 6 month period.
- The CEO is to maintain a register of notifiable gifts and record in it details of notifications given to comply with a requirement made under item (c).
 - This clause does not apply to gifts received from a relative (as defined in s. 5.74(1) of the Local Government Act) 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 CEO, 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 Councillor in the performance of their civic duties must also be available to any other Councillor who requests it.

Councillors who have a personal (as distinct from civic) interest in a document of Council have the same rights of access as any member of the public.

Employees of Council have an obligation to provide, within reason, full and timely information to Councillors about matters that they are dealing with.

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 in accordance with council’s charter.

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

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.

6.2 Security of Information

Councillors must:

- Take care to maintain the integrity and security of confidential documents or information in their possession, or for which they are responsible;
- 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;
- Not disclose any information discussed during a confidential session of a Council meeting;
- Not use Council information for personal purposes;
- 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;

- Not cause harm to the local government, another person or organisation, for instance by misrepresenting Council policy or using Council information improperly to gain advantage for someone; and
- In communicating with the public, make clear that the position they state on an issue is a personal view rather than the Council's official position, unless they are communicating an adopted policy or resolution of the Council.

6.3 Anonymous Communication

Councillor or Employee 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 Chief Executive Officer who will deal with such correspondence in accordance with the policy of the Council.

7 Dealing with Council Property

7.1 Use of the Regional Council Resources

Councillors and Employees will:

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

7.2 Travelling and Sustenance Expenses

Councillors 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 Regional Council in accordance with Council policy and the provisions of the Local Government Act 1995.

8 Reporting Breaches and Misconduct

8.1 Reporting Breaches of the Code of Conduct

A Councillor or Employee has an obligation to report suspected breaches of the code of conduct to the Chief Executive Officer or to The Chairperson. If a suspected breach of the code of conduct is reported to The Chairperson, The Chairperson has an obligation to refer this to the Chief Executive Officer for investigation. Councillors should refrain from making allegations at open Council meetings.

8.2 Investigation Procedures – Employees' Conduct (Excluding the Chief Executive Officer)

The Chief Executive Officer will investigate breaches of the code of conduct regarding Employees of Council and others engaged by the Council and will facilitate a report to the Council.

Each complaint will be dealt with quickly and fairly in accordance with the principles of procedural fairness and in accordance with the Investigative Procedure of the Pilbara Regional Council.

8.3 Investigation Procedures – Councillor and Chief Executive Officer Conduct

Where a Councillor believes that the Chief Executive Officer has failed to comply with the code, the Councillor should report the matter to the Chairperson who will report the matter to the Council.

Council will be responsible for the investigation of allegations of breaches of the code of conduct by Councillors and the CEO and must either:

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

An investigation conducted by the Chief Executive Officer, or the Council 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.

8.4 Misconduct

The Chief Executive Officer has a statutory obligation to report, to the Corruption and Crime Commission:

- any allegation of misconduct; or
- any situation that otherwise comes to his or her attention involving misconduct, where the Chief Executive Officer considers on reasonable grounds that misconduct may have occurred.

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

Councillors and Employees must be aware that matters of misconduct and/or corruption may be reported to the Corruption and Crime Commission (CCC) and those protections are afforded to persons who make such reports. It is an offence to:

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

8.5 Public Interest Disclosure Act 2003

Councillors and Employees must:

- Be aware of the Public Interest Disclosure Act 2003, which provides people who make disclosures of public interest information with certain immunities, protections and remedies and imposes certain responsibilities.

Annexure 1 - Respective Responsibilities

1. Role of a Councillor

The primary role of a Councillor is to represent the Pilbara Region

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

"Councillors:

- Represents the interests of electors, ratepayers and residents of the district;
- provides leadership and guidance to the community in the district;

- facilitates communication between the community and the council;
- participates in the local government's decision-making processes at council and committee meetings; and
- performs such other functions as are given to a Councillor by this Act or any other written law."

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

- achieving a balance in the diversity of community views to develop an overall regional strategy for the future of the Pilbara;
- 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 stakeholders' concerns;
- working with other governments and organisations to achieve benefits for the Pilbara at a regional level;
- having an awareness of the statutory obligations imposed on Councillors 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 integration of environmental protection, social advancement and economic prosperity.

2. Role of the Chairperson

In addition to performing the role of a Councillor, The Chairperson –

- Presides at meetings in accordance with the Act;
- Provides leadership and guidance to the Pilbara region;
- Carries out civic and ceremonial duties on behalf of the Council;
- Speaks on behalf of the Council;
- Performs such other functions as are given to The Chairperson or president by the Act or any other written law; and
- Liaises with the Chief Executive Officer on the Council's affairs and the performance of its functions.

3. Role of the Deputy Chairperson

The Deputy Chairperson performs the functions of the Chairperson or president when authorised to do so under section 5.34 of the Local Government Act 1995.

4. Role of the Chief Executive Officer and Employees

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

"The Chief Executive Officer's functions are to:

- Advise the council in relation to the functions of a local government under this Act and other written laws;
- Ensure that advice and information is available to the council so that informed decisions can be made;
- Cause council decisions to be implemented;
- Manage the day to day operations of the local government;
- Liaise with the Chairperson or president on the local government's affairs and the performance of the local government's functions;
- Speak on behalf of the local government if the Chairperson or president agrees;
- Be responsible for the employment, management supervision, direction and dismissal of other Employees or contractors;
- Ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and
- 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."

Employees of council have an obligation to:

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

5. Role of Council

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

The Council:

- directs and controls the local government's affairs; and
- is responsible for the performance of the local government's functions.

Without limiting subsection (1), the council is to:

- oversee the allocation of the local government's finances and resources; and
- determine the local government's policies."

6. Relationship between Councillors and Employees

An effective Councillor will work as part of the Council team with the Chief Executive Officer and other Employees. That teamwork will only occur if Councillors and Employees have a mutual respect and cooperate with each other to achieve the Council's corporate goals and implement the Council's strategies. To achieve that position, Councillors need to observe their statutory obligations which include, but are not limited to, the following:

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

Annexure 2 – Purpose and Values of the Pilbara Regional Council

1. Our Purpose:

A Pilbara Regional Government that delivers a voice and attracts a financial return commensurate with the Region's contribution to the Australian economy.

2. How we work with the Pilbara Local Governments:

The PRC governance model recognises that each member council brings specific expertise to the table, and that there is already a spirit of collaboration in the Pilbara.

3. Our Values:

Collaboration: We value the spirit of collaboration that exists in the Pilbara.

Effectiveness: We have a 'can-do-attitude' and our activities provide measurable benefits to our members and Pilbara communities.

Integrity: We are an ethical, trustworthy and responsible organisation. Our behaviours demonstrate that the interests of the public and Pilbara communities are of paramount importance.

Although this principle is current, the Council 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.

Councillors and Employees are expected to apply the current values in all their activities associated with the business of the Council.

Annexure 3 – Local Government Rules of Conduct

Local Government (Rules of Conduct)
Regulations 2007

Part 1 — General

1. Citation

These regulations are the Local Government (Rules of Conduct) Regulations 2007 (1).

2. Commencement

These regulations come into operation as follows:

- regulations 1 and 2 — on the day on which these regulations are published in the Gazette;
- 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

General principles to guide the behaviour of council members include that a person in his or her capacity as a council member should:

- act with reasonable care and diligence; and
- act with honesty and integrity; and
- act lawfully; and
- avoid damage to the reputation of the local government; and
- be open and accountable to the public; and
- base decisions on relevant and factually correct information; and
- treat others with respect and fairness; and
- not be impaired by mind affecting substances.

The general principles referred to in sub-regulation (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

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

Part 2 – Rules of conduct

1. Rules of conduct

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

2. Use of information

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.

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.

Sub-regulation (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.

3. Securing personal advantage or disadvantaging others

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.

Sub-regulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.

4. 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.

5. Prohibition against involvement in administration

- 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.
- Sub-regulation (1) does not apply to anything that a council or committee member does as part of the deliberations at a council meeting.

6. Relations with local government Employees

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.

Sub-regulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.

If a person, in his or her capacity as a council member, is attending a council 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.

Sub-regulation (3) (a) does not apply to conduct that is unlawful under The Criminal Code Chapter XXXV.

7. Disclosure of interest

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.
- 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.

Sub-regulation (2) does not apply to an interest referred to in section 5.60 of the Act.

Sub-regulation (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.

If, under sub-regulation (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.

If —

- a. under sub-regulation (2) (b) or (4)(b) a person's interest in a matter is disclosed at a meeting; or
- b. under sub-regulation (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.

8. Gifts

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.

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.

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 sub-regulation (4).

Notification of the acceptance of a notifiable gift is to be in writing and is to include:

1. the name of the person who gave the gift; and
2. the date on which the gift was accepted; and
3. a description, and the estimated value, of the gift; and
4. the nature of the relationship between the person who is a council member and the person who gave the gift; and
5. 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) —
 - a. a description; and
 - b. the estimated value; and the date of acceptance, of each other gift accepted within the 6 month period.

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