

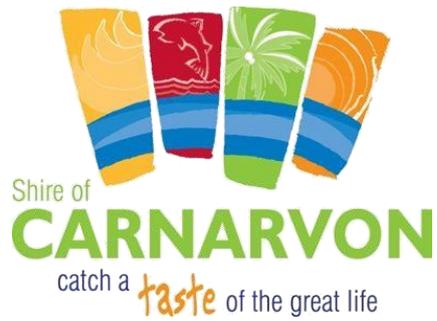


# SHIRE OF CARNARVON

## CODE OF CONDUCT FOR ELECTED MEMBERS, COMMITTEE MEMBERS, EMPLOYEES AND CONTRACTORS

(Endorsed – 18<sup>th</sup> December 2018 )

*(Local Government Act (1995) that the local government review its Code of Conduct within the twelve (12) months period following each ordinary election.)*



This document aligns with Goal 5 Civic in the Carnarvon Community Strategic Plan



**Economic** – A strong and growing economy, with a thriving regional centre, abundant business opportunities and jobs.



**Natural & Built Environment** - A sustainable natural and built environment that meets current and future community needs.



**Social** – Healthy, safe and resilient community, where everyone belongs.



**Cross Cultural Connection** - Acknowledged and celebrated traditional owners and diverse cultures that make up the community.



**Civic** – Strong and listening Council.

# *Vision*

## Unity, Humanity, Nature

- A connected community across leaders, cultures, and generations
  - A future for every young person
  - A job-rich economy, built on local strengths
  - A still-natural environment, looked after and used



# *Values*

- Courage
- Authenticity
- Respect and inclusion
- Humility
- Passion
- Excellence
- Cohesion

## PREAMBLE

The Code of Conduct, hereinafter referred to as 'the Code', provides Council Members, Committee Members, employees and contractors in Local Government with consistent guidelines for an acceptable standard of professional conduct. The Code addresses in a concise manner the broader issue of ethical responsibility and encourages greater transparency and accountability in individual Local Governments.

The Code is complementary to the principles adopted in the *Local Government Act 1995* (WA) (the Act) and Regulations which incorporate four fundamental aims to result in :

- (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.

The Code provides a guide and a basis of expectations for Council Members, Committee Members, employees and contractors. It encourages a commitment to ethical and professional behaviour and outlines principles in which individual and collective Local Government responsibilities may be based.

For the purpose of interpreting the Code a Contractor is defined as a person, body corporate or any other entity with which the Shire has a contract for services. *Limitation - This code is intended to apply to those parties engaged in the role of contractors to the Shire and is not intended to apply to their broader business or personal activities.*

## STATUTORY ENVIRONMENT

The Code of Conduct observes statutory requirements of the Local Government Act 1995 (s 5.103 – Codes of Conduct) and Local Government (Administration) Regulations 1996 (Regs 34B and 34C).

## ENFORCEMENT OF THE CODE OF CONDUCT

Any member of Council, Committee Member, employee or contractor who has concerns with an actual, perceived, potential, intended or unintended breach of a specific provision or spirit of the Code of Conduct should discuss their concerns in confidence, with their immediate Manager, the Chief Executive Officer (CEO) or the President.

Any actions taken as a result of a breach will be made in accordance with the provisions of any applicable legislative requirements and Council's responsibilities as an employer or as a principal.

## RULES OF CONDUCT

Council Members acknowledge their activities, behaviour and statutory compliance obligations may be scrutinised in accordance with prescribed rules of conduct as described in the Act and the Local Government (Rules of Conduct) Regulations 2007.

## 1. ROLES

### 1.1 Role of Council Member

The primary role of a Council 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 Council Member's public life.

The Role of Council 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.

A Council 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, Council 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 Council 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 integration of environmental protection, social advancement and economic prosperity.

### 1.2 Role of Employees

The role of employees is determined by the functions of the CEO as set out in s 5.41 of the Act :

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.

### **1.3 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.”

### **1.4 Principles affecting the employment of employees by the Shire**

The following principles, set out in section 5.40 of the Act, apply to the employment of the Shire’s employees:

- “(a) employees are to be selected and promoted in accordance with the principles of merit and equity; and
- (b) no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage; and
- (c) employees are to be treated fairly and consistently; and
- (d) there is to be no unlawful discrimination against employees or persons seeking employment by the Shire on a ground referred to in the Equal Opportunity Act 1984 or on any other ground; and
- (e) employees are to be provided with safe and healthy working conditions in accordance with the Occupational Safety and Health Act 1984; and
- (f) such other principles, not inconsistent with this Division, as may be prescribed.”

### **1.5 Relationships between Council Members, Committee Members, Employees and Contractors**

An effective Councillor will work as part of the Council team with the Chief Executive Officer and other members of employees. That teamwork will only occur if Council Members, employees and contractors have a mutual respect and co-operate with each other to achieve the Council’s corporate goals and implement the Council’s strategies. To achieve that position, Council Members must 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 members of employees or contractors to carry out particular functions;
- refrain from publicly criticising employees or contractors in a way that casts aspersions on their professional competence and credibility

## 2. CONFLICT AND DISCLOSURE OF INTEREST

### 2.1 Conflict of Interest

- (a) Council Members, Committee Members, employees and contractors 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) Employees will not engage in private work with or for any person or body with an interest in a proposed or current contract with the Local Government, without first making disclosure to the CEO. 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.
- (c) Council Members, Committee Members, employees and contractors will lodge written notice with the CEO describing an intention to undertake any 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).
- (d) Council Members, Committee Members and employees who exercise recruitments or other discretionary functions will make disclosure before dealing with relatives or close friends and will disqualify themselves from dealing with those persons.
- (e) Employees will refrain from partisan political activities which could cast doubt on their neutrality and impartiality in acting in their professional capacity. An individual's 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.

### 2.2 Financial Interest

Council Members, Committee Members and employees will adopt the principles of disclosure of financial interest as contained within the Local Government Act.

### 2.3 Disclosure of Interest

*Definition :*

*In this clause, and in accordance with Regulation 34C of the Local Government (Administration) Regulations 1996 an "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 an employee or a contractor 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
  - (i) in a written notice given to the CEO before the meeting; or
  - (ii) at the meeting immediately before the matter is discussed.
- (b) A person who is an employee or a contractor 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:

- (i) in a written notice given to the CEO before the meeting; or
  - (ii) 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 Act.
- (d) A person is excused from a requirement made under items (a) or (b) to disclose the nature of an interest if:
- (i) the person's failure to disclose occurs because the person did not know he or she had an interest in the matter; or
  - (ii) the person's failure to disclose occurs because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person discloses the nature of the interest as soon as possible after becoming aware of the discussion of a matter of that kind.
- (d) If a person who is an employee or a contractor makes a disclosure in a written notice given to the CEO before a meeting to comply with requirements of items (a) or (b), then:
- (i) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
  - (ii) immediately before a matter to which the disclosure relates is discussed at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present.
- (f) If -
- (i) 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
  - (ii) a disclosure is made as described in item (d)(ii) at a meeting; or
  - (iii) 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.

### 3. PERSONAL BENEFIT

#### 3.1 Use of Confidential Information

Council Members, Committee Members, employees and contactors shall 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, detriment or impairment to any person or organisation.

Due discretion shall be exercised by all those who have access to confidential or sensitive information. Every matter dealt with by, or brought before, a meeting sitting behind closed doors, shall be treated as strictly confidential, and shall not without the authority of the Council be disclosed to any person other

than the Council members and/or employees of the Shire (and in the case of employees only so far as may be necessary for the performance of their duties) prior to the discussion of the matter at a meeting of the Council held with open doors.

Nothing in this section prevents a Council member or officer from disclosing confidential information:

- to a legal practitioner for the purpose of obtaining legal advice; or
- if the disclosure is permitted by law.

### 3.2 Intellectual Property

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

### 3.3 Improper or Undue Influence

Council Members, Committee Members employees or contractors shall not take advantage of their position to improperly influence any other person in order to gain undue or improper (direct or indirect) advantage or gain, pecuniary or otherwise, for themselves or for any other person or body. Similarly, Council members, committee members, employees or contractors shall not take advantage of their positions to improperly disadvantage or cause detriment to the local government or any other person.

### 3.4 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” —***

- (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) except that it does not include —***

- (a) *a gift from a relative as defined in section 5.74(1); 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; or*
- (d) *a gift from WALGA, the Australian Local Government Association Limited (ABN 31 008 613 876) or the Local Government Managers Australia WA Division Incorporated (ABN 91 208 607 072);*

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

- (a) *a gift worth between \$50 and \$300; or*
- (b) *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) *a gift worth \$300 or more; or*
- (b) *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) A person who is an employee or contractor is to refrain from accepting a prohibited gift from a person who:
  - (i) is undertaking or seeking to undertake an activity involving a local government discretion; or
  - (ii) it is reasonable to believe is intending to undertake an activity involving a local government discretion.
- (b) A person who is an employee or contractor and who accepts a notifiable gift from a person who:
  - (i) is undertaking or seeking to undertake an activity involving a local government discretion; or
  - (ii) it is reasonable to believe is intending to undertake an activity involving a local government discretion,

must notify the CEO, in accordance with item (c) below and within 10 days of accepting the gift, of the acceptance.

- (c) The notification of the acceptance of a notifiable gift must be in writing and include:
    - (i) the name of the person who gave the gift; and
    - (ii) the date on which the gift was accepted; and
    - (iii) a description, and the estimated value, of the gift; and
    - (iv) the nature of the relationship between the person who is an employee and the person who gave the gift; and
    - (v) if the gift is a notifiable gift under paragraph (b) of the definition of “notifiable gift” (whether or not it is also a notifiable gift under paragraph (a) of that definition):
      1. a description; and
      2. the estimated value; and
      3. the date of acceptance,
 of each other gift accepted within the 6 month period.
  - (d) 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).
  - (e) 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).
- 2) 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.

## 4. CONDUCT OF COUNCIL MEMBERS, COMMITTEE MEMBERS, EMPLOYEES AND CONTRACTORS

### 4.1 Personal Behaviour

(a) Council Members, Committee Members, Employees and Contractors will:

- (i) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;
- (ii) perform their duties impartially and in the best interests of the Local Government uninfluenced by fear or favour (noting that individual Councillors have NO statutory powers, duties or authority as an individual outside the Council Chamber).
- (iii) act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the Local Government and the community;
- (iv) make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and
- (v) always act in accordance with their obligation of fidelity to the Local Government.

(b) Council Members will represent and promote the interests of the Local Government, while recognising their special duty to their own constituents.

### 4.2 Honesty and Integrity

Council Members, Committee Members, employees and contractors 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 President any dishonesty or possible dishonesty on the part of any other member, and in the case of an employee or contractor to the CEO.
- (c) be frank and honest in their official dealing with each other.

### 4.3 Performance of Duties

- (a) While on duty, employees and contractors will give their whole time and attention to the Local Government'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 Local Government.
- (b) Council 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. Council Members and Committee Members will be as informed as possible about the functions of the Council, and treat all members of the community honestly and fairly.

#### **4.4 Personal Communications and Social Media**

- (a) Personal communications and statements made privately in conversation, written, recorded, emailed or posted in personal social media, have the potential to be made public, whether intended or not.
- (b) Employees must not, unless undertaking a duty in accordance with their employment, disclose information, make comments or engage in communication activities about or on behalf of the Local Government, its Council Members, employees or contractors, which breach this Code of Conduct.
- (c) Council Member comments which become public and breach the *Local Government (Rules of Conduct) Regulations 2007* may constitute a breach of the *Local Government Act 1995* and may be referred for investigation.
- (d) Employee comments which become public and breach the Code of Conduct, or any other operational policy or procedure, may constitute a disciplinary matter and may also be determined as misconduct and be reported under the *Public Sector Management Act 1994*, in accordance with the *Corruption, Crime and Misconduct Act 2003*.

#### **4.5 Compliance with Lawful Orders**

- (a) Council Members, Committee Members, employees and contractors will comply with any lawful order given by any person having authority to make or give such an order, with any doubts as to the propriety of any such order being taken up with the superior of the person who gave the order and, if resolution cannot be achieved, with the Chief Executive Officer.
- (b) Council Members, Committee Members, employees and contractors will give effect to the lawful policies of the Local Government, whether or not they agree with or approve of them.

#### **4.6 Administrative and Management Practices**

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

#### **4.7 Corporate Obligations**

- (a) Standard of Dress

Council Members, Committee Members, employees and contractors are expected to comply with neat and responsible dress standards at all times. Accordingly:

- (i) Council 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.
- (ii) Management reserves the right to adopt policies relating to corporate dress and to raise the issue of dress with individual employees.

(b) Communication and Public Relations

- (i) All aspects of communication by employees and contractors (including verbal, written or personal), involving Local Government's activities should reflect the status and objectives of that Local Government. Communications should be accurate, polite and professional.
- (ii) As a representative of the community, Council Members need to be not only responsive to community views, but to adequately communicate the attitudes and decisions of the Council. In doing so Council Members should acknowledge that:
  - as a member of the Council there is respect for the decision making processes of the Council which are based on a decision of the majority of the Council;
  - information of a confidential nature ought not be communicated until it is no longer treated as confidential;
  - information relating to decisions of the Council on approvals, permits and so on ought only be communicated in an official capacity by a designated officer of the Council;
  - information concerning adopted policies, procedures and decisions of the Council is conveyed accurately.
- (iii) 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.

#### **4.8 Appointments to Committees**

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

- clearly understand the basis of their appointment; and
- provide regular reports on the activities of the organisation.

#### **4.9 Councillors' Relationships with Employees and Contractors**

An effective Councillor will work as part of the Council team with the CEO and other members of employees and contractors. That teamwork will only occur if Councillors, employees and contractors 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 Councillors shall -

1. Accept that their role is purely a leadership, not a management or administrative role.
2. Acknowledge that the CEO is primarily responsible for employees and contractors.
3. Acknowledge that they have no capacity to individually direct employees or contractors to carry out particular functions.
4. Employees and contractors are accountable to the Council through the CEO. Therefore requests for action by employees or contractors should be directed through the CEO, either verbally or by memo.
5. Refrain from using their position to improperly influence employees in their duties or functions or to gain an advantage for themselves or others.
6. Not publicly criticise employees in a way that casts aspersions on their professional competence and credibility.

7. There should be mutual respect and understanding between Councillors and employees and contractors in relation to their respective roles, functions and responsibilities.
8. Councillors recognise that the nature of decision making under the existing system of local government means that Councillors decision making powers can only be exercised in properly constituted forums.
9. Councillors should abide by the provisions and the spirit of section 5.41 of the Act in relation to the functions of the CEO.

#### **4.10 Complaints Against Employees Members and Contractors**

1. A complaint by a Councillor against a employees member, other than the CEO, or a contractor must be in writing addressed to the CEO. The CEO must upon receipt of the complaint give a copy to the President.
2. A formal complaint by a Councillor, other than the President, against the CEO must be in writing addressed to the President.
3. A complaint by the President against the CEO must be set out in a report to the Council meeting in a confidential session from which the CEO may be excluded by resolution of Council. However, the CEO must have the opportunity of right of reply to Council.
4. On receipt of a complaint, the CEO, the President or the Council, as the case requires, must, if of the opinion that the complaint has substance, investigate the complaint and may take or recommend such action as is considered appropriate relating to the complaint.

#### **4.11 Integrity and Moral Standards**

1. Councillors, employees and contractors will observe the highest standards of honesty and integrity to maintain proper standards of decorum and dress as well as a high standard of public demeanour at meetings and public functions, as these are important leadership values and are critical to the image of the organisation.
2. Councillors, and employees and contractors will ensure that their integrity and moral standards are not in any way compromised through their dealings with the public, and each other.
3. Councillors and other persons who are appointed as representatives of the Council to other bodies should observe the requirements of the Code when carrying out their duties on that body as they would for their own Council.

#### **4.12 Professional Advice**

1. Councillors shall ensure that no restrictions are placed on the ability of Employees to give professional advice to the Council.
2. Councillors, employees and contractors should acknowledge each other's point of view and respect each other's perspective due to the different roles of each.

3. Respect should be given to the responsibility of employees to offer their professional advice when it is, in their judgement, appropriate.
4. Employees and/or contractors' professional advice, both written and verbal, should be comprehensive, unbiased, and highlighting all the options open to Council.
5. Councillors shall on request be given additional full and unbiased information or clarifications by professional employees and/or contractors.

## **5. DEALING WITH COUNCIL PROPERTY**

### **5.1 Use of Local Government Resources**

Council Members, employees and contractors 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 or contractors) for private purposes (other than when supplied as part of a contract of employment), unless properly authorised to do so, and appropriate payments are made (as determined by the CEO).

### **5.2 Travelling and Sustenance Expenses**

Council Members, Committee Members and employees will only claim or accept travelling and sustenance expenses arising out of travel-related matters which have a direct bearing on the services, policies or business of the Local Government in accordance with Local Government policy and the provisions of the Local Government Act.

### **5.3 Access to Information**

- (a) The Chief Executive Officer will ensure that Council Members are given access to all information necessary for them to properly perform their functions and comply with their responsibilities.
- (b) Council 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.

### **5.4 Council Activities**

Councillors and Employees should ensure that Council impartially and properly assesses its own planning, development, building and subdivision proposals, consistent with the scope and standard of the normal assessment of private proposals or applications.

## **5.5 Communications with the Media**

It is the role of the President to communicate with the media for and on behalf of the Council, in accordance with 2.8(d) of the Act. The CEO may communicate with the media when delegated to do so in accordance with 5.41(f) of the Act. Councillors are entitled to express their own view provided they clearly make it known that they are not speaking for, or on behalf of, the Council. Whilst expressing their personal views, Councillors should not reflect on any Council decisions, the decision-making process of other Councillors or Employees.

Employees and contractors, are not permitted to communicate with, or present information to, the media, unless authorised to do so under the provisions of this code or the Act.