

Campaspe Shire Council

Councillor Code of Conduct

Adopted by Council 7 February 2017



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Campaspe Shire Council Councillor's Code of Conduct

CODE OF CONDUCT

This code, which incorporates the statutory requirements specified for a Code of Conduct in accordance with Section 76C of the Local Government Act 1989, was adopted by resolution of the Campaspe Shire Council on 7 February 2017

Introduction

The Campaspe Shire Council consist of the Councillors who are democratically elected by the electors of the Shire of Campaspe in accordance with the Local Government Act 1989 (the Act). Councillors are committed to working together in the best interests of the people within the municipality and to discharging their responsibilities to the best of their skill and judgement.

The role of Council is to provide leadership for good governance of the Shire of Campaspe. It includes:

- (a) acting as a representative government by taking into account the diverse needs of the local community in decision making;
- (b) providing leadership by establishing strategic objectives and monitoring their achievement;
- (c) maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;
- (d) advocating the interests of the local community to other communities and governments;
- (e) acting as a responsible partner in government by taking into account the needs of other communities;
- (f) fostering community cohesion and encouraging active participation in civic life.

Councillors Role

Councillors acknowledge that their role is as set out in Section 65 of the Local Government Act which states:

The role of a Councillor is—

- (a) to participate in the decision-making of the Council; and
- (b) to represent the local community in that decision-making; and
- (c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

It is also acknowledged that the councillors' role does not include the performance of functions of the Chief Executive Officer, in particular the day to day management of the council's operations.

A fairly common example of councillors being requested to be involved in operational matters is when a resident has a complaint and wants the councillor's help to resolve it. Staff manage complaints through Council policies and decisions of this nature are administrative decisions which are distinct under common law. In the main these issues will be about service delivery and are clearly operational.

As mentioned in the code under relationships, with enquiries of this kind councillors should follow our complaints or customer request process. Alternatively, a question (not an instruction) could be directed to the relevant General Manager.

If the councillor receives a number of similar complaints then there may be a systemic issue that warrants a review of a particular policy or strategy. The councillor may then raise the matter as a policy issue.

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Councillor Behaviour

Councillors confirm that they will adhere to the following principles of behaviour in their general conduct as Councillors:

- (a) Treating all people with courtesy and respect, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities. This includes:
 - (i) treating members of the community with dignity and ensuring that neither offence nor embarrassment are caused;
 - (ii) treating fellow Councillors with respect, even when disagreeing with their views or decisions;
 - (iii) debating contentious issues without resorting to personal acrimony or insult;
 - (iv) ensuring punctual attendance at Council and committee meetings;
 - (v) attending all meetings of Council, except where leave has been granted to be absent, and participate in the decision making process unless prohibited from doing so;
 - (vi) acting with courtesy towards Council staff and avoiding intimidatory behaviour; and
 - (vii) in the interests of maintaining a high level of teamwork and encouraging good morale, there is no criticism of staff in public by Councillors and no criticism of Councillors by Councillors in public.
- (b) Always acting with integrity and honesty:
 - (i) being honest in all dealings with the community, with other Councillors and with Council staff;
 - (ii) always acting with impartiality and in the best interests of the community as a whole;
 - (iii) not acting in ways that may damage the Council or its ability to exercise good government;
 - (iv) exercising reasonable care and diligence in performing the functions as Councillors; and
 - (v) complying with all relevant laws, be they Federal, State or Local Laws.
- (c) Councillors recognise that they hold a position of trust and will not misuse or derive undue benefit from their positions:
 - (i) Councillors will avoid conflicts of interest and comply with the relevant provisions of the Act and this Code of Conduct relating to interests and conflicts of interest;
 - (ii) Councillors will not exercise undue influence on other Councillors, members of Council staff or members of the public to gain or attempt to gain an advantage for themselves.

Personal Dealings with Council

When councillors deal with Council in a private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) they will not expect nor will they request preferential treatment in relation to any such private matter. They will avoid any action that could lead Council staff or members of the public to believe that they were seeking preferential treatment.

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Council Decision Making

Council is committed to making all decision impartially and in the best interests of the whole community and acknowledges that effective decision-making is vital to the democratic process and an essential component of good governance. Accordingly Councillors:

- (i) will actively and openly participate in the decision making process, striving to be informed to achieve the best outcome for the community;
- (ii) will show a willingness to listen, learn and modify views during debate, including views adopted at preliminary meetings;
- (iii) acknowledge their duty to reach the best decision for the Shire and its community transcends any obligation to any person, community groups or to political belief;
- (iv) will respect the views of the individual in the debate. However, they also accept that decisions are based on a majority vote; and
- (v) accept that no Councillor can direct another Councillor on how to vote on any decision.

Council focuses on:

- (i) Outcomes achieved through a proper and consistent process;
- (ii) Policies rather than cases; and
- (iii) Strategic thinking rather than ad hoc decisions.

The Campaspe Shire Council makes decisions at Council meetings based on reports providing details of the strategic context, background, consultation, financial implications and other relevant information. This includes:

- (i) Briefing, Review and Strategy sessions are used to provide further explanation of reports, not to make decisions or direct a change in any staff recommendation;
- (ii) assistance is provided to Councillors (if required) to develop motions if staff recommendations are not supported;
- (iii) any questions and concerns about meeting papers are to be directed to the Chief Executive Officer or Executive Managers; and
- (iv) information provided in response to an individual Councillor question is provided to all Councillors on the following basis:
 - a. if the question was received in the presence of Councillors, then the answer is to be provided to all Councillors;
 - b. if the question pertains to a matter either under consideration by Council or likely to come to Council for consideration, then the question and answer is to be provided to all Councillors; and
 - c. in other circumstances, Council staff will respond directly to the Councillor question and make a judgment as to the relevance of distributing the question and answers to all Councillors.

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Bias

Over the years courts have developed rules to ensure that decision makers at all levels of government act fairly and without bias when making decisions that affect the rights and interest of others. These rules are known as the common law rules of "natural justice" or "procedural fairness".

Councillors need to take specific heed of the rule that they bring an impartial and open mind to the task of making decisions that affect the rights and interests of others.

For councillors as decision makers this means that **in addition** to the conflict of interest provisions of the Act they must observe the common law rules of bringing an impartial and open mind to the task of making decisions that affect the rights and interests of others. The rules are not concerned with decisions that affect members of the municipality generally such as setting the rates and charges for the year but about decisions that affect an individual or a small group of individuals.

Examples of these may be:

- A decision to grant or refuse a planning permit for a specific project
- A decision to make an alteration to an application of a planning scheme to a particular area of land owned by an individual or corporation
- A decision to exempt a person from complying with a provision of a local law
- A decision to grant a lease or licence
- A decision to accept or reject a tender

The common law rules allow councillors to express their own views, as long as they are prepared to reconsider their position in the light of all the evidence and arguments. You will normally have a position on matters that are coming before council for a decision. However, your position should be open to change if there is compelling evidence provided to you that warrants a different position.

Confidential Information

Councillors acknowledge that they will comply with their obligations under Section 77 in relation to confidential briefings or information (as defined under the Local Government Act) and recognise that this obligation extends to ensuring the safekeeping of confidential information.

Access to and use of Council Information

Councillors will treat Council information appropriately, by:

- (i) not using information gained by virtue of being a Councillor for any purpose other than to exercise their role as a Councillor;
- (ii) respecting the Council's policies in relation to public comments and communications with the media;
- (iii) not releasing information deemed "confidential information" in accordance with Section 77 of the Act;
- (iv) being aware that they are only entitled to access information which is relevant to a matter before the Council; and
- (v) recognising that the requirements of the Information Privacy Act 2000 regarding access use and release of personal information also applies to Council and distributes accordingly.

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Council Resources

Council resources are to be used effectively and economically. Council resources include goods, money, intellectual property, computer, computer software, mobile phone handsets, phone lines provided by Council, or the services of Council employees (including contractors).

Councillors will ensure:

- (i) they maintain adequate security over Council assets provided to assist them to perform their role;
- (ii) they will not use Council resources for private purposes, unless legally or properly authorised to do so, and payments made where appropriate; and
- (iii) that they will not use public funds or resources in a manner that is improper or unauthorised.

Relationships with Staff

Councillors work as part of the Council team with the Chief Executive Officer and other members of staff. There is mutual respect and understanding between Councillors and Council staff in relation to their respective roles, functions and responsibilities.

Councillors' role is one of advocacy, leadership and establishment of policy rather than management and administration. The Chief Executive Officer is responsible for all staff matters.

Councillors are aware of the requirements of Section 76E of the Local Government Act and must not seek to improperly direct or influence members of Council staff in the exercise of their duties. Councillors will direct their queries to the CEO or General Managers when specific issues or particular functions are required to be undertaken (unless contact below this level has been approved by the manager for the particular matter).

Gifts

Councillors may only receive gifts in line with Policy 123: Corporate Gifts and Hospitality.

Communication

As representatives of the community, Councillors have a primary responsibility to be responsive to community views and to adequately communicate the attitudes and decisions of Council.

Councillors will endeavour to ensure that the messages communicated through the media are clear, consistent and accurate, and in accordance with Policy 55 Media Relations Policy

Individual Councillors are entitled to express independent views through the media, however if this occurs, they will make it clear that any unofficial comment is a personal view and does not represent the position of Council as a whole.

Conflict of Interest Procedures

The Council is committed to making all decisions impartially and in the best interests of the whole community. It therefore recognises the importance of fully observing the requirements of the Act in regard to the disclosure of interests and conflicts of interest.

For the purpose of this Code, "direct interests", "indirect interests" and "conflicts of interest" have the meanings specified in the Act.

Councillors will comply with all provisions of the Act in regards to Conflicts of Interest:

- (i) if a Councillor considers they have a direct or indirect interest in a matter before Council, a Special Committee of Council or an Assembly of Councillors, they have a conflict of interest;

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- (ii) if a Councillor has a conflict of interest in a matter they will comply with the requirements of the Act and ensure they disclose the class and nature of the interest and leave the room in which the meeting or assembly is being held during any discussion, debate and vote on the matter; and
- (iii) if a Councillor has a personal interest in a matter to be considered by the Council or Special Committee of Council that is not a conflict of interest, and the Councillor considers that their personal interest may be in conflict with their public duty to act impartially and in the interest of the whole community, the Councillor will declare a conflicting personal interest under Section 79B of the Act immediately before the matter is considered at the relevant meeting and apply to the Council or special committee to be exempted from voting on the matter.

In addition to the requirements of the Act:

- (i) Councillors will give early consideration to each matter to be considered by the Council, Special Committee of Council of which the Councillor is a member, or Assembly of Councillors, to ascertain if they have an interest or a conflict of interest;
- (ii) Councillors recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each individual Councillor. If a Councillor cannot confidently say that he or she does not have a conflict of interest, the Councillor will declare a possible conflict of interest and comply with the relevant requirements as if they had a conflict of interest; and
- (iii) if the Councillor considers that they may be unable to vote on a matter because of a conflict of interest, they will notify, as soon as possible, the Mayor or the Committee Chair, depending on whether the matter is to be considered by the Council, a Special Committee, or an Assembly of Councillors, as well as the Chief Executive Officer (or the designated officer);

Dispute Resolution

Before commencing any formal dispute resolution process the Councillors who are parties to any disagreement will endeavour to resolve their differences in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

This dispute resolution procedure is intended to be used when Councillors have been unable to resolve a conflict and where the situation is unduly affecting the operation of the Council. It is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in Council and Special Committee of Council meetings.

The Council has a three phase dispute resolution process which involves:

- direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance;
- external mediation by an independent mediator engaged by the Chief Executive Officer; and
- an internal resolution procedure involving an independent arbiter.

Phase 1 – Direct negotiation

Where Councillors who are in dispute have not been able to resolve the dispute between them, either (or both) party (parties) may request the Mayor to convene a meeting of the parties.

A dispute referred for direct negotiation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of the Councillor Code of Conduct.

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The party requesting the direct negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a "direct negotiation" dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the request is made by a group of councillors; and
- be signed and dated by the requestor or the requestor's representative.

The requestor is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Mayor or as soon as practicable thereafter.

The Mayor is to ascertain whether or not the other party is prepared to attend a "direct negotiation" meeting.

If the other party is not prepared to attend a meeting, the Mayor is to advise the requestor forthwith. No further action is required of the Mayor.

If the other party declines to participate in a meeting, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party consents to a meeting, the Mayor is to convene a meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within 5 working days of receiving the consent of the other party.

The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act, and the observation of the councillor conduct principles and the Councillor Code of Conduct.

The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, either or both of the parties have recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor. The Deputy Mayor will perform the functions ascribed to the Mayor.

Phase 2 – External mediation

A Councillor or a group of Councillors may make an application for a dispute to be referred direct to external mediation or after direct negotiation has failed.

An application made for a dispute to be referred for external mediation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or

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- an alleged contravention of the Councillor Code of Conduct.

The applicant is to submit a written application to the Principal Conduct Officer setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an “external mediation”. Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the application is made by a group of councillors; and
- be signed and dated by the applicant or the applicant's representative.

The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time that it is submitted to the Principal Conduct Officer or as soon as practical thereafter. The Principal Conduct Officer will advise the Mayor and CEO of the request.

The Principal Conduct Officer is to ascertain (in writing) whether or not the other party is prepared to attend an “external mediation”. If the other party declines to participate in an external mediation, he or she is to provide their reasons for doing so in writing to the Principal Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

When the other party declines to participate in an external mediation, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party agrees to participate in an external mediation, the Principal Conduct Officer is to advise the applicant, forthwith.

The Principal Conduct Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Phase 3 - Internal resolution procedure – Arbiter

A councillor or a group of councillors may make an application alleging that a Councillor has contravened the Councillor Code of Conduct. The application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the application is made by a group of councillors; and
- be signed and dated by the applicant or the applicant's representative.

The application must be submitted to the Council's Principal Conduct Officer.

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An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and CEO of the application without undue delay;
- provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application;
- identify an arbiter to hear the application;
- obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved;
- notify the parties of the name of the proposed arbiter and provide them with the opportunity (2 working days) to object to the person proposed to be the arbiter;
- consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter;
- provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired;
- after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
- attend the hearing(s) and assist the arbiter in the administration of the process

In identifying an arbiter to hear the application, the Principal Conduct Officer must select an arbiter who is suitably independent and able to carry out the role of arbiter fairly.

The role of the arbiter is to:

- consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor;
- make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council;
- give a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council;
- recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct.

In considering an application alleging a contravention of the Councillor Code of Conduct, an arbiter will:

- in consultation with the Principal Conduct Officer, fix a time and place to hear the application;
- authorise the Principal Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing;
- hold as many meetings as he or she considers necessary to properly consider the Application, the arbiter may hold a directions hearing;
- have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the application allows;

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- ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
- consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application;
- ensure that the rules of natural justice are observed and applied in the hearing of the application; and
- ensure that the hearings are closed to the public.

Where an application to have legal representation is granted by an arbiter, the costs of the respondent's legal representation are to be borne by the respondent in their entirety.

An arbiter:

- may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened the Code;
- may find that a Councillor who is a respondent to an internal resolution procedure has contravened the Code;
- will suspend consideration of an internal resolution procedure during the election period for a general election.

The arbiter is to give a copy of his or her findings and the statement of reasons to the Council, the applicant and the respondent. At the same time, the arbiter provides the findings and statement of reasons, he or she shall, where a Councillor has been found to have contravened the Code, recommend an appropriate sanction or sanctions for the contravention for consideration by the Council.

A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next ordinary meeting of the Council for its consideration. If an arbiter has found that a contravention of the Code has occurred, the Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor:

- direct the Councillor to make an apology in a form or manner specified by the Council;
- direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (in respect of the next scheduled meetings of the Council);
- direct that, for a period of up to, but not exceeding, 2 months on a date specified by the Council the Councillor:
- be removed from any position where the Councillor represents the Council; and
- to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.
- A Councillor who does not participate in the internal resolution procedure may be guilty of misconduct. The Act provides that misconduct by a Councillor means any of the following:
 - failure by a Councillor to comply with the Council's internal resolution procedure; or
 - failure by a Councillor to comply with a written direction given by the Council under section 81AB; or
 - repeated contravention of any of the Councillor conduct principles.

Allegations of misconduct are heard on application by a Councillor Conduct Panel.

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No applications during election period

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:

☐ the application was made by the Council and the Council so resolves; or

- ☐ the application was made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application; or
- the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

Definitions

Arbiter - an independent arbiter appointed by council to consider alleged violations of the council's councillor code of conduct by a councillor and make final determinations on them.

Councillor conduct panel – a panel established by the Principal Councillor Conduct Registrar to hear applications of misconduct and serious misconduct.

Principal Conduct Officer – an officer appointed by council to assist the council in the implementation of its councillor code of conduct, including conduct of the internal resolution procedure.

Principal Councillor Conduct Registrar – an employee of the Department of Environment, Land, Water and Planning whose role is to administer all councillor conduct panel processes and appeals of panel decisions.

Other Relevant Policies

The following policies and procedures that relate to conduct apply to Councillors as well as staff:

- Media Policy
- Respect in the Workplace Policy
- Protected Disclosure Act Procedures.

Breaches of the Code of Conduct

A breach of this Code should immediately be reported to the Chief Executive Officer (if the complainant is a member of the public or a staff member) or the Mayor (if the complainant is a Councillor) who will determine the course of action to be taken. If the Mayor is the subject of the complaint, the complaint shall be directed to the CEO. The principles of natural justice will be observed, and the person to whom the information relates will be given full details and a reasonable opportunity to respond.

CODE OF CONDUCT DECLARATION

in accordance with S76C(6A) of the Local Government Act 1989

"I hereby declare that I have read the Councillor Code of Conduct for Campaspe Shire Council adopted on 7 February 2017 and declare that I will abide by this code."

COUNCILLOR SIGNATURE

.....

Councillor Daniel Mackrell

Date

.....

Councillor Kristen Munro

Date

.....

Councillor Vicki Neele

Date

.....

Councillor Neil Pankhurst

Date

.....

Councillor Leanne Pentreath

Date

.....

Councillor Annie Vickers

Date

.....

Councillor Adrian Weston

Date

.....

Councillor Leigh Wilson

Date

.....

Councillor John Zobec

Date

CEO (AS WITNESS) SIGNATURE

.....

Jason Russell, Chief Executive Officer

Date