



**WELLINGTON**

SHIRE COUNCIL

*The Heart of Gippsland*

**COUNCILLOR**

**CODE OF CONDUCT**

**2016**

**ADOPTED BY COUNCIL:**

**20 DECEMBER 2016**

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# COUNCILLOR CODE OF CONDUCT

## 1. Introduction:

The *Local Government Act 1989* (the Act) requires a Council to develop and maintain a Councillor Code of Conduct.

Wellington Shire Council's, Councillor Code of Conduct, includes an internal resolution procedure for dealing with any alleged contraventions of the Code.

Failure by a Councillor to comply with the Council's internal resolution procedure or to comply with a written direction given by the Council under section 81AB of the Act (sanctions for contravention of the Code) constitutes misconduct by a Councillor. A Council can apply sanctions to a Councillor who has been found to have contravened the Councillor Code of Conduct.

If a Councillor Conduct Panel makes a finding of misconduct against a Councillor, the Panel may apply further sanctions against that Councillor.

## 2. Purpose of the Councillor Code of Conduct:

The purpose of local government is to provide a system under which Councils perform the functions and exercise the powers conferred by or under the *Local Government Act 1989* and any other Act for the peace, order and good government of their municipal districts. Good governance is fundamental to a Council being able to perform its purpose. Good governance relies on good working relations between councillors.

Wellington Shire Council's Councillor Code of Conduct:

- sets out the standards of conduct expected of elected representatives
- endeavours to foster good working relations between councillors to enable Councillors to work constructively together in the best interests of the people of Wellington Shire
- mandates councillor conduct designed to build public confidence in the integrity of local government.
- includes the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct
- sets out processes for the purpose of resolving an internal dispute between Councillors;
- includes other matters relating to the conduct of Councillors, which we as Councillors, consider to be appropriate

## 3. Adoption of the Councillor Code of Conduct

From the 2016 Council elections, a person elected to be a Councillor is not capable of acting as a Councillor until the person has read the Councillor Code of Conduct and made a declaration stating that they will abide by the Councillor Code of Conduct. The declaration must be signed and witnessed by the CEO. If the councillor fails to make a declaration to abide by the councillor code of conduct within three months of being elected, their position is declared vacated.

It is the personal responsibility of councillors to ensure that they are conversant with, and comply with, the provisions of this Code.

A Council must, within 4 months after a general election:

- (a) call a special council meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
- (b) at that special council meeting, approve any amendments to be made to the Councillor Code of Conduct, determined by the Council to be necessary following the review of the Councillor Code of Conduct.

Council may also choose to review this Code of Conduct at any other time.

A copy of this Code of Conduct (as amended from time to time) must be:

- given to each councillor
- available for inspection at the council office and any district offices
- published on the Council's internet website

#### **4. Conduct Obligations**

The Act places obligations on Councillors in relation to way they should act. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions.

As Councillors of Wellington Shire Council, we undertake to comply with the various provisions of the Act and with this Code of Conduct.

Section 76B of the Act sets out the primary principles of councillor conduct as follows:

“It is the primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must:

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.”

Section 76BA of the Act sets out the general principles of councillor conduct as follows:

“In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must:

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- (b) act honestly and avoid statements (whether orally or in writing) or actions that will or are likely to mislead or deceive a person;
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;
- (d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that it is appropriate to his or her office;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;
- (g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.”

Councillors are required to conduct themselves in observance of the primary principles and the general principles. We undertake to do this.

The Wellington Shire Council also strives to be an organisation of exceptional character.

As Councillors we confirm our commitment to lead by example, promote the highest standard in the way that Council business is conducted, undertake to comply with various provisions of the Act, and also collectively adhere to the behaviours detailed below which are encapsulated by the acronym REACH, which stands for Respectful, Engaged, Accountable, Creative and Honest:

R	<p><b>RESPECT AND RESPONSIBILITY – We;</b></p> <ul style="list-style-type: none"> <li>• respect and care about our community, each other and ourselves</li> <li>• act with integrity at all times and in all matters</li> <li>• take time to listen, to seek and to understand the other point of view</li> <li>• treat fellow Councillors with respect, even if we disagree with their views or decisions</li> <li>• debate contentious issues without resorting to personal acrimony or insult</li> <li>• strive to understand and respect the diversity of our community</li> <li>• understand our community role and respect the responsibility that comes with it</li> <li>• respect and work towards harmonious working relationships with others</li> <li>• act with courtesy towards Council staff and avoid intimidatory behaviour</li> <li>• support one another and staff if they are treated unfairly or without respect.</li> <li>• accept that no councillor can direct another councillor on how to vote on any decision.</li> </ul>
E	<p><b>ENGAGED – We;</b></p> <ul style="list-style-type: none"> <li>• listen to our community and respond</li> <li>• work together with our community and each other, to achieve the best outcomes</li> <li>• have the confidence to challenge the status quo, to reach for better outcomes.</li> <li>• are action-oriented in identifying and responding to new challenges</li> <li>• are responsive to the needs of our community</li> <li>• provide for active community participation in civic life</li> <li>• welcome the opinions of the community and respect their right to be heard.</li> </ul>
A	<p><b>ACCOUNTABLE – We;</b></p> <ul style="list-style-type: none"> <li>• spend our time and effort on solutions rather than looking for someone to blame; and</li> <li>• take responsibility for our decisions and actions and we act and work in an open and transparent manner.</li> <li>• abide by all the governing Council policies and the local government sector legislation.</li> <li>• ensure the best use of Council resources</li> </ul>
C	<p><b>CREATIVE / COURAGE – We;</b></p> <ul style="list-style-type: none"> <li>• care about getting the best outcomes; and.</li> <li>• constantly ask, “What’s the future and what’s possible”?</li> <li>• have the courage to try new ideas</li> <li>• strive for excellence in everything we do</li> <li>• have the courage to take on big projects and to look at the big picture while not losing sight of the small things that are also important.</li> <li>• have the courage to make sound judgements based on evidence and research to make good decisions at the right time.</li> <li>• persevere and commit to accomplish goals in the best interest of the Shire</li> </ul>
H	<p><b>HONEST – We;</b></p> <ul style="list-style-type: none"> <li>• tell the truth in all dealings with the community, Councillors and with Council staff; and</li> <li>• always act with impartiality and in the best interests of the people of the whole Shire</li> <li>• form our opinions and give advice from sound, evidenced-based research</li> <li>• exercise reasonable care and diligence in performing our function as Councillors</li> <li>• act with humility and apply the highest standards of ethical behaviour to everything we do</li> <li>• comply with all relevant laws, be they Federal, State or Local Laws.</li> <li>• accept responsibility for mistakes and see them as opportunities for continuous improvement and growth.</li> </ul>

## 5. Use of Council Resources

We commit to using Council resources effectively and economically. We will:

- maintain adequate security over Council property, facilities and resources provided to us to assist in performing our role and will comply with any Council policies applying to their use;
- maintain appropriate separation between personal property and Council property
- ensure any expense claims that we submit are in compliance with the relevant legislative provisions and Council policy and relate strictly to Council business;
- not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate;
- ensure that Council resources are always used effectively and economically and for the purposes for which they are provided
- ensure that Council resources are not used in a way that creates an impression of Council endorsement
- not use public funds or resources in a manner that is improper or unauthorised

## 6. Gifts and Hospitality

Councillors will scrupulously avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from the Council.

Councillors will take all reasonable steps to ensure that their immediate family members (parents, spouse, children and siblings) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

Where a gift is received on behalf of the Council, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in the Councillors Gifts Register with a notation that it is the property of the Council.

Councillors recognise that gifts equal to or above the gift disclosure threshold received in the twelve months prior to election from a person or body that has a direct interest in a matter may give rise to an indirect interest because of receipt of an applicable gift.

All gifts accepted by Councillors, regardless of value, must be declared and details included on Council's Gifts Register.

Examples where Councillors should not accept a gift include where:

- a) such a gift could be perceived as intended to or likely to influence the Councillor in the fair, impartial and efficient discharge of their duties; or
- b) there is or may be the perception of a conflict of interest with past, present or future duties or where the object of the gift is to maintain or return a favour.

Councillors will not accept gifts either in their roles as Councillor or where it could be perceived to influence the Councillor except where:

- a) the gift would generally be regarded as having a token value only and could not be perceived to influence the Councillor's actions;
- b) the gift, in the form of hospitality, is reasonably provided by a not-for-profit organisation to a Councillor attending a function or event in an official capacity;
- c) refusal of the gift may cause offence or embarrassment, in which case the gift may be accepted on behalf of Council and becomes the property of Council; or
- d) there is a clear value to Council and acceptance cannot be seen to advantage the host company

Councillors will record all campaign donations in our "campaign donation return".

## 7. Media and Communication

Councillors will endeavour to ensure that the messages communicated through the media are clear and consistent, and positively portray the Council as a decisive and responsible governing body in accordance with Council's Media and Communications Policy.

The Mayor and Chief Executive Officer will provide official comment to the media on behalf of Council where the matter is of a political, controversial or sensitive nature. This includes:

- (a) State-wide political issues affecting Local Government
- (b) Contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community
- (c) Issues pertaining to policy and Council decisions
- (d) Issues relating to the strategic direction of the Council.

Where appropriate, the Deputy Mayor or other Councillor may nominate to make official comment on behalf of the Council.

The CEO is the official spokesperson for all operational matters pertaining to the Wellington Shire Council as an organisation including:

- (a) Staffing and structure of the organisation
- (b) Corporate issues relating to service provision or the day-to-day business of Council

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

## 8. Prohibited Conduct

The Local Government Act 1989 has specific provisions that prohibit Councillors from certain conduct. This conduct relates to:

- Misuse of Position
- Improper Direction and Influence
- Confidential Information
- Conflict of Interest
- Electoral Conduct

These matters are set out below in order to provide a complete picture of the obligations on Councillors. While these matters are not of a nature to be addressed as a contravention of the Councillor Code of Conduct, we undertake to comply with the prohibitions on Councillor conduct set out below. These matters should more properly be the subject of an application to a Councillor Conduct Panel for a finding of serious misconduct or a complaint to the Local Government Inspectorate or the Independent Broad-based Anti-Corruption Commission depending on the nature of the allegation.

*(Note: Serious misconduct by a Councillors means)*

- (a) the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or*
- (b) the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or*
- (c) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or*
- (d) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or*
- (e) bullying of another Councillor or member of Council staff by a Councillor; or*
- (f) conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or*

(g) *the release of confidential information by a Councillor.*)

### **Misuse of Position**

Councillors also recognise that they hold a **position of trust** and will not misuse their position:

- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- (b) to cause, or attempt to cause, detriment to the Council or another person.

Circumstances involving the misuse of position by a Councillor include:

- (a) making improper use of information acquired as a result of the position he or she held or holds; or
- (b) disclosing information that is confidential information within the meaning of section 77(2); or
- (c) directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff or members of the public in contravention of section 76E in order to gain or attempt to gain an advantage for themselves; or
- (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
- (e) using public funds or resources in a manner that is improper or unauthorised; or
- (f) failing to disclose a conflict of interest as required under this Division.

### **Improper Direction and Influence**

A Councillor must not direct, or seek to direct, a member of Council staff:

- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
- (b) in the exercise of a power or the performance of a duty or function exercise or performed by the member as an authorised officer under this Act or any other Act; or
- (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
- (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

### **Confidential Information**

A Councillor must not disclose information that the he or she knows, or should reasonably know, is confidential information. This also includes any information that is made available through council workshops and other discussions, until such time it is deemed available for public knowledge.

A Councillor may disclose information that the he or she knows is confidential information in the following circumstances:

- (a) for the purposes of any legal proceedings arising out of this Act;
- (b) to a court or tribunal in the course of legal proceedings;
- (c) pursuant to an order of a court or tribunal;
- (d) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- (e) to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
- (f) to a municipal monitor to the extent reasonably required by the municipal monitor;
- (g) to the extent reasonably required for any other law enforcement purposes.

### **Conflict of Interest**

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 conflicts of interest.

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or a Special Committee, an Assembly of Councillors, an Audit Committee or a Section 223 Committee, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the provisions of the Act (unless any of the exemptions apply).

A Councillor has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the Councillor would be directly altered if the matter is decided in a particular way. This includes, where there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms and where the Councillor, or together with a member or members of the person's family, have a controlling interest in a company or other body that has a direct interest in the matter.

### Under Section 79 - Disclosure of Conflict of Interest

Councillors or members of special committees who have a conflict of interest in a matter to be discussed at a meeting of Council or the special committee must disclose the conflict of interest if they are attending the meeting;

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

- (a) If the Councillor considers that they have a **direct or indirect interest** in a matter before the Council, a Special Committee of Council, or an assembly of Councillors, they have a conflict of interest
- (b) 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, except for assembly of Councillors where the Councillor is only required to disclose that he or she has a conflict of interest, then leave the room in which the meeting or assembly is being held during any discussion, debate and vote on the matter.
- (c) If a Councillor has a personal interest in a matter to be considered by the Council or special committee 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

For the purpose of this Code, Councillors are to make a declaration of a Conflict of Interest on the following basis;

Type of Interest	Example of Circumstance
<b>Direct Interest Section 77B</b>	Reasonably likely that your benefits, obligations, opportunities or circumstance will be directly altered. Reasonably likely to receive a direct benefit or loss measured in financial terms if the matter is decided in a particular way Reasonably likely that your residential amenity will be directly affected. The person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter. A person who has a membership in a club or organisation that has a direct interest in a matter:
<b>Close Association Section 78</b>	A member of your family has a direct interest or an indirect interest. A relative has a direct interest or a member of your household has a direct interest.

<b>Indirect Interest</b>	<b>Indirect financial interest Section 78A</b>	Likely to receive a benefit or loss, measurable in money, resulting from a change to another person's interest. Holding shares in a company or body that has a direct interest.
	<b>Conflict of duty Section 78B</b>	Manager or member of the governing body of an organisation with a direct interest. Trustee for a person with a direct interest. Past dealings in relation to the matter as duty to another person or body. When the relevant person has a duty to another person or body that has a direct interest in the matter.
<b>Indirect Interest</b>	<b>Applicable Gift Section 78C</b>	Gifts valued at \$500 in previous 5 years. Election donations valued at or above \$500 in previous 5 years. Gifts other than election campaign donations that were received more than 12 months before a person became a Councillor are exempt.
	<b>Party to the Matter Section 78D</b>	The relevant person has become a party to the matter by lodging an appeal, objection or submission. Or by undertaking civil proceedings, in relation to the matter.

In addition to the requirements of the Act:

- (a) Councillors will give early consideration to each matter to be considered by the Council, special committee of which the Councillor is a member, or assembly of Councillors, to ascertain if they have a conflict of interest
- (b) Councillors recognise that the legal onus to determine whether a conflict of interest exists rests entirely with the individual Councillor and that Council officers cannot offer any advice in relation to potential conflicts. If a Councillor cannot confidently say that he or she does not have a conflict of interest, the Councillor will declare a conflict of interest and comply with the relevant requirements as if they had a conflict of interest
- (c) 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.

## **Electoral Conduct**

The Council is committed to fair and democratic elections and has adopted an Election Caretaker Policy which outlines the conduct of Council during the Caretaker Period for Municipal General Elections. Please refer to [Election Caretaker Policy March 2016](#)

### **9. Personal Dealings with Council**

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

### **10. Other Legislative Requirements**

The Act includes requirements in relation to Councillor eligibility, electoral conduct and the election period (caretaker period). Alleged contraventions of these provisions are not to be dealt with by the Council using the internal resolution procedure in this Code of Conduct. Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission or

the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

We undertake to comply with the various provisions relating to these matters.

## **11. Key Roles and Responsibilities**

The primary role of the Council is to provide leadership for the good governance of the Wellington Shire. The role of the Council also includes:

- (a) acting as a representative government by taking into account the diverse needs of the Wellington Shire 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; and
- (f) fostering community cohesion and encouraging active participation in civic life.

### **Role of a Councillor**

The role of a Councillor as defined within section 65 of the *Local Government Act 1989* 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

In performing the role of a Councillor, a Councillor must:

- (a) Consider the diversity of interests and needs of the local community; and
- (b) Observe principles of good governance and act with integrity; and
- (c) Provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts; and
- (d) Participate in the responsible allocation of the resources of Council through the annual budget; and
- (e) Facilitate effective communication between the Council and the community

The role of Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under section 94A

### **Role of the Mayor**

The Mayor is the elected leader and is the key formal representative of Council. The Mayor, by virtue of the position, is expected to foster positive relationships between councillors, encourage cooperation among councillors and promote unity.

Promoting good relations between councillors before contentious issues arise increases the likelihood that these issues can be dealt with robustly but without becoming divisive in a way that damages the reputation of the council.

Section 73AA of the Act describes the functions of the Mayor as including:

- (a) providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65, and the observation of the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C; and
- (b) acting as the principal spokesperson for the council; and
- (c) supporting good working relations between councillors; and
- (d) carrying out the civic and ceremonial duties of the office of Mayor

## **Role of the Chief Executive Officer**

The Chief Executive Officer (CEO) is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

The CEO has a number of statutory responsibilities and is accountable to the elected Council for delivering Council's strategies and services. As the head of the organisation, the CEO's role is to provide professional, relevant and timely information and support to Council. The CEO is also responsible for the staff of Council which includes appointing, directing and dismissing staff. Councillors have no right to individually direct staff to carry out particular functions or display intimidating behaviour.

Also, the CEO is responsible for a number of functions including:

- a) Establishing and maintaining an appropriate organisational structure;
- b) Ensuring that the decisions of the Council are implemented without undue delay;
- c) The day to day management of Council's operations in accordance with the Council Plan;
- d) Developing, adopting and disseminating a code of conduct for Council staff;
- e) Providing timely advice to the Council;
- f) Ensuring that the council receives timely and reliable advice about its legal obligations under this Act and any other Act;
- g) Supporting the Mayor in the performance of the Mayor's role;
- h) Carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013;
- i) Performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act;

We undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.

## **12. Representatives on Behalf of Council**

As leader and chief spokesperson for the Council, the Mayor represents the Council at official functions and events.

Opportunities for Councillors to represent the Council will generally occur in one of the following ways:

- (a) referral of an invitation sent directly to the Mayor;
- (b) an invitation directly to a Councillor from an external source;
- (c) an invitation forwarded to management from an external source seeking the nomination of the appropriate Councillor; or
- (d) an invitation to a Councillor by a member of management.

In determining the appropriate representative in the circumstances referred to above, consideration should be given to the role and responsibilities of Councillors.

## **Councillor Involvement at Sponsored Events**

- (a) As part of involvement in sponsored events, Councillors will be given the opportunity of attending and playing an official role in a wide range of activities.
- (b) Where an official role (speaking or otherwise) is available to Councillors, the opportunity shall first be offered to the Mayor.

## **Civic Functions**

- (a) Councillors will have the opportunity of involvement in civic functions that actively support the Council's role as a regional cultural, sporting and business centre. The hosting of civic functions is an opportunity for the Council to take an appropriate leadership role in high profile Council events and activities.
- (b) As part of the Mayor's ceremonial role, the Mayor should always take the lead role in hosting a function (when in attendance).

## **13. Candidature of Councillors**

### **Distinction between Prospective Candidate and Nominated Candidate**

The below guidelines draw a distinction between Prospective Candidates and Nominated Candidates because, as with council elections, candidates for state and federal elections only become actual nominated candidates a few weeks prior to the relevant election date. Accordingly, this policy recommends different treatment for Prospective Candidates and Nominated Candidates on the basis that some requirements are recommended as appropriate for Nominated Candidates during a formal election period which are not considered to be necessary prior to the formal election period.

- (a) A councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as an independent candidate for a state or federal election (a Prospective Candidate), should provide written advice to the CEO, as soon as practicable, who should then advise all councillors.
- (b) A councillor who is a Prospective Candidate, should declare his/her intended candidacy at a meeting of the council as soon as practicable after notifying the CEO pursuant to section 13 (a).
- (c) A councillor who nominates as a candidate for a state or federal election (a Nominated Candidate), should apply for leave of absence from the council and this leave of absence should commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election (Nomination Date) and conclude no earlier than the close of voting for the election. During this period, a councillor who is on a leave of absence should not attend meetings of the council or otherwise act as a councillor.
- (d) Any councillor / staff relationship protocol which the council has in place in respect of the caretaker period prior to a council election, should be observed by a Nominated Candidate and this should apply from their Nomination Date until the close of voting for the election.
- (e) A council, upon receiving an application for a leave of absence from a councillor who is a Nominated Candidate or who intends to become a Nominated Candidate, should approve that application.
- (f) A councillor who is a Prospective Candidate or a Nominated Candidate, should take care to differentiate between his/her role as a state or federal election candidate and role as a councillor when making public comment.
- (g) A councillor who is a Prospective Candidate or a Nominated Candidate, should not use council resources, including council equipment and facilities in relation to his/her candidacy.
- (h) A councillor who is a Prospective Candidate or a Nominated Candidate, should not attend council activities, including committee meetings and council-related external activities in relation to his/her candidacy.

## **14. Managing and Accessing Council Information**

### **Managing Information**

While Council values openness and accountability, during the course of their duties Councillors will be privy to information that is confidential. Reference to confidential information includes sensitive matters discussed at workshops and other Assemblies of Councillors.

Councillors will manage Council information appropriately and in particular:

- a) Will not use information gained by virtue of being a Councillor for any purpose other than to exercise their role as a Councillor:
- b) Will respect the Council's policies in relation to public comments and communications with the media
- c) Will treat with the utmost respect, information deemed "confidential information" in accordance with Section 77 of the Act
- d) Will recognise the requirements of the *Privacy and Data Protection Act 2014* regarding the access, use and release of personal information
- e) Will comply with the provisions of Council's Information Management (Records) Policy at all times; and
- f) Acknowledge that all mail addressed to Councillors, both hard copy and electronic, is defined as "corporate" mail and as such is subject to automatic capture and monitoring by Council Officers.

### **Accessing Information**

Councillors acknowledge that all requests made by Councillors for workshops from Council officers or access to information on Council files should be registered and reported. This obligation does not apply to requests for clarification/explanation of items on a forthcoming Council agenda.

In their capacity as a private resident of the Shire, Councillors may exercise their right to approach Council officers in the same way that any other resident may, and expect to receive the same level of service.

## 15. Definitions & Consequences of Misconduct

Definitions for misconduct, serious misconduct and gross misconduct by Councillors are summarised in the table below, along with the authority responsible for addressing the matter.

DEGREE OF SERIOUSNESS	DEFINITION	RESPONSIBLE AUTHORITY	FINDINGS	CONSEQUENCES
<b>Conduct inconsistent with standards council has set itself</b>	Breaches of Councillor Codes of Conduct	Council Mayor Principal Conduct Officer	Remedial Action	<ul style="list-style-type: none"> <li>▪ Mediation</li> <li>▪ Training</li> <li>▪ Counselling</li> </ul>
<b>Misconduct</b>	Failing to comply with a council's internal resolution procedure, including failure to abide by any decision of council in relation to a breach of the code and repeated breaches of councillor conduct principles	Panel	Misconduct	<ul style="list-style-type: none"> <li>▪ Reprimand</li> <li>▪ Apology</li> <li>▪ Leave of absence (max 2 mths)</li> <li>▪ Ineligible to be Mayor (max 4 yrs)</li> </ul>
<b>Serious Misconduct</b>	Failing to attend panel or comply with panel processes or directions. Bullying of councillor or staff or improperly directing staff. Releasing confidential information. Repeated misconduct after a finding of misconduct by the panel	Panel	Serious Misconduct	<ul style="list-style-type: none"> <li>▪ Ineligible to be Mayor (max 4 yrs)</li> <li>▪ Reprimand</li> <li>▪ Apology</li> <li>▪ Leave of absence</li> <li>▪ Suspension</li> <li>▪ Ineligible to chair special committee</li> </ul>
<b>Gross Misconduct</b>	Behaviour that demonstrates lack of character to be a councillor	VCAT	Gross Misconduct	<ul style="list-style-type: none"> <li>▪ Disqualification (max 4 yrs)</li> <li>▪ Ineligible to be candidate (max 8 yrs)</li> </ul>

Any management of councillor conduct issues is designed to:

- Reinforce the responsibility and authority of councils to manage breaches of agreed conduct through a mandatory internal resolution procedure; and
- Only escalate management of misconduct and serious misconduct to panels when councils cannot resolve the matter internally; and
- Give panels greater powers to manage and resolve misconduct and serious misconduct
- Retain the capacity to manage gross misconduct through VCAT

## 16. Dispute Resolution Procedures

This dispute resolution procedure is intended to be used when Councillors have been unable to resolve an interpersonal 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 debate and voting in Council meetings.

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. Where, after these endeavours have been exhausted, the matter still remains unresolved, the parties may resort to any or all of the Wellington Shire Council's three phase dispute resolution process.

The Council's three phase dispute resolution process involves:

- (a) **Phase 1 - Direct Negotiation between the parties** in dispute with the Mayor in attendance to provide guidance;
- (b) **Phase 2 - External Mediation by an independent mediator** engaged by the Chief Executive Officer; and
- (c) **Phase 3 - An internal resolution procedure** involving an independent arbiter.

[Refer to Appendix 1 for a summary of the key roles in Councillor conduct resolution)

### **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.

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 (if any) or the immediate past Mayor. The Deputy Mayor or the immediate past 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 for external mediation whether or not the dispute has been the subject of an application for “direct negotiation”.

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
- an alleged contravention of the Councillor Code of Conduct.

The applicant is to submit a written application to the Principal Conduct Officer (PCO) 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 (PCO) or as soon as practical thereafter.

The (PCO) 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 (PCO). 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 (PCO) is to advise the applicant, the Mayor and Chief Executive Officer forthwith.

The Chief Executive 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**

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 were 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.

A councillor or a group of councillors may make an application alleging that a Councillor has contravened this 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 (PCO).

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 (PCO) 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 (PCO) 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 (PCO), fix a time and place to hear the application;
- authorise the (PCO) 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;
- 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:

- (a) failure by a Councillor to comply with the Council's internal resolution procedure; or
- (b) failure by a Councillor to comply with a written direction given by the Council under section 81AB; or
- (c) repeated contravention of any of the Councillor conduct principles.

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

In the event that reconciliation of the dispute is not possible after (PCO) intervention, the (PCO) will seek assistance from the Principal Councillor Conduct Registrar (PCCR) to resolve the issue, whilst providing support to the parties of the dispute. The (PCCR) will convene a conduct panel.

A Councillor Conduct Panel will be able to:

- (a) Discipline a Councillor by reprimand, direct an apology or require the Councillor to take up to two months leave of absence;
- (b) Require remedial action, including mediation, training or counselling; or
- (c) Refer a matter to VCAT

The *Local Government Act 1989* prescribes how Councillor Conduct Panels are established and function when required to assist Council to enforce its Code of Conduct.

## **17. Disputes Between Members of the Public and Councillors**

Where a complaint is received from the public in respect of a Councillor, the matter will be referred to the Mayor for consideration. Where the Mayor determines a breach of the Councillor Code of Conduct has occurred, the Mayor will progress the matter in accordance with this dispute resolution process detailed herein. Where the complaint involves the Mayor, the Deputy Mayor will progress the matter in accordance with this dispute resolution process.

## **18. Disputes Between Councillors and Staff**

The CEO has sole responsibility for the management of Council staff. In the event of a dispute between a Councillor and a member of Council staff, it must be brought to the immediate attention of the Chief Executive Officer. The CEO will investigate the dispute further.

## **19. Human Rights Charter**

Elected councillors have an important role to play in ensuring council business reflects a human rights perspective. It is therefore essential that councillors maintain awareness of the relevance of the Charter to the work of Council, and improve their understanding of how they are expected to make decisions and act in a way which is compatible with the Charter.

All members of the community, Councillors and Council staff will be treated honestly and fairly in a manner that is not discriminatory on the basis of gender, religion, race or contrary to the Equal Opportunity Act and the Victorian Charter of Human Rights, and which in no way causes undue offence or embarrassment to individuals or groups.

# APPENDIX 1 – Key Roles in Councillor Conduct Resolution

## **Principal Conduct Officer**

The Wellington Shire Principal Conduct Officer role, is incorporated into the function of the General Manager Corporate Services.

A Principal Conduct Officer must –

- (a) assist the council in the implementation of, and conduct of, the internal resolution procedure and
- (b) assist the Principal Councillor Conduct Registrar to perform the functions specified in Section 81T.

## **Independent Arbiter**

It is critical that when allegations of poor conduct are levelled against a councillor that these are fairly tested. Persons subject to allegations must be given an opportunity to be heard. Decisions by the arbiter must be supported by written reasons.

The role of the arbiter is to:

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

An arbiter:

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

## **Principal Councillor Conduct Registrar**

The Principal Councillor Conduct Registrar is responsible for overseeing the resolution process once advised by the Principal Conduct Officer that all internal attempts for resolution have failed.

The registrar will:

- (a) publish guidelines about all panel processes
- (b) maintain a list of panel members (who are appointed by the minister)
- (c) form appropriate panels to hear applications
- (d) publish panel findings and decisions

The Principal Councillor Conduct Registrar has power to do all things necessary or convenient to be done for or in connection with the performance of the Principal Conduct Registrar's function under section 81T of the Act.

The Principal Councillor Conduct Registrar is responsible for receiving application for councillor conduct panels and, after receiving applications, determining whether panels should be formed. In making a determination whether to form a panel, the Principal Councillor Conduct Registrar must be

satisfied that:

- (a) An application is not frivolous, vexatious, misconceived or lacking in substance; and
- (b) There is sufficient evidence to support an allegation of misconduct or serious misconduct; and
- (c) The council has taken sufficient or appropriate steps to resolve the matter or has provided satisfactory reasons for not taking the steps.

### **Chief Municipal Inspector**

The Chief Municipal Inspector has the power to investigate and initiate applications for a panel to be established to investigate allegations of serious misconduct against councillors (Sections 81 (1B) (c) and 223A92)(d)),

The Chief Municipal Inspector will be responsible for making applications to VCAT for findings of gross misconduct against councillors (Sections 81E and 223A(2) (e)).

The Chief Municipal Inspector will have the power to suspend or stop consideration of matters by a panel in certain circumstances (Section 81P(1)).

There are three distinct roles for the CMI in respect to the councillor conduct framework

- (a) Role in relation to serious misconduct
- (b) Direct role in gross misconduct
- (c) Role to provide advice to the minister in relation to governance.

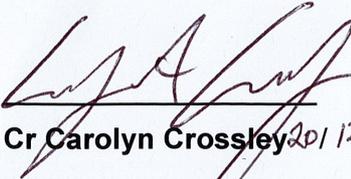
### **Jurisdiction of VCAT**

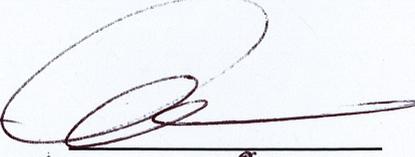
VCAT will continue to hear allegations of gross misconduct. The Chief Municipal Inspector will be responsible for making applications to VCAT for findings of gross misconduct against councillors. Decisions of a panel may still be appealed by VCAT

## Councillor Endorsement

This Code of Conduct was adopted by the Council on 20 December 2016 and is signed by the following Councillors who have read and understood and declare that they will abide by this Councillor Code of Conduct

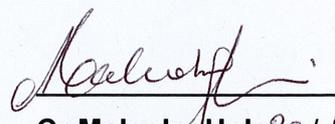
### Signatures

  
Cr Carolyn Crossley 20/12/16

  
Cr Alan Hall 20/12/16

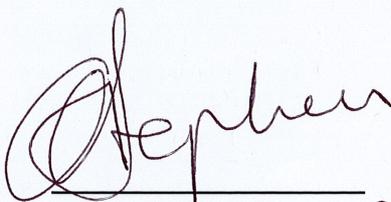
  
Cr Scott Rossetti 20/12/16

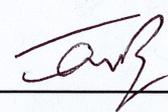
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Cr Darren McCubbin 1

  
Cr Malcolm Hole 20/12/16

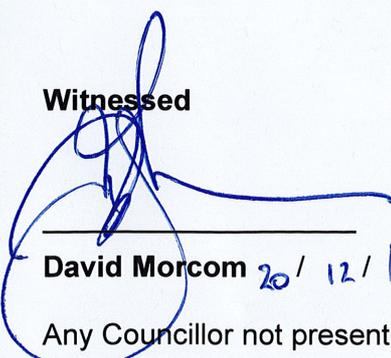
  
Cr Gayle Maher 20/12/16

  
Cr Keith Mills 20 Dec 2016

  
Cr Garry Stephens 20/12/16

  
Cr Ian Bye 20/12/16

### Witnessed

  
David Morcom 20/12/16

Any Councillor not present at this date will be witnessed by Chief Executive Officer under separate cover.

## Councillor Endorsement

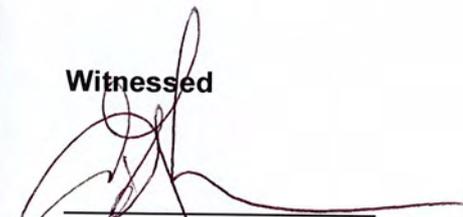
This Code of Conduct was adopted by the Council on 20 December 2016 and is signed by the following Councillor who has read and understood and declare that they will abide by this Councillor Code of Conduct

### Signatures



Cr Darren McCubbin ..... 30 / 1 / 17

### Witnessed



David Morcom 30 / 1 / 17

Any Councillor not present at this date will be witnessed by Chief Executive Officer under separate cover.

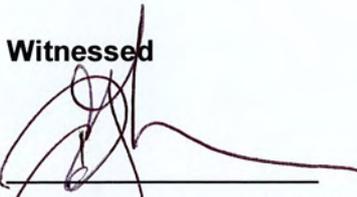
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### Signatures

  
Carmel Ripper ..... 21 / 11 / 17

### Witnessed

  
David Morcom 21 / 11 / 17

Any Councillor not present at this date will be witnessed by Chief Executive Officer under separate cover.