



# Council Policy Manual

## WEST WIMMERA SHIRE COUNCIL

COUNCIL POLICY	
INFORMATION PRIVACY POLICY	Policy No:
	Adopted by Council: 20 March 2019
	Next review date: February <del>2020</del> 2021
Senior Manager:	Chief Executive Officer
Responsible Officer:	Director Corporate and Community Services
Functional Area:	Governance
Introduction & Background	<p>The <i>Privacy and Data Protection Act 2014</i> and the <i>Health Records Act 2001</i> require that Council responsibly maintains and manages personal and sensitive information.</p> <p>The <i>Privacy and Data Protection Act 2014</i> contains 10 Information Privacy Principles (IPPs) whilst the <i>Health Records Act 2001</i> contains 11 Health Privacy Principles (HPPs), all of which Council must comply with.</p>
Purpose & Objectives	<p>The Information Privacy Policy provides guidance to Council in safeguarding personal and sensitive information that Council holds or has access to, while complying with its legislative requirements under the <i>Privacy and Data Protection Act 2014</i>, <a href="#"><i>the Protected Disclosure Act 2012</i></a> and <i>Health Records Act 2001</i>.</p>
Definitions	<p><b>Information Privacy Principles (IPPs)</b> – Set of principles that regulate the handling of personal or sensitive information. These are detailed in the <i>Privacy and Data Protection Act 2014</i>.</p> <p><b>Health Privacy Principles (HPPs)</b> - Set of principles that regulate the handling of health information. These are detailed in the <i>Health Records Act 2001</i>.</p> <p><b>Sensitive Information</b> – personal information or opinion regarding an individual person's beliefs and affiliations, including::</p> <ul style="list-style-type: none"> <li>• Ethnicity</li> <li>• Religious beliefs and/or affiliations</li> <li>• Political beliefs and/or affiliations</li> <li>• Sexual preferences and orientation</li> <li>• Criminal record</li> <li>• Membership or affiliation with any trade union or association</li> </ul>



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	<p><b>Health Information</b> – personal information or opinion regarding a person’s medical history and health, including any physical or psychological health. It also includes any desired or confirmed future provision of treatment. Health information can also include personal information collected in the course of providing a service.</p> <p><b>Personal Information</b> – Any information or opinion about an individual which when shared could give reasonable disclosure to that individual’s identity. It should be noted that this information need not be officially recorded and need not be accurate.</p> <p><b>Council</b> – Refers to all representatives acting on behalf of West Wimmera Shire Council, including Councillors, Staff, Contractors and Volunteers.</p> <p><b>PROV</b> – Public Records Officer Victoria</p> <p><b>Information Commissioner</b> – the Information Commissioner appointed by the Victorian Government under s.6C of the <i>Freedom of Information Act 1982</i>.</p> <p><b>OVIC</b> – Office of the Victorian Information Commissioner, as established under the <i>Freedom of Information Act 1982</i></p>
Policy Details	
1.	<p><b>Scope</b></p> <p>The policy applies to all Councillors, employees, contractors and volunteers who represent West Wimmera Shire Council.</p> <p>It covers all personal and health information held by West Wimmera Shire Council, whether in a formal database or not, including opinions inferred, whether accurate or not.</p>
2.	<p><b>Collection of Information</b></p> <p>Council will collect only such information that is necessary for the performance of the function requiring such information.</p> <p>Where practicable Council will offer the individual the right of anonymity in providing data.</p> <p>Council shall disclose the purpose for collection of private, sensitive and health data.</p>



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3.	<p><b>Storage and Retention of Data</b></p> <p>Council shall store all data in a secure and confidential manner in accordance with PROV standards.</p> <p>When information collected is no longer required it shall be de-identified and/or destroyed in a manner compliant with the <i>Public Records Act 1973</i>.</p>
4.	<p><b>Access to and Disclosure of Information</b></p> <p>Council shall only access and disclose information for the primary purposes for which it has been obtained.</p> <p>Under no circumstances will Council disclose personal, sensitive or health information to third parties or for other uses unless one of the following applies:</p> <ul style="list-style-type: none"> <li>• Where Council has received consent from the individual to do so</li> <li>• Where the information is to be used for a directly related purpose that the individual would reasonably expect</li> <li>• Where other legislation permits or requires information sharing</li> <li>• Where the Information Commissioner makes a public interest declaration</li> </ul> <p>Division 1 of the <i>Privacy and Data Protection Act 2014</i> provides for disclosure exemptions under particular circumstances, being:</p> <ul style="list-style-type: none"> <li>• Certain circumstances where disclosure is subject to the provisions of the <i>Freedom of Information Act 1982</i> (s.14)</li> <li>• Certain circumstances where law enforcement agencies require the information for investigation or prosecution (s.15)</li> <li>• Certain disclosures subject to the provisions of the <i>Family Violence Prevention Act 2008</i> (s.15A)</li> <li>• Certain disclosures subject to the provisions of the <i>Child Wellbeing and Safety Act 2005</i> (s.15B)</li> </ul> <p>An individual has the right to access, view and correct information pertaining to themselves.</p> <p>Councillors, Council employees, contractors or volunteers who breach these principles will be subject to disciplinary procedures and may be referred to OVIC, IBAC or police.</p>
5.	<p><b>Information Quality</b></p> <p>Council will take reasonable steps to ensure that all information collected and stored is accurate, complete and relevant to its purpose and use.</p>



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6.	<table border="1"> <tr> <th colspan="2" data-bbox="284 338 703 398">Roles and Responsibilities</th></tr> <tr> <td data-bbox="284 398 703 517">Chief Executive Officer</td><td data-bbox="703 398 1453 517"> <ul style="list-style-type: none"> <li>• Delegation and appointment of Information Privacy Officer and oversight of compliance</li> </ul> </td></tr> <tr> <td data-bbox="284 517 703 853">Information Privacy Officer</td><td data-bbox="703 517 1453 853"> <ul style="list-style-type: none"> <li>• Provide advice and guidance to staff on privacy matters</li> <li>• Maintain documentation relating to management of information protection</li> <li>• Receive and investigate complaints into breaches of information privacy</li> <li>• Receive and handle requests for access to information</li> </ul> </td></tr> <tr> <td data-bbox="284 853 703 1066">Customer Services Co-ordinator</td><td data-bbox="703 853 1453 1066"> <ul style="list-style-type: none"> <li>• Day to day monitoring of privacy compliance from Customer Service Officers</li> <li>• Maintenance of Council's Names and Addresses Register</li> </ul> </td></tr> <tr> <td colspan="2" data-bbox="284 1066 1453 1128">All staff have a responsibility to maintain confidentiality</td></tr> </table>	Roles and Responsibilities		Chief Executive Officer	<ul style="list-style-type: none"> <li>• Delegation and appointment of Information Privacy Officer and oversight of compliance</li> </ul>	Information Privacy Officer	<ul style="list-style-type: none"> <li>• Provide advice and guidance to staff on privacy matters</li> <li>• Maintain documentation relating to management of information protection</li> <li>• Receive and investigate complaints into breaches of information privacy</li> <li>• Receive and handle requests for access to information</li> </ul>	Customer Services Co-ordinator	<ul style="list-style-type: none"> <li>• Day to day monitoring of privacy compliance from Customer Service Officers</li> <li>• Maintenance of Council's Names and Addresses Register</li> </ul>	All staff have a responsibility to maintain confidentiality	
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<b>Policy Adopted:</b>	Ordinary Meeting 20/03/19	Minute Book Page _____	RecFind AD0041
<b>Policy Reviewed:</b>	Ordinary Meeting [date]	Minute Book Page _____	RecFind



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### INFORMATION PRIVACY POLICY APPENDIX 1

#### INFORMATION PRIVACY PRINCIPLES

#### *PRIVACY AND DATA SECURITY ACT 2014*

##### Schedule 1—The Information Privacy Principles

In these Principles—

***sensitive information*** means information or an opinion about an individual's—

- (a) racial or ethnic origin; or
- (b) political opinions; or
- (c) membership of a political association; or
- (d) religious beliefs or affiliations; or
- (e) philosophical beliefs; or
- (f) membership of a professional or trade association; or
- (g) membership of a trade union; or
- (h) sexual preferences or practices; or
- (i) criminal record—

that is also personal information;

***unique identifier*** means an identifier (usually a number) assigned by an organisation to an individual uniquely to identify that individual for the purposes of the operations of the organisation but does not include an identifier that consists only of the individual's name and does not include an identifier within the meaning of the **Health Records Act 2001**.

Sch. 1 def. of  
***unique  
identifier***  
amended by  
No. 60/2017  
s. 34(1).



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### 1 Principle 1—Collection

- 1.1 An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.
- 1.2 An organisation must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.
- 1.3 At or before the time (or, if that is not practicable, as soon as practicable after) an organisation collects personal information about an individual from the individual, the organisation must take reasonable steps to ensure that the individual is aware of—
  - (a) the identity of the organisation and how to contact it; and
  - (b) the fact that the individual is able to gain access to the information; and
  - (c) the purposes for which the information is collected; and
  - (d) to whom (or the types of individuals or organisations to which) the organisation usually discloses information of that kind; and
  - (e) any law that requires the particular information to be collected; and
  - (f) the main consequences (if any) for the individual if all or part of the information is not provided.
- 1.4 If it is reasonable and practicable to do so, an organisation must collect personal information about an individual only from that individual.
- 1.5 If an organisation collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in IPP 1.3 except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

### 2 Principle 2—Use and Disclosure

- 2.1 An organisation must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless—
  - (a) both of the following apply—
    - (i) the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection;
    - (ii) the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose; or
  - (b) the individual has consented to the use or disclosure; or



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- (c) if the use or disclosure is necessary for research, or the compilation or analysis of statistics, in the public interest, other than for publication in a form that identifies any particular individual—
  - (i) it is impracticable for the organisation to seek the individual's consent before the use or disclosure; and
  - (ii) in the case of disclosure—the organisation reasonably believes that the recipient of the information will not disclose the information; or
- (d) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent—
  - (i) a serious threat to an individual's life, health, safety or welfare; or
  - (ii) a serious threat to public health, public safety or public welfare; or
- (e) the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
- (f) the use or disclosure is required or authorised by or under law; or
- (g) the organisation reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of a law enforcement agency—
  - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction;
  - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
  - (iii) the protection of the public revenue;
  - (iv) the prevention, detection, investigation or remedying of seriously improper conduct;
  - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or
- (h) the Australian Security Intelligence Organisation (ASIO) or the Australian Secret Intelligence Service (ASIS), in connection with its functions, has requested the organisation to disclose the personal information and—
  - (i) the disclosure is made to an officer or employee of ASIO or ASIS (as the case requires) authorised in writing by the Director-General of ASIO or ASIS (as the case requires) to receive the disclosure; and

Sch. 1  
cl. 2.1(d)(i)  
amended by  
No. 23/2017  
s. 22(1).



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- (ii) an officer or employee of ASIO or ASIS (as the case requires) authorised in writing by the Director-General of ASIO or ASIS (as the case requires) for the purposes of this paragraph has certified that the disclosure would be connected with the performance by ASIO or ASIS (as the case requires) of its functions.

2.2 If an organisation uses or discloses personal information under IPP 2.1(g), it must make a written note of the use or disclosure.

### **3 Principle 3—Data Quality**

- 3.1 An organisation must take reasonable steps to make sure that the personal information it collects, uses or discloses is accurate, complete and up to date.

### **4 Principle 4—Data Security**

- 4.1 An organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.
- 4.2 An organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose.

### **5 Principle 5—Openness**

- 5.1 An organisation must set out in a document clearly expressed policies on its management of personal information. The organisation must make the document available to anyone who asks for it.
- 5.2 On request by a person, an organisation must take reasonable steps to let the person know, generally, what sort of personal information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

### **6 Principle 6—Access and Correction**

- 6.1 If an organisation holds personal information about an individual, it must provide the individual with access to the information on request by the individual, except to the extent that—
  - (a) providing access would pose a serious threat to the life or health of any individual; or
  - (b) providing access would have an unreasonable impact on the privacy of other individuals; or
  - (c) the request for access is frivolous or vexatious; or
  - (d) the information relates to existing legal proceedings between the organisation and the individual, and the information would not be accessible by the process of discovery or subpoena in those proceedings; or





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- (e) providing access would reveal the intentions of the organisation in relation to negotiations with the individual in such a way as to prejudice those negotiations; or
- (f) providing access would be unlawful; or
- (g) denying access is required or authorised by or under law; or
- (h) providing access would be likely to prejudice an investigation of possible unlawful activity; or
- (i) providing access would be likely to prejudice—
  - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction; or
  - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime; or
  - (iii) the protection of public revenue; or
  - (iv) the prevention, detection, investigation or remedying of seriously improper conduct; or
  - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders—by or on behalf of a law enforcement agency; or
- (j) ASIO, ASIS or a law enforcement agency performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.

6.2 However, where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision-making process, the organisation may give the individual an explanation for the commercially sensitive decision rather than direct access to the information.

6.3 If the organisation is not required to provide the individual with access to the information because of one or more of IPP 6.1(a) to (j) (inclusive), the organisation must, if reasonable, consider whether the use of mutually agreed intermediaries would allow sufficient access to meet the needs of both parties.

6.4 If an organisation charges for providing access to personal information, the organisation—

- (a) must advise an individual who requests access to personal information that the organisation will provide access on the payment of the prescribed fee; and
- (b) may refuse access to the personal information until the fee is paid.



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- 6.5 If an organisation holds personal information about an individual and the individual is able to establish that the information is not accurate, complete and up to date, the organisation must take reasonable steps to correct the information so that it is accurate, complete and up to date.
- 6.6 If the individual and the organisation disagree about whether the information is accurate, complete and up to date, and the individual asks the organisation to associate with the information a statement claiming that the information is not accurate, complete or up to date, the organisation must take reasonable steps to do so.
- 6.7 An organisation must provide reasons for denial of access or a refusal to correct personal information.
- 6.8 If an individual requests access to, or the correction of, personal information held by an organisation, the organisation must—
  - (a) provide access, or reasons for the denial of access; or
  - (b) correct the personal information, or provide reasons for the refusal to correct the personal information; or
  - (c) provide reasons for the delay in responding to the request for access to or for the correction of personal information—as soon as practicable, but no later than 45 days after receiving the request.

### **7 Principle 7—Unique Identifiers**

- 7.1 An organisation must not assign unique identifiers to individuals unless the assignment of unique identifiers is necessary to enable the organisation to carry out any of its functions efficiently.
- 7.2 An organisation must not adopt as its own unique identifier of an individual a unique identifier of the individual that has been assigned by another organisation unless—
  - (a) it is necessary to enable the organisation to carry out any of its functions efficiently; or
  - (b) it has obtained the consent of the individual to the use of the unique identifier; or
  - (c) it is an outsourcing organisation adopting the unique identifier created by a contracted service provider in the performance of its obligations to the organisation under a State contract.
- 7.3 An organisation must not use or disclose a unique identifier assigned to an individual by another organisation unless—
  - (a) the use or disclosure is necessary for the organisation to fulfil its obligations to the other organisation; or
  - (b) one or more of IPP 2.1(d) to (g) applies to the use or disclosure; or
  - (c) it has obtained the consent of the individual to the use or disclosure.



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- 7.4 An organisation must not require an individual to provide a unique identifier in order to obtain a service unless the provision of the unique identifier is required or authorised by law or the provision is in connection with the purpose (or a directly related purpose) for which the unique identifier was assigned.

### **8 Principle 8—Anonymity**

- 8.1 Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering into transactions with an organisation.

### **9 Principle 9—Transborder Data Flows**

- 9.1 An organisation may transfer personal information about an individual to someone (other than the organisation or the individual) who is outside Victoria only if—
- (a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the Information Privacy Principles; or
  - (b) the individual consents to the transfer; or
  - (c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of precontractual measures taken in response to the individual's request; or
  - (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or
  - (e) all of the following apply—
    - (i) the transfer is for the benefit of the individual;
    - (ii) it is impracticable to obtain the consent of the individual to that transfer;
    - (iii) if it were practicable to obtain that consent, the individual would be likely to give it; or
  - (f) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the Information Privacy Principles.



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### 10 Principle 10—Sensitive Information

10.1 An organisation must not collect sensitive information about an individual unless—

- (a) the individual has consented; or
- (b) the collection is required or authorised under law; or
- (c) the collection is necessary to prevent or lessen a serious threat to the life or health of any individual, where the individual whom the information concerns—
  - (i) is physically or legally incapable of giving consent to the collection; or
  - (ii) physically cannot communicate consent to the collection; or
- (d) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

10.2 Despite IPP 10.1, an organisation may collect sensitive information about an individual if—

- (a) the collection—
  - (i) is necessary for research, or the compilation or analysis of statistics, relevant to government funded targeted welfare or educational services; or
  - (ii) is of information relating to an individual's racial or ethnic origin and is collected for the purpose of providing government funded targeted welfare or educational services; and
- (b) there is no reasonably practicable alternative to collecting the information for that purpose; and
- (c) it is impracticable for the organisation to seek the individual's consent to the collection.

Sch. 1  
cl. 10.1(b)  
amended by  
No. 60/2017  
s. 34(2).  
Sch. 1  
cl. 10.1(c)  
amended by  
No. 23/2017  
s. 22(3).



### INFORMATION PRIVACY POLICY APPENDIX 2

#### HEALTH PRIVACY PRINCIPLES

#### *HEALTH RECORDS ACT 2001*

### Schedule 1—The Health Privacy Principles

Section 19

#### 1 Principle 1—Collection

##### *When health information may be collected*

- 1.1 An organisation must not collect health information about an individual unless the information is necessary for one or more of its functions or activities and at least one of the following applies—
- (a) the individual has consented;
  - (b) the collection is required, authorised or permitted, whether expressly or impliedly, by or under law (other than a prescribed law);
  - (c) the information is necessary to provide a health service to the individual and the individual is incapable of giving consent within the meaning of section 85(3) and—
    - (i) it is not reasonably practicable to obtain the consent of an authorised representative of the individual within the meaning of section 85; or
    - (ii) the individual does not have such an authorised representative;
  - (d) the information is disclosed to the organisation in accordance with HPP 2.2(a), (f), (i) or (l) or HPP 2.5;
  - (e) if the collection is necessary for research, or the compilation or analysis of statistics, in the public interest—
    - (i) that purpose cannot be served by the collection of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained; and
    - (ii) it is impracticable for the organisation to seek the individual's consent to the collection; and
    - (iii) the information is collected in accordance with guidelines issued or approved by the Health Complaints Commissioner under section 22 for the purposes of this subparagraph;

Sch. 1  
cl. 1.1(e)(iii)  
amended by  
No. 22/2016  
s. 232(a).



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Sch. 1 cl. 1.1(f)  
amended by  
No. 22/2016  
s. 232(b).  
Sch. 1  
cl. 1.1(f)(i)  
amended by  
No. 23/2017  
s. 19(1).

(f) the collection is necessary to prevent or lessen—

(i) a serious threat to the life, health, safety or welfare of any individual;  
or

(ii) a serious threat to public health, public safety or public welfare—

and the information is collected in accordance with guidelines, if any,  
issued or approved by the Health Complaints Commissioner under section  
22 for the purposes of this paragraph;

(g) the collection is by or on behalf of a law enforcement agency and the  
organisation reasonably believes that the collection is necessary for a law  
enforcement function;

(h) the collection is necessary for the establishment, exercise or defence of a  
legal or equitable claim;

(i) the collection is in the prescribed circumstances.

### *How health information is to be collected*

1.2 An organisation must collect health information only by lawful and fair means  
and not in an unreasonably intrusive way.

1.3 If it is reasonable and practicable to do so, an organisation must collect health  
information about an individual only from that individual.

1.4 At or before the time (or, if that is not practicable, as soon as practicable  
thereafter) an organisation collects health information about an individual from  
the individual, the organisation must take steps that are reasonable in the  
circumstances to ensure that the individual is generally aware of—

(a) the identity of the organisation and how to contact it; and

(b) the fact that he or she is able to gain access to the information; and

(c) the purposes for which the information is collected; and

(d) to whom (or the types of individuals or organisations to which) the  
organisation usually discloses information of that kind; and

(e) any law that requires the particular information to be collected; and

(f) the main consequences (if any) for the individual if all or part of the  
information is not provided.

1.5 If an organisation collects health information about an individual from someone  
else, it must take any steps that are reasonable in the circumstances to ensure  
that the individual is or has been made aware of the matters listed in HPP 1.4  
except to the extent that making the individual aware of the matters would pose  
a serious threat to the life or health of any individual or would involve the  
disclosure of information given in confidence<sup>i</sup>.



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- 1.6 An organisation is not required to notify the individual of the identity of persons, or classes of persons, to whom health information may be disclosed in accordance with HPP 2.2(f).

### ***Information given in confidence<sup>ii</sup>***

- 1.7 If personal information is given in confidence to a health service provider about an individual by a person other than—

- (a) the individual; or
- (b) a health service provider in the course of, or otherwise in relation to, the provision of health services to the individual—

with a request that the information not be communicated to the individual to whom it relates, the provider must—

- (c) confirm with the person that the information is to remain confidential; and
- (d) if the information remains confidential—
  - (i) record the information only if it is relevant to the provision of health services to, or the care of, the individual; and
  - (ii) take reasonable steps to ensure that the information is accurate and not misleading; and
- (e) take reasonable steps to record that the information is given in confidence and is to remain confidential.

## **2 Principle 2—Use and Disclosure<sup>iii</sup>**

- 2.1 An organisation may use or disclose health information about an individual for the primary purpose for which the information was collected in accordance with HPP 1.1.

- 2.2 An organisation must not use or disclose health information about an individual for a purpose (the ***secondary purpose***) other than the primary purpose for which the information was collected unless at least one of the following paragraphs applies<sup>iv</sup>—

- (a) both of the following apply—
  - (i) the secondary purpose is directly related to the primary purpose; and
  - (ii) the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose; or
- (b) the individual has consented to the use or disclosure; or
- (c) the use or disclosure is required, authorised or permitted, whether expressly or impliedly, by or under law (other than a prescribed law); or





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- (d) all of the following apply—
  - (i) the organisation is a health service provider providing a health service to the individual; and
  - (ii) the use or disclosure for the secondary purpose is reasonably necessary for the provision of the health service; and
  - (iii) the individual is incapable of giving consent within the meaning of section 85(3) and—
    - (A) it is not reasonably practicable to obtain the consent of an authorised representative of the individual within the meaning of section 85; or
    - (B) the individual does not have such an authorised representative; or
- (e) all of the following apply—
  - (i) the organisation is a health service provider providing a health service to the individual; and
  - (ii) the use is for the purpose of the provision of further health services to the individual by the organisation; and
  - (iii) the organisation reasonably believes that the use is necessary to ensure that the further health services are provided safely and effectively; and
  - (iv) the information is used in accordance with guidelines, if any, issued or approved by the Health Complaints Commissioner under section 22 for the purposes of this paragraph; or
- (f) the use or disclosure is for the purpose of—
  - (i) funding, management, planning, monitoring, improvement or evaluation of health services; or
  - (ii) training provided by a health service provider to employees or persons working with the organisation—and—
  - (iii) that purpose cannot be served by the use or disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the individual's consent to the use or disclosure; or
  - (iv) reasonable steps are taken to de-identify the information—and—
  - (v) if the information is in a form that could reasonably be expected to identify individuals, the information is not published in a generally available publication; and

Sch. 1  
cl. 2.2(e)(iv)  
amended by  
No. 22/2016  
s. 232(c).





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- (vi) the information is used or disclosed in accordance with guidelines, if any, issued or approved by the Health Complaints Commissioner under section 22 for the purposes of this subparagraph; or
- (g) if the use or disclosure is necessary for research, or the compilation or analysis of statistics, in the public interest—
- (i) it is impracticable for the organisation to seek the individual's consent before the use or disclosure; and
  - (ii) that purpose cannot be served by the use or disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained; and
  - (iii) the use or disclosure is in accordance with guidelines issued or approved by the Health Complaints Commissioner under section 22 for the purposes of this subparagraph; and
  - (iv) in the case of disclosure—
    - (A) the organisation reasonably believes that the recipient of the health information will not disclose the health information; and
    - (B) the disclosure will not be published in a form that identifies particular individuals or from which an individual's identity can reasonably be ascertained; or
- (h) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent—
- (i) a serious threat to an individual's life, health, safety or welfare; or
  - (ii) a serious threat to public health, public safety or public welfare—
- and the information is used or disclosed in accordance with guidelines, if any, issued or approved by the Health Complaints Commissioner under section 22 for the purposes of this paragraph; or
- (i) <sup>v</sup>the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities and, if the organisation is a registered health practitioner, the use or disclosure would not be a breach of confidence; or
- (j) <sup>vi</sup>the organisation reasonably believes that the use or disclosure is reasonably necessary for a law enforcement function by or on behalf of a law enforcement agency and, if the organisation is a registered health practitioner, the use or disclosure would not be a breach of confidence; or
- (k) the use or disclosure is necessary for the establishment, exercise or defence of a legal or equitable claim; or

Sch. 1  
cl. 2.2(f)(vi)  
amended by  
No. 22/2016  
s. 232(d).

Sch. 1  
cl. 2.2(g)(iii)  
amended by  
No. 22/2016  
s. 232(e).

Sch. 1  
cl. 2.2(h)  
amended by  
No. 22/2016  
s. 232(f).

Sch. 1  
cl. 2.2(h)(i)  
amended by  
No. 23/2017  
s. 19(2).

Sch. 1 cl. 2.2(i)  
amended by  
No. 22/2016  
s. 232(g).

Sch. 1 cl. 2.2(j)  
amended by  
No. 22/2016  
s. 232(h).



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## WEST WIMMERA SHIRE COUNCIL

- (l) the use or disclosure is in the prescribed circumstances.

### Note

Nothing in HPP 2 requires an organisation to disclose health information about an individual. An organisation is always entitled not to disclose health information in the absence of a legal obligation to disclose it.

- 2.3 If an organisation discloses health information under paragraph (i) or (j) of HPP 2.2, it must make a written note of the disclosure.

- 2.4 Despite HPP 2.2, a health service provider may disclose health information about an individual to an immediate family member of the individual if—

- (a) either—

- (i) the disclosure is necessary to provide appropriate health services to or care of the individual; or

- (ii) the disclosure is made for compassionate reasons; and

- (b) the disclosure is limited to the extent reasonable and necessary for the purposes mentioned in paragraph (a); and

- (c) the individual is incapable of giving consent to the disclosure within the meaning of section 85(3); and

- (d) the disclosure is not contrary to any wish—

- (i) expressed by the individual before the individual became incapable of giving consent and not changed or withdrawn by the individual before then; and

- (ii) of which the organisation is aware or could be made aware by taking reasonable steps; and

- (e) in the case of an immediate family member who is under the age of 18 years, considering the circumstances of the disclosure, the immediate family member has sufficient maturity to receive the information.

- 2.5 Despite HPP 2.2, an organisation may use or disclose health information about an individual where—

- (a) it is known or suspected that the individual is dead; or

- (b) it is known or suspected that the individual is missing; or

- (c) the individual has been involved in an accident or other misadventure and is incapable of consenting to the use or disclosure—

and the use or disclosure is to the extent reasonably necessary—

- (d) to identify the individual; or

- (e) to ascertain the identity and location of an immediate family member or other relative of the individual for the purpose of—



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- (i) enabling a police officer, a coroner or other prescribed organisation to contact the immediate family member or other relative for compassionate reasons; or

Sch. 1  
cl. 2.5(e)(i)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 77.4).

- (ii) to assist in the identification of the individual—

and, in the circumstances referred to in paragraph (b) or (c)—

- (f) the use or disclosure is not contrary to any wish—

- (i) expressed by the individual before he or she went missing or became incapable of consenting and not withdrawn by the individual; and

- (ii) of which the organisation is aware or could have become aware by taking reasonable steps; and

- (g) the information is used or disclosed in accordance with guidelines, if any, issued or approved by the Health Complaints Commissioner under section 22 for the purposes of this paragraph.

Sch. 1  
cl. 2.5(g)  
amended by  
No. 22/2016  
s. 232(i).

### 3 Principle 3—Data Quality

- 3.1 An organisation must take steps that are reasonable in the circumstances to make sure that, having regard to the purpose for which the information is to be used, the health information it collects, uses, holds or discloses is accurate, complete, up to date and relevant to its functions or activities.

### 4 Principle 4—Data Security and Data Retention

- 4.1 An organisation must take reasonable steps to protect the health information it holds from misuse and loss and from unauthorised access, modification or disclosure.

- 4.2 A health service provider must not delete health information relating to an individual, even if it is later found or claimed to be inaccurate, unless—

- (a) the deletion is permitted, authorised or required by the regulations or any other law; or

- (b) the deletion is not contrary to the regulations or any other law and occurs—

- (i) in the case of health information collected while the individual was a child, after the individual attains the age of 25 years; or

- (ii) in any case, more than 7 years after the last occasion on which a health service was provided to the individual by the provider—

whichever is the later.

- 4.3 A health service provider who deletes health information in accordance with HPP 4.2 must make a written note of the name of the individual to whom the health information related, the period covered by it and the date on which it was deleted.



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4.4 A health service provider who transfers health information to another individual or organisation and does not continue to hold a record of that information must make a written note of the name and address of the individual or organisation to whom it was transferred.

4.5 An organisation other than a health service provider must take reasonable steps to destroy or permanently de-identify health information if it is no longer needed for the purpose for which it was collected or any other purpose authorised by this Act, the regulations made under this Act or any other law.

### 5 Principle 5—Openness

5.1 An organisation must set out in a document—

- (a) clearly expressed policies on its management of health information; and
- (b) the steps that an individual must take in order to obtain access to their health information.

The organisation must make the document available to anyone who asks for it.

5.2 On request by an individual, an organisation must take reasonable steps—

- (a) to let the individual know—
  - (i) whether the organisation holds health information relating to the individual; and
  - (ii) the steps that the individual should take if the individual wishes to obtain access to the information; and
- (b) if the organisation holds health information relating to the individual, to let the individual know in general terms—
  - (i) the nature of the information; and
  - (ii) the purposes for which the information is used; and
  - (iii) how the organisation collects, holds, uses and discloses the information.

### 6 Principle 6—Access and Correction

*Access<sup>vii</sup>*

6.1 If an organisation holds health information about an individual, it must provide the individual with access to the information on request by the individual in accordance with Part 5, unless—

- (a) providing access would pose a serious threat to the life or health of any person under section 26 and refusing access is in accordance with guidelines, if any, issued or approved by the Health Complaints Commissioner under section 22 for the purposes of this paragraph; or



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- (b) providing access would have an unreasonable impact on the privacy of other individuals and refusing access is in accordance with guidelines, if any, issued or approved by the Health Complaints Commissioner under section 22 for the purposes of this paragraph; or
- (c) the information relates to existing legal proceedings between the organisation and the individual and the information would not be accessible by the process of discovery in those proceedings<sup>viii</sup> or is subject to legal professional privilege or client legal privilege; or
- (d) providing access would reveal the intentions of the organisation in relation to negotiations, other than about the provision of a health service, with the individual in such a way as to expose the organisation unreasonably to disadvantage; or
- (e) the information is subject to confidentiality under section 27; or
- (f) providing access would be unlawful; or
- (g) denying access is required or authorised by or under law; or
- (h) providing access would be likely to prejudice an investigation of possible unlawful activity; or
- (i) providing access would be likely to prejudice a law enforcement function by or on behalf of a law enforcement agency; or
- (j) a law enforcement agency performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia; or
- (k) the request for access is of a kind that has been made unsuccessfully on at least one previous occasion and there are no reasonable grounds for making the request again; or
- (l) the individual has been provided with access to the health information in accordance with Part 5 and is making an unreasonable, repeated request for access to the same information in the same way.

Sch. 1  
cl. 6.1(b)  
amended by  
No. 22/2016  
s. 232(k).

Sch. 1  
cl. 6.1(c)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 29.3).

6.2 However, where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision-making process, the organisation may give the individual an explanation for the commercially sensitive decision rather than access to the information.

### Note

An organisation breaches HPP 6.1 if it relies on HPP 6.2 to give an individual an explanation for a commercially sensitive decision in circumstances where HPP 6.2 does not apply.

6.3 If access is refused on the ground that it would pose a serious threat to the life or health of the individual, the procedure in Division 3 of Part 5 applies.



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- 6.4 Without limiting sections 26 and 27, nothing in this Principle compels an organisation to refuse to provide an individual with access to his or her health information.

### ***Correction***

- 6.5 <sup>ix</sup>If an organisation holds health information about an individual and the individual is able to establish that the information is inaccurate, incomplete, misleading or not up to date, the organisation must take reasonable steps to correct the information so that it is accurate, complete and up to date but must not delete the information otherwise than in accordance with HPP 4.2.

- 6.6 If—

- (a) the organisation is not willing to correct the health information in accordance with a request by the individual; and
- (b) no decision or recommendation to the effect that the information should be corrected wholly or partly in accordance with the request, is pending or has been made under this Act or any other law; and
- (c) the individual gives to the organisation a written statement concerning the requested correction—

the organisation must take reasonable steps to associate the statement with the information.

- 6.7 If the organisation accepts the need to correct the health information but—

- (a) the organisation considers it likely that leaving incorrect information, even if corrected, could cause harm to the individual or result in inappropriate health services or care being provided; or
- (b) the form in which the health information is held makes correction impossible; or
- (c) the corrections required are sufficiently complex or numerous for a real possibility of confusion or error to arise in relation to interpreting or reading the record if it were to be so corrected—

the organisation must place the incorrect information on a record which is not generally available to anyone involved in providing health services to the individual, and to which access is restricted, and take reasonable steps to ensure that only the corrected information is generally available to anyone who may provide health services to the individual.

- 6.8 If an organisation corrects health information about an individual, it must—

- (a) if practicable, record with the correction the name of the person who made the correction and the date on which the correction is made; and
- (b) take reasonable steps to notify any health service providers to whom the organisation disclosed the health information before its correction and who may reasonably be expected to rely on that information in the future.



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- 6.9 If an individual requests an organisation to correct health information about the individual, the organisation must take reasonable steps to notify the individual of a decision on the request as soon as practicable but in any case not later than 30 days after the request is received by the organisation.

### *Written reasons*

- 6.10 An organisation must provide written reasons for refusal of access<sup>x</sup> or a refusal to correct health information.

## **7 Principle 7—Identifiers**

- 7.1 An organisation may only assign identifiers to individuals if the assignment of identifiers is reasonably necessary to enable the organisation to carry out any of its functions efficiently.
- 7.2 Subject to HPP 7.4, a private sector organisation may only adopt as its own identifier of an individual an identifier of an individual that has been assigned by a public sector organisation (or by an agent of, or contractor to, a public sector organisation acting in its capacity as agent or contractor) if—
- (a) the individual has consented to the adoption of the same identifier; or
  - (b) the use or disclosure of the identifier is required or authorised by or under law.
- 7.3 Subject to HPP 7.4, a private sector organisation may only use or disclose an identifier assigned to an individual by a public sector organisation (or by an agent of, or contractor to, a public sector organisation acting in its capacity as agent or contractor) if—
- (a) the use or disclosure is required for the purpose for which it was assigned or for a secondary purpose referred to in one or more of paragraphs (c) to (l) of HPP 2.2; or
  - (b) the individual has consented to the use or disclosure; or
  - (c) the disclosure is to the public sector organisation which assigned the identifier to enable the public sector organisation to identify the individual for its own purposes.
- 7.4 If the use or disclosure of an identifier assigned to an individual by a public sector organisation is necessary for a private sector organisation to fulfil its obligations to, or requirements of, the public sector organisation, a private sector organisation may either—
- (a) adopt as its own identifier of an individual an identifier of the individual that has been assigned by the public sector organisation; or
  - (b) use or disclose an identifier of the individual that has been assigned by the public sector organisation.





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### 8 Principle 8—Anonymity

- 8.1 Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with an organisation.

### 9 Principle 9—Transborder Data Flows

- 9.1 An organisation may transfer health information about an individual to someone (other than the organisation or the individual) who is outside Victoria only if—
- (a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the Health Privacy Principles; or
  - (b) the individual consents to the transfer; or
  - (c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual's request; or
  - (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or
  - (e) all of the following apply—
    - (i) the transfer is for the benefit of the individual;
    - (ii) it is impracticable to obtain the consent of the individual to that transfer;
    - (iii) if it were practicable to obtain that consent, the individual would be likely to give it; or
  - (f) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the Health Privacy Principles; or
  - (g) the transfer is authorised or required by any other law.

### 10 Principle 10—Transfer or closure of the practice of a health service provider

- 10.1 This Principle applies if the practice or business of a health service provider (*the provider*) is to be—
- (a) sold or otherwise transferred and the provider will not be providing health services in the new practice or business; or
  - (b) closed down.
- 10.2 The provider or, if the provider is deceased, the legal representatives of the provider, must—





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- (a) publish a notice in a newspaper circulating in the locality of the practice or business stating—
  - (i) that the practice or business has been, or is about to be, sold, transferred or closed down, as the case may be; and
  - (ii) the manner in which the provider proposes to deal with the health information held by the practice or business about individuals who have received health services from the provider, including whether the provider proposes to retain the information or make it available for transfer to those individuals or their health service providers; and
- (b) take any other steps to notify individuals who have received a health service from the provider in accordance with guidelines issued or approved by the Health Complaints Commissioner under section 22 for the purposes of this paragraph.

Sch. 1  
cl. 10.2(b)  
amended by  
No. 22/2016  
s. 232(l).

10.3 Not earlier than 21 days after giving notice in accordance with HPP 10.2, the person giving the notice must, in relation to health information about an individual held by, or on behalf of, the practice or business, elect to retain that information or transfer it to—

- (a) the health service provider, if any, who takes over the practice or business; or
- (b) the individual or a health service provider nominated by him or her.

10.4 A person who elects to retain health information must continue to hold it or transfer it to a competent organisation for safe storage in Victoria, until the time, if any, when the health information is destroyed in accordance with HPP 4.

10.5 Subject to HPP 10.2, a person must comply with the requirements of this Principle as soon as practicable.

10.6 Despite any other provision of the Health Privacy Principles, a person who transfers health information in accordance with this Principle does not, by so doing, contravene the Health Privacy Principles.

10.7 If—

- (a) an individual, in response to a notice published under HPP 10.2, requests that health information be transferred to him or her or to a health service provider nominated by him or her; and
- (b) the person who published the notice elects to retain the health information—

the request must be taken to be—

- (c) in the case of a request that the health information be transferred to him or her, a request for access to that health information in accordance with Part 5 or HPP 6; and



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- (d) in the case of a request that the health information be transferred to a health service provider nominated by him or her, a request for the transfer of that health information in accordance with HPP 11—

and it must be dealt with in accordance with this Act.

10.8 This Principle operates subject to any other law, including the **Public Records Act 1973**.

10.9 For the purposes of HPP 10.1(a), a business or practice of a provider is transferred if—

- (a) it is amalgamated with another organisation; and
- (b) the successor organisation which is the result of the amalgamation is a private sector organisation.

### **11 Principle 11—Making information available to another health service provider**

11.1 If an individual—

- (a) requests a health service provider to make health information relating to the individual held by the provider available to another health service provider; or
- (b) authorises another health service provider to request a health service provider to make health information relating to the individual held by that provider available to the requesting health service provider—

a health service provider to whom the request is made and who holds health information about the individual must, on payment of a fee not exceeding the prescribed maximum fee and subject to the regulations, provide a copy or written summary of that health information to that other health service provider.

11.2 A health service provider must comply with the requirements of this Principle as soon as practicable.

11.3 Nothing in Part 5 or HPP 6 limits the operation of this Principle.

11.4 For the purposes of HPP 10.7, this Principle applies to a legal representative of a deceased health service provider in the same way that it applies to a health service provider.

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<sup>i</sup>Sch. 1 HPP 1.5: See HPP 1.7 and also section 27.

<sup>ii</sup>Sch. 1 HPP 1.7: See also section 27.

<sup>iii</sup>Sch. 1 HPP 2: See also HPP 9 for requirements relating to the transfer of health information to a person who is outside Victoria.

<sup>iv</sup>Sch. 1 HPP 2.2: A use or disclosure may be permitted under more than one paragraph of HPP 2.2.



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<sup>v</sup> Sch. 1 HPP 2.2(i): For the purposes of this paragraph, the term "breach of confidence" relates to the general law of confidence (including but not limited to the common law or in equity), which requires, amongst other things, that a duty of confidence exists under that law which is not, in the particular circumstances, outweighed by any countervailing public interest under that law.

<sup>vi</sup> Sch. 1 HPP 2.2(j): See note 11.

<sup>vii</sup> Sch. 1 HPP 6: See section 34(3) for access to health information, only part of which is claimed to fall within HPP 6.1 or HPP 6.2.

<sup>viii</sup> Sch. 1 HPP 6.1(c): See also section 96.

<sup>ix</sup> Sch. 1 HPP 6.5: See HPP 4.2 and HPP 4.3 for deletion or destruction of health information.

<sup>x</sup> Sch. 1 HPP 6.10: See section 35 regarding refusal of access.



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COUNCIL POLICY			
ADVOCACY POLICY		Policy No:	
		Adopted by Council:	19 Apr 2017
		Next review date:	April <del>2020</del> 2021
Senior Manager:	Chief Executive Officer		
Responsible Officer:	Chief Executive Officer		
Functional Area:	CEO & Governance		
Introduction & Background	<p>Council is committed to promoting the aspirations of Shire residents to other tiers of government in order to protect the quality life in the Shire by:</p> <ul style="list-style-type: none"><li>a. Providing evidence based advocacy for improved infrastructure <u>and services</u>.</li><li>b. Seeking opportunities to stimulate economic growth and investment in the region.</li><li>c. Building positive partnerships within the community, region and state.</li><li>d. Providing leadership and good governance.</li><li>e. Advocating for improvements and investment across the entire Shire.</li><li><u>f. Advocating and developing partnerships with key stakeholders, other tiers of government and government statutory bodies.</u></li><li><u>f.g. Fulfilling the advocacy obligations as determined by the Council Plan.</u></li></ul>		
Purpose & Objectives	<ul style="list-style-type: none"><li>I. To provide a framework for Council’s advocacy efforts.</li><li>II. To influence decisions by other tiers of Government and other key stakeholders that will have an effect on the Shires residents.</li><li>III. To utilise community information to create an evidence base for advocacy.</li></ul>		
Policy Details			
1.	Scope		
	<p>This policy applies to Council and its Officers when establishing and delivering on key advocacy themes and priorities, and how Council resources its efforts to advocate on behalf of the community.</p> <p>The Chief Executive Officer, Mayor and Councillors play a key role in the development and maintenance of political relationships to pursue Council’s advocacy on behalf of the</p>		



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	community. Council Officers will prepare strategies tailored specifically for each advocacy effort.
2.	<p>Advocacy Definition</p> <p>Advocacy is an action intended to influence those who hold governmental, political or economic authority and/or influence to implement public policies, resource allocation, <u>service provision</u> and projects to the benefit of residents and businesses within West Wimmera Shire.</p>
3.	<p>Council Plan</p> <p>The West Wimmera Shire Council Plan is pivotal in identifying the issues that matter to the local community.</p> <p>The Plan identifies themes and priorities for how Council directs its resources, and how it uses its voice to advocate on behalf of residents.</p>
4.	<p>Advocacy Principles</p> <p>The following principles reinforce Council's approach to advocacy:</p> <ul style="list-style-type: none"> <li>a. Representative of local need: Council's advocacy actions will be based upon policy and strategic positions adopted by Council, in direct response to the needs of the community.</li> <li>b. Community engagement: Council will inform and engage the community on its advocacy efforts and outcomes.</li> <li>c. Partnerships and Alliances: Council will optimise its likelihood of success by working in collaboration with other organisations with similar aims.</li> <li>d. Outcome Focussed: Council will direct its advocacy towards providing solutions to issues highlighted by the community <u>and via Council Plan priorities</u>.</li> <li>e. Council will prioritise its advocacy campaigns on an annual basis in conjunction with the Council Plan review each year.</li> </ul>
5.	<p>Successful Advocacy</p> <p>The level of success of an advocacy campaign will be measured by the achievement of objectives within the Council Plan and the degree to which other tiers of Government support community aspirations.</p>
6.	<p>Policy Implementation</p> <p>The Advocacy Policy will be implemented and directed by the Advocacy Procedure, which is signed off by the Chief Executive Officer and Senior Management Group.</p>



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<b>Policy Adopted:</b>	Ordinary Meeting 14/10/99	Minute Book Page 6721	
<b>Policy Reviewed:</b>	Ordinary Meeting 25/07/02	Minute Book Page 10300	
	Ordinary Meeting 06/04/06	Minute Book Page 13682	
	Ordinary Meeting 11/03/10	Minute Book Page 17759	RecFind 16/002617
	Ordinary Meeting 19/04/17	Minute Book Page 35040	RecFind 17/001481

## **COUNCILLOR CONDUCT PANEL**

In the matter of an Application by the West Wimmera Shire Council  
concerning Councillor Tom Houlihan of West Wimmera Shire Council

### **HEARING PURSUANT TO DIVISION 1B OF PART 4 OF LOCAL GOVERNMENT ACT (1989)**

Applicant:	West Wimmera Shire Council
Appointed representative:	Councillor Trevor Domaschenz
Respondent:	Councillor Tom Houlihan
Date of Hearing:	25 November 2019
Panel Members:	Mrs Jo-Anne Mazzeo (Chairperson) Ms Jan Boynton

### **DETERMINATION**

Pursuant to s 81J(1)(b) of the *Local Government Act 1989* (the Act) the Panel makes a finding of serious misconduct against Cr Tom Houlihan.

Pursuant to s 81J(2A)(b)(iv) of the Act the Panel suspends Cr Houlihan (effective from the date of this decision) for a period of two (2) months.

Pursuant to s 81J(1)(a) of the Act the Panel makes a finding of misconduct against Cr Houlihan.

Pursuant to s 81J(2)(c) of the Act the Panel directs Cr Houlihan to take leave of absence for a period of two (2) months (effective from the date of this decision) to be served concurrently with his period of suspension.

**Jo-Anne Mazzeo**  
Chairperson

**Jan Boynton**  
Panel Member

## **STATEMENT OF REASONS FOR DECISION**

### **The Application**

1. The Application dated 3 July 2019 and revised on 27 October 2019 was made by the West Wimmera Shire Council as a result of a resolution passed on 20 June 2019 seeking a finding of misconduct and/or serious misconduct against Cr Tom Houlihan relating to multiple allegations which are summarised below.
2. Councillor Trevor Domaschenz was appointed as the applicant's representative.
3. The Application alleged that Cr Houlihan had repeatedly behaved in an aggressive, intimidating and disrespectful manner towards fellow Councillors and members of Council staff (including the Chief Executive Officer and the Governance Officer) creating a risk to their health and safety, and that these actions constituted bullying of these Councillors and members of Council staff.
4. The Application also alleged that Cr Houlihan had by various actions and activities (set out below in these reasons) repeatedly contravened one or more of the following Councillor conduct principles:
  - the following primary principles of Councillor conduct under s 76B of the Act:
    - (a) act with integrity; and
    - (c) not improperly seek to confer an advantage or disadvantage on any person.
  - the following principles of Councillor conduct under s 76BA of the Act:
    - (a) avoid conflicts between public duties as councillor and personal interests and obligations;
    - (b) act honestly and avoid statements that are likely to mislead or deceive;
    - (c) treat all persons with respect and have due regard to opinions, beliefs, rights and responsibilities of others;
    - (e) endeavour to ensure that public resources are used prudently and solely in the public interest; and
    - (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.



## **Evidence provided at hearing**

5. Written evidence was submitted by both the applicant and the respondent prior to the hearing, including witness statements made by witnesses who gave evidence at hearing.
6. Oral evidence was given at the hearing by both the applicant's appointed representative and the respondent.
7. Oral evidence was also provided by the following individuals:
  - Mr David Leahy, Chief Executive Officer, West Wimmera Shire Council
  - Ms Elizabeth Matuschka, Governance Officer, West Wimmera Shire Council
  - Councillor Richard Hicks
  - Councillor Jodie Pretlove
  - Ms Margo Petersen.

## **The jurisdiction of the Panel in relation to this Application**

8. Section 81B(1) of the Act provides that a Panel may hear an Application that alleges misconduct or serious misconduct by a Councillor.
9. Pursuant to s 81J of the Act a Panel may determine whether or not a Councillor has engaged in misconduct or serious misconduct.
10. "Misconduct" is defined in s 3 of the Act as:
  - (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 s 81AB; or
  - (c) repeated contravention of any of the Councillor Conduct Principles.
11. "Serious misconduct" is defined in s 3 of the Act as:
  - (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 s 76E; or
- (g) the release of confidential information by a Councillor in contravention of s 77.

12. "Bullying" is defined in s 3 of the Act:

"Bullying by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff".

### **Evidence of the Applicant**

- 13. By way of background, the applicant's representative outlined how the respondent in his capacity as President of the Committee of Management of the Harrow and District Recreational Reserve (CoM) sought and secured significant government funding to provide a modern upgrade to the facilities at the Harrow Recreation Reserve.
- 14. Correspondence dated 5 June 2018 from the Program Manager of the Land and Built Environment Team at the Department of Environment, Land, Water and Planning (DELWP) advised the Harrow and District Recreation Reserve Committee that in order to secure the funding, a detailed application must be provided to Sport and Recreation Victoria (SRV) by August 2018, and that it must be submitted by the West Wimmera Shire Council, and that it could not be submitted by the CoM or by DELWP.
- 15. In a confidential part of the Council meeting held on 15 August 2018 Council, by resolution, approved the submission of the SRV Female Friendly Facilities Program Application for the Harrow Recreation Reserve Development. The resolution noted the amount to be contributed by each of the parties involved in funding the project and required a contractual agreement protecting the Council against any cost overruns.
- 16. The expected outcome of the funded project included female friendly facilities to support netball and tennis participation and programming and upgraded unisex football facilities.

17. The respondent had envisaged a one building construction/project, however it became apparent during the planning phase of the project that the total cost of the one building construction in its original form significantly exceeded the grants allocated to the project.
18. Councillors discussed the need for a modified build (consisting of a two-building construction with the current facilities remaining) with the CoM and local constituents. General support was received for the two-building construction, with the exception of the respondent.
19. The applicant submitted that the respondent had been the subject of two formal Councillor Code of Conduct complaints (lodged in June 2018 and December 2018 respectively) relating to ongoing inappropriate behaviour, consistent with that which led to the application for establishment of this Councillor Conduct Panel.
20. The complaint made in June 2018 was withdrawn and then subsequently reinstated shortly before Council lodged the application before this current Panel.
21. The complaint made in December 2018 stemmed from the respondent's conduct regarding management of the Government grant allocated for the upgrade of facilities at the Harrow Recreation Reserve [outlined above in paragraphs 13 to 18].
22. The complaint resulted in mediation between the respondent and Mr David Leahy, the Chief Executive Officer of the West Wimmera Shire Council (which was held in Edenhope on 29 January 2019). As part of the agreement reached at mediation, the respondent was required to make a public statement that included the words:

"There was never any intention to allege, or give the impression, that there was any corruption or wrongdoing by the CEO, other Councillors or other Officers of the Council or state departments."
23. The applicant submitted that despite making a public statement including the words extracted directly above on 4 February 2019, the respondent had continued to make derogatory, intimidating and threatening statements about West Wimmera Shire Council and staff to local media (including the ABC and the Wimmera Mail Times) and whilst doing so, clearly identifying himself as a councillor. An example given by the applicant was from the ABC Wimmera Facebook Page on 5 May 2019 (8:30am) stating that the respondent "...intends to lodge a formal complaint with the Local Government Inspectorate...as he isn't happy with decisions made by council ..."

24. The applicant also submitted that the respondent both had access to and relied on confidential information to benefit him in his other role as President of the CoM, with that information being obtained during the in-camera section of Council meetings.
25. The applicant further submitted that the respondent had notified WorkSafe Victoria on 13 May 2019 that the construction site at the Harrow Recreation Reserve was unsafe, that the location of electrical services at the site was in question and that the West Wimmera Shire Council was unable to manage the construction site, therefore placing workers in danger. The applicant submitted that the construction site was not within the jurisdiction of the West Wimmera Shire Council, and Council had no legal responsibility for the modality or timing of works. The applicant told the Panel the notification to WorkSafe was vindictive and vexatious, causing unnecessary angst and embarrassment to the contractor and sub-contractors, had sullied the relationship between Council and the Contractors and had made Council look foolish.
26. The applicant also told the Panel of an interview the respondent was involved in on or about 6 May 2019 with the ABC breakfast radio show. It is alleged that during this interview the respondent again reiterated his dissatisfaction with decisions made by Council, further damaging public confidence in both Council and in his own role as a Councillor.
27. The applicant also submitted that the respondent's ongoing refusal to sign an amended Councillor Code of Conduct (which was amended on the recommendation of the Local Government Inspectorate) demonstrates his lack of integrity, respect and does not preserve confidence in his role as councillor.
28. The applicant told the Panel of occasions where the respondent had "stormed out of meetings", "knocked over his nameplate" and refused to comply with Council processes - all demonstrating a lack of respect for Council process, other Councillors and Council officers.
29. The applicant also submitted that by virtue of his role as President of the CoM of the Harrow and District Recreation Reserve and the way he managed the exchange of information (or lack thereof), the respondent was seeking to confer an advantage to that group by failing to appropriately manage the two roles that he had (that of a Councillor and that of President of the CoM).

30. Furthermore, the applicant stated that whilst the respondent writes to other organisations/government bodies/regulatory bodies in his capacity as a private citizen, he then stands up during Council meetings declaring this, thus further blurring the lines between his role as a Councillor and that of a private citizen. The applicant gave an example of a recent Council meeting where the respondent told the public gallery that he had made complaints about Council to the Victorian Ombudsman, IBAC and the Premier of Victoria.
31. In relation to the allegation of bullying, the applicant submitted that whilst the respondent's behaviour could constitute that of a bullying nature, he repeatedly behaved in a way that creates a risk to the health and safety of Council officers, namely Mr Leahy and Ms Matuschka. Examples given in support of this were the way in which the respondent repeatedly accused Mr Leahy of theft and misappropriation of funds, the way in which he addressed Mr Leahy at their meeting on 7 December 2018 at the Horsham Police station and the way in which the respondent dealt with Ms Matuschka in her role as Governance Officer.
32. In his evidence before the Panel, Mr Leahy told the Panel that he felt attacked by the respondent, he was publicly accused of theft and constantly harassed by the respondent to the point that it has placed both himself and his family under significant stress. Just one week prior to the Panel hearing, the respondent had yet again publicly called Mr Leahy "a disgrace". Mr Leahy felt threatened by the respondent to the extent that he was no longer willing to meet with the respondent without a witness present.
33. In relation to the altercation between Mr Leahy and the respondent at the Horsham Police station in December 2018, Mr Leahy told the Panel that the respondent was insistent on meeting with Mr Leahy on that day, despite Mr Leahy already having a full calendar of meetings scheduled. The respondent demanded to meet at the Police station and Mr Leahy agreed after first suggesting that the meeting be held at the office in which, he, Mr Leahy was holding a prior meeting. The respondent was there with Ms Petersen, who witnessed the altercation. Mr Leahy told the Panel that the respondent was aggressive, accusing him of theft along with a long list of other accusations. Mr Leahy terminated the meeting and left the Police station when it became apparent to him that things were going to escalate.
34. Regarding the respondent's management of his role on Council and that of President of the CoM, Mr Leahy acknowledged that on occasions the respondent had declared a conflict of interest, but on other occasions had not.

35. Ms Matuschka provided evidence to the Panel reflecting on her observation of Mr Leahy when he returned to the Edenhope Council offices, directly after the meeting that took place at the Horsham Police Station. She recalled Mr Leahy was distressed and visibly shaken to a point that she had never seen him before.
36. Ms Matuschka also told the Panel of her own dealings with the respondent, claiming that she too felt bullied and was fearful of what he might do. Ms Matuschka made reference to the respondent's "excessive" alcohol consumption, his claims regarding use of his guns, and his "disturbing behaviour". Ms Matuschka said "...in even the simplest of exchanges..." the respondent was aggressive and attacking, and that she feels unsafe and fearful in his presence.
37. Ms Matuschka told the Panel of the respondent's repeated failure to comply with Council processes (such as completion of the Ordinary Interest Return for Councillors, participation in management of the Council diary and pool car bookings) and how she believed this to be disrespectful, unprofessional and unbecoming of the role of a Councillor.
38. Councillor Hicks gave evidence consistent with that of Mr Leahy and Ms Matuschka, confirming that he himself had witnessed firsthand the bullying by the respondent towards both Mr Leahy and Ms Matuschka.
39. Councillor Pretlove gave limited evidence to the Panel, acknowledging she had personal connections with the respondent by way of a family relationship but also acknowledged as a Councillor she was also one of the applicants.
40. Councillor Pretlove spoke of her observation of the breakdown in the relationship between the respondent and Council officers during her time as Mayor, and told the Panel of an alternative arrangement she had put in place for the respondent in order for him to comply with Council processes and to avoid direct dealings with Ms Matuschka. This alternative arrangement had been in place for some months and to Ms Pretlove's knowledge, the respondent was still yet to comply with the procedural requirements.
41. Councillor Pretlove was questioned regarding the altercation between the respondent and Mr Leahy at the Horsham Police Station. Councillor Pretlove confirmed Mr Leahy had contacted her after the event and was shaken, distressed and very upset by the exchange.

## **Evidence of the Respondent**

42. The respondent largely gave evidence around his allegation of "misappropriation of funds and theft" by Mr Leahy and three other Councillors and responded to the substance of the allegations when put to him by the Panel.
43. The respondent told the Panel that he believed his relationship with Mr Leahy and his fellow Councillors changed once he obtained the grant for the enhancement of the Harrow Recreation Reserve. He agreed that there had been a breakdown in the relationship and said he had been "tricked" into making an agreement at the mediation in January 2019. The respondent acknowledged that he breached the agreement numerous times, including on ABC radio on 5 May 2019 and during the course of the Councillor Conduct Panel hearing.
44. The respondent addressed the claims made regarding the new Councillor Code of Conduct and conceded that he had not yet signed it and had no intention of doing so. When questioned as to why this was the case, the respondent said "for no particular reason."
45. Regarding the allegations of bullying and in particular the events that transpired at the Horsham Police station, the respondent submitted that he had never been accused of being aggressive before securing the grant. The respondent then denied being aggressive, instead saying he simply "... asked him the tough questions."
46. Regarding compliance with Council process and particularly diary management, the respondent said "... diary management - reporting is a recommendation, not a law", but agreed to participate in the diary management process now that Ms Matuschka no longer has carriage of this task.
47. The respondent denied knocking over his nameplate at a meeting, saying that he put it on its side before walking out. When asked about whether he walked out of meetings, the respondent conceded he has walked out of meetings in the past and recalled one where he left because of "unfair allocation of ratepayer funds".
48. During his oral evidence, the respondent also confirmed that he had contacted WorkSafe regarding the contractors works at the Harrow Recreation Reserve, and stood by his decision to do so, saying it was in the interest of public safety.

49. When asked about his roles as Councillor and President of the CoM and the apparent tensions in those roles, the respondent submitted that he consistently declared a conflict of interest when dealing with Harrow Committee matters, and that he didn't disclose to Council matters/issues regarding the committee as those matters should come from the Committee, not him as President. Furthermore, the respondent said he had never thought of stepping down from his role of President of the CoM and did not see that he had attempted to confer an advantage on the Harrow and District Recreation Reserve CoM.
50. The respondent confirmed that he had contacted the Premier, the Victorian Ombudsman and IBAC in relation to various matters, but believed he was justified in doing so as he did it in his private capacity as a citizen of the West Wimmera Shire.
51. When asked as to whether he is respectful in his dealings with other Councillors and Council staff, the respondent said he is respectful and treats others as they treat him. He believed he had been respectful towards the Panel during the hearings and avoided dealing with Ms Matuschka to avoid getting into more trouble.
52. The respondent denied all allegations that formed part of the application, instead stating that his behaviour was justified, that he used the media as a way of securing confidence in the office of Councillor and of Council as a whole, and that he himself had been the target of bullying and inappropriate conduct by others.
53. Ms Margo Petersen gave evidence in support of the respondent, particularly in the context of the incident at the Horsham Police station as Ms Petersen was there with the respondent. Ms Petersen said the meeting started off cordially, but when Mr Leahy refused to answer questions asked by the respondent, the respondent got closer to him, got louder and was eyeing him off. Ms Petersen said she did not believe the respondent was a bully but acknowledged that the behaviour at the police station came close.
54. Ms Petersen told the Panel that the respondent does get passionate about things and can get loud, but that he is well liked and well respected and may not necessarily see that his behaviour can be viewed by others as aggressive.



## **Findings of the Panel**

55. Pursuant to s 81J(1)(b) of the Act the Panel makes a finding of serious misconduct against Cr Houlihan.
56. Pursuant to s 81J(1)(a) of the Act the Panel makes a finding of misconduct against Cr Houlihan.

## **Penalty**

57. In relation to the finding of serious misconduct, pursuant to s 81J(2A)(b)(iv) of the Act, the Panel suspends Cr Houlihan (effective from the date of this decision) for a period of two (2) months.
58. In relation to the finding of misconduct, pursuant to s 81J(2)(c) of the Act, the Panel directs Cr Houlihan to take leave of absence for a period of two (2) months (effective from the date of this decision) to be served concurrently with his period of suspension.

## **Reasons for the Panel's Decision**

59. There is substantial evidence before the Panel supporting the grounds of the application regarding alleged breaches of ss76B(a), 76BA(a), 76BA(c) and 76BA(g) of the Act. During his evidence the respondent was assertive to the point of aggressive, he was dismissive towards the Panel members and became fixated on matters not relevant to the application.
60. Despite numerous attempts to redirect the respondent to the matters at hand, the respondent was unable to explain, justify or curtail the very behaviour that led to the application being made. Instead the respondent used the hearing as another forum to allege conspiracy, misappropriation of funds and theft on the part of the West Wimmera Shire Council and senior Council officers.
61. The Panel is persuaded by the evidence of all witnesses called, who each (including the respondent's own witness) acknowledged inappropriate behaviour to varying degrees. The respondent's own witness, whilst acknowledging that she did not agree with the application or the grounds upon which it was made, told the Panel that the respondent was very angry at his meeting with the Chief Executive Officer at the Horsham Police Station. She went on to say that whilst she herself did not see the respondent as a bully, his behaviour towards Mr Leahy during their exchange at the Horsham Police station came close to bullying.

62. The Panel is also persuaded by its direct observation of the respondent's own behaviour at hearing, where he had several outbursts that required the matter to be stood down in order for the respondent to regain his composure and participate in the hearing again.
63. The respondent has clearly blurred the lines between his roles as a private citizen, as a member of the CoM, and as a councillor of the West Wimmera Shire Council. This has led to a conflict of duties, exacerbated by the respondent not maintaining clear distinction between his positions, especially when making public statements. He has continued to advocate at Council meetings for the Harrow and District Recreation Reserve, which has placed his role on Council in a precarious position.
64. The respondent continued to justify his actions, confirmed in evidence that he had made the statements as alleged (regarding theft and misappropriation of funds) and continued to make the same allegations during his submissions to the Panel.
65. The respondent demonstrated a lack of awareness of his actions, a lack of insight into his behaviour and the impact it has on those around him, and an unwillingness to work with his fellow councillors on matters with which he is not politically or socially aligned.
66. The Panel finds that the respondent repeatedly behaved in an aggressive, intimidating and disrespectful manner towards fellow Councillors and members of Council staff (including the Chief Executive Officer and the Governance Manager) creating a risk to their health and safety, and that these actions constitute bullying of these Councillors and members of Council staff.
67. The Panel is also satisfied that the respondent's conduct demonstrated a breach of ss76B(a), 76BA(a), 76BA(c) and 76BA(g) of the Act.



# Council Policy Manual

## WEST WIMMERA SHIRE COUNCIL

COUNCIL POLICY			
COMPLAINTS HANDLING POLICY		Policy No:	
		Adopted by Council:	20 February 2019
		Next review date:	February 2020
Senior Manager:	Director Corporate and Community Services		
Responsible Officer:	Director Corporate and Community Services		
Functional Area:	Corporate Services		
Introduction & Background	<p>Council provides a wide and diverse range of services to our Community. Council understands that at times disputes arise around Council decisions, actions or the standard of service delivery.</p> <p><u>It is recognised that members of the public have the right to make complaints to Council regarding its service delivery and performance.</u></p> <p>To be able to maximise our service delivery to our community Council welcomes complaints and feedback when these disputes arise. Council will use these complaints to inform and drive service improvement.</p>		
Purpose & Objectives	<p>This policy sets out guidelines to manage complaints to ensure where possible an effective and positive outcome. The policy allows Council to:</p> <ul style="list-style-type: none"><li>• Provide a mechanism for complaints to be received by Council</li><li>• Provide a structure for complaints to be investigated and actioned by Council in a timely, <u>transparent and fair</u> manner</li><li>• Provide a framework to utilise complaints in business and service provision improvement</li><li>• Enhance our relationship with our Community</li></ul>		
<u>Guiding Principles</u>	<p><u>This policy is based around the seven principles of complaints handling as outlined in the Ombudsman Victoria's publication <i>Councils and complaints – A good practice guide</i>.</u></p> <p><u>1. Commitment</u></p> <p><u>Council is committed to resolving complains that we receive and we recognise that members of the public have the right to complain. We consider complaint handling to be a core part of our business in providing and improving efficient services to our community.</u></p>		

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	<p><u>2. Accessibility</u></p> <p><i>Council will provide sufficient support to enable people with a range of needs to lodge a complaint and provide suitable resources to allow them to navigate through the complaints handling process.</i></p> <p><u>3. Transparency</u></p> <p><i>Council will make it clear how to lodge a complaint, and provide a clear framework for handling complaints which will stand up to scrutiny.</i></p> <p><u>4. Objectivity and fairness</u></p> <p><i>Council will ensure that all complaints received will be dealt with courteously, impartially, on merit and within established timeframes.</i></p> <p><u>5. Privacy</u></p> <p><i>Council will ensure that all information involved in receiving and processing a complaint is handled in accordance with privacy and other applicable legislation. We will provide clear information to complainants about how personal information is disclosed. We will de-identify complaint data as a default unless otherwise necessary.</i></p> <p><u>6. Accountability</u></p> <p><i>We are accountable internally and externally for our decisions and actions. We provide explanations and reasons for decisions, and ensure that our decisions are subject to appropriate review processes where required.</i></p> <p><u>7. Continuous Improvement</u></p> <p><i>Acting on, learning from and using complaint data helps Council identify problems and improve service levels to our community.</i></p>
Definitions	<p><b>Complaint –</b> An expressed dissatisfaction with an action, decision or an omission to act or make a decision by Council or its representatives.</p> <p>A complaint may involve:</p> <ul style="list-style-type: none"> <li>the actions of a Councillor, staff member or contractor who act on behalf of Council</li> <li>a complaint about the service standard (i.e frequency of road grading)</li> <li>a complaint about the service quality (i.e failure to respond to a phone message)</li> </ul> <p>A complaint is <i>not</i>:</p> <ul style="list-style-type: none"> <li>An initial request for works (i.e report of a pot-hole in a road)</li> <li>Feedback related to proposals for public comment and consultation (i.e consultation under S.233 of the <i>Local</i></li> </ul>

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	<p><i>Government Act 1989)</i></p> <ul style="list-style-type: none"> <li>○ A submission or application under any other Council Policy</li> <li>○ A planning objection which would be handled under the regular planning process</li> <li>○ A request for information that may or may not fall under the <i>Freedom of Information Act 1982</i></li> <li>○ An industrial relations issue</li> </ul> <p>Complainant - The person or party making the complaint</p> <p>Council - A representative of West Wimmera Shire Council. This includes:</p> <ul style="list-style-type: none"> <li>○ A Councillor of West Wimmera Shire Council</li> <li>○ An officer of West Wimmera Shire Council</li> <li>○ Any contractor authorised to act on behalf of Council</li> </ul> <p>IBAC - Independent Broad-based Anti-Corruption Commission</p>
<b>Policy Details</b>	
1.	<p><b>Scope</b></p> <p>This policy shall apply to all complaints received by Council.</p> <p>All Councillors, Council Officers and authorised contractors are subject to this policy.</p>
2.	<p><b>Making a Complaint</b></p> <p>Complaints may be received in the following manner:</p> <ul style="list-style-type: none"> <li>○ In person over the counter at one of Council's Customer Service Centres</li> <li>○ Over the telephone</li> <li>○ Via email or facsimile</li> </ul> <p>Council works staff are not to receive complaints whilst working out of the depot/office. If a Council works staff member is approached whilst engaged in out of depot/office he or she is to direct the complainant to contact the nearest Customer Service Centre.</p> <p>A complainant has the right to remain anonymous when making a complaint. In this case no follow up or response is able to be made directly to the complainant.</p> <p><u>To enable complaints to be received, Council shall maintain the following:</u></p>



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### WEST WIMMERA SHIRE COUNCIL

	<ul style="list-style-type: none"> <li>• <u>Customer Service Centres in Edenhope and Kaniva shall be open between 8.30am and 5.00pm daily Monday - Friday</u></li> <li>• <u>Council staff are available by telephone between 8.30am and 5.00pm daily Monday to Friday</u></li> <li>• <u>An email address Council@westwimmera.vic.gov.au shall be provided and monitored between 8.30am and 5.00pm daily Monday – Friday</u></li> <li>• <u>Council's mail shall be collected and reviewed daily Monday –Friday</u></li> <li>• <u>Maintain a website containing public information</u></li> <li>• <u>Council's email address, Customer Service Centre telephone numbers and postal address shall be displayed on its website</u></li> </ul>
3.	<p>What Information Needs To Be Collected</p> <p>A Council Officer receiving a complaint should ensure that sufficient information is obtained concerning the complaint which enables Council to achieve a resolution.</p> <p>This may include items such as:</p> <ul style="list-style-type: none"> <li>• The nature of the complaint (i.e what is being complained about)</li> <li>• The location and time of the item or action being the subject of the complaint (i.e when and where)</li> <li>• What the complainant believes a resolution of the complaint may be</li> <li>• Contact details of the complainant for follow up purposes – A complainant may chose to remain anonymous.</li> </ul>
4.	<p>Confidentiality</p> <p>The details of all complaints will be treated with strict confidentiality. Complaints will be forwarded to and discussed by only those officers who have a direct interest in resolution of the complaint.</p> <p>All information received will be stored and treated in accordance with the provisions of the <i>Information Privacy Act 2000</i>.</p> <p>Some complaints may take the form of a Protected Disclosure under the <u>Protected Public Interest Disclosures Act 2012</u>. Refer to Council's <i>Protected Disclosures Policy</i> for further information.</p> <p>There are some complaints which may trigger disclosure to other agencies, including Police, IBAC, Local Government Victoria, the Victorian Auditor General's Office, Victorian Ombudsman, etc. In this instance all relevant information will be referred to the appropriate agency.</p>
5.	<p>Who Deals With A Complaint</p> <p>Upon initial receipt of a complaint:</p> <ul style="list-style-type: none"> <li>• Complaints concerning staff shall be directed to the Chief Executive Officer, who may then, dependent upon the nature of the complaint, delegate investigation</li> </ul>

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	<p>and resolution to a relevant Director</p> <ul style="list-style-type: none"> <li>Complaints concerning Councillors shall be directed to the Chief Executive Officer and Council's Principal Conduct Officer. The Mayor shall be informed of any complaints received against Councillors.</li> <li>Complaints about the Mayor shall be directed to the Chief Executive Officer and Council's Principal Conduct Officer</li> <li>Complaints concerning service standard or quality shall be directed to the relevant Director, who may then, dependent upon the nature of the complaint, delegate investigation and resolution to a relevant Manager.</li> </ul> <p>Officers receiving the complaint may access the knowledge and expertise of other officers and/or external parties to assist in investigating and resolving a complaint. However, the onus on ensuring such investigation and resolution occurs remains with the receiving officer.</p>
6.	<p><u>Complaints about contractors</u></p> <p><u>Council recognises that it retains a level of responsibility for the actions of contractors providing works and services on Council's behalf.</u></p> <p><u>In the case that a complaint is received by Council concerning the actions of a contractor then that complaint shall be referred to the relevant Manager or Director responsible for the relevant service being provided.</u></p>
6-7.	<p><b>Timeliness</b></p> <p>Complaints received shall be investigated and resolution shall be made in an appropriate time frame.</p> <p>Upon initial receipt of the complaint, the complainant will be contacted to acknowledge receipt of their complaint within 2 working days (except where the complaint is made anonymously).</p> <p>Formal communication of the outcome of the investigation of the complaint shall be made to the complainant within 30 days of the receipt of the complaint.</p> <p>It is acknowledged that some complaints may be complex in nature and a resolution may not be feasible within 30 days. If this is the case then the complainant will be informed of this along with an estimate of when a resolution may be possible within 30 days of lodging the complaint.</p> <p>Some complaints may be required to follow a specific Code of Conduct or legislation.</p>
7-8.	<p><b>Rights of Complainants, Officers and Councillors</b></p> <p>A complainant has the following rights under this policy:</p> <ul style="list-style-type: none"> <li>Confidentiality. Council will ensure that the complainant's details are treated in compliance with the <i>Information Privacy Act 2000</i> and are not distributed to any person without need for the purposes of investigating and/or resolving the</li> </ul>



## Council Policy Manual

### WEST WIMMERA SHIRE COUNCIL

	<p>complaint.</p> <ul style="list-style-type: none"> <li>To be protected from detrimental action. Council must ensure that a complainant does not suffer detrimentally and is not the subject of targeted detrimental action as a result of making a complaint.</li> <li>Access to information on progress of complaint. A complainant has the right at any stage to enquire from Council as to the progress of a complaint.</li> <li>Review of resolution – A complainant has the right to request a review of the resolution of a complaint. This request must be made in writing to Council's Chief Executive Officer.</li> </ul> <p>A Council Officer and a Councillor has the following rights under this policy:</p> <ul style="list-style-type: none"> <li>The right to provide evidence and response to allegations made against them.</li> <li>Review of resolution – A respondent to a complaint has the right to request a review of the resolution of the complaint. This request must be made in writing to Council's Chief Executive Officer.</li> <li>To be protected from detrimental action – Council must ensure that respondents to complaints are not punished or treated detrimentally in any manner outside any action directly related to the resolution of that complaint.</li> </ul> <p>All rights listed under this policy are complimentary to all and any rights available to complainants and respondents under the Victorian <i>Charter of Human Rights and Responsibilities</i>.</p>
8-9.	<p><b>Review of Resolutions and Outcomes</b></p> <p>If a complainant or respondent to a complaint is unhappy or dissatisfied with the outcome of a complaint, then they may request a review of that outcome.</p> <p>Such request must be made in writing to Council's Chief Executive Officer. The review will be undertaken by a senior officer who was not originally involved in the complaint, or in the case where this is not possible, a suitably qualified and/or experienced external party.</p> <p>If after a review has been undertaken a complainant remains unsatisfied with the outcome, then they will be advised of relevant external agencies, such as IBAC, Local Government Victoria, The Victorian Auditor General's Office or Victorian Ombudsman, to refer their complaint.</p>
10.	<p><b>Redress</b></p> <p><u>If a review of an complaint outcome results in that outcome being overturned, the following remedies may be taken to redress the situation:</u></p> <ul style="list-style-type: none"> <li><u>A commitment to undertake works to rectify the initial complaint as a minimum</u></li> <li><u>A full explanation of why the initial decision was made and whether any steps have taken to prevent an incorrect decision being made in future</u></li> </ul>

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## Council Policy Manual

### WEST WIMMERA SHIRE COUNCIL

	<ul style="list-style-type: none"> <li>• <u>A review of processes to aim to prevent future situations which gave rise to the initial complaint from happening again</u></li> <li>• <u>Potential disciplinary action to against a staff member or contractor where applicable.</u></li> </ul> <p><u>Where it has been shown that Council made an error in its initial assessment of the complaint Council will provide a formal apology to the complainant acknowledging its error.</u></p>
11.	<p><u>Reporting on Performance</u></p> <p><u>To measure Council's performance on complaint handling we shall measure the following Key Performance Indicators and report on them to Council at least annually:</u></p> <ul style="list-style-type: none"> <li>• <u>Total number of complaints received</u></li> <li>• <u>Number of complaints upheld, partially upheld, and rejected</u></li> <li>• <u>Average time to respond to complaints</u></li> <li>• <u>Number of complaint outcomes subject to review</u></li> <li>• <u>Number of complaint outcomes overturned on review</u></li> <li>• <u>Number of service changes made as a result of complaints</u></li> </ul>

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<b>Policy Adopted:</b>	Ordinary Meeting 20/02/19	Minute Book Page _____	RecFind
<b>Policy Reviewed:</b>	Ordinary Meeting [date]	Minute Book Page [number]	RecFind



## Council Policy Manual WEST WIMMERA SHIRE COUNCIL

### Appendix 1 - Complaint or Request for Service

The following table provides examples of whether contact with Council is considered a complaint or a request for service:

<u>Complaint (to be dealt with per Council's Complaints Handling Policy)</u>	<u>Request for Service</u>
<u>My rubbish bins were out on time but the truck didn't pick them up</u>	<u>I forgot to put my bins out, can someone please pick them up</u>
<u>I have reported a neighbour's barking dog to Council but nothing has been done. I don't believe Council has investigated the situation correctly</u>	<u>My neighbour's dog keeps barking – can Council do anything about it?</u>
<u>I reported a pothole on Budjik Street 3 weeks ago to Council and it has not been fixed and I have heard nothing in reply to my complaint</u>	<u>There is a pothole on Budjik Street – can Council please fix it</u>



# FINANCIAL PERFORMANCE REPORT

December 2019



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## INTRODUCTION

This report provides interim financial information for the period 1 July 2019 to 31 December 2019.

It provides information on Council's operating performance via the Operating Statement, and Council's financial position as at 31 December 2019 via the Balance Sheet. A summary statement of Capital Works is also included for Council's information.

Figures included in these statements are for the financial year to date ended 31 December 2019. Year to date (YTD) figures are provided for actual results, along with the full year budget and the YTD allocation of that budget.

Information is also provided on some of the more pertinent financial indicators, including:

- Cash and investments
- Working capital
- Rates debtors outstanding
- Sundry debtors outstanding

## OPERATING STATEMENT

The year to date Operating Statement is presented as per the AASB101 format for Council's information. Variances are calculated as YTD actuals less the YTD current budget, with the variance also being displayed as a percentage of the YTD current budget.

Where the YTD actual varies from the YTD budget allocation by more than 10% or more than \$100,000 a variance explanation is given.

### West Wimmera Shire Council Comprehensive Income Statement 1 July 2019 to 31 December 2019

	YTD Actual \$	Original Annual Budget \$	Revised Annual Budget \$	Annual Revised Budget Met %	YTD Budget \$	YTD Variance \$	YTD Variance %	Notes
<b>Income</b>								
Rates & Charges	7,721,596	7,754,087	7,754,087	99.58%	7,762,583	(40,987)	-0.5%	
Statutory Fees & Fines	55,263	141,029	141,029	39.19%	61,523	(6,260)	-10.2%	1
User Fees	217,495	396,330	396,330	54.88%	198,156	19,339	9.8%	
Grants - Operating	3,003,017	7,310,301	7,751,725	38.74%	4,030,025	(1,027,008)	-25.5%	2
Grants - Capital	927,271	3,078,472	3,078,472	30.12%	1,285,182	(357,911)	-27.8%	3
Contributions - Monetary	88,180	86,000	182,950	48.20%	182,950	(94,770)	-51.8%	4
Net Gain/(Loss) on Sale of Assets	60,892	90,000	90,000	67.66%	324,000	(263,108)	-81.2%	5
Other Income	1,194,023	2,911,446	2,911,446	41.01%	1,452,380	(258,357)	-17.8%	6
<b>Total Income</b>	<b>13,267,737</b>	<b>21,767,665</b>	<b>22,306,039</b>	<b>59.48%</b>	<b>15,296,799</b>	<b>(2,029,062)</b>	<b>-13.3%</b>	
<b>Expenses</b>								
Employee Costs	4,083,254	7,707,400	7,782,397	52.47%	3,975,100	108,154	2.7%	7
Materials & Services	3,561,806	6,153,566	7,335,876	48.55%	4,166,950	(605,144)	-14.5%	8
Depreciation	3,527,887	6,998,255	6,998,255	50.41%	3,499,116	28,771	0.8%	
Borrowing Costs	-	7,000	7,000	0%	3,500	(3,500)	-100%	
Other Expenses	115,773	266,451	266,451	43.45%	128,721	(12,948)	-10%	
<b>Total Expenses</b>	<b>11,288,720</b>	<b>21,132,672</b>	<b>22,389,979</b>	<b>50.42%</b>	<b>11,773,387</b>	<b>484,667</b>	<b>4.1%</b>	
<b>Surplus/(Deficit) from Operations</b>	<b>1,979,018</b>	<b>634,993</b>	<b>(83,940)</b>		<b>3,523,412</b>	<b>(2,513,729)</b>	<b>-71.3%</b>	
<b>Total Comprehensive Result</b>	<b>1,979,018</b>	<b>634,993</b>	<b>(83,940)</b>		<b>3,523,412</b>	<b>(2,513,729)</b>	<b>-71.3%</b>	

Notes	
1. Statutory Fees & Fines	Statutory Fees & Fines are 10.2% (\$6,260) lower than anticipated for the financial year to date. This is mainly due to budget timing differences with the receipt of dog registration & renewal fees. This variance is somewhat offset by higher than anticipated town planning fees & building fees for the year to date, due to increased building activity.
2. Grants - Operating	Operating grants received by Council are 25.5% (\$1.03m) behind the year to date budget. This variance is predominantly due to a timing difference between the budget and the receipt of a Victorian Grants Commission payment.
3. Grants – Capital	Capital grants received by Council to 31 December 2019 are 27.8% (\$357,911) behind the year to date budget. This variance is largely due to the reversal of a prior year accounting accrual.
4. Contributions - Monetary	Monetary contributions are 51.8% (\$94,770) below the year to date budget. This is a result of a budget timing difference with the anticipated contributions to be received as part of the Edenhope Community Centre project. Council is confident that the contributions budget for this project will be met but had budgeted for them to be received earlier than they will be.
5. Net Gain/(Loss) on Sale of Assets	The net gain/(loss) on sale of assets will be reconciled at year-end, as part of the asset reconciliation process.
6. Other Income	Other income is 17.8% (\$258,357) below budget at 31 December 2019 due to the timing of VicRoad works and subsequent reimbursement.
7. Employee Costs	Employee costs are 2.7% (\$108,154) above the year to date budget. This is mainly due to sick leave being higher than anticipated, with several staff currently on long term sick leave.
8. Materials & Services	Materials and services show a variance of 14.5% (\$605,144) below the year to date budget. This is predominantly due to a budget timing difference with contractors in relation to the Edenhope & Districts Community Centre Redevelopment Project, with anticipated expenses not yet incurred.



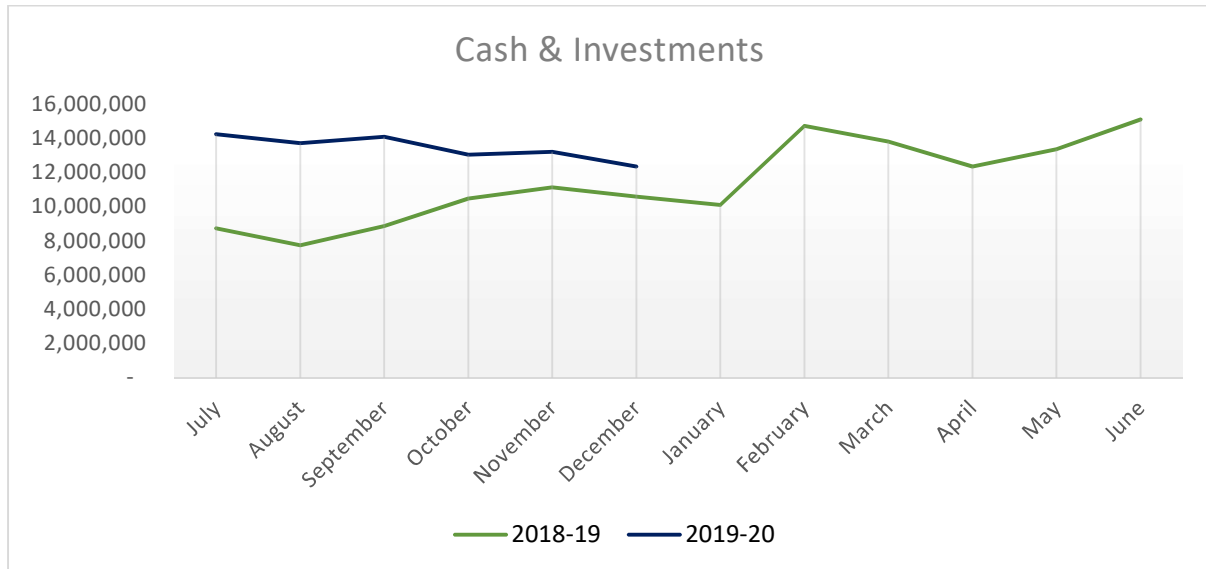
## BALANCE SHEET

### West Wimmera Shire Council Balance Sheet As at 31 December 2019

	\$ 31-Dec-19	\$ 31-Dec-18
<b>ASSETS</b>		
<b>Current Assets</b>		
Cash & Investments	12,358,382	10,531,973
Rate Debtors	6,318,045	6,078,954
Sundry Debtors	858,830	596,770
Other Financial Assets	160,745	24,000
Inventories	257,018	240,763
<b>Current Assets Total</b>	<b>19,953,020</b>	<b>17,472,460</b>
<b>Non Current Assets</b>		
Investments in Associates	435,500	430,460
Other Non-Current Assets	156,716	180,000
Property, Infrastructure, Plant & Equipment	193,757,630	220,724,589
<b>Non Current Assets Total</b>	<b>194,349,847</b>	<b>221,335,050</b>
<b>TOTAL ASSETS</b>	<b>214,302,867</b>	<b>238,807,509</b>
<b>LIABILITIES</b>		
<b>Current Liabilities</b>		
Trade & Other Payables	310,806	349,179
Trust Funds & Deposits	24,319	24,924
Provisions	2,037,503	1,712,292
<b>Current Liabilities Total</b>	<b>2,372,628</b>	<b>2,086,395</b>
<b>Non Current Liabilities</b>		
Provisions	579,421	592,215
<b>Non Current Liabilities Total</b>	<b>579,421</b>	<b>592,215</b>
<b>TOTAL LIABILITIES</b>	<b>2,952,049</b>	<b>2,678,610</b>
<b>NET ASSETS</b>	<b>211,350,818</b>	<b>236,128,900</b>
<b>EQUITY</b>		
Accumulated Surplus/(Deficit)	45,580,462	34,324,175
Reserves	165,770,356	191,244,730
<b>TOTAL EQUITY</b>	<b>211,350,818</b>	<b>225,568,905</b>

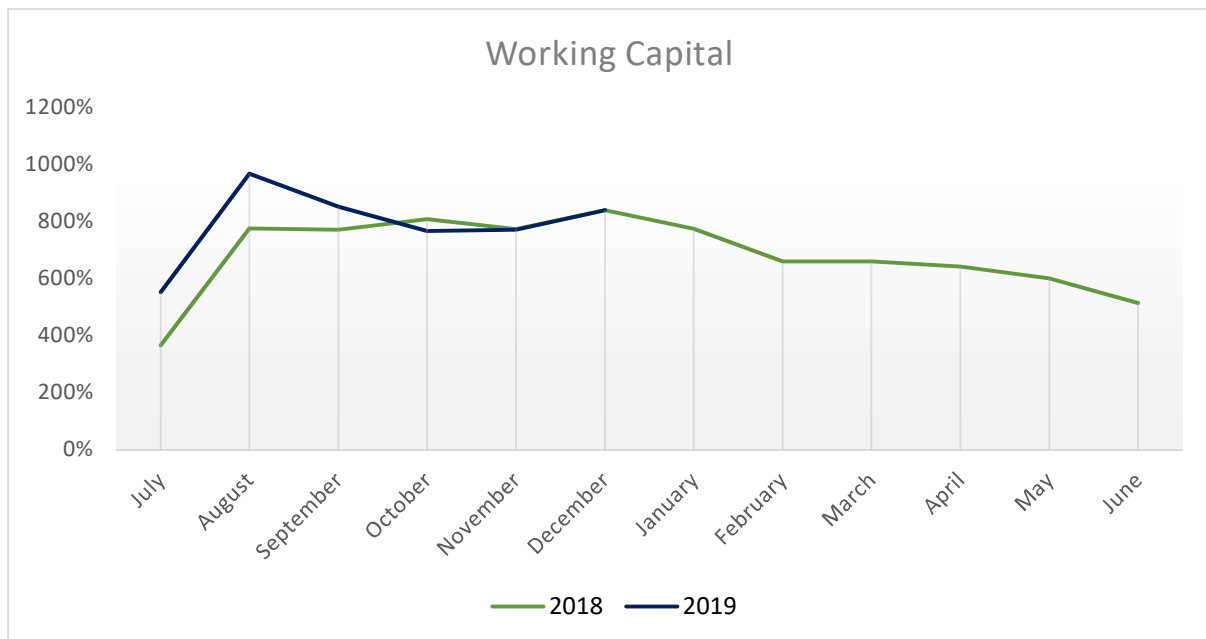


## CASH AND INVESTMENTS



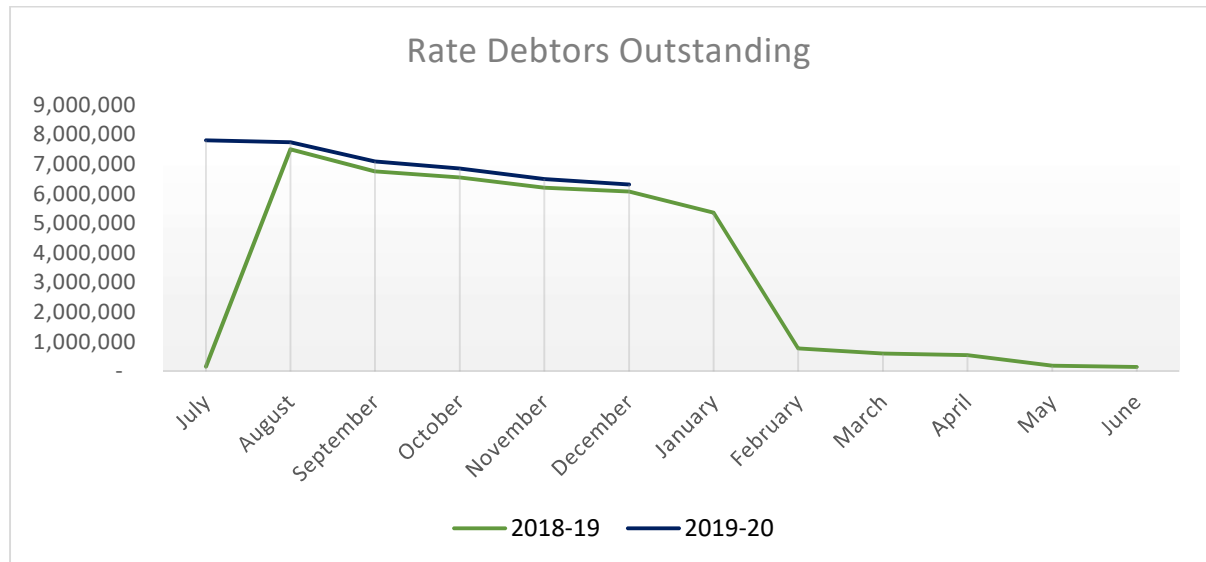
As at 31 December 2019, Council was holding a total of \$12.36m in cash and investments. As seen in the above graph, this is an increase of \$1.76m from the same time last financial year.

## WORKING CAPITAL



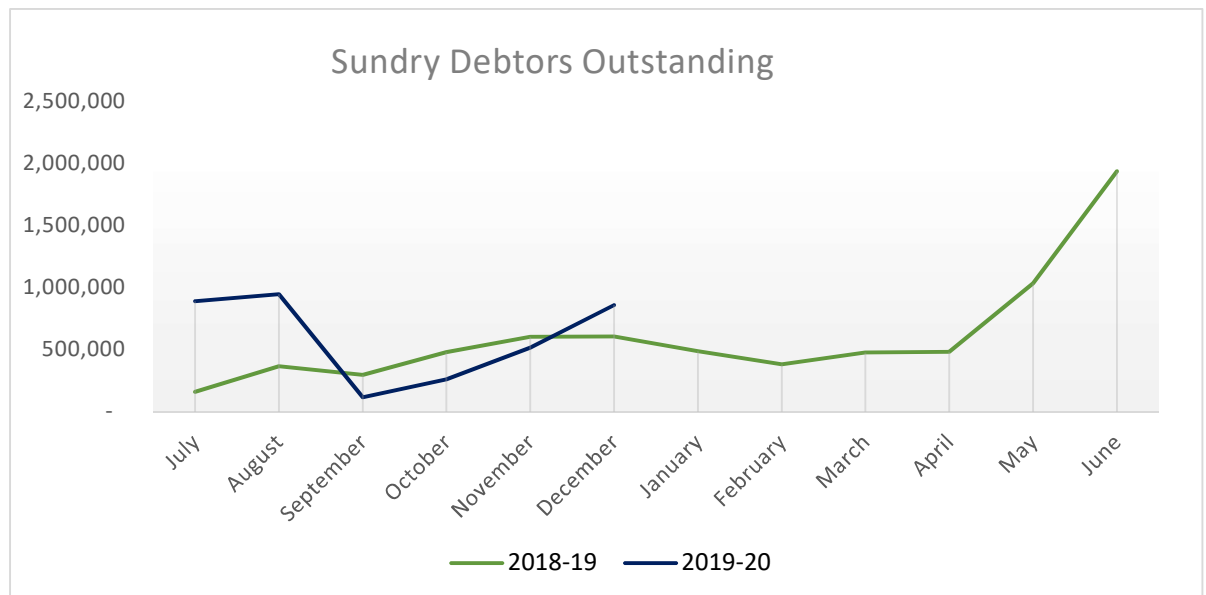
Council continues to hold a strong working capital level, with current assets at 841% of current liabilities as at 31 December 2019. This is consistent with the working capital level at the same time last financial year.

## RATE DEBTORS



Council raised \$7.1 million in rates and charges in July 2019. Approximately 65% of Council's ratepayers opt not to pay through the instalment option – for these ratepayers 100% of their rates are due by the end of February 2020.

## SUNDRY DEBTORS



The total outstanding sundry debtors at 31 December 2019 was \$858,830, a decrease of \$1.08m since 30 June 2019. As seen below, the majority (89.7%) of the outstanding debtors are current, with the majority of this amount being attributed to VicRoads income which has been raised but not yet received:

> 90 days	< 90 days	< 60 days	< 30 days	Current
0.7%	7.0%	1.0%	1.6%	89.7%

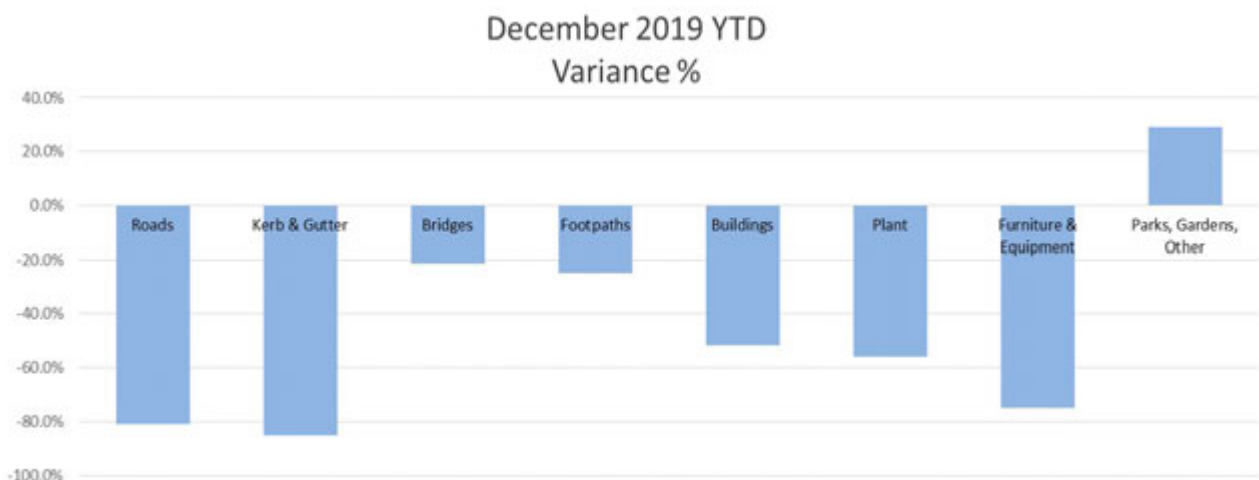
## CAPITAL WORKS

A summary of Council's capital works as at 31 December 2019 is presented. As with the operating statement, variances are calculated as YTD actuals less the YTD current budget, with the variance also being displayed as a percentage of the YTD current budget.

Notes and explanations are provided where the variances exceed 10% **and** \$20,000, **or** where the \$ variance is greater than \$100,000.

### West Wimmera Shire Council Capital Works As at 31 December 2019

Program	YTD Actuals (\$)	Annual Original Budget (\$)	Annual Current Budget (\$)	YTD Current Budget (\$)	YTD Variance (\$)	YTD Variance (%)	Note
Roads	539,266	6,524,044	6,641,250	2,846,645	-2,307,379	-81.1%	1
Kerb & Gutter	17,886	66,000	131,093	119,416	-101,530	-85.0%	2
Bridges	46,222	375,280	435,262	58,877	-12,655	-21.5%	
Footpaths	20,493	85,000	155,852	27,259	-6,766	-24.8%	
Buildings	893,725	970,000	1,930,123	1,843,812	-950,087	-51.5%	3
Plant	305,664	1,029,000	1,404,001	694,572	-388,908	-56.0%	4
Furniture & Equipment	6,021	16,500	31,500	24,000	-17,979	-74.9%	
Parks, Gardens, Other	373,513	148,500	388,077	289,800	83,713	28.9%	5
<b>Total</b>	<b>2,202,791</b>	<b>9,214,324</b>	<b>11,117,158</b>	<b>5,904,381</b>	<b>-3,701,590</b>	<b>-62.7%</b>	



Capital Works - Variance Notes		
1.	Roads	Capital works on roads is currently 81.1% (\$2.31m) lower than the budget for the year to date. This is mainly due to budget timing differences, with planned works yet to be undertaken due to unsuitable weather during the September & December quarters.
2.	Kerb & Gutter	Capital works on kerb and gutter is currently 85% (\$101,530) lower than the budget for the year to date. As with the capital works on roads, this is due to budget timing differences, with planned works yet to be completed.
3.	Buildings	Capital works on buildings is showing a variance of 51.5% (\$950,087) lower than the year to date budget. This is due to budget timing differences, with planned works yet to be undertaken due to unsuitable weather during the September & December quarters.
4.	Plant	Plant purchases are currently 56% (\$388,908) below budget for the year to date. This is due to budget timing differences, with several budgeted plant items, including a truck, yet to be purchased.
5.	Parks, Garden, Other	Capital works within parks, gardens and other is currently 28.9% (\$83,713) higher than the year to date budget. This is mainly due to the project management charge, materials and employee costs in relation to the Kaniva Wetlands project being higher than anticipated.