

MINUTES OF ORDINARY COUNCIL MEETING

Meeting held at the Council Chamber, Civic Centre, 10 Watson Terrace, Mount Gambier
on Tuesday, 19 June 2018 at 6.00 p.m.

PRESENT

Cr Hanna Persello (Deputy Mayor)
Cr Christian Greco
Cr Mark Lovett
Cr Josh Lynagh
Cr Frank Morello
Cr Steven Perryman (arrived at 6.03 p.m.)
Cr Penny Richardson
Cr Ian Von Stanke (arrived at 6.08 p.m.)

COUNCIL OFFICERS

Chief Executive Officer	-	Mr M McShane
General Manager City Growth	-	Dr J Nagy
General Manager Council Business Services	-	Mrs P Lee
General Manager City Infrastructure	-	Mr N Serle
Manager Governance and Property	-	Mr M McCarthy
Manager Development Services	-	Mrs T Tzioutziouklaris
Media and Communications Coordinator	-	Ms S McLean
Customer Service Officer	-	Ms S Moretti
Administrative Officer Executive Support	-	Mrs M Telford

WE ACKNOWLEDGE THE BOANDIK PEOPLES AS THE TRADITIONAL CUSTODIANS OF THE LAND WHERE WE MEET TODAY. WE RESPECT THEIR SPIRITUAL RELATIONSHIP WITH THE LAND AND RECOGNISE THE DEEP FEELINGS OF ATTACHMENT OUR INDIGENOUS PEOPLES HAVE WITH THIS LAND.

1. APOLOGY(IES)

Apology(ies) received from Mayor Andrew Lee and Cr Des Mutton.

That the apology from Mayor A Lee and Cr D Mutton be received.

Moved: Cr Greco

Seconded: Cr Morello

Carried

2. LEAVE OF ABSENCE

Cr Sonya Meziniec

3. CONFIRMATION OF COUNCIL MINUTES

Ordinary Meeting held on 15 May 2018

Special Council Meeting held on 22 May 2018



Special Council Meeting held on 13 June 2018

That the minutes of the Ordinary Council meeting held on 15 May 2018, the Special Council meeting held on 22 May 2018 and the Special Council meeting held on 13 June 2018 as previously circulated be confirmed as an accurate record of the proceedings of that meeting.

Moved: Cr Greco

Seconded: Cr Richardson

Carried

4. MAYORAL REPORT - Ref. AF11/881

Nil submitted

5. REPORTS FROM COUNCILLORS - Ref. AF11/882

Member

Cr Lovett Uni SA – Scholarships, Grants and Awards Celebration

Cr Morello Flinders NVI Awards Presentation Evening

Cr Persello National Sorry Day Event, Reconciliation Week "Don't Keep History a Mystery", Reconciliation Action plan Focus Group Meeting, Butterfly Foundation Workshop, New Venture Institute "Venture Dorm" Graduation

Cr Perryman arrived at 6.03 p.m.

That the reports made by Councillors on 19 June 2018 be received.

Moved: Cr Greco

Seconded: Cr Lynagh

Carried

6. QUESTIONS

6.1. With Notice

Nil submitted.

6.2. Without Notice

Nil submitted.

7. PETITIONS

Nil



8. DEPUTATIONS

Nil

9. NOTICE OF MOTION TO RESCIND

Nil

10. ELECTED MEMBERS WORKSHOPS (INFORMAL GATHERINGS) - Ref. AF15/83

28/05/2018	NVI Update and Integrated Strategies
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Records of proceedings are attached.

That the Record of Proceedings for the NVI Update Integrated Strategies Workshop held 28 May 2018 be received and the contents noted.

Moved: Cr Morello

Seconded: Cr Greco

Carried

11. ELECTED MEMBER TRAINING AND DEVELOPMENT - Ref. AF11/903

Nil

12. COUNCIL ACTION ITEMS - Ref. AF17/225, AF17/228

Items referred to the Council Meeting held 15 May 2018

That the Action Items referred to the Council Meeting held 15 May 2018 be received.

Moved: Cr Greco

Seconded: Cr Lovett

Carried

13. COMMITTEE MINUTES AND RECOMMENDATIONS

13.1. Minutes of Strategic Standing Committee – 12 June 2018

That the minutes of the Strategic Standing Committee meeting held 12 June 2018 as previously circulated be noted.

Moved: Cr Morello

Seconded: Cr Richardson

Carried



13.2. Policy Review L130 – Land Divisions – Report No. AR18/21584

- (a) That Strategic Standing Committee Report No. AR18/21584 titled '*Policy Review L130 – Land Divisions*' as presented to the Strategic Standing Committee on 12 June 2018 be noted.
- (b) That Council adopt the updated policy L130 – Land Divisions

Moved: Cr Morello

Seconded: Cr Richardson

Carried

13.3. Policy Review B150 – Building Sewer Connections, Waste Management Control and the Provision of Toilet Facilities – Report No. AR18/21637

- (a) That Strategic Standing Committee Report No. AR18/21584 titled '*Policy Review B150 – Building Sewer Connections, Waste Management Control and the Provision of Toilet Facilities*' as presented to the Strategic Standing Committee on 12 June 2018 be noted.
- (b) That Council adopt the updated policy B150 – Building Sewer Connections, Waste Management Control and the Provision of Toilet Facilities.

Moved: Cr Morello

Seconded: Cr Greco

Carried

13.4. Policy Review - F120 - Fires - Clean Air - Burning in Open Non-Domestic Premises - Report No. AR18/3151

- (a) That Strategic Standing Committee Report No. AR18/3151 titled '*Policy Review - F120 - Fires - Clean Air - Burning in Open Non-Domestic Premises*' as presented to the Strategic Standing Committee on 12 June 2018 be noted.
- (b) That Council Policy '*F120 - Fires - Clean Air - Burning in Open Non-Domestic Premises* be replaced by the *City of Mount Gambier Burning Policy*.

Moved: Cr Morello

Seconded: Cr Lovett

Carried



13.5. Policy Review - C305 Caretaker Policy Report No. AR18/20224

- (a) That Strategic Standing Committee Report No. AR18/20224 titled '*Policy Review – C305 Caretaker Policy*' as presented to the Strategic Standing Committee on 12 June 2018 be noted.
- (b) That the updated Caretaker Policy C305 as attached to Strategic Standing Committee Report No. AR18/20224 be adopted for application during the 2018 Local Government Elections caretaker period noting minor updates that have no material policy implications.

Moved: Cr Morello

Seconded: Cr Greco

Carried

Cr Von Stanke arrived at 6.08 p.m.

13.6. By-Law Review – Outcome of Public Consultation and Referrals / Adoption Report No. AR18/20150

- (a) That Strategic Standing Committee Report No. AR18/20150 titled '*By-Law Review – Outcome of Public Consultation and Referrals / Adoption*' as presented to the Strategic Standing Committee on 12 June 2018 be noted.
- (b) That In the exercise of the powers contained in section 246 of the Local Government Act 1999, having satisfied the consultation requirements of the Act and noting that no submissions were received from the public in relation to the proposed By-laws and, having had regard to the National Competition Policy Report, the Certificates of Validity provided by the Council's legal practitioner and the comments from the Dog and Cat Management Board in relation to By-Law Number 5, the majority of Council, in the presence of at least two thirds of its members, hereby makes and passes the following By-laws as attached and marked 'Attachments 2-7':
- Permits and Penalties By-law No. 1 of 2018;
 - Local Government Land By-law No. 2 of 2018;
 - Roads By-law No. 3 of 2018;
 - Moveable Signs By-law No. 4 of 2018; and
 - Dogs By-law No. 5 of 2018.
- (c) That the Chief Executive Officer be authorised to undertake all steps necessary to finalise the By-law review process and to give effect to the newly adopted By-laws.

Moved: Cr Morello

Seconded: Cr Lovett

Carried

Carried by absolute majority of the Members of Council.



13.7. Limestone Coast Local Government Association – Draft 2018/2019 Business Plan and Budget - Report No. AR18/21428

- (a) That Strategic Standing Committee Report No. AR18/22428 titled '*Limestone Coast LGA – Draft Business Plan and Budget 2018/2019*' as presented to the Strategic Standing Committee on 12 June 2018 be noted.
- (b) The draft 2018/2019 Limestone Coast Local Government Association Business Plan and draft Budget be accepted and provision made in Council's 2018/2019 draft Budget for the amount of \$180,098.
- (c) The Limestone Coast Local Government Association be advised of Council's acceptance of their draft 2018/2019 Annual Business Plan and Budget.

Moved: Cr Morello

Seconded: Cr Lynagh

Carried

13.8. Strategic Management - Elected Member Planning Session - Ref. AF16/185

- (a) That a Councillor planning day be schedule on Sunday, 8 July 2018 to refine Council's strategic priorities over a five year time frame. This would consider all of the strategies and priorities identified by Council as well as the more recent Youth and Culture and Heritage strategies and priorities.

Moved: Cr Morello

Seconded: Cr Richardson

Carried

13.9. Minutes of Operational Standing Committee – 12 June 2018

That the minutes of the Operational Standing Committee meeting held 12 June 2018 as previously circulated be noted.

Moved: Cr Lovett

Seconded: Cr Greco

Carried

13.10. Minutes of Community Engagement and Social Inclusion Sub-Committee - 16 May 2018

That the minutes of the Community Engagement and Social Inclusion Sub-Committee meeting held 16 May 2018 as previously circulated be noted.

Moved: Cr Lovett

Seconded: Cr Morello

Carried



13.11. Yerkalapata - Leading the Way: City of Mount Gambier Reconciliation Action Plan Update - Report No. AR18/18631

- (a) That Community Engagement and Social Inclusion Sub-Committee Report No. AR18/18631 titled '*Yerkalapata – Leading the Way: City of Mount Gambier Reconciliation Action Plan*' as presented to the Community Engagement and Social Inclusion Sub-Committee on 16 May 2018 be noted.
- (b) That Council work with Burrandies and the Boandik Language group to scope a project that may attract funding for the engagement of a consultant or anthropology student to conduct research to assist with collection, curation of and content development for the interpretive signage.

Moved: Cr Lovett

Seconded: Cr Greco

Carried

13.12. Governance - Community Engagement and Social Inclusion Sub-Committee - Vulnerable Families - Ref. AF17/432

- (a) That the verbal report provided by General Manager Community Wellbeing on:
- The outcome of Council meeting on 15 May 2018 regarding alternate date to be determined for the Community Day at AF Sutton Reserve due to 2018 Local Government Election Caretaker period
- be accepted.

Moved: Cr Lovett

Seconded: Cr Greco

Carried

13.13. Minutes of Heritage Sub-Committee - 30 May 2018

That the minutes of the Heritage Sub-Committee meeting held 30 May 2018 as previously circulated be noted.

Moved: Cr Lovett

Seconded: Cr Richardson

Carried



13.14. Heritage Adviser Report – March 2018 - AR18/14584

- (a) That Heritage Sub-Committee Report No. AR18/14584 titled '*Heritage Adviser Report – March 2018*' as presented to the Heritage Sub-Committee on 30 May 2018 be noted.

Moved: Cr Lovett

Seconded: Cr Richardson

Carried

13.15. Heritage Committee - Lake Terrace Cemetery Day – Sunday, 2 September 2018 - Ref. AF17/457

- (a) That Council Officers present a sample of the proposed wording to the Heritage Committee for a plaque and also of options for the display of the plaque.
- (b) Project Plan for the Lake Terrace Cemetery Day on 2 September be updated as discussed.

Moved: Cr Lovett

Seconded: Cr Richardson

Carried

13.16. Heritage Committee - Rook Walk Celebration - Ref. AF17/457

- (a) That verbal report provided by the General Manager Community Wellbeing be noted.

Moved: Cr Lovett

Seconded: Cr Greco

Carried

13.17. Heritage Committee - Further Development of Project Plan - Ref. AF17/457

- (a) That Item 8, Further Development of Project Plan be deferred to the next Heritage Sub-Committee meeting.

Moved: Cr Lovett

Seconded: Cr Richardson

Carried



13.18. Mount Gambier Railway Roundhouse - Ref. DA DA15/400: DA 381/0356/2015 - 381/V005/2015

(a) That the email from Mr Nathan Woodruff be received.

Moved: Cr Lovett

Seconded: Cr Lynagh

Amendment

Cr Richardson moved:

- (a) That the email from Mr Nathan Woodruff be received;
- (b) Council staff make the Department of Planning, Transport and Infrastructure aware of community concern about the proposed demolition of the Roundhouse and seek further advice about the heritage value of the site.

Cr Von Stanke seconded

The amendment was put and

Lost

The motion was then put and

Carried

13.19. Minutes of Audit Committee - 30 May 2018

That the minutes of the Audit Committee meeting held 30 May 2018 as previously circulated be noted.

Moved: Cr Lovett

Seconded: Cr Greco

Carried

13.20. Quarter 3 Budget Revision for the financial year ending 30 June 2018 - Report No. AR18/17363

(a) That Audit Committee Report No. AR18/17363 titled '*Quarter 3 Budget Revision for the financial year ending 30 June 2018*' as presented to the Audit Committee on 30 May 2018 be noted.

Moved: Cr Lovett

Seconded: Cr Morello

Carried



13.21. Internal Financial Controls 2017/2018 - Report No. AR18/17848

(a) That Audit Committee Report No. AR18/17848 titled '*Internal Financial Controls 2017/2018*' as presented to the Audit Committee on 30 May 2018 be noted.

Moved: Cr Lovett

Seconded: Cr Perryman

Carried

13.22. Building and Structure Valuations for Insurance Estimates 2018/2019 – Report No. AR18/16965

(a) That Audit Committee Report No. AR18/16965 titled '*Building and Structure Valuations for Insurance Estimates 2018/2019*' as presented to the Audit Committee on 30 May 2018 be noted.

Moved: Cr Lovett

Seconded: Cr Lynagh

Carried

13.23. Interim Management Letter FY2018 Galpins May 2018 incl. Management Responses - Report No. AR18/17363

(a) That Audit Committee Report No. AR18/18776 titled '*Interim Management Letter FY2018 Galpins May 2018 incl. Management Responses*' as presented to the Audit Committee on 30 May 2018 be noted.

Moved: Cr Lovett

Seconded: Cr Perryman

Carried

13.24. 2018/2019 Annual Business Plan, Budget and Business Unit Planning Update - Report No. AR18/17362

(a) That Audit Committee Report No. AR18/17362 titled '*2018/2019 Annual Business Plan, Budget and Business Unit Plan Update*' as presented to the Audit Committee on 30 May 2018 be noted.

Moved: Cr Lovett

Seconded: Cr Greco

Carried



13.25. Fees & Charges Review - Taxi Licence Renewal - Report No. AR18/19889

- (a) That Operational Standing Committee Report No. AR18/19889 titled '*Fees & Charges Review – Taxi Licence Renewals*' as presented to the Operational Standing Committee on 12 June 2018 be noted.
- (b) That the Taxi Licence renewal fee for the six month period from 1 July 2018 to 31 December 2018 be \$1 payable on demand and Council's Schedule of Fees & Charges 2018/2019 be updated accordingly.

Moved: Cr Lovett

Seconded: Cr Lynagh

Carried

13.26. Works in Progress – City Infrastructure - Report No. AR18/21240

- (a) That Operational Standing Committee Report No. AR18/21240 titled '*Works in Progress - City Infrastructure*' as presented to the Operational Standing Committee on 12 June 2018 be noted.

Moved: Cr Lovett

Seconded: Cr Greco

Carried

Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 13.27:

"as I have three daughters who attend Tenison Woods College as students".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to stay in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to the matter.

13.27. Traffic Safety – White Avenue (between Shepherdson Road and Tollner Road) - Report No. AR18/15475

- (a) That Operational Standing Committee Report No. AR18/15475 titled '*Traffic Safety – White Ave (between Shepherdson Road and Tollner Road)*' as presented to the Operational Standing Committee on 12 June 2018 be noted.



- (b) Council endorse the Traffic Management improvement plan to White Ave as prepared by DPTI.
- (c) Council write to DPTI committing to fund the concrete median works and alteration to the footpath and kerbing.
- (d) Council advise Tenison Woods College and DPTI that Council is willing to fund \$3,950 towards cost of the fence.
- (e) Council request that DPTI install no parking signs on the western side of White Avenue as appropriate to complement the new line markings.

Moved: Cr Lovett

Seconded: Cr Greco

Carried

Having participated in the meeting in relation to Item 13.27 Cr Perryman voted in favour of the motion.

13.28. Delegation of Powers - Update - Report No. AR18/19965

- (a) That Operational Standing Committee Report No. AR18/19965 titled '*Delegation of Powers - Update*' as presented to the Operational Standing Committee on 12 June 2018 be noted.
- (b) That Council hereby revokes its previous delegations to the Chief Executive Officer of those powers and functions under the following Acts:
 - Local Government Act 1999
 - Development Act 1993.
- (c) In exercise of the power contained in Section 44 of the Local Government Act 1999 the powers and functions under the following Acts and specified in the proposed Instrument of Delegation contained in Appendix 14 (annexed to Operational Standing Committee Report No. AR18/19965 titled '*Delegation of Powers – Update*') as indicated below are hereby delegated this Tuesday, 19th June, 2018 to the person occupying the office of Chief Executive Officer subject to the conditions and/or limitations indicated herein or in the Schedule of Conditions in the proposed Instrument of Delegation:
 - Local Government Act 1999 (Appendix 14).



- (d) In exercise of the power contained in Section 20 and 34 (23) of the Development Act 1993, the powers and functions under the Development Act 1993 and the Development Regulations 2008 specified in the proposed Instrument of Delegation contained in Appendix 21 (annexed to Operational Standing Committee Report No. AR18/19965 titled '*Delegation of Powers – Update*') as indicated below are hereby delegated this 19th June, 2018 to the person occupying the office of Chief Executive Officer, subject to the conditions and/or limitations indicated herein or in the Schedule of Conditions in the proposed Instrument of Delegation: under the Development Act 1993:
- Development Act 1993 (Appendix 21).
- (e) The powers and functions may be further delegated by Chief Executive Officer as the Chief Executive Officer sees fit and in accordance with Sections 44 and 101 of the Local Government Act 1999 and other relevant legislation, unless otherwise indicated herein or in the Schedule of Conditions contained in each such proposed Instrument of Delegation.
- (f) For the purpose of these delegations, all delegations to the Chief Executive Officer extend to any person appointed to act in the position of Chief Executive Officer.

For the purpose of these delegations, all further delegations made by the Chief Executive Officer extend to any person who is appointed to act in the position of the delegate.

Moved: Cr Lovett

Seconded: Cr Greco

Carried

13.29. Aquatic Centre – Proposed Entrance Fees 2018/2019 - Report No. AR18/22187

- (a) That Operational Standing Committee Report No. AR18/22187 titled '*Aquatic Centre – Proposed Entrance Fees 2018/2019*' as presented to the Operational Standing Committee on 12 June 2018 be noted.
- (b) That Council endorse the Mount Gambier Aquatic Centre Administration Fees and Charges for the 2018/2019 swimming season as proposed by Innovative Leisure Management.
- (c) That Council's Schedule of Fees and Charges 2018/2019 be updated to reflect the Aquatic Centre Admission Fees and Charges for 2018/2019.

Moved: Cr Lovett

Seconded: Cr Greco

Carried



Pursuant to Division 3 - Conflict of Interest, Section 74 of the Local Government Act 1999, Cr Perryman disclosed a material conflict of interest in Item 13.30:

"I am a Board Member of the organisation Basketball Mount Gambier Inc. who is the applicant for funding".

In accordance with Section 74(1)(b) of the Local Government Act 1999 Cr Perryman did not participate in the meeting and left the room at 6.33 p.m.

13.30. Sport and Recreation Major Capital Works Program Report No. AR18/22666

- (a) That Operational Standing Committee Report No. AR18/22666 titled '*Sport and Recreation Major Capital Works Program*' as presented to the Operational Standing Committee on 12 June 2018 be noted.
- (b) Basketball Mount Gambier receive funding of \$15,090.

Moved: Cr Lovett

Seconded: Cr Von Stanke

Carried

Cr Perryman resumed the meeting at 6.34 p.m.

Cr Greco left the room at 6.34 p.m.

13.31. Waste Management – Support Grants to Assist Local Government adjust to China’s National Sword Policy – Ref. AF11/362

- (a) That Council note the South Australian Government’s recently announced infrastructure and market development support grants to assist the Local Government adjust to impacts of China’s National Sword Policy on the waste management sector.
- (b) Council Officers prepare a report for Council on international and domestic examples of the use of incineration; power generation; recyclable plastics technology (including pelletising plastics for use in road base and other uses); and any other process or technology which would support Council to reuse or recycle waste, or process products for further use as part of Council’s waste management operations. Examples sought should have some regard to the scale of operations and volumes generated, or which could be reasonably expected to be generated if Mount Gambier was to be a hub for such recycling/incineration processes for councils within 330kms of Mount Gambier.



Moved: Cr Lovett

Seconded: Cr Lynagh

Carried

Cr Greco resumed the meeting at 6.35 p.m.

Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 13.32:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to the matter.

13.32. Minutes of Regional Sport and Recreation Centre Committee – 22 May 2018

That the minutes of the Regional Sport and Recreation Centre Committee meeting held 22 May 2018 as previously circulated be noted.

Moved: Cr Von Stanke

Seconded: Cr Greco

Carried

Having participated in the meeting in relation to the matter Cr Perryman voted in favour of Item 13.32.

Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 13.33:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to the matter.



13.33. Presiding Member Nomination - Report No. AR18/19554

- (a) That Regional Sport and Recreation Centre Report No. AR18/19554 titled '*Presiding Member Nomination*' as presented to the Regional Sport and Recreation Centre Committee on 22 May 2018 be noted.
- (b) That the meeting be open to nominations for Presiding Member of the Regional Sport and Recreation Centre Committee.
- (c) That the Regional Sport and Recreation Centre Committee recommend that Council appoint Cr Von Stanke to the position of Presiding Member of the Regional Sport and Recreation Centre Committee, effective from the date of Council approval.

Moved: Cr Von Stanke

Seconded: Cr Perryman

Carried

Having participated in the meeting in relation to the matter Cr Perryman voted in favour of Item 13.33.

Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 13.34:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to the matter.

13.34. Terms of Reference and Meeting Schedule - Report No. AR18/19550

- (a) That Regional Sport and Recreation Centre Committee Report No. AR18/19550 titled '*Terms of Reference and Meeting Schedule*' as presented to the Regional Sport and Recreation Centre Committee on 22 May 2018 be noted.
- (b) That ordinary meetings of the Regional Sport and Recreation Centre Committee be held on the 1st Tuesday of each month at 5.30 pm and special meetings be held as requested by the presiding member.



Moved: Cr Von Stanke

Seconded: Cr Lovett

Carried

Having participated in the meeting in relation to the matter Cr Perryman voted in favour of Item 13.34.

Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 13.35:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to the matter.

13.35. Recreation Sporting and Aquatic Centre Visits - Report No. AR18/19650

- (a) That Regional Sport and Recreation Centre Report No. AR18/19650 titled 'Recreation Sporting and Aquatic Centre Visits' as presented to the Regional Sport and Recreation Centre Committee on 22 May 2018 be noted.

Moved: Cr Von Stanke

Seconded: Cr Greco

Carried

Having participated in the meeting in relation to the matter Cr Perryman voted in favour of Item 13.35.

Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 13.36:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."



In accordance with section 75A Cr Perryman participated in the meeting in relation to the matter.

13.36. Regional Sport and Recreation Centre Committee Verbal Report – AF18/175

- (a) That the verbal report provided by Chief Executive Officer and General Manager City Growth be accepted.
- (b) Notes from verbal report be attached to the minutes for information.

Moved: Cr Von Stanke

Seconded: Cr Morello

Carried

Having participated in the meeting in relation to the matter Cr Perryman voted in favour of Item 13.36.

Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 13.37:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to Item 13.37.

13.37. Minutes of Regional Sport and Recreation Centre Committee – 5 June 2018

That the minutes of the Regional Sport and Recreation Centre Committee meeting held 5 June 2018 as previously circulated be noted.

Moved: Cr Von Stanke

Seconded: Cr Perryman

Carried

Having participated in the meeting in relation to the matter Cr Perryman voted in favour of Item 13.37.



Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 13.38:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to Item 13.38.

13.38. Council Decision Making Regarding Grant Applications During Council Election Caretaker Period - Report No. AR18/21516

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| <p>(a) That the Regional Sport and Recreation Centre Committee Report No. AR18/21516 titled 'Council Decision Making Regarding Grant Applications During Council Election Caretaker Period' as presented to the Regional Sport and Recreation Centre Committee on 5 June 2018 be noted.</p> <p>(b) That Council note the legal advice received by Council that decisions relating to the grant process and submitting grant applications to Federal and State Government during Caretaker period are excluded from the definition of a "designated decision".</p> |
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Moved: Cr Von Stanke

Seconded: Cr Morello

Carried

Having participated in the meeting in relation to the matter Cr Perryman voted in favour of Item 13.38.

Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 13.39:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to the matter.



13.39. Proposed Amendment to Timeline - Report No. AR18/21484

- (a) That Regional Sport and Recreation Centre Committee Report No. AR18/21484 titled '*Proposed Amendment to Timeline*' as presented to the Regional Sport and Recreation Centre Committee on 5 June 2018 be noted.
- (b) That the time frame originally identified in Council's Resolution 20 March 2018 Item 13.7 Project Management/Proposed Indoor Recreation Centre – Reference AF17/22 be extended for the submission of documents to the Committee and Council to the end of 2018.

Moved: Cr Von Stanke

Seconded: Cr Lovett

Carried

Having participated in the meeting in relation to the matter Cr Perryman voted in favour of Item 13.39.

Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 13.40:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to the matter.

13.40. Regional Sport and Recreation Committee Site Visit Summary Ref. AR18/20941

- (a) That Regional Sport and Recreation Centre Committee Report No. AR18/20941 titled '*Regional Sport and Recreation Committee Site Visit Summary*' as presented to the Regional Sport and Recreation Centre Committee on 5 June 2018 be noted.

Moved: Cr Von Stanke

Seconded: Cr Perryman

Carried



Having participated in the meeting in relation to the matter Cr Perryman voted in favour of Item 13.40.

Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 13.41:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to the matter.

13.41. Open Tender Process Ref. AR18/21524

- (a) That Regional Sport and Recreation Centre Committee Report No. AR18/21524 titled "Open Tender Process" as presented to the Regional Sport and Recreation Centre Committee on 5 June 2018 be noted.
- (b) That Council proceeds with an open tender process to identify and engage a company to cost estimate the project in two stages, firstly the stage leading to Council's full grant application and secondly, should the project proceed, cost estimates in line with full architectural design and construction documentation.
- (c) That the Committee and identified Council staff be involved in the tender selection process using criteria as specified in the tender documentation.

Moved: Cr Von Stanke

Seconded: Cr Morello

Carried

Having participated in the meeting in relation to the matter Cr Perryman voted in favour of Item 13.41.

Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 13.42:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".



Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to the matter.

13.42. Community Reference Group - Report No. AF18/175

(a) That Council establish a Community Reference Group represented by a cross section of stakeholders and community members to contribute to the project by:

- Participating in its design so that the needs of future users are considered
- Provide a local perspective on the impact of the facility in terms of use and access

(b) The Community Reference Group will seek a minimum composition of the following representatives, with the ability to modify the composition as determined by the Committee.

- 1 x primary school
- 1 x secondary school
- 1 x local swim school provider
- 1 x allied health care provider
- 1 x retirement/residential care facility
- 1 x childcare provider
- 1 x community youth group
- 4 x sport/ recreation clubs
- 2 x other community groups

(c) Terms of Reference will be established and endorsed by the Committee and Council.

Moved: Cr Von Stanke

Seconded: Cr Lynagh

Amendment

Cr Perryman moved:



- (a) That Council establish a Community Reference Group represented by a cross section of stakeholders and community members to contribute to the project by:
- Participating in its design so that the needs of future users are considered
 - Provide a local perspective on the impact of the facility in terms of use and access
- (b) The Community Reference Group will seek a minimum composition of the following representatives, with the ability to modify the composition as determined by the Committee.
- 1 x primary school
 - 1 x secondary school
 - 1 x local swim school provider
 - 1 x allied health care provider
 - 1 x retirement/residential care facility
 - 1 x childcare provider
 - 1 x community youth group
 - 4 x sport/ recreation clubs
 - 2 x other community groups
- Basketball, Netball, Swimming Club and Tennis be invited to nominate a representative to the community reference group.
- (c) Terms of Reference will be established and endorsed by the Committee and Council.

Cr Greco seconded

The amendment was put and

Carried

and as the motion was put and

Carried

Having participated in the meeting in relation to the matter Cr Perryman voted in favour of Item 13.42.

13.43. Minutes of Council Assessment Panel – 17 May 2018

That the minutes of the Council Assessment Panel meeting held 17 May 2018 as previously circulated be noted.

Moved: Cr Lovett

Seconded: Cr Greco

Carried



14. COUNCIL REPORTS

Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 14.1:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to the matter.

14.1. Mount Gambier Regional Sport and Recreation Centre Community Reference Group Terms of Reference - Report No. AR18/23268

- (a) That Council Report No. AR18/23268 titled '*Regional Sport and Recreation Committee Community Reference Group*' as presented to the Council on 19 June 2018 be noted.
- (b) That Council endorse the Mount Gambier Regional Sport and Recreation Centre Community Reference Group Terms of Reference and Nomination Form for use in establishing the Community Reference Group as per previous amendment at Item 13.42.

Moved: Cr Von Stanke

Seconded: Cr Greco

Carried

Having participated in the meeting in relation to the matter Cr Perryman voted in favour of Item 14.1.

15. MOTION(S) - With Notice

Nil submitted.

16. MOTION(S) - Without Notice

Cr Greco is seeking a leave of absence from Council and Committee from the 10th July 2018 to the 19th September 2018 inclusive.



Leave of Absence be granted to Cr Greco from 10th July 2018 to 19th September 2018 inclusive.

Moved: Cr Greco

Seconded: Cr Perryman

Carried



17. CONFIDENTIAL ITEMS

17.1. Consideration for Exclusion of the Public

Item 17.2

The following Agenda Item be received, discussed and considered in confidence by excluding the public pursuant to Section 90(2) of the Local Government Act 1999, and an order be made that the public (with the exception of Councillors – H Persello, C Greco, M Lovett, J Lynagh, F Morello, S Perryman, P Richardson and I Von Stanke and Council Officers - M McShane, P Lee, J Nagy, N Serle, M McCarthy, T Tzioutziouklaris, S McLean, S Moretti and M Telford) be excluded from the meeting in order for the Agenda Item (Illegal Development – Operation of A Builder’s Yard within the Residential Zone) to be considered in confidence.

The Operational Standing Committee is satisfied that, pursuant to section 90(3)(a) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would involve the unreasonable disclosure of:

- Information concerning the personal affairs of any person (living or dead),
- Information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence or the right to a fair trial.
- Legal advice

The Council is satisfied that the information to be received, discussed or considered in relation to this item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of the occupier of the property.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances as the matter is personal to the occupier of the property.

Item No.	Subject Matter	S90(3) Grounds
17.2	Illegal Development – Operation of a Builder’s Yard within the Residential Zone - Report No. AR18/21607	(a), (f) and (h)

Moved: Cr Greco

Seconded: Cr Lovett

Carried



17.3. Consideration for Keeping Items Confidential

That an order be made pursuant to Section 91(7) and recorded in the publicly released version of the minutes in accordance with Section 91(9) of the Local Government Act, 1999 that the document in relation to Item 17.2 which has been considered by the Council on a confidential basis pursuant to Section 90(3) be kept confidential.

Item No.	Subject Matter	S90(3) Grounds	Element To Be Kept Confidential	Duration
17.2	Illegal Development - Report No. AR18/21607	(a) & (f)	All details	Until the matter has been resolved. Where duration exceeds 12 months To be reviewed at least once

Moved: Cr Greco

Seconded: Cr Lynagh

Carried



17.4. Consideration for Exclusion of the Public

Item 17.5

The following Agenda Item be received, discussed and considered in confidence by excluding the public pursuant to Section 90(2) of the Local Government Act 1999, and an order be made that the public (with the exception of Councillors – H Persello, C Greco, M Lovett, J Lynagh, F Morello, S Perryman, P Richardson and I Von Stanke and Council Officers - M McShane, P Lee, J Nagy, N Serle, M McCarthy, T Tzioutziouklaris, S McLean, S Moretti and M Telford) be excluded from the meeting in order for the Agenda Item (Illegal Development – Cessation of the Storage of Scrap Items, Goods and Materials on the Subject Property) to be considered in confidence.

The Operational Standing Committee is satisfied that, pursuant to section 90(3)(a) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would involve the unreasonable disclosure of:

- Information concerning the personal affairs of any person (living or dead),
- Information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence or the right to a fair trial.
- Legal advice

The Council is satisfied that the information to be received, discussed or considered in relation to this item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of the occupier of the property.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances as the matter is personal to the occupier of the property.

Item No.	Subject Matter	S90(3) Grounds
17.5	Illegal Development – Cessation of the Storage of Scrap Items, Goods and Materials on the Subject Property - Report No. AR18/21507	(a), (f) and (h)

Moved: Cr Greco

Seconded: Cr Lynagh

Carried



17.6. Consideration for Keeping Items Confidential

That an order be made pursuant to Section 91(7) and recorded in the publicly released version of the minutes in accordance with Section 91(9) of the Local Government Act, 1999 that the document in relation to Item 17.5 which has been considered by the Council on a confidential basis pursuant to Section 90(3) be kept confidential.

Item No.	Subject Matter	S90(3) Grounds	Element To Be Kept Confidential	Duration
17.5	Illegal Development – Cessation of the Storage of Scrap Items, Goods and Materials on the Subject Property No. AR18/21507	(a) & (f)	All details	Illegal Development – Cessation of the Storage of Scrap Items, Goods and Materials on the Subject Property No. AR18/21507

Moved: Cr Greco

Seconded: Cr Lovett

Carried



17.7. Consideration for Exclusion of the Public

Item 17.8

The following item(s) be received, discussed and considered in confidence by excluding the public pursuant to Section 90 (2) of the Local Government Act, 1999 and an order be made that the public (with the exception of Councillors – H Persello, C Greco, M Lovett, J Lynagh, F Morello, S Perryman, P Richardson and I Von Stanke and Council Officers - M McShane, P Lee, J Nagy, N Serle, M McCarthy, T Tzioutziouklaris, S McLean, S Moretti and M Telford) be excluded from the meeting in order for the item to be considered in confidence as the Council is satisfied that the item is a matter that can be considered in confidence.

The Council is satisfied that pursuant to the following sections of the Act, the information to be received, discussed or considered in relation to this Agenda Item is:

- s90(3)(d) - commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected:
 - to prejudice the commercial position of the person who supplied the information, or
 - to confer a commercial advantage on a third party.

The information to be considered in relation to this Agenda Item include costings for provision of recycling services and other specific financial information, the disclosure of which would prejudice the supplier's commercial position in the open market.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of the supplier's commercial position could jeopardise the delivery of the recycling service to the community.

Item No.	Subject Matter	S90(3) Grounds
17.8	Council Update on Recycling Contract Variation - June 2018 - Report No. AR18/23145	(d)

Moved: Cr Lovett

Seconded: Cr Lynagh

Carried



IN-CONFIDENCE

17.8. Council Update on Recycling Contract Variation – June 2018 - Report No. AR18/23145

- (a) That Council Report No. AR18/23145 titled '*Council update on Recycling Contract Variation – June 2018*' as presented to Council on 19 June 2018 be noted.
- (b) That the recycling contract variation with Green Triangle Recyclers as proposed in the Draft Deed of Variation as provided at Attachment 1 (AR18/23362) is endorsed.
- (c) That Council authorise the CEO and Mayor to affix the sign and seal to documents as necessary to give effect to resolution (b).

Moved: Cr Persello

Seconded: Cr Lovett

Cr Perryman requested a Division

The declaration was then set aside

Voting by division being:

Members Voting in Favour

Cr Von Stanke
Cr Morello
Cr Lovett
Cr Lynagh

4 for the motion

Members Voting Against

Cr Greco
Cr Richardson
Cr Perryman

3 against the motion

The Deputy Mayor declare the motion

Carried



17.9. Consideration for Keeping Items Confidential

That an order be made pursuant to Section 91(7) and recorded in the publicly released version of the minutes in accordance with Section 91(9) of the Local Government Act, 1999 that the document in relation to Item 17.8 which has been considered by the Council on a confidential basis pursuant to Section 90(3) be kept confidential.

Item No.	Subject Matter	S90(3) Grounds	Element To Be Kept Confidential	Duration
17.8	Council update on recycling Contract Variation – June 2018 - Report No. AR18/23145	(d)	<p>Report and Attachments 1 and 2 as follows:</p> <ul style="list-style-type: none"> - Report No. AR18/23145 Council update on recycling Contract Variation – June 2018 - Attachment 1 (AR18/23362) Draft Deed of Variation of Contract AF17/59 Receival of Recyclable Materials - Attachment 2 (AR18/16676) Council Update on Recycling Issues and Options – May 7 2018 	Until a commercial agreement is reached with the supplier or 11 months has elapsed whichever is the earlier
		Resolutions (a) – (c) and Attachment 3 to be released immediately following consideration of Item 17.8 at the Council meeting on 19 June 2018.		

Moved: Cr Lovett

Seconded: Cr Lynagh

Carried



17.10. Consideration for Exclusion of the Public

Item 17.11

The following Agenda Item be received, discussed and considered in confidence by excluding the public pursuant to Section 90 (2) of the Local Government Act 1999, and an order be made that the public (with the exception of Council Members Councillors - C Greco, M Lovett, J Lynagh, F Morello, S Perryman, H Persello, P Richardson and I Von Stanke and Council Officers - M McShane, J Nagy, N Serle, M McCarthy, T Tzioutziouklaris, S McLean, M Telford and S Moretti now present) be excluded from the meeting in order for the Agenda Item Architectural Expression of Interest for the Mount Gambier Regional Sport and Recreation Centre AR18/23408 to be considered in confidence.

The Council is satisfied that, pursuant to section 90(3)(b) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected:

- to confer a commercial advantage on a person with whom the Council is proposing to conduct business; or
- would prejudice the commercial position of the Council.

At this stage of the Regional Sport and Recreation Centre Project the Council has undertaken an Expression of Interest process only for potential architectural services and is yet to receive and consider any formal tender submissions from proponents. The consideration and shortlisting of proponents in a public environment could be detrimental to securing the best outcomes for the community as each shortlisted proponent would be aware of their competitive status conferring an advantage on each of them whilst prejudicing Council's own Commercial position.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because until a final determination on a selected tenderer has been made the Council reserves the right, on behalf of the community, to revisit alternative means of securing outcomes for the project. Further, as the project remains unfunded Council may seek to review any decisions made in this matter.

Item No.	Subject Matter	S90(3) Grounds
17.11	Architectural Expression of Interest for the Mount Gambier Regional Sport and Recreation Centre - Report No. AR18/23408	(b)

Moved: Cr Lovett

Seconded: Cr Greco

Carried



Pursuant to Division 3 - Conflict of Interest, Section 75A of the Local Government Act 1999, Cr Perryman informed the meeting of a perceived conflict of interest in Item 17.11:

"I am a Board member of Committee of Management of Basketball Mount Gambier Inc. That organisation is a stakeholder group in the process to apply for the grant and is participating in the Council community consultation and design process".

Cr Perryman informed the meeting of the manner in which they intend to deal with the perceived conflict of interest as follows:

"I intend to remain in the Chamber, debate and vote."

In accordance with section 75A Cr Perryman participated in the meeting in relation to the matter.



Having participated in the meeting in relation to the matter Cr Perryman voted in favour of the motion.

17.12. Consideration for Keeping Items Confidential

That an order be made pursuant to Section 91(7) and recorded in the publicly released version of the minutes in accordance with Section 91(9) of the Local Government Act, 1999 that the document in relation to Item 17.11 which has been considered by the Council on a confidential basis pursuant to Section 90(3) be kept confidential.

Item No.	Subject Matter	S90(3) Grounds	Element To Be Kept Confidential	Duration
17.11	Architectural Expression of Interest for the Mount Gambier Regional Sport and Recreation Centre - Report No. AR18/23408	(b)	All details	Until: Council has considered and endorsed a contract for architectural services for the Mount Gambier Regional Sport and Recreation Centre Project.

Moved: Cr Lovett

Seconded: Cr Greco

Carried

Meeting closed at 7:05 p.m.

AR18/24311





Contract AF17/59

Receival of Recyclable Materials
(1st July 2017 to 30th June 2022)

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Schedule

Item 1 Council	City of Mount Gambier ABN 17 330 264 425 Fax: (08) 8724 9791 Email: city@mountgambier.sa.gov.au Phone: (08) 8721 2555
Item 2 Contractor	Green Triangle Recyclers (Weber Management Pty Ltd as trustee for Weber Family Trust) ABN 39 273 511 787 Fax: (08) 8725 3278 Email: ianweber@greentrianglercyclers.com.au Phone: (08) 8725 2715 or 0418 849 841
Item 3 Insurance requirements	Public liability insurance Company: QBE Insurance Australia Policy: 161A564672BPK Expiry: 28/02/2018 Amount : \$20,000,000 for any one incident
Item 4 Commencement Date	1 st July 2017
Item 5 Termination Date	30 th June 2022
Item 6 Council's Representative	Mark McShane, Chief Executive Officer and any other person as may be advised by the Council in writing
Item 7 Contractor's Staff	Ian Weber and any other person as may be approved by the Council in writing

Item 8 Confidential Sections	Nil
Item 9 Contractor's Representative	Ian Weber and any other person as may be advised by the Contractor in writing

Date

21st June 2017

Parties

City of Mount Gambier ABN 17 330 264 425 of 10 Watson Terrace Mount Gambier, South Australia 5290

Green Triangle Recyclers (Weber Management Pty Ltd as trustee for Weber Family Trust) of 1 Eucalypt Drive Mount Gambier, South Australia 5290

Background

- A. Pursuant to a Request for Tender process, the Council sought submissions from suitably qualified parties for the Services.
- B. The Contractor submitted a tender for the Services, and the Council accepted it.
- C. The Contractor agrees to perform the Services on the terms in this agreement.

Agreed Terms

1. Definitions and Interpretation

1.1 Definitions

In this agreement:

Agreement means this agreement and includes the Schedule and the Annexures.

Annexure refers to an Annexure of this agreement.

Authorisation includes any authorisation, agreement, approval, licence, permit, consent, qualification, accreditation, registration, certificate, declaration or exemption and any renewal and variation of them by or with a Governmental Agency.

Background Intellectual Property means Intellectual Property Rights in the Deliverables which were not specifically created as part of the Services

(including the pre-existing Intellectual Property Rights of the Contractor and Intellectual Property Rights of third parties).

Clause refers to a clause of this agreement.

Commencement Date means the date specified in Item 4 of the Schedule.

Confidential Information means any documentation or information of a confidential nature supplied by either of the parties to the other in connection with this agreement and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by each party, but specifically excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by Law.

Confidential Sections are those clauses, Schedules and/or Annexures specified in specified in Item 8 of the Schedule that are deemed to be confidential for the purposes of the FOI Act.

Contractor's Representative means the person specified in Item 9 of the Schedule.

Contractor's Staff means the people approved by the Council to perform the Services, being those persons specified in Item 7 of the Schedule.

Council means the Council specified in Item 1 of the Schedule.

Council's Representative means the person specified in Item 6 of the Schedule.

Data means information directly or indirectly relating to this agreement and/or the Services.

Deliverables means all documents, equipment, software, information and Data produced as part of the Services and supplied to the Council as part of the Services.

Fee means the fee payable by the Council for the Services, which is to be determined and reviewed in the manner set out in Annexure B, and which is more specifically set out in each Purchase Order.

FOI Act means *Freedom of Information Act 1991 (SA)*.

Force Majeure Event means an event beyond the reasonable control of the parties which precludes a party from performing on time an obligation under this agreement. Such circumstances include:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and

- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.

Governmental Agency means any government or any government, semi-governmental, administrative, fiscal or judicial body, commission, authority, tribunal, agency or entity including any self-regulatory organisation established under statute or any stock exchange.

Intellectual Property Rights includes property and rights in respect of or in connection with copyright (including future copyright and rights in the nature of or analogous to copyright), know-how, trade mark, service mark, design, inventions (including patents), business or company names, or other proprietary rights, or any rights to registration of such rights (including all renewals and extensions) whether created before or on or after the agreement.

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

Notice means a notice, demand, consent, approval or communication under this agreement.

Purchase Order refers to any of purchase orders placed by the Council pursuant to clause 3.1.

Recipient refers to a party who receives a supply pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Reportable Incident means any accident, injury, property or environmental damage or any potential breach of any Law that occurs during or as a result of this agreement.

Schedule refers to the Schedule of this agreement.

Services means those services which the Contractor is to perform under this agreement, more specifically set out in Annexure A.

Standing Offer means the standing offer made by the Contractor to the Council pursuant to clause 3.1.

Supplier refers to a party who makes an supply under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Term means the period starting on the Commencement Date and finishing on the Termination Date.

Termination Date means the date specified in Item 5 of the Schedule, unless this agreement is terminated in accordance with this agreement.

Variation means any change to the Services including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Services.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.4 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.5 a reference to this agreement includes any schedules and annexures to this agreement;
- 1.2.6 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.7 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.8 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.9 a provision is not construed against a party only because that party drafted it;
- 1.2.10 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
- 1.2.11 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.12 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that Act at the date of this agreement;
- 1.2.13 an expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given by that Act at the date of this agreement.

2. Engagement of Contractor

- 2.1 The Council engages the Contractor who accepts the engagement for the Term to perform the Services on the terms of this agreement.

- 2.2 The parties acknowledge that nothing in this agreement creates or infers a relationship between the parties of partnership or employer/employee.

3. Basis of Engagement

3.1 Standing Offer Arrangement

- 3.1.1 The Contractor hereby irrevocably grants the Council with a Standing Offer during the Term to provide the Services for the Fee at the times requested by the Council.
- 3.1.2 The Council may place an order for the Services at any time during the Term by sending a Purchase Order to the Contractor.
- 3.1.3 Each Purchase Order by the Council constitutes an acceptance of the Standing Offer by the Contractor to provide the Services and will constitute an agreement for the Contractor to provide the Services to the Council in accordance with the Purchase Order and the terms and conditions of this agreement.
- 3.1.4 The Council is not obliged to request any or any minimum number of Services from the Contractor under this agreement.
- 3.1.5 The arrangements contemplated by this agreement are not an exclusive arrangement and the Council may, at its discretion, engage other Contractors to provide the Services.
- 3.1.6 The Services will be provided as and when required by the Council in accordance with a Purchase Order.

3.2 Publicity and Changes

- 3.2.1 The Contractor must not (without the prior written consent of the Council) advertise, promote or publish in any form, the fact that the Contractor is providing the Services to the Council.
- 3.2.2 The Contractor must immediately notify the Council in writing of:
- 3.2.2.1 any change in the financial or technical capacity of the Contractor which a reasonable person would consider adversely impacts upon the Contractor's ability to provide the Services to the Council; and/or
 - 3.2.2.2 any change in the Contractor's ownership.

4. Invoicing and Payment

4.1 Payment of Fee

4.1.1 The Council will pay to the Contractor the Fee for the provision of the Services in accordance with the provisions of each Purchase Order.

4.1.2 The Contractor will issue the Council with an invoice at the end of the month in which it receives a Purchase Order from the Council.

4.2 Payment terms

4.2.1 Payment of the Fee will be due within 30 days from the end of the month in which the Council receives a correctly rendered tax invoice from the Contractor.

4.2.2 A tax invoice is correctly rendered when it:

4.2.2.1 describes the Services provided and the period to which the Services relate;

4.2.2.2 displays the Council's Purchase Order number;

4.2.2.3 displays the terms of payment of the Fee described in the invoice;

4.2.2.4 is addressed to the Council's address specified in Item 1 of the Schedule; and

4.2.2.5 set out in reasonable detail the manner and basis of the calculation of the Fee, including the component of GST.

4.3 Effect of payment

A payment of all or part of the Fee is not an acceptance of the Services or a waiver of a right or action of the Council.

4.4 Right of set off

The Council may deduct from amounts otherwise payable to the Contractor any amount due from the Contractor to the Council.

5. Standard and Scope of Services

5.1 The Contractor represents and warrants to the Council that:

5.1.1 all actions and conditions required to be taken, fulfilled and done by it in order to enable it to enter into, exercise its rights and perform its obligations under this agreement have been done; and

- 5.1.2 all Authorisations required for its entry into, exercise of its rights under, and performance of its obligations under this agreement have been obtained.
- 5.2 The Contractor must provide the Council with the Services in the manner and at the times or within the timeframe specified in each Purchase Order.
- 5.3 The Contractor must:
 - 5.3.1 perform the Services with all the skill, care and diligence to be expected from a qualified, competent and experienced provider of services similar to the Services;
 - 5.3.2 devote such of its time and ability as is appropriate and reasonably necessary for the proper and timely performance of the Services;
 - 5.3.3 comply with all Authorisations and all applicable Laws, accepted industry standards, specifications and procedures in the performance of the Services and its obligations under this agreement; and
 - 5.3.4 comply with any reasonable requests of the Council, whether in relation to the manner of the performance of the Services or otherwise.
- 5.4 The Contractor must supply at its own expense all plant, equipment and facilities required for the performance of the Services and maintain them in a safe and good working condition.
- 5.5 The Contractor must keep the Council fully and regularly informed as to all matters affecting or relating to the Services and must provide to the Council any information reasonably requested by the Council to monitor the performance of the Contractor's obligations under this agreement.
- 5.6 The Contractor must promptly notify the Council of a Reportable Incident within 24 hours of the incident taking place. The Contractor must provide a report to the Council's Representative giving complete details, including results of investigations into its cause, and any recommendations or strategies for prevention in the future.
- 5.7 Times for the fulfilment of the Contractor's obligations under this agreement are essential terms of this agreement.

6. Variation to Services

- 6.1 The Council may, by written notice to the Contractor, request a Variation to the Services. This may consist of a direction to the Contractor to change the character, quality, scope and/or extent of the Services.

- 6.2 Subject to clause 6.4, the Contractor must not carry out a Variation unless and until the Council provides to the Contractor a written Variation and the Variation is valued.
- 6.3 A Variation is valued as follows:
- 6.3.1 where the Variation can be valued by the application of rates accepted by the Council - by the application of those rates; or
- 6.3.2 where there are no relevant rates - the Council's Representative and the Contractor's Representative may, by agreement, determine a reasonable value.
- 6.4 If the Council gives the Contractor a written instruction that a matter is so urgent that the Contractor should proceed with the Variation before it is valued, the Contractor may proceed with the Variation and the Variation must be valued afterwards by the Council's Representative and the Contractor's Representative.
- 6.5 If the Council's Representative and the Contractor's Representative are unable to reach agreement under clauses 6.3.2 or 6.4, the matter will be resolved under clause 15.
- 6.6 No Variation invalidates this agreement irrespective of the character or value of the Variation.
- 6.7 All Variations must be in writing and signed by the Council's Representative.

7. Contractor's Staff

- 7.1 The Contractor acknowledges that the Council enters into this agreement on the basis of the skills, reputation, qualifications, experience and knowledge of the Contractor's Staff and that the Services must be performed only by the Contractor's Staff.
- 7.2 The Contractor may request in writing that the Council approve further people as Contractor's Staff.
- 7.3 The Council may, in its absolute discretion, give (conditionally or unconditionally) or withhold such approval.
- 7.4 The Contractor is responsible for the performance of the Services by Contractor's Staff and will not be relieved of its obligations or liabilities under this agreement.
- 7.5 The Contractor is responsible for labour management and industrial relations in respect of the provision of the Services by the Contractor's Staff.
- 7.5.1 The Council does not bear or accept any additional costs as a result of the impact of any industrial dispute on the performance of the Services.

- 7.5.2 In the event of an industrial dispute, the Contractor must take all reasonable steps to ensure the continuation of the Services without adverse impact on the Council.

8. Insurance

- 8.1 During the Term, the Contractor must maintain all insurances required by Law and this agreement, including:
- 8.1.1 public liability insurance for the amount specified in Item 3 of the Schedule in respect of any one incident arising during or in consequence of the performance of the Services. The insurance policy must bear an endorsement from the insurer acknowledging the indemnities given by the Contractor under this agreement;
 - 8.1.2 any other insurances specified in Item 3 of the Schedule.
- 8.2 The Contractor must produce evidence of those insurances to the Council upon request.
- 8.3 All insurance policies must bear an endorsement from the insurer that it will notify the Council if the policy is cancelled or altered or allowed to lapse.
- 8.4 The Contractor must not allow any act or omission which would make any policy of insurance void or unenforceable.
- 8.5 The Contractor must register itself with WorkCover and maintain that registration and pay all levies pursuant to the *Workers Rehabilitation and Compensation Act 1986* (SA) at all times during the Term. The Contractor must produce evidence of that registration to the Council upon request.
- 8.6 The Contractor must ensure that its subcontractors (so long as they have been approved by the Council) comply with this clause.

9. Ownership of Intellectual Property Rights and Deliverables

- 9.1 The Contractor warrants that the Deliverables will not infringe the Intellectual Property Rights of any person. The Contractor fully indemnifies the Council against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against the Council alleging that the Deliverables infringe any such Intellectual Property Rights.
- 9.2 The Contractor hereby assigns to the Council all future copyright and all other rights of a like nature in the Deliverables throughout all countries of the world to the intent that such rights will, upon their creation, vest in the Council.

- 9.3 Subject to clause 9.4, title to all Intellectual Property Rights in the Deliverables (other than copyright vesting in the Council under clause 9.2), will be assigned to the Council upon its creation.
- 9.4 The Contractor hereby grants the Council a perpetual, royalty-free, non-exclusive licence of Background Intellectual Property, with a right to grant sub-licences, to the extent necessary to use or reproduce in any way the Deliverables.
- 9.5 The Contractor must do all such things and execute all such forms and documents as are necessary to permit or facilitate the performance of the transactions contemplated by this clause 9.

10. Indemnity and Exclusion of Liability

- 10.1 The Contractor must indemnify the Council and its employees, officers and Contractors against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person, caused or contributed to by the Contractor, a breach by the Contractor of this agreement, a wilful unlawful or negligent act or omission of the Contractor, and any claim action or proceeding by a third party against the Council or its employees officers and Contractors caused or contributed to by the Contractor.
- 10.2 This indemnity is reduced by the extent to which the Council contributes to the event giving rise to the claim for the indemnity.
- 10.3 The Contractor must perform the Services at its own risk in all things and releases the Council and its employees, officers, members and Contractors from all claims, actions, proceedings, costs, expenses, losses, suffering, and liabilities incurred by the Contractor or its employees, agents, subcontractors and third parties which arise from the performance of the Services.

11. Non Performance by Contractor

If the Contractor breaches a provision of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so, the Council may:

- 11.1 suspend any or all payment of the Fee until the breach is remedied; and/or
- 11.2 remedy the breach itself whether by the use of the Council's employees or other Contractors and deduct the cost of remediation from any Fee due to the Contractor; and/or
- 11.3 terminate this agreement in accordance with clause 13.1; and/or
- 11.4 pursue any other legal remedies available to the Council.

12. Force Majeure

- 12.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this agreement:
 - 12.1.1 neither party is liable for such delay or failure; and
 - 12.1.2 all obligations of a party under this agreement are suspended until the Force Majeure Event ceases to apply.
- 12.2 A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this agreement must:
 - 12.2.1 notify the other party as soon as possible giving:
 - 12.2.1.1 reasonably full particulars of the Force Majeure Event;
 - 12.2.1.2 the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
 - 12.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
 - 12.2.2 use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;
 - 12.2.3 resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;
 - 12.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
 - 12.2.5 notify the other party when resumption of performance occurs.
- 12.3 If a delay or failure under this clause exceeds 60 days, the Council may immediately terminate this agreement by written notice to the Contractor. In such circumstances, the Council will be liable to the Contractor only in respect of the Fees properly owing up to the date of termination in respect of the Services (or part thereof) performed to the Force Majeure Event. Without limiting the effect of this clause 12.3, the Council will not be liable to compensate the Contractor for loss of potential profits or other consequential loss incurred by the Contractor arising from termination by the Council pursuant to this clause.

13. Termination

13.1 Termination by Council

13.1.1 The Council may immediately terminate this agreement by giving notice to the Contractor if the Contractor:

13.1.1.1 ceases to carry on business or becomes otherwise unable to perform its obligations under this agreement; or

13.1.1.2 breaches a material or essential term of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so; or

13.1.1.3 becomes an externally-administered body corporate or an insolvent under administration; or

13.1.1.4 becomes insolvent or bankrupt.

13.1.2 In such circumstances, the Council will be liable to the Contractor only in respect of the Fees properly owing up to the date of termination in respect of the Services (or part thereof) performed to that time. Without limiting the effect of this clause 13.1.2, the Council will not be liable to compensate the Contractor for loss of potential profits or other consequential loss incurred by the Contractor arising from termination by the Council pursuant to this clause.

13.2 Termination by Contractor

The Contractor may immediately terminate this agreement if the Council breaches a material term of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so.

13.3 Accrued rights and remedies

Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

14. Confidential Information and Freedom of Information

14.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this agreement, and agrees that it will:

14.1.1 keep confidential;

14.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;

14.1.3 maintain proper and secure custody of; and

14.1.4 not use or reproduce in any form;

any Confidential Information belonging to the other party. Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this agreement.

14.2 The Contractor consents to any disclosures made as a result of the Council complying with its obligations under the FOI Act, subject to any legally required consultation.

14.3 Unauthorised disclosure of any Confidential Sections constitutes a breach of a party's obligations under this agreement.

15. Dispute Resolution

15.1 General

15.1.1 A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.

15.1.2 A party claiming that a dispute has arisen under this agreement must give written notice to the other party specifying the nature and details of the dispute.

15.1.3 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.

15.1.4 If the parties are unable to resolve the dispute within 10 business days, they must promptly refer the dispute:

15.1.4.1 in the case of the Council to the Chief Executive Officer;
and

15.1.4.2 in the case of the Contractor to the Contractor's Representative.

15.1.5 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.

15.2 Mediation

15.2.1 If those persons are unable to resolve the dispute within 10 business days of referral, a party may refer the dispute for mediation under the mediation rules of the Law Society of South Australia Inc to:

15.2.1.1 a mediator agreed by the parties; or

15.2.1.2 if the parties are unable to agree a mediator within five business days, a mediator nominated by the President of the Law Society or the President's nominee.

15.2.2 The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has agreed in writing.

15.2.3 Any information or documents disclosed by a party under this clause:

15.2.3.1 must be kept confidential; and

15.2.3.2 may not be used except to attempt to resolve the dispute.

15.2.4 Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.

15.3 Arbitration

15.3.1 If the dispute is not resolved within 10 business days of appointment of the mediator, a party may refer the dispute to:

15.3.1.1 an arbitrator agreed by the parties; or

15.3.1.2 if the parties are unable to agree an arbitrator within five business days, an arbitrator nominated by the Chairperson of the South Australian Chapter of The Institute of Arbitrators and Mediators Australia or the Chairperson's nominee.

15.3.2 A referral to arbitration is a submission to arbitration within the meaning of the *Commercial Arbitration Act 2011* (SA).

15.3.3 The party serving the notice of arbitration must lodge with the arbitrator a security deposit for the cost of the arbitration proceedings.

15.3.4 The arbitrator may determine the amount of costs, how costs are to be apportioned and by whom they must be paid.

15.4 Performance

If possible, each party must perform its obligations under this agreement during negotiations, mediation and arbitration proceedings.

16. Subcontracting and Assigning

16.1 The Contractor must not assign or subcontract this agreement or any right or obligation under it without the prior written consent of the Council, which may be granted or withheld by the Council in its absolute discretion.

- 16.2 With any application for such consent, the Contractor must provide all information required by the Council, including evidence that the proposed assignee or subcontractor is capable of performing the Services to be assigned or subcontracted.
- 16.3 Unless otherwise agreed in writing by the Council, no such assignment or subcontract relieves the Contractor from any liability under this agreement or at Law in respect of the performance or purported performance of this agreement and the Contractor is responsible for the acts and omissions of any assignee or subcontractor or any assignee's or subcontractor's employees and agents as if they were the acts or omissions of the Contractor.
- 16.4 For the purpose of this clause, if the Contractor is a company, an assignment of this agreement includes any change in the beneficial ownership of the share capital of the Contractor, or the resignation, death or appointment of any director of the company, which alters the effective control of the Contractor.

17. **Miscellaneous**

17.1 **Alteration**

This agreement may be altered only in writing signed by each party.

17.2 **Entire agreement**

This agreement:

17.2.1 constitutes the entire agreement between the parties about its subject matter; and

17.2.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

17.3 **Waiver**

A waiver of a provision of or right under this agreement must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.

17.4 **Exercise of power**

17.4.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.

17.4.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

17.5 Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

17.6 Further action

Each party must do all things necessary to give full effect to this agreement and the transactions contemplated by this agreement.

17.7 Governing law

17.7.1 This agreement is governed by the law in South Australia.

17.7.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

17.8 Ombudsman

The Contractor acknowledges that the *Ombudsman Act 1972 (SA)* empowers the Ombudsman to investigate matters in the public interest. The Contractor must ensure compliance with all obligations arising under that Act and all applicable Laws.

17.9 Work Health and Safety

In complying with its obligations pursuant to this agreement, the Contractor agrees to:

17.10.1 comply with any environmental requirements of the Council communicated from time to time by the Council to the Contractor;

17.10.2 comply with all requirements of the *Work Health and Safety Act 2012 (SA)* and any regulations made under it;

17.10.3 comply with the City of Mount Gambier Contractor Management Guide;

17.10.4 comply with any reasonable requests of the Council in relation to the Contractor's performance of its obligations pursuant to this agreement; and

17.10.5 promptly notify the Council of any accident, injury, property or environmental damage of any potential breach of any law (reportable incident) that occurs during or as a result of this agreement. Within 24 hours of a reportable incident, the Contractor must provide a report to the Council's Representative giving complete details, including the results of investigations into its cause and recommendations or strategies for prevention in the future.

17.10 ICAC

The Contractor acknowledges and agrees that by entering into this agreement with the Council the Contractor will be considered to be a public officer for the purposes of the *Independent Commissioner Against Corruption Act, 2012* (SA) (ICAC Act) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

18. Goods and Services Tax

18.1 Consideration does not include GST

Unless specifically described as 'GST inclusive', any payment or consideration under this agreement does not include GST.

18.2 Gross up of consideration

Where a supply by a Supplier to a Recipient under this agreement is subject to GST (other than a supply specifically described as 'GST inclusive'):

- 18.2.1 the expressed consideration for that supply must be increased by, and the Recipient must pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply; and
- 18.2.2 the Recipient must pay that additional amount at the same time and in the same manner as the expressed consideration.

18.3 Reimbursements

If a payment to a party under this agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with the previous subclause.

18.4 Tax invoices

Notwithstanding any other provision of this agreement, the Recipient need not make any payment for a taxable supply made by the Supplier under this agreement until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

18.5 Adjustments

If an adjustment event has occurred in respect of a taxable supply made under this agreement, any party that becomes aware of the occurrence of that adjustment event must notify each other party to that taxable supply as soon as practicable, and all of those parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that

taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the Supplier first becomes aware that the adjustment event has occurred.

19. Notices

- 19.1 A Notice must be:
- 19.1.1 in writing, in English and signed by a person authorised by the sender; and
 - 19.1.2 hand delivered or sent by pre paid post or facsimile or electronic communication to the recipient's address or facsimile number specified in the Schedule, as varied by any Notice given by the recipient to the sender.
- 19.2 A Notice is deemed to be received:
- 19.2.1 if hand delivered, on delivery;
 - 19.2.2 if sent by prepaid post, two business days after posting (or seven business days after posting if posting to or from a place outside Australia);
 - 19.2.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender;
 - 19.2.4 if sent by electronic communication, at the time deemed to be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if the notice was being given under a Law of the Commonwealth of Australia.
- 19.3 However if the Notice is deemed to be received on a day that is not a business day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next business day.

20. Costs

Each party must pay its own costs of preparing this agreement and any document required by it.

Annexure A Services

General

This contract is for the receipt of kerbside collected recyclable materials.

This will be a schedule of rates contract (based on \$/tonne) for a five (5) year period, commencing on 1st July 2017 and terminating on 30th June 2022.

The success of a kerbside recycling scheme will be contingent upon high levels of service and convenience to users of the service and to this end this contract requires the contractor to specify clearly and precisely what materials they are prepared to accept for the kerbside recyclable collection system (refer Tender AF17/59). It is expected that the nominated materials will be received for the entire duration of the contract.

The removal of any item(s) from the nominated list of receivables will only occur with the approval of the Council and under terms and conditions as negotiated between Council and the Contractor at the time.

The contractor should understand that the removal of any item from the specified list (as included with the tender) is likely to be opposed by Council and will require substantial evidence to support any such deletion.

Any negotiations with respect to deletion of an item from the specified receivables list will address the base dollar rate for receiving materials (i.e. Council will look to apply a financial penalty).

It is expected that the nominated list of recyclable materials will be consistent with what the community can reasonably expect to be recycled and should include items such as:

- Glass
- Plastic
- Paper/Cardboard
- Tins
- Cans (aluminium)
- Milk Cartons

The contractor will be required to produce a quality document setting out the recyclables that will be collected such that the document can be used as part of the education program. This document is to be distributed to all rateable assessments of Mount Gambier (currently there are approximately 13,000 rateable properties).

A self explanatory, A4 document (in electronic format) is envisaged.

Receipt of Materials

The contract requires the contractor to operate a fully licensed receipt/sorting depot (in accordance with all prevailing legislative requirements including, but not limited to the Environment Protection Act and Work Health Safety Act).

The receipt depot should be within the City of Mount Gambier or in very close proximity to the City.

The contractor responsible for the collection of the recyclables will be required to tip off on a concrete floor/bin at the specified depot/receival location without any undue delays.

The collection contractor will also be required to weigh each load at the Waste Transfer Centre on Eucalypt Drive prior to tip off, and the weigh bridge weight will be the basis of all payments for the receival of recyclables (note: the collection contractor also has the option to use any other certified weighbridge).

Hours of Operation

The receival contractor will be required to provide uninhibited access 3 days/week (following the collection pattern of Councils recyclable collection service but on alternate weeks) and this will include any public holidays (with the exception of Good Friday and Christmas Day);

i.e. Week 1 - Monday, Wednesday, Friday

Week 2 - Monday, Tuesday, Thursday (refer attached collection maps).

The receival depot must be available for tip off at all times required by the collection vehicles and must also have regard to any seasonal demands that may occur (i.e. required tip off after normal closing hours at the receival facility).

The collection vehicles will not be permitted to commence collection prior to 7.00 a.m.

Contamination

It is highly likely that contamination will be a constant feature of the materials received. Council will not be held responsible in any way for the inclusion of contamination in the recyclable stream at the source but will endeavour to educate the public to assist in keeping contamination to a minimum.

The collection vehicle operators will also be required to exercise vigilance as part of the collection of recyclables but it must be understood that the collector can only monitor material as it is dropped into the truck. A notice will be given to an occupier detected of contamination and repeat offences may lead to a discontinuance of their recycling service.

This specification requires the tenderer to outline the procedures proposed to deal with contamination in the recyclable stream once it is tipped off at the receival point.

The tender documents should clearly set out any requirements/expectations the tenderer may have of Council with regard to contamination.

Record Keeping

A number of Government Agencies require detailed records to be maintained. The tender price of this contract shall incorporate the costs to provide the required records for legislation and Council purposes.

The South Australian EPA reporting requirements are required to be abided by.

IMPORTANT NOTE:

All Contractors and their employees must read and abide by the requirements as outlined in the City of Mount Gambier Contractor Management Guide.

Annexure B Fee

Price to receive Recyclable Materials - \$118 per tonne + National CPI annual increase (excluding GST).

Should Council's gate price for waste disposal increase beyond the current 2017/2018 fee, then an increase to the recycling receival rate shall occur as a % of this gate fee increase, based on the following formula:

$$\frac{\text{Total contamination for pervious 12 month period (tonnes)}}{\text{Total recycling received for previous 12 month period (tonnes)}} \times \frac{100}{1}$$



e.g. total contamination = 880 tonnes
total recycling received = 3500 tonnes
gate fee increase = \$5 /tonne

$$\text{Increase to recycling receival rate} = \frac{880}{3500} \times \frac{100}{1} = 25.1\%$$

25.1% x \$5/tonne = \$1.26/tonne increase on receival rate.

EXECUTED as an agreement


By the Council

SIGNED by Mark McShane, Chief Executive Officer under delegated authority in the presence of:	
 Signature	 Signature of witness
	<i>LISA HINTON</i> Name of witness (print)

Use the below execution clause if the Contractor is a company executing under common seal.

The common seal of _____ was affixed in accordance with its Constitution and by the authority of its directors:	
_____ Director	_____ Director/Secretary

Use the below execution clause if the Contractor is a company but is NOT executing under common seal.

Executed by _____ in accordance with section 127(1) of the Corporations Act by the authority of its directors:	
Signature of Director	 Signature of Director/Secretary
Name of Director (print)	IAN WEBER Name of Director/Secretary (print)

Use the below execution clause if the Contractor is an individual.

Signed by	in the presence of:
Signature	Signature of witness
	Name of witness (print)

Use the below execution clause if the Contractor is a Partnership - please add extra execution clauses for additional partners as necessary.

Partner 1:

Signed by	in the presence of:
_____ Signature of witness	_____ Signature of partner
_____ Name of witness (print)	
_____ Address of witness (print)	

Partner 2:

Signed by	in the presence of:
_____ Signature of witness	_____ Signature of partner
_____ Name of witness (print)	
_____ Address of witness (print)	