

Current Policy - Content	Proposed Change	Change Notes
<p><b>Title</b> CP 4.8 – Legal Representation on Costs Indemnification</p>	<p><b>Title</b> : CP 4.8 – Legal Representation for Council Members and Employees</p>	<p>Amend title</p>
<p><b>SUSTAINABILITY THEME</b></p> <p>Governance</p>	<p><b>SUSTAINABILITY THEME</b></p> <p>Governance</p>	<p>No change</p>
<p><b>OBJECTIVES</b></p> <p>To provide a framework and guidance in the protection of Council members and employees involved in legal proceedings as a result of their employment.</p>	<p><b>OBJECTIVE</b></p> <p>To provide a framework and guidelines to assist the Council in determining when the City should provide financial assistance to council members and employees for legal representation.</p>	<p>Suggested change to wording – to reference that Council determine the financial assistance to be provided</p>
<p><b>POLICY STATEMENT</b></p> <p>This policy is designed to protect the interests of individual Council members and employees (including past members and former employees) where they become involved in legal proceedings because of their official functions.</p> <p>In each case it will be necessary to determine whether assistance with legal costs is justified for the good government of the City of Greater Geraldton.</p> <p>The policy provides criteria &amp; circumstances for assessing the appropriateness of expending City funds on the legal representation of Council members and employees.</p>	<p><b>POLICY STATEMENT</b></p> <p>Under the <i>Local Government Act 1995</i>, The City of Greater Geraldton is empowered to protect the interests of individual council members and employees (including past members and former employees) where they become involved in legal proceedings because of their official functions.</p> <p>In each case it will be necessary to determine whether assistance with legal costs is justified for the good government of the <b>City</b>.</p> <p>This policy provides criteria &amp; circumstances for assessing the appropriateness of expending City funds on the legal representation of Council members and employees.</p>	<p>Amendment to first paragraph- to reference the LGA.</p> <p>Second paragraph , first line– refer to City of Greater Geraldton as ‘City’</p>
<p><b>POLICY DETAILS</b></p> <p>There are four major criteria for determining whether the City will pay legal representation costs of a council member or employee. These are –</p> <ol style="list-style-type: none"> <li>1.1. the legal representation costs must relate to a matter that arises from the performance, by the council member or employee, of his or her functions;</li> <li>1.2. the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;</li> <li>1.3. in performing his or her functions, to which the legal representation relates, the council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and</li> <li>1.4. the legal representation costs do not relate to a matter that is of a personal or private nature.</li> </ol>	<p><b>POLICY DETAILS</b></p> <p>There are four major criteria for determining whether the City will pay legal representation costs of Council member or employee. These are –</p> <ol style="list-style-type: none"> <li>1.1. the legal representation costs must relate to a matter that arises from the performance, by the Council member or employee, of his or her functions;</li> <li>1.2. the legal representation <b>costs</b> must be in respect of legal proceedings that have been, or may be, commenced;</li> <li>1.3. in performing his or her functions, to which the legal representation relates, the Council member or employee, must have acted in good faith, <b>and consistently with the City’s Codes of Conduct, Local Government(Rules of Conduct) Regulations 2007 (Council members), and other written laws;</b></li> <li>1.4. the legal representation costs do not relate to a matter that is of a personal or private nature.</li> </ol>	<p>1.2 – amend the word cost to costs.</p> <p>1.3 -Suggested amendment refer to Legislation and policy</p>

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<p><b>2. Examples of Legal Representation Costs that may be Approved</b></p> <p><b>2.1.</b> If the criteria in clause 1 of this policy are satisfied, the City may approve the payment of legal representation costs –</p> <p style="padding-left: 20px;"><b>2.7.1.</b> where proceedings are brought against a council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the council member or employee; or</p> <p style="padding-left: 20px;"><b>2.7.2.</b> to enable proceedings to be commenced and/or maintained by a council member or employee to permit him or her to carry out his or her functions – for example, where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the council member or employee;</p> <p style="padding-left: 20px;"><b>2.7.3.</b> or where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees.</p> <p><b>2.2.</b> The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a council member or employee.</p>	<p><b>2. Examples of Legal Representation Costs that may be Approved</b></p> <p><b>2.1.</b> If the criteria in clause 1 of this policy are satisfied, the City may approve the payment of legal representation costs –</p> <p style="padding-left: 20px;"><b>2.1.1.</b> where proceedings are brought against a Council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the Council member or employee;</p> <p style="padding-left: 20px;"><b>2.1.2.</b> to enable proceedings to be commenced and/or maintained by a Council member or employee to permit him or her to carry out his or her functions – for example, where a Council member or employee seeks to take action to obtain a restraining order against a person using threatening behavior to the Council member or employee;</p> <p style="padding-left: 20px;"><b>2.1.3.</b> where exceptional circumstances are <b>involved such that the Council member or employee is unable to continue to fulfill the functions of his or her office by reason of a loss of confidence in the individual</b>– for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about Council members or employees; or</p> <p><b>2.2.</b> The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a Council member or employee.</p>	<p>2.1.1 remove the word “or”</p> <p>2.1.3, add the word “or”.</p> <p>2.1.3 additional wording for clarification</p> <p>No change</p>
<p><b>3. Application for Payment</b></p> <p><b>3.1.</b> A council member or employee who seeks assistance under this policy is to make an application(s), in writing, to the council or the CEO.</p>	<p><b>3. Application for Payment</b></p> <p><b>3.1.</b> A Council member or employee who seeks assistance under this policy is to make an application(s), in writing, to the CEO <b>(unless the CEO is the applicant, in which case the application is to be made to the Director Corporate and Commercial Services).</b></p>	<p>Applications to be made to CEO, not CEO or Council (the CEO will then submit for consideration by Council). Add reference to Director Corporate and Commercial Services</p>
<p><b>3.2.</b> A written application for payment of legal representation costs is to give details of –</p> <ul style="list-style-type: none"> <li>• the matter for which legal representation is sought;</li> <li>• how that matter relates to the functions of the council member or employee making the application;</li> <li>• the lawyer (or law firm) who is to be asked to provide the legal representation;</li> </ul>	<p><b>3.2.</b> A written application for payment of legal representation costs is to give details of –</p> <p style="padding-left: 20px;"><b>3.2.1.</b> the matter for which legal representation is sought;</p> <p style="padding-left: 20px;"><b>3.2.2.</b> how that matter relates to the functions of the Council member or employee making the application;</p>	<p>Change dot points to numbering for reference purposes</p>

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<ul style="list-style-type: none"> <li>the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc.);</li> <li>an estimated cost of the legal representation;</li> <li>and why it is in the interests of the City for payment to be made.</li> </ul>	<p><b>3.2.3.</b> the lawyer (or law firm) who is to be asked to provide the legal representation;</p> <p><b>3.2.4.</b> the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc.);</p> <p><b>3.2.5.</b> an estimated cost of the legal representation; and</p> <p><b>3.2.6.</b> why it is in the interests of the City for payment to be made.</p>	
<p><b>3.3.</b> The application is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates.</p>	<p><b>3.3.</b> The application is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates.</p>	No change
<p><b>3.4.</b> As far as possible, the application is to be made before commencement of the legal representation to which the application relates.</p>	<p><b>3.4.</b> As far as possible, the application is to be made before commencement of the legal representation to which the application relates.</p>	No change
<p><b>3.5.</b> The application is to be accompanied by a signed written statement by the applicant that he or she –</p> <ul style="list-style-type: none"> <li>has read, and understands, the terms of this policy;</li> <li>acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 7 and any other conditions to which the approval is subject; and</li> <li>undertakes to repay to the City any legal representation costs in accordance with the provisions of clause 7.</li> </ul>	<p><b>3.5</b> The application is to be accompanied by a signed written statement by the applicant that he or she –</p> <p><b>3.5.1</b> has read, and understands, the terms of this policy;</p> <p><b>3.5.2</b> acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 7 and any other conditions to which the approval is subject; and</p> <p><b>3.5.3</b> undertakes to repay to the City any legal representation costs in accordance with the provisions of clause <b>5.7</b> and 7 as may <b>be required by the terms of this policy</b></p>	<p>Change dot points to numbering for reference purposes</p> <p>Add “5.7” and reference to terms of policy</p>
<p><b>3.6.</b> In relation to clause 3.5(c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of those monies to the local government as may be required by the local government and the terms of the policy.</p>	<p><b>3.6.</b> In relation to clause 3.5(c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of those monies to the local government as may be required by the local government and the terms of the policy.</p>	No change
<p><b>3.7.</b> An application is also to be accompanied by a report prepared by the CEO or, where the CEO is the applicant, by an approved person.</p>	<p><b>3.7.</b> When an application is received in accordance with this policy a report is to be prepared by the CEO or , where the CEO is the applicant, the Director Corporate and Commercial Services.</p>	Amend to refer to Director Corporate and Commercial Services
<p><b>4. Legal Representation Costs – Limit</b></p> <p><b>4.1.</b> The council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application.</p>	<p><b>4. Legal Representation Costs – Limit</b></p> <p><b>4.1.</b> Unless <b>otherwise determined by absolute majority of Council payment of legal representation costs in respect of a single application is not to exceed \$10,000.</b></p>	Amend to cap payments at \$10,000 unless otherwise determined by absolute majority of Council.
<p><b>4.2.</b> A council member or employee may make a further application to the council in respect of the same matter.</p>	<p><b>4.2.</b> A Council member or employee may make <b>one or more additional</b> applications to the Council in respect of the same matter. <b>Such further</b></p>	

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	<b>application must be supported by a comprehensive explanation in respect to the increase and a letter confirming the details from the approved lawyer.</b>	Amended to include requirement for documentation, and more than one additional application.
<p><b>5. Council’s Powers</b></p> <p><b>5.1.</b> The council may –</p> <ul style="list-style-type: none"> <li>• refuse;</li> <li>• grant; or</li> <li>• grant subject to conditions,</li> </ul> <p>an application for payment of legal representation costs.</p>	<p><b>5. Council’s Powers</b></p> <p><b>5.1.</b> The Council may –</p> <ul style="list-style-type: none"> <li>• refuse;</li> <li>• grant; or</li> <li>• grant subject to conditions,</li> </ul> <p>an application for payment of legal representation costs.</p>	No Change
<p><b>5.2.</b> Conditions under clause 5.1 may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.</p>	<p><b>5.2.</b> Conditions under clause 5.1 may include, but are not restricted to;</p> <p><b>5.2.1</b> a financial limit and/or</p> <p><b>5.2.2</b> a requirement to enter into a formal agreement <b>with the City</b>, including a security agreement, relating to the payment, and repayment, of legal representation costs.</p>	Change format to include two sub- clauses and add the reference to the City
<p><b>5.3.</b> In assessing an application, the council may have regard to any insurance benefits that may be available to the applicant under the City's council members 'or employees' insurance policy or its equivalent.</p>	<p><b>5.3.</b> In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant under the City's Council members 'or employees' insurance policy or its equivalent.</p>	No change
<p><b>5.4.</b> The council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.</p>	<p><b>5.4.</b> The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.</p>	No change
<p><b>5.5.</b> The council may, subject to clause 5.6, determine that a council member or employee whose application for legal representation costs has been approved has, in respect of the matter for which legal representation costs were approved –</p> <ul style="list-style-type: none"> <li>• not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or</li> <li>• given false or misleading information in respect of the application.</li> </ul>	<p><b>5.5.</b> The Council may, subject to clause 5.6, determine that a Council member or employee whose application for legal representation costs has been approved has, in respect of the matter for which legal representation costs were approved –</p> <ul style="list-style-type: none"> <li><b>5.5.1.</b> not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or</li> <li><b>5.5.2.</b> given false or misleading information in respect of the application.</li> </ul>	Change from dot points to numbering – for reference purposes
<p><b>5.6.</b> A determination under clause 5.5 may be made by the council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.</p>	<p><b>5.6.</b> A determination under clause 5.5 may be made by the Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.</p>	No change
<p><b>5.7.</b> Where the council makes a determination under clause 5.5, the legal representation costs paid by the City are to be repaid by the council member or employee in accordance with clause 7.</p>	<p><b>5.7.</b> Where the Council makes a determination under clause 5.5, <b>and gives the Council member or employee written notification of the determination :</b></p> <ul style="list-style-type: none"> <li><b>5.7.1.</b> no further payments of legal representation costs are to be made; and</li> </ul>	Additional information to clarify repayment of debt and subclauses created

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	<p><b>5.7.2.</b> the legal representation costs paid by the City <b>are immediately repayable</b> by the Council member or employee in accordance with clause 7.</p>	
	<p><b>5.8.</b> Where the Council resolves to vary an approval under clause 5.4 , but no determination has been made under clause 5.5</p> <p><b>5.8.1.</b> the Council member or employee is to be notified in writing as soon as possible of the decision; and</p> <p><b>5.8.2.</b> subject to clauses 5.7 and 7 , the Council member of employee is not required to bear the cost of or to refund , any legal representation costs incurred prior to notification as long as those costs were incurred in accordance with the prior approval.</p>	New clause for clarification
	<p><b>5.9</b> Nothing in clause 5.8 prevents a later determination being made under clause 5.5 that require repayment under clause 5.7 or clause 7.</p>	New clause for clarification
<p><b>6. Delegation to Chief Executive Officer</b></p> <p><b>6.1.</b> In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the council, any of the powers of the council under clause 5.1 and 5.2, to a maximum of \$10,000 in respect of each application.</p>	<p><b>6. Delegation to Chief Executive Officer</b></p> <p><b>6.1.</b> In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the Council, any of the powers of the Council under clause 5.1 and 5.2, to a maximum of \$10,000 in respect of each application.</p>	No change
<p><b>6.2.</b> Where the CEO is the applicant, the powers in clause 6.1 are to be exercised by Director Corporate and Commercial Services.</p>	<p><b>6.2.</b> Where the CEO is the applicant, the powers in clause 6.1 <b>may</b> be exercised by Director Corporate and Commercial Services.</p>	Change from are to - to may
<p><b>6.3.</b> An application approved by the CEO under clause 6.1., or by the Director Corporate and Commercial Services under clause 6.2.is to be submitted to the next ordinary meeting of the council. Council may exercise any of its powers under this policy, including its powers under clause 5.4.</p>	<p><b>6.3.</b> An application approved by the CEO under clause 6.1., or by the Director Corporate and Commercial Services under clause 6.2. is to be submitted to the next ordinary meeting of the Council. Council may exercise any of its powers under this policy, including its powers under clause 5.4.</p>	No change
<p><b>7. Repayment of Legal Representation Costs</b></p> <p><b>7.1.</b> A council member or employee whose legal representation costs have been paid by the City is to repay the City –</p> <ul style="list-style-type: none"> <li>• all or part of those costs – in accordance with a determination by the council under clause 5.7;</li> <li>• as much of those costs as are available to be paid by way of set-off – where the council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid the legal representation costs.</li> </ul>	<p><b>7. Repayment of Legal Representation Costs</b></p> <p><b>7.1.</b> A Council member or employee whose legal representation costs have been paid by the City is to repay the City:</p> <p><b>7.1.1</b> all or part of those costs – in accordance with a determination by the Council under clause 5.7;</p> <p><b>7.1.2</b> as much of those costs as are available to be paid by way of set-off – where the Council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid the legal representation costs.</p>	Add subclause numbering for reference purposes
<p><b>7.2.</b> The City may take action in a court of competent jurisdiction to recover any monies due to it under this policy.</p>	<p><b>7.2.</b> The City may take action in a court of competent jurisdiction to recover any monies due to it under this policy.</p>	No change
<p><b>KEY TERM DEFINITIONS</b></p> <p><b>Approved lawyer</b> is to be –</p> <ol style="list-style-type: none"> <li>1. 'certified practitioner' under the Professions Act 2008;</li> <li>2. from a law firm on the City’s panel of legal service providers, if relevant, unless the council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise; and</li> <li>3. approved in writing by the council or the CEO under delegated authority.</li> </ol>	<p><b>KEY TERM DEFINITIONS</b></p> <p><b>Approved lawyer</b> is to be –</p> <ol style="list-style-type: none"> <li>1. a '<b>local legal</b> practitioner' under the <b>Legal</b> Profession Act 2008;</li> <li>2. from a law firm on the City’s panel of legal service providers, if relevant, unless the Council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise; and</li> <li>3. approved in writing by the Council or CEO under delegated authority.</li> </ol> <p><b>City</b> - City of Greater Geraldton</p>	<p>Amend name of Act and definition</p> <p>Add – <b>City</b> – City of Greater Geraldton</p> <p>No other change</p>

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<p><b>Council member or employee</b> means a current or former commissioner, council member, non-elected member of a council committee or employee of the City.</p> <p><b>Legal Proceedings</b> may be civil, criminal or investigative.</p> <p><b>Legal Representation</b> is the provision of legal services, to or on behalf of a council member or employee, by an approved lawyer that are in respect of –</p> <ol style="list-style-type: none"> <li>1. a matter or matters arising from the performance of the functions of the council member or employee; and</li> <li>2. legal proceedings involving the council member or employee that have been, or may be, commenced.</li> </ol> <p><b>Legal Representation Costs</b> are the costs, including fees and disbursements, properly incurred in providing legal representation.</p> <p><b>Legal Services</b> includes advice, representation or documentation that is provided by an approved lawyer.</p> <p><b>Payment</b> by The City of legal representation costs may be either by – a direct payment to the approved lawyer (or the relevant firm); or a reimbursement to the council member or employee.</p>	<p><b>Council member or employee</b> means a current or former commissioner, C council member, non-elected member of a Council committee or employee of the City.</p> <p><b>Legal Proceedings</b> may be civil, criminal or investigative.</p> <p><b>Legal Representation</b> is the provision of legal services, to or on behalf of a Council member or employee, by an approved lawyer that are in respect of –</p> <ol style="list-style-type: none"> <li>1. a matter or matters arising from the performance of the functions of the Council member or employee; and</li> <li>2. legal proceedings involving the Council member or employee that have been, or may be, commenced.</li> </ol> <p><b>Legal Representation Costs</b> are the costs, including fees and disbursements, properly incurred in providing legal representation.</p> <p><b>Legal Services</b> includes advice, representation or documentation that is provided by an approved lawyer.</p> <p><b>Payment</b> by The City of legal representation costs may be either by –</p> <ol style="list-style-type: none"> <li>1. a direct payment to the approved lawyer (or the relevant firm); or</li> <li>2. a reimbursement to the Council member or employee.</li> </ol>																													
<p><b>ROLES AND RESPONSIBILITIES</b></p> <p>The Director Corporate and Commercial Services is responsible for administering this policy.</p>	<p><b>ROLES AND RESPONSIBILITIES</b></p> <p>The Director Corporate and Commercial Services is responsible for administering this policy.</p>																													
<p><b>WORKPLACE INFORMATION</b></p> <p>Local Government Act Local Government Insurance Services DLGC Operational Guideline Number 14 – Legal Representation for Council Members and Employees</p>	<p><b>WORKPLACE INFORMATION</b></p> <p>Local Government Act <b>1995</b> Local Government Insurance Services DLGC Operational Guideline Number 14 – Legal Representation for Council Members and Employees</p>	<p>Amend title of Local Government Act to add - 1995</p>																												
<p><b>POLICY ADMINISTRATION</b></p> <table border="1" data-bbox="195 1436 1219 1795"> <thead> <tr> <th data-bbox="195 1436 602 1535">Directorate</th> <th data-bbox="602 1436 1009 1535">Officer Manager Corporate Services</th> <th data-bbox="1009 1436 1219 1535">Review Cycle</th> <th data-bbox="1219 1436 1219 1535">N</th> </tr> </thead> <tbody> <tr> <td data-bbox="195 1535 602 1633">Corporate &amp; Commercial Services</td> <td data-bbox="602 1535 1009 1633">Manager Corporate Services</td> <td data-bbox="1009 1535 1219 1633">Biennial</td> <td data-bbox="1219 1535 1219 1633"></td> </tr> <tr> <th data-bbox="195 1633 371 1732">Version</th> <th data-bbox="371 1633 602 1732">Decision Reference</th> <th colspan="2" data-bbox="602 1633 1219 1732"></th> </tr> <tr> <td data-bbox="195 1732 371 1795">1</td> <td data-bbox="371 1732 602 1795">24.01.2017</td> <td colspan="2" data-bbox="602 1732 1219 1795">CCS231</td> </tr> </tbody> </table>	Directorate	Officer Manager Corporate Services	Review Cycle	N	Corporate & Commercial Services	Manager Corporate Services	Biennial		Version	Decision Reference			1	24.01.2017	CCS231		<p><b>POLICY ADMINISTRATION</b></p> <table border="1" data-bbox="1234 1436 2175 1795"> <thead> <tr> <th data-bbox="1234 1436 1670 1535">Directorate</th> <th data-bbox="1670 1436 2047 1535">Officer</th> <th data-bbox="2047 1436 2175 1535">Review Cycle</th> </tr> </thead> <tbody> <tr> <td data-bbox="1234 1535 1670 1633">Corporate &amp; Commercial Services</td> <td data-bbox="1670 1535 2047 1633">Manager Corporate Services</td> <td data-bbox="2047 1535 2175 1633">Biennial</td> </tr> <tr> <th data-bbox="1234 1633 1451 1732">Version</th> <th data-bbox="1451 1633 1670 1732">Decision Reference</th> <th data-bbox="1670 1633 2175 1732">Synopsis</th> </tr> <tr> <td data-bbox="1234 1732 1451 1795">2</td> <td data-bbox="1451 1732 1670 1795"></td> <td data-bbox="1670 1732 2175 1795">Update following review</td> </tr> </tbody> </table>	Directorate	Officer	Review Cycle	Corporate & Commercial Services	Manager Corporate Services	Biennial	Version	Decision Reference	Synopsis	2		Update following review	
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