



## APPLICATION TO JOIN BURNING SEED TOWN COUNCIL

I confirm my desire to apply for a position as a Burning Seed Town Councillor of Red Earth City's Burning Seed Town Council and that I am over 18 years old. I have also read the "Issues to consider before standing as a Burning Seed Town Council Member" notes which follow after this form.

Surname	
Given Names	
Paddock Name	
Address	
Mobile number	
Email address	

Please provide us with some detail on your involvement with Burning Seed or Burning Man in Australia or anywhere, why you would like to join the Burning Seed Town Council and why you feel you are qualified to contribute to the future development of the event.

## **Issues to consider before standing as a Burning Seed Town Council Member**

The Burning Seed Town Council of Red Earth City was formed by the Board of Red Earth City Pty Ltd in November 2015.

This was achieved by the Board of Red Earth City Pty Ltd replacing the original 'Committee Guidelines' with the 'Committee Guidelines Version 2' on Tuesday 17<sup>th</sup> November 2015.

These guidelines were part of creating the non-profit organisation Red Earth City and the organisation's Burning Seed Town Council body, which is a Standing Committee of the Red Earth City Pty Ltd Board, that has been delegated the responsibility of managing the 'business and affairs' of the company in relation to its responsibility of operating Burning Seed, to act as the peak body for the organisation for matters pertaining to Burning Seed in the same capacity as a Board.

The Town Council may consist of 7 members which includes:

- (1) 1 director of Red Earth City Pty Ltd appointed, by resolution, at a Board meeting of Red Earth City Pty Ltd; and
- (2) 6 members nominated by the Burning Seed Town Council received from the community and appointed, by resolution, at a Board meeting of Red Earth City Pty Ltd.

The community group landscape has changed markedly in the past decade. Where once a community group Board and Committee members were seen as “time donors”, applauded for their hard work and excused from some of the more onerous compliance requirements placed on their corporate world cousins, this is no longer the case.

These days, a community group Board and Committee members are subject to the same demands for accountability and efficiency as any Board Member member – profit or non-profit. Such responsibilities may have legal ramifications and should not be taken lightly.

### **Burning Seed Town Council Role**

Burning Seed Town Councillors, like the directors of any company, have an obligation to adequately equip themselves so that they can:

- set policy
- guide strategic directions, according to the mission and plans of the company and its organisation, in ways that fairly and knowledgeably reflect the interests of the company's shareholder members and the organisation's stakeholders, co-ordinators, volunteers and employees.
- approve capital expenditure and operating budgets
- ensure adequate resources are provided and managed effectively to achieve the company and its organisation's goals, and
- assess the town council's performance

## Organisation and Company Governance

The organisation formed from the company should promote and practice community values and principles of the Burning Man Project, which emanates out of the USA, through consensus. In practice, therefore, the organisation should actively:

- provide and promote education to the company's shareholder members and the organisation's stakeholders, co-ordinators, volunteers and employees.
- co-operate with other organisations with similar purpose at local, state and national levels.
- promote equity and non-discrimination in relation to age, race, nationality, sex, religion and politics.

Burning Seed Town Councillors of the organisation are not neutral. They have a business relationship with and personal goals for the organisation and it is necessary to:

- Clearly define the role of the town council.
- Strive to attract town councillors with appropriate qualifications and expertise.
- Define required and desired town councillor competencies.
- Provide ongoing training and development for town councillors, the company's shareholder members and the organisation's stakeholders, co-ordinators, volunteers and employees.

On behalf of the shareholder members, the company directors confer on the Burning Seed Town Council the authority to make decisions.

The Burning Seed Town Council is, however, accountable to the company's Board and the shareholder members about:

- what decisions have been made
- why the decisions have been made
- what company resources have been used
- what results have been achieved and why

All town councillors, directors and shareholder members should have equal and timely access to information concerning the company including:

- The financial situation
- Performance
- Ownership
- Governance

## **Who can be a Burning Seed Town Council member?**

You do not usually have to have any specific qualifications to be a Town Council member, although it is true that some skills (such as legal, financial, networking or management skills) are often in more demand than others. An eligible person generally is:

- An adult (over 18 years of age);
- Not insolvent or under administration; and,
- Not disqualified under the group's constitution or due to a breach of their duties.

## **What do I need to know before I join a Town Council?**

When you agree to take on a governance role you are accepting a range of legal, moral and ethical responsibilities. You should therefore have a good knowledge of the community group you are being asked to govern, how it works, why it exists, and how it does what it does. You need to know who you will be governing alongside, what role you will be expected to fulfil and what skills and how much time you will need to devote to the role.

You will also need to examine your own reasons for wanting to join a Town Council and what you hope to get out of your service – this will help you to decide whether or not your expectations can be fulfilled.

When you join a Town Council you accept the obligation to look after your organisation's finances. In some cases, a Town Council's financial responsibilities may be quite extensive (for example, for a Town Council that is responsible for overseeing a large organisation with debts, income, staff, etc.).

Any Town Council that oversees a budget, no matter how small, needs to have a good understanding of its financial duties and take them very seriously.

Although Town Council members are not generally required to have particular qualifications to be appointed, the law does impose standards of financial competence.

The Town Council is expected to be capable of understanding the affairs of the organisation or facilities it is governing well enough to reach a well-informed opinion of its financial capacity. It must be sufficiently up-to-date with the organisation's dealings to allow it to respond properly to the organisation's changing financial capacity. Naturally, this requires some familiarity with financial reports.

You should also know enough about financial matters to be able to understand the workings of the budgets and accounts. If you do not know what words like "revenue," "assets" and "income" mean, you will need to do a lot more homework before taking on any Town Council role that requires overseeing a budget.

The following duties are statutory;

- **The Duty to Act in Good Faith**

This duty comes from Section 181 of the Corporations Act, which reads:

A director or other officer of a corporation must exercise their power and discharge their duties (a) in good faith in the best interests of the corporation; and (b) for a proper purpose.

This duty imposes a fixed standard regardless of the capabilities and state of mind of any individual Town Council member. Therefore, it is entirely possible that even though a member honestly believes they are acting in the best

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interests of their Town Council, the law can take the opposite view.

- **The Duty to Avoid a Conflict of Interest**

A conflict of interest arises when a Town Council member's duty to act in the interests of the Town Council of which s/he is a member is compromised by some other personal or professional interest. Some Town Councils will be governed by rules that have particular provisions for the handling of conflicts of interest so you should check if such rules exist for your group.

- **The Duty Not to Misuse Information or Misuse the Position of Town Councillor**

The law prohibits Town Council members from using their position to gain an advantage for themselves or another, or to cause detriment to the entity they are governing. A breach of this law may carry civil or criminal penalties. A Town Council member also must not misuse information gained through their position.

There is significant overlap between these duties, the duty to avoid a conflict of interest (above), and the duty not to abuse a corporate opportunity (below).

- **The Duty Not to Abuse a Corporate Opportunity**

Being a Town Council member may involve discussing a range of opportunities including, on occasion, business opportunities. It is therefore possible that Town Council members may, by virtue of their position, be made aware of several potentially profitable opportunities. This creates a temptation for Town Council members to take up such opportunities themselves at the expense of the entity they are governing for. The law may view this as abusing a corporate opportunity.

- **Duty to Act with Care and Diligence**

Town Council members must exercise their powers and discharge their duties with the care and diligence of a "reasonable person" in their position. In general terms you will meet the duty of care and diligence if you:

- Make a decision to take, or not to take, action in good faith and for a proper purpose; and,
- Do not have any material personal interest in the matter; and,
- Inform yourself about the matter to the extent you reasonably believe is appropriate; and,
- Reasonably believe that your judgement is in the Town Council's best interests. The Town Council member's belief is taken to be rational unless no reasonable Town Council member could have held it. It must be noted, however, that in order to rely on this rule, the Town Council member must actually make a judgement, and not merely do nothing.

**In addition, you are expected to:**

- Attend meetings regularly (if not always – some Town Councils will have minimum requirements);
- Act as an entrepreneur – look for opportunities that can advance your Town Council's cause;
- Make certain that your Town Council undertakes good financial reporting practices;
- Ask questions and seek more information when you believe it is required;
- Define appropriate Town Council policies and supervise their implementation;

- Understand your Town Council's core work;
- Keep abreast of governance issues.

As a Town Council member, you may be able to delegate your powers. This will protect you from a breach of your duty of care and diligence if, after making appropriate inquiries, you believe "reasonably and in good faith" that the delegate is reliable and competent. Similarly, you can rely on the professional advice of others (such as an accountant) if the reliance is in good faith, and you have independently assessed the advice. Such reliance is reasonable unless the contrary is proven.

- **Insolvent Trading**

The insolvent trading provisions are some of the most important in the current company law and will almost certainly be of relevance to your Town Council. These provisions compel Town Council members not to allow the organisation to trade while insolvent (unable to pay debts) and not to allow the organisation to become insolvent.

You will breach this duty if you dishonestly fail to prevent your organisation from incurring a debt when a reasonable Town Council member would have been aware that there were reasonable grounds for suspecting the organisation's debts could not be paid as and when they fell due.

Even if the organisation was solvent at the time of incurring the debt, an offence is committed if the organisation becomes insolvent by incurring the debt in question.

Penalties for insolvent trading are particularly severe. Civil penalties of up to \$200,000 or disqualification from directorship may be imposed, although penalties may not be as severe in the community sector. In very serious cases, Town Council members may be criminally liable, which can mean a prison sentence. For this reason, it is vital that legal and financial advice is sought at the slightest hint of danger.

- **Duty to Avoid Fraud and Other Wrongs**

A Town Council member must not engage in any activities which amount to fraud, negligence, and default, breach of trust or breach of duty. Where such conduct leads to the organisation suffering loss or damage, the member may have to transfer an amount of property to the organisation, equivalent to the loss or damage their actions have caused.

- **Other Relevant Laws**

In addition to the duties outlined above, there are a range of generally applied laws that Town Council members should keep in mind as they carry out their role. Town Council members are, after all, responsible for ensuring that their Town Council is entirely legally compliant. The following list is by no means exhaustive but it is a good starting point to indicate some of the areas of law Town Council members would be advised to familiarise themselves with.

- Occupational Health and Safety - (designed to ensure that workers are safe and secure in their place of work)
- Environmental Law - (a vast branch of law that is generally concerned with pollution control, environmental and occupational health, ecologically sustainable development and resource management)
- Australian Indigenous cultural heritage Law – (protecting Indigenous cultural heritage)
- Negligence - (governing cases where the duty of care is breached, causing a foreseeable kind of material damage to another)
- Trade Practices Act - (a powerful and important Act, which includes a section prohibiting misleading and deceptive conduct)

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- Anti-Discrimination - (all organisations and individuals are obliged to meet this legislation, which has a range of provisions that may differ from state to state)
- Contracts Law - (could apply to a property lease, a computer rental agreement, an agreement to supply services, etc.)
- Privacy Laws - (designed to govern the way personal information about individuals is collected, stored, used and disclosed)
- Food Safety Laws - (including requirements for the handling, storage, transport and display of foods)
- Defamation - (designed to protect the reputation of individuals and organisations by allowing the right to sue for damages)
- Fundraising - (laws vary from state to state but most states now require formal approval and licensing prior to fundraising activities being initiated)

The information contained in these pages comes from extracts of “Boards, Committees & Governance” published by Our Community Pty Ltd. ([www.ourcommunity.com.au](http://www.ourcommunity.com.au)). Please see their site for further information or the Australian Securities & Investments Commissions. (<http://www.asic.gov.au/>) under the company overview section (<http://www.asic.gov.au/for-business>).