



## **MELTON CITY COUNCIL**

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### **Minutes of the Policy Review Panel Meeting of the Melton City Council**

**1<sup>st</sup> Meeting  
24 August 2020**

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MINUTES OF THE POLICY REVIEW PANEL

24 AUGUST 2020

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## MELTON CITY COUNCIL

MINUTES OF THE POLICY REVIEW PANEL MEETING OF THE  
MELTON CITY COUNCIL  
HELD VIA A VIDEOCONFERENCE ON 24 AUGUST 2020 AT 1:30PM

**Present:** Cr L Carli - Mayor (Chairperson)  
Cr K Hardy (arrived at 1:46pm)  
Cr K Majdlik  
Cr S Ramsey

**In Attendance:** Ms C. Denyer, Manager Legal and Governance  
Mr J Whitfield, Governance Coordinator

**1. WELCOME**

The Mayor, Cr Carli, opened the meeting and welcomed the Panel members.

**2. APOLOGIES**

Nil.

**3. DECLARATION OF INTERESTS AND / OR CONFLICT OF INTEREST**

Nil.

**4. MINUTES OF PREVIOUS MEETINGS**

**Motion**

Crs Ramsey/Majdlik.

That the Minutes of the Policy Review Panel held on 22 April 2020 and adopted by Council at the Ordinary Meeting held on 9 May 2020 be noted

CARRIED

**5. OTHER BUSINESS CARRIED OVER FROM A PREVIOUS MEETING**

Nil.

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**6. PRESENTATION OF STAFF REPORTS****6.1 COUNCILLORS AND DELEGATED COMMITTEE MEMBERS  
RESOURCES & EXPENSES POLICY**

**Responsible Officer:** Kel Tori - Chief Executive Officer  
**Document Author:** Christine Denyer - Manager Legal and Governance  
**Date Prepared:** 11/08/2020

**1. Recommendation:**

That Council approve the *Councillors and Delegated Committee Members Resources & Expenses Policy* (Draft Policy), at **Appendix 1** amended pursuant to the *Local Government Act 2020* (2020 Act).

**Motion**

Crs Majdlik/Hardy.

That Council approve the *Councillors and Delegated Committee Members Resources & Expenses Policy* (Draft Policy), at **Appendix 1** amended pursuant to the *Local Government Act 2020* (2020 Act) with the amendments made by the Panel shown in yellow highlight.

CARRIED

**2. Background****2.1 The Policy**

The sections of the 2020 Act which relate to this policy commenced on 1 May 2020 and provide the Council must adopt the first expenses policy under the 2020 Act **by 1 September 2020**.

The relevant sections of the Act provide as follows:

Section 42 - Council must make available resources and facilities reasonably necessary for the Mayor and Councillors (unspecified) including having regard for those with a disability and Carers in a Care Relationship as defined by the Carers Recognition Act 2012 (CRA).

Section 40 - Council must reimburse a Councillor or a member of a delegated committee for out of pocket expenses which the Council is satisfied the three limb test set out in the Act, and identified in the Policy, is met.

Section 41 - sets out the minimum policy considerations. These include that the policy must specify a procedure for reimbursement, provide for the reimbursement of child care costs reasonably required for the Councillor/Delegated Committee member to perform their role



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and have 'particular regard to' those who are carers in a Care Relationship pursuant to the CRA.

**2.2 Sources/benchmarking**

Apart from the provisions of the 2020 Act (outlined above), the following were considered:

- LGV draft template (**Appendix 2**) noting that the template does not deal with resources.
- Recommendations arising out of the Victorian Auditor-General's Office (VAGO), 'Fraud and Corruption Control – Local Government' (June 2019)

Noting the recent review of Council's existing policy (October 2019) and the fact that that the LGV template does not deal with all requirements in the Act, officers considered it better to amend Council's current Policy.

**2.3 Consultation**

Internal consultation took place with staff in the Governance, Mayor & Councillors Office, Fleet Management and uniform supply areas.

**2.4 Communication and Implementation**

The policy will be communicated to all Councillors who are not present at the Council meeting at which it is resolved.

The policy will be available on Council's website.

Soft copy forms will be available for Councillors for easy of completion and return.

**2.5 Compliance**

The Draft Policy complies with the *Local Government Act 2020* and the *Charter of Human Rights and Responsibilities Act 2006*.

**2.6 Measures of Success**

If Councillors comply with the Policy then it is considered successful. Compliance with the Policy can probably only truly be measured by an Audit. Governance Review/Audits are conducted from time to time by the Inspectorate.

All out of pocket expense claims will be reported to the Audit Committee as provided for in its annual work plan.

**LIST OF APPENDICES**

1. Councillors and Delegated Committee Members Resources & Expenses Policy - dated August 2020
2. LGV draft template - undated

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Item 6.1 Councillors and Delegated Committee Members Resources &amp; Expenses Policy

Appendix 1 Councillors and Delegated Committee Members Resources &amp; Expenses Policy - dated August 2020

|   |  |
|---|--|
|  | <b>Councillors and <u>Delegated Special</u> Committee Members Resources, <u>Support</u> and Expenses Policy</b>  |
| <b>Version No.</b>  | V <u>65.0</u> , 5 August 20 <u>2019</u>  |
| <b>Endorsement</b>  | Executive, <u>5-September-2019</u> 5 August 2020<br>Policy Review Panel, <u>24/08/2020</u> <u>2-October-2019</u> |
| <b>Authorisation</b>  | Council <u>14-October-2019</u>   |
| <b>Review date</b>  | <u>August 2022</u> <u>30-September-2022</u>  |
| <b>Responsible officer</b>  | Chief Executive Officer  |
| <b>Policy owner</b>   | Manager Legal and Governance   |

**1. Purpose**

To outline the procedures and policy in relation to provide guidelines for the provision of resources and support to Mayor and Councillors, and reimbursement of necessary out of pocket expenses of Councillors and members of Delegated Special Committees of Council provided such expenses meet the three limb test set out in the Act.

**2. Scope**

This policy applies to the Mayor, Councillors and appointed members of Delegated Special Committees of Council.

**3. Definitions**

| Word/Term                  | Definition   |
|----------------------------|--|
| <u>Act</u>                 | <u>means the Local Government Act 2020.</u>  |
| <u>Carer</u>               | <u>A carer is defined in section 4 of the Carers Recognition Act 2012 and is set out further at 5.2</u>  |
| <u>Delegated Committee</u> | <u>is defined in section 3 of the Act and includes a Joint Delegated Committee but does not include a Community Asset Committee.</u>   |
| Hospitality                | Provision of tea/coffee, drinks and/or a light meal.   |
| Sitting Fee                | A fixed amount paid to a <u>member of a Delegated Special</u> Committee Member for attending a meeting of the Committee. <u>If a sitting fee is determined, it must be determined by a resolution of the Council.</u>  |
| <u>Three Limb Test</u>     | <u>Refers to the three limb test set out in section 40 of the Act. This section provides that Councillors or members of Delegated Committees must be reimbursed for out of pocket expenses provided the three limb test in section 40 is met:</u><br><br><ol style="list-style-type: none"> <li><u>1. bona fide expenses; and</u></li> <li><u>2. have been reasonably incurred in the performance of the role of Councillor; and</u></li> <li><u>3. are reasonably necessary for the Councillor and member of a Delegated Committee to perform this role.</u></li> </ol> |

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Item 6.1 Councillors and Delegated Committee Members Resources &amp; Expenses Policy

Appendix 1 Councillors and Delegated Committee Members Resources &amp; Expenses Policy - dated August 2020

**4. Policy****4.1 Resources**

Council will provide the following resources/support as a minimum tool kit.

**4.1.1 Mayor**

- Full private use of a fully maintained motor vehicle ~~of a standard of up to Holden Caprice or equivalent~~ ~~the cost of which is less than the amount which attracts the luxury vehicle tax, changed over on or after a three year period per vehicle (regardless of the Council or Mayoral term) provided however that if the motor vehicle is deemed by the Mayor, acting reasonably, to not be fit for purpose, it may be changed at any time.~~
- An office at each of Melton Civic Centre and Caroline Springs Library fitted with ~~computer (whether by PC or docking station to dock individual laptop)~~ ~~desktop PC,~~ phone, dictaphone, copier/printer/scanner/~~fax machine~~, desk, office chair, 2 visitor chairs, tea and coffee facilities, bar fridge and filing cabinet
- Refreshments to be provided on direction of the Mayor and Deputy Mayor
- Council corporate purchase card for use in accordance with adopted guidelines and procedures
- An ~~Executive Personal~~ Assistant and an Administrative Assistant to provide administrative and secretarial support to Mayor and Councillors
- Laptop or tablet computer with wireless internet service, or ability to connect to wireless internet, as required
- Printer at place of residence, if required
- Mobile Phone
- Business Cards, ~~if required~~
- Letterhead for Mayoral correspondence

**4.1.2 Councillors**

- Administrative support through the ~~Personal Executive~~ Assistant to the Mayor and Councillors, and Administrative Assistant
- Access to Council "Pool" vehicle for Council related business
- Shared office for Councillors ~~fitted with at least one 'spare' computer (PC or laptop) and additional docking stations to dock individual laptops with desktop P.C. and printer/copier/scanner~~
- Laptop or tablet computer with wireless internet service, or ability to connect to wireless internet, as required
- Printer at ~~Councillor's~~ place of residence, if required
- Mobile Phone
- Business cards, ~~if required~~
- Personalised letterhead for Councillor correspondence
- ~~Office chair and/or workstation, if required.~~

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Item 6.1 Councillors and Delegated Committee Members Resources &amp; Expenses Policy

Appendix 1 Councillors and Delegated Committee Members Resources &amp; Expenses Policy - dated August 2020

**Note:**

Mayor and Councillors must reimburse Council for personal call costs made on council provided mobile phone should the phone bill exceed the phone plan charges.

**4.1.3 Councillor Uniform**

i) Each Councillor may be provided with the following, as required:

-one jacket

-one winter jacket

-one pair of pants or skirt

-2 shirts

ii) At the mid-point of each Council term, each Councillor is to be provided with replacement jacket and pants or skirt, as required.

iii) A further budget allocation of \$1,000 per Council term per Councillor is made for the purchase of additional or replacement items of Councillor uniform.

**4.1.4 Postage**

5. Postage requirements shall be processed by the Records Department via the Executive Assistant. Postage is restricted to responding to correspondence from the community, and Council will not reimburse the cost incurred in "bulk" mail outs.

**5. 4.2 Expenses**

Councillors and members of Delegated Committees must be reimbursed for out-of-pocket expenses provided those expenses meet the Three Limb Test.

**5.1 Child care expenses**

Child care expenses are deemed to meet limbs 1 and 2 and will therefore only require proof of the Third Limb, that is, their being reasonably required/necessary for a Councillor or member of a Delegated Committee to perform their role (s 41(2)(c)). This may include hourly fees, booking fees and may include cancellation fees, if an event/meeting/function/briefing etc is cancelled at short notice.

Council must reimburse child care expenses where sufficient evidence of the third limb is provided. Proof will include evidence of a meeting/event/function/briefing and, where relevant, evidence of its late cancellation such that fees could not be avoided.

**5.2 Carer related expenses**

Council will reimburse Carer or care relationship related expenses where a Councillor can show evidence of a care relationship and evidence that the Three Limb Test is met.

A person is in a care relationship if he or she provides another person, or receives from another person, care because one of the persons in the relationship—

(a) has a disability; or

(b) is older; or

(c) has a mental illness; or

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\_\_\_\_\_ (d) has an ongoing medical condition (including a terminal or chronic illness or dementia).

A care relationship also includes a person caring for a child under a permanent care order, child care agreement or protection order, pursuant to the *Children, Youth and Families Act 2005*.

A person is not in a care relationship with another person merely because he or she—

\_\_\_\_\_ (a) is the spouse, or the domestic partner within the meaning of the *Children, Youth and Families Act 2005*, of the other person; or

\_\_\_\_\_ (b) is the parent, child or other relative of the other person; or

\_\_\_\_\_ (c) lives with the other person.

Further, a person is not in a care relationship if he or she provides care to another person—

\_\_\_\_\_ (a) under a contract of service or a contract for the provision of services; or

\_\_\_\_\_ (b) under an employment contract; or

\_\_\_\_\_ (c) in the course of doing voluntary work for a community organisation; or

\_\_\_\_\_ (d) as part of the requirements of an education course or training.

but can be in a care relationship even if the person receives funding from either the Commonwealth or State Government in relation to carrying out the role of a carer.

Evidence of a care relationship may include a letter confirming diagnosis and may include details of caring required, a statutory declaration as to the diagnosis and care required, a letter from the DHHS in relation to a child in care pursuant to the *Children, Youth and Families Act 2005*.

Carer expenses may include the travel expenses and accommodation of an accompanying person (to be cared for by the Councillor or member of Delegated Committee or to provide care to the Councillor or member of a Delegated Committee), the expenses of a professional carer to perform the caring responsibilities usually undertaken by the Councillor or member of a Delegated Committee or to provide care to that Councillor or Member of a Delegated Committee (eg sign language interpreter, attendant carer).

**5.3 Travel Expenses**

Councillors are entitled to be reimbursed for all travel expenses (including public transport costs) necessarily incurred in carrying out their duties as a Councillor which meet the Three Limb Test, including but not limited to travel to:

- a. A formal Council meeting
- b. Meetings and Civic or ceremonial functions held by the Council that a Councillor is reasonably required to attend
- c. Meetings of external agencies to which the Councillor has been appointed on behalf of Council
- d. Diarised meeting with a constituent or local community group
- e. Diarised meetings with Mayor/other Councillors/Council Officers held at Council offices
- f. Urgent non-diarised meetings with constituents or others, subject to the approval of the Mayor
- g. Any exceptional circumstances that arise in the bona fide performance of the role of Councillor, subject to approval of the Mayor.

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Private vehicle travel claims will be reimbursed at the rate applying to Council staff in accordance with Council's Enterprise Agreement (EA) as varied from time to time.

**Postage**

~~Postage requirements shall be processed by the Records Department via the Personal Assistant. Postage is restricted to responding to correspondence from the community, and Council will not reimburse the cost incurred in "bulk" mail-outs.~~

**5.4 Conferences and Seminars**

Where Council has approved attendance by the Mayor or a Councillor at an event (as distinct from Councillor Development opportunities defined in 5.54.4a), all reasonable expenses incurred in attending the event and which meet the three limb test will be met-will be reimbursed, including:

- Travel costs including flights\*
- Registration Fee
- Meals and refreshments not provided within registration fee
- Accommodation
- Reasonable Mini-bar expenses
- In-house movies of a G, PG or M rating

\*Where flights are required, the best value fare, flying economy should be booked. Regard should be given to the cheapest available airline, the time of day (eg breakfast lunch or dinner where a meal would otherwise need to be purchased anyway) and any other relevant factor (eg the need to arrive at a particular time). Council has no preference for any airline, and flights should generally be booked well in advance to take advantage of discount fares. For flights of 5 hours or more, premium economy can be booked.

**(a) Councillor Development**

Where Councillors wish to voluntarily register, enrol, participate or attend in activities, education, training or the like designed to improve the knowledge, skills, function and/or capacity of the Councillor in the discharge of their responsibilities to Council and service to the community more broadly, the following applies:

- i) Enrolment or attendance in a Councillor Development activity is subject to application and approval of the CEO.
- ii) Application by a Councillor to the CEO must be in the form of the defined application form attached (Form 2) supported by appropriate evidence to validate the proposal.
- iii) The CEO may only approve any application if satisfied that there is a genuine benefit in the development of skills, knowledge, expertise et cetera applicable to the role, duties and/or function of a Councillor.
- iv) Upon determination of any application by a Councillor to the CEO, the application must be reported to all Councillors via email or Council briefing as soon as practicable, inclusive of the outcome.
- v) The CEO may refer any application to a Council Meeting for consideration and determination at their sole discretion.
- vi) Attendance at international/overseas development opportunities must come before a Council Meeting for consideration.
- vii) Development activity must be completed within the elected term of the Councillor, or where it extends beyond the elected term, the Councillor must give a written undertaking to the CEO that they will reimburse Council for any uncompleted component at the time of their ceasing to be a Councillor.



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- viii) Expenses incurred in the participation or attendance of a Councillor Development activity will be recorded and reimbursed as per standard expense procedures and obligations.

**5.5 Hospitality**

Council will reimburse the Mayor and Councillors for reasonable costs incurred in extending hospitality to visiting dignitaries, Members of Parliament, and business leaders.

~~The Mayor and Councillors must submit to a briefing meeting of Council quarterly summaries of hospitality extended and the costs incurred, for ratification.~~

**4.4 Councillor Caring Allowance**

~~Council will reimburse Councillors who incur expenses for the provision of care for any person with whom the Councillor resides and has caring responsibilities for including any person with a disability and any child up to 18 years of age, when he or she is required to attend:~~

- ~~i) A Council or Forum meeting~~
- ~~ii) An informal briefing session held by management or by other Councillors~~
- ~~iii) A Civic or ceremonial occasion convened by the Council~~
- ~~iv) A meeting, function or official role attended as a representative of the Council~~
- ~~v) A meeting arising as a result of a Councillor being appointed by Council to an external body or committee~~
- ~~vi) An 'assembly of Council' as defined in the Local Government Act 1989~~
- ~~vii) A site inspection in the capacity as a Councillor~~
- ~~viii) A conference, study tour/official visit or, training session in the capacity as a Councillor.~~
- ~~ix) Any meeting relating to Council business~~

~~Council will reimburse the Councillor for carer expenses:~~

- ~~i) A recognised care provider; or~~
- ~~ii) To a person who does not:
 
  - ~~— Have an immediate family or like relationship with the Councillor~~
  - ~~— Reside permanently or temporarily with the Councillor~~
  - ~~— Have a relationship with the Councillor or his or her partner such that it would be inappropriate for Council to reimburse monies paid to the care provider.~~~~

~~Caring expenses consist of:~~

- ~~i) Hourly fees~~
- ~~ii) Agency booking fees~~
- ~~iii) Reasonable travelling expenses.~~

~~Councillors need to provide:~~

- ~~i) The date and title of the Council event/meeting for which reimbursement is being requested~~
- ~~ii) Completed Australian Tax Office 'Statement by a Supplier' Form (required if not quoting an Australian business Number (ABN) for care provided)~~
- ~~iii) Completed Expense/Entitlement Reimbursement Claim form~~
- ~~iv) Copy of the receipt clearly outlining:
 
  - ~~a. The provider of the service~~~~

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- b. ~~The type of service provided~~
- c. ~~The date on which the service took place~~
- d. ~~The hourly rate of the provider and hours of service~~
- e. ~~Signature of the person who has provided the service and~~
- f. ~~Total received payment.~~

~~Fees are payable per hour or part of an hour, subject to any minimum period which is part of the providers usual terms. A receipt from the care provider shall be provided for the reimbursement of any expenses claimed.~~

~~A Councillor must certify that claims for care services relates to the business of Council Claims, together with invoices, are to be forwarded to the Chief Executive Officer.~~

~~Carer expenses should be reasonable in all the circumstances.~~

#### 6. Members of Special Delegated Committees

Where members of special Delegated Committees are paid a "sitting fee", no travel reimbursement will be made for attendance at such meetings for which the sitting fee is paid.

In all other instances, members of special Delegated Committees are entitled to reimbursement of out of pocket expenses ~~for travel, conferences, seminars and training courses and childcare/family care~~ as if they were a Councillor with reference to the Three Limb Test, provided that such expenses are incurred attending formal committee meetings or such other events as specifically approved by Council or the Special Committee under its Terms of Reference.

#### 7. Procedure for Reimbursement of Out of Pocket Expenses

To claim reimbursement a written request (pro-forma attached as Form 1) detailing the nature of the expense, the amount claimed, and stating that the expenses claimed meet the Three Limb Test ~~are "reasonable bona fide Councillor out of pocket expenses incurred while performing duties as Councillor"~~. Requests for reimbursement must be lodged within a 3 month period from when the expense has been incurred and must be signed by the Councillor, and approved by the Chief Executive Officer ~~or his nominee~~ as complying with this policy.

In the event that a Councillor ceases to hold the office of Councillor including outgoing Councillors after an election, any eligible outstanding expense reimbursement should be submitted for consideration within 1-3 months from the date of them ceasing to hold the office of Councillor and must be signed by the individual and approved by the Chief Executive Officer or his nominee as complying with this policy.

#### 4.5—Councillor Uniform

- i) ~~Each Councillor may be provided with the following, as required:~~
  - ~~— one jacket~~
  - ~~— one winter jacket~~
  - ~~— one pair of pants or skirt~~
  - ~~— 2 shirts~~
  - ~~— 2 ties/scarves~~
  - ~~— one hat (to have a brim for sun protection)~~
- ii) ~~At the mid-point of each Council term, each Councillor is to be provided with replacement jacket and pants or skirt, as required.~~



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iii) ~~A further allocation of \$1,000 per Council term per Councillor is made for the purchase of additional or replacement items of Councillor uniform.~~

## 8. Responsibility/Accountability

|             |  |
|-------------|--|
| <b>85.1</b> | <b>Manager Legal and Governance</b>  |
|             | <ul style="list-style-type: none"> <li>• Policy owner and is responsible for updating and amending this policy and related documents.</li> <li>• Responsible for providing professional advice and guidance to Councillors regarding this policy.</li> <li>• <del>Responsible for providing details of all reimbursements under section 40(2) of the Act to the Audit and Risk Committee.</del></li> </ul> |
| <b>85.2</b> | <b>Councillors and Members of Delegated Committees</b>   |
|             | <ul style="list-style-type: none"> <li>• Familiarise themselves with the policy and understand their obligations.</li> </ul>   |

## 9. References and links to legislation and other documents

| Name   | Location   |
|--|--|
| <del>Carers Recognition Act 2012</del>                 | <del><a href="http://www.legislation.vic.gov.au/">http://www.legislation.vic.gov.au/</a></del> |
| <del>Local Government Act 2020/1989 (section 75)</del> | <del><a href="http://www.legislation.vic.gov.au/">http://www.legislation.vic.gov.au/</a></del> |
| Melton City Council Enterprise Agreement No. 9 2019    | Council intranet   |

## 10. Attachments

**Form 1** – Councillor Expense Reimbursement Requests:

- 1A ~~Childcare and Carer Expense~~
- 1B Miscellaneous ~~Expense~~
- 1C Car Parking ~~Expense~~
- 1D Travel ~~Expense~~

**Form 2** – Councillor Development ~~Application Form~~



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**FORM 1B – Miscellaneous**

MISCELLANEOUS EXPENSE  
REIMBURSEMENT REQUEST

I, Cr. .... hereby request reimbursement of the following caring expenses which meet the Three Limb Test namely:

1. ..... bona fide expenses; and
2. ..... have been reasonably incurred in the performance of the role of councillor; and
3. ..... are reasonably necessary for the Councillor and member of a Delegated Committee to perform this role; Cr. .... hereby request reimbursement of the following reasonable-bona-fide-out-of-pocket-expenses-incurred-while-performing-duties-as-a-Councillor;

| Date | Type of Expense and Details (provide as much detail as possible) | Amount |
|------|--|--------|
|      |  |        |
|      |  |        |
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|      |  |        |
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|      |  |        |
|      |  |        |

\*Receipts and tax invoices to be attached

Approved as complying with Council Policy

Councillor Signature \_\_\_\_\_  
CEO / Nominee \_\_\_\_\_





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FORM 2 – Councillor Development

### Councillor Development Application Form

**1. Your details**

Name \_\_\_\_\_ Cr. \_\_\_\_\_

**2. Development opportunity details**

Event/Course name \_\_\_\_\_  
 Provider/Host etc. \_\_\_\_\_  
 Topic or theme \_\_\_\_\_  
 Date of training \_\_\_\_\_  
 Cost of training \$ \_\_\_\_\_  
 Additional estimated costs \$ \_\_\_\_\_

**3. Links to professional development**

How does the training link to your role and responsibilities as a Councillor? Attach any supporting evidence.

**4. Travel details**

Is interstate or overnight travel required?  No  Yes → If yes, complete details below

Destination \_\_\_\_\_  
 Travel cost \$ \_\_\_\_\_  
 Accommodation cost \$ \_\_\_\_\_  
 Estimated meal cost \$ \_\_\_\_\_  
 Estimated total cost \$ \_\_\_\_\_

**5. Approval**

CEO \_\_\_\_\_ Date \_\_\_\_\_

**Office Use Only**

|               |  |  |
|---------------|--|--|
| Received by   |  |  |
| Date received |  |  |

Please return completed form to the CEO:

**Mail:**  
PO Box 21,  
Melton VIC 3337

**Email:**  
kelvint@melton.vic.gov.au  
(max. file size: 10MB)

**In person:**  
232 High Street  
Melton VIC 3337



## MINUTES OF THE POLICY REVIEW PANEL

1<sup>ST</sup> MEETING - 24 AUGUST 2020

Item 6.1 Councillors and Delegated Committee Members Resources &amp; Expenses Policy

Appendix 2 LGV draft template - undated

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**COUNCIL EXPENSES POLICY****PURPOSE**

This document has been created to provide support to Victorian councils to meet the requirements of the Local Government Act 2020.

We encourage feedback and commentary and will update this document from time to time based on this. Please contact us via [lgact@delwp.vic.gov.au](mailto:lgact@delwp.vic.gov.au).

Please note that this is draft document, it is intended to support councils develop their own policy. Councils must make their own judgement on what should be included within their own policy.

**INTRODUCTION**

Section 41 of the *Local Government Act 2020*, **Council expenses policy**, replaces section 75B of the *Local Government Act 1989*, **Councillor reimbursement policy**.

Much like the previous Act, a council expenses policy under the new Act outlines the procedures and policy for reimbursement of out-of-pocket expenses of councillors and members of delegated committees.

It may be that your council's existing policy substantially meets the new Act's requirements, with only some minor changes necessary.

**PRINCIPLES**

A principles-based approach

The new *Local Government Act 2020* has been developed through an extensive consultation process to revitalise local democracy, boost council innovation and efficiency and establish a clear, simple and accessible act.

The Act specifies **Overarching governance principles** (section 9). These are:

- a. *Council decisions are to be made and actions taken in accordance with the relevant law;*
- b. *priority is to be given to achieving the best outcomes for the municipal community, including future generations;*
- c. *the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;*
- d. *the municipal community is to be engaged in strategic planning and strategic decision making;*
- e. *innovation and continuous improvement is to be pursued;*
- f. *collaboration with other Councils and Governments and statutory bodies is to be sought;*
- g. *the ongoing financial viability of the Council is to be ensured;*
- h. *regional, state and national plans and policies are to be taken into account in strategic planning and decision making;*
- i. *the transparency of Council decisions, actions and information is to be ensured.*

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The governance principles are aided by five supporting principles, these are:

- community engagement (s 56)
- strategic planning (s 89(2))
- financial management (s 101)
- public transparency (s 57)
- service performance (s 106(2))

You can find a discussion of the supporting principles at the [Local Government Victoria](#) website, and principles at the relevant sections of the Act.

The previous Act (1989) was very prescriptive about how councils could make decisions, when and how councils could consult with the community, how meetings were to be run, how and when information should be made available to the public and so on. Over time it has become apparent that this level of prescription is unnecessary for modern councils. It impedes a council's ability to manage their affairs in a responsible way that meets the needs of their community, while limiting their ability to innovate and improve engagement.

In developing your council's expenses policy, it is important to remember this principles-based approach. Although not all the principles will apply to this policy, for example council expenses policy does not require community consultation, it is important to bear in mind the intent of the principles. The principles **do** require councils to be transparent in their decision making, to ensure financial sustainability and that priority is to be given to achieving the best outcomes for the community (section 9).

#### COUNCIL EXPENSES POLICY

Section 41 of the Act (2020) says a council must adopt and maintain an expenses policy on or by 1 September 2020. This provision came into operation on 1 May 2020.

#### THE POLICY

A council expenses policy must be adopted or amended by a formal resolution in a council meeting. This is not a function that can be delegated.<sup>1</sup>

The policy will apply to both councillors and members of delegated committees<sup>2</sup> and is intended to provide advice and a framework for operation. It applies to the reimbursement of out of pocket expenses where the council is satisfied (s 40):

- a. *the claim is for bona fide expenses*
- b. *the expenses have been reasonably incurred in the performance of the role of councillor or member of a delegated committee and*
- c. *the expenses are reasonably necessary for the councillor or delegated committee member to perform that role.*

The policy may be amended by council at any time. It would be considered good practice that the policy be reviewed periodically to reflect any changes or improvement in council practices and accountability.

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<sup>1</sup> See s.11(2)(g) of the Act

<sup>2</sup> See s.40 of the Act



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In developing the policy, councils should have regard to the *Gender Equity Act 2020*. This Act requires councils to take positive and effective steps to improve gender equity outcomes both as a workplace and a deliverer of services. In the development of this policy councils have both the opportunity to ensure women are supported to take up roles as councillors and committee members, as well as the obligation to ensure that women are not inadvertently disadvantaged by a policy that, for example, does not consider the reality of the caring roles that many women bear the weight of.

**WHAT CHANGES IN THE NEW ACT?**

The Act (2020) includes several new provisions for an expenses policy:

- The new policy must apply to both councillors and members appointed to delegated committees. Delegated committees are one of the new committee types included in the Act (see s 63). Members of delegated committees exercise powers, duties or functions delegated by council, therefore many of the provisions of the Act that apply to councillors, apply equally to members of delegated committees.
- This policy will also apply to members of a joint delegated committee, as this type of committee is created by existing delegated committees from each of the councils forming the joint delegated committee (see s 64).
- The legislation now requires that this policy specifically include:
  - reimbursement of childcare costs and
  - reimbursement of costs incurred by those who are carers within the meaning of section 4 of the *Carers Recognition Act 2012*.

**Note** that while the Act includes the power for the Minister to create regulations in relation to council expenses policy, there are currently no plans to do this.

**WHAT MUST A POLICY INCLUDE?**

Section 41(2) of the Act specifies the requirements for a council expenses policy:

*A policy adopted by a Council under this section must —*

- a. specify procedures to be followed in applying for reimbursement and in reimbursing expenses; and*
- b. comply with any requirements prescribed by the regulations in relation to the reimbursement of expenses; and*
- c. provide for the reimbursement of childcare costs where the provision of child care is reasonably required for a Councillor or member of a delegated committee to perform their role; and*
- d. have particular regard to expenses incurred by a Councillor who is a carer in a care relationship within the meaning of section 4 of the Carers Recognition Act 2012.*

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**WHAT CAN THE POLICY INCLUDE?**

Many existing council policies related to expenses also include policies related to allowances, entitlements, resources and facilities include councillor, mayor and deputy mayor. While the Act does not require the inclusion of these, there is no prohibition on including them.

**WHAT DOES THIS LOOK LIKE IN PRACTICE?**

It is likely that much of your council's existing expenses policy meets the requirements of the new Act.

Procedural information may include:

- the documentary requirements for submitting a claim (e.g. receipts, claim forms, etc.)
- time frames for submitting claims (e.g. monthly, with a time limit of three months from the date of purchase on each claim)
- requirements for GST invoices.

Internal processes may also be included, such as:

- reporting "A council must provide details of all reimbursements under this section to the Audit and Risk Committee" and any other reporting required by council (s 40(2))
- how reimbursements will be paid
- how to submit a claim
- approval processes.

**SCOPE**

Sections 40 and 41 of the Act outline what out-of-pocket expenses may be claimed. Apart from the specific provisions related to childcare and carers, these sections are quite broad. A council may choose to be more specific and descriptive in the policy's application.

Many councils have existing policies that encompass expenses but also include broader provisions:

- Allowances  
Section 39 of the Act covers allowances for mayors, deputy mayors and councillors. Under the new arrangements, allowances will be set by determination of the Victorian Independent Remuneration Tribunal. The current arrangements will remain in place until the first determination of the Tribunal (s39(6)).
- Other entitlements  
Section 42 of the Act, **Resources and facilities for the mayor and councillors**, ensures that the mayor and councillors have available to them the tools, services and facilities necessary to undertake their roles. It includes specific provisions to support councillor with support requirements due to disability or carer duties. This section is, however, silent on what those are. There is the opportunity in this policy to outline these agreed entitlements, which may include:
  - mobile phones
  - laptop/tablet
  - other home office equipment (printer)

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- use of council offices and meeting rooms
- stationery
- administrative support
- mayoral vehicle
- travel
- professional development/training
- private vehicle use/taxi use/pool vehicles.

The draft policy attached includes only the requirements under the Act. We have included notes (in blue text) where you may consider including other items in the policy.

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**DRAFT  
COUNCIL EXPENSES POLICY**

This draft policy includes suggestions to meet the requirements of the Local Government Act 2020. Notes are provided in blue text for other items that you may consider including.

**1. PURPOSE**

This policy supports councillors and members of delegated committees to perform their role, as defined under the Local Government Act 2020, by ensuring that expenses reasonably incurred in the performance of their role are reimbursed. The policy also provides guidance on:

- entitlements
- processes for reimbursement
- reporting requirements.

The policy is intended to ensure that councillors and members of delegated committees are supported to perform their duties without disadvantage.

*Policies covering councillor expenses often also include allowances and entitlements. While the Act does not require this, there is no prohibition on continuing to do so.*

**2. SCOPE**

This policy applies to:

- councillors of XX Council
- members of delegated committees of XX Council.

*You may consider developing a policy that covers staff, councillors and committee members.*

Councillor duties are those performed by a councillor as a necessary part of their role, in achieving the objectives of council.

These duties may include (but are not limited to):

- attendance at meetings of council and its committees
- attendance at briefing sessions, workshops, civic events or functions convened by council
- attendance at conferences, workshops and training programs related to the role of councillor, mayor or deputy mayor
- attendance at meetings, events or functions representing council
- duties in relation to constituents concerning council business.

Members of delegated committees exercise powers of councillors, under delegation. This policy also applies to those members in the course of undertaking their role as delegated committee members.

**3. DEFINITIONS**

*Carer* is defined under section 4 of the Carers Recognition Act 2012

*Delegated committees* are defined under section 63 of the Local Government Act 2020

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**4. POLICY**

Councillors and members of delegated committees are entitled, under section 40 of the *Local Government Act 2020* (the Act), to reimbursement of expenses reasonably incurred in the performance of their duties.

This policy ensures that the reimbursement of these expenses is in accordance with the Act and meets the Act's principles of public transparency; achieving the best outcomes for the municipal community; and ensuring the ongoing financial viability of the council.

Councillors and members of delegated committees will be reimbursed for out-of-pocket expenses that are:

- bona fide expenses **and**
- have been reasonably incurred in the performance of the role of councillor **and**
- are reasonably necessary for the councillor and member of a delegated committee to perform this role.

Carer and dependent-related expenses

Council will provide reimbursement of costs where the provision of childcare is reasonably required for a councillor or member of a delegated committee to perform their role (s 41(2)(c)).

This applies to the care of a dependent, while the councillor or delegated committee member is undertaking their official duties; and may include expenses such as hourly fees and booking fees, if applicable.

Council will provide reimbursement of costs where the provision of carer services is reasonably required when a councillor or delegated committee member who is a carer (see **Definitions**) incurs reasonable expenses in the performance of their duties (s 41(2)(d)).

Payments for carer and childcare services will not be made to a person who resides with the councillor or delegated committee member; has any financial or pecuniary interest with the councillor or delegated committee member; or has a relationship with the councillor, delegated committee member or their partner.

If your council chooses to expand this policy beyond what is required under the Act, that information could be included here, under the following heading, for example:

Expenses

Allowances

Tools, services and facilities

**5. PROCEDURE**

- Making a claim for reimbursement
  - All claims must be made on the approved expense reimbursement form, available from XX or the councillor portal
  - Original receipts must be attached for all claims (credit card receipts will not be accepted)
  - Where the provider of the goods or service is registered for GST a tax invoice must be obtained and provided (without this the GST component of the cost cannot be reimbursed)
  - Claims must be lodged with XX by the XX day of each month.
- Reimbursements will be provided monthly by electronic funds transfer.

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Policies that include more items (e.g. allowances, entitlements) should also include procedures for these items.

**6. MONITORING, EVALUATION AND REVIEW**

Quarterly reports of all councillor and delegated committee member expenses will be provided to council, and the council's Audit and Risk Committee.

The reporting period is not set in the legislation, this is a suggestion.

The report will include:

- expenses incurred by councillors during the quarter
- reimbursement claims made by councillors during the quarter
- reimbursements made by councillors during the quarter.

Council commits to monitoring processes and decision making to understand the overall success of the policy's implementation.

A periodic review of the policy will be undertaken to ensure any changes required to strengthen or update the policy are made in a timely manner.

**7. RELATED POLICIES AND LEGISLATION**

Council policies:

- Governance rules
- Public transparency policy
- Governance framework
- Information privacy policy

Legislation:

- *Carers Recognition Act 2012*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Freedom of Information Act 1982*
- *Local Government Act 2020*
- *Privacy and Data Protection Act 2014*
- *Equal Opportunity Act 2010*
- *Gender Equity Bill 2020*

**INTERNAL USE ONLY****REVIEW**

Responsible Manager: Manager Governance  
Date Adopted: August 2020  
Date of Next Review: August 2024

**DOCUMENT HISTORY**

| Version | Document history  | Approved by/updated on website |
|---------|---|--------------------------------|
| 1       | New document  | 27 May 2020                    |
| 1.1     | Minor change to <b>Carer and dependent related expenses</b> | Amanda Boyd 03 June 2020       |

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**6.2 PUBLIC TRANSPARENCY POLICY**

**Responsible Officer:** Kel Tori – Chief Executive Officer  
**Document Author:** Emma Perconte - Paralegal Officer  
**Date Prepared:** 13/08/2020

**1. Recommendation:**

That Council approve the *Public Transparency Policy* at **Appendix 1** pursuant to the *Local Government Act 2020 (2020 Act)*.

**Motion**

Crs Hardy/Majdlik.

That Council approve the *Public Transparency Policy* at **Appendix 1** pursuant to the *Local Government Act 2020 (2020 Act)*.

CARRIED

**2. Background****2.1 The Policy**

The *Local Government Act 2020 (2020 Act)* creates a requirement for Councils to adopt a Public Transparency Policy by **1 September 2020** in line with the Public Transparency Principles (PTPs).

The PTPs deem that:

- (a) Decision making must be transparent (except in regards to information that is confidential);
- (b) Council information must be publicly available unless confidential or *contrary to the public interest* (which is grounded in case law);
- (c) Council information must be understandable and accessible; and
- (d) Public awareness of the availability of Council information must be facilitated.

**2.2 Sources/benchmarking**

The Draft Policy is based on a template developed by Maddocks with very minor changes. Two categories of documents have been deleted from the Maddocks draft:

- *Service Agreements, Contracts, Leases and Licences; and*
- *Relevant technical reports and/or research that inform Council's decision-making.*

Whilst each request for information that is not available on the website will be considered on its merits, officers consider that these categories are often Confidential and/or legally privileged and should be deleted from the policy so as to not create a false expectation.

Apart from the provisions of the 2020 Act (outlined above), the Local Government Victoria draft template (**Appendix 2**) was also considered.



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**2.3 Consultation**

The draft policy was distributed to the Communications business unit for their consideration and comment as a key stakeholder.

**2.4 Communication and Implementation**

If adopted, the Policy will be published on the Council website. Council will take steps to raise community awareness of the Policy, such as publishing information about the new Policy on its social media pages. It will also be circulated to Council staff.

To meet the provisions of the 2020 Act, the Draft Policy sees a lot more information available on Council's website or upon request than is currently the case. A summary of the information generally available is contained in **Appendix 1** of the Draft Policy. The policy will be implemented by ensuring that the information listed at **Appendix 1** is publically accessible on Council's website.

The website may be amended as a result of the new policy, which will be done in collaboration with the Communications business unit as soon as possible once the Policy has been approved.

**2.5 Compliance**

The policy is compliant with external legislation including the *Local Government Act 1989 (Vic)* and the *Local Government Act 2020 (Vic)*, and the Corporate Policy Management Framework. This policy is also compliant with regulation 12 of the *Local Government (General) Regulations 2015*, which require that certain documents be made available for public inspection. It is compliant with the Council's Instruments of Delegation.

**2.6 Measures of Success**

Council are required to adopt and adhere to this policy under the *Local Government Act 2020*. The Policy will be considered a success if the information that the Policy contemplates is made readily available on the website, at Council offices or upon request, in adherence with process outlined in the Policy.

Reporting measures are not a relevant consideration for this policy. Council are not obliged to keep a record of information released to members of the public.

**LIST OF APPENDICES**

1. Public Transparency Policy
2. Local Government Victoria Public Transparency Policy

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Item 6.2 Public Transparency Policy

Appendix 1 Public Transparency Policy

|   |   |
|---|---|
|  | <b>Public Transparency Policy</b>                             |
| <b>Version No.</b>  | Draft 0.1, 3 August 2020                                      |
| <b>Endorsement</b>  | Executive, 5 August 2020<br>Policy Review Panel <INSERT DATE> |
| <b>Authorisation</b>  | Council, <INSERT DATE>  |
| <b>Review date</b>  | 30 June 2022  |
| <b>Responsible officer</b>  | Chief Executive Officer                                       |
| <b>Policy owner</b>   | Manager Legal & Governance                                    |

**1. Purpose**

This purpose of this Policy is to:

- 1.1 give effect to the Public Transparency Principles;
- 1.2 describe the ways in which Council Information will be made publicly available;
- 1.3 specify which Council Information will be made publicly available as a matter of course; and
- 1.4 describe the categories of Council Information that may be unavailable to the public.

This Policy is adopted under section 57 of the Act.

**2. Objective**

The objective of this Policy is to formalise Council's support for transparency in its decision-making processes and availability of Council Information and to achieve the purpose stated in Part 1 of this Policy.

**3. Scope**

This Policy applies to Councillors and Officers.

**4. Definitions**

| Word/Term                | Definition   |
|--------------------------|--|
| Act                      | means the <i>Local Government Act 2020</i> .   |
| Chief Executive Officer  | includes an Acting Chief Executive Officer   |
| Closed Meeting           | means a Meeting that is closed to members of the public  |
| Community                | means the residents and ratepayers of, and visitors to, the Municipal District and may, depending on the context, refer to all of those people or to particular subsets of those people. |
| Confidential Information | means confidential information as defined in section 3(1) of the Act   |
| Council                  | means Melton City Council  |
| Council Information      | means all documents and other information held by Council  |
| Council Office           | For the purpose of this Policy, Council's offices are located at the   |

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Appendix 1 Public Transparency Policy

|                                |  |
|--------------------------------|--|
|                                | <ul style="list-style-type: none"> <li>Melton Civic Centre, 232 High Street, Melton and</li> <li>Caroline Springs Library and Learning Hub, 193-201 Caroline Springs Boulevard, Caroline Springs.</li> </ul> |
| Council Website                | means Council's website at www.melton.vic.gov.au   |
| Governance Rules               | means the governance rules adopted by Council under section 60 of the Act, as amended from time to time  |
| Health Information             | means health information as defined in section 3(1) of the <i>Health Records Act 2001</i> .  |
| Meeting                        | means a meeting of Council or a Delegated Committee  |
| Municipal District             | means the municipal district of Council  |
| Officer                        | means a member of Council staff, and includes the Chief Executive Officer  |
| Personal Information           | means personal information as defined in section 3(1) of the <i>Privacy and Data Protection Act 2014</i> .   |
| Public Transparency Principles | means the public transparency principles set out in section 58 of the Act and reproduced in Part 5.2 of this Policy  |
| Requestor                      | means a person making a request to access Council Information under and in accordance with this Policy   |

**5. Policy****5.1. Responsibility for this Policy**

- 5.1.1. The Chief Executive Officer is responsible for the application and operation of this Policy.
- 5.1.2. The Chief Executive Officer may, from time to time, authorise another Officer or Officers to fulfil any of the Chief Executive Officer's functions and duties under this Policy.
- 5.1.3. Where another Officer is or other Officers are authorised under clause 5.1.2, any reference in this Policy to the Chief Executive Officer is to be read as a reference to that Officer or those Officers.

**5.2. Public Transparency Principles**

- 5.2.1. The Public Transparency Principles are set out in section 58 of the Act as follows:
- 5.2.1.1. Council decision-making processes must be transparent, except when Council is dealing with information that is confidential by virtue of the Act or any other Act.
- 5.2.1.2. Council Information must be publicly available, unless:
- the information is confidential by virtue of the Act or any other Act; or
  - public availability of the information would be contrary to the public interest.
- 5.2.1.3. Council Information must be understandable and accessible to members of the Municipal District.
- 5.2.1.4. Public awareness of the availability of Council Information must be facilitated.

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- 5.2.2 Council will give effect to and implement the Public Transparency Principles in accordance with this Policy.

**5.3. Council Decision Making Process**

- 5.3.1. Council will ensure that the decision-making processes that it adopts are transparent and open to the Community so that the Community is provided with an opportunity for meaningful engagement with Council and its decision-making processes.
- 5.3.2. Without limiting the generality of clause 5.1.3, Council's decision-making processes will:
- 5.3.2.1. be conducted in accordance with the Act and the Governance Rules;
  - 5.3.2.2. unless considering Confidential Information, be conducted in a forum that is open to, and accessible by, the Community; and
  - 5.3.2.3. be informed by the:
    - (a) views of those members of the Community whose rights and interests will be directly affected by the decision; and
    - (b) responses, if any, to any process of community engagement conducted by Council in respect of the decision, whether in accordance with its Community Engagement Policy or otherwise.
- 5.3.3 Further details of Council's decision-making process can be found in Chapter 1 of the Governance Rules.

**5.4. Availability of Council Information**

- 5.4.1. All Council Information will be made available to the public, unless the:
- 5.4.1.1. Council Information is Confidential Information; or
  - 5.4.1.2. release of the Council Information is assessed by the Chief Executive Officer as being contrary to the public interest.
- 5.4.2. A list of the categories of Council Information which will generally, subject to this Policy, be made available either on the Council Website, at the Council Office or on request is set out at Appendix 1 to this Policy.

**5.5. Publications**

Council publishes a range of newsletters, reports and handbooks for residents, businesses and visitors to the Municipal District. These publications are available on the Council Website, at the Council Office or on request to Council.

**5.6. Accessibility of Council Information**

- 5.6.1. Council Information will be made available on the Council Website, at the Council Office and/or on request.
- 5.6.2. Council will, to the extent possible, facilitate access to Council Information by:
- 5.6.2.1. making Council Information available in accordance with this Policy;
  - 5.6.2.2. endeavouring to make Council Information accessible electronically and in hard copy, where requested; and

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- 5.6.2.3. endeavouring to convert Council Information to different accessible formats where necessary for members of the Community for whom:
- (a) English is their second language; or
  - (b) disability requires an alternative means to be provided.
- 5.6.3. Where a request is made for access to Council Information that is not on the Council Website or otherwise available at the Council Office, the Chief Executive Officer will:
- 5.6.3.1. review the request;
  - 5.6.3.2. assess whether the Council Information requested is Confidential Information, or its release would be contrary to the public interest, and
  - 5.6.3.3. notify the Requestor of the outcome of that assessment.
- 5.6.4. If the Council Information requested is assessed under clause 5.6.3 as not being Confidential Information, or its release is assessed as not being contrary to the public interest, the Council Information will be provided to the Requestor.
- 5.6.5. The Council Information will be provided to the Requestor by email unless the:
- 5.6.5.1. Requestor seeks access in a different form, including by reference to the matters stated in clause 5.6.2.2, in which case the Council Information will be provided in that form, unless it is impracticable to do so; or
  - 5.6.5.2. Chief Executive Officer, having regard to the nature of the Council Information requested, determines that the Council Information should be provided in a different form, such as by inspection.
- 5.6.6. Council will provide such support to the Requestor as it considers reasonable to ensure that the Council Information provided is understood by them.
- 5.6.7. If, under clause 5.6.25.6.2, the Council Information requested is assessed as being Confidential Information, or its release is assessed as being contrary to the public interest, the Requestor will be advised:
- 5.6.7.1. that the request has been denied;
  - 5.6.7.2. of the reasons for the request being denied; and
  - 5.6.7.3. of alternative mechanisms by which they may seek access to the Council Information (e.g. by making a request under the *Freedom of Information Act 1982*).
- 5.6.8. Any request for access to Council Information by way of an alternative mechanism under clause 5.6.7.3 will be assessed according to the process applicable to it.
- 5.6.9. Where:
- 5.6.9.1. Council Information requested is assessed under clause 5.6.7 as being Confidential Information, or its release is assessed as being contrary to the public interest; but
  - 5.6.9.2. it is practicable for that Council Information to be provided with deletions so that it is suitable for release to the Requestor; and
  - 5.6.9.3. the Chief Executive Officer believes that the Requestor would want the Council Information in that format,

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the Council Information will be provided in that format.

**5.7. Council Information that is Not Available**

Some Council Information may not be made publicly available. This will occur if the information is Confidential Information, or its release would be contrary to the public interest.

**5.7.1. Confidential Information**

5.7.1.1. What constitutes Confidential Information is set out in section 3(1) of the Act and includes information within the following categories:

| Type                                 | Description   |
|--------------------------------------|---|
| Council business information         | Information that would prejudice Council's position in commercial negotiations if prematurely released.   |
| Security information                 | Information that is likely to endanger the security of Council property or the safety of any person if released.  |
| Land use planning information        | Information that is likely to encourage speculation in land values if prematurely released.   |
| Law enforcement information          | Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released.   |
| Legal privileged information         | Information to which legal professional privilege or client legal privilege applies.  |
| Personal information                 | Information which would result in the unreasonable disclosure of information about any person or their personal affairs if released.  |
| Private commercial information       | Information provided by a business, commercial or financial undertaking that relates to trade secrets or that, if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.  |
| Confidential meeting information     | Records of Council and Delegated Committee meetings that are closed to the public to consider confidential information.   |
| Internal arbitration information     | Information provided to, or produced by, an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons.  |
| Councillor Conduct Panel information | Information: <ul style="list-style-type: none"> <li>provided to, or produced by, a Principal Councillor Conduct Registrar, for the purposes of an application to form a Councillor Conduct Panel; or</li> <li>provided to, or produced by, a Councillor Conduct Panel for the purposes of conducting a hearing, other than a decision or reasons for a decision; or</li> <li>comprising any part of a statement of reasons or other document under the control of a Councillor Conduct Panel that the Councillor Conduct Panel determines contains confidential information.</li> </ul> |

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| Type  | Description  |
|---|--|
| Confidential information under the 1989 Act | Information that was confidential information for the purposes of section 77 of the <i>Local Government Act 1989</i> . |

- 5.7.1.2. In the interests of transparency, Council may, by resolution, determine to release information to the public even though it is Confidential Information.
- 5.7.1.3. A decision under clause 5.7.1.2 will generally only be made if Council, on the advice of the Chief Executive Officer, is satisfied that releasing the Confidential Information would not:
- (a) be consistent with any legal or contractual obligation;
  - (b) cause disadvantage to any person, including Council; and
  - (c) otherwise be contrary to the public interest
- 5.7.2. Contrary to the Public Interest
- 5.7.2.1. Council Information will not be made publicly available if doing so would be contrary to the public interest.
- 5.7.2.2. When assessing whether making certain Council Information publicly available would be contrary to the public interest, the Chief Executive Officer will have regard to, among other things:
- (a) the sensitivity of the Council Information;
  - (b) whether the Council Information comprises a draft, or otherwise is no longer current, and
  - (c) any adverse effect that releasing the Council Information would have on the effectiveness of Council's decision-making processes.
- 5.7.2.3 Without limiting clause 5.7.2.2, factors that might lead to a decision that the release of Council Information is contrary to the public interest might include whether release would be likely to:
- (a) disclose Personal Information or Health Information;
  - (b) disclose information or opinions of a preliminary nature such that they might :
    - i. mislead the Community with respect to Council's position on a matter; or
    - ii. have a substantial adverse effect on the economy of the Municipal District;
  - (c) prejudice discussions or negotiations between Council and any other party, in relation to a contract, legal proceedings or any other matter;
  - (d) impair or otherwise impact on:
    - i. Council's ability to obtain information in future that is similar in nature to the Council Information;

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- ii. Negotiations with respect to employment arrangements for Officers; or
  - iii. Defence, prosecution and settlement of legal proceedings; or
- (e) impact on the reasonable allocation of Council's resources, including in responding to requests for Council Information that are assessed by the Chief Executive Officer as being frivolous, vexatious or repetitious in nature.

**5.8. Public Awareness of Availability of Council Information**

Council will ensure public awareness of this Policy and the availability of Council Information by:

- 5.8.1. publishing this Policy on the Council Website;
- 5.8.2. making this Policy available for inspection at Council office;
- 5.8.3. converting this Policy to such accessible formats, having regard to clause 5.6.2.2, as the Chief Executive Officer determines; and
- 5.8.4. ensuring that all Officers:
  - 5.8.4.1. are aware of this Policy and its effect, and
  - 5.8.4.2. direct members of the Community to this Policy when access to Council Information is sought.

**5.9. Human Rights Charter**

This Policy has been assessed against the *Charter of Human Rights and Responsibilities Act 2006* as being consistent with that Act and, in particular, as promoting the rights of members of the Community:

- 5.9.1. Not to have their privacy interfered with (section 13); and
- 5.9.2. Take part in public life (section 18), by having the opportunity to:
  - 5.9.2.1. Participate in the conduct of Council's affairs;
  - 5.9.2.2. Have access to Council and Council Information.

**5.10. Dissatisfaction with the Application of this Policy**

5.10.1. If a Requestor is dissatisfied with Council's application of, or believes that Council has acted inconsistently with, this Policy, they can report their dissatisfaction to Council's Manager Legal & Governance by:

- 5.10.1.1. email to [LegalServices@melton.vic.gov.au](mailto:LegalServices@melton.vic.gov.au); or
- 5.10.1.2. telephone on 03 9747 7200

5.10.2. If the Requestor believes that the matter remains unresolved, it can be reported to the Victorian Ombudsman by:

- 5.10.2.1. making a complaint online at <https://www.ombudsman.vic.gov.au/complaints>; or
- 5.10.2.2. telephone on 03 9613 6222.



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**5.11. Application of this Policy**

5.11.1. This Policy applies to all Council Information, except Council Information which is made available, or is otherwise accessible, under another Act (other than an Act which refers to this Policy).

5.11.2. Without limiting the generality of clause 5.11.1, this Policy does not apply to Council Information which is:

5.11.2.1. required to be made available under the *Planning and Environment Act 1987*;

5.11.2.2. required to be made available under the *Building Act 1993*; or

5.11.2.3. otherwise required to be made available on payment of a fee or charge.

**5.12. Monitoring, Evaluation and Review**

Council will review this Policy every two years to ensure that it continues to reflect the expectations of the Community with respect to the availability and accessibility of Council Information.

**6. Responsibility /Accountability**

|            |  |
|------------|--|
| <b>6.1</b> | <b>Chief Executive Officer</b> is responsible for the application and operation of this Policy.                  |
| <b>6.2</b> | <b>Manager Legal &amp; Governance</b> is responsible for maintaining this Policy.                                |
| <b>6.3</b> | <b>All Councillors and Council officers</b> are responsible for compliance with the requirements of this Policy. |

**7. References and links to legislation and other documents**

| <b>Name</b>  | <b>Location</b>   |
|--|---|
| <i>Local Government Act 2020</i>                             | Available via <a href="https://www.legislation.vic.gov.au/">https://www.legislation.vic.gov.au/</a>           |
| <i>Local Government Act 1989</i>                             | Available via <a href="https://www.legislation.vic.gov.au/">https://www.legislation.vic.gov.au/</a>           |
| <i>Charter of Human Rights and Responsibilities Act 2006</i> | Available via <a href="https://www.legislation.vic.gov.au/">https://www.legislation.vic.gov.au/</a>           |
| <i>Building Act 1993</i>                                     | Available via <a href="https://www.legislation.vic.gov.au/">https://www.legislation.vic.gov.au/</a>           |
| <i>Freedom of Information Act 1982</i>                       | Available via <a href="https://www.legislation.vic.gov.au/">https://www.legislation.vic.gov.au/</a>           |
| <i>Health Records Act 2001</i>                               | Available via <a href="https://www.legislation.vic.gov.au/">https://www.legislation.vic.gov.au/</a>           |
| <i>Planning and Environment Act 1987</i>                     | Available via <a href="https://www.legislation.vic.gov.au/">https://www.legislation.vic.gov.au/</a>           |
| <i>Privacy and Data Protection Act 2014</i>                  | Available via <a href="https://www.legislation.vic.gov.au/">https://www.legislation.vic.gov.au/</a>           |
| Freedom of Information Procedure                             | Available via Intranet  |
| Governance Rules   | Available via Intranet and Council's website <a href="http://www.melton.vic.gov.au">www.melton.vic.gov.au</a> |
| Part II Statement  | Available via Council's website <a href="http://www.melton.vic.gov.au">www.melton.vic.gov.au</a>              |

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**Appendix 1**

For the purposes of clause 5.4 of this Policy, the following Council Information will generally, and subject to this Policy, be made available either on the Council Website or on request by a member of the Community.

**1. Documents such as:**

- Plans and Reports adopted by Council;
- Council Policies;
- Project and Service Plans;

**2. Process information such as:**

- application processes for approvals, permits, grants, access to Council services;
- decision-making processes (Governance Rules);
- Guidelines and Manuals;
- Community Engagement Processes; and
- Complaints Handling Processes.

**3. The following Council Information will be available on Council's website:**

- Meeting Agendas;
- Minutes of Meetings;
- Audit and Risk Committee Charter;
- Terms of Reference for Delegated Committees;
- Gift Registers for Councillors and Council Staff;
- Travel Registers for Councillors and Council Staff;
- Registers of Conflicts of Interest disclosed by Councillors and Council Staff;
- Registers of Leases entered into by Council (Register of Leased Assets);
- Register of Delegations;
- Register of Authorised Officers;
- Register of Election Campaign Donations;
- Summary of Personal Interests; and
- any other Registers or Records required by the Act or any other Act.

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**DRAFT PUBLIC TRANSPARENCY POLICY****PURPOSE**

This policy supports Council in its ongoing drive for good governance, open and accountable conduct and the public availability of council information. The *Local Government Act 2020* (the Act) requires Council to adopt and maintain a public transparency policy (section 57). This policy gives effect to the Public Transparency Principles outlined in section 58 of the Act.

**OBJECTIVES**

The objective of Council's Public Transparency Policy is to formalise its support for transparency in its decision-making processes and the public awareness of the availability of Council information. This policy promotes:

- a) greater clarity in Council's decision-making processes;
- b) increased confidence and trust in the community through greater understanding and awareness;
- c) enhanced decision making by the community;
- d) improved Council performance;
- e) access to information that is current, easily accessible and disseminated in a timely manner;
- f) reassurance to the community that Council is spending public monies wisely.

This policy describes what council information is, information on transparency processes and how information will be made available to the public. It is an integral part of council's Good Governance Framework.

**SCOPE**

This policy applies to Councillors and Council staff of the Council.

**DEFINITIONS**

For the purposes of this policy, Council adopts the following definitions:

|                             |  |
|-----------------------------|--|
| <b>Community</b>            | Community is a flexible term used to define groups of connected people. We use it to describe people of a municipality generally, including individuals or groups who live, work, play, study, visit, invest in or pass through the municipality.<br><br>More specifically, it can refer to everyone affiliated with the municipality, or smaller groups defined by interest, identity or location, and not necessarily homogenous in composition or views. Different types of communities often overlap and extend beyond municipal boundaries. Communities may be structured, as in clubs or associations or unstructured, such as teens. Communities are flexible and temporary, subject individual identity and location |
| <b>Consultation</b>         | The process of seeking input on a matter.  |
| <b>Public Participation</b> | This definition should be drawn from your Community Engagement Policy. Public participation encompasses a range of public involvement, from simply informing people about what government is doing, to delegating decisions to the public and community activity addressing the common good.   |
| <b>Stakeholder</b>          | An individual or group with a strong interest in the decisions of Council and are directly impacted by their outcomes.   |
| <b>Closed Meetings</b>      | When Council resolves to close a meeting to the general public in order to consider a confidential matter regarding issues of a legal, contractual or personnel nature and other issues deemed not in the public interest.   |

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**Transparency** A lack of hidden agendas or conditions, and the availability of all information needed in order to collaborate, cooperate and make decisions effectively. Importantly, "transparency" is also human rights issue: the right to have the opportunity, without discrimination, to participate in public affairs (s.58 of The Act).

**Public Interest Test**

Council may refuse to release information if it determines that the harm likely to be created by releasing the information will exceed the public benefit in being transparent. When considering possible harm from releasing information, the Council will only concern itself with harm to the community or members of the community. Potential harm to the Council will only be a factor if it would also damage the community, such as where it involves a loss of public funds or prevents the council from performing its functions.

**WHAT WILL COUNCIL BE TRANSPARENT WITH**

**Decision Making at Council Meetings**

- Will be undertaken in accordance with the Act and the Governance Rules.
- Will be conducted in an open and transparent forum, unless in accordance with the provisions in the Act and Governance Rules.
- Will be informed through community engagement, in accordance with the Community Engagement Principles and the Community Engagement Policy.
- Will be made fairly and, on its merits, and where any person whose rights will be directly affected by a decision of the Council will be entitled to communicate their views and have their interests considered.

**Council Information**

This information includes but is not limited to:

**Process information** such as:

- Practice notes and operating procedures;
- Application processes for approvals, permits, grants, access to Council services;
- Decision making processes;
- Guidelines and manuals;
- Community engagement processes;
- Complaints handling processes.

**Council records** will, at a minimum, be available on Council's website:

- Council meeting agendas;
- Reporting to Council;
- Minutes of Council meetings;
- Reporting from Advisory Committees to Council through reporting to Council;
- Audit and Risk Committee Performance Reporting;
- Terms of reference or charters for Advisory Committees;
- Registers of gifts, benefits and hospitality offered to Councillors or Council Staff;

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- Registers of travel undertaken by Councillors or Council Staff;
- Registers of Conflicts of Interest disclosed by Councillors or Council Staff;
- Submissions made by Council;
- Registers of donations and grants made by Council;
- Registers of leases entered into by Council, as lessor and lessee;
- Register of Delegations;
- Register of Authorised officers;
- Register of Election campaign donations.
- Summary of Personal Interests
- Any other Registers or Records required by legislation or determined to be in the public interest.

Consistent with the Part II statement, Council will make available the following records for inspection. Examples include but are not limited to:

- Summary of Personal Interests ('Register of interests' until 24 October 2020); and
- Submissions received under section 223 of the Local Government Act 1989 until its repeal or received through a community engagement process undertaken by Council.

**PUBLICATIONS**

Council publishes a range of newsletters, reports and handbooks for residents, businesses and visitors to council. You can download them from the website or call Council for a copy. Some of these publications are available at Council's libraries.

**ACCESS TO INFORMATION**

- Information will be made available on the Council website, open data, at Council offices, or by request.
- Consideration will be given to accessibility and cultural requirements in accordance with the *Charter of Human Rights and Responsibilities Act 2006*.
- Consideration will be given to confidentiality in accordance with the Act and public interest test where appropriate.
- Council will respond to requests for information in alignment with the Act including the Public Transparency Principles, and this policy.

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**INFORMATION NOT AVAILABLE**

Some Council information may not be made publicly available. This will only occur if the information is confidential information or if its release would be contrary to the public interest or in compliance with the *Privacy and Data Protection Act 2014*.

"Confidential information" is defined in section 3 of the *Local Government Act 2020*. It includes the types of information listed in the following table.

| Type  | Description  |
|---|--|
| Council business information                      | Information that would prejudice the Council's position in commercial negotiations if prematurely released.  |
| Security information                              | Information that is likely to endanger the security of Council property or the safety of any person if released.   |
| Land use planning information                     | Information that is likely to encourage speculation in land values if prematurely released.  |
| Law enforcement information                       | Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released.  |
| Legal privileged information                      | Information to which legal professional privilege or client legal privilege applies.   |
| Personal information                              | Information which would result in the unreasonable disclosure of information about any person or their personal affairs if released.   |
| Private commercial information                    | Information provided by a business, commercial or financial undertaking that relates to trade secrets or that would unreasonably expose the business, commercial or financial undertaking to disadvantage if released. |
| Confidential meeting information                  | Records of a Council and delegated committee meetings that are closed to the public to consider confidential information   |
| Internal arbitration information                  | Confidential information relating internal arbitration about an alleged breach of the councillor code of conduct.  |
| Councillor Conduct Panel confidential information | Confidential information relating to a Councillor Conduct Panel matter   |
| Confidential information under the 1989 Act       | Information that was confidential information for the purposes of section 77 of the <i>Local Government Act 1989</i>   |

The Council may decide, in the interests of transparency, to release information to the public even though it is confidential under the Act. However, this will not happen if release is contrary to law or if releasing the information is likely to cause harm to any person or is not in the public interest to do so.

Where information is not confidential, and not already available, Council will apply the principles of a public interest test with consideration also of the resources required to respond to the request.

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**RESPONSIBILITIES**

| Party/parties             | Roles and responsibilities  | Timelines |
|---------------------------|---|-----------|
| Council                   | Champion the commitment and principles for public transparency through leadership, modelling practice and decision-making.  | Ongoing   |
| Executive Management Team | Champion behaviours that foster transparency and drive the principles through policy, process and leadership.<br>Monitor implementation of this policy.   | Ongoing   |
| Senior Management Team    | Manage areas of responsibility to ensure public transparency, good governance and community engagement is consistent with this policy.  | Ongoing   |
| All Staff                 | Public transparency is the responsibility of all employees as appropriate to their role and function.<br>All staff respond to requests for information and facilitate provision of information in consultation with their manager and in alignment with the Policy. | Ongoing   |
| Manager Governance        | To monitor implementation of this policy and conduct periodic reviews to drive continuous improvement.  | Ongoing   |
| Unit Manager Governance   | To monitor implementation of this policy and conduct periodic reviews to drive continuous improvement.  | Ongoing   |

**HUMAN RIGHTS CHARTER**

This policy has been reviewed against and complies with section 13 of the *Charter of Human Rights and Responsibilities Act 2006*, as this Policy aligns with and provides for the protection of an individual's right not to have their privacy unlawfully or arbitrarily interfered with. It is also in line with section 18 which recognises a person's right to participate in the conduct of public affairs.

**NON-COMPLIANCE WITH THIS POLICY**

If a member of the community wishes to question a decision about the release of information, this should be raised directly with the officer handling the matter in the first instance. If still not satisfied and would like to contest the decision, this can be reported to the (designate an officer such as the officer responsible for FOI in council).

If not satisfied with Council's response, the concerns can be raised directly with the Victorian Ombudsman's office on (03) 9613 6222, or via the website – [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au).

**OTHER WAYS TO ACCESS INFORMATION**

The *Freedom of Information Act 1982* gives you right of access to documents that Council hold. Council is committed to, where possible, proactive and informal release of information in accordance with the Freedom of Information Professional Standards issued by the Victorian Information Commissioner. Read more at [www.ovic.vic.gov.au](http://www.ovic.vic.gov.au).

A list of available information is provided in the Part II Statement (the Statement) published on Council's website in accordance the Freedom of Information Act 1982. This Statement requires government agencies and local councils to publish a number of statements designed to assist members of the public in accessing the information it holds.

If you can't find the information you require, call us directly so we may assist you.

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**MONITORING, EVALUATION AND REVIEW**

Council commits to monitoring processes, information sharing and decision making to understand the overall level of success in the Policy's implementation.

A periodic review of this policy will be undertaken to ensure any changes required to strengthen or update the policy are made in a timely manner.

**RELATED POLICIES & LEGISLATION**

Council's:

- Governance Rules
- Public Transparency Principles
- Governance Framework (Template available from LGV if required based on Geelong model)
- Community Engagement Policy
- Information Privacy Policy
- Health Records Policy
- Information Rights Policy
- Open Data Policy

*Charter of Human Rights and Responsibilities Act 2006*

*Freedom of Information Act 1982*

*Local Government Act 2020*

*Local Government Act 1989*

*Privacy and Data Protection Act 2014*

*Equal Opportunity Act 2010.*

**INTERNAL USE ONLY**

**REVIEW**

Responsible Manager: Manager Governance

Date Adopted: August 2020

Date of Next Review: August 2024



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The Chairperson, Cr Carli, left the Chair

Cr Ramsey took the Chair.

Cr Carli left the meeting at 3:30pm.

Cr Carli returned to the meeting at 3:23pm.

Cr Ramsey left the Chair

The Chairperson, Cr Carli, took the Chair.

### 6.3 ELECTION PERIOD POLICY

**Responsible Officer:** Christine Denyer – Manager Legal & Governance

**Document Author:** John Whitfield - Governance Coordinator

**Date Prepared:** 11/08/2020

#### 1. Recommendation:

That Council approve the *Election Period Policy (Draft Policy)*, at **Appendix 1** amended pursuant to *Local Government Act 2020 (2020 Act)*.

#### Motion

Crs Ramsey/Majdlik.

That Council approve the *Election Period Policy (Draft Policy)*, at **Appendix 1** amended pursuant to *Local Government Act 2020 (2020 Act)*.

CARRIED

#### 2. Background

##### 2.1 The Policy

The existing Election Period Policy was adopted by Council in December 2019 before the 2020 Act had passed through the parliament. Officers believe it prudent to update the policy at the same time as the adoption of the Governance Rules because they contain a reference to the policy.

The amendments ensure compliance with the 2020 Act. The main changes are set out below.

Melton's approach to its existing Election Period Policy is a very conservative one – going slightly further than the legislation requires. The Draft Policy continues with this approach.

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CEO certification no longer statutory requirement – incumbent on all staff in Act

The 2020 Act removes the requirement (and requisite offence) for the CEO to certify that that a publication of Council does not contain any electoral material (unless it relates only to the process of the election). Instead the requirement (and requisite offence) is upon all Councillors and all staff. This statutory requirement has been made clear in the policy. In addition, because of the potential reputational damage, the requirement for the CEO to certify has been retained in the policy. This acts as a safeguard for the organisation.

Definition of 'Electoral Matter'

'Electoral matter' is now defined the Act, and reflected in the Draft Policy, albeit it is a non-exhaustive definition.

Major Policy, Inappropriate and Significant Decisions – must, must and should

Potential decisions have been grouped into three: Major Policy Decisions, Inappropriate Decisions and Significant Decisions.

The new Act does not use these terms however Officers believe these are useful for explanatory purposes and thus these remain in the Draft Policy. Council *must not* make any Major Policy Decisions or Inappropriate Decisions and *should not* make any Significant Decisions. Previously, Inappropriate Decisions were also in the 'should' category.

General Managers and ultimately the CEO will make determinations as to which category a decision falls under and whether, if in the 'should' category, there is justification for the decision to be made.

**2.2 Sources/benchmarking**

The existing policy was adopted by Council on 9 December 2019 and took into account a paper by the Local Government Investigations and Compliance Inspectorate entitled *Election Period Policy Review*. In addition, the Council looked at the policies of a number of other Councils that were all shared by the Inspectorate as examples of policies that followed or exceeded legislative requirements.

The focus in this review is to ensure compliance with the 2020 Act.

**2.3 Consultation**

The revised policy has been developed by the Legal & Governance Unit and approved by the Chief Executive to proceed to the Policy Review Panel.

**2.4 Communication and Implementation**

A copy of the Election Period Policy will:

- (a) be given to each Councillor as soon as practicable after it is adopted;
- (b) be available for inspection by the public at the Council office and any district offices;  
and
- (c) be published on the Council's website.

**2.5 Compliance**

The Draft Policy complies with the *Local Government Act 2020* and the *Charter of Human Rights and Responsibilities Act 2006*.

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The Charter of Human Rights has been considered and has no direct relevance. Gender equity and diversity issues were given consideration in the development of this policy.

**2.6 Measures of Success**

This policy is successful if it provides clear guidance to Council, Councillors and staff on processes to be followed during an election period.

This will be most clearly evidenced by no breaches of the *Local Government Act 2020* found either internally or through any external review by the Local Government Inspectorate.

**LIST OF APPENDICES**

1. Election Period Policy

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Appendix 1 Election Period Policy

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|  | <h2>Election Period Policy</h2>  |
| <b>Version No.</b>  | <del>V2.0 - 11 November 2019</del> V3.0 - 14 August 2020   |
| <b>Endorsement</b>  | <del>Executive – 20 August 2020</del><br>Policy Review Panel – <del>27 November 2019 - &lt;insert date&gt;</del> |
| <b>Authorisation</b>  | Council <del>9 December 2019 - &lt;insert date&gt;</del>   |
| <b>Review date</b>  | 31 July 2023   |
| <b>Responsible Officer</b>  | Manager Legal and Governance   |
| <b>Policy owner</b>   | Governance Coordinator   |

**1. Purpose**

To satisfy section 93B of the *Local Government Act 1989* (the '1989 Act'), ~~and section 69 of the Local Government Act 2020 (the '2020 Act')~~ which ~~requires~~require Council to prepare, adopt and maintain an Election Period Policy which must address certain matters.

**2. Scope**

All Melton City Council Councillors, employees, contractors, consultants and volunteers, and applicable only during the statutory election period.

**3. Application of Policy**

The election period (or caretaker period) for the 2020 local government general elections commences at noon on Tuesday 22 September 2020 and ends at 6.00pm on Saturday 24 October 2020.

The Chief Executive Officer is responsible for the application of the policy across Melton City Council.

~~In this Policy the Act means the Local Government Act 1989 and any legislation which amends or replaces that Act from time to time. Where in this policy a definition refers to a definition in the Act and then goes on to include that definition, the definition in any new or amended legislation will apply. For the avoidance of doubt, to the extent that this Policy conflicts with any legislation which amends or replaces the Act and which is in force during the Election Period, that amending or replacement legislation will prevail to the extent of any inconsistency.~~

**4. Definitions**

| Word/Term               | Definition   |
|-------------------------|--|
| <del>the 2020 Act</del> | <del>means the Local Government Act 2020.</del>  |
| the 1989 Act            | means the <i>Local Government Act 1989</i> <del>and any Act which amends or replaces that Act from time to time.</del>                       |
| Caretaker Period        | has the same meaning as 'Election Period'.   |
| Council Information     | means any communication or material containing facts, data or material about the Council and its products, services, processes or functions. |

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| Word/Term   | Definition   |
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| Council resources                                 | means human, material and financial resources of Council, including but not limited to, Council office and works spaces, staff (fulltime, part time, casual, contract) and volunteers, hospitality services, equipment and stationery used for normal Council business.  |
| Delegation  | means the giving of decision-making power(s) by instrument of a function, duty or power under any Act, where such delegation is allowed by law.  |
| <u>Election Period</u>                            | <u>has the same meaning as in section 3(1) of the 2020 Act and, in relation to an election, means the period that—</u><br><u>(a) starts at the time that nominations close on nomination day;</u><br><u>and</u><br><u>(b) ends at 6 p.m. on election day</u>   |
| <u>Election Period</u><br><u>Electoral Matter</u> | has the same meaning as in <u>sections 3(4) of the 2020 Act and, in relation</u><br><u>means matter which is intended or likely to affect voting in an</u><br><u>election, means the period that—</u><br><u>(a) starts but does not include any electoral material produced by or</u><br><u>on the last day on which nominations for that behalf of the</u><br><u>election can be received; and</u><br><u>(b) ends at 6 p.m. on manager for the purposes of conducting an</u><br><u>election day;</u><br><u>and</u><br><u>Without limiting the generality of the definition of electoral matter,</u><br><u>matter is to be taken to be intended or likely to affect voting in an</u><br><u>election if it contains an express or implicit reference to, or comment</u><br><u>on—</u><br><u>(a) the election; or</u><br><u>(b) a candidate in the election; or</u><br><u>(c) an issue submitted to, or otherwise before, the voters in</u><br><u>connection with the election</u> |
| Event   | means gatherings of internal and/or external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue that is of relevance to the Council and its community and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners, receptions and balls.   |
| Function  | has the same meaning as 'Event' as defined in this policy.   |

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| Word/Term              | Definition   |
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| Inappropriate Decision | <p>has the same meaning as in the Act and means:</p> <p>decisions means any decision:</p> <p>(a) that would <del>affect</del>enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting in an at the election; (refer s69(3) of the 2020 Act)</p> <p>(b) decisions that the Council considers could be reasonably deferred until the next Council is in place (refer s69(2)(c) of the 2020 Act)</p> <p>(b)(c) the Council considers should not be made after the <del>the</del>during an election period (refer s69(2)(d) of the 2020 Act)</p>  |
| Major Policy Decision  | <p>means any decision:</p> <p>(a) <del>relating</del>relates to the <del>employment</del>appointment or remuneration of a the Chief Executive Officer under section 94 of the Act, other than a decision but not to appoint the appointment or remuneration of an actingActing Chief Executive Officer;</p> <p>(b)(a) to terminate the appointment of a Chief Executive Officer under section 94 (refer s69(2)(a) of the 2020 Act;)</p> <p>(c) to enterregarding the entering into a contract the total value of which exceeds \$100,000.</p>  |
| Publications           | <p>means:</p> <ul style="list-style-type: none"> <li>brochures, pamphlets, handbills, flyers, magazines and books</li> <li>reports (other than Agenda papers and Minutes)</li> <li>advertisements and notices, except newspaper notices of meetings</li> <li>new website material</li> <li>social media publications</li> <li>emails with multiple addresses, used for broad communication with the community</li> <li>bulk mail outs or identical letters sent to a large number of people by or on behalf of Council</li> <li>media releases</li> <li>material to publicise a function or event</li> <li>Councillor speeches.</li> </ul> |
| Public consultation    | <p>means a process that involves inviting stakeholders (individuals, groups, organisations or the public generally) to comment on an issue or proposed action or proposed policy, and which includes discussion of the matter with the public.</p>   |
| Significant decision   | <p>means any decision:</p> <p>(a) decisions that may irrevocably commit the incoming Council to substantial expenditure or to other significant actions; and</p> <p>(b) decisions that may have an irrevocable and/or significant impact on the municipality or a significant section of the community.</p>  |

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| Word/Term                          | Definition   |
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| Social media                       | includes, but is not limited to: Facebook, Twitter, You-Tube, Flickr, LinkedIn, Pinterest, Snapchat, Instagram, <u>TikTok</u> accounts but does not include the private and individual social media accounts of any candidate or Chief Executive Officer or staff member.  |
| <u>Special Delegated Committee</u> | has the same meaning as in s3(1) of the 2020 Act and means—<br>(a) <del>a delegated committee established by a Council under section 86; 63; or</del><br>(b) <del>a joint delegated committee that exercises established by 2 or more Councils under section 64; or</del><br>(c) <del>a committee, other than a Community Asset Committee, exercising any power, or performs a duty or function, of the of a Council that has been under this Act or any other Act delegated to that the committee under this Act or any other Act;</del><br>or any requisite committee by another name in any amending or replacement legislation |

5. Policy

5.1 Council Decision Making

5.1.1 Major Policy Decisions

The Council, a Special Delegated Committee or a person acting under a Delegation given by the Council **must not** make a **Major Policy Decision** during the election period.

If the Council considers that there are extraordinary circumstances where the municipality or the local community would be significantly disadvantaged by the Council not making a particular Major Policy Decision the Council will, by resolution, request an exemption from the Minister for Local Government, in accordance with section 93A(2)177 of the 2020 Act.

Any person who is in any doubt as to whether or not a decision is a Major Policy Decision should consult with the Chief Executive Officer.

The Chief Executive Officer will:

- (a) ensure that no Council Report goes to Council during the election period in relation to a Major Policy Decision; and/or
- (b) give a decision to any staff member in relation to whether or not the proposed decision amounts to a Major Policy Decision.

The Chief Executive Officer's decision will be final.

A Major Policy Decision made in contravention of this Policy is ~~at risk of being invalid (refer s69(4)) and Council may be liable to compensate~~ any person who suffers any loss or damage as a result of this invalidity (provided they have acted in good faith); on a Council decision that is invalid by virtue of subsection (4) is entitled to compensation from the Council for that loss or damage (refer s69(5)).

It will be the ultimate responsibility of the Chief Executive Officer to determine if a matter is a major policy decision. Where possible, the Chief Executive Officer will ensure that matters are scheduled for Council to ensure that 'major policy decisions' are resolved prior to the commencement of the election period or scheduled for determination by the incoming Council.



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**5.1.2 Inappropriate Decisions**

The Council, a ~~Special Delegated~~ Committee or a person acting under a Delegation given by the Council ~~should~~ **must** not make an **Inappropriate Decision** during the election period.

Decisions that bind an incoming Council which could reasonably be made after an election, or would affect voting in an election ~~should~~ **must** be avoided.

Any person who is in any doubt as to whether or not a decision is an Inappropriate Decision should consult with the relevant General Manager in the first instance and thereafter the Chief Executive Officer, whose decision on the matter will be final.

The relevant General Manager will:

- (a) ensure that no Council Report goes to Council during the election period in relation to an Inappropriate Decision; and/or
- (b) give a decision to any staff member in relation to whether or not the proposed decision amounts to an Inappropriate Decision.
- (c) refer any proposed decision in relation to which the General Manager is in any doubt amounts to an Inappropriate Decision to the Chief Executive Officer whose decision will be final.

**5.1.3 Significant Decisions**

The Council, a ~~Special Delegated~~ Committee or a person acting under a Delegation given by the Council ~~should~~ **not** make a **Significant Decision** during the election period.

The Council will however, allow an exception to this principle where:

- (a) the delay in making a 'significant decision' would have a negative impact on the Council, or result in significant detriment to the local or broader community
- (b) result in a breach of a statutory timeframe within which a matter is to be considered and resolved upon
- (c) where the disadvantage of not making the decision exceeds the benefits of complying with the principle.

In deciding with (a), (b) or (c), the Council will deal with the matter impartially, having regard to the long term interests of the community and as transparently as possible.

The Chief Executive Officer will:

- (a) ensure that any Council Report that contains a Significant Decision during the election period will clearly identify such decision in the report as being a Significant Decision.
- (b) give a decision to any staff member in relation to whether or not the proposed decision amounts to a Significant Decision. The Chief Executive Officer's decision will be final.

**5.2 Prohibition on Publishing Material – ~~section 55D of the Act~~**

~~Section 55D304(2) of the 2020 Act prohibits a Councillor or member of Council staff from printing, publishing or distributing; or to cause, permit or authorise others to print, publish or distribute any advertisement, handbill, pamphlet or notice electoral material during the election period by or on behalf of Council unless it has been certified, in writing, by the Chief Executive Officer electoral material only contains information about the election process or is otherwise required by any Act or regulation.~~

~~The Chief Executive Officer must not intentionally or recklessly certify a publication that contains electoral matter, unless that material is only about the election process.~~

~~A breach of this section of the 2020 Act is an offence.~~



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**5.2.1 Prohibited Material**

Electoral matter is defined in the [2020 Act \(refer s3\(4\) and s3\(5\)\)](#) and means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the [returning officer Election Manager](#) for the purposes of conducting an election.

Material is electoral matter if it [expressly or implicitly](#):

- [refers to or comments on the election, a candidate for the election or an issue before the voters in connection with an election.](#)
- publicises the strength or weaknesses of a candidate
- advocates the policies of the Council or of a candidate
- responds to claims made by a candidate
- publicises the achievements of the elected Council
- publicises matters that have already been the subject of public debate
- is about matters that are known to be contentious in the community and likely to be the subject of election debate
- deals with Election Candidates statements
- refers to Councillors or candidates by name or by implicit reference.

**5.2.2 Council Publications – Certification**

All publications to be printed, published or distributed during the election period must be certified by the Chief Executive Officer, processed through Council's Enterprise Content Management System (ECM) for record management purposes. See **Attachment 1**.

The certification by the Chief Executive Officer will be recorded in ECM notes in the Customer Action Request (CAR) webform, and be in the following form:

*'Certified by the Chief Executive Officer in accordance with [section 55D of the Local Government Act 1989](#) the Election Period Policy'.*

In considering whether to grant approval for the publication of materials during an election period, in accordance with the provisions of the [2020 Act](#), the Chief Executive Officer:

- (a) must not permit materials to be published which includes an express or implicit reference to, or comment on:
  - (i) the election
  - (ii) a candidate in the election
  - (iii) an issue submitted to, or otherwise before, the voters in connection with the election.
- (b) may approve publication of material which only contains information about:
  - (i) the election process itself
  - (ii) Council information that does not include any reference to a current Councillor otherwise precluded by this policy.

**5.2.3 Council Agendas and Reports**

Information and briefing material prepared by staff for Councillors during the election period will relate only to factual matters or to existing Council policies and services.

Such information will not relate to new policy development, new projects or matters that are the subject of public or election debate or that might be perceived to be connected with a candidate's election campaign.

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Items submitted for Public Question Time will be reviewed to ensure that they comply with the principles of the [2020 Act](#) and this Policy.

**'Caretaker Statement'**

During the election period, the Chief Executive Officer will ensure that a 'caretaker statement' is included in every report submitted to the Council or a [Special Delegated Committee](#) for a decision.

The 'Caretaker Statement' will specify one or more of the following:

- (1) *'The recommended decision is not a 'Major Policy Decision' or 'Inappropriate Decision' or 'Significant Decision' within the meaning of Council's Election Period Policy.'*
- (2) *'The recommended decision is not a 'Major Policy Decision' as defined in Council's Election Period Policy. The recommended decision is a 'Significant Decision' within the meaning of the Council's Election Period Policy but an exception should be made for the following reasons (insert reasons for making an exception).....'*
- (3) *'The recommended decision is to seek an exemption from the Minister because the matter is a 'Major Policy Decision' as defined in [section 93A of the Local Government Act 1989 Council's Election Period Policy](#).'*
- (4) *'The recommended decision is a 'Major Policy Decision' as defined in [section 93A of the Local Government Act 1989 Council's Election Period Policy](#), but an extraordinary circumstances exemption was granted by the Minister for Local Government on (insert date).'*

During an election period, the Council will not make a decision on any matter or report that does not include one of the caretaker statements.

**5.2.4 Annual Report**

Council is required by the [1989 Act](#) to prepare and put on public display its Annual Report. The Council's Annual Report will be published during the election period.

The Annual Report will not contain any material that could be regarded as overt electioneering or that inappropriately promotes individual Councillors.

**5.2.5 Council Website**

Material published on Council's website in advance of the election period is not subject to certification, however existing material that is prominently displayed will be reviewed and consideration given to the removal of any such material that would be considered electoral matter, as if it were published during the election period.

Councillor photos and contact information will remain available on the website during the caretaker period, but Councillors' profiles will be removed.

Any material published on Council's website during the election period must be certified by the Chief Executive Officer.

The Annual Report does not require certification by the Chief Executive Officer however; any publication of an extract or summary of the Annual Report will require certification.

An election period statement will be placed on Council's website advising that it will not be updating or adding new information to the website during the election period other than necessary operational information.

**5.2.6 Social Media**

Any content published on Council social media sites during the election period must be certified by the Chief Executive Officer.

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Content generated by Council Officers is to be kept to the minimum level assessed to mitigate the loss of any readership or subscription to the social media account.

Content must not include Prohibited Material as defined under 5.2.1 of this policy.

Social media accounts that allow third party generated content to be disabled **must** disable that functionality for the election period.

Where not possible, *prohibited content* published by third parties must be deleted as soon as practical, and consideration given to the temporary suspension of the social media account during the election period.

An election period statement will be placed on Council's social media accounts advising that it will not be updating or adding new information to these accounts during the election period other than necessary operational information.

**5.3 Public Consultations**

Public consultation is to be avoided where possible during the election period. Whilst some public consultation activities may be necessary during the election period to facilitate the day to day business of Council and ensure matters continue to be proactively managed, any such public consultation activities will avoid express or implicit links to the election.

**5.3.1 Postpone public consultation**

If there is the potential for a matter or issue to become contentious or politically sensitive in the course of the election period, Council reserves the right to postpone a matter if the issue is likely to affect voting.

**5.3.2 Approval to conduct public consultation**

The Chief Executive Officer may approve public consultation occurring during the election period, but will first consider:

- (a) whether the consultation process is likely to be controversial
- (b) whether the consultation process is significant
- (c) whether the consultation process can be deferred until after the election
- (d) the financial implications if the consultation was made during the caretaker period or deferred until after the election
- (e) the best interests of the community.

The requirements of clause 5.3.2 do not apply to public consultation required under the *Planning and Environment Act 1987*, or matters subject to section 223 of the [1989 Act](#).

**5.4 Attendance at Functions and Events****5.4.1 Public events staged by external bodies**

Councillors may continue to attend events and functions during the election period where necessary. Councillors must not use appearances at public events for the purposes of electioneering and are not to formerly speak at these events unless expressly authorised by the Chief Executive Officer. Where this express authorisation has been given any speech must be approved by the Chief Executive Officer in accordance with 5.2.2 above and 5.4.3 below.

**5.4.2 Council Functions and Events**

Council organised events and functions held during the election period will be reduced to only those essential to the operation of the Council.

Councillors may continue to attend Council events and functions during the election period.

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**5.4.3 Speeches and Keynote addresses**

Councillors may make speeches at Council organised or sponsored events and functions during the election period subject to approval of the Chief Executive Officer. Any speeches to be delivered by a Councillor during the election period must be written by Council staff under the direction of the CEO and approved in accordance with 5.2.2. The Councillor Speaking Opportunity Protocol continues to apply during the election period.

**5.5 Access to Council Information – section 93B(3)(c)**

All election candidates have equal rights to information relevant to their election campaigns from the Council administration. While it is important that sitting Councillors continue to receive information that is necessary to fulfil their elected roles, neither Councillors nor candidates will receive information or advice from Council staff that might be perceived to support election campaigns. Transparency will be observed and practised in the provision of all information and advice during the election period.

**5.5.1 Information Requests**

The Governance Team will maintain an 'Information Request Register' during the election period for all requests relating to electoral matters and non-routine requests for information from election candidates, including incumbent Councillors. See **Attachment 2**.

- (a) All initial requests for information must be directed through the responsible General Manager who will maintain a 'Register of Requests' made and advice provided. See **Attachment 3**.
- (b) The Register of Requests will then be forwarded to the Governance Team at the end of each week during the election period.
- (c) The Information Request Register will contain the Register of Requests maintained by the three relevant General Managers and will be retained by the Governance Team during the election period.
- (d) The Information Request Register will be a public document that contains all requests for information by Councillors and candidates, and the responses given to those requests.
- (e) The Information Request Register will be accessible on Council's website with updates to the website on a weekly basis; in line with Section 5.5.1(b) above.

**5.5.2 Improper Use of Position**

Sections 76D and 76E of the [1989 Act](#) prohibit Councillors from misusing or inappropriately making use of their position. These provisions apply at all times, not only during the election period however the risk of a breach of these provisions may be greater during an election period.

[The 2020 Act contains similar provisions \(Misuse of position\) which commence on 24 October 2020, replacing the above provisions.](#)

A breach of section 76D attracts serious penalties, including possible imprisonment.

**5.6 Role of the ~~Returning Officer~~Election Manager**

All election related enquiries from candidates, whether sitting Councillors or not, will be directed to the ~~Returning Officer~~ Election Manager or, where the matter is outside the responsibilities of the ~~Returning Officer~~Election Manager, to the Chief Executive Officer.

**5.7 Media Services****5.7.1 Restriction on services**

Council's Communications team undertake the promotion of Council activities and initiatives.



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During the election period this team's services must not be used in any way that might promote a Councillor as an election candidate.

Council publicity during the election period will be restricted to communicating normal Council activities and initiatives and subject to certification by the Chief Executive Officer.

**5.7.2 Media Releases/Spokespersons**

Media releases will minimise references to specific Councillors and will not identify any Councillor in a manner that could promote a Councillor as an election candidate. Where it is necessary to identify a spokesperson, the Chief Executive Officer will be consulted.

All media releases will require certification by the Chief Executive Officer.

**5.7.3 Media Enquiries and Responses**

All media enquiries are to be directed to the Communications team.

All responses to media enquiries will require certification by the Chief Executive Officer.

**5.7.4 Councillors**

Councillors will not use their position as an elected representative or their access to Council Officers and other Council resources to gain media attention.

**5.7.5 Council Employees**

During the election period no Council employee may make any public statement that relates to an election issue unless prior approval has been obtained by the Chief Executive Officer. Any public statement must be approved by the Chief Executive Officer in accordance with 5.2.2.

**5.8 Council Resources**

Public resources are not to be used inappropriately during a Council election, except in regard to supporting the actual election process. ~~The Council will ensure that Council staff exercises appropriate discretion in that regard.~~

It is an offence for a Councillor or member of staff to use Council resources in a way that is intended to or is likely to affect the result of the election (refer to s304(1) of the 2020 Act).

**5.8.1** Prior to the election period, the Chief Executive Officer will ensure that all members of Council staff are advised in regard to the application of the Election Period Policy.

- (1) Council staff will not undertake an activity, or assist Councillors in a way that could create a perception that they are being used for electoral purposes, or which may affect voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer.
- (2) The Personal Assistant to the Mayor and Councillors and Administrative Support Officers or any other Council staff member will not be asked to undertake any tasks connected directly or indirectly with electioneering.
- (3) Any Council employee who considers that a particular use of Council resources may influence voting in an election or provide an undue advantage for a candidate should advise their immediate supervisor before authorising, using or allocating the resource. The Manager will seek appropriate advice in order to ascertain whether the use of Council resources is in accordance with this policy.

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**5.8.2** In applying these principles, the Council understands that the following will be the normal practice during the election period:

- (1) Council resources, including offices, support staff, hospitality services, equipment and stationery will be used exclusively for normal Council business during the election period, and will not be used for the personal advantage of any Councillor or candidate in connection with any election. This does not apply to the provision of office space for the Victorian Electoral Commission (VEC) **Returning Officer Election Manager** within in a Melton City Council building.
- (2) Councillor newsletters will not be resourced by the Council in any way during the election period.
- (3) Speeches for Councillors will only be prepared by Council staff in relation to events that are part of the normal services or operation of the Council and such speeches will not be circulated or available for publication.
- (4) No Council logos, letterheads, or other Melton City Council branding will be used for, or linked in any way to a candidate's election campaign.
- (5) Reimbursements of Councillor's out-of-pocket expenses during the election period will only apply to costs that have been incurred in the performance of normal Council duties, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign.
- (6) Facilities, services and equipment provided to, or made available to Councillors for the purpose of conducting normal Council business, must not be used for election campaigning purposes. These include telephones, office equipment, council email address and social media handles.

**5.8.3** In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, advice will be sought from the Chief Executive Officer.

## 6. Responsibility /Accountability

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| <b>6.1 Councillors</b>  | Councillors are to ensure that they: <ul style="list-style-type: none"> <li>• understand and comply with the provisions in this policy</li> <li>• direct any enquiries or requests for information to the Chief Executive Officer.</li> </ul>  |
| <b>6.2 Council employees/Contractors/Consultants/Volunteers</b> | All Council employees, contractors, consultant and volunteers will: <ul style="list-style-type: none"> <li>• understand and comply with the provisions of this policy in the conduct of their duties</li> <li>• report any activities or conduct that has, or may be perceived as breaching this policy to their immediate Manager/General Manager.</li> </ul> |
| <b>6.3 Coordinators and Managers</b>                            | Coordinators and Managers will ensure: <ul style="list-style-type: none"> <li>• that staff are aware of the provisions of this policy</li> <li>• that all reports of activities or conduct that has, or may be perceived as breaching this policy is taken seriously, and reported to the relevant General Manager for review.</li> </ul>                      |

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| <b>6.4</b> | <p><b>Governance Coordinator and Manager Legal and Governance</b></p> <p>The Governance Coordinator and Manager Legal and Governance are responsible for:</p> <ul style="list-style-type: none"> <li>the review and administration of this policy</li> <li>preparation and maintenance of an 'Information Request Register' in accordance with section 5.5.1(c) of this policy</li> <li>posting the Information Request Register on Council's website in accordance with section 5.5.1(e) of this policy</li> </ul>   |
| <b>6.5</b> | <p><b>General Managers</b></p> <p>General Managers are responsible for:</p> <ul style="list-style-type: none"> <li>the operational administration of this policy</li> <li>preparation and maintenance of a weekly 'Register of Requests' in accordance with section 5.5.1(a)</li> <li>the review of any reports of activities or conduct that has, or may be perceived as breaching this policy, inclusive of any immediate action.</li> </ul>  |
| <b>6.6</b> | <p><b>Chief Executive Officer</b></p> <p>In addition to their statutory responsibilities, the Chief Executive Officer will ensure as far as practicable that:</p> <ul style="list-style-type: none"> <li>all Councillors and Officers are informed of the application of this policy at least 60 days prior to the commencement of the election period</li> <li>matters of Council business requiring major policy or significant decisions are scheduled for Council to enable resolution prior to the commencement of the election period ('caretaker period'), or deferred where appropriate for determination by the incoming Council</li> <li>the policy and additional guidelines, if appropriate, are made available to staff outlining their role and responsibilities in the implementation of this policy.</li> </ul> |

**7. References and links to legislation and other documents**

| Name  | Location   |
|---|--|
| <a href="#">Local Government Act 2020 (Vic)</a> | <a href="http://www.legislation.vic.gov.au">www.legislation.vic.gov.au</a> |
| <a href="#">Local Government Act 1989 (Vic)</a> | <a href="http://www.legislation.vic.gov.au">www.legislation.vic.gov.au</a> |
| Code of Conduct (Councillors)                   | Governance Intranet Site and Council website                               |
| Code of Conduct (Employees)                     | Governance Intranet Site   |

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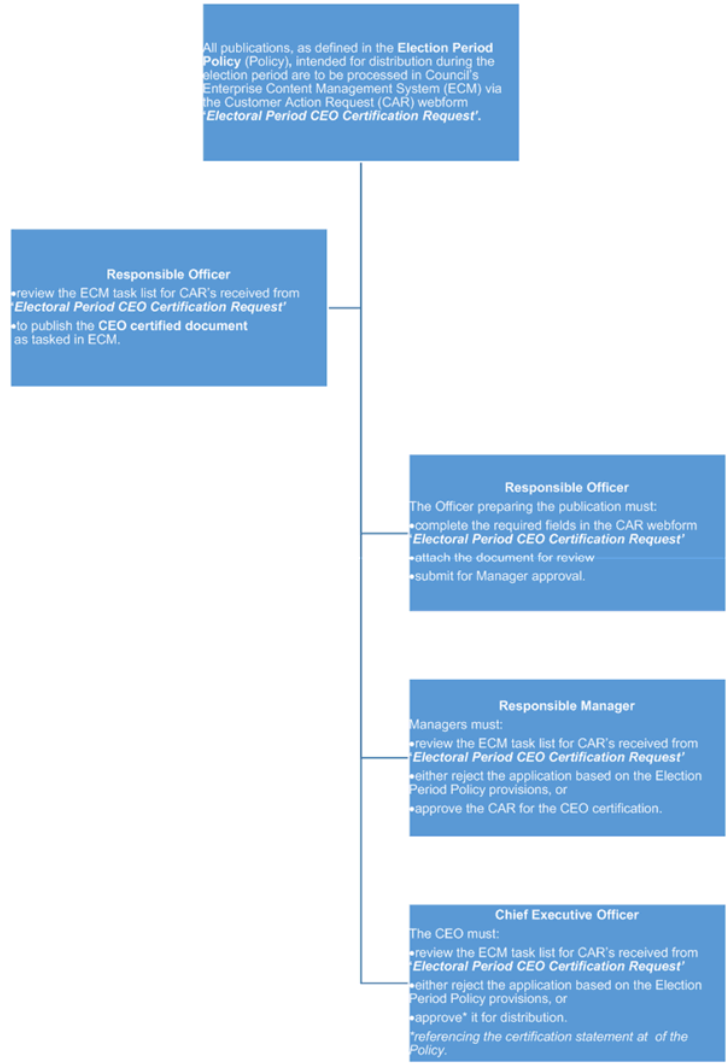
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Item 6.3 Election Period Policy

Appendix 1 Election Period Policy

Attachment 1

5.2.2 Council Publications – Certification









## 6.4 AUDIT AND RISK COMMITTEE CHARTER

**Responsible Officer:** Kel Tori - Chief Executive Officer  
**Document Author:** Christine Denyer - Manager Legal and Governance  
**Date Prepared:** 13/08/2020

### 1. Recommendation:

That Council adopt the proposed Audit and Risk Committee Charter at **Appendix 1** pursuant to the *Local Government Act 2020* (the Act).

#### Motion

Crs Hardy/Ramsey.

That Council adopt the proposed Audit and Risk Committee Charter at **Appendix 1** pursuant to the *Local Government Act 2020* (the Act).

CARRIED

### 2. Background

#### 2.1 The Policy

Pursuant to the new *Local Government Act 2020* (the Act) the Council must establish an Audit and Risk Committee and requisite Charter by 1 September 2020.

Council, at its meeting on 20 July 2020 resolved, amongst other things, to 'hold over the scheduled review of the Audit Committee Charter pending release by DELWP of a template for the Audit and Risk Committee Charter as required by the *Local Government Act 2020* (the Act), which will be brought to Council via the normal Policy Approval Process.'

#### 2.2 Sources/benchmarking

The template referred to in the resolution has now been released by LGV and is attached at **Appendix 2** (the LGV Charter).

Whilst officers believe that the LGV Charter is perfectly adequate, they also take the view that Council's current Terms of Reference / Charter is a very good document and that the combination of the two would provide the best document to form the new Audit and Risk Committee Charter.

**Appendix 1** contains the Proposed Melton City Council Audit and Risk Committee Charter (the Proposed Charter). It is based on current Terms of Reference showing amendments in redline. These amendments reflect the requirements of *Local Government Act 2020* and most of the elements of the LGV Charter. The material ways in which the LGV Charter differs are discussed below.

The following variations from the LVG Charter are noted:

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1. Membership and Tenure of Independent Members

This experience and expertise of the independent members is set out in the Act (s53) and reflected in the Proposed Charter. The reference to diversity reflects wording resolved upon by Council earlier this year for all advisory committees.

The tenure of the independent members is at the discretion of Council

Council's current ToR:

- existing members may reapply for a second term at the conclusion of their first three year term, with a two consecutive term maximum (i.e. 6 year maximum).

LGV Charter:

- existing members may be reappointed for two additional three-year terms (i.e. 9 year maximum).
- Silent as to assessment of performance before reappointment.

Proposed Charter at **Appendix 1**:

- existing members may be reappointed for a second term at the conclusion of their first three year term, with a two consecutive term maximum (i.e. 6 year maximum), with a formal assessment of performance on reappointment.
- The requirement for formal assessment is a recommendation of the 2016 VAGO report into Audit Committee Governance referred to in the background to Council's existing ToR and the Proposed Charter.
- Officers consider that a total of 3 x 3 year terms is potentially too long for an independent member to serve, else they risk losing sufficient objectivity.
- The 6 year maximum is in keeping with Council's current maximum tenure.

2. Chairperson

This role is at the discretion of Council save that the Chairperson cannot be a Councillor. In other words, Council may elect the Chairperson or the independent members may elect the Chairperson.

Council's current ToR:

- Independent members elect the Chairperson.
- The Chairperson may only chair the meeting for three years consecutively.

LGV Charter:

- Council elects the Chairperson.
- Silent as to maximum term of chairing.

Proposed Charter at **Appendix 1**:

- Independent members elect the Chairperson.
- Silent as to maximum term of chairing.
- Election of the chair by the independent members provides the Chairperson with the confidence of the members present and provide an extra level of independence of the Council.

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**2.3 Consultation**

The Proposed Charter was sent to the existing Audit Committee (out of session) who made minor amendments (highlighted yellow in the document) and then resolved to recommend to Council that it adopt the Proposed Charter.

**2.4 Communication and Implementation**

Once adopted, the Audit and Risk Committee Charter will be accessible to the public via Council's website.

The final Charter will also be distributed to the Audit Committee.

**2.5 Compliance**

The Proposed Charter is compliant with the Act. The Charter of Human Rights has been considered and has no direct relevance. Issues of diversity have been taken into account and reflected using the standard wording as resolved by Council (*'Membership of the Committee, where possible, being balanced in regard to age, gender, ethnicity and people living with a disability.'*)

**2.6 Measures of Success**

The Audit and Risk Committee will evaluate their own performance collectively against the Charter and provide a copy of the annual assessment to the Chief Executive Officer for tabling at the next Council meeting. The evaluation will include feedback from both Committee members and senior officers who have regular interactions with the Committee.

**LIST OF APPENDICES**

1. Proposed Charter - undated
2. LGV Template Charter - undated



Audit and Risk  
Committee  
Charter ~~Terms of~~  
~~Reference~~

Recommended to Council by ~~Approved by~~ Audit Committee on 5/08/2020  
~~26/6/2019~~

Adopted by Council on 22/7/2019

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Item 6.4 Audit and Risk Committee Charter

Appendix 1 Proposed Charter - undated

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Item 6.4 Audit and Risk Committee Charter

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Item 6.4 Audit and Risk Committee Charter

Appendix 1 Proposed Charter - undated

## 1. Background

The Melton City Council (Council) Audit and Risk Committee (~~the Committee~~) is ~~established as an independent Advisory Committee to Council appointed by Council~~ pursuant to Section ~~53(13)~~ of the Local Government Act ~~2020(1989)(Act)~~.

The ~~Audit Committee Terms of Reference Charter~~ has been developed having regard to ~~the draft Audit and Risk Committee Charter developed by the sector and led by Local Government Victoria (accessed via [engage.vic.gov.au](https://engage.vic.gov.au))~~. 'Audit Committee – A Guide to Good Practice for Local Government', (January 2011) issued by the Minister of Local Government and the Victorian Auditor General's report 'Audit Committee Governance' of August 2016 (including the Standing Directions of the Minister for Finance 2016).

This ~~Charter Terms of Reference~~ sets out the ~~Audit Committee's objectives, functions and responsibilities~~, authority, composition and tenure, roles and responsibilities, reporting and administrative arrangements.

The primary ~~function and responsibility~~ objective of the ~~Audit Committee~~ is to ~~monitor, the compliance of Council policies and procedures with the Act including any regulations, and chiefly, the overarching governance principles, Council's financial and performance reporting, Council's risk management and fraud prevention systems and controls and oversee the internal and external audit function, assist Council to fulfil its corporate governance responsibilities through the effective conduct of its responsibilities for accounting and financial reporting practices, management of risk, maintaining a reliable system of internal controls, operation of good governance and facilitating sound organisational ethics.~~

The ~~Audit Committee~~ does not have executive powers or authority to implement actions in areas over which management has responsibility and does not have any delegated financial responsibilities. The ~~Audit Committee~~ does not have any management function and is therefore independent of management.

~~As part of Council's governance obligations to its community, Council has constituted an Audit Committee to provide the Council with guidance on:~~

- ~~• Internal and external financial reporting;~~
- ~~• Management of financial and other risks;~~
- ~~• Effectiveness of the internal and external audit function;~~
- ~~• Provision of an effective means of communication between the external auditor, internal auditor, management and Council; and~~
- ~~• Advice and recommendations on various matters within the terms of reference in order to facilitate decision making by council in relation to the discharge of its responsibilities.~~

The internal, external auditors and other assurance providers support the ~~Audit Committee~~ by providing independent and objective assurance on internal corporate governance, risk management, internal control and compliance.

~~An Audit Committee Work Plan is established and reviewed annually to ensure the Committee effectively discharges its responsibilities.~~

## 2. Authority

The ~~Audit Committee~~ is ~~established by the an independent Advisory Committee of Council, formally appointed by Council pursuant to Section 53 of the Act 86 of the Local Government Act 1989. It is not a delegated committee and has no delegated responsibilities. Rather, it operates in an advisory capacity to Council in the performance of which it has – Council authorises the Committee within its scope of responsibilities the ability~~ to:

- Perform activities within the scope of this ~~Terms of Reference Charter~~;
- Require the attendance of Senior Council Officers - at meetings as appropriate;

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- Have unrestricted access to members of the management team, employees and relevant information;
- Review the process for reporting, pursuant to the Protected Disclosure Act 2012;
- Oversee the performance of the external auditor and appointment and performance of the internal auditor;
- Meet in private without the attendance of management; and
- Request necessary financial resources to be provided to enable the Committee to receive any necessary legal, accounting or other professional advice.

### 3. Membership

The **Audit**-Committee will be comprised of five members as follows:

- Three (3) Independent members; and
- Two (2) Councillors

The Chairperson of the Committee shall be appointed annually from the external independent members of the Committee by all members of the **Audit**-Committee. ~~The Chairperson may only chair meetings for three years consecutively.~~

The Chairperson of the **Audit**-Committee shall have a casting vote on occasions where there is an equal number of votes on a matter. In the absence of the appointed Chairperson from a meeting, the meeting will appoint an acting Chairperson from the Independent members present.

A quorum of any meeting will be at least two independent members and at least one Councillor member. In this instance a quorum is three (3) members.

All members have full and equal voting rights on all matters considered by the Committee unless a member is unable to vote due to a conflict of interest. Resolutions shall pass on a simple majority vote.

### 4. Terms of Appointment

#### Independent Members

The appointment of external independent members shall be made by Council following a public advertisement process through local and/or state wide newspapers and Council website.

The applications for membership will be assessed against appropriate criteria. The criteria will fall within the areas of:

- Expertise in financial management and risk;
  - Experience in public sector management; and
- ~~Level and breadth of senior business, management, finance and accounting, legal and /or audit experience and qualifications;~~
  - ~~Level of familiarity in relation to local government operations, financial reporting and auditing requirements, risk management and corporate governance;~~

~~Consideration should also be given to pPrevious aAudit cCommittee experience, and Membership of the Committee, where possible, being balanced in regard to age, gender, ethnicity and people living with a disability.~~

Independent members must collectively have experience in a. and b. above pursuant to section 53 of the Act.

The ~~S~~selection Panel (**Panel**) for appointment to the **Audit**-Committee will consist, unless a conflict of interest exists, of the Mayor and the Chief Executive Officer. In the case of a conflict of interest,

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Appendix 1 Proposed Charter - undated

the Deputy Mayor and/or a General Manager of the Council may comprise the selection Panel. The Panel will take into account the experience of the candidates and their likely ability to apply appropriate analytical and strategic management skills. A recommendation for appointment will be put before Council for resolution.

Independent members shall be appointed for a term of three years. The term of each member should be arranged so that there is an orderly rotation of membership and avoidance of more than one member retiring at the same time.

At the conclusion of the independent members first three year term, existing members will be eligible to be reappointed at the discretion of Council for a second three year term without the need for a formal application process provided that a formal assessment of the member's performance is undertaken by the Panel. Existing members will also be eligible to apply to be reappointed should Council decide to advertise the position. Independent members can only serve for two consecutive terms.

The terms of each member should be arranged so that there is an orderly rotation of membership and avoidance of more than one member retiring at the same time.

In the event of an independent member resigning/retiring before the expiry of their term then this vacancy will either be filled for the remainder of that term or if the vacancy occurs within 12 months of the expiry of the term then Council may choose not to fill the vacancy. Further, should the resignation/retirement of the members coincide then Council may extend the remaining members term by one year to ensure continuity.

In the event the Council proposes to remove a member of the Committee, it must give 4 weeks written notice to the member of its intention to do so and provide that member with the opportunity to be heard if that member so requests.

Remuneration will be paid to each independent member of the **Audit**-Committee as determined by Council from time to time. The remuneration shall be based on a set fee per attendance at each formal meeting with an additional amount paid to the Chairperson. Remuneration will be paid to each independent member of the Committee twice yearly, in June and December.

#### Councillor members

The Councillor members of the **Audit**-Committee shall be appointed annually by Council at its Annual Meeting where Councillor representation is decided upon.

The term of the Councillor member to the **Audit**-Committee shall be for a one year term, and may be appointed by Council for further terms.

If the Mayor is one of the Councillor members, the Mayor may appoint a substitute, in the event that Mayoral duties prevent the Mayor's attendance at a meeting.

## 5. Meetings

Conduct of meetings shall be consistent with Council's Governance Rules, insofar as they can be adapted to the Committee meeting ~~Meeting Procedure Local Law~~, and at the discretion of the Chairperson.

The Committee shall meet as required and according to the annual schedule adopted by Council but must meet a minimum of four times per year with an additional meeting to consider the Annual Financial and Performance Statements.

A schedule of meetings and an annual work plan will be developed and agreed to by the members and recommended to Council annually for its adoption. Meetings will be arranged as much as possible to coincide with relevant Council reporting deadlines, in particular the finalisation of the financial and performance statements and the draft annual report to the Minister for Local Government.

Additional meetings shall be convened at the discretion of the Chairperson or at the written request of any member of the **Audit**-Committee, internal or external auditor.

Members of the Committee are expected to attend every meeting of the Committee.

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The agenda and supporting documentation will be circulated to members of the Audit-Committee at least 3 working days in advance of each meeting.

The minutes, containing the Committee's recommendations, will be presented to the Council at a subsequent Council meeting following the Audit-Committee meeting.

The Chairperson at the subsequent meeting will sign the minutes of the previous meeting.

Council shall provide administrative support to the Audit-Committee.

The following requirements shall apply to all meetings of the Committee:

- Only Committee members are entitled to attend-vote at meetings;
- Other Councillors may attend meetings in an observation capacity;
- The Committee may invite, or require any persons to attend meetings, as it deems necessary;
- The Chief Executive Officer, Legal & Governance Manager, Manager Finance will represent the organisation and attend all meetings;
- Other Council staff may be invited to attend at the discretion of the Committee to advise and provide information when required;
- Council staff and Councillors who are not members of the Committee will not have a right to vote and may be excluded from meetings when votes are taken;
- The Internal Auditor (as appointed by Council) should attend all meetings, where internal audit reports are presented or as requested by the Committee, except when the Committee chooses to meet in camera;
- The External Auditor (as appointed by the Victorian Auditor General (VAGO)) should attend the meeting when the annual financial accounts and external audit management reports are considered and at other meetings as appropriate;
- The External Auditor may request to meet in-camera at the convenience of the Committee;
- The external and internal auditors may be invited to make presentations to the Committee as appropriate; and
- The Committee will meet at least once annually with the external and internal auditors (separately) without management present if required by the Committee, the Auditors of Council.

## 6. Performance

The Audit-Committee will evaluate their own performance collectively against the Charter-Terms-of-Reference and provide a copy of the annual assessment to the Chief Executive Officer for tabling at the next Council meeting. The evaluation will include feedback from both Committee members and senior officers who have regular interactions with the Committee.

## 7. Insurance

Members of the Audit-Committee are-will be covered by Council's insurance policies.

## 8. Conflict-of-Interest-Committee Member Regulatory Obligations

Committee members are expected to be aware of their obligations under Section 53 of the Act. These obligations relate to misuse of position as a member of the Committee (Section 123), confidential information (Section 125) and conflict of interest (Sections 126 to 131). Details about



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~~these obligations are included in Appendix A to this Charter. In accordance with Section 79 of the Local Government Act 1989 (the Act), members of the Audit Committee will be required to disclose all conflicts of interest and will not be eligible to vote on a matter or attend the part of the meeting at which the subject of the conflict will be considered.~~

~~Members of the Audit Committee must be fully aware of their responsibilities with regard to the management of interests in relations to the discharge of their duties as a member of the Committee. Management of interests includes the proper disclosure of any conflicts of interest as and when they may arise.~~

~~Members of the Audit Committee must be fully aware of the statutory definitions of direct and interest interests which may give rise to a conflict of interest. These are specifically set out in sections 77A, 77B, 78, 78A, 78C and 78D of the Act.~~

~~Each independent member of the Committee is required to lodge a declaration of interest form on a bi-annual basis and declare any interest at the commencement of each meeting and prior to the consideration of the item at the meeting.~~

~~Failure to comply with the provisions of the Act with regard to conflicts of interest may result in the member's appointment being terminated.~~

## 9. Reporting

The Audit Committee shall after every meeting forward the minutes of that meeting, containing its recommendations, to the next Ordinary Meeting of Council.

The Melton City Council Annual Report will contain information on Audit Committee members, number of meetings held, attendance record, audit processes and results of works completed by the Internal and External Auditor.

The Audit Committee shall provide advice and report to Council on any matters of significance as determined by the Audit Committee.

~~The Chairperson will prepare a report to Council through the Chief Executive Officer on the Committee's activities twice per annum. One of these reports will be prepared after the meeting at which the annual financial report and the annual performance statement have been considered and recommended to Council for adoption, such report indicating how the Committee has discharged its responsibilities as set out in this Charter for the previous year.~~

The Audit Committee Chairperson shall attend an annual Assembly of Councillors meeting to:

- ~~Recommend approval of the Internal Audit Program for the coming year and~~
- ~~Summarise the activities of the Audit Committee during the previous financial year.~~

~~For increased independence, the Audit Committee Chairperson has the authority to have a report placed on the agenda of any Council meeting.~~

The Audit Committee ~~Terms of Reference~~ Charter and details of its members will be published on Council's website.

## 10. Confidentiality

~~All Committee members are expected to be aware of their responsibilities with regard to the confidentiality of information about Council's affairs pursuant to Section 77 of the Act. Failure to comply with the provisions of the Act with regard to confidentiality may result in the member's appointment being terminated.~~

## 10.1. Duties and Responsibilities

~~The primary responsibility of the Audit committee is to assist Council to fulfil its responsibilities in relation to the Council's accounting policies, risk management, internal control systems, internal audit function and financial reporting practices.~~

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The ~~responsibilities~~~~duties~~ of the ~~Audit~~ Committee include:

#### A. External Audit

The ~~Audit~~ Committee will:

1. Review the External Auditor's proposed audit scope and approach to be applied each year in light of Council's present circumstances and changes in regulatory and other requirements.
2. Review with the External Auditor Council's draft annual financial statements focusing on:
  - ~~Accounting policies and Approved Accounting Standards;~~
    - Changes to accounting policies and Approved Accounting Standards;
    - Significant adjustments to the financial statements (if any) arising from the audit process;
    - Compliance with accounting standards and other reporting requirements of financial and non-financial information; and
    - Significant variances with explanations from prior years.
3. In conjunction with the External Auditor, review Council's draft Performance Statement and consider the results in the context of the quarterly reports received throughout the year challenging any unusual or unexpected results;
4. Discuss and review with the external auditor issues arising from the audit including all Management Letters issued by the auditor for completeness and appropriateness;
5. Ensure findings and recommendations made by the external auditor and ~~management's~~ ~~proposed responses~~ are received, discussed and appropriately acted upon;
6. Meet separately with the external auditor to discuss any matters that the Committee or external auditor believe should be discussed privately. Ensure the external auditor has access to the Committee Chairperson when required;
7. Consider the independence of the external auditor in the context of any other services provided to Council. It is proposed that the external auditors would not provide services other than external audit functions.
8. Review on an annual basis the performance of the external auditor.

#### B. Internal Audit

The ~~Audit~~ Committee will

1. Review the level of resources allocated to internal audit and the scope of its authority.
2. Review the strategic three year and annual plan of the Internal Auditor to ensure that it takes into consideration the risk profile of Council.
3. Review the scope of the internal audit plan and the effectiveness of the function, evaluating whether the plan addresses the following issues:
  - Effectiveness of internal controls over significant areas of risk, including non-financial management control systems;
  - Effectiveness of internal controls over key processes relating to revenue, expenditure, assets and liabilities;
  - Efficiency and effectiveness of significant Council programmes; and
  - Compliance with legislation, policies, best practice guidelines and contractual arrangements.

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4. Receive, review and recommend approval or otherwise of the scope of work for each proposed audit prior to the audit being undertaken;
5. Ensure the significant findings and recommendations made by the Internal Auditor, and management's proposed responses are received, discussed and appropriately acted upon;
6. Review the appropriateness of special internal audit assignments by internal audit at the request of Council or Chief Executive Officer;
7. Consider the independence of the Internal Auditor in the context of any other services provided to Council;
8. Monitor the effectiveness of the internal audit function on an ongoing basis;
9. Ensure there are no unjustified restrictions or limitations placed on the Internal Auditor;
10. Meet with the Internal Auditor annually or as required to consider any matters that the **Audit** Committee or Internal Auditor should discuss privately; and
11. Review on an annual basis the performance of the Internal Auditor, and where performance is not considered satisfactory, discuss with Council and management any proposal to undertake a tender process for the appointment of a new Internal Auditor.
12. Through the Committee Chairperson, be party to the process of appointment of the Internal Auditor.

**C. Financial and Performance Reporting**The **Audit** Committee will:

1. Review Council's financial position, via the receipt of Council's Quarterly Financial Management reports ~~or the monthly financial report whichever is more current~~ and report to Council on any material issues which may require action;
2. At least annually review changes to the Local Government Performance Reporting Framework and understand the impact of those changes on Council's performance indicators;
3. Review significant accounting and reporting issues including complex or unusual transactions and highly judgemental areas, and recent professional and regulatory pronouncements and understand their impact on financial reports;
4. Review the annual financial statements prior to their approval by Council and determine whether they are complete and consistent with the information known to the Committee members and assess whether the financial statements reflect appropriate accounting policies and comply with all relevant standards and regulatory requirements; and
5. Review with management and the external auditors all matters required to be communicated to the **Audit** Committee under the Australian Auditing Standards;
6. Monitor the progress of any litigation, claim or contingency which could have a material effect on Council's financial position or operating result; and
7. Recommend to Council the adoption of the Annual Financial Statements incorporating the Annual Performance Statements to Council. Review any significant changes and the reasons for the changes that may arise subsequent to such recommendation but before the Statements are signed.

**D. Internal Control Environment**

1. Review the adequacy and effectiveness of key policies, systems and controls for providing a sound internal control environment. This should be done on a rotational basis over a three to four year period;

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~~2. Determine whether systems and controls are reviewed regularly and updated where required;~~

~~3. Monitor significant changes to systems and controls to assess whether those changes significantly impact Council's risk profile;~~

~~4. Ensure that a programme is in place to test compliance with systems and controls;~~

~~5. Assess whether the control environment is consistent with Council's Governance Principles.~~

**D. Ethical and Statutory Compliance**

The Audit Committee will:

~~1. Consider the effectiveness of the systems and processes for monitoring compliance with legislation and regulations;~~

~~2. Obtain regular updates from management about compliance and non-compliance matters of material significance pertaining to ethical, statutory, related party and legal issues; and~~

~~3. Keep informed of the findings of any examination by regulatory agencies and monitor managements response to such findings.~~

**E. Risk Management**

The Audit Committee will:

1. Monitor the risk exposure of Council by determining if management has appropriate risk management processes and adequate management information systems;

2. Review Council's Risk Management Policy and Framework and risk profile;

3. Monitor the process of review of Council's risk profile to ensure that material risks are dealt with appropriately;

4. Receive status reports on a regular basis ~~status report~~ of the risk register and actions being taken to manage identified risks;

~~4.5. Review the insurance programme annually prior to renewal;~~

5.6. Monitor the progress of any significant land / or material lawsuits facing the Council; and

6.7. Monitor the effectiveness of Council's business continuity processes and practices.

**F. Fraud Prevention Systems and Controls and Compliance**

The Audit Committee will:

1. Monitor the effectiveness of fraud prevention policies throughout the organisation;

2. Identify and refer specific projects or investigations deemed necessary through the Chief Executive Officer, the Internal Auditor and the Council;

3. ~~Consider~~ Review reports in relation to any subsequent investigation, including the investigation of any suspected cases of fraud.

4. Review internal controls over revenue, expenditure, assets and liability processes; and

5. Review internal controls over significant areas of risk including non-financial management control systems;

~~6. Receive status reports of occurrences of fraud (if any). Review reports by management about the actions taken by Council to report such matters to the appropriate integrity bodies.~~

**G. Other Responsibilities Compliance Management**



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**The Audit Committee will:**

1. Review the systems and processes implemented by Council for monitoring compliance with relevant legislation and regulations and the results of management's follow up of any instances of non-compliance;
2. Review the processes for communicating Council's Employee Code of Conduct to employees and contractors and for monitoring compliance with the Code;
3. Obtain briefings on any significant compliance matters; and
4. Receive reports from management on the findings of any examinations by regulatory or integrity agencies (whether related to investigations at Council or other agencies), such as the Ombudsman, IBAC, Victoria Government Inspectorate, etc. and monitor Council's responses.
1. Consider the findings and recommendations of relevant audits undertaken by the Victorian Auditor-General's Office (VAGO), the Victorian Ombudsman, Independent Broad-based Anti-corruption Commission (IBAC) and other agencies and to ensure Council considers the relevant recommendations.
2. Review and consider quarterly performance reports based on Local Government Victoria's Performance Reporting Framework;
3. Enquire as to the internal control framework and level of assurance received around the accuracy and completeness of the quarterly performance information reported;
4. Perform other activities related to this Terms of Reference as requested by Council; and
5. Undertake a self-assessment of its performance against the Terms of Reference on an annual basis;

**112. Review of the Audit Committee Terms of Reference Charter**

The Audit Committee will review the Audit Committee Terms of Reference Charter at least once every three years and recommend changes to Council for approval.

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**Appendix A****Committee Member Regulatory Obligations****Guidance to Members**

| <b>LGA Section</b>   | <b>LGA Requirement</b>  |
|--|---|
| <b>Misuse of Position</b>  |   |
| 123(1)   | A Committee member must not intentionally misuse their position to: <ul style="list-style-type: none"> <li>a) Gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or</li> <li>b) Cause, or attempt to cause, detriment to the Council or another person</li> </ul>  |
| 123(3)   | Circumstances involving misuse of a position by a member of the Committee include: <ul style="list-style-type: none"> <li>a) Making improper use of information acquired as a result of being a member of the Committee; or</li> <li>b) Disclosing information that is confidential information; or</li> <li>c) Directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or</li> <li>d) Exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or</li> <li>e) Using public funds or resources in a manner that is improper or unauthorised; or</li> <li>f) Participating in a decision on a matter in which the member has a conflict of interest.</li> </ul> |
| <b>Confidential Information</b>  |   |
| 125  | A member of the Committee must not intentionally or recklessly disclose information that the member knows, or should reasonably know, is confidential information. There are some exemptions to this requirement, the key one being that if the information disclosed by the member has been determined by Council to be publicly available.  |
| <b>Conflicts of Interest</b>   |   |
| 126  | A member of the Committee has a conflict of interest if the member has: <ul style="list-style-type: none"> <li>a) A general conflict of interest as described in Section 127; or</li> <li>b) A material conflict of interest as described in Section 128.</li> </ul>  |
| 127  | A member of the Committee has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the members private interests could result in that member acting in a manner that is contrary to their public duty as a member of the Committee.   |
| 128  | A member of the Committee has a material conflict of interest in a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.   |
| <p style="text-align: center;"><b>Please Note</b></p> <p><i>The above guidance is not verbatim from the Act and does not include all details as explained in Part 6, Division 1 of the Act. For a full understanding of the requirements of the Act in relation to the matters summarised above, members are expected to make themselves fully aware of the requirements of the Act.</i></p> |   |

ABC Council  
Audit and Risk Committee  
Charter

DRAFT

Date of Approval:

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ABC Council – Audit & Risk Committee Charter

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- A. Committee Member Regulatory Obligations – Guidance to Members

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## ABC Council – Audit &amp; Risk Committee Charter

**1. Purpose**

The ABC Council has established an Audit & Risk Committee (the Committee) pursuant to Section 53 of the Local Government Act 2020 (the Act) to support Council in discharging its oversight responsibilities related to financial and performance reporting, risk management, fraud prevention systems and control, maintenance of a sound internal control environment, assurance activities including internal and external audit and Council's performance with regard to compliance with its policies and legislative and regulatory requirements. It acts in this capacity by monitoring, reviewing, endorsing and advising on the above matters as set out in this Charter. This Charter has been developed in accordance with Section 54 of the Act.

The appointment of independent members to the Committee as outlined in this Charter enables the Committee to provide advice to Council on matters related to its responsibilities based on broader skills and experience than might otherwise be the case and in so doing bring additional benefits to Council.

The Committee has no executive authority and no delegated financial responsibilities and is therefore independent of management.

**Guiding Commentary**

*Whilst the Act requires that Councils establish an Audit & Risk Committee, the key driver for doing so should be to support Council to discharge its responsibilities in complex areas where specialist skills and experience need to be brought to bear.*

**2. Authority**

The Committee is directly responsible to Council for discharging its responsibilities as set out in this Charter. The Committee has no delegated authority from Council unless specifically provided by Council from time to time and any such authority shall be temporary and may only relate to specific matters as directed by Council.

The Committee has the authority to:

- Endorse key documents and reports that must be approved by Council, including annual financial reports, annual performance statements, new or revised policies and other documents that assist in maintaining a strong internal control environment;
- Approve internal and external audit plans, including internal audit plans with an outlook of greater than one year;
- Provide advice and make recommendations to Council on matters within its areas of responsibility;
- Retain counsel of relevant independent experts where it considers that is necessary in order to execute its responsibilities, subject to prior agreement with the Chief Executive Officer;
- Seek any relevant information it requires from Council, Council Officers (who are expected to co-operate with the Committee's requests) and external parties;
- Meet with Council Officers, internal and external auditors and other parties as required to discharge its responsibilities.

The Committee will, through the Chief Executive Officer, have access to appropriate management support to enable it to discharge its responsibilities effectively.

**Guiding Commentary**

*1) Approval of Internal Audit Plans*

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*There is divergence in practice amongst Committees as to whether Committees can/should approve internal audit plans. Often Councils take the view that as the Committee undertakes the detailed review of such plans and has the skill sets in its membership, the Committee should approve the plans. Alternatively, some Councils believe that Council itself should be the approval forum and hence require the Committee to review and endorse internal audit plans for approval by Council. This model takes the position that the Committee will approve the internal audit plans. Both approaches are acceptable so long as Council has made a decision as to its preferred approach.*

*If the Committee is considering a material increase in the size of the internal audit plan and hence seeking an increase in the budget spend for internal audit activity, it is recommended that the internal audit plan be approved by Council.*

**3. Membership and Tenure**

The Committee will consist of five members appointed by Council, three of whom must be independent members. Council employees cannot be members of the Committee. Details of membership and tenure are set out below:

*Independent Members*

- 3.1 Independent members will be appointed for three year terms;
- 3.2 Independent members may be reappointed for two additional three-year terms subject to satisfactory performance, that is, a maximum of nine years;
- 3.3 Independent members must collectively have expertise in financial management and reporting and risk management and also experience in public sector management;
- 3.4 Independent members terms of appointment will be set so that as far as possible only one member retires at a time in order to minimise the loss of knowledge of Council's business that may occur on change of membership;
- 3.5 Remuneration will be paid to independent members as approved by Council from time to time;

*Councillor Members*

- 3.6 Councillor members will be appointed to the Committee by Council annually;
- 3.7 Should an appointed Councillor member not be able to attend a Committee meeting, Council can appoint an alternate member to act in such circumstances, either on a meeting by meeting basis or for the entire year;

*Chairperson*

- 3.8 The Chairperson of the Committee must be an independent member;
- 3.9 Council will appoint the Chairperson of the Committee;
- 3.10 If the Chairperson is unable to attend a meeting, the members in attendance at the meeting will appoint a Chairperson for that meeting from among the attending members;

*Quorum for Meetings*

- 3.11 A quorum shall comprise at least one Councillor member and two independent members;

**Guiding Commentary**2) *Committee Membership*

*Whilst a membership of five is generally regarded as the optimum for a Committee, there is flexibility with regard to membership numbers. The critical point is to ensure that the*

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*independent members are the majority and as long as that is the case Councils can vary the total number of members to suit individual circumstances.*

*The key considerations are to ensure that the Committee has the right skill mix amongst its independent members, has an appropriate level of Councillor representation and is the right size to ensure that the Committee can conduct its business efficiently and effectively.*

*Councils should decide on the number of members based on the above criteria. Options and variations which may also be considered are noted below:*

- *Membership of seven with four independent and three Councillor members or membership of six with four independent members. If Council has identified specific skill needs to enable its Committee to fully consider issues that might be put before it, increasing the size of the Committee to expand its skill sets may be worthwhile. Considerations with these models will be the challenges in identifying four independent members with the appropriate skill sets and the additional work load for Councillors that may flow from having three Councillors on the Committee. The larger size of the Committee will necessarily require a skilled Chairperson to manage the additional discussion that will flow from such a model;*
- *Membership of three with two independent and one Councillor members. This is generally not a preferred option due to the added pressures that a smaller Committee requires of sitting members, the potential skill gaps that could flow from a smaller number of members and the need for 100% attendance at every meeting to meet quorum requirements;*
- *Councils can appoint alternate Councillor members who can step in to attend Committee meetings when a nominated member is not able to attend. This option is often useful where the Mayor of the day is a member of the Committee and has competing Mayoral duties.*

*The Act applies no restrictions on the number of Councillors who may attend Committee meetings. The restrictions in the Act apply only to the number of voting members. This means that Councillors who are not members of the Committee but who have a keen interest in the business of the Committee and wish to contribute to the discussion may attend meetings but cannot vote on resolutions.*

3) *Terms of Appointment*

*Terms of appointment for independent members are not specified in the Act and tend to vary. The key consideration in setting terms is to ensure that the Committee has access to relevant skills and experience that are refreshed as required. Most Committees appoint independent members for two or three terms of three years each (that is, six or nine years), and in most circumstances that will meet the above criteria. Continuous service on a Committee for longer than nine years is not recommended. Periods of less than six years equally are not recommended unless there are performance concerns.*

4) *Appointment of Chairperson*

*Council has two options as to how it appoints the Chairperson of the Committee as follows:*

- a) Council can appoint the Chairperson; or*
- b) Council can allow the Committee to elect its own Chairperson.*

*Generally, if Council wishes to retain control of how it wants the Committee to function, it should retain the power to appoint the Chairperson. In practice both options can work well.*

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**4. Meetings**

The Committee will meet at least four times a year, with authority to convene additional meetings, as circumstances require;

- 4.1 A schedule of meetings will be developed annually and agreed by members;
- 4.2 All Committee members are expected to attend each meeting in person, although in special circumstances members can attend through electronic means;
- 4.3 The Committee will invite members of Council's management team, the internal and external auditors and other personnel as appropriate to attend meetings. The Chief Executive Officer and the Director Corporate Services and Manager Finance (or equivalents) will attend all meetings, except for confidential matters;
- 4.4 Committee members and the internal and external auditors can request the Chairperson to convene additional meetings if they feel that is justified to address unexpected matters that may have arisen;
- 4.5 Meeting agendas and appropriate briefing materials will be provided to members at least one week before each meeting;
- 4.6 Minutes will be prepared for all meetings;

**Guiding Commentary**

5) *Number of Meetings*

*There are no legislative requirements regarding the number of meetings a Committee must hold. The key determinate of the number of meetings required is the Committee's capacity to effectively discharge its responsibilities set out in its Charter on a timely basis. In broad terms, four meetings per annum held approximately every quarter will usually allow the Committee to fully discharge its responsibilities*

*Generally, most Committees schedule four meetings per annum although several do schedule five meetings. Where five meetings are scheduled, the fifth meeting is generally devoted to dealing with the various requirements related to the review and endorsement of the annual financial report and the annual performance statement and the outcomes of the audit of those reports.*

*Other circumstances that may result in additional meetings of a Committee are where Council asks the Committee to consider a special issue that cannot be held over until a scheduled meeting or where an auditor or a member of the Committee asks for an additional meeting to discuss significant matters that again cannot be held over until the next scheduled meeting.*

**5. Responsibilities**

The Committee will carry out the following responsibilities.

**Financial and Performance Reporting**

- 5.1 At least annually review significant accounting and external reporting issues, including complex or unusual transactions, transactions and balances in areas where judgement is required, changes to accounting policies, recent accounting, professional and regulatory pronouncements and legislative changes, and understand their effect on the annual financial report and the audit thereof;



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- 5.2 At least annually review changes to the Local Government Performance Reporting Framework and understand the impact of those changes on Council's performance indicators;
- 5.3 Review the annual financial report and annual performance statement and consider whether they are complete, consistent with information known to Committee members, reflect appropriate accounting treatments and adequately disclose Council's financial performance and position;
- 5.4 Review with management and the external auditors the results of the audit, including any difficulties encountered by the auditors and how they were resolved;
- 5.5 Recommend the adoption of the annual financial report and annual performance statement to Council; and
- 5.6 Review the appropriateness of the format and content of periodic management financial reports and performance statements to Council as required.

## Internal Control Environment

- 5.7 Review the adequacy and effectiveness of key policies, systems and controls for providing a sound internal control environment. This should be done on a rotational basis over a three to four year period;
- 5.8 Determine whether systems and controls are reviewed regularly and updated where required;
- 5.9 Monitor significant changes to systems and controls to assess whether those changes significantly impact Council's risk profile;
- 5.10 Ensure that a programme is in place to test compliance with systems and controls;
- 5.11 Assess whether the control environment is consistent with Council's Governance Principles.

**Guiding Commentary**

## 6) Internal Control Environment

*It is widely recognised in both the business and public sectors that a sound and effective internal control environment is crucial to every business to enable them to achieve their objectives. Hence it is not surprising that Audit & Risk Committees are expected to monitor the health of the internal control environment.*

*The most widely recognised model of the Internal Control Framework is the one developed in 2013 by the Committee of Sponsoring Organisations of the Treadway Commission (COSO). It is recognised as one of the leading frameworks for designing, implementing and applying internal controls and in assessing the effectiveness of those controls. The COSO model is based on the view that there are five basic components of the Internal Control Framework as follows:*

- Control environment;
- Risk assessment;
- Control activities;
- Information and communication;
- Monitoring

*Internal controls help an organisation to achieve its objectives. By identifying risks that might prevent those goals from being achieved, it is possible to identify the effective controls needed.*

*This Charter gives the Committee the responsibility for overseeing and monitoring the above five elements. This section of the Charter deals with monitoring the internal control environment.*

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7) *Monitoring the Internal Control Environment*

*The intent of the new Act is to establish a set of principles (Governance Principles) that are the foundation of how Council conducts its affairs and interacts with other parties, such as residents, ratepayers, suppliers, contractors, other levels of government, etc. In this context, when developing the regime that monitors how well Council is adhering to these principles, the Committee will need to identify the key policies and controls that Council relies on to achieve compliance.*

*Monitoring the internal control environment (ICE) can be a challenging responsibility for Committees. The two key elements of the Committee's responsibility are as follows:*

- *Defining Council's ICE. This can be difficult because the ICE varies from Council to Council. The key question that Committees need to ask when determining what constitutes the ICE is, "What are the key controls that Council relies upon in the course of carrying out its activities to ensure that Council achieves its objectives whilst protecting its assets"?*; and
- *Determining how best to monitor Council's ICE.*

*The ICE includes a range of activities undertaken by Council including approval, recording, reporting and communication elements. Key control elements that are likely to be part of the ICE include:*

*Governance*

- *Council approved Delegations of Authority;*
- *Councillor and Employee Codes of Conduct;*
- *Human Resource Management Policies (from recruitment and on-boarding to departure);*
- *Occupational Health & Safety Policies;*
- *Data privacy Policies;*
- *Child safe Policies;*
- *Data Governance and Security Policies;*
- *Protected Disclosure Policies;*

*Finance & Accounting*

- *Banking and Investment Policies;*
- *Asset Accounting Policies;*
- *Procurement Policies for all methods of procurement;*
- *Purchasing Card Policies;*
- *Debt Management/Borrowing Policies;*
- *Rates Management Policies;*
- *Accounts Receivable Management Policies;*
- *High Level Budget Development, Management and Reporting activities;*
- *Period End Reconciliations for significant accounts in the finance system;*
- *Period End Financial Reports including budget variance analysis;*

*Risk Management*

- *Risk Management Policies and Framework*
- *Risk Appetite Policy;*
- *Fraud Prevention Policies, Fraud Control Plans and Fraud Risk Assessments;*
- *Business Continuity and Disaster Recovery Plans and Testing;*

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- IT Security and Penetration/Vulnerability Assessment and Testing;
- Insurance Programmes

*Compliance Management*

- Compliance management programs for both internal (policies) and external (legislation and regulation) elements;
- Payment Card Industry Compliance;
- Gifts, Benefits & Hospitality Policies;
- Management of Non-Compliance Events

*In practice, once the ICE has been determined it is not difficult for the Committee to monitor the soundness of the ICE and this is likely to be best done by being documented in the Committee's Annual Work Plan. The key challenge in monitoring these control elements is with Council's management team as reporting on the performance of these controls can require significant resources. Generally, these matters can be included in the Committee's annual work plan on the basis that they are reviewed at least once over a rotational three to four-year cycle.*

8) *Impact of Governing Principles*

*The new Act requires that the Committee's functions and responsibilities include the monitoring of compliance of Council's policies and procedures with the new overarching Governance Principles now required to be established by Councils in accordance with Section 60 of the Act.*

*Once the Governance Principles have been established by Council, the Committee will need to establish a programme that enables the Committee to monitor compliance with the Governance Principles. As the Governance Principles are likely to be broad in order to apply to the whole of Council's activities, the Committee will need to consider what its monitoring activities should be and how frequently it considers compliance. Once articulated, the monitoring activities can be included in the Committee's annual work plan as mentioned above.*

*If the Committee has done its work in having a clear understanding of its ICE as discussed above, it should not be a difficult or time consuming exercise to align the ICE with the Governing Principles.*

**Risk Management**

- 5.12 Review annually the effectiveness of Council's risk management framework;
- 5.13 Review Council's risk appetite statement and the degree of alignment with Council's risk profile;
- 5.14 Review Council's risk profile and the changes occurring in the profile from meeting to meeting;
- 5.15 Review Council's treatment plans for significant risks, including the timeliness of mitigating actions and progress against those plans;
- 5.16 Review the insurance programme annually prior to renewal; and
- 5.17 Review the approach to business continuity planning arrangements, including whether business continuity and disaster recovery plans have been regularly updated and tested.

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**Fraud Prevention Systems and Controls**

- 5.18 Review Council's Fraud Prevention policies and controls, including the Fraud Control Plan and fraud awareness programmes at least every two years;
- 5.19 Receive reports from management about actual or suspected instances of fraud or corruption including analysis of the underlying control failures and action taken to address each event; and
- 5.20 Review reports by management about the actions taken by Council to report such matters to the appropriate integrity bodies.

**Internal Audit**

- 5.21 Review the Internal Audit Charter regularly to determine that it provides an appropriate functional and organisational framework to enable Council's internal audit function to operate effectively and without limitations;
- 5.22 Review and approve the three year strategic internal audit plan, the annual internal audit plan and any significant changes to them;
- 5.23 Review progress on delivery of annual internal audit plan;
- 5.24 Review and approve proposed scopes for each review in the annual internal audit plan;
- 5.25 Review reports on internal audit reviews, including recommendations for improvement arising from those reviews;
- 5.26 Meet with the leader of the internal audit function at least annually in the absence of management;
- 5.27 Monitor action by management on internal audit findings and recommendations;
- 5.28 Review the effectiveness of the internal audit function and ensure that it has appropriate authority within Council and has no unjustified limitations on its work;
- 5.29 Ensure that the Committee is aware of and appropriately represented with regard to any proposed changes to the appointment of the internal audit service provider, including being appropriately briefed on the need for any proposed change;
- 5.30 Recommend to Council, if necessary, the termination of the internal audit contractor.

**Guiding Commentary**9) *Committee Involvement in Internal Audit Service Provider Appointments*

*Council's internal audit function should be established with an appropriate Charter to protect its independence so that it can complete its work without limitation or constraint. Internal Audit Charters are not difficult to establish and there are many good examples available from a multiplicity of professional sources. It is appropriate, given the nature and content of such charters, that the Committee approve the Charter. Committees should as far as practically possible adopt a charter that aligns with available good practice examples. Heavy tailoring of available charters is not recommended. It is unlikely that once established, such charters will need major change unless there are significant changes in Council's expectations of internal audit.*

*It is important that the Committee is appropriately involved in consideration of any proposed change to the internal audit service provider. Such involvement should always begin before any decisions have been made about whether or not to make such a change. The Committee's primary focus with regard to internal audit service provider appointments must necessarily be about ensuring that the internal audit function is fearless and independent, that it has the capability to deliver the internal audit programme effectively on a timely basis, can engage with management in a considered and balanced way in undertaking reviews and can engage effectively with the Committee at meetings.*

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*The Committee does not need to be directly involved in a procurement panel for the appointment of an internal audit service provider in order to satisfy itself that the above attributes are achieved, but it can be involved and a member of the Committee may be asked to chair the panel although, again, that is not essential.*

**External Audit**

- 5.31 Annually review and approve the external audit scope and plan proposed by the external auditor;
- 5.32 Discuss with the external auditor any audit issues encountered in the normal course of audit work, including any restriction on scope of work or access to information;
- 5.33 Ensure that significant findings and recommendations made by the external auditor, and management's responses to them, are appropriate and are acted upon in a timely manner;
- 5.34 Review the effectiveness of the external audit function and ensure that the Victorian Auditor General's Office (VAGO) is aware of the Committee's views;
- 5.35 Consider the findings and recommendations of any relevant performance audits undertaken by VAGO and monitor Council's responses to them; and
- 5.36 Meet with the external auditor at least annually in the absence of management.

**Guiding Commentary**10) *Assessing External Auditor Performance*

*Some Committees see limited value in assessing the performance of external audit because there they have no way of influencing the appointment process due to the Victorian Auditor-General being a permanent appointment for all Councils. However, VAGO is interested in their performance and is likely to receive constructive feedback positively. This Charter takes the view that the Committee has a role to play in providing insightful feedback to VAGO on external audit performance whether VAGO or an appointed agent is responsible for delivering the external audit.*

**Compliance Management**

- 5.37 Review the systems and processes implemented by Council for monitoring compliance with relevant legislation and regulations and the results of management's follow up of any instances of non-compliance;
- 5.38 Review the processes for communicating Council's Employee Code of Conduct to employees and contractors and for monitoring compliance with the Code;
- 5.39 Obtain briefings on any significant compliance matters; and
- 5.40 Receive reports from management on the findings of any examinations by regulatory or integrity agencies (whether related to investigations at Council or other agencies), such as the Ombudsman, IBAC, Victoria Government Inspectorate, etc. and monitor Council's responses.

**Guiding Commentary**11) *Compliance Management*

*Compliance management relates to Council's responsibilities for compliance beyond the internal control environment – those are dealt with separately above in the Charter. Because of the breadth of Council service provision there is a vast amount of legislation and regulation that Council must be aware of and comply with. This section of the Charter deals with the Committee's role in monitoring Council's compliance performance in these areas. Recent examples of emerging compliance risk are the child safe standards, private swimming pool*

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*registration, industrial manslaughter, disclosure of gifts, benefits and hospitality, etc. There are many other examples. The risks to Council in not being aware of these obligations and hence not managing them appropriately can be significant. The Committee should view these obligations through a risk lens and determine whether Council has appropriate controls in place to ensure these exposures are well managed and that significant compliance risk has been appropriately mitigated.*

## 12) Compliance Specifics

*Many Committees like to include review/oversight of specific areas in their programme of activities, particularly where there can be significant reputational risk. Examples of this include:*

- *Review of Councillor and Chief Executive Officer expense reimbursement claims;*
- *Review of Councillor and Chief Executive Officer business travel expenses;*
- *Review of the Gifts, Benefits and Hospitality register*
- *Review of the Conflict of Interests and Declarations of Interest registers*
- *Review of Council approved credit/purchasing/fuel card usage*

*Committee activity in monitoring these and other areas of compliance will vary depending on the individual circumstances for each Council. For this reason, it is recommended that such activity be included in the Committee's Annual Work Plan under the compliance or internal control environment areas.*

## 6. Reporting to Council

- 6.1 Minutes of Committee meetings will be provided to Council at the first available opportunity after clearance by the Committee Chairperson following each Committee meeting;
- 6.2 The Chairperson will prepare a report to Council through the Chief Executive Officer on the Committee's activities twice per annum. One of these reports will be prepared after the meeting at which the annual financial report and the annual performance statement have been considered and recommended to Council for adoption, such report indicating how the Committee has discharged its responsibilities as set out in this Charter for the previous year.

**Guiding Commentary**

## 13) Minutes of Meetings

*Traditionally Committees have provided Council with copies of minutes of meetings after review by the Chairperson and many Committees have also provided reports to Council on Committee activities from time to time. The requirements in the Act maintain the practice of providing minutes of meetings and add a separate requirement that Committees report twice per annum on their activities. This will generally mean that Committees will report to Council every second meeting.*

## 14) Reports to Council

*This model Charter takes the position that minutes of Committee meetings should always be provided to Council as required by the Act and that there should also be six monthly activity reports to Council. The key report will be the one prepared at the financial year end after the Committee has discharged its responsibilities to Council with regard to the annual financial report and the annual performance statement. This report, usually prepared in August or September each year, can be used by Council for inclusion in*

MINUTES OF THE POLICY REVIEW PANEL

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Item 6.4 Audit and Risk Committee Charter  
Appendix 2 LGV Template Charter - undated

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**ABC Council – Audit & Risk Committee Charter**

*Council's Annual Report and in fact many Councils have followed this practice for many years.*

*It makes sense that the second report by the Committee now mandated by the new Act should be prepared in the February/March period covering activities for the other six months of the year.*

*Councils may find it useful if the August/September activity report covers the full year of activities so that it can be used for inclusion in Council's Annual Report as noted above.*

*In terms of reporting to Council, there are no specified requirements for content of such reports other than that they be a report on the Committee's activities, but it would make sense that they are structured around the Committee's responsibilities as set out in Section 5 above. In terms of frequency, Councils may decide that they have a preference for such a report after every meeting.*

*Committees should ensure that reports to Council are concise and cover only the material matters they have considered. Good practice would be a report of two to three pages as a maximum.*

**7. Performance Evaluation**

The Committee shall undertake a process to evaluate its performance annually and report the outcomes of the evaluation process to Council through the Chief Executive Officer, including recommendations for any opportunities for improvement. The evaluation will include feedback from both Committee members and senior officers who have regular interactions with the Committee.

**8. Committee Member Regulatory Obligations**

Committee members are expected to be aware of their obligations under Section 53 of the Act. These obligations relate to misuse of position as a member of the Committee (Section 123), confidential information (Section 125) and conflict of interest (Sections 126 to 131). Details about these obligations are included in Appendix A to this Charter.

**9. Review of Charter**

The Committee shall review and assess the adequacy of the Charter every two years or earlier if necessary and submit requests to Council through the Chief Executive Officer for revisions and improvements for approval.

## MINUTES OF THE POLICY REVIEW PANEL

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Item 6.4 Audit and Risk Committee Charter

Appendix 2 LGV Template Charter - undated

## ABC Council – Audit &amp; Risk Committee Charter

**Appendix A**  
**Committee Member Regulatory Obligations**

**Guidance to Members**

| LGA Section  | LGA Requirement   |
|--|---|
| <b>Misuse of Position</b>  |   |
| 123(1)   | A Committee member must not intentionally misuse their position to: <ul style="list-style-type: none"> <li>a) Gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or</li> <li>b) Cause, or attempt to cause, detriment to the Council or another person</li> </ul>  |
| 123(3)   | Circumstances involving misuse of a position by a member of the Committee include: <ul style="list-style-type: none"> <li>a) Making improper use of information acquired as a result of being a member of the Committee; or</li> <li>b) Disclosing information that is confidential information; or</li> <li>c) Directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or</li> <li>d) Exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or</li> <li>e) Using public funds or resources in a manner that is improper or unauthorised; or</li> <li>f) Participating in a decision on a matter in which the member has a conflict of interest.</li> </ul> |
| <b>Confidential Information</b>  |   |
| 125  | A member of the Committee must not intentionally or recklessly disclose information that the member knows, or should reasonably know, is confidential information. There are some exemptions to this requirement, the key one being that if the information disclosed by the member has been determined by Council to be publicly available.  |
| <b>Conflicts of Interest</b>   |   |
| 126  | A member of the Committee has a conflict of interest if the member has: <ul style="list-style-type: none"> <li>a) A general conflict of interest as described in Section 127; or</li> <li>b) A material conflict of interest as described in Section 128.</li> </ul>  |
| 127  | A member of the Committee has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the members private interests could result in that member acting in a manner that is contrary to their public duty as a member of the Committee.   |
| 128  | A member of the Committee has a material conflict of interest in a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.   |
| <p><b>Please Note</b></p> <p><i>The above guidance is not verbatim from the Act and does not include all details as explained in Part 6, Division 1 of the Act. For a full understanding of the requirements of the Act in relation to the matters summarised above, members are expected to make themselves fully aware of the requirements of the Act.</i></p> |   |



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**7. GENERAL BUSINESS**

Nil.

**8. CONFIDENTIAL BUSINESS**

Nil.

**9. NEXT MEETING**

24 August 2020

**10. CLOSE OF BUSINESS**

The meeting closed at 3:40pm.

Confirmed

Dated this

.....CHAIRPERSON