



**TERMS OF REFERENCE
OF THE
COUNCIL SECTION 41 COMMITTEE
FOR THE
QUORN MARKETS
REFERENCE COMMITTEE**

1. Background

Section 41 of the *Local Government Act 1999* provides that:

- (1) *A council may establish committees.*
- (2) *A committee may, according to a determination of the council (and subject to the operation of this Act), be established:*
 - (a) *to assist the council in the performance of its functions;*
 - (b) *to inquire into and report to the council on matters within the ambit of the council's responsibilities;*
 - (c) *to provide advice to the council;*
 - (d) *to exercise, perform or discharge delegated powers, functions or duties.*
- (3) *The membership of a committee will be determined by the council and may consist of, or include, persons who are not members of the council.*
- (4) *The council must appoint a person as the presiding member of a committee, or make provision for the appointment of a presiding member.*
- (5) *A member of a committee holds office at the pleasure of the council.*
- (6) *The council may appoint the principal member of the council as an ex officio member of a committee (but in such a case the principal member will not be taken to be included in the membership of the committee unless actually present at a meeting of the committee).*
- (7) *A committee may establish a subcommittee to assist it in a matter.*
- (8) *A council must, when establishing a committee, determine the reporting and other accountability requirements that are to apply in relation to the committee.*
- (9) *A committee that is performing a regulatory activity of the council must report to the council on its activities at least quarterly.*
- (10) *The establishment of a committee does not derogate from the power of the council to act in a matter.*
- (11) *No act or proceeding of a council committee is invalid by reason of -*
 - (a) *a vacancy or vacancies in the membership of the committee; or*
 - (b) *a defect in the election or appointment of a member or members of the committee; or*
 - (c) *the fact that the election of a member or members of the committee is subsequently declared void by a court of competent jurisdiction.*
- (12) *No civil liability attaches to a member of a committee for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's or committee's powers, functions or duties.*
- (13) *A liability that would, but for subsection (12), attach to a member of a committee attaches instead to the council.*

2. Policy Position

That pursuant to the provisions of Section 41 of the *Local Government Act 1999* that The Flinders Ranges Council ("the Council") establish a Committee to be known as the Quorn Markets Reference Committee ("the Committee").

3. Role of the Committee

The role of the Committee is for the purpose of assisting in ensuring the smooth operation of the Quorn Markets as a viable community event.

4. Functions of the Committee

The Council has established the Committee for the following purposes:

- 4.1 To manage membership and approve applications for new stallholders for the Quorn Markets.
- 4.2 To assist in the promotion of the markets to attract new stallholders and visitors.
- 4.3 To encourage expansion of the markets into other available / suitable spaces or at events.
- 4.4 To encourage membership of the event beyond the Council district.

The Reference Committee has these specific ongoing operational functions:

- 4.5 Provide an event that will attract people to the region and encourage small hobbyists and business owners promote and sell their products.

5. Membership

5.1 General

Membership of the Committee will consist of:

- One (1) Elected Member
- Chief Executive Officer
- Manager, Governance and Tourism
- Up to five (5) interested community/market members.

All members hold office at the pleasure of the Council.

In addition to Committee members, an Advisor will be appointed by Council at the request of the Committee

Current Members and Adviser are detailed in Schedule 1 to this Terms of Reference document.

5.2 Members Obligations

Members must at all times act with reasonable care and diligence in the performance and discharge of official duties. All members of the Committee will be required to abide by the Council's Statutory Code of Conduct.

A member of the Committee must not, whether within or outside the State, make improper use of his or her position as a member of the Committee to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council, or the Committee.

Members who fail to attend three (3) consecutive meetings of the Committee, without an acceptable reason, cease to be a member of that Committee.

In accordance with the provisions of Section 75 of the *Local Government Act 1999*, the Conflict of Interest and Disclosure of Interest requirements contained within Sections 73 and 74 of the *Local Government Act 1999* apply to all members of the Committee.

Sections 73, 74 and 75 of the *Local Government Act 1999* are provided as Appendix 1 to this Terms of Reference document

5.3 Term of Appointment

The Term of Appointment for members of the Committee is a term expiring at the conclusion of the next general election of the Council held after his or her appointment as a member of the Committee.

5.4 Resignation

A member may resign from membership of the Committee by giving written notice thereof to the Chairperson of the relevant Committee.

The Chairperson of the relevant Committee shall give notice of such resignation to the Chief Executive Officer of the Council.

5.5 Vacancy

A member of the Committee who ceases to be a member / employee shall also cease to be a member of the relevant Committee.

Any vacancy in the membership of the relevant Committee is to be filled as soon as practicable by the respective body who appointed the member who has ceased to be a member of the relevant Committee.

No act or proceeding of the Committee is invalid by reason of a vacancy or vacancies in the membership of the Committee.

5.6 Roles and Responsibilities of Members

The role of a Committee member is to:

- 5.6.1 participate in the deliberations of the Committee, with regard to the policy and business which is before the Committee;
- 5.6.2 be mindful of the objectives and policies of the Council;
- 5.6.3 be aware of Council resources, budgets and strategic plans, and the need for efficiency and effectiveness in the activities for which the Committee have been established;
- 5.6.4 be informed on issues before the Committee, to prepare adequately for meetings and to seek additional information if required;
- 5.6.5 be mindful of the potential for a "Conflict of Interest" to occur through participation on the Committee and to declare such interests as and when they arise;
- 5.6.6 represent the nominating sector, body or organisation honestly and fairly; and
- 5.6.7 observe confidentiality as and when required.

6. Chairperson

6.1 Election and Term of Appointment

The Committee Members at the first meeting following the Term of Appointment set out at Clause 5.3, shall elect from amongst their own members, a

Chairperson to the relevant Committee who shall hold office at the pleasure of the Council.

6.2 Role of the Chairperson

The Chairperson of the relevant Committee does not have executive authority and shall:

- 6.2.1 call all meetings of the Committee;
- 6.2.2 preside at all meetings of the Committee at which he / she is present and preserve order thereat so that the business may be conducted in due form and with propriety;
- 6.2.3 upon confirmation of the minutes, sign them in the presence of the meeting at the foot of the last page and initial each page as a true, accurate and correct record of the proceedings of that meeting;
- 6.2.4 be a media spokesperson for the relevant Committee.

In the event of a Chairperson being absent from a meeting, the members present shall appoint a member who shall preside over that meeting or until the Chairperson is present.

7. Administrative Arrangements

The Chairperson (or his / her delegate) of the relevant Committee shall perform or arrange the performance of Minute Secretary.

7.1 Secretariat Duties

The duties of the Secretariat will be provided by the Committee and shall include:

- 7.1.1 the preparation and distribution of Notices of Meetings and Agendas;
- 7.1.2 providing Notices of Meetings, Agendas, Financial Reports and related documents to members in order to ensure compliance with Section 88 of the Act;
- 7.1.3. ensuring that items on Agendas are described with reasonable particularity and accuracy and are accompanied by copies of reports and other documents to be discussed at a meeting;
- 7.1.4 ensuring the timely distribution of Minutes to members of the relevant Committee and to the Council following receipt from the Minute Secretary;
- 7.1.5 ensuring that Minutes are available for public display within five (5) working days of the next Council meeting held after the last meeting of the relevant Committee;
- 7.1.6 dealing with all correspondence as instructed by the Committee;
- 7.1.7 dealing with all business referred to him / her by the Chairperson;
- 7.1.8 keeping of such records as instructed by the Council or Committee from time to time;
- 7.1.9 carrying out such duties as the Chairperson or the relevant Committee may from time to time arrange.

7.2 Minutes

The Chairperson of the relevant Committee shall ensure that Minutes of the Committee Meetings are kept.

Minutes of the proceedings of all meetings of the Committee shall be forwarded to the members of the Committee and the Council within five (5) working days after the next Ordinary Meeting of the Council at which the minutes are received.

[Section 91 of the Act has been provided as Appendix 2 to this Terms of Reference]

The Minutes of the proceedings of meetings of the Committee shall:

- 7.2.1 record the names of members present at the meeting, and the starting and closing times of the meeting;
- 7.2.2 set out all reports received;
- 7.2.3 record all motions, the names of the mover and seconder, resolutions withdrawn, carried and lost;
- 7.2.4 record all business transacted by the relevant Committee;
- 7.2.5 be confirmed by members of the relevant Committee at its next meeting; and
- 7.2.6 be tabled and received by the Council at the next Ordinary Meeting following receipt.

8. Finance and Financial Reporting

8.1 Funding

All funds provided for the functioning of the Committee are held by the Council.

The Committee may apply for grants for various projects on behalf of Council.

The Committee has neither the power nor the authority to approve expenditure of the Council funds.

9. Meetings

9.1 Ordinary Meetings

The Committee shall meet at least four (4) times per year at a place and time to be determined by the Committee. Committee meetings may be held by tele or video conference.

All meetings of the Committee must be conducted in accordance with the provisions of Section 90 of the Act, a copy of which is included as Appendix 3 to this Terms of Reference document.

Meetings of the Committee must be conducted in a place open to the public.

The Committee may order that the public be excluded from attendance at a meeting where the Committee considers it to be necessary and appropriate to act in a meeting closed to the public, in order to receive, discuss or consider in confidence any information or matter listed in Section 90(3) of the Act.

If an order is made to exclude the public from a meeting, a note must be made in the Minutes of the making of the order and of the grounds on which it was made.

9.2 Observer Status

Observer status may be given by the Committee to a nominee from a body or group with an interest in the objectives of the Committee.

Observer status does not confer voting rights nor the ability to address meetings of the Committee.

Permission to address a meeting of the Committee shall only be by invitation from the Chairperson of the Committee.

9.3 Special Meetings

A Special Meeting of the Committee may be held at any time.

The Chairperson must call a Special Meeting upon the written request of at least three (3) members of the relevant Committee.

9.4 Notice of Meetings

Notice of every meeting of the Committee, including Special Meetings, shall be given in writing at least three (3) clear days prior to such meeting.

The Notice shall contain the date, time and place of the meeting and the business to be transacted thereat and be signed by either the Secretariat or Chairperson.

9.5 Time and Place of Meetings

The Committee may set the time and place of its own meetings taking into account the availability and convenience of the members of the Committee. Meetings may be conducted by tele or video conference.

9.6 Quorum

A quorum for the purpose of all meetings of the Committee shall be ascertained by dividing the total number of members of the Committee for the time being in office by 2, ignoring any fraction resulting from the division, and adding one (e.g. $6 / 2 = 3$, $\rightarrow 3 + 1 = 4$).

No business can be transacted at a meeting unless a quorum is present.

If a quorum is lost because a member cannot participate in a particular matter because of a conflict of interest the matter must be adjourned so that the remainder of the meeting may proceed.

9.7 Proceedings at Meetings

The prevailing Local Government Regulations concerning proceedings at Council meetings shall apply to all meetings of the Committee.

A copy of the *Local Government (Proceedings at Meetings) Regulations 2013* are included as Appendix 4 to this Terms of Reference document.

9.8 Voting

Each member of the Committee (including the Chairperson) or where applicable, their deputy, shall exercise a deliberative vote at meetings of the Committee.

In the event of an equality of votes, the matter lapses.

9.9 Adjournment

The members present at any meeting of the Committee may adjourn such meeting from time to time and from place to place.

10. Risk Management

The Committee shall operate under the risk management principles adopted by the Council and set out in the current Policy and ensure wherever practical all Work Health and Safety principles are applied to reduce the risk of harm or injury to all persons associated the Committee and / or any control strategies.

10.1 Liability of Committee Members

In accordance with Section 41(12) of the Act, no civil liability attaches to a member of the Committee for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's or Committee's powers, functions or duties.

10.2 Dissolution

The Council may at any time dissolve the Committee.

10.3 Interpretation

Any ambiguity or difficulty in the interpretation of this Terms of Reference document shall be referred to the Chief Executive Officer and if needed, Council for direction.

A member of the public having a special need that prevents them from understanding the contents of this Terms of Reference document shall be provided with the Terms of Reference document in a format that suits their needs, at the discretion of the Chief Executive Officer.

11. Public Availability of Terms of Reference

The public may inspect a copy of this Terms of Reference document, without charge, at the office of the Council during normal office hours, and may obtain a copy for a fee fixed by the Council, if any.

Further enquiries in relation to the Terms of Reference document should be directed to the Chief Executive Officer, by telephoning 08 8620 0500 or emailing council@frc.sa.gov.au

12. Review of Terms of Reference

The Council may review this Terms of Reference document from time to time, however it is anticipated that an annual review of the Terms of Reference document will be undertaken.

13. Adoption of Terms of Reference

This Council Terms of Reference document “Council Reference Committee – Quorn Markets”, adopted by The Flinders Ranges Council at its meeting held on Tuesday 17 October 2023.

Review Date	Version Number	Change	Resolution
17 October 2023	1	Adopted	297/2023
20 February 2024	2	Minor Grammar changes, number of community members changed to five (5) and CEO name updated	

14. Schedules

The following schedules form part of this Terms of Reference document:

- Schedule 1 Committee Membership and Adviser

15. Appendices / Attachments

The following appendices / attachments form part of this Terms of Reference document:

- Appendix 1: Sections 73, 74 & 75 *Local Government Act 1999*
- Appendix 2: Section 91 *Local Government Act 1999*
- Appendix 3: Section 90 *Local Government Act 1999*
- Appendix 4: *Local Government (Procedures at Meetings) Regulations 2013*

Schedule 1 Committee Membership

Membership of the Committee will consist of:

- | | |
|--|---|
| 1. 1 x Council Elected Member | Deputy Mayor Reynolds |
| 2. Council Chief Executive Officer or Proxy | SG Holden |
| 3. Supervisor, Administration and Tourism | PT Osborn |
| 4. 5 x interested community members | Kylie Finlay
Michelle Nicolai
Sue Smith
Lee-Ann Slattery |

Appendix 1

Sections 73, 74 & 75 of the *Local Government Act 1999*

Subdivision 4—Conflicts of interest

73—Preliminary

In this Subdivision—

agency or instrumentality of the Crown includes—

- (a) an administrative unit of the Public Service; and
- (b) a body corporate comprised of or including, or having a governing body comprised of or including, a Minister or Ministers of the Crown or a person or persons appointed by the Governor or a Minister or other agency or instrumentality of the Crown;

conflict of interest means—

- (a) a general conflict of interest; or
- (b) a material conflict of interest;

general conflict of interest—see section 74;

material conflict of interest—see section 75.

74—General conflicts of interest

- (1) Subject to section 75A, for the purposes of this Subdivision, a member of a council has a *general conflict of interest* in a matter to be discussed at a meeting of the council if an impartial, fair-minded person might consider that the member's private interests might result in the member acting in a manner that is contrary to their public duty.

- (2) For the purposes of subsection (1)—

private interests means any direct or indirect interest of a member that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief;

public duty means the responsibilities and obligations that a member has to members of the public in their role as a member.

75—Material conflicts of interest

- (1) Subject to section 75A, for the purposes of this Subdivision, a member of a council has a *material conflict of interest* in a matter to be discussed at a meeting of the council if any of the following persons would gain a benefit, or suffer a loss, (whether directly or indirectly and whether of a personal or pecuniary nature) depending on the outcome of the consideration of the matter at the meeting:

- (a) the member;
- (b) a relative of the member;
- (c) a body corporate of which the member is a director or a member of the governing body;
- (d) a proprietary company in which the member is a shareholder;

- (e) a family company of the member (within the meaning of Schedule 3);
- (f) a family trust of the member (within the meaning of Schedule 3);
- (g) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee;
- (h) a partner of the member;
- (i) the employer or an employee of the member;
- (j) a person with whom the member has entered into, is seeking to enter into, or is otherwise involved in a negotiation or tendering process in connection with entering into, an agreement for the provision of professional or other services for which the member would be entitled to receive a fee, commission or other reward;
- (k) a person or body from whom the member has received a designated gift;
- (l) a person of a prescribed class.

(2) In this section—

designated gift means—

- (a) a gift of a kind required to be disclosed in a large gifts return under Part 14 of the *Local Government (Elections) Act 1999* relating to the last election at which the member was elected; or
- (b) a gift or benefit of an amount greater than the prescribed amount under section 81A(1)(b) of the *Local Government (Elections) Act 1999* received by the member after the last election at which the member was elected (whether or not the gift or benefit is required to be disclosed in a return under Part 14 of the *Local Government (Elections) Act 1999*).

75A—Exemptions and other matters

- (1) A member of a council will not be regarded as having a conflict of interest in a matter to be discussed at a meeting of the council—
 - (a) if the interest is held in common with a substantial proportion of the ratepayers, electors or residents of the council area and does not materially exceed the interest held by the other ratepayers, electors or residents; or
 - (b) if the interest in the matter is that of an employer or employee of the member, and the member does not know, and could not reasonably be expected to know, of that interest; or
 - (c) if the interest in the matter is that of a relative of the member, other than the member's spouse or domestic partner, and the member does not know, and could not reasonably be expected to know, of that interest; or
 - (d) if—
 - (i) the interest arises in relation to a prescribed matter or in prescribed circumstances; and
 - (ii) the member complies with the requirements of the regulations (if any) relating to dealing with the matter.

- (2) Without limiting subsection (1), a member of a council will not be regarded as having a general conflict of interest in a matter to be discussed at a meeting of the council by reason only of—
- (a) an engagement with a community group, sporting club or similar organisation undertaken by the member in their capacity as a member; or
 - (b) membership of a political party; or
 - (c) membership of a community group, sporting club or similar organisation (if the member is not an office holder for the group, club or organisation); or
 - (d) the member having been a student of a particular school or their involvement with a school as parent of a student at the school; or
 - (e) a nomination or appointment as a member of a board of a corporation or other association, if the member was nominated for appointment by a council.
- (3) A member of a council who is a member, officer or employee of an agency or instrumentality of the Crown, will be regarded as having a conflict of interest in a matter before the council if the matter directly concerns that agency or instrumentality but otherwise will not be regarded as having an interest in a matter by virtue of being a member, officer or employee of the agency or instrumentality.
- (4) Regulations under subsection (1)(d)—
- (a) may be limited to material conflicts of interest or general conflicts of interest, or may relate to conflicts of interest generally; and
 - (b) may make different provision according to the matter or circumstances to which they are expressed to apply.

75B—Dealing with general conflicts of interest

- (1) If a member of a council has a general conflict of interest in relation to a matter to be discussed at a meeting of the council, the member must deal with the interest in a transparent and accountable way and, in particular, must inform the meeting of—
- (a) the member's interest in the matter; and
 - (b) whether or not the member proposes to participate in the meeting in relation to the matter; and
 - (c) if the member proposes to participate in the meeting in relation to the matter—
 - (i) how the member intends to deal with the general conflict of interest, including whether the member intends to vote on the matter; and
 - (ii) the member's reasons for participating (and, if relevant, voting) in relation to the matter.
- (2) If a quorum at a meeting cannot be formed because a member of a council proposes to exclude themselves from the meeting in order to comply with subsection (1), the member will not be taken to have contravened subsection (1) by participating (including by voting, for example) in the meeting in relation to the matter if the attendance of the member, together with any other required number of members, forms a quorum for the meeting.

- (3) If a member of a council discloses a general conflict of interest in a matter to be discussed at a meeting of the council, the following details must be recorded in the minutes of the meeting:
 - (a) the member's name;
 - (b) the nature of the interest, as described by the member;
 - (c) the manner in which the member dealt with the general conflict of interest;
 - (d) if the member voted on the matter, the manner in which the member voted;
 - (e) the manner in which the majority of persons who were entitled to vote at the meeting voted on the matter.
- (4) To avoid doubt, it is declared that non-participation in a meeting of a council is not the only way in which a member of the council may appropriately deal in a transparent and accountable way with a general conflict of interest of the member in a matter to be discussed at the meeting.

75C—Dealing with material conflicts of interest

- (1) If a member of a council has a material conflict of interest in a matter to be discussed at a meeting of the council, the member must—
 - (a) inform the meeting of the member's material conflict of interest in the matter; and
 - (b) leave the meeting room (including any area set aside for the public) such that the member cannot view or hear any discussion or voting at the meeting, and stay out of the meeting room while the matter is being discussed and voted on.
- (2) However, a member of the council does not contravene subsection (1) by taking part in the meeting if the member—
 - (a) has been granted an approval under subsection (3); and
 - (b) complies with the conditions of the approval.
- (3) The Minister may grant an approval in writing to a member of the council to take part in the meeting if—
 - (a) because of the number of members subject to the obligation under this section, conduct of the meeting would be obstructed if the approval were not given; and
 - (b) it appears to the Minister to be in the interests of the council's community and area.
- (4) The Minister may grant an approval under subsection (3) subject to any conditions determined by the Minister.
- (5) If a member of a council discloses a material conflict of interest in a matter to be discussed at a meeting of the council, the following details must be recorded in the minutes of the meeting:
 - (a) the member's name;
 - (b) the nature of the interest, as described by the member;
 - (c) if the member took part in the meeting under an approval under subsection (3), the fact that the member took part in the meeting.

Appendix 2

Section 91 of the *Local Government Act 1999*

91—Minutes and release of documents

- (1) The chief executive officer must ensure that minutes are kept of the proceedings at every meeting of the council or a council committee.
- (2) If the chief executive officer is excluded from a meeting pursuant to Part 3, the person presiding at the meeting must ensure that minutes are kept.
- (3) Each member of the council must, within five days after a meeting of the council or a council committee, be supplied with a copy of all minutes of the proceedings of the meeting kept under this section.
- (7) Section 132(1) does not apply to a document or part of a document if—
 - (a) the document or part relates to a matter dealt with by the council or council committee on a confidential basis under Part 3; and
 - (b) the council or council committee orders that the document or part be kept confidential.
- (8) A council must not make an order under subsection (7)—
 - (a) to prevent the disclosure of the remuneration or conditions of service of an employee of the council after the remuneration or conditions have been set or determined; or
 - (b) to prevent the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the council as to why a successful tenderer has been selected; or
 - (ba) to prevent the disclosure of the amount or amounts payable by the council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, the council after the contract has been entered into by all parties to the contract; or
 - (c) to prevent the disclosure of the identity of land that has been acquired or disposed of by the council, or of any reasons adopted by the council as to why land has been acquired or disposed of by the council.
- (9) If an order is made under subsection (7)—
 - (a) the council or council committee must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed, and, in any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year; and
 - (ab) in the case of an order of specified duration—
 - (i) the duration of the order cannot be extended after the order has ceased to apply (as a result of the expiry of the period for which the order was specified to apply); and
 - (ii) an order extending the duration of such an order cannot be delegated by the relevant council or council committee; and

- (b) the council or council committee must ensure that a note is made in the minutes recording the making of the order, the grounds on which it was made, and the decision of the council or council committee under paragraph (a); and
 - (c) the council or council committee may delegate to an employee of the council the power to revoke the order.
- (10) No action for defamation lies against the council in respect of—
 - (a) the accurate publication under this section of any information, statement or document (in whatever form); or
 - (b) the accurate publication under this section of a transcript, recording or other record of a meeting of a council or a council committee.
- (11) A document purporting to be minutes of proceedings at a meeting of a council, or a council committee, or to be a copy of or extract from such minutes, and to be signed by the chief executive officer, will be accepted as proof, in the absence of proof to the contrary, of the matters contained in the document.

Appendix 3

Section 90 of the *Local Government Act 1999*

90—Meetings to be held in public except in special circumstances

- (1) Subject to this section, a meeting of a council or council committee must be conducted in a place open to the public.
- (2) A council or council committee may order that the public be excluded from attendance at a meeting to the extent (and only to the extent) that the council or council committee considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence any information or matter listed in subsection (3) (after taking into account any relevant consideration under that subsection).
- (3) The following information and matters are listed for the purposes of subsection (2):
 - (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
 - (b) information the disclosure of which—
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
 - (ii) would, on balance, be contrary to the public interest;
 - (c) information the disclosure of which would reveal a trade secret;
 - (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
 - (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
 - (ii) would, on balance, be contrary to the public interest;
 - (e) matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;
 - (f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
 - (g) matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
 - (h) legal advice;
 - (i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;

- (j) information the disclosure of which—
 - (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and
 - (ii) would, on balance, be contrary to the public interest;
 - (k) tenders for the supply of goods, the provision of services or the carrying out of works;
 - (m) information relating to a proposal to prepare or amend a designated instrument under Part 5 Division 2 of the *Planning, Development and Infrastructure Act 2016* before the draft instrument or amendment is released for public consultation under that Act;
 - (n) information relevant to the review of a determination of a council under the *Freedom of Information Act 1991*;
 - (o) information relating to a proposed award recipient before the presentation of the award.
- (4) In considering whether an order should be made under subsection (2), it is irrelevant that discussion of a matter in public may—
- (a) cause embarrassment to the council or council committee concerned, or to members or employees of the council; or
 - (b) cause a loss of confidence in the council or council committee; or
 - (c) involve discussion of a matter that is controversial within the council area; or
 - (d) make the council susceptible to adverse criticism.
- (5) A person who, knowing that an order is in force under subsection (2), enters or remains in a room in which a meeting of the council or council committee is being held is guilty of an offence and liable to a penalty not exceeding \$500 and if such a person fails to leave the room on request it is lawful for an employee of the council or a member of the police force to use reasonable force to remove him or her from the room.
- (6) Subsection (5) does not apply to—
- (a) a member of the council or the council committee; or
 - (b) any other person permitted to be in the room by the council or the council committee.
- (7) If an order is made under subsection (2), a note must be made in the minutes of the making of the order and specifying—
- (a) the grounds on which the order was made; and
 - (b) the basis on which the information or matter to which the order relates falls within the ambit of each ground on which the order was made; and
 - (c) if relevant, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest.

(7a) A council committee meeting will be taken to be conducted in a place open to the public for the purposes of this section even if 1 or more committee members participate in the meeting by telephone or other electronic means in accordance with any procedures prescribed by the regulations or determined by the council under section 89 (provided that members of the public can hear the discussion between all committee members and subject to the qualification that a council may direct a committee not to use telephone or other electronic means for the purposes of its meetings).

(9) In this section—

personal affairs of a person includes—

(a) that person's—

(i) financial affairs;

(ii) criminal records;

(iii) marital or other personal relationships;

(iv) personal qualities, attributes or health status;

(b) that person's employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person,

but does not include the personal affairs of a body corporate.

Appendix 4

Local Government (Procedures at Meetings) Regulations 2013

Division 1—Preliminary

5—Application of Part

The provisions of this Part apply to or in relation to—

- (a) the meetings of a council; and
- (b) the meetings of a council committee performing regulatory activities; and
- (c) the meetings of any other council committee if the council has, by resolution, determined that this Part should apply to that committee.

6—Discretionary procedures

- (1) Subject to the requirements of the Act, if a provision of this Part is expressed to be capable of being varied at the discretion of the council pursuant to this regulation, then a council may, by a resolution supported by at least two-thirds of the members of the council entitled to vote on the resolution, determine that a code of practice prepared or adopted by the council that establishes its own procedures for the relevant matter or matters will apply in substitution for the relevant provision (and such a determination will have effect according to its terms).
- (2) A council should, at least once in every financial year, review the operation of a code of practice under this regulation.
- (3) A council may at any time, by resolution supported by at least two-thirds of the members of the council entitled to vote on the resolution, alter a code of practice, or substitute or revoke a code of practice.
- (4) A council must, in considering the exercise of a power under this regulation, take into account the Guiding Principles.
- (7) Regulation 12(4) does not apply to a motion under subregulation (3).
- (8) This regulation does not limit or derogate from the operation of regulation 20¹.

Note—

- 1 Furthermore, if a matter is not dealt with by the Act or these regulations (including under a code of practice under this regulation), then the relevant procedure will be—

- (a) as determined by the council; or
- (b) in the case of a council committee where a determination has not been made by the council—as determined by the committee.

(See sections 86(8) and 89(1) of the Act.)

Division 2—Prescribed procedures

7—Commencement of meetings and quorums

- (1) A meeting will commence as soon after the time specified in the notice of meeting as a quorum is present.

- (2) If the number of apologies received by the chief executive officer indicates that a quorum will not be present at a meeting, the chief executive officer may adjourn the meeting to a specified day and time.
- (3) If at the expiration of 30 minutes from the time specified in the notice of meeting as the time of commencement a quorum is not present, the presiding member or, in the absence of a presiding member, the chief executive officer, will adjourn the meeting to a specified day and time.
- (4) If a meeting is adjourned for want of a quorum, the chief executive officer will record in the minute book the reason for the adjournment, the names of any members present, and the date and time to which the meeting is adjourned.
- (5) If a meeting is adjourned to another day, the chief executive officer must—
 - (a) give notice of the adjourned meeting to each member setting out the date, time and place of the meeting; and
 - (b) give notice of the adjourned meeting to the public by causing a notice setting out the date, time and place of the meeting to be placed on display at the principal office of the council.

8—Minutes

- (1) The minutes of the proceedings at a meeting must be submitted for confirmation at the next meeting or, if that is omitted, at a subsequent meeting.
- (2) No discussion on the minutes may occur before confirmation, except as to the accuracy of the minutes as a record of proceedings.
- (3) On the confirmation of the minutes, the presiding member will—
 - (a) initial each page of the minutes, which pages are to be consecutively numbered; and
 - (b) place his or her signature and the date of confirmation at the foot of the last page of the minutes.
- (4) The minutes of the proceedings of a meeting must include—
 - (a) the names of the members present at the meeting; and
 - (ab) the name of any member who is not present because the member is suspended or taken to have been granted leave of absence from the office of member of the council; and
 - (b) in relation to each member present—
 - (i) the time at which the person entered or left the meeting; and
 - (ii) unless the person is present for the whole meeting, the point in the proceedings at which the person entered or left the meeting; and
 - (iii) if, during the meeting, the member is excluded under section 86(6b) of the Act, a statement that the member was excluded and the period for which the member was excluded; and
 - (c) each motion or amendment, and the names of the mover and seconder; and
 - (d) any variation, alteration or withdrawal of a motion or amendment; and

- (e) whether a motion or amendment is carried or lost; and
- (f) any disclosure of interest made by a member; and
- (g) an account of any personal explanation given by a member; and
- (h) details of the making of an order under subsection (2) of section 90 of the Act (see subsection (7) of that section); and
- (i) a note of the making of an order under subsection (7) of section 91 of the Act in accordance with the requirements of subsection (9) of that section; and
- (j) details of any adjournment of business; and
- (k) a record of any request for documents to be tabled at the meeting; and
- (l) a record of any documents tabled at the meeting; and
- (m) a description of any oral briefing given to the meeting on a matter of council business; and
- (n) any other matter required to be included in the minutes by or under the Act or any regulation.

9—Questions

- (1) A member may ask a question on notice by giving the chief executive officer written notice of the question at least 7 clear days before the date of the meeting at which the question is to be asked.
- (2) If notice of a question is given under subregulation (1)—
 - (a) the chief executive officer must ensure that the question is placed on the agenda for the meeting at which the question is to be asked; and
 - (b) the question and the reply must be entered in the minutes of the relevant meeting.
- (3) A member may ask a question without notice at a meeting.
- (4) The presiding member may allow the reply to a question without notice to be given at the next meeting.
- (5) A question without notice and the reply will not be entered in the minutes of the relevant meeting unless the members present at the meeting resolve that an entry should be made.
- (6) The presiding member may rule that a question with or without notice not be answered if the presiding member considers that the question is vague, irrelevant, insulting or improper.

10—Petitions

- (1) A petition to the council must—
 - (a) be legibly written or typed or printed; and
 - (b) clearly set out the request or submission of the petitioners; and
 - (c) include the name and address of each person who signed or endorsed the petition; and

- (d) be addressed to the council and delivered to the principal office of the council.
- (2) If a petition is received under subregulation (1), the chief executive officer must ensure that the petition or, if the council has so determined as a policy of the council, a statement as to the nature of the request or submission and the number of signatures or the number of persons endorsing the petition, is placed on the agenda for the next ordinary meeting of the council or, if so provided by a policy of the council, a committee of the council.
- (3) Subregulation (2) may be varied at the discretion of the council pursuant to regulation 6.

11—Deputations

- (1) A person or persons wishing to appear as a deputation at a meeting must deliver (to the principal office of the council) a written request to the council.
- (2) The chief executive officer must transmit a request received under subregulation (1) to the presiding member.
- (3) The presiding member may refuse to allow the deputation to appear at a meeting.
- (4) The chief executive officer must take reasonable steps to ensure that the person or persons who requested a deputation are informed of the outcome of the request.
- (5) If the presiding member refuses to allow a deputation to appear at a meeting, the presiding member must report the decision to the next meeting of the council or council committee (as the case may be).
- (6) The council or council committee may resolve to allow a deputation to appear despite a contrary ruling by the presiding member.
- (7) A council may refer the hearing of a deputation to a council committee.

12—Motions

- (1) A member may bring forward any business in the form of a written notice of motion.
- (2) The notice of motion must be given to the chief executive officer at least 7 clear days before the date of the meeting at which the motion is to be moved.
- (3) A motion the effect of which, if carried, would be to revoke or amend a resolution passed since the last general election of the council must be brought by written notice of motion.
- (4) If a motion under subregulation (3) is lost, a motion to the same effect cannot be brought—
 - (a) until after the expiration of 12 months; or
 - (b) until after the next general election,whichever is the sooner.
- (5) Subject to the Act and these regulations, a member may also bring forward any business by way of a motion without notice.
- (6) The presiding member may refuse to accept a motion without notice if, after taking into account the Guiding Principles, he or she considers that the motion should be dealt with by way of a written notice of motion.

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- (7) The presiding member may refuse to accept a motion if the subject matter is, in his or her opinion, beyond the power of the council or council committee (as the case may be).
 - (8) A motion will lapse if it is not seconded at the appropriate time.
 - (9) A member moving or seconding a motion will speak to the motion at the time of moving or seconding the motion.
 - (10) A member may only speak once to a motion except—
 - (a) to provide an explanation in regard to a material part of his or her speech, but not so as to introduce any new matter; or
 - (b) with leave of the meeting; or
 - (c) as the mover in reply.
 - (11) A member who has spoken to a motion may not at a later stage of the debate move or second an amendment to the motion.
 - (12) A member who has not spoken in the debate on a question may move a formal motion.
 - (13) A formal motion must be in the form of a motion set out in subregulation (14) (and no other formal motion to a different effect will be recognised).
 - (14) If the formal motion is—
 - (a) that *the meeting proceed to the next business*, then the effect of the motion, if successful, is, in the case of an amendment, that the amendment lapses and the meeting proceeds with the consideration of the motion before the meeting without further reference to the amendment and, in the case of a motion, that the motion lapses and the meeting proceeds to the next item of business; or
 - (b) that *the question be put*, then the effect of the motion, if successful, is that debate is terminated and the question put to the vote by the presiding member without further debate; or
 - (c) that *the question lie on the table*, then the effect of the motion, if successful, is that the meeting immediately moves to the next item of business and the question can then only be retrieved at a later time by resolution (and, if so retrieved, debate is then resumed at the point of interruption); or
 - (d) that *the question be adjourned*, then the effect of the motion, if successful, is that the question is disposed of for the time being but debate can be resumed at the later time (at the point of interruption); or
 - (e) that *the meeting be adjourned*, then the effect of the motion, if successful, is that the meeting is brought to an end immediately without the consideration of further business.
 - (15) If seconded, a formal motion takes precedence and will be put by the presiding member without discussion unless the motion is for an adjournment (in which case discussion may occur (but only occur) on the details for resumption).
 - (16) A formal motion does not constitute an amendment to a substantive motion.
 - (17) If a formal motion is lost—
 - (a) the meeting will be resumed at the point at which it was interrupted; and

- (b) if the formal motion was put during debate (and not at the end of debate) on a question, then a similar formal motion (ie a motion to the same effect) cannot be put until at least 1 member has spoken on the question.
- (18) A formal motion for adjournment must include the reason for the adjournment and the details for resumption.
- (19) Any question that lies on the table as a result of a successful formal motion under subregulation (14)(c) lapses at the next general election.
- (20) The chief executive officer must report on each question that lapses under subregulation (19) to the council at the first ordinary meeting of the council after the general election.
- (21) Subregulations (9), (10) and (11) may be varied at the discretion of the council pursuant to regulation 6.

13—Amendments to motions

- (1) A member who has not spoken to a motion at an earlier stage of the debate may move or second an amendment to the motion.
- (2) An amendment will lapse if it is not seconded at the appropriate time.
- (3) A person who moves or seconds an amendment (and, if he or she chooses to do so, speaks to the amendment) will, in so doing, be taken to have spoken to the motion to which the amendment relates.
- (4) If an amendment is lost, only 1 further amendment may be moved to the original motion.
- (5) If an amendment is carried, only 1 further amendment may be moved to the original motion.
- (6) Subregulations (1), (3), (4) and (5) may be varied at the discretion of the council pursuant to regulation 6.

14—Variations etc

- (1) The mover of a motion or amendment may, with the consent of the seconder, request leave of the meeting to vary, alter or withdraw the motion or amendment.
- (2) The presiding member must immediately put the question for leave to be granted and no debate will be allowed on that question.

15—Addresses by members etc

- (1) A member must not speak for longer than 5 minutes at any 1 time without leave of the meeting.
- (2) A member may, with leave of the meeting, raise a matter of urgency.
- (3) A member may, with leave of the meeting, make a personal explanation.
- (4) The subject matter of a personal explanation may not be debated.
- (5) The contribution of a member must be relevant to the subject matter of the debate.
- (6) Subregulations (1) and (2) may be varied at the discretion of the council pursuant to regulation 6.

16—Voting

- (1) The presiding member, or any other member, may ask the chief executive officer to read out a motion before a vote is taken.
- (2) The presiding member will, in taking a vote, ask for the votes of those members in favour of the question and then for the votes of those members against the question (and may do so as often as is necessary to enable him or her to determine the result of the voting), and will then declare the outcome.
- (3) A person who is not in his or her seat is not permitted to vote.
- (4) Subregulation (3)—
 - (a) may be varied at the discretion of the council pursuant to regulation 6; and
 - (b) does not apply in relation to a member participating in a council committee meeting by telephone or electronic means approved in accordance with procedures determined by the council or council committee for the purposes of section 89 of the Act.

17—Divisions

- (1) A division will be taken at the request of a member.
- (2) If a division is called for, it must be taken immediately and the previous decision of the presiding member as to whether the motion was carried or lost is set aside.
- (3) The division will be taken as follows:
 - (a) the members voting in the affirmative will, until the vote is recorded, stand in their places;
 - (b) the members voting in the negative will, until the vote is recorded, sit in their seats;
 - (c) the presiding member will count the number of votes and then declare the outcome.
- (4) The chief executive officer will record in the minutes the names of members who voted in the affirmative and the names of the members who voted in the negative (in addition to the result of the vote).
- (5) Subregulation (3) may be varied at the discretion of the council pursuant to regulation 6.

18—Tabling of information

- (1) A member may require the chief executive officer to table any documents of the council relating to a motion that is before a meeting (and the chief executive officer must then table the documents within a reasonable time, or at a time determined by the presiding member after taking into account the wishes of the meeting, and if the member who has required the tabling indicates that he or she is unwilling to vote on the motion until the documents are tabled, then the matter must not be put to the vote until the documents are tabled).
- (2) The chief executive officer may, in tabling a document, indicate that in his or her opinion consideration should be given to dealing with the document on a confidential basis under section 90 or 91 of the Act.

19—Adjourned business

- (1) If a formal motion for a substantive motion to be adjourned is carried—
 - (a) the adjournment may either be to a later hour of the same day, to another day, or to another place; and
 - (b) the debate will, on resumption, continue from the point at which it was adjourned.
- (2) If debate is interrupted for want of a quorum and the meeting is then adjourned, the debate will, on resumption, continue from the point at which it was interrupted.
- (3) Business adjourned from a previous meeting must be dealt with before any new business at a subsequent meeting.
- (4) The provisions of this regulation may be varied at the discretion of the council pursuant to regulation 6.

20—Short-term suspension of proceedings

- (1) If the presiding member considers that the conduct of a meeting would benefit from suspending the operation of all or some of the provisions of this Division for a period of time in order to allow or facilitate informal discussions, the presiding member may, with the approval of at least two-thirds of the members present at the meeting, suspend the operation of this Division (or any part of this Division) for a period determined by the presiding member.
- (2) The Guiding Principles must be taken into account when considering whether to act under subregulation (1).
- (3) If a suspension occurs under subregulation (1)—
 - (a) a note of the suspension, including the reasons for and period of suspension, must be entered in the minutes; and
 - (b) the meeting may proceed provided that a quorum is maintained but, during the period of suspension—
 - (i) the provisions of the Act must continue to be observed¹; and
 - (ii) no act or discussion will have any status or significance under the provisions which have been suspended; and
 - (iii) no motion may be moved, seconded, amended or voted on, other than a motion that the period of suspension should be brought to an end; and
 - (c) the period of suspension should be limited to achieving the purpose for which it was declared; and
 - (d) the period of suspension will come to an end if—
 - (i) the presiding member determines that the period should be brought to an end; or
 - (ii) at least two-thirds of the members present at the meeting resolve that the period should be brought to an end.

Note—

- 1 See particularly Part 4 of Chapter 5, and Chapter 6, of the Act.

21—Chief executive officer may submit report recommending revocation or amendment of council decision

- (1) The chief executive officer may submit a report to the council recommending the revocation or amendment of a resolution passed since the last general election of the council.
- (2) The chief executive officer must ensure that the report is placed on the agenda for the meeting at which the report is to be considered.
- (3) The provisions of this regulation may be varied at the discretion of the council pursuant to regulation 6.

