



The Flinders  
Ranges Council

**TERMS OF REFERENCE**

**OF**

**THE FLINDERS RANGES COUNCIL**  
**AUDIT COMMITTEE**

## **AUDIT COMMITTEE** **TERMS OF REFERENCE**

Section 126 of the *Local Government Act 1999* ("the Act") requires each Council to have an Audit Committee. However the committee is established under Section 41 of the Act the same as any other Committees of Council. Audit Committees have no authority to act independently of Councils and can act only in areas covered by their terms of reference.

### **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.*



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### 2. Policy Position

That pursuant to the provisions of Section 41 of the *Local Government Act 1999* and Section 126(1) of the *Local Government Act 1999*, that The Flinders Ranges Council (“the Council”) establish a Committee to be known as The Flinders Ranges Council Audit Committee (“the Committee”).

### 3. Role of the Committee

The role of the Committee is to fulfil the statutory responsibilities of Council pursuant to Section 126 of the *Local Government Act 1993*.

### 4. Membership

4.1 Members of the Committee are appointed by the Council. The Members of the Committee shall be:

- An Independent Member (Chair) (by expressions of interest)
- The Mayor of The Flinders Ranges Council
- Up to 2 Councillors of The Flinders Ranges Council
- Up to 2 Community Members (by Public Call with suitable qualifications)

The minimum size of the Committee shall be four (4) members and the maximum size of the Committee shall be five (5) members.

Each Member shall have the option to appoint a proxy (who must be of similar standing, e.g. qualified) to act with full voting rights on their behalf and in their absence.

Current Committee Members are detailed in Schedule 1.

4.2 Independent Member of the Committee shall have recent and relevant financial, risk management, internal audit etc. experience. The Independent Member of the Committee shall be appointed for a period of up to four years, commencing part-way through an election cycle, so that their term overlaps each Council election to provide continuity.

4.3 The Presiding Member of the Committee shall be the Independent Member.

4.4 Council’s external auditors will be invited to attend all meetings of the Committee.

4.5 Appointments to the Committee from among the Elected Members of Council shall be for a period of up to four years, expiring at the end of the term of the Council. Appointees may be reappointed by Council for a new term.

4.6 The Community Member of the Committee shall have recent and relevant financial, risk management, internal audit etc. experience. The Community Member of the Committee shall be appointed for a period of up to four years, commencing part-way through an election cycle, so that their term overlaps each Council election to provide continuity. The Community Member will be appointed by Council from registrations of interest received after Public call.

4.7 Only members of the Committee are entitled to vote in Committee meetings. Unless otherwise required (by the conflict of interest provisions in the Act) not to vote, each member must vote on every matter that is before the Committee for decision. However other individuals such as the Chief Executive Officer, External Auditor and Finance and Administration Manager would normally attend any meeting as observers and / or be responsible for preparing papers for the Committee. In accordance with the principles of open, transparent and informed decision making, Committee meetings must be conducted in a place open to the public. The agenda and minutes of the Committee meetings, subject to any items that are discussed in confidence under Section 90 of the Act and subsequently retained as confidential under Section 91 of the Act, are also required to be made available to the public. Refer Appendix 3.

4.8 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 2 to this Terms of Reference document

## 5. Secretarial Resources

The Chief Executive Officer shall provide sufficient administrative resources to the Committee to enable it to adequately carry out its functions.

## 6. Quorum

The quorum necessary for the transaction of business shall be 50% of the number of members of the Committee rounded down to a whole number, plus one. A duly convened meeting of the Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Committee.

## 7. Frequency of Meetings

The Committee shall meet a minimum of four times a year at appropriate times in the reporting and audit cycle and otherwise as required to action the Audit Work program.

## 8. Notice of Meetings

8.1 Ordinary meetings of the Committee will be held at times and places determined by the Committee. Committee meetings may be held by tele or video conference.

8.2 A special meeting of the Committee may be called in accordance with the Act.

8.3 Notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and observers, no later than 3 clear days before the date of the meeting. Supporting papers shall be sent to Committee members (and to other attendees as appropriate) within the same timeframe.

8.4 All meetings of the Committee must be conducted in accordance with the provisions of Section 90 of the *Local Government Act 1999*, a copy of which is included as Appendix 4 to this policy document.

- 8.5 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 pursuant to the provisions of Section 90 of the *Local Government Act 1999*.
- 8.6 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. Minutes of Meetings**

- 9.1 The Chief Executive Officer shall ensure that the proceedings and resolutions of all meetings of the Committee, including recording the names of those present and in attendance are minuted and that the minutes otherwise comply with the requirements of the *Local Government (Procedures at Meetings) Regulations 2013*. Refer Appendix 5
- 9.2 Minutes of Committee meetings shall be circulated within five days after a meeting to all members of the Committee and to all members of the Council and will (as appropriate) be available to the public.

## **10. Functions of the Committee**

### 10.1 Financial reporting

- 10.1.1 The Committee shall monitor the integrity of the financial statements of the Council, including its annual report, reviewing significant financial reporting issues and judgements which they contain.
- 10.1.2 The Committee shall review and challenge where necessary:
- 10.1.2.1 the consistency of, and / or any changes to, accounting policies;
  - 10.1.2.2 the methods used to account for significant or unusual transactions where different approaches are possible;
  - 10.1.2.3 whether the Council has followed appropriate accounting standards and made appropriate estimates and judgements, taking into account the views of the external auditor;
  - 10.1.2.4 the clarity of disclosure in the Council's financial reports and the context in which statements are made; and
  - 10.1.2.5 all material information presented with the financial statements.

### 10.2 Internal Controls and Risk Management Systems

The Committee shall:

- 10.2.1 keep under review the effectiveness of the Council's internal controls and risk management systems; and
- 10.2.2 review and recommend the approval, where appropriate, of any material to be included in the annual report concerning internal controls and risk management.

### 10.3 Whistleblowing

The Committee shall review the Council's arrangements for its employees to raise concerns, in confidence, about possible wrongdoing in financial recording or reporting or other procedural matters. The Committee shall ensure these arrangements allow independent investigation of such matters and appropriate follow-up action.

### 10.4 External Audit

The Committee shall:

- 10.4.1 develop and implement a policy on the supply of non-audit services by the external auditor, taking into account any relevant ethical guidance on the matter;
- 10.4.2 consider and make recommendations to the Council, in relation to the appointment, re-appointment and removal of the Council's external auditor. The Committee shall oversee the selection process for new auditors and if an auditor resigns the Committee shall investigate the issues leading to this and decide whether any action is required;
- 10.4.3 oversee Council's relationship with the external auditor including, but not limited to:
  - 10.4.3.1 recommending the approval of the external auditor's remuneration, covering fees for both audit or non-audit services, and recommending whether the level of fees is appropriate to enable an adequate audit to be conducted;
  - 10.4.3.2 recommending the approval of the external auditor's terms of engagement, including any engagement letter issued at the commencement of each audit and the scope of the audit;
  - 10.4.3.3 assessing the external auditor's independence and objectivity taking into account relevant professional and regulatory requirements and the extent of Council's relationship with the auditor, including the provision of any non-audit services;
  - 10.4.3.4 satisfying itself that there are no relationships (such as family, employment, investment, financial or business) between the external auditor and the Council (other than in the ordinary course of business);
  - 10.4.3.5 monitoring the external auditor's compliance with legislative requirements on the rotation of audit partners; and
  - 10.4.3.6 assessing the external auditor's qualifications, expertise and resources and the effectiveness of the audit process (which shall include a report from the external auditor on the Audit Committee's own internal quality procedures;
- 10.4.4 meet as needed with the external auditor. The Committee shall meet the external auditor at least once a year, without management being present to discuss the external auditor's report and any issues arising from the audit;
- 10.4.5 review and make recommendations on the annual audit plan, and in particular its consistency with the scope of the external audit engagement;
- 10.4.6 review the findings of the audit with the external auditor. This shall include, but not be limited to, the following:
  - 10.4.6.1 a discussion of any major issues which arose during the external audit;
  - 10.4.6.2 any accounting and audit judgements; and
  - 10.4.6.3 levels of errors identified during the external audit,
- 10.4.7 review the effectiveness of the external audit;



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- 10.4.8 review any representation letter(s) requested by the external auditor before they are signed by management;
- 10.4.9 review the subsequent audit management letter from the external auditor and management's proposed response, by the Council, to the external auditor's findings and recommendations in that audit management letter.

10.5 Audit Work Plan

The Audit Committee is responsible for preparing the Audit Work Plan for approval by Council. The Audit Committee is responsible for monitoring and reporting on the progress in respect to the Audit Work Plan required outcomes.

**11. Reporting Responsibilities**

The Committee shall make whatever recommendations to the Council it deems appropriate on any area within its terms of reference where in its view action or improvement is needed.

**12. Document Control**

The electronic version of this Terms of Reference document stored on the Council's Records Management System is the controlled version.

Printed or hard copies of this Terms of Reference document are uncontrolled.

Before using or relying on a printed or hard copy of this Terms of Reference document, the user must verify that it is the current version.

**13. 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, the 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.

**14. Public Availability of Terms of Reference**

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

Further enquiries in relation to the Terms of Reference document should be directed to the Chief Executive Officer by telephoning 8620 0500 or emailing [council@frc.sa.gov.au](mailto:council@frc.sa.gov.au)

**15. Review of Terms of Reference**

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



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## 16. Adoption of Terms of Reference

This Council Terms of Reference document “The Flinders Ranges Council Audit Committee”, was adopted by The Flinders Ranges Council at its meeting held on 11 February 2014.

Review Date	Version Number	Change	Resolution
11 February 2014	4	New Committee	
17 March 2015	5	Adopted by Council	072/2015
09 May 2017 / 16 May 2017	6	Review by Policy Review Committee, Committee updated, Legislation updated / Adopted by Council	083/2017

## 17. Schedules

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

- Schedule 1: Committee Membership

## 18. Appendices / Attachments

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

- Appendix 1: Section 126 *Local Government Act 1999*
- Appendix 2: Sections 73, 74 & 75 *Local Government Act 1999*
- Appendix 3: Section 91 *Local Government Act 1999*
- Appendix 4: Section 90 *Local Government Act 1999*
- Appendix 5: *Local Government (Procedures at Meetings) Regulations 2013*



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**Schedule 1**

**Current Audit Committee Members**

Membership of the Committee is currently:

Richard Perkins – Chair - Independent Member (Moore Stephens SA)

Mayor Peter Slattery

Councillor Kenneth Anderson

Councillor Greg Flint

Paula Osborn - Community Representative

**Appendix 1**

**Section 126 of the Local Government Act 1999**

**126—Audit committee**

- (1) *A council must have an audit committee.*
- (2) *The membership of an audit committee—*
  - (a) *may include persons who are not members of the council; and*
  - (b) *may not include an employee of the council (although an employee may attend a meeting of the committee if appropriate); and*
  - (c) *may include, or be comprised of, members of an audit committee for another council; and*
  - (d) *must otherwise be determined in accordance with the requirements of the regulations.*
- (4) *The functions of an audit committee include—*
  - (a) *reviewing annual financial statements to ensure that they present fairly the state of affairs of the council; and*
  - (ab) *proposing, and providing information relevant to, a review of the council's strategic management plans or annual business plan; and*
  - (ac) *proposing, and reviewing, the exercise of powers under section 130A; and*
  - (b) *liaising with the council's auditor; and*
  - (c) *reviewing the adequacy of the accounting, internal control, reporting and other financial management systems and practices of the council on a regular basis.*

**Appendix 2**

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

**Division 3—Conflicts of interest**

**Subdivision 1—Material conflicts of interest**

**73—Material conflicts of interest**

- (1) Subject to this section, 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 beneficiary under a trust or an object of a discretionary trust of which the member is a trustee;
  - (f) a partner of the member;
  - (g) the employer or an employee of the member;
  - (h) a person from whom the member has received or might reasonably be expected to receive a fee, commission or other reward for providing professional or other services;
  - (i) a person of a prescribed class.
- (2) A member of a council will not be taken to have a material conflict of interest in a matter to be discussed at a meeting of the council—
- (a) if the relevant benefit or loss would be enjoyed or suffered in common with all or a substantial proportion of the ratepayers, electors or residents of the council area; or
  - (b) on account of an interest under subsection (1) of a relative of the member, other than the member's spouse or domestic partner, if the member does not know, and could not reasonably be expected to know, of the interest.
- (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 material 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) In this section—
- agency or instrumentality of the Crown** includes—
- (a) an administrative unit of the Public Service;
  - (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.

**74—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.

**Maximum penalty:**

- (a) if the member votes on the matter with an intention to gain a benefit, or avoid a loss, for the member or another person—\$15 000 or 4 years imprisonment; or
  - (b) in any other case—\$5 000.
- (2) However, a member of the council does not contravene subsection (1) by taking part in the meeting, or being in the chamber where the meeting is being conducted, if the member—
- (a) has been granted an approval under subsection (3); and
  - (b) is complying 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, or to be in the chamber where the meeting is being conducted, 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; or*
  - (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 and on a website determined by the chief executive officer:*
- (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, or was in the chamber during the meeting, under an approval under subsection (3), the fact that the member took part in the meeting, or was in the chamber during the meeting (as the case requires).*
- (6) *This section does not apply to a matter of ordinary business of the council of a kind prescribed by regulation for the purposes of this section.*

### **Subdivision 2—Actual and perceived conflicts of interest**

#### **75—Actual and perceived conflicts of interest**

- (1) *In this Subdivision—*
- actual conflict of interest**—see section 75A(1)(a);
- conflict of interest**—see subsections (2) and (3);
- perceived conflict of interest**—see section 75A(1)(b).
- (2) *For the purposes of this Subdivision but subject to this section, a **conflict of interest** is a conflict between—*
- (a) *a member of a council's interests (whether direct or indirect personal or pecuniary); and*
  - (b) *the public interest,*
- that might lead to a decision that is contrary to the public interest.*
- (3) *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) *by reason only of—*
    - (i) *an engagement with a community group, sporting club or similar organisation undertaken by the member in his or her capacity as a member; or*
    - (ii) *membership of a political party; or*
    - (iii) *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*
    - (iv) *the member having been a student of a particular school or his or her involvement with a school as parent of a student at the school; or*
    - (v) *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; or*
  - (b) *in prescribed circumstances.*
- (4) *A member of a council will not be taken, for the purposes of this Subdivision, to have a conflict of interest in a matter to be discussed at a meeting of the council if the relevant member's interest in the matter is held in common with all or a substantial proportion of the ratepayers, electors or residents of the council area.*

#### **75A—Dealing with actual and perceived conflicts of interest**

- (1) *If, in relation to a matter to be discussed at a meeting of a council, a member of the council—*
- (a) *has a conflict of interest in the matter (an **actual conflict of interest**); or*
  - (b) *could reasonably be taken, from the perspective of an impartial, fair-minded person, to have a conflict of interest in the matter (a **perceived conflict of interest**),*
- the member must deal with the actual or perceived conflict of interest in a transparent and accountable way.*
- (2) *Without limiting subsection (1), the member must inform the meeting of—*
- (a) *the member's interest in the matter; and*
  - (b) *if the member proposes to participate in the meeting in relation to the matter, how the member intends to deal with the actual or perceived conflict of interest.*



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- (3) *If a quorum at a meeting cannot be formed because a member of a council proposes to exclude himself or herself 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.*
- (4) *If a member of a council discloses an actual or perceived 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 and on a website determined by the chief executive officer:*
  - (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 actual or perceived conflict of interest;*
  - (d) *if the member voted on the matter, the manner in which he or she voted;*
  - (e) *the manner in which the majority of persons who were entitled to vote at the meeting voted on the matter.*
- (5) *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 an actual or perceived conflict of interest of the member in a matter to be discussed at the meeting.*
- (6) *This section does not apply to a matter of ordinary business of the council of a kind prescribed by regulation for the purposes of this section.*

**Subdivision 3—Other matters**

**75B—Application of Division to members and meetings of committees and subsidiaries**

- (1) *The provisions of this Division extend to committees and to members of committees established by councils as if—*
  - (a) *a committee were a council; and*
  - (b) *a member of a committee were a member of a council.*
- (2) *The provisions of this Division extend to subsidiaries and to board members of subsidiaries as if—*
  - (a) *a subsidiary were a council; and*
  - (b) *a board member of a subsidiary were a member of a council.*

**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 proposed amendment to a Development Plan under the Development Act 1993 before a Development Plan Amendment proposal relating to the 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.*
- (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).
- (8) The duty to hold a meeting of a council or council committee at a place open to the public does not in itself make unlawful informal gatherings or discussion involving—
- (a) members of the council or council committee; or
  - (b) members of the council or council committee and staff,
- provided that a matter which would ordinarily form part of the agenda for a formal meeting of a council or council committee is not dealt with in such a way as to obtain, or effectively obtain, a decision on the matter outside a formally constituted meeting of the council or council committee.
- Examples—**
- The following are examples of informal gatherings or discussions that might be held under subsection (8):
- (a) planning sessions associated with the development of policies or strategies;
  - (b) briefing or training sessions;
  - (c) workshops;
  - (d) social gatherings to encourage informal communication between members or between members and staff.
- (8a) In addition, an informal gathering or discussion under subsection (8) may only be held if—
- (a) the council has adopted a policy on the holding of informal gatherings or discussions; and
  - (b) the informal gathering or discussion complies with the policy.
- (8b) A policy adopted under subsection (8a) must comply with any requirements prescribed by the regulations, and the regulations may (for example) include requirements that the policy provide for—
- (a) the imposition of limitations on the holding of informal gatherings or discussions; and
  - (b) procedures for approval of informal gatherings or discussions; and
  - (c) the capacity of the council to impose conditions on an approval.
- (8c) A council may from time to time alter its policy, or substitute a new policy.
- (8d) The council must ensure that a copy of the policy under subsection (8a) is available for inspection (without charge) at the principal office of the council during ordinary office hours and on a website determined by the chief executive officer.
- (8e) A person is entitled, on payment of a fee fixed by the council, to a copy of a policy under subsection (8a).
- (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**

**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.*
- (4) *A copy of the minutes of a meeting of the council must be placed on public display in the principal office of the council within five days after the meeting and kept on display for a period of one month.*
- (5) *A person is entitled to inspect, without payment of a fee, at the principal office of the council -*
  - (a) *minutes kept under this section; and*
  - (b) *reports to the council or a council committee received at a meeting of the council or committee; and*
  - (c) *recommendations presented to the council in writing and adopted by resolution of the council; and*
  - (d) *budgetary or other financial statements adopted by the council.*
- (6) *A person is entitled, on payment of a fee fixed by the council, to a copy of any documents available for inspection under subsection (5).*
- (7) *However, subsections (4), (5) and (6) do 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*



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- (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 5**

**Local Government (Procedures at Meetings) Regulations 2013**

**Part 2—Meetings of councils and key committees**

**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.
- (5) A person is entitled to inspect (without charge) the code of practice of a council under this regulation at the principal office of the council during ordinary office hours.
- (6) A person is entitled, on payment of a fee fixed by the council, to a copy of the code of practice.
- (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 20<sup>1</sup>.

**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*
  - (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*
  - (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 5 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*



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- (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 5 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.*
- (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.*



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- (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 observed<sup>1</sup>; 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—**

<sup>1</sup> 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*