



**14.5** **GOVERNANCE RULES (INCORPORATING THE ELECTION PERIOD POLICY) - ADOPTION OF DRAFTS FOR CONSULTATION**

**EXECUTIVE MEMBER:** KYLIE BENNETTS, DIRECTOR, OFFICE OF THE CEO

**PREPARED BY:** KIRSTY PEARCE, SENIOR GOVERNANCE ADVISOR

**1. PURPOSE**

- 1.1 This report presents to Council the proposed:
- 1.1.1 Governance Rules, required under section 60 of the Local Government Act 2020;
  - 1.1.2 Election Period Policy, required under section 69 of the Local Government Act 2020, and
- 1.2 recommends commencing a community engagement process prior to the adoption of the Governance Rules and Election Period Policy.

**2. EXECUTIVE SUMMARY**

- 2.1 The Local Government Act 2020 (Act) received Royal Assent on 24 March 2020. The Act is the result of a four-year review of the Local Government Act 1989. The Act is proclaimed in four stages.
- 2.2 Council is required under Section 60 of the Act to adopt a set of Governance Rules, inclusive of an Election Period Policy, by 1 September 2020.
- 2.3 The requirement to adopt a set of Governance Rules replaces the Meeting Procedure Local Law required under the Local Government Act 1989, and must be made with respect to—
- (a) the conduct of Council meetings and meetings of delegated committees;
  - (b) the form and availability of meeting records;
  - (c) the election of the Mayor and the Deputy Mayor;
  - (d) the appointment of an Acting Mayor;
  - (e) an election period policy;
  - (f) procedures for the disclosure of a conflict of interest by a Councillor or a member of a delegated committee;
  - (g) the disclosure of a conflict of interest by a member of Council staff when providing information in respect of a matter.
- 2.4 The Governance Rules must provide for Council to—
- (a) consider and make decisions on any matter being considered by the Council fairly and on the merits; and
  - (b) institute decision making processes to ensure that any person whose rights will be directly affected by a decision of the Council is entitled to communicate their views and have their interests considered



- 2.5 Council must include an election period policy in its Governance Rules. An election period policy must prohibit any Council decision during the election period for a general election that—
- (a) relates to the appointment or remuneration of the Chief Executive Officer; or
  - (b) commits the Council to expenditure exceeding one per cent of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year; or
  - (c) the Council considers could be reasonably deferred until the next Council is in place; or
  - (d) the Council considers should not be made during an election period.
- 2.6 An election period policy must prohibit any Council decision during the election period for a general election or a by-election that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election.

### 3. RECOMMENDATION

That Council:

- 3.1 Endorses for the purposes of community consultation:
- 3.1.1 Draft Governance Rules, required under section 60 of the Local Government Act 2020 (Attachment 1);
  - 3.1.2 Draft Election Period Policy, required under section 69 of the Local Government Act 2020 (Attachment 2).
- 3.2 Invites written submissions and community feedback on the draft Governance Rules and draft Election Period Policy until 31 July 2020.
- 3.3 Receives a further report at the Ordinary Council meeting to be held on 19 August 2020 recommending the adoption of the Governance Rules and Election Period Policy after considering the feedback received.
- 3.4 Delegates authority to the Chief Executive Officer to make amendments to the document to correct any minor drafting errors that do not materially alter the intent of the policy.

### 4. KEY POINTS/ISSUES

#### Governance Rules

- 4.1 Council's current Meeting Procedure Local Law was adopted by Council in September 2019 after an extensive review process was conducted to incorporate changes in legislation, the inclusion of minor enhancements and new clauses to improve the clarity and transparency of meeting procedures for Councillors, the community and staff. The Local Law considered all feedback received from Councillors, Council's Executive Leadership Team and members of the community, and was benchmarked against the Meeting Procedure Local Laws of similar Councils.
- 4.2 The draft Governance Rules are primarily a replication of the Meeting Procedure Local Law 2019 and have been developed using a model template produced by Maddocks Lawyers incorporating legislation and Best Practice, and guidance material released by State Government.



- 4.3 The governance rules are divided into an introduction and seven chapters. Each chapter has its own rules.
- 4.3.1 Chapter 1 – Governance Framework
- Ensures compliance with s 60(2) of the Act. In doing so, it imposes obligations on those involved in decision-making, including members of council staff acting under delegation.
- 4.3.2 Chapter 2 – Meeting Procedure for Council Meetings
- Contains the rules relating to meeting procedure at council meetings. It includes provisions relating to the election of the Mayor and Deputy Mayor, the appointment of any Acting Mayor and the form and availability of meeting records (in the form of minutes of council meetings). The provisions of the existing meeting procedure local law have been transferred across to this chapter.
- 4.3.3 Chapter 3 – Meeting Procedure for Delegated Committees
- The meeting procedure for council meetings is relied upon as the basis for regulating the conduct of delegated committee meetings and allows for some flexibility for provisions of the governance rules to be modified in its application to a meeting of a delegated committee.
- 4.3.4 Chapter 4 – Meeting Procedure for Community Asset Committees
- It is open to Council’s CEO to provide for how community asset committee meetings are to be conducted in the instrument of sub-delegation. As an alternative, this chapter enables the community asset committee to set its own meeting procedure.
- 4.3.5 Chapter 5 – Disclosure of Conflicts of Interest
- Sets out procedures for the disclosure of conflicts of interest by Councillors at council meetings, delegated committee meetings and community asset committee meetings. Members of council staff are also subject to disclosure obligations when exercising delegated power or performing a statutory function and are included in this chapter.
- 4.3.6 Chapter 6 – Miscellaneous
- Addresses other matters linked to the conduct of meetings not provided for in other chapters including informal meetings of councillors and management of confidential information.
- 4.3.7 Chapter 7 – Use of the Common Seal
- Regulates the use of the Common Seal.
- 4.4 Chapter 8 – Election Period Policy**
- 4.4.1 An Election Period Policy must be included in the Governance Rules. Council’s current Election Period Policy was extensively reviewed and adopted by Council in September 2019. The new draft Policy has been



updated to incorporate the changes in legislation provided by the introduction of the Local Government Act 2020.

4.4.2 The election period is the period that starts from the last day that nominations for that election can be received and ends on 6pm on Election Day. The 2020 Election Period is from 12 noon on Tuesday 22 September 2020 to 6pm Saturday 24 October 2020. A reference to caretaker period has the same meaning election period.

4.4.3 The Act prohibits specific decisions of Council during the election period—

- appointment or remuneration of the CEO but not an Acting CEO
- expenditure exceeding one per cent of the income from general rates, municipal charges and service rates and charges
- Council considers could be reasonably deferred until the next Council is in place
- Council considers should not be made during an election period
- any decision that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election.

A decision made in contravention of the policy is invalid. A person who suffers any loss or damage as a result of acting in good faith on a Council decision that is invalid is entitled to compensation from the Council for that loss or damage.

4.4.4 The Act presents a number of Electoral offences relating to Council responsibilities

**a) Printing and Publication of Electoral Material**

A person must not print, publish or distribute electoral material unless the name and address of the person who authorised the electoral material is clearly displayed on its face

A person must not print, publish or distribute electoral material that contains a representation of a ballot-paper for use in an election that is likely to induce a voter to mark their vote otherwise than in accordance with the directions on the ballot-paper.

**b) False or misleading information or particulars**

A person must not make a statement knowing that it is false or misleading in a material particular in any information provided orally or in writing in relation to voter enrolment or in any declaration or application in relation to an election under this Act or the regulations. An offence against this section is an indictable offence and can carry up to 5 years imprisonment.

**c) Author to be identified**

A person must not during the election period print, publish or distribute a newspaper, circular or pamphlet containing electoral matter unless the author's name and address are set out at the end of the article, or if only part of the article, appears in any issue of a newspaper, circular or pamphlet at the end of that part



4.4.5 To ensure that Council complies with its obligations, the Policy establishes procedures and limitations to govern the following activities during an election period:

- Decision Making
- Council Resources
- Consultation and Engagement
- Events and Functions
- Publishing and Communications
- Council Information
- Electoral Signage and Electioneering

## **5. CONSULTATION AND STAKEHOLDERS**

- 5.1 The Governance Rules and Election Period Policy are statutory documents which incorporate prescribed requirements of the Local Government Act 2020.
- 5.2 Officers have worked closely with other Councils, Local Government Victoria, the Municipal Association of Victoria, legal advisors, LGPro and other sector bodies to interpret legislative requirements and develop draft policies.
- 5.3 A high level review of Council's Meeting Procedure Local Law was undertaken by an independent legal advisor to ensure consistency with the Local Government Act and the Charter of Human Rights prior to its adoption in September 2019.
- 5.4 The Governance Rules and the Election Period Policy have been provided to the Council's Audit Committee for review. Due to the tight deadlines for adoption, the Committee will provide this feedback during the consultation period and this will be incorporated into the final document that is presented to Council in August 2020 for adoption at that point in time.

## **6. LEGAL AND RISK IMPLICATIONS**

- 6.1 Council is required to adopt by 1 September 2020 Governance Rules, under section 60 of Act, and an Election Period Policy, under section 69 of Act.
- 6.2 The Governance Rules provide processes to ensure that decisions made by Council are fair, considered, balanced, ethical and impartial; and made on the merits, free from favouritism or self-interest, and adhere to the principles of natural justice.
- 6.3 The Election Period Policy aims to ensure that council complies with its legislative requirements under the Act, and Councillors, community and staff are aware of what can and cannot be done during the election period.

## **7. FINANCIAL IMPACT**

- 7.1 Funding for the development of Policies required under the Local Government Act 2020 has been provided for in existing budgets.

## **8. ENVIRONMENTAL IMPACT**

- 8.1 There is no direct environmental impact resulting from Council adopting these documents.



## 9. COMMUNITY IMPACT

- 9.1 The key objectives of the Governance Rules relating to the community are to:
- 9.1.1 Ensure proceedings and decision making by Council is transparent and understandable to all people who wish to participate in and observe meetings of Council.
  - 9.1.2 Ensure participation in proceedings is accessible and balanced with Council's primary decision-making role.
  - 9.1.3 Ensure proceedings and decision making is conducted in accordance to the principles of procedural fairness and good governance.
  - 9.1.4 Ensure proceedings and decision making is made in a safe and respectful environment and provides an equal opportunity for all to participate, with respect being accorded to the expression of differing views.
- 9.2 The adoption of an election period policy ensures community expectations that Councillors and Council staff act in an accountable, transparent and lawful way during the election period.

## 10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 Adoption of the Governance Rules and Election Period Policy aligns with Direction 6 of the Council Plan (Our Commitment to You), by providing a transparent and good governance approach to decision making and aids in achieving a financially sustainable, high performing, well governed organisation that puts the community first.
- 10.2 These documents assist Councillors and Council staff to understand the importance of having open and ethical processes which adhere to the law and stand up to scrutiny.

## 11. IMPLEMENTATION STRATEGY

- 11.1 Public notice of the draft Governance Rules and Election Period Policy will be given, and officers will undertake a community engagement process in accordance with the Act. Council will consider feedback received and adopt the final documents at the 19 August 2020 Council meeting.

## 12. OFFICER DIRECT OR INDIRECT INTEREST

- 12.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

**TRIM FILE NO:** F20/1

**ATTACHMENTS**

- 1. Final Draft\_Governance Rules.pdf
- 2. Final Draft\_Election Period Policy.pdf