



Colac Otway
SHIRE

SUBMISSIONS COMMITTEE MEETING

AGENDA

Wednesday 13 April 2022

at 4:00 PM

COPACC

95 - 97 Gellibrand Street, Colac



COLAC OTWAY SHIRE SUBMISSIONS COMMITTEE MEETING

Wednesday 13 April 2022

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COLAC OTWAY SHIRE SUBMISSIONS COMMITTEE MEETING

NOTICE is hereby given that the next **SUBMISSIONS COMMITTEE MEETING OF THE COLAC OTWAY SHIRE COUNCIL** will be held at COPACC on Wednesday 13 April 2022 at 4:00 PM.

AGENDA

1 DECLARATION OF OPENING

OPENING PRAYER

Almighty God, we seek your blessing and guidance in our deliberations on behalf of the people of the Colac Otway Shire. Enable this Council's decisions to be those that contribute to the true welfare and betterment of our community.

AMEN

2 PRESENT

3 APOLOGIES AND LEAVE OF ABSENCE

4 WELCOME AND ACKNOWLEDGEMENT OF COUNTRY AND REASON FOR MEETING

Colac Otway Shire acknowledges the original custodians and law makers of this land, their elders past and present and welcomes any descendants here today.

Please note: This Committee meetings will be audio recorded and live streamed, with the exception of matters identified as confidential items in the Agenda. This includes the public participation sections of the meetings.

By participating in open meetings, individuals consent to the use and disclosure of the information they share at the meeting (including any personal and/or sensitive information).

Recordings of meetings will be available to the public on Council's website as soon as practicable following the meeting. Recordings are also taken to facilitate the preparation of the minutes of open Council and Committee meetings and to ensure their accuracy. Original recordings will be retained by Council for a period of four years.

As stated in the Governance Rules, other than an official Council recording, no video or audio recording of proceedings of Council or committee meetings will be permitted without specific approval by resolution of the relevant meeting.

The sole purpose of this Submissions Committee meeting is to hear persons who indicated they wish to speak in support of their written submission to the:

1. Councillor Code of Conduct
2. Public Transparency Policy
3. Governance Rules
4. 2022-25 Rating Strategy.

5 DECLARATIONS OF INTEREST

A Councillor who has declared a conflict of interest, must leave the meeting and remain outside the room while the matter is being considered, or any vote is taken.

6 CONFIRMATION OF MINUTES

- Submissions Committee meeting held on 1 September 2021.

RECOMMENDATION

That the Submissions Committee confirm the minutes of the Submissions Committee meeting held on 1 September 2021.

7 VERBAL SUBMISSIONS

Item: 8.1

Councillor Code of Conduct - Consideration of Submissions

OFFICER	Marlo Emmitt
CHIEF EXECUTIVE OFFICER	Anne Howard
DIVISION	Executive
ATTACHMENTS	<ol style="list-style-type: none">1. Feedback and Responses for Councillor Code of Conduct [8.1.1 - 1 page]2. Councillor Code of Conduct - final - adopted 24 February 2021 [8.1.2 - 27 pages]

1. PURPOSE

The purpose of this report is to hear verbal submissions in relation to the Councillor Code of Conduct.

2. EXECUTIVE SUMMARY

The Councillor Code of Conduct (Code) was adopted by Council on 24 February 2021 in accordance with the requirements of the *Local Government Act 2020* (Act). The Council resolution also stipulated that there be a review of the Code (to begin within nine months of the resolution being passed), with consideration to be given for public input.

Councillors reviewed the Code at a Councillor Briefing session held on 20 October 2021. No changes to the Code were recommended.

On 24 November 2021, Council resolved to issue the Code for public consultation, for a period of not less than six weeks, and hear any verbal submissions at a meeting of the Submissions Committee at a time and date to be determined.

The Code was promoted on the 'Have Your Say' section of Council's website, via the Colac Herald, community newsletters and Council's social media platforms. The consultation period commenced on 26 November 2021 and concluded on 14 January 2022.

One written submission was received, a summary of which is provided at Attachment 1. The submitter also requested the opportunity to be heard by the Submissions Committee, in support of their written submission.

3. RECOMMENDATION

That the Submissions Committee:

1. *Acknowledges the written submission received to the Councillor Code of Conduct.*
2. *Acknowledges and notes the verbal comments made in support of the written submission.*
3. *Thanks the submitter for their submissions.*
4. *Having heard all persons wishing to speak to their submission, recommends that Council consider the submissions at the Council meeting scheduled to be held on Wednesday 27 April 2022.*

4. KEY INFORMATION

Councillor Code of Conduct

The *Local Government Act 2020* (Act) requires Council to develop and maintain a Councillor Code of Conduct (Code) that includes the standards of conduct expected to be observed by councillors that are prescribed in the *Local Government (Governance and Integrity) Regulations 2020*. A Code may also include any other matters which the Council considers appropriate.

Under the Act, Council must review and adopt the Code within four months of the general election.

The submission received provides feedback on the following topics:

- Inclusion of community consultation in the Code
- Including of procedures to assist the community
- Council decisions resulting from a process that breaches the Code of Conduct.

The feedback has been reviewed and summarised and an officer response provided.

5. CONSIDERATIONS

Overarching Governance Principles (s(9)(2) LGA 2020)

The Governance Principles have been considered throughout the Councillor Code of Conduct review process, with the following rule being regarded as having particular relevance:

- s(9)(2)(i) the transparency of Council decisions, actions and information is to be ensured; despite there being no legislative requirement, the Code review has undergone a public exhibition and community engagement process. The Submissions Committee meeting is being held to give people an opportunity to verbally address the Committee in support of their written submissions.

Policies and Relevant Law (s(9)(2)(a) LGA 2020)

Not applicable.

Environmental and Sustainability Implications (s(9)(2)(c) LGA 2020)

Not applicable.

Community Engagement (s56 LGA 2020 and Council’s Community Engagement Policy)

In accordance with Council’s Community Engagement Policy, the Code was exhibited for public consultation, for a period of not less than six weeks. The consultation period commenced on 26 November 2021 and concluded on 14 January 2022. A meeting of the Submissions Committee was subsequently scheduled for 13 April 2022, to hear any person wishing to speak at the Committee meeting in support of their written submission.

Public Transparency (s58 LGA 2020)

Public transparency has been ensured through the public exhibition and community engagement process.

Alignment to Plans and Strategies

Alignment to Council Plan 2021-2025:

Theme 4 – Strong Leadership and Management

4.1 We commit to a program of best practice and continuous improvement.

Financial Management (s101 Local Government Act 2020)

Not applicable.

Service Performance (s106 Local Government Act 2020)

Not applicable.

Risk Assessment

There are no identified Workplace Health and Safety implications associated with this report.

Communication/Implementation

The outcome of the Code review will be posted on Council’s website and individuals who made a submission during the exhibition period will be informed of the outcome separately.

Human Rights Charter

Not applicable.

Officer General or Material Interest

No officer declared an interest under the *Local Government Act 2020* in the preparation of this report.

Summary of submission received

Councillor Code of Conduct

Summary of feedback	Officer response
<p><u>Inclusion of community consultation in the Code</u></p> <p>While there is no legislative requirement, I propose that engagement with the community be included in the Councillor Code of Conduct as an action to be undertaken when it is developed or reviewed.</p>	<p>There is no legislative requirement to engage with the public when developing or reviewing the Councillor Code of Conduct, however this does not preclude Council from doing so if it wants to.</p> <p>Officers make no recommendation about this, as it is not a governance matter. The Councillor Code of Conduct is a public commitment by Councillors to each other and the community outlining behaviours that reflect the prescribed standards of conduct.</p>
<p><u>Inclusion of procedures that assist the community</u></p> <p>Recommend that the procedures in relation to reporting a breach of the Code of Conduct, specifically where it relates to a member of the community, be detailed and highlighted in the Code.</p> <p>Perhaps consider grievance resolution procedures (like those in Yarra City Council's Code) that apply equally to grievances reported by Councillors, Council officers and 'another person'.</p>	<p>This inclusion is not recommended. Where members of the public would like to raise a complaint against a Councillor for a possible breach or offence under the Act or this Code, this may be directed to the Local Government Inspectorate or the Colac Otway Shire Councillor Conduct Officer.</p>
<p><u>Council decisions resulting from processes that breach the Code of Conduct</u></p> <p>Recommend Council consider including in the Code provisions that outline the steps to be taken if a Council decision has resulted from a process that was inherently a breach of the Councillor Code of Conduct.</p> <p>The issue is how do we rectify a council decision that is found to have been tainted by a breach in the Councillor Code of Conduct, either through a Councillor's actions in the process leading to the decision that was made or through some other means.</p> <p>Factors to be considered may include, establishing the person/s who are eligible to raise an objection to the council decision on the grounds stated above, the timeframe within which they should do so and the procedures to investigate and where appropriate, address the concerns that were raised.</p> <p>The issue may be addressed as part of the arbitration process and may involve repealing and then retaking the decision after following due process – whether or not the decision remains the same.</p>	<p>Not recommended for inclusion in the Councillor Code of Conduct. The Code sets the standards of conduct expected to be observed by Councillors in the course of their functions and duties as Councillors.</p> <p>Council's Complaints Policy should include procedures for making a complaint about Council as the collective decision-making body.</p> <p>NOTE: Council will be reviewing its Complaints Policy in the near future and will consider procedures relating to complaints about the CEO, Council contractors and decisions made at Council meetings as part of the review process (in recommended in the Victorian Ombudsman's Councils and Complaints Good Practice Guide 2nd edition).</p>



COUNCILLOR CODE OF CONDUCT

Adopted by Council: 24 February 2021





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1. Introduction

The Councillor Code of Conduct (Code) forms part of Colac Otway Shire's Governance Framework, which is set out in the *Local Government Act 2020* (the Act). The primary objective for the Colac Otway Shire Council (Council) is to endeavour to achieve the best outcomes for the local community having regard to the long term cumulative effect of its decisions.

This Code is a public declaration that Councillors of the Council are committed to governing the municipality effectively and will observe the principles of good governance and integrity.

The Code was adopted by Council on 24 February 2021 and is required to be reviewed within four months of a general election.

2. First Nations Acknowledgment

Council proudly acknowledges the Gulidjan (Goole-ee-jan) and Gadubanud (Gad-a-ban-nood) peoples as the traditional custodians of the Colac Otway Region. We acknowledge that the Council is located on and conducts business upon lands of the Gulidjan and Gadubanud people.

We will observe the appropriate protocols for acknowledgement of the original inhabitants of this land. The following Acknowledgement of Council is read by the Mayor (or Chief Executive, as appropriate) at all formal Council meetings and civic receptions prior to commencement of any formal proceedings:

"Colac Otway Shire acknowledges the original custodians and law makers of this land, their elders past, present and emerging and welcomes any descendants here today."

3. Purpose

The purpose of the Code is to set out the standards of conduct expected to be observed by Councillors in the course of their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification.

4. Scope

This Code applies to the Councillors of the Colac Otway Shire Council.

5. Legislative context

The *Local Government Act 2020* requires Council to develop and maintain a Councillor Code of Conduct that includes the standards of conduct expected to be observed by Councillors prescribed in the *Local Government (Governance and Integrity) Regulations 2020*. A Councillor Code of Conduct may also include any other matters which the Council considers appropriate.

6. Councillor Standards of Conduct

Councillors must comply with the prescribed Standards of Conduct in Schedule 1 to the *Local Government (Governance and Integrity) Regulations 2020*.

A breach of the conduct standards constitutes *misconduct* as defined under the Act.



6.1. Standard 1 – Treatment of others

In performing the role of a Councillor, we will treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that we:

- take positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*
- support Council in fulfilling its obligation to achieve and promote gender equality
- do not engage in abusive, obscene or threatening behaviour in our dealings with members of the public, Council staff and Councillors
- in considering the diversity of interests and needs of the municipal community, treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities.

6.2. Standard 2 – Performing the role of Councillor

In performing the role of a Councillor, we will do everything reasonably necessary to ensure that we perform the role of a Councillor effectively and responsibly, including by ensuring that we:

- undertake any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor
- diligently use Council processes to become informed about matters which are subject to Council decisions
- are fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity
- represent the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

6.3. Standard 3 – Compliance with Good Governance Measures

In performing the role of a Councillor, to ensure the good governance of Council, we will diligently and properly comply with the following:

- any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors
- the Council Expenses Policy adopted and maintained by the Council under section 41 of the Act
- the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act
- any directions of the Minister issued under section 175 of the Act.



6.4. Standard 4 – Councillor Must Not Discredit or Mislead Council or Public

In performing the role of a Councillor, we will:

- ensure that our behaviour does not bring discredit upon Council
- not deliberately mislead Council or the public about any matter related to the performance of our public duties.

6.5. Standard 5 – Standards do not Limit Robust Political Debate

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

7. Roles and Responsibilities

7.1. Role of Council

The primary role of Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. Council must perform its role in accordance with the Overarching Governance Principles (refer Appendix 2).

7.2. Role of Councillor

The role of every Councillor is to:

- participate in the decision making of the Council
- represent the interests of the municipal community in that decision making
- contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

In performing the role of Councillor, each Councillor will:

- consider the diversity of interests and needs of the municipal community
- support the role of the Council
- acknowledge and support the role of the Mayor
- act lawfully and in accordance with the oath or affirmation of office
- act in accordance with the standards of conduct
- comply with Council procedures required for good governance.

7.3. Role of the Mayor

The role of the Mayor is to:

- chair Council meetings and be the principal spokesperson for the Council
- lead engagement with the municipal community on the development of the Council Plan
- report to the municipal community, at least once each year, on the implementation of the Council Plan
- promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct
- assist Councillors to understand their role



- take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer
- provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings
- perform civic and ceremonial duties on behalf of the Council.

7.4. Role and Powers of the Deputy Mayor

Where the Mayor is not present but his or her attendance is required to carry out the Mayoral functions or duties, the Deputy Mayor will perform the role of the Mayor and may exercise any of the powers of the Mayor.

7.5. Role of the Chief Executive Officer

The role of the Chief Executive Officer is prescribed in section 46 of the Act, but in general terms the Chief Executive Officer is responsible for supporting the Mayor and Councillors in the performance of their roles and ensuring the effective and efficient management of the day to day operations of the Council.

8. Specific Councillor Conduct Obligations

The following section sets out specific conduct obligations that are agreed by all Councillors.

8.1. Councillor Values and Behaviours

In undertaking our role as Councillors we will uphold the following agreed values of being:

- Community focussed
- Fair and inclusive
- Respectful
- Transparent and open
- Collaborative
- Prepared, efficient and productive
- Strategic, with a view to the future
- Respectful of diversity of opinions and differences
- Supportive of an open and safe environment in which to have robust discussions
- Accountable for delivering results.

In undertaking our roles as Councillors we agree that the following behaviours underpin these values:

- Listening actively and showing respect for one another and our roles
- Greeting each other courteously
- Being prepared when coming together to discuss Council business and engaging with an empathetic approach towards each other's viewpoints
- Maintaining an approach to things with an optimistic perspective
- Acknowledging good work



- Moving on and letting go of things to move forward together.

A list of behaviours we do not want see are included at Appendix 3.

8.2. Council Decision Making

In performing the role of Councillor, we commit to making all decisions impartially and in the best interests of the community. We will actively participate in the decision-making process and appropriately inform ourselves of the matter at hand. We will abide by the Governance Rules, which govern the conduct of Council meetings. Once a decision has been made, we will respect the making of that decision.

We will observe due regard to procedural fairness, the absence of bias in decision-making and will conform with relevant legislation and policies in the consideration of matters, including conflict of interest provisions, and the Councillor Interaction with Council Staff Protocol.

We understand that Council is bound by the decisions made at Council meetings, and that while we may not agree with all decisions made, it is our collective responsibility to ensure the stability of governance in our Shire.

8.3. Conflict of Interest

Each Councillor is required to identify, manage and disclose any conflicts of interest they may have in accordance with sections 126 to 131 of the Act, and Chapter 5 of the Governance Rules.

We acknowledge that we have read and understand these provisions and will abide by them. In the event that we consider that we have an actual or perceived conflict of interest in relation to a matter, we will declare and identify this at the commencement of any discussion on the matter. We will seek advice from the Chief Executive Officer or other appropriate person if we need assistance on interpretation of the legislative provisions.

We understand that the declaration must be in writing, and must be made at any Council meeting, delegated committee meeting or meeting conducted under the auspices of Council, at which the matter is to be discussed. Failure to comply with these provisions may constitute *serious misconduct*.

8.4. Use of Council resources

We commit to using Council resources effectively and economically and in accordance with all Council policies. In particular, we will:

- use Council resources, which may include equipment, information, staff resources, property of any kind and other assets, which have been provided to us only for the purposes of our duties as a Councillor and not for private purposes unless properly authorised to do so
- maintain adequate security over Council property, facilities and resources in our possession or control
- ensure that any claim for expenses that we may make will be in accordance with all legislative obligations and Council policies
- not use public funds or resources in a manner that is improper or unauthorised.



8.5. Councillor and Staff Interactions

The Chief Executive Officer is responsible for managing interactions between Councillors and Council Staff and ensuring the appropriate policy, protocols and practices are in place. Councillors acknowledge that the relationship between Councillors and Council Officers must be one of mutual cooperation and support.

Interactions are guided by the *Council and Staff Interactions – Chief Executive Officer Protocol*.

8.6. Political Activity

We are committed to ensuring that elections conducted by the Colac Otway Shire Council are done so fairly and democratically and in accordance with the highest standards of governance. Where we are a sitting Councillor during an election period we will abide by the requirements of the applicable legislation and the Council-endorsed Election Period Policy (which forms part of the Council's adopted Governance Rules) and, whether or not we are standing for re-election, we will at all times act respectfully towards all candidates for the election.

8.7. Bullying, vilification and victimisation

Council is committed to maintaining a workplace that is free from bullying, vilification and victimisation, where all people are treated with dignity and respect. In performing our role as Councillors, we must take positive action to eliminate victimisation in accordance with the *Equal Opportunity Act 2010*.

We will uphold Council's obligations to support a safe workplace, and will not engage in repeated unreasonable behaviour toward another Councillor or member of Council staff that creates a risk to the health and safety of that other Councillor or member of Council staff.

We will take all reasonable steps to eliminate bullying, vilification and victimisation at Council.

8.8. Human rights and equal opportunity

In performing our role as Councillors we must take positive action to eliminate discrimination in accordance with the *Equal Opportunity Act 2010* and support Council in fulfilling its obligation to achieve and promote gender equality.

We acknowledge the human rights that are protected under the *Victorian Charter of Human Rights and Responsibilities Act 2006* and undertake to exercise our duties in a manner that is compatible with the rights set out in the Charter.

We acknowledge this undertaking extends to all our relationships as a Councillor, including with other Councillors, the Chief Executive Officer and Council employees, as well as any member of the public with whom we may have contact, and any decisions we participate in as a Councillor.

We are committed to treating all people with dignity and respect and recognise that there is no place for unlawful discrimination, harassment (sexual or otherwise), racial and religious vilification and victimisation of any individual. We will:

- take all reasonable steps to eliminate all forms of discrimination at Council
- support Council to fulfil its obligation to achieve and promote gender equality.



8.9. Occupational health and safety

Council is committed to providing and maintaining a safe workplace for all and recognises the provisions of the *Occupational Health and Safety Act 2004* (OHS) apply to Council and Councillors. The Chief Executive Officer has a clear accountability for OHS matters, given their mandate under the Act, and will put policies in place from time to time to ensure a safe workplace for Councillors to carry out their civic duties.

As Councillors, we understand that occupational health and safety is a shared responsibility. Accordingly, we will:

- take reasonable care to protect our own health and safety as well as the health and safety of others in the workplace
- take reasonable care to make sure Council carries out, through the Chief Executive Officer, its general duties to ensure a safe workplace that is without risks to health by ensuring appropriate systems and policies are in place to manage those risks and consider any health and safety implications of Council decisions.

8.10. Sexual Harassment

Sexual harassment is against the law and will not be tolerated under any circumstances. In performing our role as Councillors, we must take positive action to eliminate sexual harassment in accordance with the *Equal Opportunity Act 2010*.

We will not engage in any unwelcome conduct of a sexual nature towards another individual where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the individual harassed would be offended, humiliated or intimidated. We will take all reasonable steps to eliminate sexual harassment at Council.

8.11. Interacting with children and young people

Council prides itself on being a child safe organisation and has zero tolerance for child abuse. Council adheres to the Victorian Child Safe Standards and related legislation which governs the protection of children and young people and deals with the failure to report harm, failure to protect and grooming offenses.

Accordingly, we undertake to:

- maintain the highest standards of professional conduct in our attitude, behaviour and interactions with children and young people
- support and maintain Council's commitment to the safety and wellbeing of children and young people and including through any decision we participate in as a Councillor
- take all reasonable steps to protect children and young people from harm, including complying with Council's obligations under State and Federal child protection legislation and the Victorian Child Safe Standards.



8.12. Personal Dealings with Council

When dealing with Council in a personal capacity (for example, as a ratepayer, recipient of a Council service or applicant for a permit), we will not expect or request preferential treatment.

To ensure transparency and fairness, complaints received by Councillors should be treated the same way as ones made to Council officers. We must not seek to direct or influence the complaint handling process.

We are aware the same service standards apply to a Councillor request, as a request for service from a community member.

8.13. Councillor and officer engagement

We have read and understood the requirements of Section 124 of the Act and will not seek to improperly direct or influence members of Council staff in the exercise of their duties. We will follow all procedures and protocols which set out interaction between Councillors and the Chief Executive Officer, senior management and other employees.

8.14. Gifts, Benefits or Hospitality

Councillors should avoid situations that give rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment.

We will comply with Council's Gifts, Benefits and Hospitality Policy and other applicable legislation.

8.15. Community Diversity

Council is committed to providing a welcoming and positive experience for all, regardless of background, culture, nationality, sexual orientation, gender identity or accessibility needs.

8.16. Reporting Unethical Behaviour

Ethical behaviour is an integral part of responsible, effective and accountable government. We acknowledge Council's obligations under the *Public Interest Disclosures Act 2012* to facilitate the making of disclosures of improper conduct by public officers and public bodies, including Council, its employees and Councillors.

We will immediately report to the Chief Executive Officer and/or appropriate integrity body, in line with the Council's Public Interest Disclosures Procedures, any suspected, potential or actual fraudulent, criminal, unethical, corrupt or other unacceptable behaviour that comes to our knowledge. We will participate as required to the best of our ability in any subsequent investigation whether undertaken internally or externally.

8.17. Media and Communications

Councillors have an obligation to effectively and satisfactorily communicate the decisions of Council and to respond to the community as required. To ensure that clear and consistent messages are communicated, the Council's Communications Policy sets out the management of media enquiries, release of information and nominated spokespersons.

Whilst it is understood that it is acceptable for an individual Councillor to publicly state that they did or did not vote in favour of any Council decision (made in open session) and the reasons, each Councillor agrees that this is to be done in a manner which is respectful of Council.



We will:

- respect the roles of Council's official spokespersons
- respect Council's decisions by not actively undermining any decisions which have been made
- not bring Council into disrepute through any of our words or actions
- not speak on behalf of Council without authority
- ensure any personal opinions or views we express publicly are identified as our own and not those of Council
- ensure any communications we make are not offensive, derogatory, insulting or otherwise damage the reputation of Council.

8.18. Use of Council Information

We acknowledge that information which is 'confidential information' within the meaning of section 3 and section 125 of the Act, and Chapter 6 of the Governance Rules may not be disclosed by us except in certain specified circumstances (refer Appendix 1).

We understand that Council information may also be subject to other legislation including the *Health Records Act 2001*, *Privacy and Data Protection Act 2014* and *Freedom of Information Act 1982*. We understand that all briefing material provided to Councillors shall be considered confidential unless that information is otherwise made publicly available by resolution of Council or the Chief Executive Officer.

We will comply with any legislative provisions and Council policies concerning our access to, use of, or disclosure of Council information, whether confidential or otherwise.

8.19. Land Use Planning, Development Assessment and Other Regulatory Functions

The safety and integrity of Council and Councillors in performance of their duty is of primary importance.

We recognise the separation of our roles and responsibilities from those of the Chief Executive Officer and Council officers and as such will abstain from involvement in functions such as the issuing of permits (unless referred to Council for a formal resolution), the consideration of fines, prosecutions and other similar regulatory functions of the Council.

When proposing to meet with a planning permit applicant, either for the purpose of discussing the application or where the application is likely to become controversial, we will seek a meeting via the Planning Manager to ensure a Council planning officer is present.

9. Dispute Resolution Process

9.1. Purpose

This part describes the processes for Councillors who wish to report and resolve a dispute with another Councillor under the Code. Councillors recognise that the democratic process of local government involves holding, and expressing, different and sometimes opposing viewpoints. It is a normal, and vital, function of this process that these different views are shared in a considered and informed way. Although all Councillors strive to engage in positive, constructive and respectful interactions, conflict and/or disputes may arise.



All Councillors recognise that they hold an individual and collective responsibility to resolve disputes in a proactive, positive and courteous manner before they are escalated, to avoid such disputes threatening the effective operation of Council.

The primary purpose of an internal resolution procedure is to provide Councillors with support and mechanisms to resolve conflicts and disputes in a manner that enables them to move forward and establish and maintain effective working relationships. The procedure also provides avenues and guidance for escalating more serious issues and allegations where required.

This procedure:

- is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in council and committee meetings
- does not include a complaint made against a Councillor or Councillors by a member or members of Council staff, or by any other person, or a “disclosure” under the *Public Interest Disclosures Act 2012*.

9.2. Scope

This procedure operates alongside, and does not displace, any external avenues provided for by legislation for the reporting and resolution of issues and disputes.

For the purposes of this part:

- This procedure does not deal with allegations of criminal misconduct as they are envisaged to be raised with Victoria Police or other relevant mechanisms.
- Nothing in this procedure prevents an individual Councillor with a specific issue or dispute from pursuing other avenues available to them under the law.

Where members of the public would like to raise a complaint against a Councillor for a possible breach or offence under the Act or this Code, this may be directed to the Local Government Inspectorate or the Colac Otway Shire Councillor Conduct Officer. For the avoidance of doubt, a member of the public may raise a formal complaint through any available channel external to Council as provided by law.

In particular, some allegations of Councillor *misconduct* under this Code may also constitute *serious misconduct* under the Act. In these instances, it is open to Council, a Councillor, or a group of Councillors, to make an application for a Councillor Conduct Panel. For allegations of gross misconduct, Council, a Councillor(s) or members of the public can raise complaints to the Local Government Inspectorate.

9.3. Responsibilities

9.3.1. Mayor and Deputy Mayor

The Mayor and Deputy Mayor have a responsibility to:

- establish and promote appropriate standards of conduct
- support good working relations between Councillors
- support Councillors in dispute resolution.



9.3.2. *Councillor Conduct Officer*

The Councillor Conduct Officer has a responsibility to:

- assist Council in the implementation and conduct of the internal resolution procedure
- assist the Principal Councillor Conduct Registrar to perform the functions specified in section 149 of the Act.

9.3.3. *Chief Executive Officer*

The Chief Executive Officer has a responsibility to:

- ensure that support and assistance is available to all Councillors where it is required
- take all reasonable steps to ensure the consistent and accountable application of this policy across Council
- comply with all relevant legislation as the senior officer within Council administration.

9.3.4. *Councillors*

Councillors as defined in this section have a responsibility to:

- co-operate with any investigation into, or arbitration of, a complaint made under this procedure
- maintain confidentiality regarding any complaint.

9.4. **Informal Internal Resolution Between Parties to a Dispute**

9.4.1. *Discussion*

Before commencing a formal dispute resolution process, the Councillors who are parties to a dispute are encouraged to use their best endeavours to resolve their issue or dispute in a courteous and respectful manner between themselves, stop any behaviour that is causing issues, and to avoid the issue escalating and threatening the effective operation of Council.

Where the issue or dispute remains unresolved or where the circumstances make informal resolution inappropriate, the parties may resort to Council's internal dispute resolution processes set out below.

9.5. **Formal Internal Resolution Between Parties to a Dispute**

9.5.1. *Interpersonal Disputes and Alleged Contravention of the Councillor Code of Conduct*

Interpersonal disputes between Councillors involve conflict where there may be a breakdown in communication, a misunderstanding, a disagreement between Councillors, or strained working relationships. Disputes may also relate to an alleged contravention of the Code.

Interpersonal disputes between Councillors or alleged contraventions of the Code may be managed via:

- a resolution discussion (facilitated by the Mayor or Deputy Mayor)
- mediation with an external mediator (via application to the Councillor Conduct Officer)

9.5.1.1. *Internal Resolution Discussion*

Where Councillors who are in dispute have not been able to resolve their dispute informally between themselves, a party may request in writing that the Mayor or Deputy Mayor (the 'Convenor') convene a confidential meeting of the parties to discuss the dispute. The Councillor



requesting the meeting is to provide the Convenor with the name of the other Councillor and the details of the dispute in writing. They should also notify the other Councillor of the request and provide a copy of the written request to them.

The Convenor or the Councillor Conduct Officer is to ascertain whether or not the other party is prepared to attend the meeting. If the other Councillor is not prepared to attend the meeting, the Convenor is to advise the party seeking the meeting. No further action is required of the Convenor.

If the other Councillor consents to a meeting, the Convenor is to hold a confidential meeting of the parties.

Unless one or both parties are unavailable, this should be arranged within ten working days of receipt of the meeting request.

The Convenor may provide the parties with guidelines in advance of the meeting or at the meeting, to help facilitate the meeting. If the parties cannot resolve the dispute at the meeting, a further meeting may be convened.

The role of the Convenor at the meeting is to assist the parties to resolve the dispute. In the process of doing this they may provide guidance about what is expected of a Councillor including in relation to the role of a Councillor under section 28 of the Act and the Code. The Convenor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties and a copy kept by the Councillor Conduct Officer. Where the dispute remains unresolved, a party may request mediation, or make an application for arbitration (where alleged contravention of the Councillor Conduct Standards apply).

9.5.1.2. Internal Independent Mediation

A Councillor or a group of Councillors may request that their dispute be referred to mediation.

The mediation would be conducted by an external accredited mediator.

The party seeking the mediation is to notify the other party of the request and details of the dispute in writing at the same time that it is submitted to the Councillor Conduct Officer. The Councillor Conduct Officer is to ascertain (in writing) whether or not the other Councillor is prepared to participate in the mediation.

If the Councillor declines to participate in the mediation, they are to provide their reasons for not doing so in writing to the Councillor Conduct Officer. These reasons may be taken into account if the matter is subsequently the subject of an application for a Councillor Conduct Panel.

If the other party agrees to participate in mediation, the Councillor Conduct Officer is to advise the party seeking the mediation, the Mayor and Chief Executive Officer.

The Councillor Conduct Officer will engage the services of an external mediator to conduct the mediation at the earliest opportunity. All parties will cooperate with the dispute resolution process and provide reasonable assistance to the external mediator and the Councillor Conduct Officer.

If the parties cannot resolve the dispute at the mediation meeting, a further meeting may be convened with the consent of both parties. The mediator is to document any agreement reached. Copies of the agreement are to be provided to both parties and the Councillor Conduct Officer.



9.5.2. *Internal Arbitration Process for Breaches of the Prescribed Standards of Conduct*

The internal arbitration process applies to any breach by a Councillor of the prescribed standards of conduct.

An internal arbitration involves a party (the Applicant) to a dispute requesting the Principal Councillor Conduct Registrar to appoint an impartial third party (the Arbiter) to make findings in the relation to allegations concerning another Councillor(s) (the Respondent) and whether they have engaged in misconduct under the Act.

An application for an internal arbitration process to make a finding of *misconduct* against a Councillor can be made by:

- Council following a resolution of Council; or
- a Councillor or a group of Councillors.

The application must:

- specify the name of the Councillor alleged to have breached the conduct standards
- specify the clause of the conduct standards in the *Local Government (Governance and Integrity) Regulations 2020* that the Councillor is alleged to have breached
- specify the misconduct that the Councillor is alleged to have engaged in that resulted in the breach of the conduct standards
- include evidence in support of the allegation
- name the Councillor appointed to be their representative where the application is made by a group of Councillors
- be signed and dated by the Applicant or the Applicant's representative
- be made within three months of the alleged misconduct occurring
- be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(c) of the Act.

After receiving an application, the Councillor Conduct Officer will provide the application to the Councillor who is the subject of the application.

On receiving an application, the Principal Councillor Conduct Registrar will:

- advise the Chief Executive Officer (and the Mayor as appropriate) of the application without undue delay
- identify an Arbiter to hear the application
- obtain from the Arbiter written advice that they have no conflict of interest in relation to the Councillors involved
- notify the parties of the name of the proposed Arbiter and provide them with the opportunity (two working days) to object to the person proposed to be the Arbiter
- consider the grounds of any objection and appoint the proposed Arbiter or identify another Arbiter
- provide a copy of the Application to the Arbiter as soon as practicable after the opportunity for the parties to object to an Arbiter has expired
- after consultation with the Arbiter, advise the Applicant and the Respondent of the time and place for the hearing
- attend the hearing(s) and assist the Arbiter in the administration of the process.



The Principal Councillor Conduct Registrar, after examining an application, will appoint an Arbiter to Council to hear the matter if satisfied that:

- the application is not frivolous, vexatious, misconceived or lacking in substance.
- there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application.

In identifying an Arbiter to hear the application, the Principal Councillor Conduct Registrar will select an Arbiter who is suitably independent and able to carry out the role fairly.

The Arbiter must be selected from a panel of eligible persons established by the Secretary to conduct an internal arbitration process.

The role of the Arbiter includes:

- consider an application alleging a contravention of the prescribed standards of conduct
- make findings in relation to the application
- provide a written statement of reasons supporting the findings to the parties at the same time as providing the findings to Council
- recommend an appropriate sanction or sanctions where the Arbiter makes a finding of misconduct against a Councillor.

An Arbiter:

- may find that a Councillor who is a Respondent to an application has not engaged in misconduct
- may find that a Councillor has engaged in misconduct
- may hear each party to the matter in person or solely by written or electronic means of communication
- is not bound by the rules of evidence and may be informed in any manner the Arbiter sees fit
- may at any time discontinue the hearing if the Arbiter considers that the application is vexatious, misconceived, frivolous or lacking in substance or the applicant has not responded, or has responded inadequately, to a request for further information
- will suspend the process during the election period for a general election
- must refer the matter in writing to the Principal Councillor Conduct Registrar if the Arbiter believes that the conduct that is the subject of the application for an internal arbitration process appears to involve *serious misconduct* and would more appropriately be dealt with as an application to the Councillor Conduct Panel under section 154 of the Act.

The Arbiter is to provide a copy of his or her findings and the statement of reasons to:

- Council
- The applicant or applicants
- The Councillor who is the subject of the allegation.
- The Principal Councillor Conduct Registrar.

A copy of the Arbiter's decision and statement of reasons must be tabled at the next Council meeting after Council has received the copy of the Arbiter's decision and statement of reasons and recorded in the minutes of the meeting.

If the Arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted before submission to the Council meeting.



If an Arbiter has made a finding of *misconduct* the Arbiter may do any one or more of the following:

- direct the Councillor to make an apology in a form or manner specified by the Arbiter
- suspend the Councillor from the office of Councillor for a period specified by the Arbiter not exceeding one month
- direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the Arbiter
- direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the Arbiter
- direct a Councillor to attend or undergo training or counselling specified by the Arbiter.

A Councillor will cooperate with the arbitral process and provide reasonable assistance to the Arbiter.

An application cannot be made for an internal resolution by arbitration during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

9.5.3. Failure to Participate in Internal Arbitration Process

A Councillor who does not participate in the internal arbitration procedure may be guilty of *serious misconduct*.

9.6. Application to Councillor Conduct Panel

Councillor Conduct Panels may hear an application that alleges *serious misconduct* by a Councillor.

An application for a Councillor Conduct Panel to make a finding of *serious misconduct* against a Councillor may be made by:

- The Council following resolution of the Council to do so;
- A Councillor or group of Councillors; or
- The Chief Municipal Inspector.

An application must be made within 12 months of the alleged serious misconduct occurring.

Applications of serious misconduct are reviewed by the Principal Conduct Registrar and are the subject of a Council Conduct Panel (CPP) process of review.



Appendix 1 – Definitions

Chief Executive	The Chief Executive Officer of the Colac Otway Shire Council
Chief Municipal Inspector	The Chief Municipal Inspector is responsible for investigating and prosecuting possible breaches and offences under the Local Government Act 2020, investigating allegations of Councillor misconduct, serious misconduct and gross misconduct, making an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor and making an application to the Victorian Civil and Administrative Tribunal for a finding of gross misconduct by a Councillor.
Conflict of Interest	A Councillor has: <ul style="list-style-type: none"> • a general conflict of interest in a matter if an impartial, fair minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty. • a material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.
Conduct Standards	The standards of Councillor conduct prescribed under Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020.
Councillor	All references to 'Councillor' include the Mayor, Deputy Mayor and elected members of the Colac Otway Shire Council except as expressly provided.
Councillor Conduct Panel	A panel established under the Local Government Act 2020 to hear applications and make findings of alleged misconduct or serious misconduct by a Councillor.
Employee	An employee of Council includes all members of staff, contractors and volunteers under the direct control or supervision of the Colac Otway Shire Council.
Gross Misconduct	'Gross misconduct' by a Councillor means behaviour that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature.
Improper Conduct	'Improper conduct' includes a failure to disclose a conflict of interest, a breach of confidentiality, the improper direction or influence of staff, the



	improper use of Council resources, or a breach of Council policy under the Code of Conduct by a Councillor.
Misconduct	<i>Misconduct</i> by a Councillor means any breach by a Councillor of the prescribed conduct standards included in this Councillor Code of Conduct.
Councillor Conduct Officer	A person appointed by the Chief Executive Officer to assist Council in implementing its internal arbitration process.
Principal Councillor Conduct Registrar	The Principal Councillor Conduct Registrar receives applications for the establishment of Councillor Conduct Panels under the Local Government Act 2020.
Secretary	Secretary to the Department of Environment, Land, Water and Planning
Confidential Information	<p>Confidential information is defined under section 3(1) of the Local Government Act 2020.</p> <p>(a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;</p> <p>(b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person;</p> <p>(c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;</p> <p>(d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;</p> <p>(e) legal privileged information, being information to which legal professional privilege or client legal privilege applies;</p> <p>(f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;</p> <p>(g) private commercial information, being information provided by a business, commercial or financial undertaking that—</p> <p>(i) relates to trade secrets; or</p> <p>(ii) if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;</p> <p>(h) confidential meeting information, being the records of meetings closed to the public under section 66(2)(a);</p>



	<p>(i) internal arbitration information, being information specified in section 145;</p> <p>(j) Councillor Conduct Panel confidential information, being information specified in section 169;</p> <p>(k) information prescribed by the regulations to be confidential information for the purposes of this definition;</p> <p>(l) information that was confidential information for the purposes of section 77 of the <i>Local Government Act 1989</i>.</p> <p>Note: <i>In the interests of transparency, Council may, by resolution, determine to release information to the public even though it is Confidential Information. Refer to Council's Public Transparency Policy for more detail.</i></p>
<p>Vilification</p>	<p>Vilification is behaviour that incites physical harm or hatred, serious contempt, revulsion or severe ridicule of a person or group because of their race or religion. It is unlawful conduct</p>
<p>Victimisation</p>	<p>Victimisation is subjecting, or threatening to subject, someone to reprisal or detriment because they have asserted their rights under equal opportunity law, made a complaint, helped someone else to make a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation</p>
<p>Bullying</p>	<p>For the purposes of this Code, "bullying behaviour" is any behaviour in which:</p> <ul style="list-style-type: none"> • a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons • the behaviour creates a risk to health and safety. <p>Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:</p> <ul style="list-style-type: none"> • aggressive, threatening or intimidating conduct • belittling or humiliating comments • spreading malicious rumours • teasing, practical jokes or 'initiation ceremonies' • exclusion from work-related events • unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level • displaying offensive material • pressure to behave in an inappropriate manner. <p>The following are not bullying behaviours:</p>



	<ul style="list-style-type: none"> • maintaining reasonable workplace goals and standards • legitimately exercising a regulatory function • legitimately implementing a council policy or administrative processes.
<p>Serious misconduct</p>	<p><i>Serious misconduct</i> by a Councillor means:</p> <ul style="list-style-type: none"> • failure by a Councillor to comply with the Council's internal arbitration process • failure by a Councillor to comply with a direction given to the Councillor by an Arbiter under section 147 • the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor. • failure of a Councillor to comply with a direction of a Councillor Conduct Panel • continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an Arbiter or by a Councillor Conduct Panel under section 167(1)(b) of the <i>Local Government Act 2020</i> • bullying by a Councillor of another Councillor or a member of Council staff • conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or member of Council staff • the disclosure by a Councillor of information the Councillor knows or should reasonably know, is confidential information • conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff • the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with the <i>Local Government Act 2020</i>.
<p>The Act</p>	<p>All references to 'the Act' are to the <i>Local Government Act 2020</i>.</p>



Appendix 2 - Overarching Governance Principles

A Council must in the performance of its role give effect to the overarching governance principles. (Section 8 & 9 of the Local Government Act 2020).

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

- 2 In giving effect to the overarching governance principles, a Council must take into account the following supporting principles—
 - (a) the community engagement principles;
 - (b) the public transparency principles;
 - (c) the strategic planning principles;
 - (d) the financial management principles;
 - (e) the service performance principals.



Appendix 3 – Undesirable Behaviours

To support and foster good working relationships, Councillors agree they do not want to see the following behaviours:

- Personal vindictiveness
 - Disrespect
 - Hostility
 - Aggression
- Closed mindedness to other people's opinions
- Manipulativeness, game playing and dishonesty
- Rude/abusive behaviour
- Badgering, belittling and put downs
- Being underprepared for meetings.



Appendix 4 - Relevant Legislation

Local Government Act 2020 (Vic)

Local Government (Governance and Integrity) Regulations 2020 (Vic)

Child Wellbeing and Safety Act 2005 (Vic)

Equal Opportunity Act 2010 (Vic)

Occupational Health and Safety Act 2004 (Vic)

Public Interest Disclosures Act 2012 (Vic)

Sex Discrimination Act 1984 (Cth)

Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)



Appendix 5 - Relevant Council Policies

Councillor and Staff Interactions – Chief Executive Officer Protocols

Fraud and Corruption Control Policy

Public Interest Disclosures Procedures

Governance Rules

Election Period Policy (incorporated in the Governance Rules)

Gifts, Benefits and Hospitality Policy

Public Transparency Policy

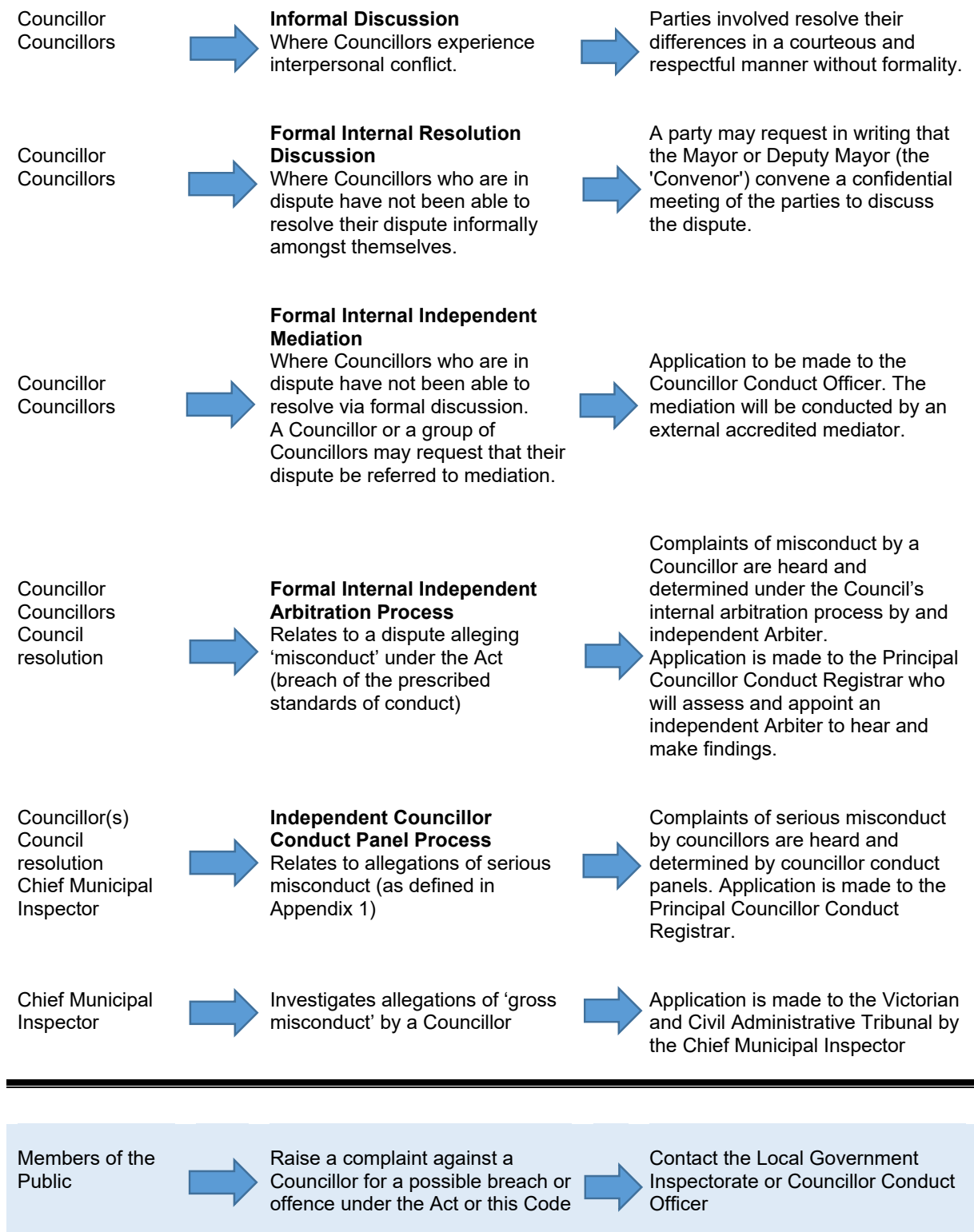
Council Expenses Policy

Information Privacy Policy

Complaints Policy



Appendix 6 – Dispute resolution flowchart



Item: 8.2

Governance Rules and Public Transparency Policy - Consideration of Submissions

OFFICER	Marlo Emmitt
CHIEF EXECUTIVE OFFICER	Anne Howard
DIVISION	Executive
ATTACHMENTS	<ol style="list-style-type: none"> 1. Feedback and Responses for Governance Rules [8.2.1 - 3 pages] 2. Table of changes to Governance Rules [8.2.2 - 4 pages] 3. Marked up changes to Governance Rules [8.2.3 - 46 pages] 4. Feedback and Responses for Public Transparency Policy [8.2.4 - 1 page] 5. Marked up changes to Public Transparency Policy [8.2.5 - 11 pages]

1. PURPOSE

The purpose of this report is to hear verbal submissions in relation to the revised Governance Rules and Public Transparency Policy.

2. EXECUTIVE SUMMARY

At its scheduled meeting held on 26 August 2020, Council adopted the Governance Rules (Rules) and Public Transparency Policy (Policy) in accordance with the requirements of the *Local Government Act 2020*. Council also:

1. Noted its previous resolution of 24 June 2020, recommending that the Rules be reviewed within 12 months of adoption, with Council to consider a report in April 2021 in relation to commencing a review.
2. Resolved at the 26 August 2020 meeting, that the Policy be reviewed within 12 months of adoption, with Council to consider a report in April 2021 in relation to commencing a review.

Workshops were held at Briefing sessions with Councillors to review the Rules and Policy on the following dates:

1. 21 April 2021
2. 14 July 2021
3. 13 October 2021
4. 30 October 2021.

At its meeting on 24 November 2021, Council resolved to issue the revised Rules and Policy for public consultation, for a period of not less than six weeks, and hear any verbal submissions at a meeting of the Submissions Committee at a time and date to be determined.

Both documents were promoted on the 'Have Your Say' section of Council's website, via the Colac Herald, community newsletters and Council's social media platforms. The consultation period commenced on 26 November 2021 and concluded on 14 January 2022.

One written submission was received for each document, a summary of which is provided at Attachment 1. The submitter also requested the opportunity to be heard by the Submissions Committee, in support of their written submission.

3. RECOMMENDATION

That the Submissions Committee:

1. ***Acknowledges the written submissions received to the revised Governance Rules and Public Transparency Policy.***
2. ***Acknowledges and notes the verbal comments made in support of written submissions.***
3. ***Thanks the submitter for their submissions.***
4. ***Having heard all persons wishing to speak to their submissions, recommends that Council consider the submissions at the Council meeting scheduled to be held on Wednesday 27 April 2022.***

4. KEY INFORMATION

Governance Rules

Under section 60 of the *Local Government Act 2020*, a Council must develop, adopt and keep in force Governance Rules for or with respect to the conduct of Council and delegated committee meetings, form and availability of meeting records, election of the Mayor and Deputy Mayor, appointment of an Acting Mayor, an election period policy, conflict of interest disclosure procedures for Councillors and staff and any other matters prescribed by the regulations.

The submission received provides feedback on the following seven topics:

1. Question time duration
2. Discussion on question asked
3. Unasked questions
4. Councillors answering questions
5. Electronic petitions and Council action on petitions
6. Community participation in Council decision
7. Citizens' Agenda Item.

Public Transparency Policy

Under section 57 of the *Local Government Act 2020*, a Council must adopt and maintain a Public Transparency Policy which gives effect to the public transparency principles, describes the ways in which Council information is to be made publicly available, specify which information must be publicly available and include any other matters prescribed by the regulations.

The submission received provides feedback on the following three topics:

1. Definitions
2. Community engagement in the Council decision-making process
3. Councillors to explain reasons for their decisions and opportunity be given to public to counter the reasons before vote is taken.

The feedback has been reviewed and summarised and an officer response provided.

5. CONSIDERATIONS

Overarching Governance Principles (s(9)(2) LGA 2020)

The Governance Principles have been considered throughout the Rules and Policy review process, with the following principles being regarded as having particular relevance:

- s9(2)(a) – Council decisions are to be made and actions taken in accordance with the relevant law. The revised Rules and Policy have been reviewed in accordance with the requirements of section 60 of the *Local Government Act 2020*.
- s(9)(2)(i) the transparency of Council decisions, actions and information is to be ensured. The Rules and Policy reviews have undergone a comprehensive public exhibition and community engagement process. The Submissions Committee meeting is being held to give people an opportunity to verbally address the Committee in support of their written submissions.

Policies and Relevant Law (s(9)(2)(a) LGA 2020)

The Rules and Policy have been developed and reviewed to ensure compliance with section 60 of the *Local Government Act 2020*.

Environmental and Sustainability Implications (s(9)(2)(c) LGA 2020)

Not applicable.

Community Engagement (s56 LGA 2020 and Council's Community Engagement Policy)

In accordance with Council's Community Engagement Policy, the revised Rules and Policy were exhibited for public consultation, for a period of not less than six weeks. The consultation period commenced on 26 November 2021 and concluded on 14 January 2022. A meeting of the Submissions Committee was subsequently scheduled for 13 April 2022 to hear any person wishing to speak at the Committee meeting in support of their written submission.

Public Transparency (s58 LGA 2020)

Public transparency has been ensured through the public exhibition and community engagement process.

Alignment to Plans and Strategies

Alignment to Council Plan 2021-2025:

Theme 4 – Strong Leadership and Management

4.1 We commit to a program of best practice and continuous improvement.

Financial Management (s101 *Local Government Act 2020*)

Not applicable.

Service Performance (s106 *Local Government Act 2020*)

Not applicable.

Risk Assessment

There are no identified Workplace Health and Safety implications associated with this report.

Communication/Implementation

The outcome of the Rules and Policy reviews will be posted on Council's website and individuals who made a submission during the exhibition period will be informed of the outcome separately.

Human Rights Charter

Not applicable.

Officer General or Material Interest

No officer declared an interest under the *Local Government Act 2020* in the preparation of this report.

Summary of submission received

Governance Rules

Summary of feedback	Officer response
<p><u>Question time duration</u></p> <p>Recommend the time allocated for public questions in Rule 56.3 be extended from 30 minutes to 1 hour to accommodate more questions, should there be any. This also applies to unscheduled meetings and time limits outlined in Rule 56.8.</p> <p>Council meetings are the only opportunity that the community is guaranteed an audience with all/most of the Councillors present for their issues/concerns to be addressed.</p>	<p>Extending public question time in the Governance Rules beyond 30 minutes is not recommended. If required, Public Question time may be extended at the discretion of the Chair.</p> <p>Unscheduled meetings are essentially for urgent matters that cannot be held over until the next scheduled meeting. Agendas are typically small for unscheduled meetings. It is therefore recommended that only questions relating to the items on the agenda be permitted during these meetings, with a reduced time allocation of 15 minutes (as proposed in the revised Governance Rules).</p>
<p><u>Discussion on question asked</u></p> <p>Recommend the words ‘no discussion allowed’ be removed from Rule 56.19, to allow the questioner to seek further clarification on the answer provided. Unless Council proposes to provide an alternative forum for members of the community to ask questions/have discussion.</p>	<p>Removing the words ‘no discussion allowed’ from Rule 56.16 is not recommended. Formal meetings of Council are not the appropriate forum for ‘extended dialogue’ between elected officials and members of the public, which may be perceived as debate.</p> <p>Ongoing discussion may compromise future decisions if it creates perception of bias.</p> <p>Council is considering re-establishing the ‘Community Conversations’ sessions, or a variation thereof, now that pandemic restrictions have been eased.</p>
<p><u>Unasked questions</u></p> <p>The absence of the person submitting a question should not be a reason to not ask or answer their question (once the questions of those present are addressed).</p> <p>Questions not asked due to time constraints should be published on Council’s website together with the written response provided. Questions asked may be of interest to the broader community, add to the discussion and lead to Council being more informed prior to making a decision.</p>	<p>The sub-rule giving the Chair the discretion to refrain from reading out a question if a person is not physically in the gallery has been removed. This was deliberate to avoid disenfranchising people who were not able to attend the meeting in person.</p> <p>Questions not asked/read out due to time constraints do not form part of the formal Council meeting. A response will be provided to the individual in writing after the meeting.</p>
<p><u>Councillors answering questions</u></p> <p>Believe the rule that Councillors will not answer questions runs contrary to the transparency and accountability provisions of the Act as well as Council’s Public Transparency Policy.</p> <p>While it makes sense that operational questions are directed to staff for a response, Councillors should respond to questions about their decisions and reasons for them (as staff are not in a position to do so).</p>	<p>Questions should not be directed to individual Councillors, but to the collective Council group. Formal Council meetings are not the forum for members of the public to question Councillors about their decisions or individual opinions and/or reasons for them.</p> <p>The contact details of all individual Councillors are publicly available and people are encouraged to contact individual Councillors directly if they want to discuss any matter.</p>

<p><u>Rule 57: Petitions</u></p> <p>Do not believe full consideration has been given to the variations in process between electronic and written petitions.</p> <p>Rule 57.4 requires the address of every petitioner and proprietary petition websites do not release the addresses of signatories to a petition (though some do provide the suburb and post code, if this would suffice)?</p> <p>Rule 57.4 requires a petitioner’s signature, so need clarity around whether a typed name would meet the definition of an electronic signature.</p> <p>Rule 57.5 requires a signature to appear on a page that includes the whole text of the petition, but it may not be possible to print the petition out in the format required by the rule.</p> <p>Recommend Council set up an electronic petition page similar to the one in operation in Australian Parliament House, as believe it is more efficient, reliable and easy to manage.</p>	<p>Full consideration has been given to the variation in process, but including every detail in the Governance Rules makes for a long document.</p> <p>Clause 57.9 of the revised Governance Rules addresses this insofar as it says ‘to the satisfaction of the Chief Executive Officer’.</p> <p>Clause 57.9 of the revised Governance Rules addresses this insofar as it says ‘to the satisfaction of the Chief Executive Officer’.</p> <p>Clause 57.9 of the revised Governance Rules addresses this insofar as it says ‘to the satisfaction of the Chief Executive Officer’.</p> <p>While this is a valuable suggestion, Council does not receive enough petitions to warrant spending the time and resources on creating an electronic petition page at this point in time.</p>
<p><u>Council action on petitions</u></p> <p>Propose the following additions to the rules governing petitions:</p> <ol style="list-style-type: none"> 1. To avoid any delays in action on petitions, a rule be included to specify a clear timeframe (preferably within one meeting of the petition being presented), when Council must act on the petition. 2. Prior to Council making a decision on a petition, the petition organisers must be given the opportunity to meet with <u>all</u> Councillors so as to provide clarification on and promote their petition. 3. In addressing the petition, any motion put forward by Councillors at a Council meeting must not serve to vary the essence of the petition. In addition, the petition organiser must be given the opportunity to address the motion if they so desire. 	<p>The practice is that the Council ‘receives the petition’ at the first Council meeting and brings a report back to the earliest meeting on next steps. The subject of the petition will determine the time in which Council may act on it. Do not recommend specifying a timeline, as suggested in point 1.</p> <p>Do not recommend including point 2 in the Governance Rules. The contact details of all individual Councillors are publicly available and petitioners are encouraged to contact individual Councillors directly if they want to discuss matters.</p> <p>Do not recommend including point 3 in the Governance Rules. Councillors may move any motion they choose to, and where a petition is concerned, there may be a need to achieve a ‘middle ground’, depending on the matter. Moreover, mandating that the petition organiser be given an opportunity to address the motion before the Council if they so desire is not recommended. If Councillors wish to ask the petitioner if the motion before the meeting meets their needs, then that is at the discretion of individual Councillors.</p>
<p><u>Community participation in council decisions</u></p> <p>This recommendation draws inspiration from the overarching principles outlined in section 9(2) of the <i>Local Government Act 2020</i>. In particular, those requiring Council to engage the community in strategic decision making and to pursue innovation and continuous improvement. Council should take advantage of technological advances and innovations</p>	<p>This is a valuable suggestion. There are many ways in which Council can engage with its community and the Communications team will be canvassing a variety of methods in the near future and will report back to Council on options and costs. This suggestion will be reviewed as one of the options.</p>

<p>and use technology to advance the 'demo' in democracy. Specifically by providing greater opportunities for the community to contribute towards Council decisions. This can be achieved through the use of mobile phones. This involves establishing a structured communications network (based on post codes) which enables targeted messaging and well as whole of shire messaging. This is an 'opt in' model and once the network is set up, as simple as sending a text message with a link.</p>	
<p><u>Citizen's agenda item</u></p> <p>Propose Council consider allowing room for one citizens' agenda item at Council meetings. This would provide community members with an opportunity to fast track pressing issues of interest to them and give Council insight into issues that are of interest to the community.</p>	<p>This is not recommended as part of the formal Council meeting. Council meetings are primarily a forum for Council's decision-making, and there should be no expectation that Councillors deal with 'on the run' decisions raised by the community.</p> <p>Council is considering re-establishing the 'Community Conversations' sessions, or a variation thereof, now that pandemic restrictions have been eased. This would be a more appropriate forum.</p>

Table of changes to Governance Rules

Document Reference	Summary of changes	Date discussed
Chapter 1 – Governance Framework Rule 1 - Context (Page 3)	Included the following additional reference documents: <ul style="list-style-type: none"> Public Transparency Policy Livestreaming and Recording Policy. 	Councillor Briefing 21 April 2021
Part A - Introduction Rule 3 - Definitions (Page 7)	<ul style="list-style-type: none"> Added definitions for 'Joint Letter' and 'Petitions' to provide more clarity. 	Councillor Briefing 21 April 2021
Part C – Meetings Procedure Division 1 – Notices of Meetings and Delivery of Agendas (Pages 10 and 11)	<ul style="list-style-type: none"> Rules 9 and 11 – addition of reference to Scheduled and Unscheduled Council meetings (fixed and not fixed). Rule 10 – reference added to cancelling meetings. Rule 11 – added that Council may by resolution call an unscheduled meeting. Rule 12 – defined 'reasonable notice' of meeting (seven days) and added wording around where extraordinary circumstances prevent giving 'reasonable notice' there is a requirement to minuted the reasons. New Rule 14 added (Availability of Council Meeting Documentation) to address availability of meeting documentation (to Councillors six days prior to meeting and members of the public five days prior to meeting). 	Councillor Briefing 21 April 2021
Part C – Meetings Procedure Division 2 - Quorums (Pages 11 and 12)	<ul style="list-style-type: none"> Sub-rule 16.1 – update to refer to correct Rule (15). Sub-rule 16.2 - added further reason where sub-rule 15.2 and 15.3 doesn't apply – where it is the intention of the Council for the meeting to lapse/not proceed and prior notice is given. New Rule 18 - added (Time Limits for Meetings) to address length of meetings and impact on decision making (includes adjournments/breaks). 	Councillor Briefing 21 April 2021 Councillor Briefing 13 and 20 October 2021
Part C – Meetings Procedure Division 3 – Business of Meetings (Pages 12 and 13)	<ul style="list-style-type: none"> Sub-Rule 20 amended to add in reference to 'consultation with the Mayor', in line with the requirements of section 18(h) of the <i>Local Government Act 2020</i>. Rule 21 amended to include the words 'through resolution of Council' as opposed to 'with the consent of Council'. It is a procedural motion. New Rule 22 added to introduce <i>En Bloc</i> voting (for meeting efficiency) and provide guidance around process and which items shouldn't be moved <i>En Bloc</i>. 	Councillor Briefing 21 April 2021 Councillor Briefing 13 October 2021

Attachment 8.2.2 Table of changes to Governance Rules

<p>Part C – Meetings Procedure Division 4 – Motions and Debate</p> <p>(Pages 13 to 18)</p>	<ul style="list-style-type: none"> • Rule 24 reworded to say ‘Councillors May Give Notice of Motions’ (they don’t propose them). Limit to Scheduled Council meetings only. • Expanded on sub-Rule 25.3 to include an officer response will be provided with the Notice of Motion to be published in the agenda. • New sub-Rule added (25.7) to make clear no material changes are to be made to a Notice of Motion at the meeting (changing slightly is acceptable, but must always be consistent with general thrust of matter). • Sub-Rule 33 added - reference to ‘substantive motion’. • New sub-Rule 33.2 added - that debate on substantive motion before the meeting does not recommence. • Sub-Rule 41.2 amended - removed reference to ‘be seated’. 	<p>Councillor Briefing 13 October 2021</p> <p>Councillor Briefing 21 April 2021</p>
<p>Part C – Meetings Procedure Division 5 – Procedural Motions</p> <p>(Pages 19 to 21)</p>	<ul style="list-style-type: none"> • Sub-Rule 42.1.1 amended to make clear if there is no opposition to a motion or an amendment, the mover only gets three minutes to speak to it. • Changed references to the gendered Mayor/Chair and removed all the other options for address. Also applies to Council staff. • Added further (often used) procedural motions to table. 	<p>Councillor Briefing 13 October 2021</p> <p>Councillor Briefing 21 April 2021</p> <p>Councillor Briefing 13 October 2021</p>
<p>Part C – Meetings Procedure Division 6 – Rescission Motions</p> <p>(pages 22 and 23)</p>	<ul style="list-style-type: none"> • More detail provided around motions to rescind a previous resolution and timeframe. • Added new sub-Rule (46.4) to make clear the section doesn’t apply to officer recommendations. • Removed reference to example in box. • Removed prior sub-Rule 47.2 (not necessary) and amended updated new sub-Rule 50.1 accordingly. 	<p>Councillor Briefing 13 October 2021</p> <p>Councillor Briefing 21 April 2021</p>
<p>Part C – Meetings Procedure Division 7 – Points of Order</p> <p>(Pages 23 to 25)</p>	<ul style="list-style-type: none"> • Various Clauses re-ordered for better flow/easy reading. • Some parts removed and/or reworded (ie remove ‘returning to his or her seat’). 	<p>Councillor Briefing 21 April 2021</p>
<p>Part C – Meetings Procedure Division 8 – Public Question Time</p> <p>(Pages 26 to 29)</p>	<ul style="list-style-type: none"> • Distinction made between public question time at Scheduled meetings and Unscheduled meetings. • New sub-Rule 56.4 added re time/word limits for public questions in writing and person. • New sub-Rule 56.5 added detailing options for submitting questions/registering to ask question remotely. • New sub-Rule 56.8 added that public question time be limited to 15 minutes at Unscheduled Council meetings. • Changed reference to submission time being ‘Monday’ preceding the meeting (to address 	<p>Councillor Briefing 21 April 2021</p> <p>Councillor Briefing 13 October 2021</p>

Attachment 8.2.2 Table of changes to Governance Rules

	<p>instances where Council meets on a day other than Wednesday).</p> <ul style="list-style-type: none"> • Amended sub-Rule 56.21 – so that the Chair asks the Chief Executive Officer to determine the most appropriate staff member to respond to a question (Councillors will not respond to questions). • Remove sub-Rule that gives the Chair the discretion to refrain from reading out a question if person not physically in public gallery. • Information condensed and reordered more generally. 	
<p>Part C – Meetings Procedure Division 9 – Petitions and Joint Letters</p> <p>(Pages 29 and 30)</p>	<ul style="list-style-type: none"> • Removed sub-Rules referring to Councillors presenting petitions/joint letters – not reflective of current practice. • More guidance provided around electronic petitions and process generally. 	<p>Councillor Briefing 21 April 2021 and 20 October 2021</p>
<p>Part C – Meetings Procedure Division 10 - Voting (Page 32)</p>	<ul style="list-style-type: none"> • Sub-Rule 64.1 - Removed reference to ‘maintaining a register’, dealt with in minutes of meeting. • Removed example box/text – not necessary. 	<p>Councillor Briefing 20 October 2021</p>
<p>Part C – Meetings Procedure Division 11 - Minutes (Pages 32 to 35)</p>	<ul style="list-style-type: none"> • Condensed the section on Confirmation of Minutes (too prescriptive). • Removed requirement to record the names of Council staff present at the meeting (not necessary and time consuming for Governance) – prior sub-Rule 71.1.3. Limit to Executive and Governance Officers. • Only a very brief summary of public questions and responses to be provided in the minutes – recording of meeting on YouTube if people want to refer to it. Sub-Rule 67.1.13. 	<p>Councillor Briefing 14 July 2021</p> <p>Councillor Briefing 20 October 2021</p>
<p>Part C – Meetings Procedure Division 14 – Suspension of Meetings Procedure (Pages 36)</p>	<ul style="list-style-type: none"> • Changed reference from ‘standing orders’ to ‘meetings procedure’ – easier to understand for public. 	<p>Councillor Briefing 14 July 2021</p>
<p>Part C – Meetings Procedure Division 15 – Miscellaneous (Pages 36 and 37)</p>	<ul style="list-style-type: none"> • Deleted old Rules 79 and 80 - never going to refer to the Standing Orders and Rules of Practice of the Upper House of the Victorian Parliament. • Added new section ‘Recording Proceedings’ to refer to recording of meetings and authorisation to edit where comments are defamatory etc. 	<p>Councillor Briefing 14 July 2021</p>
<p>Chapter 3 – Meeting Procedure for Delegated Committees (Page 38)</p>	<ul style="list-style-type: none"> • Added new Rule 1 to address the fact the Mayor can appoint a Councillor to be the Chair of a Delegated Committee (section 19(1)(a) of the <i>Local Government Act 2020</i>). • Added new Rule 4 to make clear members of the public can address a delegated committee where the Instrument of Delegation permits. 	<p>Councillor Briefing 14 July 2021</p> <p>Councillor Briefing 20 October 2021</p>

Attachment 8.2.2 Table of changes to Governance Rules

	<ul style="list-style-type: none"> Added new Rule 5 to make clear there will be no public question time at Delegated Committee meetings. 	
Chapter 5 – Disclosure of Conflicts of Interest (Page 40)	<ul style="list-style-type: none"> Rule 1 – removed reference to the <i>Local Government Act 1989</i> because the relevant section has been repealed. Expanded definition (sub-Rule 3.1) of what a ‘meeting conducted under the auspices of Council’ means – so stand alone and people don’t have to refer elsewhere. 	Councillor Briefing 14 July 2021
Chapter 6 - Miscellaneous (Page 45)	<ul style="list-style-type: none"> Clause 2 – remove reference to <i>Local Government Act 1989</i> because relevant section has been repealed. Tidied up references to Chief Executive Officer ‘designating’ information as confidential (changed to ‘advise’). 	Councillor Briefing 14 July 2021



GOVERNANCE RULES

Adopted by Council: 26 August 2020

Effective: 1 September 2020



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GOVERNANCE RULES

Introduction

1. Nature of Rules

These are the Governance Rules of Colac Otway Shire Council, made in accordance with section 60 of the *Local Government Act 2020*.

2. Date of Commencement

These Governance Rules commence on 1 September 2020.

3. Contents

These Governance Rules are divided into the following Chapters:

Chapter	Name
Chapter 1	Governance Framework
Chapter 2	Meeting Procedure for Council Meetings
Chapter 3	Meeting Procedure for Delegated Committees
Chapter 4	Meeting Procedure for Community Asset Committees
Chapter 5	Disclosure of Conflicts Of Interest
Chapter 6	Miscellaneous
Chapter 7	Election Period Policy

4. Definitions

In these Governance Rules, unless the context suggests otherwise the following words and phrases mean:

Act means the *Local Government Act 2020*.

Chief Executive Officer includes an Acting Chief Executive Officer.

Community Asset Committee means a Community Asset Committee established under section 65 of the Act.

Council means Colac Otway Shire Council.

Council meeting has the same meaning as in the Act.

Delegated Committee means a Delegated Committee established under section 63 of the Act.

Mayor means the Mayor of Council.

Special Unscheduled Council Meeting means a Council meeting not fixed by Council.

these Rules means these Governance Rules.

Chapter 1 – Governance Framework

1. Context

These Rules should be read in the context of and in conjunction with:

- (a) the overarching governance principles specified in section 9(2) of the *Act*; and
- (b) the following documents adopted or approved by *Council*:
 - (i) Council Plan; ~~and~~
 - (ii) Councillor Code of Conduct;-
 - (iii) Public Transparency Policy; and
 - ~~(iii)~~(iv) Livestreaming and Recording of Council and Planning Committee Meetings Policy.

2. Decision Making

- (a) In any matter in which a decision must be made by *Council* (including persons acting with the delegated authority of *Council*), *Council* must consider the matter and make a decision:
 - (i) fairly, by giving consideration and making a decision which is balanced, ethical and impartial; and
 - (ii) on the merits, free from favouritism or self-interest and without regard to irrelevant or unauthorised considerations
- (b) *Council* must, when making any decision to which the principles of natural justice apply, adhere to the principles of natural justice (including, without limitation, ensuring that any person whose rights will be directly affected by a decision of *Council* is entitled to communicate their views and have their interests considered).
- (c) Without limiting anything in paragraph (b) of this sub-Rule:
 - (i) before making a decision that will directly affect the rights of a person, *Council* (including any person acting with the delegated authority of *Council*) must identify the person or persons whose rights will be directly affected, give notice of the decision which *Council* must make and ensure that such person or persons have an opportunity to communicate their views and have their interests considered before the decision is made;
 - (ii) if a report to be considered at a *Council meeting* concerns subject-matter which will directly affect the rights of a person or persons, the Report must record whether the person has or persons have been provided with an opportunity to communicate their views and have their interests considered;
 - (iii) if a report to be considered at a *Delegated Committee* meeting concerns subject-matter which will directly affect the rights of a person or persons, the Report must record whether the person has or persons have been provided with an opportunity to communicate their views and have their interests considered; and
 - (iv) if a member of Council staff proposes to make a decision under delegation and that decision will directly affect the rights of a person or persons, the member of Council staff must, when making that decision, complete a Delegate Report that records that notice of the decision to be made was given to the person or persons and such person or persons were provided with an opportunity to communicate their views and their interests considered.



Chapter 2 – Meeting Procedure for Council Meetings

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Part A – Introduction

1. Title

This Chapter will be known as the "Meeting Procedure Local Law".

2. Purpose of this Chapter

The purpose of this Chapter is to:

- 2.1 provide for the election of the Mayor and any Deputy Mayor;
- 2.2 provide for the appointment of any Acting Mayor; and
- 2.3 provide for the procedures governing the conduct of *Council meetings*.

3. Definitions and Notes

3.1 In this Chapter:

"*agenda*" means the notice of a meeting setting out the business to be transacted at the meeting;

"*Chair*" means the Chairperson of a meeting and includes a Councillor who is appointed by resolution to chair a meeting under section 61(3) of the *Act*;

"*joint letter*" means a formal application to Council in the form of a letter which has been signed by at least 12 people or executive/committee representatives from ten separate entities whose names and physical addresses also appear on the letter. A letter from a single entity or organisation that is signed by multiple parties from that organisation or entity will not be classed as a joint letter.

"*minute book*" means the collective record of proceedings of *Council*;

"*municipal district*" means the municipal district of *Council*;

"*notice of motion*" means a notice setting out the text of a motion, which it is proposed to move at the next relevant meeting;

"*notice of rescission*" means a *notice of motion* to rescind a resolution made by *Council*; ~~and~~

"*petition*" means a formal written application addressed to Council, submitted in printed or electronic format without erasure, signed or electronically endorsed by at least 12 people whose names and physical addresses also appear, and on which each page of the petition bears the wording of the whole of the petition; and

"*written*" includes duplicated, lithographed, photocopied, printed and typed, and extends to both hard copy and soft copy form, and *writing* has a corresponding meaning.

3.2 Introductions to Parts, headings and notes are explanatory notes and do not form part of this Chapter. They are provided to assist understanding.



Part B – Election of Mayor

Introduction: This Part is concerned with the annual election of the *Mayor*. It describes how the *Mayor* is to be elected.

4. Election of the *Mayor*

The *Chief Executive Officer* must facilitate the election of the *Mayor* in accordance with the provisions of the *Act*.

5. Method of Voting

The election of the *Mayor* must be carried out by a show of hands.

6. Determining the election of the *Mayor*

6.1 The *Chief Executive Officer* must open the meeting at which the *Mayor* is to be elected, and invite nominations for the office of *Mayor*.

6.2 Any nominations for the office of *Mayor* must be seconded by another Councillor.

6.3 Once nominations for the office of *Mayor* have been received, the following provisions will govern the election of the *Mayor*:

6.3.1 if there is only one nomination, the candidate nominated must be declared to be duly elected;

6.3.2 if there is more than one nomination, the Councillors present at the meeting must vote for one of the candidates;

6.3.3 in the event of a candidate receiving an absolute majority of the votes, that candidate is declared to have been elected;

6.3.4 in the event that no candidate receives an absolute majority of the votes, and it is not resolved to conduct a new election at a later date and time, the candidate with the fewest number of votes must be declared to be a defeated candidate. The Councillors present at the meeting must then vote for one of the remaining candidates;

6.3.5 if one of the remaining candidates receives an absolute majority of the votes, he or she is duly elected. If none of the remaining candidates receives an absolute majority of the votes, the process of declaring the candidates with the fewest number of votes a defeated candidate and voting for the remaining candidates must be repeated until one of the candidates receives an absolute majority of the votes. That candidate must then be declared to have been duly elected;

6.3.6 in the event of two or more candidates having an equality of votes and one of them having to be declared:

(a) a defeated candidate; and

(b) duly elected

the declaration will be determined by lot.

6.3.7 if a lot is conducted, the *Chief Executive Officer* will have the conduct of the lot and the following provisions will apply:



- (a) each candidate will draw one lot;
- (b) the order of drawing lots will be determined by the alphabetical order of the surnames of the Councillors who received an equal number of votes except that if two or more such Councillors' surnames are identical, the order will be determined by the alphabetical order of the Councillors' first names; and
- (c) as many identical pieces of paper as there are Councillors who received an equal number of votes must be placed in a receptacle. If the lot is being conducted to determine who is a defeated candidate, the word "Defeated" shall be written on one of the pieces of paper, and the Councillor who draws the paper with the word "Defeated" written on it must be declared the defeated candidate (in which event a further vote must be taken on the remaining candidates unless there is only one candidate remaining, in which case that candidate will be declared to have been duly elected).

7. Election of Deputy Mayor and Chairs of Delegated Committees

Any election for:

- 7.1 any office of Deputy Mayor; or
- 7.2 Chair of a *Delegated Committee*

will be regulated by Rules 4-6 (inclusive) of this Chapter, as if the reference to the:

- 7.3 *Chief Executive Officer* is a reference to the *Mayor*; and
- 7.4 *Mayor* is a reference to the Deputy Mayor or the Chair of the *Delegated Committee* (as the case may be).

8. Appointment of Acting Mayor

If *Council* has not established an office of Deputy Mayor and it becomes required to appoint an Acting Mayor, it can do so by:

- 8.1 resolving that a specified Councillor be so appointed; or
- 8.2 following the procedure set out in Rules 5 and 6 (inclusive) of this Chapter, at its discretion.



Part C – Meetings Procedure

Introduction: This Part is divided into a number of Divisions. Each Division addresses a distinct aspect of the holding of a meeting. Collectively, the Divisions describe how and when a meeting is convened, when and how business may be transacted at a meeting.

Division 1 – Notices of Meetings and Delivery of Agendas

9. Dates and Times of Meetings Fixed by Council (~~Scheduled Meetings~~)

Subject to Rule 11, Council must from time to time fix the date, time and place of all Council meetings.

10. Council May ~~Cancel or~~ Alter Meeting Dates

Council may ~~cancel or~~ change the date, time and place of any Council meeting which has been fixed by it and must provide reasonable notice of the change to the public.

11. ~~Special~~ Meetings Not Fixed by Council (~~Unscheduled Meetings~~)

~~11.1~~ 11.1 The Council may be resolution, call an unscheduled meeting of the Council. The resolution must specify the date, time and place of the meeting and the business to be transacted.

~~11.1.1~~ 11.2 The Mayor or at least ~~three~~³ Councillors may by a written notice call an ~~an~~ ~~unscheduled~~ ~~Special~~ Council ~~M~~meeting.

~~11.2~~ 11.3 The notice must specify the date and time of the ~~unscheduled~~ ~~Special~~ Council ~~M~~meeting and the business to be transacted.

~~11.3~~ 11.4 The Chief Executive Officer must convene the ~~unscheduled~~ ~~Special~~ Council ~~M~~meeting as specified in the notice.

~~11.4~~ 11.5 Unless all Councillors are present and unanimously agree to deal with any other matter, only the business specified in the written notice can be transacted at the ~~Special~~ ~~unscheduled~~ Council ~~M~~meeting.

12. Notice of Meeting

12.1 A notice of meeting, incorporating or accompanied by an agenda of the business to be dealt with, must be delivered or sent electronically to every Councillor for all Council meetings at least 48 hours before the meeting.

12.2 Notwithstanding sub-Rule 12.1, a notice of meeting need not be delivered or sent electronically to any Councillor who has been granted leave of absence unless the Councillor has requested the Chief Executive Officer in writing to continue to give notice of any meeting during the period of his or her absence.

12.3 Reasonable notice of each Council meeting must be provided to the public at least seven days before the meeting. Council may do this:

12.3.1 for meetings which it has fixed by preparing a schedule of meetings annually, twice yearly or from time to time, and arranging publication of such schedule in a newspaper generally circulating in the municipal district either at various times throughout the year, or prior to each such Council meeting; and

12.3.2 for any meeting by giving notice on its website and:



(a) in each of its Customer Service Centres; and/or

(b) in at least one newspaper generally circulating in the *municipal district*.

12.4 If urgent or extraordinary circumstances prevent Council from complying with sub-Rule 12.3, the Council must:

12.4.1 give such notice as is practicable; and

12.4.2 specify the urgent or extraordinary circumstances which prevented the Council from complying with sub-Rule 12.3 in the minutes of the meeting.

13. Prohibition of Unauthorised Recording of Meetings

Other than an official *Council* recording, no video or audio recording of proceedings of *Council meetings* will be permitted without specific approval by resolution of the relevant *Council meeting*.

14. Availability of Council Meeting Documentation

14.1 All endeavours will be made to make Council meeting documentation available:

14.1.1 to Councillors and relevant staff members six days prior to a scheduled meetings; and

14.1.2 on Council's website five days prior to a schedule meeting and hard copies provided at its Customer Service centres.

14.2 Council may, on occasion, be unable to comply with sub-Rule 14.1, where the meeting is an unscheduled meeting.

Division 2 – Quorums

~~14-15.~~ Inability to Obtain a Quorum

If after 30 minutes from the scheduled starting time of any *Council meeting*, a quorum cannot be obtained:

~~14.1~~15.1 the meeting will be deemed to have lapsed;

~~14.2~~15.2 the *Mayor* must convene another *Council meeting*, the *agenda* for which will be identical to the *agenda* for the lapsed meeting; and

~~14.3~~15.3 the *Chief Executive Officer* must give all Councillors *written* notice of the meeting convened by the *Mayor*.

~~15-16.~~ Inability to Maintain a Quorum

~~15.1~~16.1 If during any *Council meeting*, a quorum cannot be maintained then Rule ~~13-15~~ will apply as if the reference to the meeting is a reference to so much of the meeting as remains.

~~15.2~~16.2 Sub-Rule ~~14~~15.1 does not apply if the inability to maintain a quorum is because of the number of Councillors who have a conflict of interest in the matter to be



considered, or where prior notification has been given that the meeting will not proceed and there was no opportunity for Council to formally resolve to cancel it.

16-17. Adjourned Meetings

16-17.1 Council may adjourn any meeting to another date or time but cannot in the absence of disorder or a threat to the safety of any Councillor or member of Council staff adjourn a meeting in session to another place.

16-217.2 The *Chief Executive Officer* must give *written* notice to each Councillor of the date, time and place to which the meeting stands adjourned and of the business remaining to be considered.

17.3 If it is impracticable for the notice given under sub-Rule 1517.2 to be in *writing*, the *Chief Executive Officer* must give notice to each Councillor by telephone or in person.

18. Time Limits for Meetings

18.1 The Chair will pause a Council meeting after four hours and the Council will consider if it wants to continue. A majority of Councillors present must vote in favour of its continuance.

18.2 In the absence of a continuance, the meeting must stand adjourned to a time and date to be announced by the Chair, immediately prior to the meeting standing adjourned and where possible, within two business days.

18.3 No meeting is to continue past six hours. In that event, the provisions of sub-Rules 17.2 and 17.3 will apply.

16-318.4 The Council may adjourn for a short break every hour, after a period of two hours, or at the Chair's discretion.

17-19. Cancellation or Postponement of a Meeting

17-119.1 The *Chief Executive Officer* may, in the case of an emergency necessitating the cancellation or postponement of a *Council meeting*, cancel or postpone a *Council meeting*.

17-219.2 The *Chief Executive Officer* must present to the immediately following *Council meeting* a *written* report on any exercise of the power conferred by sub-Rule 1719.1.

Division 3 – Business of Meetings

18-20. Agenda and the Order of Business

The *agenda* for and the order of business for a *Council meeting* is to be determined by the *Chief Executive Officer*, following consultation with the Mayor, so as to facilitate and maintain open, efficient and effective processes of government.

19-21. Change to Order of Business

Once an *agenda* has been sent to Councillors, the order of business for that *Council meeting* may be altered with the consent through resolution of *Council*.



22. **En Bloc Voting**

- 22.1 Subject to sub-Rule 22.4 below, Council may move agenda items *en bloc*, so long as the *motion* is moved, seconded and carried unanimously.
- 22.2 During discussion on any items to be moved *en bloc*, the Chair will ask Councillors if any of the items to be considered are:
- 22.2.1 Items where the motion is expected to be different to the officer recommendation?
- 22.2.2 Items where a disclosure of conflict of interest is to be declared by a Councillor?
- 22.2.3 Items where a Councillor would like the recommendation to be considered separately?
- 22.3 If a Councillor indicates an item falls within sub-Rule 22.2, then the Chair will request the item be removed from the group of items to be considered *en bloc*.
- 22.4 The following items must not be considered *en bloc*:
- 22.4.1 Items that relate to planning matters or that involve statutory third-party rights;
- 22.4.2 Items of a controversial nature which may attract a large amount of interest; and
- 22.4.3 Items where a special majority vote is required (eg Councillor Code of Conduct is required to be passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council).
- 22.5 Questions/discussion from Councillors are permitted on the items moved *en bloc*.
- 22.6 The minutes of the meeting must clearly identify which matters are decided *en bloc* and each individual resolution must be recorded in full.

20.23. **Urgent Business**

If the *agenda* for a *Council meeting* makes provision for urgent business, business cannot be admitted as urgent business other than by resolution of *Council* and only then if it:

20.423.1 relates to or arises out of a matter which has arisen since distribution of the *agenda*; and

20.223.2 cannot safely or conveniently be deferred until the next *Council meeting*.

Division 4 – Motions and Debate

21.24. **Councillors May ~~Propose Notices of Motion~~ Give Notice of Motions**

Councillors may ensure that an ~~issue is listed on an agenda by lodging a~~ matter is considered by a scheduled Council meeting by giving Notice of a Motion.

22.25. **Notice of Motion**

22.125.1 A *notice of motion* must be in *writing* signed by a Councillor, and be lodged with or sent to the *Chief Executive Officer* at least ~~8~~ eight days prior to the Council



meeting, to allow sufficient time for the *Chief Executive Officer* to include the *notice of motion* in the agenda papers for a *Council meeting*.

~~22.2~~25.2 The *Chief Executive Officer* may reject any *notice of motion* which:

~~22.2.1~~25.2.1 is vague or unclear in intention

~~22.2.2~~25.2.2 it is beyond *Council's* power to pass; or

~~22.2.3~~25.2.3 if passed would result in *Council* otherwise acting invalidly

but must:

~~22.2.4~~25.2.4 give the Councillor who lodged it an opportunity to amend it prior to rejection, if it is practicable to do so; and

~~22.2.5~~25.2.5 notify in *writing* the Councillor who lodged it of the rejection and reasons for the rejection.

~~22.3~~25.3 The full text of any *notice of motion* accepted by the *Chief Executive Officer* must be included in the *agenda*; and include an officer comment. No officer comment will be provided for a *notice of rescission*.

~~22.4~~25.4 The *Chief Executive Officer* must cause all notices of motion to be numbered, dated and entered in the notice of motion register in the order in which they were received.

~~22.5~~25.5 Except by leave of *Council*, each *notice of motion* before any meeting must be considered in the order in which they were entered in the notice of motion register.

~~25.6~~ Where a *notice of motion* is listed on an agenda, the *Chair* will first invite the Councillor who gave the *notice of motion* to move it, in accordance with clause 25.

~~22.6~~25.7 No material changes may be made to a Notice of Motion at the meeting.

~~22.7~~25.8 If a Councillor who has given a *notice of motion* is absent from the meeting or fails to move the motion when called upon by the *Chair*, any other Councillor may move the motion.

~~22.8~~25.9 If a *notice of motion* is not moved at the *Council meeting* at which it is listed, it lapses.

~~22.9~~25.10 Unless Council resolves to re-list at a future *Council meeting* a *notice of motion* which has been lost, a similar motion must not be put before Council for at least three months from the date it was lost.

~~23-26.~~ **Chair's Duty**

Any motion which is determined by the *Chair* to be:

~~23.1~~26.1 defamatory;

~~23.2~~26.2 objectionable in language or nature;

~~23.3~~26.3 vague or unclear in intention;

~~23.4~~26.4 outside the powers of *Council*; or



~~23.5~~~~26.5~~ irrelevant to the item of business on the *agenda* and has not been admitted as urgent, or purports to be an amendment but is not,

must not be accepted by the *Chair*.

~~24-27.~~ **Introducing a Report**

~~24.1~~~~27.1~~ Before a *written* report is considered by *Council* and any motion moved in relation to such report, a member of Council staff may introduce the report if invited by the *Chair* by indicating:

~~24.1.1~~~~27.1.1~~ its background; or

~~24.1.2~~~~27.1.2~~ the reasons for any recommendation which appears.

~~24.2~~~~27.2~~ Unless *Council* resolves otherwise, a member of Council staff need not read any written report to *Council* in full.

~~25-28.~~ **Introducing a Motion or an Amendment**

The procedure for moving any motion or amendment is:

~~25.1~~~~28.1~~ the mover must state the motion without speaking to it;

~~25.2~~~~28.2~~ the motion must be seconded and the seconder must be a Councillor other than the mover. If a motion is not seconded, the motion lapses for want of a seconder;

~~25.3~~~~28.3~~ if a motion or an amendment is moved and seconded the *Chair* must ask:

"Is the motion or amendment opposed? Does any Councillor wish to speak to the motion or amendment?"

~~25.4~~~~28.4~~ if no Councillor indicates opposition or a desire to speak to it, the *Chair* may declare the motion or amendment carried without discussion;

~~25.5~~~~28.5~~ if a Councillor indicates opposition or a desire to speak to it, then the *Chair* must call on the mover to address the meeting;

~~25.6~~~~28.6~~ after the mover has addressed the meeting, the seconder may address the meeting;

~~25.7~~~~28.7~~ after the seconder has addressed the meeting, or has, without speaking on the motion, reserved ~~his or her~~their address until later in debate (or after the mover has addressed the meeting if the seconder does not address the meeting,) the *Chair* must invite debate by calling on any Councillor who wishes to speak to the motion, providing an opportunity to alternate between those wishing to speak against the motion and those wishing to speak for the motion, prior to the seconder addressing the meeting, if ~~he or she~~they chose to reserve ~~his or her~~their address;

~~25.8~~~~28.8~~ the mover of the original motion retains the right of reply to that motion; and

~~25.9~~~~28.9~~ if, after the mover has addressed the meeting, the *Chair* has invited debate and no Councillor speaks to the motion, then the *Chair* must put the motion to the vote.

~~26-29.~~ **Right of Reply**

~~26.1~~~~29.1~~ The mover of a motion, including an amendment, has a right of reply to matters raised during debate.



~~26-2~~29.2 After the right of reply has been taken but subject to any Councillor exercising ~~his~~ ~~or her~~their right to ask any question concerning or arising out of the motion, the motion must be put to the vote without any further discussion or debate.

~~27-30.~~ **Moving an Amendment**

~~27-1~~30.1 Subject to sub-Rule ~~27-2~~30.2 a motion which has been moved and seconded may be amended by leaving out or adding words. Any added words must be relevant to the subject of the motion.

~~27-2~~30.2 A motion to confirm a previous resolution of *Council* cannot be amended.

~~27-3~~30.3 An amendment must not be directly opposite to the motion.

~~28-31.~~ **Who May Propose an Amendment**

~~28-1~~31.1 An amendment may be proposed or seconded by any Councillor, except the mover or seconder of the original motion.

~~28-2~~31.2 Any one Councillor cannot move more than two amendments in succession without the leave of the *Chair* and that leave will not be unreasonably withheld.

~~29-32.~~ **How Many Amendments May be Proposed**

~~29-1~~32.1 Any number of amendments may be proposed to a motion but only one amendment may be accepted by the *Chair* at any one time.

~~29-2~~32.2 No second or subsequent amendment, whether to the motion or an amendment of it, may be taken into consideration until the previous amendment has been dealt with.

~~30-33.~~ **An Amendment Once Carried**

~~33.1~~ If the amendment is carried, the motion as amended then becomes the motion before the meeting (substantive motion), and ~~the amended motion~~ may be debated before it is put.

~~30-1~~33.2 Debate on the substantive motion doesn't recommence. Only Councillors who didn't speak to the original motion have a right to speak to the substantive motion.

~~30-2~~33.3 The mover of the original motion retains the right of reply to that motion.

~~31-34.~~ **Foreshadowing Motions**

~~31-1~~34.1 At any time during debate a Councillor may foreshadow a motion so as to inform *Council* of ~~his or her~~their intention to move a motion at a later stage in the meeting, but this does not extend any special right to the foreshadowed motion.

~~31-2~~34.2 A motion foreshadowed may be prefaced with a statement that in the event of a particular motion before the *Chair* being resolved in a certain way, a Councillor intends to move an alternative or additional motion.

~~31-3~~34.3 The *Chief Executive Officer* or person taking the minutes of the meeting is not expected to record foreshadowed motions in the minutes until the foreshadowed motion is formally moved.



~~32-35.~~ **Withdrawal of Motions**

Before any motion is put to the vote, it may be withdrawn by the mover and seconder with the leave of *Council*.

~~33-36.~~ **Separation of Motions**

Where a motion contains more than one part, a Councillor may request the *Chair* to put the motion to the vote in separate parts.

~~34-37.~~ **Chair May Separate Motions**

The *Chair* may decide to put any motion to the vote in several parts.

~~35-38.~~ **Priority of address**

Outside of the specific application of Rule ~~25~~28 in the case of competition for the right to speak, the *Chair* must decide the order in which the Councillors concerned will be heard.

~~36-39.~~ **Motions in Writing**

~~36-1~~39.1 The *Chair* may require that a complex or detailed motion be in writing.

~~36-2~~39.2 *Council* may adjourn the meeting while the motion is being *written* or *Council* may defer the matter until the motion has been *written*, allowing the meeting to proceed uninterrupted.

~~37-40.~~ **Repeating Motion and/or Amendment**

The *Chair* may request the person taking the minutes of the *Council meeting* to read the motion or amendment to the meeting before the vote is taken.

~~38-41.~~ **Debate Must Be Relevant to the Motion**

~~38-1~~41.1 Debate must always be relevant to the motion before the Chair, and, if not, the *Chair* must request the speaker to confine debate to the motion.

~~38-2~~41.2 If after being requested to confine debate to the motion before the Chair, the speaker continues to debate irrelevant matters, the *Chair* may direct the speaker to be seated and not speak further in respect of the motion then before the Chair.

~~38-3~~41.3 A speaker to whom a direction has been given under sub-Rule ~~38-2~~41.2 must comply with that direction.

~~39-42.~~ **Speaking Times**

~~39-1~~42.1 A Councillor must not speak longer than the time set out below, unless granted an extension by the *Chair*:

~~39-1-1~~42.1.1 _____ the mover of a motion or an amendment which has been opposed: ~~5~~ five minutes and three minutes if no opposition;

~~39-1-2~~42.1.2 _____ any other Councillor: ~~3~~ three minutes; and

~~39-1-3~~42.1.3 _____ the mover of a motion exercising a right of reply/closing statement: ~~2~~ two minutes.



~~39.2~~42.2 Where the *Chair* allows discussion on an item, the maximum speaking time for a Councillor will be ~~3~~three minutes.

~~40.43.~~ **Addressing the Meeting**

If the *Chair* so determines:

~~40.1.3~~43.1 any person addressing the *Chair* must refer to the *Chair* as:

~~40.1.1~~43.1.1 ~~Madam~~ Mayor; or

~~40.1.2~~ Mr Mayor; or

~~40.1.3~~43.1.2 ~~Madam~~ Chair or Acting Chair; or

~~40.1.4~~ Mr Chair

as the case may be;

~~40.2~~43.2 all Councillors, other than the *Mayor*, must be addressed as

Cr(name).

~~40.3~~43.3 all members of Council staff, must be addressed as ~~Mr or Ms~~

.....(name) as appropriate or by their official title.

~~41.44.~~ **Right to Ask Questions**

~~41.1~~44.1 A Councillor may, when no other Councillor is speaking, ask any question concerning or arising out of the motion or amendment before the *Chair*.

~~41.2~~44.2 The *Chair* has the right to limit questions and direct that debate be commenced or resumed.

Division 5 – Procedural Motions

~~42.45.~~ **Procedural Motions**

~~42.1~~45.1 Unless otherwise prohibited, a procedural motion may be moved at any time and must be dealt with immediately by the *Chair*.

~~42.2~~45.2 Notwithstanding any other provision in this Chapter, procedural motions must be dealt with in accordance with the following table:



PROCEDURAL MOTIONS TABLE

Procedural Motion	Form	Mover	When Motion Prohibited	Effect if Carried	Effect if Lost	Debate Permitted on Motion
1. Adjournment of debate to later hour and/or date	That this matter be adjourned to *am/pm and/or *date	Any Councillor who has not moved or seconded the original motion or otherwise spoken to the original motion	(a) During the election of a <i>Chair</i> ; (b) When another Councillor is speaking	Motion and amendment is postponed to the stated time and/or date	Debate continues unaffected	Yes
2. Adjournment of debate indefinitely	That this matter be adjourned until further notice	Any Councillor who has not moved or seconded the original motion or otherwise spoken to the original motion	(a) During the election of a <i>Chair</i> ; (b) When another Councillor is speaking; or (c) When the motion would have the effect of causing <i>Council</i> to be in breach of a legislative requirement	Motion and any amendment postponed but may be resumed at any later meeting if on the agenda	Debate continues unaffected	Yes
3. The closure <u>(of debate)</u>	That the motion be now put	Any Councillor who has not moved or seconded the original motion or otherwise spoken to the original motion	During nominations for <i>Chair</i>	Motion or amendment in respect of which the closure is carried is put to the vote immediately without debate of this motion, subject to any Councillor exercising his or her right to ask any question concerning or arising out of the motion	Debate continues unaffected	No



Procedural Motion	Form	Mover	When Motion Prohibited	Effect if Carried	Effect if Lost	Debate Permitted on Motion
<u>4. Deferral of a matter (to a future meeting)</u>	<u>'That the debate on this matter be deferred until (insert meeting/date) to allow (purpose of deferral) ...'</u>	<u>Any Councillor who has not moved or seconded the original motion or otherwise spoken to the original motion</u>	<u>(a) During the election of the Mayor/Deputy Mayor;</u> <u>(b) During the election of a Chairperson; or</u> <u>(c) When another Councillor is speaking</u>	<u>Consideration/debate on the motion and/or amendment is postponed to the stated date and the item is re-listed for consideration at the resolved future meeting, where a fresh motion may be put and debated</u>	<u>Debate continues unaffected</u>	<u>Yes</u>
<u>5. Laying a motion on the table (pausing debate)</u>	<u>'That the motion be laid on the table'</u>	<u>A Councillor who has not spoken for/against the motion</u>	<u>During the election of the Mayor/Deputy Mayor</u>	<u>Motion not further discussed or voted on until Council resolves to take the question from the table at the same meeting</u>	<u>Debate continues unaffected N</u>	<u>No</u>
<u>6. Take a motion from the table (resume debate on a matter)</u>	<u>'That the motion in relation to xx be taken from the table'</u>	<u>Any Councillor</u>	<u>When no motion is on the table</u>	<u>Debate of the item resumes</u>	<u>Debate of the item remains paused</u>	<u>No</u>
<u>7. Alter the order of business</u>	<u>'That the item listed at xx on the agenda be considered before/after the item listed as xy'</u>	<u>Any Councillor</u>	<u>(a) At a Meeting to elect the Mayor; or</u> <u>(b) During any debate</u>	<u>Alters the order of business for the meeting</u>	<u>Items are considered in the order as listed in the Agenda</u>	<u>No</u>
<u>8. Suspension of Meetings Procedure</u>	<u>'That the Meetings Procedure be suspended to ...' (reason must be provided)</u>	<u>Any Councillor</u>		<u>The rules of the meeting are temporarily suspended for the specific reason given in the motion. No debate or decision on any matter, other than a decision to resume Meetings Procedure, is permitted</u>	<u>The meeting continues unaffected</u>	<u>No</u>



Procedural Motion	Form	Mover	When Motion Prohibited	Effect if Carried	Effect if Lost	Debate Permitted on Motion
<u>9. Resumption of Meetings Procedure</u>	<u>'That the Meetings Procedure be resumed'</u>	<u>Any Councillor</u>	<u>When Meeting Procedures have not been suspended</u>	<u>The temporary suspension of the rules of the meeting is removed</u>	<u>The meeting cannot continue</u>	<u>No</u>
<u>10. Consideration of confidential matter(s) (Close the meeting to members of the public)</u>	<u>That, in accordance with Section 66(2)(a) of the <i>Local Government Act 2020</i> the meeting be closed to members of the public for the consideration of item xx is confidential as it relates to [insert reason]</u>	<u>Any Councillor</u>	<u>During the election of the Mayor/Deputy Mayor</u>	<u>The meeting is closed to members of the public</u>	<u>The meeting continues to be open to the public</u>	<u>Yes</u>
<u>11. Reopen the meeting</u>	<u>'That the meeting be reopened to members of the public'</u>	<u>Any Councillor</u>		<u>The meeting is reopened to the public</u>	<u>The meeting remains closed to the public</u>	<u>No</u>



Division 6 – Rescission Motions

~~43.46.~~ 46. Notice of Rescission

~~43.1~~46.1 A Councillor may ~~propose~~ propose ~~give~~ give notice of ~~rescission~~ a motion to rescind a previous resolution of Council provided:

~~46.1.1~~ 46.1.1 the resolution proposed to be rescinded has not been acted on; ~~and~~

~~43.1~~46.1.2 the effect of rescinding the resolution will not place the Council at significant legal, financial or other risk, including non-compliance with statutory obligations; and

~~43.1~~46.1.3 the ~~#~~Notice of #~~Rescission~~ is delivered to the Chief Executive Officer within 48 hours of the resolution having been made setting out -

(a) the resolution to be rescinded; and

(b) the meeting and date when the resolution was carried.

It should be remembered that a notice of rescission is a form of notice of motion.

Accordingly, all provisions in this Chapter regulating notices of motion equally apply to notices of rescission.

~~43.2~~46.2 A resolution will be deemed to have been acted on if:

~~43.2~~46.2.1 its contents have or substance has been communicated in writing to a person whose interests are materially affected by it; or

~~43.2~~46.2.2 a statutory process has been commenced

so as to vest enforceable rights in or obligations on *Council* or any other person.

~~43.3~~46.3 The *Chief Executive Officer* or an appropriate member of Council staff must defer implementing a resolution which:

~~43.3~~46.3.1 has not been acted on; and

~~43.3~~46.3.2 is the subject of a notice of rescission which has been delivered to the Chief Executive Officer in accordance with sub-Rule ~~43.1.2~~46.1.3,

unless deferring implementation of the resolution would have the effect of depriving the resolution of efficacy.

~~43.4~~46.4 This section does not apply to an officer recommendation to supersede a previous resolution of Council.

~~By way of example, assume that, on a Monday evening, Council resolves to have legal representation at a planning appeal to be heard on the following Monday. Assume also that, immediately after that resolution is made, a Councillor lodges a notice of motion to rescind that resolution. Finally, assume that the notice of rescission would not be dealt with until the next Monday evening (being the evening of the day on which the planning appeal is to be heard).~~

~~In these circumstances, deferring implementation of the resolution would have the effect of~~



~~depriving the resolution of efficacy. This is because the notice of rescission would not be debated until after the very thing contemplated by the resolution had come and gone. In other words, by the time the notice of rescission was dealt with the opportunity for legal representation at the planning appeal would have been lost.~~

~~Sub-Rule 43.3 would, in such circumstances, justify the Chief Executive Officer or an appropriate member of Council staff actioning the resolution rather than deferring implementation of it.~~

44.47. If Lost

If a motion for rescission is lost, a similar motion may not be put before *Council* for at least three months from the date it was last lost, unless *Council* resolves that the *notice of motion* be re-listed at a future meeting.

45.48. If Not Moved

If a motion for rescission is not moved at the meeting at which it is listed, it lapses.

46.49. May be Moved by any Councillor

A motion for rescission listed on an *agenda* may be moved by any Councillor present but may not be amended.

47.50. When Not Required

~~47.1~~50.1 ~~Unless sub-Rule 47.2 applies, a~~ motion for rescission is not required where *Council* wishes to change policy.

~~47.2~~ — The following standards apply if *Council* wishes to change policy:

~~47.2.1~~ — if the policy has been in force in its original or amended form for less than 12 months, a *notice of rescission* must be presented to *Council*; and

~~47.2.2~~ — any intention to change a *Council* policy, which may result in a significant impact on any person, should be communicated to those affected and this may include publication and consultation, either formally or informally.

Division 7 – Points of Order

51. Valid Points of Order

A point of order may be raised in relation to anything which, a motion, amendment or statement made that:

51.1 is contrary to *these Rules*;

51.2 is defamatory;

51.3 is irrelevant to the matter under consideration or offensive;

51.4 is outside *Council's* legal powers;

51.5 constitutes improper behaviour;

_____ is offensive;



51.6 constitutes a tedious repetition of something already said;

51.7 a motion, which, under Rule ~~23~~26, or a question which, under Rule ~~53~~56, should not be accepted by the *Chair*;

51.8 a question of procedure; or

51.9 any act of disorder.

~~Rising to express~~Expressing a difference of opinion or to contradict a speaker is not a valid point of order.

52. Procedure for Point of Order

52.1 A Councillor raising a point of order must:

52.1.1 state the point of order; and

52.1.2 state any section, Rule, paragraph or provision of *these Rules* or the Councillor Code of Conduct relevant to the point of order.

~~before resuming his or her seat.~~

52.2 A Councillor who is interrupted by another Councillor calling for a point of order must immediately stop speaking and remain silent until the Councillor raising the point of order has been heard and the question disposed of by the *Chair*.

53. Chair May Adjourn to Consider

53.1 The Chair may adjourn the meeting to consider a point of order which has been raised but otherwise must rule on it as soon as it is raised.

53.2 All other questions or matters before the meeting are suspended until the point of order is decided.

~~48-54.~~ Chair to Decide

The *Chair* must decide all points of order by stating the provision, rule, practice or precedent which ~~he or she~~they considers applicable to the point raised without entering into any discussion or comment.

~~49.1.~~ Chair May Adjourn to Consider

~~49.11.1~~ The *Chair* may adjourn the meeting to consider a point of order which has been raised but otherwise must rule on it as soon as it is raised.

~~49.21.1~~ All other questions or matters before the meeting are suspended until the point of order is decided.

~~50-55.~~ Final Ruling on a Point of Order

~~50.155.1~~ The decision of the Chair in respect of a point of order raised will not be open for discussion and will be final and conclusive unless the majority of Councillors present carry a motion of dissent.



~~50.2~~55.2 A motion of dissent on a point of order must contain the provision, rule, practice or precedent in substitution for the *Chair's* ruling.

~~50.3~~55.3 A motion of dissent in relation to a point of order is not a motion of dissent in the Chair, and the Chair must at all times remain in the Chair and ~~he or she~~they will retain ~~his or her~~their right to a second vote.

~~50.4~~55.4 A motion of dissent on a point of order will take precedence over all other business and, if carried, must be acted on instead of the ruling given by the *Chair*.

~~51.1.~~51.1. ~~Procedure for Point of Order~~

~~51.11.1~~ A Councillor raising a point of order must:

~~51.1.11.1.1~~ state the point of order; and

~~51.1.21.1.1~~ state any section, Rule, paragraph or provision of *these Rules* or the Councillor Code of Conduct relevant to the point of order

~~before resuming his or her seat.~~

~~51.21.1~~ A Councillor who is interrupted by another Councillor calling for a point of order must immediately stop speaking and remain silent until the Councillor raising the point of order has been heard and the question disposed of by the *Chair*.

~~52.1.~~52.1. ~~Valid Points of Order~~

A point of order may be raised in relation to anything which:

~~52.11.1~~ is contrary to *these Rules*;

~~52.21.1~~ is irrelevant to the matter under consideration;

~~52.31.1~~ is outside *Council's* legal powers;

~~52.41.1~~ constitutes improper behaviour;

~~52.51.1~~ is offensive;

~~52.61.1~~ constitutes a tedious repetition of something already said;

~~52.71.1~~ a motion, which, under Rule 23, or a question which, under Rule 53, should not be accepted by the *Chair*;

~~52.81.1~~ a question of procedure; or

~~52.01.1~~ any act of disorder.

~~Rising to express a difference of opinion or to contradict a speaker is not a valid point of order.~~



Division 8 – Public Question Time

~~53-56.~~ Question Time

~~53-156.1~~ 56.1 Unless Council resolves differently, there must be a public question time at every *Council meeting* fixed under Rule 9 or every *Special/Unscheduled Council Meeting* fixed under Rule 11 to enable members of the public to submit written questions and to ask verbal questions of ~~Council~~*the meeting*. Question time is specifically for succinct questions in form and character, rather than forums for making statements and discussion.

56.2 Sub-Rule ~~53-156.1~~ does not apply during any period when a meeting is closed to members of the public in accordance with section 66(2) of the Act.

Scheduled meetings

56.3 A 30 minute period shall be provided for questions at the beginning of Scheduled Council meetings.

56.4 Each question asked/submitted must not be greater than 90 seconds in duration (or 225 words if in writing).

56.5 During public question time, members of the public may either:

56.5.1 Raise their hand and ask their question from the public gallery;

56.5.2 Register by no later than 5pm two days prior to the scheduled meeting to join the meeting virtually or by phone to ask their question.

56.5.3 Submit a question (online, by post or hand delivered to our Customer Service centre) by no later than 5pm two days prior to the scheduled meeting, to be read out at the meeting.

56.6 A time limit of ~~5~~five minutes per person applies, irrespective of the number of questions submitted/asked by that person. If a person has submitted or wants to ask more questions ~~to~~at a meeting than can be answered in the ~~5~~five minutes allocated, their remaining questions may:

56.6.1 at the discretion of the Chair, be dealt with after all other persons have had their ~~first~~ questions asked and answered (or their ~~five~~5 minutes has expired), time permitting; or

56.6.2 not be asked and answered if the time allotted for public question time has expired; and

56.6.3 where questions have not been asked and answered at the relevant Council meeting, a response ~~can~~will be provided in writing after the meeting.

56.7 The Chair or a member of Council staff nominated by the Chair may read to those present at the meeting a question which has been submitted in accordance with this Rule.

Unscheduled meetings

56.8 A 15 minute period shall be provided for questions at the beginning of Unscheduled Council meetings.



~~56.9~~ Only questions related to the agenda for that meeting will be accepted for *Special* *Unscheduled* Council Meetings ~~fixed under Rule 11~~.

~~53.2~~~~56.10~~ Sub-Rules 56.4 to 56.7 apply to questions at *Unscheduled Council meetings*.

~~53.3~~~~56.11~~ Public question time will not exceed 30 minutes in duration.

~~53.4~~~~56.12~~ Public question time may be extended at the discretion of the *Chair*.

~~53.5~~~~56.13~~ Written questions submitted to *Council* will be given preference and will take precedence at the *Council meeting*. *Written questions must state the name and address (and organisation if applicable), of the person submitting the question, and generally be in a form approved or permitted by Council. and must be:*

~~53.5.1~~ *in writing, state the name and address, and the organisation if applicable, of the person submitting the question, and generally be in a form approved or permitted by Council; and*

~~53.5.2~~ *physically received by Council or lodged electronically at the prescribed email address or via the electronic form on Council's website, clearly marked as a question for the Council meeting, prior to 5pm on the Monday preceding the relevant Council meeting.*

~~53.6~~~~56.14~~ If a member of the public intends to ask a question that is unrelated to an item on the agenda, they are *particularly* encouraged to register a question, in writing, prior to the relevant *Scheduled Council meeting* so that a better-researched and more complete response can be provided.

~~53.7~~~~56.15~~ The *Chair* will exercise discretion so that the maximum number of people present will be permitted to ask their questions within the time available for public question time.

~~53.8.1.1~~ A time limit of 5 minutes per person applies, irrespective of the number of questions submitted by that person. ~~If a person has submitted more questions to a meeting than can be answered in the 5 minutes allocated, their remaining questions may:~~

~~53.8.11.1.1~~ *at the discretion of the Chair, be dealt with after all other persons have had their first question asked and answered (or their 5 minutes has expired), time permitting; or*

~~53.8.21.1.1~~ *not be asked and answered if the time allotted for public question time has expired; and*

~~53.8.31.1.1~~ *where questions have not been asked and answered at the relevant Council meeting, a response can be provided in writing after the meeting.*

~~53.9.1.1~~ The *Chair* or a member of Council staff nominated by the *Chair* may read to those present at the meeting a question which has been submitted in accordance with this Rule.

~~53.10~~ Notwithstanding sub-Rule 53.9, the *Chair* may refrain from reading a question or having a question read if the person who submitted the question is not present in the gallery at the time when the question is due to be read.



~~53.14~~56.16 The Chair of the meeting may disallow any question on the ground that it is repetitive of a question already asked (including at previous meetings), objectionable, irrelevant, raises an issue that is the type of information deemed confidential (including questions relating to compliance or enforcement matters or other legal proceedings), is asked to embarrass a Councillor or member of the administration. ~~A question may be disallowed by the Chair if the Chair determines that it:~~

~~53.11.1~~ ~~relates to a matter outside the duties, functions and powers of Council;~~

~~53.11.2~~ ~~is defamatory, indecent, abusive, offensive, irrelevant, trivial or objectionable in language or substance;~~

~~53.11.3~~ ~~deals with a subject matter already answered;~~

~~53.11.4~~ ~~is aimed at embarrassing a Councillor or a member of Council staff;~~

~~53.11.5~~ ~~is a not question of Council, but rather is seeking the views of a particular Councillor or officer.~~

~~53.11.6~~ ~~relates to personnel matters;~~

~~53.11.7~~ ~~relates to the personal hardship of any resident or ratepayer;~~

~~53.11.8~~ ~~relates to industrial matters;~~

~~53.11.9~~ ~~relates to contractual matters;~~

~~53.11.10~~ ~~relates to proposed developments;~~

~~53.11.11~~ ~~relates to legal advice;~~

~~53.11.12~~ ~~relates to matters affecting the security of Council property; or~~

~~53.11.13~~ ~~relates to any other matter which Council considers would prejudice Council or any person.~~

~~53.12~~56.17 Any question which has been disallowed by the Chair must be made available to any other Councillor upon request.

~~53.13~~56.18 Any member of the public asking a question of Council must extend due courtesy and respect to Council and the processes under which it operates, and must take direction from the Chair whenever called upon to do so.

~~53.14~~56.19 All questions and answers must be as brief as possible, and no discussion may be allowed other than by Councillors for the purposes of clarification.

~~53.15~~56.20 Like questions may be grouped together and a single answer provided.

~~53.16~~56.21 Questions from the public gallery or virtually/by phone, shall be addressed to the Chair. The Chair will then ask the Chief Executive Officer to determine who will answer each the question. The Chair may nominate a Councillor, the Chief Executive Officer, or a senior officer may be nominated to General Manager to respond to a question.



~~53.17~~56.22 If the *Chair* so permits, a second speaker may support or add to an answer given, but questions shall not be debated by *Council* during public question time.

~~53.18~~56.23 ~~A Councillor or the~~The *Chief Executive Officer* may require a question to be put on notice. If a question is put on notice, a *written* copy of the answer will be sent to the person who asked the question and will be included in the minutes of the following *Council meeting*.

~~53.19~~56.24 ~~A Councillor or the~~The *Chief Executive Officer* may advise *Council* that it is his or her opinion that the reply to a question should be given in a meeting closed to members of the public. The ~~Councillor or Chief Executive Officer~~ ~~(as the case may be)~~ must state briefly the reason why the reply should be so given and, unless *Council* resolves to the contrary, the reply to such question must be so given.

Division 9 – Petitions and Joint Letters

~~54.57.~~ 57. Petitions and Joint Letters

~~57.1~~ A petition or joint letter must be presented to the next available scheduled meeting of Council where the petition or joint letter is received at least 10 days before the Council meeting.

~~54.1~~57.2 Unless *Council* determines to consider it as an item of urgent business, no motion (other than a motion to receive the same) may be made on any petition, ~~or joint letter, memorial or other like application,~~ until the next *Council meeting* after that at which it has been presented.

~~54.2~~ — It is incumbent on every Councillor presenting a petition or joint letter to acquaint himself or herself with the contents of that petition or joint letter, and to ascertain that it does not contain language disrespectful to *Council*.

~~54.3~~ — Every Councillor presenting a petition or joint letter to *Council* must:

~~54.3.1~~ — write or otherwise record his or her name at the beginning of the petition or joint letter; and

~~54.3.2~~ — confine himself or herself to a statement of the persons from whom it comes, the number of signatories to it, the material matters expressed in it and the text of the request.

~~54.4~~57.3 Every petition or joint letter presented to *Council*:

~~54.4.1~~57.3.1 must be in *writing* (other than pencil), typing or printing, contain the request of the petitioners or signatories and be signed by at least 12 people;

~~54.4.2~~57.3.2 must be addressed to the *Council*, *Mayor*, a Councillor or Councillors, containing a request for action to be taken by *Council*;

~~54.4.3~~57.3.3 may be submitted electronically, by post or delivered in person;

~~54.4.4~~57.3.4 must be in the English language, or accompanied by a translation, which will need to be certified by the *Chief Executive Officer* who will present it to be correct;



~~54.4.5~~57.3.5 must not be defamatory or objectionable in language or nature;
and

~~54.4.6~~57.3.6 must not relate to matters outside the powers of Council or relate to neighbourhood disputes/issues;

~~54.4.7~~57.3.7 must be received by Council in its original form ~~eight (8)~~10 days prior to a Council ~~M~~mmeeting and, if it is not, will be presented at the next Council ~~M~~mmeeting; and

~~54.4.8~~57.3.8 may, at the discretion of the *Chief Executive Officer*, be refused if the same, or substantially the same, petition is received more than once in a twelve (12) month period during the course of a term of *Council*.

~~54.5~~57.4 Every petition or joint letter must be signed by the persons whose names are appended to it by their names or marks, and, except in cases of incapacity or sickness, by no one else and the address of every petitioner or signatory must be clearly stated.

~~54.6~~57.5 Any signature appearing on a page which does not bear the text of the whole of the petition or request may not be considered by *Council*.

~~54.7~~57.6 Every page of a petition or joint letter must be a single page of paper and not be posted, stapled, pinned or otherwise affixed or attached to any piece of paper other than another page of the petition or joint letter.

~~54.8~~57.7 If a petition, or joint letter, ~~memorial or other like application~~, relates to an operational matter, *Council* must refer it to the *Chief Executive Officer* for consideration.

~~54.9~~57.8 If a petition relates to:

~~54.9.1~~57.8.1 a 'planning matter' which is the subject of a public notification process under the *Planning and Environment Act 1987*; or

~~54.9.2~~57.8.2 a 'statutory matter' which is the subject of ~~a public submissions process under section 223 of the Local Government Act 1989~~a community engagement process;

the petition will be treated as a joint submission in relation to the 'planning matter' or the 'statutory matter' (as the case may be).

~~57.9~~ The Chief Executive Officer may accept electronic petitions received via online websites if they are satisfied that the petition is authentic and from a legitimate website and provided that the electronic petition has been closed and a copy has been forwarded to Council.

~~57.10~~ A petition or joint letter shall not be presented at a meeting of Council or received by Council unless it meets the definition under these Governance Rules, unless it is specifically resolved by Council to receive the petition or joint letter in a non-conforming format. Only the wording of the request and the number of signatories will be included in the public agenda for a Council meeting.

~~57.11~~ If the petition or joint letter relates to any item already on the agenda for the Council meeting at which the petition or joint letter is submitted, the Chair may decide that the petition or joint letter will be dealt with in conjunction with that agenda item.

~~57.12~~ A petition or joint letter may nominate a person to whom a reply must be sent, but if no person is nominated or if it is not obvious who the intended contact person is, Council will reply to the first signatory who appears on the petition or joint letter.



Division 10 – Voting

~~55-58.~~ 58. How Motion Determined

To determine a motion before a meeting, the *Chair* must first call for those in favour of the motion and then those opposed to the motion, and must then declare the result to the meeting.

~~56-59.~~ 59. Silence

Voting must take place in silence.

~~57-60.~~ 60. Recount

The *Chair* may direct that a vote be recounted to satisfy himself or herself of the result.

~~58-61.~~ 61. Casting Vote

~~58-1~~61.1 In the event of a tied vote, the *Chair* must exercise a casting vote.

~~58-2~~61.2 In the event of an item first coming before Council having an equality of votes, Council's expectation is that the Chair will generally vote in the negative unless there is an imminent deadline that requires an immediate decision.

~~58-3~~61.3 Council's expectation is that the item should then be listed for the next Council meeting. If there is an equality of votes when the item is re-presented to Council, then the expectation is that the Chair will use the casting vote to finally resolve the matter.

~~58-4~~61.4 Council acknowledges that the Chair is always free to exercise the casting vote as ~~he or she~~they sees fit, notwithstanding the expectations outlined in sub-Clauses ~~58-2~~61.2 and ~~58-3~~61.3.

~~59-62.~~ 62. By Show of Hands

Voting on any matter is by show of hands.

~~60-63.~~ 63. Procedure for a Division

~~60-1~~63.1 Immediately after any question is put to a meeting and before the next item of business has commenced, a Councillor may call for a division.

~~60-2~~63.2 When a division is called for, the vote already taken must be treated as set aside and the division shall decide the question, motion or amendment.

~~60-3~~63.3 When a division is called for, the *Chair* must:

~~60-3-1~~63.3.1 first ask each Councillor wishing to vote in the affirmative to raise a hand and, upon such request being made, each Councillor wishing to vote in the affirmative must raise one of ~~his or her~~their hands. The Chair must then state, and the Chief Executive Officer or any authorised officer must record, the names of those Councillors voting in the affirmative; and

~~60-3-2~~63.3.2 then ask each Councillor wishing to vote in the negative to raise a hand and, upon such request being made, each Councillor wishing to

vote in the negative must raise one of ~~his or her~~their hands. The *Chair* must then state, and the *Chief Executive Officer* or any *authorised officer* must record, the names of those Councillors voting in the negative.

~~61.64.~~ **No Discussion Once Declared**

Once a vote on a question has been taken, no further discussion relating to the question is allowed unless the discussion involves:

~~61.1~~64.1 a Councillor requesting, before the next item of business is considered, that his or her opposition to a resolution be recorded in the minutes ~~or a register maintained for that purpose~~;

~~61.2~~64.2 foreshadowing a *notice of rescission* where a resolution has just been made, or a positive motion where a resolution has just been rescinded.

For example, Rule 61 would allow some discussion if, immediately after a resolution was made, a Councillor foreshadowed lodging a notice of rescission to rescind that resolution.

Equally, Rule 61 would permit discussion about a matter which would otherwise be left in limbo because a notice of rescission had been successful. For instance, assume that Council resolved to refuse a planning permit application. Assume further that this resolution was rescinded.

Without a positive resolution — to the effect that a planning permit now be granted — the planning permit application will be left in limbo. Hence the reference, in sub-Rule 61.2, to discussion about a positive motion were a resolution has just been rescinded.

Division 11 – Minutes

~~62.65.~~ **Confirmation of Minutes**

~~62.1~~65.1 At every *Council meeting* the minutes of the preceding meeting(s) must be dealt with as follows:

~~62.1.1~~65.1.1 a copy of the minutes must be delivered to each Councillor no later than 48 hours before the meeting;

~~65.1.2~~ no discussion or debate on the confirmation of the minutes is permitted except where their accuracy as a record of the proceedings of the meeting to which they relate is questioned;

~~65.1.3~~ following the moving and seconding of the minutes, if no Councillor indicates opposition, the question is put to the vote; and

~~62.1.2~~ — if no Councillor indicates opposition, the minutes must be declared to be confirmed;

~~62.1.3~~ — if a Councillor indicates opposition to the minutes:

(a) — he or she must specify the item(s) to which he or she objects;

(b) — the objected item(s) must be considered separately and in the order in which they appear in the minutes;



- ~~(c) — the Councillor objecting must move accordingly without speaking to the motion;~~
- ~~(d) — the motion must be seconded;~~
- ~~(e) — the Chair must ask:
"Is the motion opposed?"~~
- ~~(f) — if no Councillor indicates opposition, then the Chair must declare the motion carried without discussion and then ask the second of the questions described in sub-Rule 62.1.3(k);~~
- ~~(g) — if a Councillor indicates opposition, then the Chair must call on the mover to address the meeting;~~
- ~~(h) — after the mover has addressed the meeting, the seconder may address the meeting;~~
- ~~(i) — after the seconder has addressed the meeting (or after the mover has addressed the meeting if the seconder does not address the meeting), the Chair must invite debate by calling on any Councillor who wishes to speak to the motion, providing an opportunity to alternate between those wishing to speak against the motion and those wishing to speak for the motion;~~
- ~~(j) — if, after the mover has addressed the meeting, the Chair invites debate and no Councillor speaks to the motion, the Chair must put the motion; and~~
- ~~(k) — the Chair must, after all objections have been dealt with, ultimately ask:
"The question is that the minutes be confirmed" or
"The question is that the minutes, as amended, be confirmed",
and he or she must put the question to the vote accordingly;~~

~~62.1.4~~65.1.4 a resolution of *Council* must confirm the minutes and the minutes must, if practicable, be signed by the *Chair* of the meeting at which they have been confirmed;.

~~62.1.5~~ the minutes must be entered in the *minute book* and each item in the *minute book* must be entered consecutively; and

~~62.1.6~~ unless otherwise resolved or required by law, minutes of a *Delegated Committee* requiring confirmation by *Council* must not be available to the public until confirmed by *Council*.

~~63.~~ **No Debate on Confirmation of Minutes**

~~No discussion or debate on the confirmation of minutes is permitted except where their accuracy as a record of the proceedings of the meeting to which they relate is questioned.~~



~~64-66.~~ **Deferral of Confirmation of Minutes**

Council may defer the confirmation of minutes until later in the *Council meeting* or until the next meeting if considered appropriate.

~~65-67.~~ **Form and Availability of Minutes**

~~65.1-67.1~~ The *Chief Executive Officer* (or other person authorised by the *Chief Executive Officer* to attend the meeting and to take the minutes of such meeting) must keep minutes of each *Council meeting*, and those minutes must record:

~~65.1.1-67.1.1~~ _____ the date, place, time and nature of the meeting;

~~65.1.2-67.1.2~~ _____ the names of the Councillors present and the names of any Councillors who apologised in advance for their non-attendance;

~~65.1.3~~ _____ the names of the members of Council staff present for the purpose of participation in the *Council meeting*;

~~65.1.4-67.1.3~~ _____ any disclosure of a conflict of interest made by a Councillor, including the explanation given by the Councillor under Chapter 5;

~~65.1.5-67.1.4~~ _____ arrivals and departures (including temporary departures) of Councillors during the course of the meeting;

~~65.1.6-67.1.5~~ _____ each motion and amendment moved (including motions and amendments that lapse for the want of a seconder);

~~65.1.7-67.1.6~~ _____ the outcome of every motion, that is, whether it was put to the vote and the result of either carried, lost, withdrawn, lapsed, amended, etc.;

~~65.1.8-67.1.7~~ _____ the vote cast by each Councillor upon a division;

~~65.1.9-67.1.8~~ _____ the vote cast by any Councillor who has requested that his or her vote be recorded in the minutes;

~~65.1.10-67.1.9~~ _____ questions upon notice;

~~65.1.11-67.1.10~~ _____ the failure of a quorum;

~~65.1.12-67.1.11~~ _____ any adjournment of the meeting and the reasons for that adjournment;

~~67.1.12~~ _____ the time at which standing orders were suspended and resumed; ~~and~~

~~65.1.13-67.1.13~~ _____ a brief summary of any public questions and responses provided by the *Chief Executive Officer* or their nominee; ~~and~~

~~65.1.14-67.1.14~~ _____ any other matter which the *Chief Executive Officer* thinks should be recorded to clarify the intention of the *Council meeting* or the recording of the minutes.

~~65.2-67.2~~ The *Chief Executive Officer* must ensure that the minutes of any *Council meeting* are:

~~65.2.1-67.2.1~~ _____ published on *Council's* website; and



~~65.2.2~~67.2.2 available for inspection at *Council's* office during normal business hours.

~~65.3~~67.3 Nothing in sub-Rule ~~65.2~~67.2 requires *Council* or the *Chief Executive Officer* to make public any minutes relating to a *Council meeting* or part of a *Council meeting* closed to members of the public in accordance with section 66 of the *Act*.

Division 12 – Behaviour

~~66.68.~~ 68. Public Addressing the Meeting

~~66.1~~68.1 Members of the public do not have a right to address *Council* and may only do so with the consent of the *Chair* or by prior arrangement.

~~66.2~~68.2 Any member of the public addressing *Council* must extend due courtesy and respect to *Council* and the processes under which it operates and must take direction from the *Chair* whenever called on to do so.

~~66.3~~68.3 A member of the public present at a *Council meeting* must not disrupt the meeting.

~~67.69.~~ 69. Chair May Remove

The *Chair* may order and cause the removal of any person, other than a Councillor, who disrupts any meeting or fails to comply with a direction given under sub-Rule ~~66.2~~68.2.

It is intended that this power be exercisable by the Chair, without the need for any Council resolution. The Chair may choose to order the removal of a person whose actions immediately threaten the stability of the meeting or wrongly threatens his or her authority in chairing the meeting.

~~68.70.~~ 70. Chair may adjourn disorderly meeting

If the *Chair* is of the opinion that disorder at the *Council* table or in the gallery makes it desirable to adjourn the *Council meeting*, ~~he or she~~the Chair may adjourn the meeting to a later time on the same day or to some later day as ~~he or she~~the Chair thinks proper. In that event, the provisions of sub-Rules ~~45.2~~47.2 and ~~45.3~~47.3 apply.

~~69.71.~~ 71. Removal from Chamber

The *Chair*, or *Council* in the case of a suspension, may ask the *Chief Executive Officer* or a member of the Victoria Police to remove from the Chamber any person who acts in breach of this Chapter and whom the *Chair* has ordered to be removed from the gallery under Rule ~~70~~69.

Division 13 – Additional Duties of Chair

~~70.72.~~ 72. The Chair's Duties and Discretions

In addition to the duties and discretions provided in this Chapter, the *Chair*:

~~70.1~~72.1 must not accept any motion, question or statement which is derogatory, or defamatory of any Councillor, member of Council staff, or member of the community; and

~~70.2~~72.2 must call to order any person who is disruptive or unruly during any meeting.



Division 14 – Suspension of ~~Standing Orders~~ Meetings Procedure

~~71.73.~~ 73. Suspension of ~~Standing Orders~~ Meetings Procedure

~~71.1~~73.1 To expedite the business of a meeting, *Council* may suspend ~~standing orders~~ meetings procedure.

The suspension of ~~standing orders~~ meetings procedure should be used to enable full discussion of any issue without the constraints of ~~formal meeting procedure~~ formality.

Its purpose is to enable the formalities of meeting procedure to be temporarily disposed of while an issue is discussed.

~~71.2~~73.2 The suspension of ~~standing orders~~ meetings procedure should not be used purely to dispense with the processes and protocol of the government of *Council*. An appropriate motion would be:

"That ~~standing order~~ meetings procedure be suspended to enable discussion on....."

~~71.3~~73.3 No motion can be accepted by the *Chair* or lawfully be dealt with during any suspension of ~~standing orders~~ meetings procedure.

~~71.4~~73.4 Once the discussion has taken place and before any motions can be put, the resumption of ~~standing orders~~ meetings procedure will be necessary. An appropriate motion would be:

"That ~~standing orders~~ meetings procedure be resumed."

Division 15 – Miscellaneous

~~72.74.~~ 74. Meetings Conducted Remotely

If:

~~72.1~~74.1 by law a meeting may be conducted electronically; and

~~72.2~~74.2 *Council* decides that a meeting is to be conducted electronically,

the *Chair* may, with the consent of the meeting, modify the application of any of the Rules in this Chapter to facilitate the more efficient and effective transaction of the business of the meeting.

~~73.~~ 73. Procedure not provided in this Chapter

~~In all cases not specifically provided for by this Chapter, resort must be had to the Standing Orders and Rules of Practice of the Upper House of the Victorian Parliament (so far as the same are capable of being applied to Council proceedings).~~

75. Recording Proceedings

75.1 The proceedings of open Council meetings will be audio recorded to facilitate the preparation of the minutes of the meeting and to ensure their accuracy.

75.2 Where practicable, the proceedings of open Council meetings will be streamed live on Colac Otway Shire Council's website so that interested parties can watch the



proceedings in real time. A recording of the live stream will be made available on the Colac Otway Shire's website the day following the meeting.

75.3 The Chief Executive Officer has the discretion and authority to delay publication of a recording in instances where comments made by members of the public at the meeting are considered to be objectionable, offensive, defamatory or inappropriate.

75.4 The Council is authorised to resolve that audio and live stream recordings of meetings be edited by the deletion of comments from the public which the Council considers to be objectionable, offensive, defamatory or inappropriate.

74.76. Criticism of members of Council staff

74.176.1 The *Chief Executive Officer* may make a brief statement at a *Council meeting* in respect of any statement by a Councillor made at the *Council meeting* criticising him or her or any member of Council staff.

74.276.2 A statement under sub-Rule 74.176.1 must be made by the *Chief Executive Officer*, through the *Chair*, as soon as it practicable after the Councillor who made the statement has resumed his or her seat.



Chapter 3 – Meeting Procedure for Delegated Committees

1. Appointing Chairs of Delegated Committees

The Act provides the Mayor with specific power to appoint a Councillor to be the Chair of a Delegated Committee.

The Council may also resolve to appoint a Councillor to be Chair of a Delegated Committee (however the appointment by the Mayor prevails).

1.2. Meeting Procedure Generally

If *Council* establishes a *Delegated Committee*:

1.2.1 all of the provisions of Chapter 2 apply to meetings of the *Delegated Committee*; and

1.2.2 any reference in Chapter 2 to:

1.2.1.2.1 a *Council meeting* is to be read as a reference to a *Delegated Committee meeting*;

1.2.2.2.2 a Councillor is to be read as a reference to a member of the *Delegated Committee*; and

1.2.3.2.3 the Mayor is to be read as a reference to the Chair of the *Delegated Committee*.

2.3. Meeting Procedure Can Be Varied

Notwithstanding Rule 4.2, if *Council* establishes a *Delegated Committee* that is not composed solely of Councillors:

2.3.1 *Council* may; or

2.3.2 the *Delegated Committee* may, with the approval of *Council*

resolve that any or all of the provisions of Chapter 2 are not to apply to a meeting of the *Delegated Committee*, in which case the provision or those provisions will not apply until *Council* resolves, or the *Delegated Committee* with the approval of *Council* resolves, otherwise.

4. Requests to address a Delegated Committee

Where the Instrument of Delegation specifically permits, a person may request to be heard at a Delegated Committee meeting, comprising all Councillors, in relation to a matter listed on the Agenda.

5. No Public Question Time

There will be no public question public time at Delegated Committee meetings.



Chapter 4 – Meeting Procedure for Community Asset Committees

1. Introduction

In this Chapter, “Instrument of Delegation” means an instrument of delegation made by the *Chief Executive Officer* under section 47(1)(b) of the *Act*.

2. Meeting Procedure

Unless anything in the instrument of delegation provides otherwise, the conduct of a meeting of a *Community Asset Committee* is in the discretion of the *Community Asset Committee*.

Chapter 5 – Disclosure of Conflicts of Interest

1. Introduction

The following Rules in this Chapter apply only upon Division 1A of Part 4 of the *Local Government Act 1989* being repealed.⁵

2.3. Definition

In this Chapter:

~~2.1~~3.1 “meeting conducted under the auspices of *Council*” means a meeting of the kind described in section 131(1) of the Act, and ~~includes a meeting referred to in Rule 1 of Chapter 6 (whether such a meeting is known as a ‘Councillor Briefing’ or by some other name)~~ is a meeting of Councillors that is a scheduled or planned meeting for the purpose of discussing the business of Council or briefing Councillors, which is attended by at least one member of Council staff, and is not a Council meeting, Delegated Committee meeting or Community Asset Committee meeting; and

~~2.2~~3.2 a member of a *Delegated Committee* includes a Councillor.

3.4. Disclosure of a Conflict of Interest at a Council Meeting

A Councillor who has a conflict of interest in a matter being considered at a *Council meeting* at which ~~he or she~~they:

~~3.1~~4.1 ~~is~~ are present must disclose that conflict of interest by explaining the nature of the conflict of interest to those present at the *Council meeting* immediately before the matter is considered; or

~~3.2~~4.2 intends to be present must disclose that conflict of interest by providing to the *Chief Executive Officer* before the *Council meeting* commences a written notice:

~~3.2.1~~4.2.1 advising of the conflict of interest;

~~3.2.2~~4.2.2 explaining the nature of the conflict of interest; and

~~3.2.3~~4.2.3 detailing, if the nature of the conflict of interest involves a Councillor’s relationship with or a gift from another person, the:

- (a) name of the other person;
- (b) nature of the relationship with that other person or the date of receipt, value and type of gift received from the other person; and
- (c) nature of that other person’s interest in the matter,

and then immediately before the matter is considered at the meeting announcing to those present that ~~he or she has~~they have a conflict of interest and that a written notice has been given to the *Chief Executive Officer* under this sub-Rule.

The Councillor must, in either event, leave the *Council meeting* immediately after giving the explanation or making the announcement (as the case may be) and not return to the meeting until after the matter has been disposed of.

⁵At the time of making these Rules the date on which Division 1A of Part 4 of the *Local Government Act 1989* is expected to be repealed is 24 October 2020.



4.5. Disclosure of Conflict of Interest at a Delegated Committee Meeting

A member of a *Delegated Committee* who has a conflict of interest in a matter being considered at a *Delegated Committee* meeting at which ~~he or she~~they:

~~4.1~~5.1 ~~is~~are present must disclose that conflict of interest by explaining the nature of the conflict of interest to those present at the *Delegated Committee* meeting immediately before the matter is considered; or

~~4.2~~5.2 intends to present must disclose that conflict of interest by providing to the *Chief Executive Officer* before the *Delegated Committee* meeting commences a written notice:

~~4.2.1~~5.2.1 _____ advising of the conflict of interest;

~~4.2.2~~5.2.2 _____ explaining the nature of the conflict of interest; and

~~4.2.3~~5.2.3 _____ detailing, if the nature of the conflict of interest involves a member of a *Delegated Committee*'s relationship with or a gift from another person the:

(a) name of the other person;

(b) nature of the relationship with that other person or the date of receipt, value and type of gift received from the other person; and

~~4.2.4~~5.2.4 _____ nature of that other person's interest in the matter,

and then immediately before the matter is considered at the meeting announcing to those present that ~~he or she has~~they have a conflict of interest and that a written notice has been given to the *Chief Executive Officer* under this sub-Rule.

The member of a *Delegated Committee* must, in either event, leave the *Delegated Committee* meeting immediately after giving the explanation or making the announcement (as the case may be) and not return to the meeting until after the matter has been disposed of.

5.6. Disclosure of a Conflict of Interest at a Community Asset Committee Meeting

A Councillor who has a conflict of interest in a matter being considered at a *Community Asset Committee* meeting at which ~~he or she~~they:

~~5.1~~6.1 ~~is~~are present must disclose that conflict of interest by explaining the nature of the conflict of interest to those present at the *Community Asset Committee* meeting immediately before the matter is considered; or

~~5.2~~6.2 intends to present must disclose that conflict of interest by providing to the *Chief Executive Officer* before the *Community Asset Committee* meeting commences a written notice:

~~5.2.1~~6.2.1 _____ advising of the conflict of interest;

~~5.2.2~~6.2.2 _____ explaining the nature of the conflict of interest; and

~~5.2.3~~6.2.3 _____ detailing, if the nature of the conflict of interest involves a member of a Councillor's relationship with or a gift from another person the:



- (a) name of the other person;
- (b) nature of the relationship with that other person or the date of receipt, value and type of gift received from the other person; and

~~5.2.4~~6.2.4 nature of that other person's interest in the matter,

and then immediately before the matter is considered at the meeting announcing to those present that ~~he or she has~~they have a conflict of interest and that a written notice has been given to the *Chief Executive Officer* under this sub-Rule.

The Councillor must, in either event, leave the *Committee Asset Committee* meeting immediately after giving the explanation or making the announcement (as the case may be) and not return to the meeting until after the matter has been disposed of.

~~6.7.~~6.7. Disclosure at a Meeting Conducted Under the Auspices of Council

A Councillor who has a conflict of interest in a matter being considered by a meeting held under the auspices of *Council* at which ~~he or she is~~they are present must:

~~6.4~~7.1 disclose that conflict of interest by explaining the nature of the conflict of interest to those present at the meeting immediately before the matter is considered;

~~6.2~~7.2 absent ~~himself or herself~~themselves from any discussion of the matter; and

~~6.3~~7.3 as soon as practicable after the meeting concludes provide to the *Chief Executive Officer* a written notice recording that the disclosure was made and accurately summarising the explanation given to those present at the meeting.

~~7.8.~~7.8. Disclosure by Members of Council Staff Preparing Reports for Meetings

~~7.4~~8.1 A member of Council staff who, in ~~his or her~~their capacity as a member of Council staff, has a conflict of interest in a matter in respect of which ~~he or she is~~they are preparing or contributing to the preparation of a Report for the consideration of a:

~~7.1~~8.1.1 *Council meeting*;

~~7.1~~8.1.2 *Delegated Committee meeting*;

~~7.1~~8.1.3 *Community Asset Committee meeting*

must, immediately upon becoming aware of the conflict of interest, provide a written notice to the *Chief Executive Officer* disclosing the conflict of interest and explaining the nature of the conflict of interest.

~~7.2~~8.2 The *Chief Executive Officer* must ensure that the Report referred to in sub-Rule ~~7.4~~8.1 records the fact that a member of Council staff disclosed a conflict of interest in the subject-matter of the Report.

~~7.3~~8.3 If the member of Council staff referred to in sub-Rule ~~7.4~~8.1 is the *Chief Executive Officer*:

~~7.3~~8.3.1 the written notice referred to in sub-Rule ~~7.4~~8.1 must be given to the *Mayor*; and

~~7.3~~8.3.2 the obligation imposed by sub-Rule ~~7.2~~8.2 may be discharged by any other member of Council staff responsible for the preparation of the Report.



~~8-9.~~ Disclosure of Conflict of Interest by Members of Council Staff in the Exercise of Delegated Power

~~8-4~~9.1 A member of Council staff who has a conflict of interest in a matter requiring a decision to be made by the member of Council staff as delegate must, immediately upon becoming aware of the conflict of interest, provide a written notice to the *Chief Executive Officer* explaining the nature of the conflict of interest.

~~8-2~~9.2 If the member of Council staff referred to in sub-Rule ~~8-4~~9.1 is the *Chief Executive Officer* the written notice must be given to the *Mayor*.

~~9-10.~~ Disclosure by a Member of Council Staff in the Exercise of a Statutory Function

~~9-4~~10.1 A member of Council staff who has a conflict of interest in a matter requiring a statutory function to be performed under an Act by the member of Council staff must, upon becoming aware of the conflict of interest, immediately provide a written notice to the *Chief Executive Officer* explaining the nature of the conflict of interest.

~~9-2~~10.2 If the member of Council staff referred to in sub-Rule ~~9-4~~10.1 is the *Chief Executive Officer* the written notice must be given to the *Mayor*.

~~10-11.~~ Retention of Written Notices

The *Chief Executive Officer* must retain all written notices received under this Chapter for a period of three years.

Chapter 6 – Miscellaneous

1. Informal Meetings of Councillors

If there is a meeting of Councillors that:

- 1.1 is scheduled or planned for the purpose of discussing the business of *Council* or briefing Councillors;
- 1.2 is attended by at least one member of Council staff; and
- 1.3 is not a *Council meeting*, *Delegated Committee* meeting or *Community Asset Committee* meeting

the *Chief Executive Officer* must ensure that a summary of the matters discussed at the meeting are:

- (a) tabled at the next convenient *Council meeting*; and
- (b) recorded in the minutes of that *Council meeting*.

2. Confidential Information

- 2.1 ~~If, after the repeal of section 77(2)(c) of the Local Government Act 1989,~~ Where the *Chief Executive Officer* is of the opinion that information relating to a meeting is confidential information within the meaning of the *Act*, ~~he or she~~ they may ~~designate~~ advise the information ~~as is~~ confidential and advise Councillors and/or members of Council staff in writing accordingly. If not advised then the information may still be confidential by virtue of the Act.
- 2.2 Information which has been ~~designated~~ advised by the *Chief Executive Officer* as confidential information within the meaning of the *Act*, and in respect of which advice has been given to Councillors and/or members of Council staff in writing accordingly, will be presumed to be confidential information.
- 2.3 Notwithstanding sub-Clauses 2.1 and 2.2, *Council* may resolve to release confidential information within the meaning of the *Act*, or that which has been ~~designated~~ advised by the *Chief Executive Officer* as confidential information within the meaning of the *Act*.



Chapter 7 – Election Period Policy

[Election Period Policy not part of review]

Summary of submission received

Public Transparency Policy

Summary of feedback	Officer response
<p><u>Definitions</u></p> <p>Correct the typo under the Definition of ‘public transparency’.</p> <p>I think the principles are reproduced in clause 6 of this policy rather than clause 5.</p>	<p>Good pick up. Recommend incorporating suggested change.</p>
<p><u>7.1</u></p> <p>The policy needs to include some detail on how this commitment is ensured and during which stage of the decision making process this will be achieved. It is not enough for the ‘transparency’ box to be ticked by allowing the community to witness councillors make decisions at Council meetings without any meaningful engagement on the part of the community towards that decision – especially in relation to matters initiated by the community and/or of interest to them.</p>	<p>The Public Transparency is a high level Policy. Clause 7.2 adequately addresses this, along with reference to Chapter 1 of the Governance Rules and other related Policies and Legislation – such as the Community Engagement Policy.</p>
<p><u>7.3.2</u></p> <p>Provision should be made (either in the Public Transparency Policy or the Governance Rules) for Councillors to explain what factors they have included in their decision (particularly in relation to matters put forward be the public) and reasons for their decision. The community should also have the opportunity to counter the reasons before any final vote is taken. Ideally, this should happen during the engagement stage so that there are no surprises for the community when Council makes the decision.</p>	<p>This is not recommended. Councillors are not compelled to comment on matters or their decision-making process at Council or Delegated Committee meetings. Councillors will generally provide comment about the reasons they vote for or against a motion as part of the formally constituted meeting.</p> <p>Councillors should always bring an open mind to the decision-making process (to avoid perception of pre-determined bias). A form of engagement that results in the community knowing what the decision of Council is before it convenes and votes on the matter, is not recommended.</p>



18.14 - Public Transparency Policy

COUNCIL POLICY

1. PURPOSE

This purpose of this Policy is to:

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

This Policy is adopted under section 57 of the Act.

2. OBJECTIVE

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

3. SCOPE

This Policy applies to Councillors and Officers.

4. DEFINITIONS

In this Policy, the following words and phrases mean:

"Act" means the *Local Government Act 2020*.

"Chief Executive Officer" includes an Acting Chief Executive Officer.

"Closed Meeting" means a Meeting that is closed to members of the public.

"Community" means the residents and ratepayers of, and visitors to, the Municipal District and may, depending on the context, refer to all of those people or to particular subsets of those people.

"Confidential Information" means confidential information as defined in section 3(1) of the Act.

"Council" means Colac Otway Shire Council.

"Council Information" means all documents and other information held by Council.

"Council Offices" means the offices of Council located at 2-6 Rae Street, Colac and 100 Great Ocean Road, Apollo Bay.

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“Council Website” means Council’s website at www.colacotway.vic.gov.au.

“Governance Rules” means the governance rules adopted by Council under section 60 of the Act, as amended from time to time.

“Health Information” means health information as defined in section 3(1) of the *Health Records Act 2001*.

“Meeting” means a meeting of Council or a Delegated Committee.

“Municipal District” means the municipal district of Council.

“Officer” means a member of Council staff, and includes the Chief Executive Officer.

“Personal Information” means personal information as defined in section 3(1) of the *Privacy and Data Protection Act 2014*.

“Public Transparency Principles” means the public transparency principles set out in section 58 of the Act and reproduced in Part 5 of this Policy.

“Requestor” means a person making a request to access Council Information under and in accordance with this Policy.

5. RESPONSIBILITY FOR THIS POLICY

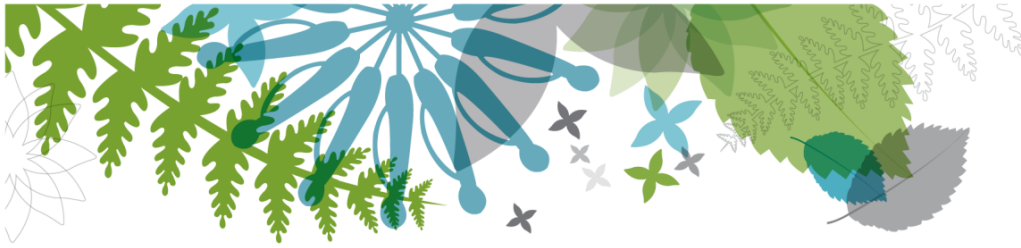
- 5.1 The Chief Executive Officer is responsible for the application and operation of this Policy.
- 5.2 The Chief Executive Officer may, from time to time, authorise another Officer or Officers to fulfil any of the Chief Executive Officer’s functions and duties under this Policy.
- 5.3 Where another Officer is, or other Officers are, authorised under clause 5.2, any reference in this Policy to the Chief Executive Officer is to be read as a reference to that Officer or those Officers.

6. PUBLIC TRANSPARENCY PRINCIPLES

- 6.1 The Public Transparency Principles are set out in section 58 of the Act as follows:
 - 6.1.1 Council decision-making processes must be transparent, except when Council is dealing with information that is confidential by virtue of the Act or any other Act.
 - 6.1.2 Council Information must be publicly available, unless:
 - (a) the information is confidential by virtue of the Act or any other Act; or
 - (b) public availability of the information would be contrary to the public interest.

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- 6.1.3 Council Information must be understandable and accessible to members of the Municipal District.
- 6.1.4 Public awareness of the availability of Council Information must be facilitated.
- 6.2 Council will give effect to and implement the Public Transparency Principles in accordance with this Policy.

7. COUNCIL DECISION-MAKING PROCESSES

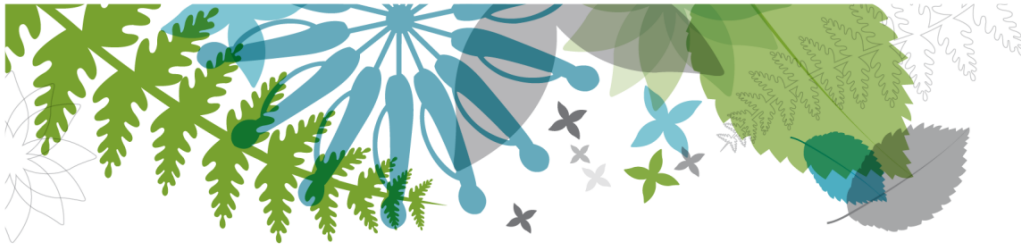
- 7.1 Council will ensure that the decision-making processes that it adopts are transparent and open to the Community so that the Community is provided with an opportunity for meaningful engagement with Council and its decision-making processes.
- 7.2 Without limiting the generality of clause 7.1, Council’s decision-making processes will:
 - 7.2.1 be conducted in accordance with the Act and the Governance Rules;
 - 7.2.2 unless considering Confidential Information, be conducted in a forum that is open to, and accessible by, the Community; and
 - 7.2.3 be informed by the:
 - (a) views of those members of the Community whose rights and interests will be directly affected by the decision; and
 - (b) responses, if any, to any process of community engagement conducted by Council in respect of the decision, whether in accordance with its Community Engagement Policy or otherwise.
- 7.3.1 Further details of Council’s decision-making process can be found in Chapter 1 of the Governance Rules.

8. AVAILABILITY OF COUNCIL INFORMATION

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

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9. PUBLICATIONS

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

10. ACCESSIBILITY OF COUNCIL INFORMATION

10.1 Council Information will be made available on the Council Website, at the Council Offices and/or on request.

10.2 Council will, to the extent possible, facilitate access to Council Information by:

10.2.1 making Council Information available in accordance with this Policy;

10.2.2 endeavouring to make Council Information accessible electronically and in hard copy, where requested; and

10.2.3 endeavouring to convert Council Information to different accessible formats where necessary for members of the Community for whom either:

(a) English is their second language; or

(b) their disability requires an alternative means of access to be provided.

10.3 Where a request is made for access to Council Information that is not on the Council Website or otherwise available at the Council Offices, the Chief Executive Officer will:

10.3.1 review the request;

10.3.2 assess whether the Council Information requested is Confidential Information, or its release would be contrary to the public interest; and

10.3.3 notify the Requestor of the outcome of that assessment.

10.4 If the Council Information requested is assessed under clause ~~10.2~~10.3 as not being Confidential Information, or its release is assessed as not being contrary to the public interest, the Council Information will be provided to the Requestor.

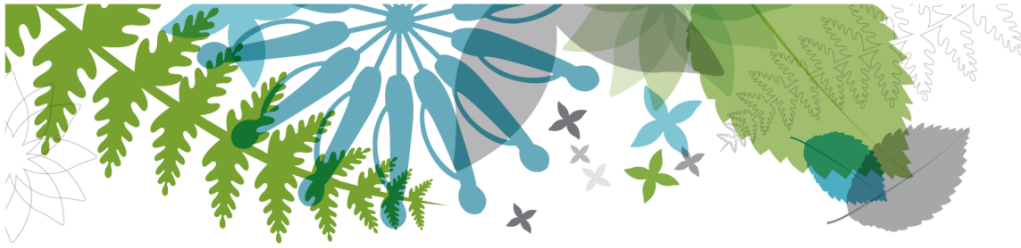
10.5 The Council Information will be provided to the Requestor by email unless either the:

10.5.1 Requestor seeks access in a different form, including by reference to the matters stated in clause 10.2.3, in which case the Council Information will be provided in that form, unless it is impracticable to do so; or

10.5.2 Chief Executive Officer, having regard to the nature of the Council Information requested, determines that the Council Information should be provided in a different form, such as by inspection.

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- 10.6 Council will provide such support to the Requestor as it considers reasonable to ensure that the Council Information provided is understood by them.
- 10.7 If, under clause ~~10.2~~10.3, the Council Information requested is assessed as being Confidential Information, or its release is assessed as being contrary to the public interest, the Requestor will be advised:
 - 10.7.1 that the request has been denied;
 - 10.7.2 of the reasons for the request being denied; and
 - 10.7.3 of alternative mechanisms by which they may seek access to the Council Information (eg by making a request made under the *Freedom of Information Act 1982*).
- 10.8 Any request for access to Council Information by way of an alternative mechanism under clause 10.7.3 will be assessed according to the process applicable to it, however:
 - 10.8.1 if the Council Information has previously been provided in the course of processing a request made under the *Freedom of Information Act 1982*, it will be provided but may be subject to Council’s fees and charges in its provision.
- 10.9 Where:
 - 10.9.1 Council Information requested is assessed under clause ~~10.2~~10.3 as being Confidential Information, or its release is assessed as being contrary to the public interest; but
 - 10.9.2 it is practicable for that Council Information to be provided with deletions so that it is suitable for release to the Requestor; and
 - 10.9.3 the Chief Executive Officer believes that the Requestor would want the Council Information in that format,

the Council Information will be provided in that format.

11. COUNCIL INFORMATION THAT IS NOT AVAILABLE

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

11.1 Confidential Information

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

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Type	Description
Council business information	Information that would prejudice Council's position in commercial negotiations if prematurely released.
Security information	Information that is likely to endanger the security of Council property or the safety of any person if released.
Land use planning information	Information that is likely to encourage speculation in land values if prematurely released.
Law enforcement information	Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released.
Legal privileged information	Information to which legal professional privilege or client legal privilege applies.
Personal information	Information which would result in the unreasonable disclosure of information about any person or their personal affairs, if released, <u>or the disclosure of which would involve an interference with personal privacy under the <i>Privacy and Data Protection Act 2014</i>.</u>
Private commercial information	Information provided by a business, commercial or financial undertaking that relates to trade secrets or that, if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.
Confidential meeting information	Records of Council and Delegated Committee meetings that are closed to the public to consider confidential information <u>under section 66(2)(a) of the <i>Local Government Act 2020</i>.</u>
Internal arbitration information	Information provided to, or produced by, an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons.
Councillor Conduct Panel information	Information: <ul style="list-style-type: none"> ▪ provided to, or produced by, a Principal Councillor Conduct Registrar, for the purposes of an application to form a Councillor Conduct Panel; or ▪ provided to, or produced by, a Councillor Conduct Panel for the purposes of conducting a hearing, other than a decision or reasons for a decision; or ▪ comprising any part of a statement of reasons or other document under the control of a Councillor Conduct Panel that the Councillor Conduct Panel determines contains confidential information.
Confidential information under the 1989 Act	Information that was confidential information for the purposes of section 77 of the <i>Local Government Act 1989</i> .

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11.1.2 In the interests of transparency, Council may, by resolution, determine to release information to the public even though it is Confidential Information.

11.1.3 A decision under clause 11.1.2 will generally only be made if Council, on the advice of the Chief Executive Officer, is satisfied that releasing the Confidential Information would not:

- (a) be inconsistent with any legal or contractual obligation;
- (b) cause unreasonable disadvantage to any person, including Council; and
- (c) otherwise be contrary to the public interest.

11.2 Contrary to the Public Interest

11.2.1 Council Information will not be made publicly available if doing so would be contrary to the public interest.

11.2.2 When assessing whether making certain Council Information publicly available would be contrary to the public interest, the Chief Executive Officer will have regard to, among other things:

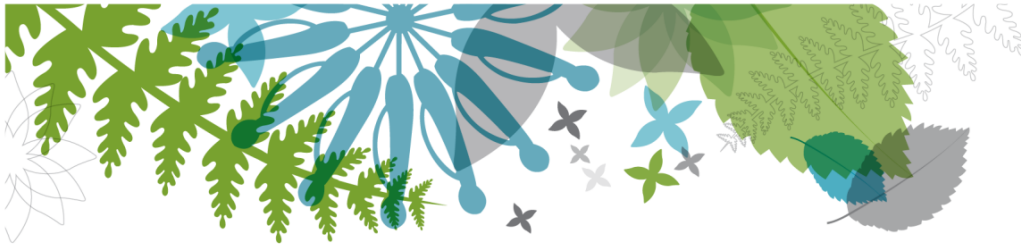
- (a) the sensitivity of the Council Information;
- (b) whether the Council Information comprises a draft, or otherwise is no longer current; and
- (c) any adverse effect that releasing the Council Information would have on the effectiveness of Council's decision-making processes.

11.2.3 Without limiting clause 11.2.2, factors that might lead to a decision that the release of Council Information is contrary to the public interest might include whether release would be likely to:

- (a) disclose Personal Information or Health Information;
- (b) disclose information or opinions of a preliminary nature such that they might:
 - (i) mislead the Community with respect to Council's position on a matter; or
 - (ii) have a substantial adverse effect on the economy of the Municipal District;
- (c) prejudice discussions or negotiations between Council and any other party, in relation to a contract, legal proceedings or any other matter;
- (d) impair or otherwise impact on:
 - (i) Council's ability to obtain information in future that is similar in nature to the Council Information;
 - (ii) negotiations with respect to employment arrangements for Officers; or
 - (iii) defence, prosecution and settlement of legal proceedings; or

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- (e) impact on the reasonable allocation of Council’s resources, including in responding to requests for Council Information that are assessed by the Chief Executive Officer as being frivolous, vexatious or repetitious in nature.

12. COUNCIL INFORMATION THAT IS NOT AVAILABLE PUBLIC AWARENESS FO AVAILABILITY OF COUNCIL INFORMATION

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

- 12.1 publishing this Policy on the Council Website;
- 12.2 making this Policy available for public inspection at Council’s offices;
- 12.3 converting this Policy to such accessible formats, having regard to clause 10.2.3, as the Chief Executive Officer determines; and
- 12.4 ensuring that all Officers:
 - 12.4.1 are aware of this Policy and its effect; and
 - 12.4.2 direct members of the Community to this Policy when access to Council Information is sought.

13. HUMAN RIGHTS CHARTER

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

- 13.1 not to have their privacy interfered with (section 13); and
- 13.2 take part in public life (section 18), by having the opportunity to:
 - 13.2.1 participate in the conduct of Council’s affairs; and
 - 13.2.2 have access to Council and Council Information.

14. DISSATISFACTION WITH THE APPLICATION OF THIS POLICY

- 14.1 If a Requestor is dissatisfied with Council’s application of, or believes that Council has acted inconsistently with⁷ this Policy, they can report their dissatisfaction to Council’s Manager⁷ Governance and Communications by:
 - 14.1.1 email to inq@colacotway.vic.gov.au; or
 - 14.1.2 telephone on 03 5232 9400.

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- 14.2 If the Requestor believes that the matter remains unresolved, it can be reported to the Victorian Ombudsman by:
- 14.3 making a complaint online at <https://www.ombudsman.vic.gov.au/complaints>; or
- 14.4 telephoning the Victorian Ombudsman on 03 9613 6222.

15. APPLICATION OF THIS POLICY

- 15.1 This Policy applies to all Council Information, except Council Information which is made available, or is otherwise accessible, under another Act (other than an Act which refers to this Policy).
- 15.2 Without limiting the generality of clause 15.1, this Policy does not apply to Council Information which is:
- 15.2.1 required to be made available under the *Planning and Environment Act 1987*;
- 15.2.2 required to be made available under the *Building Act 1993*; or
- 15.2.3 otherwise required to be made available on payment of a fee or charge.

16. RESPONSIBILITIES

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

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1-17. MONITORING, EVALUATION AND REVIEW

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

18. RELATED POLICIES AND LEGISLATION

Council's:

- Governance Rules
- Community Engagement Policy
- Information Privacy Policy

Charter of Human Rights and Responsibilities Act 2006

Freedom of Information Act 1982

Local Government Act 2020

Privacy and Data Protection Act 2014

Equal Opportunity Act 2010

2-19. DOCUMENT CONTROL

Policy owner	Manager, Governance & Communications	Division	Executive
Adopted by Council	26 August 2020	Policy Number	18.14
File Number	F18/5081	Review date	August 2024, or sooner if required

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APPENDIX 1

For the purposes of clause 8 of this Policy, the following Council Information will generally, and subject to this Policy, be made available either on the Council Website or on request by a member of the Community.

1. Documents such as:

- Plans and Reports adopted by Council;
- Council Policies;
- Project and Service Plans;
- Service Agreements, Contracts, Leases and Licences; and
- relevant technical reports and/or research that inform Council's decision-making.

2. Process information such as:

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

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

- Meeting Agendas and Reports to Council and Delegated Committees;
- Minutes of Meetings Council meetings and meetings of Delegated Committees;
- Audit and Risk Committee Charter;
- Terms of Reference for Delegated Committees, Community Asset Committees and Advisory Committees of Council;
- Gift Registers for Councillors and Council Staff;
- Travel Registers for Councillors and Council Staff;
- Registers of Conflicts of Interest disclosed by Councillors and Council Staff;
- Registers of Leases entered into by Council;
- Register of Delegations;
- Register of Authorised Officers;
- Register of Election Campaign Donations;
- Summary of Personal Interests;
- Councillor Allowances; ~~and~~
- any other Registers or Records required by the Act or any other Act.

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Item: 8.3

2022-25 Rating Strategy - Consideration of Submissions

OFFICER	Paul Carmichael
GENERAL MANAGER	Errol Lawrence
DIVISION	Corporate Services
ATTACHMENTS	1. Rating Strategy 2022-25 [8.3.1 - 29 pages]

1. PURPOSE

The purpose of this report is to receive and consider submissions received in response to the public exhibition of the draft 2022-25 Rating Strategy.

2. EXECUTIVE SUMMARY

The draft 2022-25 Rating Strategy was placed on exhibition from 25 February 2022 to 25 March 2022. Eight submissions were received from seven submitters.

3. RECOMMENDATION

That the Submissions Committee:

- 1. Acknowledges the written submissions received to the draft 2022-25 Rating Strategy.*
- 2. Acknowledges and notes the verbal comments made in support of written submissions.*
- 3. Thanks the submitters for their submissions.*
- 4. Consider the officer comments provided in response to the submissions.*
- 5. Having heard all persons wishing to speak to their submissions, recommends that Council consider the submissions at the Council meeting scheduled to be held on Wednesday 27 April 2022.*

4. KEY INFORMATION

Council at its meeting on 23 February 2022 adopted a draft 2022-25 Rating Strategy, which was subsequently placed on exhibition for public comment for a period of four weeks. The exhibition period finished on 25 March 2022.

As a result, eight submissions were received from seven separate submitters.

Only submitter 1 has requested to appear in support of his submissions, being submissions 1 and 2. The main themes raised in the submissions relate to:

- Concern at the effect on rates of escalating property values,
- Concern the effect short term holiday rentals (Air BnBs etc) are having on towns such as Apollo Bay, particularly in relation to rental and property values,
- Suggested Holiday Rental rating category should be rated at same rate as Commercial properties, and
- Possible need for a separate rating category for Apollo Bay.

A summary of the submissions and officer's response comments is as follows:

From	Key submission points	Officer comment
Sub 1	Issue raised appears to be questioning the legality of charging rates for land which property owners purportedly cannot use for their own purposes because they are required to use part of their property to store Council owned assets (i.e.: rubbish bins).	<p>Rates are levied on properties in accordance with relevant legislation.</p> <p>The issue raised has no bearing on how the rate burden is apportioned across the shire and is therefore outside the scope of the Rating Strategy</p>
Sub 1A	Was the "refusal to pass on already promised and passed reduction in farm rates" taken into consideration in the 2022-25 Rating Strategy as this could have an inflationary impact on food prices as farmers have higher costs, which then have to be passed on the consumers.	<p>As part of the preparation of the 2022-25 Rating Strategy, economic analysis looking at areas of comparative advantage /disadvantage was obtained. The intent of this was to try and ensure that disadvantaged areas within the shire were not further adversely affected by the Rating Strategy. The areas containing farms were among the least disadvantaged areas in the shire whilst at the same time the past few years have been very good years for the farming sector.</p> <p>The reduction of the Farm rate differential in previous rating strategies to 73% of the base rate was not implemented due to reasons applicable at the time.</p> <p>It is pointed out reducing the differential would not have automatically meant that farms would pay less rates, but rather the overall "Farm" rating category would pay a lesser proportion of the total rates revenue to be raised.</p> <p>It is also considered that as inflationary pressure on food prices is influenced by a range of macro-economic factors, the effect of a local rating decision on a comparatively small group of producers would have a negligible effect on food prices.</p>

From	Key submission points	Officer comment
Sub 2	<p>There appears no awareness of the power of ratings categories to contribute to shaping and solving community issues.</p> <p>Imbalance between holiday lettings and the ability of young people especially workers in health, education incl early childhood, hospitality and construction to find affordable accommodation.</p> <p>Submitter recommends:</p> <p>Those whose primary place of residence is Apollo Bay to have no change in rates.</p> <p>Those who indulge in short term rentals should pay same as commercial ie:140% of base rate.</p> <p>Those rentals that are long term > 12months AND reasonable i.e., < 150 per bedroom max \$450 / week should pay 100% of current rates.</p> <p>A maximum of 40% of residences in Apollo Bay available for short term with remainder available for residence or long term rental.</p> <p>Vacant land in centre Apollo Bay be rated as commercial (140%) unless tiny house/ RV is placed for seasonal workers, when they can pay 100% of rates.</p> <p>Prepare a masterplan for Apollo Bay, including building overlay for indigenous plantings, max height 7.2 metres and compulsory passive construction, renewables, including shadowing based on June 21, limiting building to max 50% higher than adjoining properties.</p> <p>The additional revenue based on the above schedule should be prioritised to</p>	<p>The effects of short stay holiday accommodation on worker attraction and accommodation in tourist areas is a worldwide problem that requires a more complex response than punitive taxation.</p> <p>Using differential rating to engineer a specific situation is a direct contravention of the Victorian government's Differential Rating Guidelines as it discriminates against a specific group of property owners. It would also be difficult for Council to meet its legal obligation to fairly and equitably apportion the rates burden by taking such discriminatory action.</p> <p>Proposal ignores the broader context (e.g.: does this also apply to all primary places of residence in the shire? – if not, how is this fair to them?). This would contravene the Differential Rating Guidelines.</p> <p>Holiday rental properties currently pay rates at 100% of base rate compared to 85% for residential properties in Apollo Bay (and Balance of Shire). Whether they should pay more is debateable but it is pointed out these properties were acutely affected by COVID lockdowns and were generally not able to receive government Covid support.</p> <p>Council has no access to rental data and getting accurate data from owners would be problematic.</p> <p>It is outside the scope of the Rating Strategy to determine how many and which holiday houses should be permitted to operate as such. The rating structure reflects how a property is used – it does not dictate how it's used.</p> <p>Land cannot be rated as a Commercial property <i>unless</i> it is allowed to be used for a commercial purpose under the Town Planning Scheme. If it was then used for a residential purpose, it would be rated as a Residential property.</p> <p>These proposals are outside the scope of the Rating Strategy.</p> <p>How Council spends its funds is determined each year in its budget process.</p>

From	Key submission points	Officer comment
	support early education and affordable housing for workers.	
Sub 3	Create a new rating category for Apollo Bay property owners that only own one property with a 75% rate differential.	<p>Proposal ignores the broader context in that:</p> <ul style="list-style-type: none"> - It does not apply to property owners in other parts of the shire that also only own one property - It ignores relativity with Farm rating category that has differential of 75%, who have high valuations and feel they receive less services than towns. - Ignores relativity with residential properties elsewhere in Shire that have lower valuation yet would pay at a higher rate in the dollar <p>How is this fair to other categories given they will inevitably pay the shortfall in revenue caused?</p> <p>Difficult to justify the highest valued residential properties in the shire paying a significantly lesser differential than other residential properties simply to mitigate the amount paid. This contravenes a fundamental principle of rating (i.e.: higher valued properties pay more rates).</p>
Sub 4	<p>Supports submission 3 (i.e.: separate rating category for Apollo Bay with 75% differential)</p> <p>Property values along coast increased by "(say) 3 times more than elsewhere" leading to "... an additional and artificial increase over and above any incremental % (rates) increase".</p> <p>Suggests spending on coast be more proportionate to rates raised.</p>	<p>See comments for #3 above.</p> <p>Inaccurate statement re valuation increases (but was a general comment). Seems to assume there is a % rates increase that is then added to by a valuation based increase. This is incorrect.</p> <p>Where Council spends its funds is determined each year in its budget process. Generally, funds are expended where this is most need.</p>
Sub 5	<p>Valuation shifts outside Colac up to 40% compared to Colac (13%) will lead to rates increases outside Colac up to 27% more than Colac.</p> <p>Why aren't Air BnB properties included in Holiday Rental?</p> <p>Employment along coast is "part time" – affecting ability to pay. Should therefore reduce differential for "Balance of Shire" & "Farms"</p> <p>Increase "Holiday Rental" differential as this has reduced long term rental market.</p>	<p>A 40% valuation increase doesn't mean a 40% rates increase. The amount of additional revenue Council can raise is limited by the State government's rates cap.</p> <p>Air BnB properties are included in the Holiday rental rating category & pay rates at 100% of the based rate in the dollar compared to 85% for residential properties along the coast.</p> <p>COVID has made ability to pay an issue for many throughout the whole shire. Reducing the differential for a particular category simply shifts the burden to others in the shire.</p> <p>See comment above. Whether they should pay more is debateable but it is pointed out these properties were acutely affected by COVID lockdowns and were generally not able to receive government Covid support.</p>

From	Key submission points	Officer comment
Sub 6	Significant (unequal) increases in property values across the Shire precipitate need to review differentials to mitigate rate increases.	The amount of additional revenue Council can raise is limited by the State government's rates cap, <i>regardless</i> of any valuation changes.
Sub 7	<p>Councillors need to see valuation trend for different parts of the shire to make informed rating strategy decision.</p> <p>Average rates burden borne by coastal towns (compared to Colac) is unfair</p> <p>Disproportionate amount spent in Colac compared to coast</p> <p>Air BnBs should be rated at same rate as the Commercial properties they compete with.</p> <p>Encourage long term residential rental by providing 40% rate discount for properties leased for 12 months.</p> <p>"Now that the farming sector is prospering relative to other business Sectors, will the rate reduction for Ag land brought back to its former 75% level?"</p>	<p>Councillors have been provided with summary of 2022 valuation changes in various areas. Matter of opinion if year on year trend aids decision making.</p> <p>Mean & median rates will be higher in higher valued areas, which accords with basic principle of rating (i.e.: higher valued properties pay more rates).</p> <p>How rates are spent is determined in annual budget process rather than Rating Strategy.</p> <p>Whether they should pay more is debateable but it is pointed out these properties were acutely affected by COVID lockdowns and were generally not able to receive government Covid support.</p> <p>Effectiveness of this questionable. Short term rental provides owners with greater returns & ability to use house for personal use. Also raises equity issues & shifts burden to other ratepayers.</p> <p>Farm rate differential remained at 75%.</p>
Sub 8	<p>Lack of public consultation in preparing draft.</p> <p>Retaining current categories and differentials ignores COVID initiated population movement across the State and its effects on employment, property values etc</p> <p>"Part of the coastal strip and other parts of Apollo Bay have experienced higher than average property value increases. This will impact on their rates".</p> <p>Property value not an indicator of capacity to pay – particularly for pensioners, retirees, part time employed etc</p> <p>Consider commercial aspect of Air BnBs.</p>	<p>Public consultation in previous rating strategies provided little feedback. It was decided this year to develop themes with Councillors (as representatives of the community) to develop a proposal for the community to consider.</p> <p>Despite demographic changes, the current rating categories are considered to provide generic description of major land uses in the shire. Setting the differentials is the essence of the rating strategy.</p> <p>The amount of additional revenue Council can raise is limited by the State government's rates cap, <i>regardless</i> of any valuation changes.</p> <p>True – but generally rates account for about 3% of a person's gross income.</p> <p>Whether they should pay more is debateable but it is pointed out these properties were acutely affected by</p>

From	Key submission points	Officer comment
		COVID lockdowns and were generally not able to receive government Covid support.

Council should consider the comments in the submissions and make a decision on them at its April open Council meeting.

5. CONSIDERATIONS

Overarching Governance Principles (s(9)(2) LGA 2020)

The consideration of submissions received is an essential part of the Council complying with governance principle (i) prescribed in the abovementioned section of the Local Government Act 2020. The principle is “the transparency of Council decisions, actions and information is to be ensured”

Considering submissions allows the views of the community to be received, heard and considered before Council makes a final decision.

Policies and Relevant Law (s(9)(2)(a) LGA 2020)

The draft Rating Strategy document was placed on exhibition for public comment in accordance with Council’s Community Engagement Policy. The policy allows the public to make submissions and appear before Council in support of their submission if they so request.

Environmental and Sustainability Implications (s(9)(2)(c) LGA 2020)

Not applicable.

Community Engagement (s56 LGA 2020 and Council’s Community Engagement Policy)

The consideration of submissions is the implementation of the broad aims of Council’s Community Engagement Policy.

Public Transparency (s58 LGA 2020)

It is considered the process undertaken thus far has complied with Public Transparency principles.

Alignment to Plans and Strategies

Alignment to Council Plan 2021-2025:

Consideration of submissions aligns with the 2021-25 Council Plan in that it contributes to the achievement of item 4.2.5 of Theme 4 of the plan, being that our financial and risk management practices are responsible and sustainable. This is done by allowing the proposed strategy to be held up for public scrutiny.

Financial Management (s101 Local Government Act 2020)

Not applicable.

Service Performance (s106 Local Government Act 2020)

Not applicable.

Risk Assessment

Not applicable.

Communication/Implementation

Submitters will be advised of the outcome of their submissions.

Human Rights Charter

Not applicable.

Officer General or Material Interest

No officer declared an interest under the *Local Government Act 2020* in the preparation of this report.

Options

Council is required to consider the submissions before making a decision on them. There is no alternative option.

Officer comments have been provided to offer some context to assist Councillors in their consideration.



Colac Otway Shire
Rating Strategy 2022-2025

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Synopsis

Council is required to prepare a Revenue & Rating Plan. Included in the plan is a rating strategy that sets out the rating structure and how the rates burden will be shared across the entire community. The current rating strategy expired on 30 June 2021.

This strategy will apply for the years for the financial years from 2022-23 to 2024-25.

The 2021-25 Revenue and Rating Plan provided for the existing differential rating structure to be retained for 2021-22, with an undertaking that it be reviewed during 2021-22 for the remaining years of the plan.

This approach was taken as the State government and the Victorian Ombudsman were conducting reviews at the time that were thought likely to have an impact on how rates were to be levied. In addition the State government was in the process of reviewing the Local Government Act 1989 and it was anticipated provisions related to rating may also be affected.

The process of reviewing the differential rating structure commenced in early 2021. A feature of the process was to seek Councillor involvement in identifying key issues which were then considered at a series of Briefing sessions throughout 2021.

This process also allowed Councillors to nominate various scenarios to be modelled in order to gauge how various options may shift the rates burden. In all, 15 scenarios were modelled. This was done by applying the particular scenario to the adopted 2021-22 rates data and comparing the outcome.

Council was also keen to ensure that the community's capacity to pay was taken into consideration. It therefore obtained economic and demographic data from Morrison Low, (specialist consultants) to identify regions within the shire experiencing relative advantage/disadvantage. The findings of Morrison Low were consistent with similar data obtained in previous rating strategies.

Since the review commenced, it has become apparent there may be significant valuation increases for various property types across the shire. This is consistent with trends being seen nationally. As different property types will experience different levels of the valuation change, there will be a degree of natural shifting of the rates burden between rating categories. Differential rating provides a mechanism for Council to try and mitigate some of the shift.

Ultimately Council believes:

- a differential rating structure should be retained
- the current rating categories provide an appropriate generic description of the property types within the shire
- the current differentials between the categories allows for the fair and equitable sharing of the rates burden across the community.

1. Introduction

Council is required to periodically prepare a Rating Strategy. The purpose of the Rating Strategy is to set the rating structure and how the rates burden will be apportioned across the community. The current rating strategy expired on 30 June 2021.

As Council's 2021-25 Revenue and Rating Plan was being prepared, the State government was:

- conducting a review of the rating system in Victoria, and
- promulgating a new Local Government Act to replace the Local Government Act 1989.

In addition, the Victorian Ombudsman was also conducting an inquiry into responses by Councils to ratepayers in financial hardship.

As there was uncertainty about the outcomes of the above listed initiatives and the effect they would have on a rating strategy that was to apply up to 2025, Council resolved to retain the existing rating structure and differential regime for 2021-22 to allow time for the above State government initiatives to be finalised. It also resolved to review the rating strategy for the 2022-23 to 2024-25 financial years.

Ultimately the review of the rating system in Victoria and the Ombudsman's hardship response review were completed and responded to by the State government (see 2.4.1 and 2.4.2 below).

The review of the Local Government Act resulted in a new Local Government Act being proclaimed (ie; the Local Government Act 2020) to replace the 1989 Act with the *exception* of the rating provisions provided in the 1989. Thus the requirements of the Local Government Act 1989 remain relevant today.

Finally, early 2020 saw the emergence of the COVID19 pandemic, which has had significant effects on large sections of the community, particularly in connection with the capacity of people to pay their rates.

(1.1) What are "rates" and why must they be paid?

Rates are a "tax" levied upon property owners in a municipal district and are used to pay for a range of services provided by Councils. They are based on the Capital Improved Valuation of the property. The services provided range from services direct to the public, through to the provision and maintenance of infrastructure and administration of State government legislation. Overall, there are more than 60 discrete services provided by Council.

Rates are Council's major source of revenue and are therefore essential to the provision of services to the community.

They are not a "fee for service" or determined by how much or many services a ratepayer uses.

(1.2) How is your rates bill calculated?

A typical rates bill comprises of the following components:

General rate	Calculated by multiplying the property's Capital Improved valuation (CIV) by the rate in the dollar applicable to the rating category. The rate in the dollar is set annually by Council	See 3 below
Municipal Charge	A fixed charge set annually by Council	See 3.2 below
Waste management Charge	A fixed charge set annually by Council	See 3.3 below

The components are added together to give the total amount of Council rates payable.

In addition, the annual notice levies the State Government's Fire Services Property Levy (FSPL). Council is required to levy and collect the FSPL for the State government.

The FSPL comprises of the following components:

Fixed charge	A fixed charge set annually by the State government
Variable levy	Calculated by multiplying the property's Capital Improved valuation (CIV) by a rate in the dollar applicable to property type category. The rate in the dollar is set annually by the state government.

Further information regarding the Fire Services Property Levy is available from www.sro.vic.gov.au

2. **Legislative Authority**

Whilst the new Local Government Act 2020 came into operation, the rating provisions of the Local Government Act 1989 were not repealed.

The *Local Government Act 1989 (LGA 1989)* stipulates that the primary objective of a Council is to endeavour to achieve the best outcomes for the local community while considering the long-term and cumulative effects of decisions. In seeking to achieve its primary objective, a Council must have regard to a number of objectives, including:

- promoting the social, economic and environmental viability and sustainability of the municipal district;
- ensuring that resources are used efficiently and effectively and services are provided in accordance with best value principles to best meet the needs of the local community;
- improving the overall quality of life of people in the local community;
- promoting appropriate business and employment opportunities to ensure that services and facilities provided by the Council are accessible and equitable;
- ensuring the equitable imposition of rates and charges; and
- ensuring transparency and accountability in Council decision-making.

Section 154 of the LGA 1989 provides for all land (with some specified exceptions) to be rateable.

Section 156 of the LGA 1989 provides for the property owner to be liable to pay rates and charges levied for the property.

(2.1) Equity

Section 3C (2) (f) of the *Local Government Act 1989* requires Council to ensure rates are levied fairly and equitably.

The Local Government Act does not define what is “equitable”, however as the rates are a tax based on valuation of the property it is generally accepted that equity does not relate to the amount of rates to be paid. It is noted the State government’s rating guidelines (see 2.3 below) acknowledges that higher valued properties should pay more rates than lower valued properties.

Overall, in considering what rating is “equitable” Council must consider all facets of the rating structure, property valuation, budgetary requirements and differentials between rating categories in order to meet the needs of the community.

(2.2) Basis of Rating

Section 158A requires Council to separately levy a rate or charge on each portion of land for which it has a separate valuation.

Section 157 provides for Council to use the Site Value, Nett Annual Value or Capital Improved Value as the means of valuing properties for rating purposes.

As such, the link between the valuation of a property and the amount of rates levied is legally established. Rates paid are therefore not a reflection of services provided or used.

(2.3) State Government Guidelines

In addition to the legislative authority, the State Government provided a Revenue and Rating Strategy Guide in 2014. The guide suggests a key step in developing a rating strategy is the consideration of the following principles:

#	Principle	Explanation
1	Wealth tax	Rates are a tax based upon the value of the property being rated and has no correlation to the ratepayer's access to or consumption of services.
2	Equity	That consideration be given to " <i>horizontal equity</i> " (ie: that ratepayers with similar valued properties should pay similar amounts) and " <i>vertical equity</i> " (i.e. that ratepayers with higher valued properties should pay more than those with lesser valued properties).
3	Efficiency	That consideration be given to the extent to which production and consumption decisions by people are affected by rates.
4	Simplicity	The system should be easily understood by ratepayers and be practical to administer.
5	Benefit	That consideration be given to the nexus between consumption/benefit and the rates burden.
6	Capacity to pay	What factors are relevant to particular property classes in order to make informed observations about their capacity to pay rates.
7	Diversity	Which groups in the municipality may warrant special consideration in regards to their capacity to pay.

(2.4) State Government reviews

During 2020 and 2021 the State government conducted two major reviews of rating practices in local government. In addition, it introduced a new Local Government Act 2020 to replace most sections of the Local Government Act 1989. The rating provisions of the 1989 Act were held over pending the outcome of these two reviews. In setting its 2021-25 Revenue and Rating Plan, Council anticipated these reviews may have an impact on the rating strategy part of the Plan and consequently undertook to review the rating strategy for the years from 2022-23.

These reviews were:

- Victorian Local Government Rating Systems Review.
- Ombudsman's Review of Councils responses to ratepayers in financial hardship.

2.4.1 - Victorian Local Government Rating Systems Review

In December 2020 the State government released its final report and response to recommendations of a review of local government rating systems in Victoria. The review made 56 recommendation to the State government, covering a broad range of reforms from major legislative change to small administrative improvements, with both short- and long-term implications.

Overall, the Government is committed to a local government rating system that:

- provides local government with the autonomy to raise sufficient tax revenue to meet the needs and capacity of their community.
- is based on a proportion of the value of the property, i.e. higher valued properties usually contribute more in rates than lower valued properties in the same municipality.
- is simple to understand and allows for meaningful community engagement to make informed and transparent decisions about rate distribution and rating levels.
- provides transparent and flexible ways for councils to treat ratepayers facing financial hardship fairly.
- is set out in primary legislation and is in line with the principles-based approach of the *Local Government Act 2020*.

The Victorian Government also believes local governments must take responsibility for their own rating decisions and levels, reflecting their obligations as a distinct and essential tier of government.

Ultimately the government supported (either in full or in principle) 35 of the 56 recommendations. Most of the adopted recommendations require the State government to undertake further investigations or introduce new legislation /regulations.

The most pertinent recommendations directly affecting Councils are:

Recognition of rates as a “tax”	Recommendation 1
Retain Capital Improved Value as the basis of differential rating	Recommendation 8
Retain the rule that the highest differential rate in dollar cannot exceed 4 times the lowest.	Recommendation 9
Basing differential rating decisions on data analysis of the effect of those decisions and informing and consulting with the community.	Recommendation 11
Retain the rule that the maximum amount that may be raised in general rates by way of a fixed charge remain at 20 per cent.	Recommendation 16
Prepare a four-year rating strategy which aligns with their four-year resource plans and that annual budgets align with their four-year resource plans and their four-year rating strategies.	Recommendation 47

The State government’s full response to the review is available on:

https://engage.vic.gov.au/download_file/40010/2559

2.4.2 - Investigation into how local councils respond to ratepayers in financial hardship

In May 2021 the Victorian Ombudsman issued a report of its investigation into how Council's respond to ratepayers that are in financial hardship. The investigation resulted from concerns from ratepayers, financial counsellors and community lawyers in recent years about the way councils treat people who cannot afford their council rates. With the COVID-19 pandemic threatening to increase financial hardship in the community, the Ombudsman decided it was timely to investigate the issue. The investigation focused on council hardship relief for home owners (ratepayers) who cannot pay rates on their primary residence.

The Ombudsman found that:

- there is a variety of approaches as to how Councils address rates hardship cases,
- all Council's offered relief during the COVID pandemic but these schemes have/are ending,
- public information regarding hardship assistance is sometimes hard to find and not clear
- there is a reliance on putting people on payment plans and not utilising the power to waive or defer rates
- interest charged if often high (currently 10 %per annum)
- debt is often exacerbated by legal costs resulting from taking debtors to Court
- more discretion is required where ratepayers are struggling with issues such as mental illness or domestic violence.

Overall, the Ombudsman was of the view hardship practices throughout local government compare poorly with sectors such as energy and water and that Councils have fallen behind best practice.

The full report is available on:

<https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-how-local-councils-respond-to-ratepayers-in-financial-hardship/#full-report>

A summary of Council's hardship practices is provided in section 9 below.

3. *Current Rating Situation*

A key aspect of the rating strategy is to review the existing rating structure.

Like most municipalities in Victoria, Colac Otway shire has a differential rating structure, which applies a different rate in the dollar to different types (categories) of properties. The rating category is a generic indication of how the property is being used (e.g. for a residential, commercial, holiday accommodation or farm use).

Also like most Victorian Councils, the Capital Improved Valuation of a property is used as the basis of rating.

Most Council's in Victoria have similar differential rating categories to Colac Otway Shire. The exception is the Holiday Rental category, which very few have. This category is considered appropriate as the use of absentee owned holiday houses for short term holiday accommodation for a tariff is a significant land use in the shire, particularly along the Great Ocean Rd/coastal region.

Overall, all properties in the Shire generally fit into one of the above rating categories. Some properties will have characteristics of more than one rating category (eg: a shop with residence attached). In such cases, the property is allocated to the "highest and best use" rating category. This approach is consistent with the principle on which properties are valued and it is cheaper for the property to be rated as a single assessment rather than as multiple assessments (eg: one assessment in the "Commercial" rating category for the shop and one assessment in the "Residential" rating category for the residence).

(3.1) General rates

The current (2021-22) rating structure, rates in the dollar and differentials are shown below.

Revenue derived from these rating categories comprises the "general rates" component of an overall rates bill.

Rating Category	Rate in \$	Differential (from base rate)
<i>Residential - Colac/Elliminyt</i> (Residential properties in the Colac, Colac East & West & Elliminyt township.)	0.003580	100% (base rate)
<i>Residential - Balance Shire</i> (Residential properties located in the municipality excluding Colac & Elliminyt)	0.003043	85%
<i>Holiday Rental</i> (Houses/cabins that are made available for short term holiday accommodation for a fee/tariff)	0.003580	100%
<i>Rural – Farm</i>	0.002685	75%
<i>Commercial / Industrial – Colac/Elliminyt/Colac West</i> (Commercial properties in the Colac, Elliminyt & Colac West Township)	0.005907	165%
<i>Commercial / Industrial - Balance Shire</i> (Commercial properties not located in the townships of Colac, Apollo Bay, Elliminyt or Princes Highway Colac West)	0.005012	140%

In addition to the general rates derived from the above rating categories, Council also levies the following charges:

(3.2) Municipal Charge

This is a flat charge levied on all properties pursuant to section 159 of the Local Government Act (as amended).

The Municipal Charge raises revenue to pay for a proportion of the administrative costs of Council. It ensures low valued properties (that pay a low amount of general rates) contribute a meaningful amount towards the running costs of the Shire.

The total amount of revenue currently able to be raised from the Municipal Charge is 20% of the sum total of revenue raised from the charge and general rates in that financial year. In 2021-22 the revenue from the Municipal Charge at the Shire amounted to approximately 9% of the total revenue from the charge and general rates.

The only exemption from the Municipal Charge is for Single Farm Enterprises, which have two or more assessments in the same ownership that are used for farming purposes.

In these cases, at least one Municipal Charge is required to be paid.

The Municipal Charge for 2021-22 was \$195.00.

As part of its 2022-23 budget deliberations Council will review the amount of the Municipal Charge, however the percentage of total revenue derived from the Municipal Charge will remain unchanged.

(3.3) Waste Management Charge

This is a flat charge levied on all properties on the waste collection routes or those that have requested the use the service pursuant to section 162 of the Local Government Act 1989.

The charge is levied to defray the costs of Council providing a kerbside domestic waste collection service. As such it is a user pays charge levied on properties that derive benefit from the service. The service is provided on a weekly basis for most properties, with a fortnightly service in Wye River.

The Waste Management Charge for 2021-22 was \$308.00 per annum for the weekly service and \$235.00 per annum for the fortnightly service.

As part of its 2022-23 budget deliberations Council will review the amount of the Waste Management Charge.

Generally, the Waste Management Charge seeks to recover the cost of providing the service.

4 Valuations

(4.1) Valuation used for rating purposes

A key determinant of the amount of general rates a property will pay is the valuation of the property. The valuation used for rating purposes is the Capital Improved Valuation (CIV). The CIV is an estimate of the market value of the property (being land and any capital improvements such as buildings, fences, etc.) as at the valuation date.

Valuations are provided by the Valuer General and are conducted annually.

The valuation date is a set date (being 1st January each year) at which all properties in the Shire are valued. This ensures all properties are valued relative to each other at the same point in the market cycle.

The valuation does not however become operative until the next 1st July.

Thus, the valuation to be used for the 2022-23 financial year have a valuation date of 1st January 2022 but does not become operative however until the 1st July 2022 (being the start of the 2022-23 financial year).

It should be noted an increase in the total valuation of properties in the shire does not automatically result in Council generating more revenue from rates. This is because each year the amount of revenue to be collected is different. As the amount of rates revenue is the product of multiplying the total valuations by a rate in the dollar, increased valuations generally leads to a reduced rate in the dollar where overall rates revenue increases are minimal.

(4.2) Notice of valuation used for rating purposes

Property owners are advised of their valuations on their annual rates notice, which is issued in August each year. The notice advises of three valuations. These are:

Capital Improved Valuation (CIV)	Being the value of the land <i>and</i> any capital improvements
Site Value	Being the value of the land only.
Nett Annual Value	Being an estimate of the rental a property could generate annually (usually set at 5% of CIV)

(4.3) Valuation objections

The annual Notice also provides a two month period in which objections to the valuation may be lodged.

The right of objection to a valuation is provided by sections 16 and 17 of the Valuation of Land Act 1960 (VLA).

Section 17 of the VLA specifies the valid grounds for objection, being that:

- (a) the value assigned is too high or too low;
- (b) the interests held by various persons in the land have not been correctly apportioned;
- (c) the apportionment of the valuation is not correct;

- (d) lands that should have been included in one valuation have been valued separately;
- (e) lands that should have been valued separately have been included in one valuation;
- (f) the person named in the [notice of valuation](#), assessment notice or other document is not liable to be so named;
- (g) the [area](#), dimensions or description of the land including the [AVPCC](#) allocated to the land are not correctly stated in the [notice of valuation](#), assessment notice or other document.

All valid objections are reviewed by the Valuer General's appointed valuer.

(4.4) Supplementary valuations

During the year, the value of a property may change due to a material change to the property. The most common example of this is when a house is built on a previously vacant lot. In such cases, Council is required by section 13L of the Valuation of Land Act 1960 to have the valuation of the property reviewed.

This is referred to as a Supplementary Valuation. This is done to maintain equity between ratepayers.

The amended valuation applies from the point in time that the material change came into effect. As a result, the property will be valued at the previous valuation for part of the financial year and the new valuation for the balance of the financial year. The rates levied for that financial year are then recalculated accordingly.

Advice of the new valuations and amended amount of rates is provided to the ratepayer by way of a Supplementary Valuation and Rates Notice. The right of objection referred to in 4.3 above also applies to supplementary valuations.

5 Rate Capping

Since 2016-17, Victorian Councils have been subjected to a municipal rate cap imposed by the State Government. The rate cap limits the percentage increase in a council's average general rate and municipal charge. It does not apply to waste charges or the State government's Fire Services Property Levy.

In past years the rate cap has been as follows:

Year	Rate cap
2016-17	2%
2017-18	1.75%
2018-19	2.25%
2019-20	2.5%
2020-21	2%

The rate cap does *not* mean all properties rates will increase by the percentage of the rate cap. This is because the amount of rates payable is influenced by the percentage change in the property valuation and the rate in the dollar applied. This is illustrated as follows:

	Rate cap	Capital valuation (CIV)	Improved	% Change	CIV	Rate in dollar	Amount of rates	% change
Year 1		\$500,000				0.003580	\$1,790.00	
Year 2	2%	\$550,000		10%		0.003450	\$1,897.50	6%

Council can apply a rate increase up to the cap. Ministerial approval must be obtained for Council to apply a rate increase in excess of the cap.

6 Payment Options

Council provides the following three payment options:

Option	When due
Quarterly Instalment	1 st Instalment due: 30 September 2 nd Instalment due: 30 November 3 rd Instalment due: 28 February 4 th Instalment due: 31 May
Payment by Arrangement	Frequency of part payments by arrangement with full amount due by 31 May.
Lump Sum payment	Full payment by 15 February

7 Payment Methods

Rates and charges are able to be paid by the following methods:

- online (via BPay, Post Billpay and Formsport or via Council's website)
- by direct debit
- by cheque
- by credit card over the phone
- in person by cash or credit card at Council's customer service centres at Colac and Apollo Bay and at any post office.

8 Penalty Interest

Penalty interest is charged on rates not paid by due dates in accordance with section 172 of the Local Government Act 1989. The penalty rate of interest is prescribed by the State Government.

Exceptions to this are:

- Late payments of instalments 2 and 3 for accounts where the quarterly instalment option has been activated by the ratepayer. Our practice has been to allow missed payments of these two instalments to *not* be charged interest as they will appear as being due on the next Instalment notice issued.
- Rates being paid by arrangement where a part payment is missed.

In both these cases, rates are required to be paid in full by 31 May. Interest is charged on any balance outstanding after this date in accordance with the requirements of section 172 of the Act.

The penalty interest regime used by Council minimises interest to the ratepayer as much as possible and is considered appropriate.

9 **Hardship Assistance**

Council has a “Rates Assistance to Rates Debtors in Hardship” policy which seeks to provide assistance to rates debtors who can show they are suffering legitimate financial hardship.

Council believes it can carry debt longer than non government organisations and is prepared to allow rates debtors to pay their rates debt over time. The policy therefore provides for:

- ✓ all accrued interest to be waived, and
- ✓ no further interest to be levied for a specific period of time.

The intention is that rate payments made will be reducing principal instead of being applied to paying interest. There is therefore an expectation the ratepayer will enter into a meaningful payment arrangement.

Council does not generally waive rates as they are a charge against the property and will ultimately be paid when the property changes ownership. Whilst hardship assistance provided includes a moratorium on penalty interest to prevent the debt from escalating, it is felt “interest free” cannot continue indefinitely. It is hoped the debtor therefore takes the opportunity to make more financially beneficial arrangements (such as extending a mortgage at cheaper rates of interest than penalty interest) to pay arrears and clear the debt.

It is felt this expectation accords with the general views of the community that ratepayers should be responsible for their debts.

Having said that, Council recognises there can be many factors leading to financial hardship and is therefore a participant in the Geelong region Financial Inclusion Action Plan (FIAP). Council recognises that rates debtors in hardship are likely to have financial debts with other organisations as well. In that regard, Council has formed a collaboration with Barwon Water and Colac Area Health to streamline the application process so that an application to either of these organisations will be accepted as an application to us. Further, Council is happy with the consent of the ratepayer, to refer them to other relevant FIAP organisations to help alleviate broader financial hardship.

10 **Action Taken Leading to this Strategy**

To enable informed decisions to be made, Councillors:

- identified a number of basic issues relevant to rating
- Identified a number of scenarios they wanted modelled
- Considered demographic data to identify if there were areas of the shire that had less capacity to pay

The scenarios were then modelled against the data used to set the rates for the 2021-22 financial year. This allowed Councillors to see what the difference *would have been* in 2021-22 compared to what the situation actually was.

Doing this allowed Councillors to see how the distribution of the rates burden would be affected by the various scenarios.

(10.1) Issues considered

At the start of the process Councillors identified the following as issues to be considered. There were subsequently considered at Councillor Briefing sessions conducted throughout 2021.

#	Issue	Details	Outcome
1	Fairness & equity?	<ul style="list-style-type: none"> • What is the definition of this in a rating context? • How do we define “fair & equitable”? 	Councillors at Briefing session on 18 August 2021 reaffirmed that fairness and equity in levying general rates is achieved by using a common rate in the dollar against the valuation of all properties in any particular rating category.
2	Capacity to pay.	<ul style="list-style-type: none"> • Should this be considered? • If so, how is it determined/measured? • What are the implications of this? • Economic performance of rating categories over past few years? • Economic forecast for rating categories going forward? 	<p>Councillors at Briefing session on 18 August 2021 reaffirmed:</p> <p>(a) it is not feasible to base rating decisions on the personal capacity to pay as Council has no access to data necessary to make these judgements, and</p> <p>(b) it will seek to obtain and use relevant economic data to make decisions about the capacity to pay of all rating categories.</p>
3	User pays.	<ul style="list-style-type: none"> • Should this be considered? • If so, what are the implications of this? 	<p>Councillors at Briefing session on 18 August 2021 reaffirmed:</p> <p>(a) that user pays charges should be used where appropriate, and</p> <p>(b) the extent to which user pays charges are used to raise revenue be considered as part of the budget process.</p>
4	Rating structure.	<ul style="list-style-type: none"> • Do the current categories adequately reflect the diversity of property types in the shire? • Is a differential rating structure appropriate? • What are the alternatives? • What are the implications of change? 	Councillors at Briefing session on 18 August 2021 reaffirmed it retains the use of a differential rating structure.

		<ul style="list-style-type: none"> If it is appropriate, are the differentials fair and equitable? 	
5	Emerging issue – Rise of Air BnB.	<ul style="list-style-type: none"> What effect does this have? Should Council get involved? What are possible solutions? What are implications of possible solutions? 	Councillors at Briefing session on 8 September 2021 reaffirmed using the rates system to discourage use of properties for short term holiday accommodation is not a feasible option as the amount of income able to be generated from short term holiday rental exceeds the amount of rates that could be charged.
6	Affordable housing.	<ul style="list-style-type: none"> Does Council have a role to play? Can/should Council's rating structure be used to affect an outcome? 	<p>Councillors at Briefing session on 8 September 2021 reaffirmed:</p> <p>(a) the issue of affordable housing is a complex issue requiring involvement of many stakeholders;</p> <p>(b) that its role at present is one of planning and advocacy; and</p> <p>(c) that it continues to identify properties where residential accommodation is provided as a charitable purpose with a view to making them "not rateable".</p>
7	Holiday rental – rating.	<ul style="list-style-type: none"> Holiday rental properties should pay more, or the same as the Commercial rate in the dollar. 	<p>Councillors at Briefing session on 8 September 2021 requested</p> <p>(a) a model be provided for this scenario; and</p> <p>(b) the model be considered at scheduled workshops in October 2021.</p>
8	Rates discount/lower rate in \$ for long term (ie: 12 months or greater) rental properties.	<ul style="list-style-type: none"> Offer a discounted rate to motivate/reward for providing more secure long term housing. 	Councillors at Briefing session on 8 September 2021 acknowledged there would be practical problems in implementing and administering such as proposal.
9	Higher differential rate for vacant residential land.	<ul style="list-style-type: none"> Aim to encourage use or sale of vacant land for housing. 	Councillors at Briefing session on 8 September 2021 acknowledges there are significant broader issues to be considered before drawing a

			conclusion that applying a higher differential rate to vacant residential land would be an effective tool in encouraging landowners to develop their land for residential purposes.
10	Farm zoned properties less than 5ha that can't get residential permit	Create a new rating category for these? What are implications of doing this?	Councillors at Briefing session on 15 September 2021 reaffirmed that it continues to categorize undeveloped small acreage properties (i.e., 5 ha or less) located in the "Farm" town planning zone as "Farm" properties for rating purposes.
11	Trust For Nature covenanted properties.	Should these receive a rates rebate or be included in specific / different rating category?	Councillors at Briefing session on 15 September 2021 acknowledged that properties that have Trust for Nature covenants registered on their Certificate of Title should be eligible for a rates rebate of \$10 per hectare of covenanted land up to a maximum of \$1,000.
12	Visitor-pay parking along the coast. Free permits for residents, ratepayers & their families.	Visitor-pay parking along the coast. Free permits for residents, ratepayers & their families. Gain additional revenue Costs could be limited by contracting to a company who can do all the logistics and issue of permits.	Councillors at Briefing session on 15 September 2021 acknowledged the introduction of car parking fees and a resident/ratepayers permit scheme is outside the scope of the Rating Strategy.
13	"Commercial – Colac/Elliminyt" rating category should pay the same rate in the dollar as "Commercial-Balance of Shire" rating category.	Aim to stimulate the Colac /Elliminyt business sector	Councillors at Briefing session on 20 October 2021 requested as model of this scenario be prepared. The model for this is shown as Scenario 4 below.
14	Farm rate differential to be reduced to 73% (or lower)	What are implications of doing this?	Councillors at Briefing session on 20 October 2021 requested as model of this scenario be prepared. The model for this is shown as Scenarios 5, 6 & 7 below.
15	Reduce Municipal Charge to 5% or zero What are implications?	What are implications?	Councillors at Briefing session on 20 October 2021 requested as model of this scenario be prepared. The model for this is shown as Scenario 8, 9 & 10 below.

16	Other Charges – Municipal Charge/Waste mgt Charge.	Other Charges – Municipal Charge/Waste mgt Charge. Are they appropriate? What is an appropriate level? What are implications of changing the amounts of these charges?	Councillors at Briefing session on 2 February 2022 agrees the percentage of revenue raised from the Municipal Charge (being 9%) should not change.
17	Create Long term rental category Higher rate in dollar for Hol Rental		Councillors acknowledged this was not feasible.
18	Universal rate in dollar – staged introduction over 3 years		Councillors at Briefing session on 17 November 2021, acknowledged this was not desirable The model for this is shown as Scenario 2 below.
19	Rating differentials.	What will differentials be? Are the differentials fair and equitable?	Briefing sessions on 17 November 2021 & 2 February 2022 considered scenarios presented and agreed to retain existing differentials.

(10.2) Identified scenarios

Ultimately Councillors requested the following 13 scenarios be modelled to examine their effect in distributing the rates burden. As mentioned, above the scenarios were modelled in comparison to the adopted 2021-22 rating regime. It was not possible to model scenarios for 2022-23 and the valuations to be used for the 2022-23 financial year will not be available until March-April 2022 and the amount of revenue to be raised for 2022-23 from rates is unknown at this stage/

A summary of the scenarios and the assumptions underpinning the scenario is as follows:

#	Scenario & Aim	Model assumptions
1	Uniform rate in dollar <i>Aim: Examine effect of uniform rate in dollar</i>	Apply uniform rates in \$ across all categories
2	Uniform rate in dollar – staged introduction over 3 years <i>Aim: Investigate staged introduction of uniform rate in \$</i>	Phase in uniform (single) rate for all rating categories above or below 100% of the base over three years
3	<i>Sub scenario</i> Uniform rate in dollar – staged introduction over 3 years with aligned Commercial categories in year 1.	Phase in uniform (single) rate for all rating categories above or below 100% of the base over three years with both Commercial categories aligned in Year 1)

#	Scenario & Aim	Model assumptions
4	<p>“Commercial –Colac/Elliminyt” rating category to pay the same rate in the dollar as “Commercial- Balance of Shire” rating category.</p> <p><i>Aim: To stimulate the Colac /Elliminyt business sector.</i></p>	<ul style="list-style-type: none"> • “Commercial – Colac/Elliminyt” rate in \$ to = “Commercial-Bal of Shire” • Revenue reduction to be collected from all other categories.
5	<p>Farm rate differential to be reduced to 73%. (Identified in previous rating strategies)</p>	<ul style="list-style-type: none"> • “Farm” rate in \$ to be 73% of “Residential-Colac/Elliminyt” rate in \$. • Revenue reduction to be collected from all other rating categories.
6	<p><i>Sub scenario</i></p> <p>Farm rate differential to be reduced to 70%.</p>	<ul style="list-style-type: none"> • “Farm” rate in \$ to be 70% of “Residential-Colac/Elliminyt” rate in \$. • Revenue reduction to be collected from all other rating categories.
7	<p><i>Sub scenario</i></p> <p>Farm rate differential to be reduced to 67%.</p>	<ul style="list-style-type: none"> • “Farm” rate in \$ to be 67% of “Residential- Colac/Elliminyt” rate in \$. • Revenue reduction to be collected from all other rating categories.
8	<p><i>Sub scenario</i></p> <p>No Municipal Charge.</p>	<p>Delete Municipal Charge.</p> <p>Revenue reduction to be collected from all other categories equally. (This will affect the rates in the \$)</p>
9	<p>Reduce Municipal Charge to 5% (being \$98.40).</p>	<ul style="list-style-type: none"> • Amount to be raised from Municipal Charge to be 5% of the total amount to be raised from Municipal Charge & general rates (being \$98.40). • Revenue reduction to be collected from all other categories equally. (This will affect the rates in the \$)
10	<p>Reduce Municipal Charge to \$100.</p>	<ul style="list-style-type: none"> • Municipal Charge to be reduced from \$195 to \$100. (which equates to 5.1% of rates & charges revenue). • Revenue reduction to be collected from all other categories equally. (This will affect the rates in the \$)
11	<p>Holiday rental – Same as Commercial – Bal of Shire (140% differential).</p> <p><i>Aim: Holiday rental properties should pay more, or the same as the Commercial rate in the dollar.</i></p>	<ul style="list-style-type: none"> • “Holiday Rental” rate in \$ to = “Commercial – Bal of Shire” • Additional revenue to be deducted from “Residential – Bal of Shire”
12	<p><i>Sub scenario</i></p>	<ul style="list-style-type: none"> • “Holiday Rental” rate in \$ to = “Commercial – Colac/Elliminyt”.

#	Scenario & Aim	Model assumptions
	Holiday Rental – Same as “Commercial – Bal of Shire” (165% differential)	Additional revenue to be deducted from “Residential – Bal of Shire”.
13	Lower rate in \$ for long term (ie: 12 months or greater) rental properties. <i>Aim: Offer a discounted rate to motivate/reward for providing more secure housing.</i>	<ul style="list-style-type: none"> • Create “virtual” new rating category with 50 properties @ total CIV \$31,280,000 (being average Holiday Rental CIV\$625,600 x 50) • Use Farm rate (lowest rate) in \$ • Revenue reduction to be collected from “Holiday Rental” category
14	Farm differential to be 74% of base rate & Municipal Charge to be 5% (\$98.40)	<ul style="list-style-type: none"> • No change to other rating category differentials • Re coup foregone Municipal Charge revenue from all categories
15	Farm differential to be 73% of base rate & delete Municipal Charge	<ul style="list-style-type: none"> • No change to other rating category differentials • Re coup foregone Municipal Charge revenue from all categories

A summary of the outcomes of each scenario and a detailed analysis is attached (see attachments 1 and 2 respectively).

(10.3) Demographic Snapshot / capacity to pay

A theme often raised by the community is that municipal rates should be based upon a person’s “capacity to pay”. This is also a “principle” the “Revenue and Rating Strategy Guidelines 2014” suggests should be considered by Council when developing a rating strategy. It also emerged as a theme from the State Government’s rating systems review in 2020.

Whilst this is a desirable aspiration, people’s financial circumstances inevitably vary and are known only to the person concerned. Thus implementing this aim presents significant practical difficulties.

As it is presumed “capacity to pay” is evidenced by income, the question then is whether “gross income” or “nett income” should be the determinant of rates payable. This then has implications in regards to equity of rating as some sections of the have the capacity to minimise their income for taxation purposes whilst other sectors (e.g. PAYE taxpayers) cannot minimise their taxable income to the same extent.

As Council does not have access to income data, it is not feasible to use income (gross or nett) as a basis for municipal rating.

Overall, municipal rates comprise approximately 3.5% of all tax income in Australia, with a rates bill generally amounting to approximately 3% of a ratepayer’s gross income. Notwithstanding this, Council is keen to avoid creating a rating situation that shifts the rates burden to parts of the community that already have limited capacity to pay.

Council therefore engaged Morrison Low consultants to compile socio-economic demographic data relevant to the Shire. Morrison Low are specialist demographers/economic consultants who have vast experience in compiling, analysing and interpreting demographic data for the government and local government sector.

The aim was to identify areas of the shire that had comparatively higher levels of social disadvantage and vulnerability and therefore possibly less capacity to pay.

Morrison Low analysed REMPLAN data for the shire.

Their report was based on the 2016 census data as the 2020 census data was not yet available. Despite this it is felt, with the exception of the effects of COVID19, the demographic characteristics of the shire will not have changed dramatically since 2016. Their report looked at capacity to pay by identifying:

- areas of social disadvantage
 - vulnerable groups /areas with the community
- trends within the major industry types with the shire, and
- the effect of COVID19 on the local economy.

To do this, Morrison Low divided the shire into 7 distinct geographic areas, being:

- Colac central
- Colac West
- Colac East
- Elliminyt
- Great Ocean Road / Otways region
- Rural North (ie: mostly north of the Princes Highway but extending south of highway east of Colac to include Birregurra)
- Rural South (ie: mostly south of the Princes Highway and extending to the northern edge of the Otway Ranges).

Overall Colac Otway Shire is one of the most disadvantaged shires in Victoria. It has a higher level of low-income earners than the regional and state level, yet its unemployment rate (4%) is lower than the state level (6%). Interestingly, it has a slightly lower level of housing stress than the regional and state levels. The sectors creating the most employment are:

- manufacturing
- agriculture/forestry/fishing
- health care and social assistance.

Employment numbers and economic output for all occupation types has stagnated since March 2020 as a result of the COVID19 pandemic.

The key characteristics of each region identified by Morrison Low were:

Area	Characteristics
Colac central	Most disadvantaged area in the shire with: <ul style="list-style-type: none"> ➤ Larger proportion of older and/or retired residents ➤ More low-income residents & less high-income residents ➤ Higher unemployment rate (due to age profile) ➤ Higher percentage of residents who need core assistance

	➤ Higher percentage of housing stress.
Colac West & East	Similar to Colac central - though with slightly higher housing stress percentage in Colac East.
Elliminyt	<ul style="list-style-type: none"> ➤ Average level of disadvantage (ie: equal with State level) ➤ Younger population ➤ Higher proportion of high-income earners ➤ Higher proportion of home ownership & newer houses ➤ Lowest unemployment rate ➤ Lowest demand for core services ➤ Lowest level of housing stress
Great Ocean Rd/Otways	<ul style="list-style-type: none"> ➤ Slightly higher level of disadvantage than the State level ➤ Comparatively high proportion of high-income earners ➤ Higher proportion of retirees ➤ Low unemployment rates but higher percentage of workers in part time work ➤ Higher level of housing stress ➤ Low level of demand for core assistance
Rural North	<ul style="list-style-type: none"> ➤ Slightly higher level of disadvantage than the State level ➤ Highest proportion of high-income earners (area contains some large farms) Low unemployment rate ➤ Comparatively high level of home ownership ➤ Moderate level of housing stress (2nd lowest in shire & well below state & national level) ➤ Low level of demand for core assistance
Rural South	<ul style="list-style-type: none"> ➤ Average level of disadvantage ➤ Comparatively high proportion of high-income earners (area contains some most of the dairy farms in the shire) ➤ Low unemployment rate ➤ Comparatively high level of home ownership ➤ Moderate level of housing stress (3rd lowest in shire & well below state & national level) ➤ Low level of demand for core assistance

The data showed that parts of Colac township have a significantly higher level of social disadvantage and vulnerability than other areas of the shire. Conversely the Elliminyt area which is experiencing new development was an area of comparative advantage.

In the rural sector, the northern part of the shire was slightly more disadvantaged than the south but both areas were at about the average level of disadvantage.

The Great Ocean Rd/Otway region was experiencing a slightly higher than average level of social disadvantage but was more vulnerable in that it is experiencing a higher level of housing stress and has over half of its working population in part time employment.

These results were consistent with demographic data obtained in previous rating strategy reviews.

A summary of the data for each region is attached as attachment 4.

A copy of the Morrison Low report is attached as attachment 5.

(10.4) Community Consultation

Community consultation was not undertaken for the preparation of this strategy. Officers relied on the input of Councillors as elected representatives of the community to identify issues to be considered. Once the draft strategy is adopted by Council, it will be placed on public exhibition for six weeks in accordance with Council's Community Engagement Policy.

11 Proposed rating structure

After due consideration Councillors at the Briefing session on 2nd February 2022 agreed to retaining the current rating structure and differentials as:

- ❖ the current rating differentials do not pre-emptively shift the rates burden between rating categories (noting in particular that the Colac township has areas that have a significantly higher level of disadvantage than other parts of the shire),
- ❖ it is anticipated there will be significant valuation increases across the shire which is likely to provide a shift in the rates burden between categories,
- ❖ the current differentials provide a mechanism for rates increases resulting from valuation increases to be mitigated (i.e. evened out) to some extent, although it is acknowledged the extent of valuation increases may require amendment of the differentials between rating categories,
- ❖ the current rating categories provide an accurate generic description of land use types for all properties in the Shire (e.g. all properties were either residential, commercial/industrial, holiday rental or farm properties).

Thus it is proposed the following rating structure and differentials be adopted for the term of the Rating Strategy.

Rating Category	Differential (from base rate)
<i>Residential – Colac/ Elliminyt</i> (Residential properties in the Colac, Colac East & West & Elliminyt).	100% (base rate)
<i>Residential - Balance of Shire</i> (Residential properties located in the municipality excluding those in the "Residential -Colac / Elliminyt" rating category)	85%

Rating Category	Differential (from base rate)
<i>Holiday Rental</i> (Houses/cabins that are made available for short term holiday accommodation for a fee/tariff)	100%
<i>Rural – Farm</i> (Properties used for farm purposes as defined by the Valuation of Land Act 1960).	75%
<i>Commercial / Industrial – Colac/Elliminyt</i> (Commercial properties in the Colac, Colac East & West and Elliminyt)	165%
<i>Commercial / Industrial - Balance Shire</i> (Commercial / industrial properties in the municipality excluding those in the “Commercial / Industrial –Colac/Elliminyt” rating category.	140%

Other Charges

In addition to general rates being levied on the basis of the above structure, it is proposed Council retain the Municipal Charge (see 3.1 above) and Waste Management Charge (see 3.2 above).

12 Compliance with State Government's Guidelines

As mentioned above, in 2014 the State Government provided guidelines for the preparation of a rating strategy. In preparing this strategy, an attempt has been made to comply with the principles outlined in the guidelines as follows:

#	Principle	Explanation
1	<i>Wealth tax</i>	<p>Rates are a tax based upon the value of the property being rated and have no correlation to the ratepayers' access to or consumption of services.</p> <p>Compliance: <i>The strategy has been prepared on this basis.</i></p>
2	<i>Equity</i>	<p>That consideration be given to "<i>horizontal equity</i>" (i.e. that ratepayers with similar valued properties should pay similar amounts) and "<i>vertical equity</i>" (i.e. that ratepayers with higher valued properties should pay more than those with lesser valued properties).</p> <p>Compliance: <i>"Horizontal equity" is achieved as properties in the same category and valuation pay the same amount of rates. The strategy provides "vertical equity" as higher values properties pay more rates than lower valued properties.</i></p>
3	<i>Efficiency</i>	<p>That consideration be given to the extent to which production and consumption decisions by people are affected by rates.</p> <p>Compliance: <i>How these decisions are affected by the amount of rates payable is unknown and varies from person to person. The strategy attempts to equitably apportion the rates burden across the shire and actively sought to avoid shifting that rates burden to other rating categories by changing the differentials.</i></p>
4	<i>Simplicity</i>	<p>The system should be easily understood by ratepayers and be practical to administer.</p> <p>Compliance: <i>The rating structure (being based on generic land use descriptions) is believed to be simple for the community to understand.</i></p>
5	<i>Benefit</i>	<p>That consideration be given to the nexus between consumption/benefit and the rates burden.</p> <p>Compliance: <i>This principle seems contradictory to principle 1 above. However, the use of differential rates attempts to recognise that some areas (e.g. Colac/Elliminyt) have greater access to services than other areas and therefore pay rates at a higher rate in the dollar.</i></p>

#	Principle	Explanation
6	<i>Capacity to pay</i>	<p>What factors are relevant to particular property classes in order to make informed observations about their capacity to pay rates.</p> <p>Compliance: <i>Council obtained economic data to identify areas of experiencing comparative social disadvantage and vulnerability. Ultimately a balance between this principle and principles 2, 3 and 5 has to be found.</i></p>
7	<i>Diversity</i>	<p>Which groups in the municipality may warrant special consideration in regards to their capacity to pay.</p> <p>Compliance: <i>See comment for principle 6.</i></p>

13 Meeting community expectations

It is acknowledged that many in the community will judge the Rating Strategy by whether they pay less rates or more. This is understandable, although simplistic. It is also understood the effects of COVID 19 have placed communities under unprecedented financial and emotional stress.

To that end, Council will continue to assist ratepayers by accepting flexible payment arrangements and where necessary providing assistance under its hardship policy (see 9 above). In addition, it also offers a range of part payment options (see 6 above).

Council views referral of accounts to debt collectors to be a last resort but also seeks to encourage early intervention for ratepayers with arrears to initiate action before the debt becomes unmanageable.

Ultimately municipal rates are a charge against the property and remain against the property (accruing penalty interest on arrears) until such time as they are paid. There is no advantage to the ratepayer by ignoring the debt.

Ratepayers are therefore encouraged to discuss their situation with Rates department staff as soon as possible.

References

Ministerial Differential Rating Guidelines - 2013

Revenue & Rating Strategy Guidelines"- DELWP 2014

Local Government Rating System Review – December 2020

Investigation into how Councils respond to ratepayers in financial hardship – Victorian Ombudsman - May 2021

Capacity To Pay – Morrison Low – October 2021

