

GOVERNANCE RULES

Report Author: Governance Coordinator
Responsible Officer: Director Corporate Services
Ward(s) affected: (All Wards);

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

SUMMARY

As a result of the Covid-19 Pandemic, Council was obligated to adjust a number of core business services. Council meetings, in particular, were quickly converted to virtual platforms and the Victorian Government introduced the *COVID-19 Omnibus (Emergency Measures) Bill 2020* to allow for Councillors to attend meetings by electronic means. This temporary legislation was necessary in the absence of an explicit directive to administer virtual meetings in Council's Governance Rules.

It became apparent that hybrid meeting functionality was beneficial to the overall conduct of Council and hence a more permanent and legislated arrangement was introduced by the Victorian Government through the *Regulatory Legislation Amendment (Reform) Act 2022* (the Amendment Act). The Amendment Act received Royal Assent on 29 March 2022 and included reforms relating to virtual meetings. These reforms will become active on 2 September 2022. Council has prepared a revised version of its Governance Rules to reflect these permanent changes, and displayed the revised Rules for public comment.

A number of other changes to the Governance Rules have been reviewed as part of the process and are outlined in this report.

It is recommended that Council adopt the revised Governance Rules included at Attachment 1 to this report to ensure the ongoing good governance and transparent conduct of Council and Delegated Committee Meetings.

RECOMMENDATION

That Council adopt and keep in force the Governance Rules included at Attachment 1 to the report.

RELATED COUNCIL DECISIONS

The current Governance Rules were adopted at the Council meeting held 25 August 2020.

DISCUSSION

Purpose and Background

The purpose of this report is to:

- outline the amendments to the current Governance Rules;
- summarise feedback received during community consultation; and
- provide assurance to Council and the community that, in the interest of good governance, Council adopt the Governance Rules and by virtue comply with the new requirements of the Local Government Act 2020 (the 2020 Act) and the Amendment Act.

The Covid-19 Pandemic caused disruption to many services in Council including the conduct of its Council meetings. Virtual meetings became a necessity and Council had to quickly adapt, in the absence of any legislated guidelines, to allow for such a critical function of Council to continue.

These amendments are now necessary, from a compliance perspective, to continue the operation of Council and Delegated Committee meetings in a hybrid manner. The Amendment Act, received Royal Assent on 29 March 2022 and includes reforms relating to virtual council meetings. These reforms will be incorporated into Division 2, Part 3 of the 2020 Act, which relates to the procedures for Council decision making, including the holding of meetings (being council meetings, joint meetings of councils, delegated committee, and joint delegated committee meetings). Local Government Victoria developed a Ministerial Good Practice Guideline to assist councils in the development of their Governance Rules in order to comply with the new virtual meeting provisions. The guidelines have been considered in the preparation of the amended Governance Rules.

The issues and proposed changes are outlined below.

ISSUES

The revised Governance Rules, included at Attachment 1, have been developed to meet the new requirements of the 2020 Act. In preparing the Governance Rules, consideration has been given to:

- the Ministerial Good Practice Guidelines released by Local Government Victoria to assist councils in the development of their Governance Rules in order to comply with the new virtual meeting provisions; and

- an updated template for Governance Rules produced by Maddocks Lawyers that represents a 'standard' form of Governance Rules that is capable of satisfying the associated requirements.

Virtual Meetings

The amendments to the 2020 Act as specified in the Amendment Act include:

- amendment to the definition of meetings and delegated committees in section 60(1) paragraph (a) and (b) to include holding these by means of electronic communication;
- a new subsection after 60(1) paragraph (b) to include requesting and attendance at Council meetings and meetings of delegated committees by means of electronic communication; and
- addition of a paragraph after 61(6) to confirm that a Councillor may attend and be present at a Council meeting by electronic means of communication.

The current Governance Rules make allowance for voting by electronic means of communication which may be implied to include equivalent attendance by such means however this is not clearly stated. The current Governance Rules do not outline any protocol for attendance by electronic means.

Election of the Mayor

The 2020 Act, Division 4 sections 25(4) and 25(5) requires that the Mayor be elected by an absolute majority of Councillors and that, if needed, a new election be conducted at a later time and date where an absolute majority cannot be obtained.

The current Governance Rules include provisions for drawing a lot to elect the Mayor in the event that two or more candidates have equal votes. If this rule were applied in future the election of the Mayor may not be compliant with the 2020 Act.

PROPOSED CHANGES

Virtual Meetings

The proposed changes are:

- insertion of new sub rule, 4.6 to clearly state that attendance or presence at a meeting may include virtual attendance;
- amendment to sub rule 5.1, 7.1 and 12.1 to include allowance for virtual attendance;
- insertion of new sub rule 12.2 to including virtual mode;
- insertion of new sub rule 12.3 to enable Council to hold a meeting that is solely face-to-face or virtual;
- amendment to sub rule 13.1 and 15.2(a) to include virtual;
- inclusion of a statement when determining a Quorum to include virtual attendance;

- inclusion to sub rule 57.2(d), 58.3, 59.11 and 60.11(a) to allow for members of the public to attend virtually; and
- inclusion of new Rule 82 *Mode of Attendance* to specify how the Council will accommodate different methods of attendance at meeting and how this is communicated and recorded.

Election of the Mayor

The proposed changes are:

- revision to rule 8.4(f) to remove the option for the Mayor to be determined via a lot in the event that two or more candidates have equal number of votes, and provisions to conduct a new election at a later date and time under this scenario;
- removal of rule 8.4(g) that describes the process for drawing a lot; and
- Addition of the words '*must be within five business days*' has been included to ensure there is no unnecessary delay in the election of the Mayor.

Miscellaneous

- Rule 4. Including definition of the word attendance to mean attend, attending or attendance in-person, on site or by electronic means and consolidation of all references to attend meetings;
- removal of part of Rule 29.1(f) which currently states that those wishing to speak must be called upon by the Chair in an alternate order. The removal of this part will allow the Mayor to freely call for any Councillor wishing to speak to an item in a manner that complements the debate at hand;
- Inclusion of sub rule 65.2 to allow the Chair to adjourn the meeting to consider how their casting vote will be cast;
- Inclusion of sub rule 71.1(i) to allow for the Minutes to specify the Councillors' attendance; and
- Removal of Rule 1 *Introduction*, with regard to Conflicts of Interest as a result of the reference being repealed from the Legislation.

Recommendation

The proposed changes to the Governance Rules will fully address the known issues, and will:

- allow for ongoing flexibility of meeting mode (i.e. physical and virtual mode);
- ensure clarity for Councillors and members of Delegated Committees with regards to permissible mode of attendance at meetings and appropriate protocol to follow; and
- ensure the process for electing the Mayor results in an absolute majority.

FINANCIAL ANALYSIS

There are no costs associated with the proposal to amend the Governance Rules in addition to costs already contained within approved budgets.

APPLICABLE PLANS AND POLICIES

This report contributes to the following strategic objective(s) in the Council Plan:

- *Connected and Healthy Communities: Communities are safe, resilient, healthy, inclusive and socially well connected. Quality services are accessible to everyone; and*
- *High Performing Organisation: An innovative, responsive organisation that listens and delivers quality, value for money services to our community.*

RELEVANT LAW

The proposed changes to the Governance rules are to comply with changes to the 2020 Act that will come into effect 2 September 2022 as detailed in the *Regulatory Legislation Amendment (Reform) Act 2022*.

Section 60 of the 2020 Act requires Council to adopt and keep in force Governance Rules. Section 60(3) and (4) allows for Council to amend its Governance Rules subject to community engagement.

SUSTAINABILITY IMPLICATIONS

There are no sustainability implications associated with the proposed changes to the Governance Rules.

COMMUNITY ENGAGEMENT

Section 60(4) of the 2020 Act requires a process of community engagement be followed by Council in developing or amending its Governance Rules. A three-week community engagement process was undertaken, and 11 submissions in total were received and are summarised below.

Overall, feedback was positive. The community appreciated the opportunity to comment on changes in Council's approach to virtual attendance at Council meetings and supported the clarity in electing the Mayor by an absolute majority.

The following summary of community feedback has been included in the revised Governance Rules:

1. *Statement:* Supported the changes and requested that the method of attendance be recorded in the minutes.

Officer response: Rule 71.1(i) already specifies that mode of attendance must be recorded in the Minutes

2. *Statement:* Indicated support for the changes and questioned how members of the public can contribute to the meeting 'on the fly' if they are attending virtually.

Officer response: It is a requirement that members of the public register their interest to speak to an item prior to the commencement of the meeting. This is to ensure meetings are appropriately managed. If a member of the public is wishing to speak to an item and does not wish to register, they must attend in person. Virtual participation in a meeting can only be enabled by pre-registering. Council meetings will be livestreamed independently for members of the public to view, however there is not an opportunity to participate via this platform.

3. *Statement:* Requested the addition of a time limit when Council resolve to re-convene the Election of the Mayor meeting in the event an absolute majority cannot be reached.

Officer response: Although it would be irresponsible of the Council to delay the Election of the Mayor for a lengthy time given no business can be transacted when the Chair is vacant, this is a valid point. Therefore, the addition of '*must be within five business days*' has been included to ensure there is no unnecessary delay.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

Prior to the release of the Ministerial Guidelines, officers engaged with the MAV Governance Network Forum where other councils contribute advice and support on Governance related matters.

RISK ASSESSMENT

Amendments to the Governance Rules as proposed enables Council to continue to meet its obligations under the 2020 Act and ensures clarity around meeting attendance and associated protocol and processes to elect the Mayor. The proposed changes may help to improve community confidence that processes are well defined and transparent and encourage community participation in Council meetings through ongoing hybrid meeting options.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS TO THE REPORT

1. Governance Rules