



**MORNINGTON
PENINSULA**
Shire

ATTACHMENTS

COUNCIL MEETING

TUESDAY, 5 APRIL 2022

5.30PM

**MUNICIPAL OFFICES
BESGROVE STREET, ROSEBUD**

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Sorrento - Update**

Attachment 1 8 March 2022 Council Report 136

2019 Council Decision Register

Printed on

28-March-2022



In Progress
No Action Yet
Completed
No Further Action

Count of Status	Column Labels							
Row Labels	Number of Decisions COMPLETED	Number of Decisions IN PROGRESS	Number of No Further Action Required	Number of 2019 Council Decisions	Percentage of Decisions In Progress	Percentage of No Further Action Required	Percentage of Decisions No Update	Percentage of Decisions COMPLETED
Chief Executive Officer	2		6	8	0%	75%	0%	25%
Finance	12		4	16	0%	25%	0%	75%
Governance	28		6	34	0%	18%	0%	82%
Infrastructure Project Delivery	2			2	0%	0%	0%	100%
Infrastructure Strategy & Climate Change	27	3	2	32	9%	6%	0%	84%
Environment Protection	7	1		8	13%	0%	0%	88%
Aged & Disability	3			3	0%	0%	0%	100%
Communications, Media & Events	3			3	0%	0%	0%	100%
Planning Services	9			9	0%	0%	0%	100%
Family Services & Community Planning	15		2	17	0%	12%	0%	88%
Project Delivery	8			8	0%	0%	0%	100%
Infrastructure Services	17	1	1	19	5%	5%	0%	89%
Property & Strategy	28	3	2	33	9%	6%	0%	85%
Innovation & Advocacy	9			9	0%	0%	0%	100%
Arts & Culture	3			3	0%	0%	0%	100%
Planning & Building	1			1	0%	0%	0%	100%
Infrastructure Strategy	1			1	0%	0%	0%	100%
Libraries	1			1	0%	0%	0%	100%
Buildings & Facilities	1			1	0%	0%	0%	100%
Number of 2019 Council Decisions	177	8	23	208				

Department	Number of 2019 Council Decisions	Number of Decisions COMPLETED	Number of Decisions IN PROGRESS	Number of Decisions NO UPDATE	Percentage of Decisions No Update	Percentage of Decisions COMPLETED
Planning Services	60	59	1	0	0%	98%

2020 Council Decision Register

Printed on

28-March-2022



LEGEND:	In Progress
	No Action Yet
	Completed

Department	Column Labels			
Row Labels	Number of Decisions Completed	Number of Decisions In Progress	Number of Decisions with No Action	Number of 2020 Council Decisions
CEO	9			9
Communications and Events	5			5
Communities	24			24
Corporate Services	20			20
Governance	53			53
Place	67			67
Planning and Building	55			55
Planning & Infrastructure	3	2		5
Community Strengthening	1	2	1	4
Corporate Strategy and Business Improvement		1		1
Number of 2020 Council Decisions	237	5	1	243

Percentage of Decisions in Progress	Percentage of Decisions No Action	Percentage of Decisions COMPLETED
0%	0%	100%
0%	0%	100%
0%	0%	100%
0%	0%	100%
0%	0%	100%
0%	0%	100%
0%	0%	100%
40%	0%	60%
50%	25%	25%
100%	0%	0%
2%	0%	98%

2021 Council Decision Register

Printed on

28-March-2022



LEGEND:	In Progress
	No Action Yet
	Completed

Department	Column Labels			
Row Labels	Number of Decisions Completed	Number of Decisions In Progress	Number of Decisions with No Action	Number of 2021 Council Decisions
CEO	1			1
Communications and Events	1			1
Communities	10			10
Community Strengthening	18	2	2	22
Corporate Services	4			4
Corporate Strategy & Business Improvement	11	9	3	23
Governance	24			24
Office of the CEO	54	1		55
Place	11			11
Planning & Building	19			19
Planning & Infrastructure	66	14	7	87
Number of 2021 Council Decisions	219	26	12	257

Percentage of Decisions In Progress	Percentage of Decisions No Action	Percentage of Decisions COMPLETED
0%	0%	100%
0%	0%	100%
0%	0%	100%
9%	9%	82%
0%	0%	100%
39%	13%	48%
0%	0%	100%
2%	0%	98%
0%	0%	100%
0%	0%	100%
16%	8%	76%
10%	5%	85%

2022 Council Decision Register

Printed on

28-March-2022



LEGEND:	In Progress
	No Action Yet
	Completed

Department	Column Labels			
Row Labels	Number of Decisions Completed	Number of Decisions with No Action	In Progress	Number of 2022 Council Decisions
Community Strengthening		3	1	4
Corporate Strategy and Business Improvement	1	3	2	6
Office of the CEO	3	7		10
Planning & Infrastructure	2	8		10
Number of 2022 Council Decisions	6	21	3	30

Percentage of Decisions In Progress	Percentage of Decisions No Action	Percentage of Decisions COMPLETED
25%	75%	0%
0%	50%	17%
0%	70%	30%
0%	80%	20%
10%	70%	20%

Councillor Briefing Sessions



Briefing Date: 15 March 2022 **Time:** 10.00am **Location:** Microsoft Teams Meeting

Councillors Present (please tick)

Cr Bissinger Cr Celi Cr Dixon Cr Gill Cr Holland Cr Mar
 Cr Marsh Cr McCafferty Cr O'Connor Cr Mercurio Cr Race

Guests Present:

Dr Vicky Au, Engagement and Strategy Lead, Hydrogen Industry Mission - CSIRO
Mr Wodek Jakubik, Innovation Manager - Coregas Pty Ltd

Matters Discussed:

1. Green Hydrogen - Opportunity Discussion
2. Stringer Road Reserve Concept Plan and Associated Report
3. Draft Public Memorials Policy
4. Public Transparency Policy
5. Expression of Interest - Independent Member CEO Employment and Remuneration Committee
6. Update to the Kindergarten Priority of Access/Allocation Criteria
7. Risk Management Policy and Framework
8. South East Metropolitan Advanced Waste Processing (SEMAWP) - Commitment Level
9. Planning Permit Application P21/3507 - 1915 Dandenong - Hastings Road, Pearcedale

Conflict of Interest Disclosures (refer overleaf):

Matter No.	Name of Councillor/s who declared a Conflict of Interest (**Conflict of Interest form to be completed)	Did they leave the Assembly?	
		YES	NO
		.	.
		.	.
		.	.

Responsible Officer completing this form:

Name: Tegan Lewis **Signature:**

Position: Senior Council Reports Officer

Council Policy

DRAFT Public Memorials Policy

Objective Reference: A10293015



1.0 AUTHORITY

Our Council Plan.

2.0 INTENT

The purpose of this policy is to:

- Provide a framework for the application and installation of all public memorials whether in buildings, on footpaths, in parks, gardens, streets or other public places.
- Establish guidelines for the application and installation of public memorials.
- Define the criteria that applications must meet.
- Provide an equitable decision-making approach which is clear and transparent.
- Ensure that proposals are assessed and managed in a timely manner.
- Minimise the risks and environmental impact of memorials and memorial plaques; and
- Ensure that public open spaces serve their intended purpose and do not become dominated by memorials.

3.0 SCOPE

This policy applies to:

- Requests for public memorials made by Councillors, Shire officers, individuals and community groups.
- Applications for public memorials on Shire owned land and property; and
- Applications for public memorials on land owned by the Department of Environment, Land, Water and Planning (DELWP) of which Council is the Committee of Management. Section 15 of the *Crown Land Reserves Act 1978* refers to appointed Committees of Management that “shall manage, improve, maintain or control the land for the purposes for which it is reserved”.

4.0 GOVERNANCE PRINCIPLES

This policy gives effect to the following Governance Principles under section 9 the *Local Government Act 2020*:

- Council decisions are to be made and actions taken in accordance with the relevant law.
- priority is to be given to achieving the best outcomes for the municipal community, including future generations.

5.0 POLICY STATEMENT

Approved by: Council

Approval date: XX/XX/XX

Scheduled Review Date: 05/04/2026

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Council Policy

DRAFT Public Memorials Policy

Objective Reference: A10293015



The Mornington Peninsula Shire (Shire) recognises that some members of the community wish to acknowledge the life of a deceased person or association or event by establishing a memorial in public open space on Shire owned or managed property.

In order for the Shire to ensure its public open spaces continue to serve their intended purpose and are not transformed into places of mourning, and that its assets are not impacted negatively, subjects for memorials and memorial plaques in public open space will be limited to the following:

- Deceased individuals or associations strongly linked to the Shire, who have made a significant contribution to the community for a minimum of 25 years or have been recognised for a significant achievement or event.
- A significant anniversary of an event unique to the history and development of the township or location.

The Shire will deal sensitively with all requests for the establishment of public memorials.

5.1 Policy Principles

- 5.1.1 Any person may submit a public memorial application by completing an 'Application for a Public Memorial' available on the Shire website and submitted to the Governance Team.
- 5.1.2 Applications will be assessed by the Governance Team against the policy principles in consultation with Shire officers and Ward Councillors having regard to relevant Shire policies, plans and strategies and taking into consideration the number of existing memorials or memorial plaques in the surrounding vicinity.
- 5.1.3 Approval will only be granted for individuals or associations strongly linked to the Shire who have made a significant contribution to the community for a minimum of 25 years or have been recognised for a significant achievement or event, which will need to be demonstrated. The individual or association must have left a significant tangible legacy to the community that has resonance with the broader public.
- 5.1.4 Public memorials can be considered to mark a significant or documented historical event, such as a disaster or tragedy at the site.
- 5.1.5 Applications for public memorials will generally not be considered within two years following the death of a person to allow for the development of historical perspective and for consideration of the criteria for significance.
- 5.1.6 Memorial plaques will not be attached to any existing Shire furniture.
- 5.1.7 Existing memorials or memorial plaques that predate this policy should not be considered as a precedent for future approvals.
- 5.1.8 The location proposed by the applicant must have relevance to the individual or association and cannot negatively impact the intended purpose and function of the space.

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Objective Reference: A10293015



5.1.9 Donated memorials or acknowledgements for the promotion or advertising of commercial businesses, political or religious groups will not be considered.

5.1.10 Corporate branding or logos for groups or businesses will not be considered.

5.1.11 If required, community consultation will occur in accordance with the Community Engagement Strategy.

5.1.12 The Shire will manage the design, manufacture, installation and maintenance of any memorial having regard to relevant Shire policies and procedures.

5.1.13 All costs for the application, establishment and installation of memorials are borne by the applicant.

5.1.14 Any memorial or memorial plaque that has been placed without knowledge or approval from the Shire will be removed.

5.2 Assessment Criteria

5.2.1 All applications will be determined by the Governance Team in consultation with Ward Councillors and relevant Shire officers.

5.2.2 All applications must include evidence of community support and the community benefit of recognising the individual or association with a memorial must be demonstrated.

5.2.3 Applications made by individuals or organisations require written consent from the family of the individual to be commemorated.

5.2.4 Following initial assessment, if the application does not meet the policy criteria, the applicant will be provided with the opportunity to provide further supporting information and/or documentation.

5.2.5 Where a memorial application is not approved, the applicant will be provided with reasons in writing and will have the right to have the decision reviewed by the Manager – Legal and Governance.

In addition to the policy principles, the following requirements apply to public memorial applications received by the Shire.

5.3 Bench Seats

5.3.1 Bench seats with a memorial plaque will not be considered.

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Objective Reference: A10293015



5.3.2 A bench seat with a small motif or symbol such as a native flower, butterfly or rainbow (the motif will be at the discretion of the Governance Team) can be considered however no names or words are to be incorporated into the motif.

5.3.3 Bench seats without a motif or plaque will be referred to the Infrastructure department's Contracts Coordinator and considered outside of this policy.

5.4 Public Memorial Artwork

Applications for public memorial artwork such as a sculpture, tapestry, painting, or mural must comply with the Mornington Peninsula Shire Public Art Policy.

5.5 War Memorials

A war memorial commemorates the sacrifice of those Australians who have died during or from causes attributable to war. War memorials take many forms, but all have the intention to remind us of those we have lost to war. Applications will be considered taking into consideration the following:

- Wherever possible any war memorial should be erected at an existing war memorial site.
- The local Returned Services League Committee in the relevant area must be consulted for all war memorial applications.

5.6 Memorial/Commemorative Trees and Plantings

In determining a request for the planting of memorial/commemorative trees or plants in any appropriate street, park, garden or reserve within the Shire, the following applies:

- The request complies with any existing Master Plan or planting design in that location and the nursery standards are in accordance with the Shire's *Street Tree Vegetation Policy* and the *Private Works on Nature Strip Reserves Policy*.
- Determination of the species, location and planting of any tree will be managed by the Shire.
- Applicants must consider the establishment of the tree and watering schedule.
- No special care or guarantee of replacement is given; and
- To ensure that trees are protected from damage and public risk is minimised, plaques will not be installed on or around trees.

5.7 Roadside Memorials

The Shire recognises that some members of the community may wish to mark the location of a fatal accident on a road by the placement of a roadside memorial on or near a road.

All roadside memorials must be registered with the Shire. The 'Roadside Memorial registration form' is available on the website and must be completed when a roadside memorial is established.

Approved by: Council

Approval date: XX/XX/XX

Scheduled Review Date: 05/04/2026

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DRAFT Public Memorials Policy

Objective Reference: A10293015



Roadside memorials will be considered having regard to the following:

- The wishes and needs of the family will take precedence over those of friends of the deceased.
- Alterations to a public road must not be made.
- Memorials must not be hazardous to road or footpath users and will be placed in a location that enables people to visit safely (refer to *VicRoads Roadside Memorial Policy 2015*, Road Safety Principle for guidance).
- Memorials must be constructed of material and installed in a way that will not cause injury if struck by a vehicle.
- Memorials must not be placed or constructed in a way that it will distract drivers in any way. *VicRoads Supplement to the AustRoads Guide to Road, Design Part 6: Roadside, safety and barriers* should be used to assess this.
- Memorials must not hinder appropriate maintenance of a road or road reserve and must not unreasonably restrict access for utility and emergency services.
- The location of the memorial should not detract from the amenity of the local area or impact the quality of life of adjacent landowners, property occupiers or other members of the public.
- The Shire does not accept responsibility for the maintenance of roadside memorials, or any loss, damage, removal or relocation of roadside memorials that may occur due to road maintenance or construction activities.
- Flowers may be considered as a temporary memorial and placed in line with all policy principles. Plastic or other wrapping materials that may be dangerous to wildlife or become litter are discouraged.
- Crosses or similar may be considered in line with all policy principles.
- Unique and personal memorials are to align with all policy principles.

The Shire will remove a roadside memorial where it does not comply with the above criteria.

Removal of the memorial will be at the Shire's discretion and officers will take all reasonable measures to contact the person who initiated the memorial prior to its removal.

A time limit of 15 months will be allowed for roadside memorials.

This Policy applies to Shire managed roads. All requests for memorials on VicRoads managed roads are to be referred to VicRoads. The ongoing management of these memorials is undertaken by VicRoads in line with the *VicRoads Roadside Memorial Policy 2015*.

5.8 Cremated remains

Requests to scatter cremated remains are considered under the *Burial and Operations Policy* through the Cemeteries Administration Office directly.

There is no provision for a memorial plaque to be installed at the site where cremated remains are scattered.

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Council Policy

DRAFT Public Memorials Policy

Objective Reference: A10293015



5.9 Ownership and Life of Memorials

All memorials placed on Shire owned or managed property are deemed to be assets of the Shire (except for roadside memorials) and managed in accordance with the Shire's policies and procedures.

The Shire will manage and maintain a memorial for the life of the asset (except for roadside memorials) in accordance with the Shire's *Asset Management Plan*, after which time, determination of the future of the memorial will be at the Shire's discretion, which may include the relocation, removal, and/or decommissioning as required. It is envisaged that it will remain for a maximum of 10 years from the date of installation with the following exceptions:

- The area is to be redeveloped.
- The use of the site changes significantly in character and the memorial or memorial plaque is not deemed suitable for that area.
- If it becomes unsightly or unsafe it will be removed.

Where the condition of the memorial is poor or the site is no longer appropriate, Shire officers will take all reasonable measures to contact the person who initiated the memorial prior to its removal or relocation.

Where a Memorial or plaque is removed for any reason, every attempt will be made to return the plaque to the applicant or family.

5.10 Fees and Charges

Unless otherwise specified, all costs for memorials and memorial plaques are to be borne by the applicant/donor, including any additional costs specific to the installation which may include, but are not limited to:

- Any community or stakeholder consultation processes.
- Any development approval requirements.
- Design, engineering, or artist fees.
- Construction, manufacture, and installation fees (including site preparation); and
- Purchase of park furniture associated with the memorial.

5.11 Review of decision

Applicants can request a review of the decision be undertaken and investigated.

A request to review a decision must be made in writing and include supporting information which should be forwarded to the Manager – Legal and Governance via the following:

Email: governanceteam@mornpen.vic.gov.au

Approved by: Council

Approval date: XX/XX/XX

Scheduled Review Date: 05/04/2026

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Council Policy

DRAFT Public Memorials Policy

Objective Reference: A10293015



Mail: Mornington Peninsula Shire Council
Private Bag 1000
Rosebud
VIC 3939.

6.0 HUMAN RIGHTS CHARTER COMPATIBILITY

This policy has been assessed as being compatible with *the Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

7.0 ASSOCIATED DOCUMENTS

- Our Council Plan
- Asset Management Policy
- Burial and Operations Policy
- Naming Rules for Places in Victoria, Statutory Requirements for naming roads, features and localities 2016
- Private Works on Nature Strips and Reserves Policy
- Public Art Policy
- *Road Management Act 2004*
- Signage Policy
- Street Tree and Vegetation Policy
- VicRoads – Roadside Memorial Policy 2015
- VicRoads Supplement to the Austroads Guide to Road Design – Part 6: Roadside design, safety and barriers

8.0 DEFINITIONS

Memorial	Any object in public open space for the purpose of acknowledging a deceased person or recognising an association or event.
Memorial Feature	Is defined for the purposes of this policy as a tree or plant, public artwork, war memorial or a bench seat.
Plaque	A flat tablet of metal or other durable material which includes text and/or images to commemorate an individual, association or event.
Roadside Memorial	Any object constructed, erected or placed on the road or within the road reserve to commemorate/indicate a road fatality. Memorials may include items such as wooden crosses, coloured posts, flowers or a personalised memorial. Unique and personal memorials are to align with all criteria.

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Council Policy

DRAFT Public Memorials Policy

Objective Reference: A10293015



Significant Contribution

A deceased individual or association that has gone above and beyond what would reasonably be expected through their dedication, exemplary service or voluntary contribution to the Shire or has left a tangible legacy to the municipality as part of their life's achievements for a minimum of 25 years.

9.0 POLICY SPONSOR

The Policy is endorsed and approved by the Council. The Manager – Legal and Governance is responsible for overseeing the application and review of this policy.

10.0 DOCUMENT CONTROLS

Council will review this policy within four years or earlier as required.

Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, the change to an existing policy or document referred to in this policy, and minor updates to legislation and the like which does not have a material impact. However, any change or update which materially alters the document must be by resolution of Council.

Approved by: Council

Approval date: XX/XX/XX

Scheduled Review Date: 05/04/2026

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Council Policy

DRAFT Public Memorials Policy

Objective Reference: A10293015



ATTACHMENT 1: PROCEDURE FOR CONSIDERING PUBLIC MEMORIAL APPLICATIONS

The consideration of public memorial applications should generally occur in accordance with the following steps:

- Step 1: All requests for public memorials are to be submitted to the Governance Team using the Public Memorial Application form available on the Shire website for initial assessment and acknowledgement response to the applicant.
- Step 2: The Governance Team to undertake an initial assessment of the application. The following is required before considering the application further:
- Supporting material to demonstrate that the individual or association is suitable for commemoration and meets the definition of 'Significant Contribution'.
 - Evidence connecting the individual to the proposed location.
 - Written confirmation that the family has provided their approval (if the applicant is not a member of the deceased's family).
 - Evidence of community support and details of the community benefit of commemoration of the individual.
- Step 3: Determine whether the proposed site is Shire owned or managed property. If the Shire is not the property owner or Committee of Management (CoM), refer the applicant to the relevant organisation or CoM.
- Step 4: Research and consult with relevant Shire officers and Ward Councillor/s to determine suitability of the request having regard to the policy principles. Shire officers to provide specialist information and detail as to whether the application meets the relevant policy criteria as well as recommendations on whether further information is required to make a decision.
- Step 5: If it is determined that the application meets the policy criteria, an approval notice to be sent to the applicant, then referral to the relevant team to liaise with the applicant directly to determine a suitable location, establish and install the memorial.
- Step 6: If it is determined that the application does not meet the policy criteria, the decision will be given in writing providing appeal rights.
- Step 7: All approved memorials and memorial plaques that are installed will be recorded on the Asset Register.
- Step 8: Approved applications to be recorded on the Public Memorials register for reference. This is not a public register as it contains applicant details.

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Approval date: XX/XX/XX
Scheduled Review Date: 05/04/2026

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Public Memorials and Plaques Policy

Adopted by Council 12 December 2017

Doc Id: A7149740

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1 POLICY STATEMENT

1.1 PURPOSE

The purpose of this Policy is to provide a framework for the installation of all plaques and memorials whether in or on buildings, on the pavement, in parks, gardens, streets or public places. All plaques or memorials installed within Mornington Peninsula Shire must conform to this Policy.

The Policy applies to:

- Requests made by Councillors, Shire officers, individuals and community groups; and
- Applications for land owned by Mornington Peninsula Shire Council;
- Applications for land owned by the Department of Environment, Land, Water and Planning (DELWP) of which Council is the Committee of Management. Section 15 of the *Crown Land Reserves Act 1978* refers to appointed Committees of Management that “shall manage, improve, maintain or control the land for the purposes for which it is reserved”.

1.2 OBJECTIVES

Policy objectives in relation to plaques and memorials are to:

- Provide guidelines for the application and installation of memorials, promoting a clear and transparent process;
- Provide an equitable decision making approach to requests for installation of memorials and plaques;
- Ensure that proposals are assessed and managed in a timely manner; and
- Minimise the risks and environmental impact of plaques and memorials.

1.3 STATEMENT

Mornington Peninsula Shire Council recognises that some members of the community wish to acknowledge the life of a deceased person by establishing a memorial in a public open space.

Some parks or other locations already contain plaques or memorials that predate this Policy. These markers contribute to an understanding of significant events or person closely associated with the area's history or community. An existing memorial or plaque is not a precedent for future approvals.

When receiving a request for a memorial or plaque, the Shire will take into consideration the number of existing memorials or plaques in the surrounding vicinity.

Applications for establishment of memorials will be considered on a case by case basis in accordance with this Policy and requests must state the community benefit of recognising the individual or association with a memorial.

1.4 CRITERIA

In order for the Shire to ensure its public open spaces continue to serve their intended purpose and are not transformed into places of mourning, and that its assets are not impacted negatively, subjects for plaques and memorials in public open space will be limited to the following:

- A significant anniversary of an event unique to the history and development of the township or location;
- Historical or other information relevant to the site/location; and
- A public artwork of significance.

In addition, Principle (H) Using Commemorative Names from the Office of Geographic Names (OGN) *Naming Rules for Places in Victoria 2016* will guide the Council:

“If named after a person, that person should be or have been held in strong regard by the community, with preference given to unofficial names used by the local community. When deciding on the assignment of a commemorative name, naming authorities should consider the person’s achievements, relevant history and association to the area, and the significance of the family/person to the area/land. For example, a family that has been associated with an area for at least 50 years.”

1.5 POLICY CONTEXT

Our Peninsula 2021 – Council Plan 2017-2021

Our Place

1. Through strategic planning we improve and protect the unique characteristics of the Mornington Peninsula.

Strategies

- A. Maintain 70% of the Mornington Peninsula as green wedge.
- B. Develop and implement integrated land-use plans which provide for planning appropriate to the role and function of each area.
- C. Design and deliver well-planned townships with adequate capacity for housing, infrastructure, employment, business activity and recreational areas.
- D. Enhance the character of our townships and villages through the development and maintenance of public spaces, reflecting local character, conditions and community preference.

2 OWNER

The owner of this Policy is Council. All enquiries regarding this Policy should be directed to the Governance unit.

2.1 OWNERSHIP AND LIFE OF THE MEMORIAL

All memorials placed on Council owned or managed land are deemed to be assets of the Mornington Peninsula Shire Council (with the exception of roadside memorials) and managed in accordance with Council's policies and procedures.

Mornington Peninsula Shire Council will manage and maintain a memorial for the life of the asset (with the exception of roadside memorials) in accordance with Council's Asset Management Plan, after which time, determination of the future of the memorial will be at Council's discretion, which may include the relocation, removal, and/or decommissioning as required.

Where the condition of the memorial is poor or the site is no longer appropriate, Council officers will take all reasonable measures to contact the person who initiated the memorial prior to its removal or relocation.

3 DEFINITIONS

Memorial	Any object such as park bench or tree in public open space for the purpose of acknowledging a deceased person.
Plaque	A flat tablet of metal or other durable material which includes text and/or images to commemorate a person, group, event or historical information relative to the location.
Roadside memorial	Any object constructed, erected or placed on the road or within the road reserve to commemorate/indicate a road fatality. Memorials may include items such as wooden crosses, coloured posts, flowers or a personalised memorial. Unique and personal memorials are to align with all criteria.
Interpretive sign	Signage that provides an interpretive experience with information about: <ul style="list-style-type: none">• An individual or association that has contributed significantly to the cultural, political or social aspects of the Shire's development;• An individual or association strongly linked to the Shire and its history;• A significant anniversary of an event unique to the history and development of the township or location; or• Historical or other information relevant to the site/location.

4 MEMORIALS FOR COUNCIL CONSIDERATION

Applications for memorial features, plaques, interpretive signs and war memorials to be located on Council owned or managed land (Crown Land) will be tabled at Council for consideration twice per calendar year and will be restricted to major cultural/heritage figures and places, or in remembrance of war events and sacrifices.

4.1 MEMORIAL FEATURES

Memorial features such as a park bench/seat, fountain, statue, ornamental feature, sculpture or other significant or unique artwork will be considered on a case by case basis in line with the following:

- If approved by Council, the statutory process for community consultation will be in accordance with the Naming Rules for Places in Victoria (Office of Geographic Names);
- Proposals may be subject to Council's budgetary processes;
- Management plans and approvals processes, where applicable, form part of the determination on whether the location is suitable;
- Mornington Peninsula Shire Council will manage the installation of any memorial;
- If the memorial deteriorates beyond repair, becomes unsightly or unsafe, the Shire may remove it;
- The memorial may be relocated should the site be redeveloped or significantly change in character; and
- If the proposed memorial is in the form of public artwork such as a sculpture, tapestry, painting or mural, it must comply with the above criteria and the Mornington Peninsula Shire Public Art Policy.
- The Shire will not maintain or replace plaques in the event of damage to or removal of the plaque; and
- Plaques will not be attached to any existing Shire furniture.

4.2 MEMORIAL/COMMEMORATIVE INTERPRETIVE SIGN

Memorial/commemorative interpretive signs are used to signify or commemorate an historic or significant occasion, person or feature and will be considered on a case by case basis. The following criteria apply to commemorative and memorial interpretive signs:

- If approved by Council, the statutory process for community consultation will be in accordance with the Naming Rules for Places in Victoria (Office of Geographic Names);
- Proposals may be subject to Council's budgetary processes;
- Mornington Peninsula Shire Council will manage the design, manufacture, installation and maintenance of any memorial/commemorative interpretive sign in accordance with Shire furniture design standards.

4.3 WAR MEMORIALS

A war memorial commemorates the sacrifice of those Australians who have died during or from causes attributable to war. They vary widely in form but all have the intention to remind us of those we have lost to war.

The following applies to war memorials:

- The local Returned and Services League committee must be consulted prior to tabling a report to Council;
- If approved by Council, the statutory process for community consultation will be in accordance with the Naming Rules for Places in Victoria (Office of Geographic Names);
- Proposals may be subject to Council's budgetary processes; and
- Any proposal to move or significantly change an existing memorial shall be considered under this Policy.

5 MEMORIALS FOR WARD COUNCILLOR/OFFICER CONSIDERATION

Applications for heritage markers, memorial tree planting, ashes and roadside memorials will be assessed and determined by Shire officers in consultation with the Ward Councillor/s.

5.1 HERITAGE RECOGNITION MARKERS

Heritage recognition markers are installed by Council on private and public property and communicate the listing of a building, its history and its significance. The following criteria apply to Heritage recognition markers:

- The property must be State or Local Heritage listed;
- Development approval is required;
- Property owner permission is required;
- Proposals may be subject to Council's budgetary processes; and
- Proposals will be assessed and determined by Shire officers in consultation with the Ward Councillor/s.

Markers are generally installed directly onto the building or fence. If this is not possible, the marker will be post mounted as close to the building or fence as practical. All wording on markers is developed by Council staff in consultation with the applicant and property owners.

5.2 MEMORIAL/COMMEMORATIVE TREES AND PLANTINGS

Requests for planting of memorial/commemorative tree(s) in any appropriate street, park or reserve within Mornington Peninsula Shire are available based on the following:

- They comply with any existing Master Plan or planting design in that place or street and the nursery standards in accordance with Mornington Peninsula Shire Council's Street Tree Vegetation Policy and the Private Works on Nature Strip Reserves Policy;
- The type, location and planting of any tree will be managed by the Shire;
- No special care or guarantee of replacement is given; and
- To ensure that trees are protected from damage and public risk is minimised, plaques will not be installed on or around trees.

5.3 ROADSIDE MEMORIALS

Mornington Peninsula Shire Council recognises that some members of the community may wish to mark the location of a death on the road network with the placement of a roadside memorial on or near a road. Consideration for roadside memorials will be reviewed by Shire officers in consultation with the Ward Councillor/s and approval will be based on the following:

- The wishes and needs of the family will take precedence over those of friends of the deceased;
- Alterations to a public road must not be made;
- Memorials must be non-hazardous to road or footpath users and will be placed in a location that enables people to visit safely (refer to VicRoads Roadside Memorial Policy, Principle 5.1 for guidance);
- Memorials must be constructed of material and installed in a way that will not cause injury if struck by a vehicle;
- Memorials must not be placed or constructed in a way that it will distract drivers in any way. VicRoads Supplement to the AustRoads Guide to Road Design should be used to assess this;
- Memorials must not prevent appropriate maintenance of a road or road reserve and must not unreasonably restrict access for utility and emergency services;
- The location of the memorial should not detract from the amenity of the local area or impact the quality of life of adjacent landowners, property occupiers or other members of the public;
- Council is not responsible for the cost or installation of a roadside memorial;
- Council does not accept responsibility for the maintenance of roadside memorials, or any loss, damage, removal or relocation of roadside memorials that may occur due to road maintenance or construction activities;
- Flowers may be considered as a temporary memorial and placed in line with all policy principles. Plastic or other wrapping materials that may be dangerous to wildlife or become litter are discouraged;
- Crosses or similar may be considered in line with all policy principles; and
- Unique and personal memorials are to align with all policy principles.

Council will remove a roadside memorial where it does not comply with the above criteria. Removal of the memorial will be at Council's discretion and officers will take all reasonable measures to contact the person who initiated the memorial prior to its removal.

A time limit of 3 months will be allowed for roadside memorials.

This Policy applies to Shire managed roads. All requests for memorials on VicRoads managed roads are to be referred to VicRoads.

5.4 ASHES

Mornington Peninsula Shire Council will consider requests to scatter the ashes of deceased persons or animals on Local Government land on a case by case basis. Where approval is granted, the ashes are to be distributed at a time and in a manner which creates minimal attention and disruption. Applications will be determined by officers in consultation with the Ward Councillor/s.

There is no provision for a memorial plaque to be installed at the site where ashes are to be scattered.

6 FEES AND CHARGES

Unless otherwise specified, all costs for memorials/plaques are to be borne by the applicant/donor, including any additional costs specific to the installation which may include, but are not limited to:

- Any community or stakeholder consultation processes;
- Any development approval requirements;
- Design, engineering or artist fees;
- Construction, manufacture and installation fees (including site preparation); and
- Purchase of park furniture associated with the memorial.

The Shire will install the memorial/plaque, ensuring consistency with Shire furniture design and/or tree planting guidelines.

7 PROCEDURE

All requests for memorials and plaques are to be submitted to the Governance unit using the Request for Public Memorial form (Appendix A) for initial assessment and acknowledgement response to the applicant. Governance will liaise with relevant Shire officers and Ward Councillor/s to determine suitability of the request.

Requests for ashes, roadside memorials, memorial tree plantings and heritage recognition markers will be determined by Shire officers in consultation with the Ward Councillor/s.

Requests for memorial features, interpretive signs and war memorials that are considered appropriate will be presented to Council for determination. Submitted requests must include a detailed proposal to include background on why Council should consider the request.

If circumstances require that a plaque or memorial needs to be removed, Mornington Peninsula Shire will make all reasonable efforts to notify the applicant.

Approved applications will be recorded on a Public Memorials register for reference. This is not a public register as it will contain applicant details.

8 REFERENCES AND REVIEW

VicRoads	Roadside Memorial Policy
VicRoads	Supplement to the Austroads Guide to Road Design
Office of Geographic Names	Naming rules for places in Victoria 2016
Mornington Peninsula Shire Council	Street Tree Vegetation Policy
Mornington Peninsula Shire Council	Private Works on Nature Strips Reserves Policy
Mornington Peninsula Shire Council	Public Art Policy

This Policy will be reviewed within 12 months of the 2020 general Council election or earlier as required.



Mornington Peninsula Shire

24 January at 19:40 · 🌐

Every now and then, community members wish to acknowledge the life of a deceased loved one with a memorial in a public open space. Many find comfort in having a place to visit and see a public memorial as a tribute to someone who meant a lot to them.

Memorial types can include a bench seat, tree planting, roadside memorials, war memorials and public art work. 🍀

We are updating our Public Memorials Policy and we're inviting our community to have their say.

Should members of the community have the opportunity to place a memorial in a public open space? What types of memorials do you think should be considered?

Answer these questions and share any other comments on our website at mornpen.vic.gov.au/publicmemorials until 22 February 🌹

██████████
██████████
Bench seats & trees with memorial names & carvings are a great idea but no point suggesting them because council doesn't listen to any locals anyway. Must admit when I see bench seats with names I think of who those people may have been - & that is what memorial seats etc are all about.

👍 3

3 w Edited

██████████
██████████
Does anyone pay respect to deceased family members at their cemetery plot?

👍 2

3 w

██████████
██████████
Great for both families & the community

3 w

██████████
██████████
I'm happy they are re visiting this idea. I put in a request 2 years ago and it was rejected.

3 w

██████████
██████████
What a great idea!! A plaque on a bench where they sat is a great idea

👍 6

3 w

↳ 3 replies

██████████
██████████
As long as it is useful. That way people notice

3 w

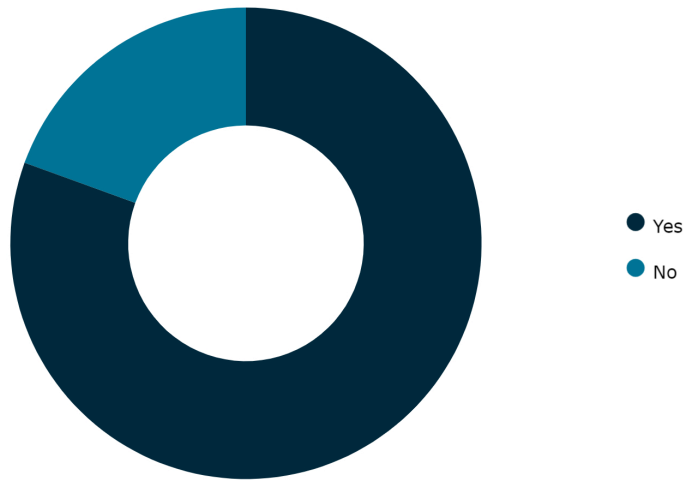
██████████
██████████
Bench seats are great!

Shape our Future
Report Type: Form Results Summary
Date Range: 24-01-2022 - 21-02-2022
Exported: 22-02-2022 20:59:08

Closed	Public Memorials Policy feedback	34
	Public Memorials Policy	37
		Contributors Contributions

Contribution summary

1. Should members of the community have the opportunity to place a memorial in a public open space? Required
Multi Choice | Skipped: 1 | Answered: 36 (97.3%)



Answer choices	Percent	Count
Yes	80.56%	29
No	19.44%	7
Total	100.00%	36

Council Policy

Public Transparency Policy



1.0 AUTHORITY

Local Government Act 2020, Section 57

2.0 INTENT

The purpose of this policy is to:

2.1 achieve compliance with the *Local Government Act 2020* (the Act); and

2.2 ensure that Council demonstrates and promotes transparency in its decision making by giving effect to the Public Transparency Principles as set out in Section 58 of the *Local Government Act 2020*:

- a) Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of the *Local Government Act 2020* or any other Act;
- b) Council information must be publicly available unless:
 - i. the information is confidential by virtue of the *Local Government Act 2020* or any other Act;
 - or
 - ii. public availability of the information would be contrary to the public interest;
- c) Council information must be understandable and accessible to members of the municipal community
- d) Public awareness of the availability of Council information must be facilitated

This policy describes how information will be made available to the public and is an integral part of Council's governance framework.

3.0 SCOPE

This policy applies to Council, Council staff and any committee or other body making decisions under the delegated authority of Council.

4.0 POLICY STATEMENT

4.1 Council is committed to the principles of public transparency. Council considers transparency a cornerstone of democratic governance. Openness, accountability and honesty are essential for fully informed engagement in the democratic process. Effective community engagement, planning, financial management and the performance of all council responsibilities are underpinned by transparent processes.

4.2 Council demonstrates its commitment to public transparency through its organisational value of 'Openness'. "We share knowledge and learning for the benefit of all, actively engage with our community, and are transparent in our decision making".

4.3 Council decisions are made with transparent processes that are:

- undertaken in accordance with the Act and the Governance Rules;
- conducted in an open and transparent forum, unless in accordance with the provisions in the Act and Governance Rules;

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Council Policy

Public Transparency Policy



- made fairly and on its merits, and where any person whose rights will be directly affected by a decision of Council, that person will be entitled to communicate their views and have their interests considered; and
- informed by community engagement, in accordance with the Community Engagement Principles and Council's Community Engagement Policy.

4.4 Council information is made publicly available through:

- publication on one or more of Council's websites, social media pages and printed publications.
- documents available for inspection at one or more of Council's offices both on display and by request.
- release under the Freedom of Information Act 1982.
- key Council budget briefings open to the public
- by any other appropriate means as determined by Council, the Chief Executive Officer, or the Head of Governance and Legal.

4.5 All Council information will be made publicly available unless it is confidential, or its release would not be in the public interest. Examples of Council information that is publicly available include:

- agendas and minutes of Council meetings
- adopted plans, policies and strategies
- financial and non-financial performance reports
- complaints handling processes
- community engagement processes
- Statutory Registers

A comprehensive list of all publicly available Council information is provided in Council's Part II Statement published on the Shire's website in accordance with the *Freedom of Information Act 1982*.

Where information is not already available and not confidential, Council will facilitate direct release of the information (i.e. without needing to apply under Freedom of Information) where Council considers its release to be in the public interest.

Some Council information may not be made publicly available. This will only occur if the information is confidential information or if its release would be contrary to the public interest or not in compliance with the *Privacy and Data Protection Act 2014*. Council will adopt a strict interpretation of *confidential* within the *Local Government Act 2020* to ensure that information is not inappropriately characterised as confidential, when it should be made available to the public.

4.6 Council information is understandable and accessible to members of the municipal community.

4.6.1 Council makes information understandable by:

- promoting the use of legible, plain, jargon free language in written materials, publications and reports
- adhering to style guides and corporate templates that are set out to enhance understanding
- training staff in effective communication, presentation and report writing skills
- providing community engagement opportunities that facilitate discussion, clarification and explanation of Council information

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4.6.2 Council makes information accessible by:

- publishing information in a range of formats, including via social media platforms, on Council's website and in hard copy format and printed publications distributed across the municipality
- proactively and routinely releasing information for free or low cost
- responding to individual requests for information
- responding to applications made under the *Freedom of Information Act 1982*
- complying with the *Disability Discrimination Act 1992*
- considering accessibility and cultural requirements in accordance with the *Charter of Human Rights and Responsibilities Act 2006*
- complying with the Web Content Accessibility Guidelines 2.0
- advertising the availability of interpretation services and the National Relay Service

4.7 Public awareness of Council Information is facilitated by:

- promotion on Council's website, social media platforms such as 'Have Your Say', and printed publications (e.g. Peninsula Wide)
- community engagement opportunities
- publication of Council's Part II Statement in accordance with the *Freedom of Information Act 1982*
- public notices as required by legislation

5.0 ASSOCIATED DOCUMENTS

- *Local Government Act 2020*
- *Local Government Act 1989*
- *Privacy and Data Protection Act 2014*
- *Freedom of Information Act 1982*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Public Records Act 1973*
- *Equal Opportunity Act 2010*
- Mornington Peninsula Shire Community Engagement Strategy [pending adoption]
- Mornington Peninsula Shire Community Engagement Policy [pending adoption]
- Mornington Peninsula Shire Privacy Policy
- Governance Rules
- Governance Framework

6.0 DEFINITIONS

Confidential information has the same meaning as defined in section 3(1) of the *Local Government Act 2020*

Information: For the purposes of this policy and the Public Transparency Principles, information includes documents.

Transparency: Organisations are transparent when they enable others to see and understand how they operate. To achieve transparency, an organisation must provide information about its activities and

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Council Policy

Public Transparency Policy



governance to stakeholders that is accurate, complete, and made available in a timely way. Transparency enables accountability. This does not mean all information should be made publicly available. There are certain types of information that may not be provided publicly, including personal information such as client records, and 'commercial in confidence' material such as tender submissions.

Public Interest: Council considers a range of factors when determining if the release of information is in the public interest. These include

- the aims of the *Freedom of Information Act 1982* (such as the scrutiny of government, inform debate, promote oversight of government spending)
- public participation in government decision-making

Council is not required to make publicly available information if its release would be contrary to the public interest, in accordance with the *Local Government Act 2020*. When considering the public interest, Council will apply the test that exists in the *Freedom of Information Act 1982*. Council may refuse to release information if it is satisfied that the harm to the community likely to be created by releasing the information will exceed the public benefit in it being released. When considering possible harm from releasing information, Council will only concern itself with harm to the community or members of the community. Potential harm to Council will only be a factor if it would also damage the community, such as where it involves a loss of public funds or prevents Council from performing its functions.

Information that might be withheld because it is not in the public interest may include:

- internal working documents that have not been approved or submitted to Council, especially where their release may mislead the public
- directions to Council staff regarding negotiations in contractual or civil liability matters, where release may damage the Council's capacity to negotiate the best outcome for the community; and
- correspondence with members of the community, where release may inappropriately expose a person's private dealings.

7.0 POLICY OWNER

The Policy is endorsed and approved by the Council. The Head of Governance and Legal is the responsible person for this policy.

8.0 DOCUMENT CONTROLS

Council will review this policy within 12 months from the date of adoption.

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Council Policy

Public Transparency Policy

Objective Reference: TBA



1.0 AUTHORITY

- *Local Government Act 2020*, Section 57

2.0 INTENT

The purpose of this policy is to ensure the Mornington Peninsula Shire (the Shire) demonstrates and promotes transparency in its decision making by giving effect to the Public Transparency Principles set out in Section 58 of the *Local Government Act 2020* (the Act) as follows:

- a) Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of the *Local Government Act 2020* or any other Act;
- b) Council information must be publicly available unless:
 - i. the information is confidential by virtue of the *Local Government Act 2020* or any other Act; or
 - ii. public availability of the information would be contrary to the public interest;
- c) Council information must be understandable and accessible to members of the municipal community
- d) Public awareness of the availability of Council information must be facilitated.

This policy describes how information will be made available to the public and is an integral part of the Shire's governance framework.

3.0 SCOPE

This policy applies to the Shire, Shire staff, Councillors and any committee or other body making decisions under the delegated authority of Council.

4.0 GOVERNANCE PRINCIPLES

Under the *Local Government Act 2020*, Council must give effect to the following overarching governance principles:

- a) Council decisions are to be made and actions taken in accordance with the relevant law;
- b) the municipal community is to be engaged in strategic planning and strategic decision making;
- c) the transparency of Council decisions, actions and information is to be ensured.

5.0 POLICY STATEMENT

5.1 The Shire is committed to the principles of public transparency. The Shire considers transparency a cornerstone of democratic governance. Openness, accountability and honesty are essential for fully informed engagement in the democratic process. Effective community engagement, planning, financial management and the performance of all Shire responsibilities are underpinned by transparent processes.

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Council Policy

Public Transparency Policy

Objective Reference: TBA



5.2 The Shire demonstrates its commitment to public transparency through its organisational value of 'Openness'. "We share knowledge and learning for the benefit of all, actively engage with our community, and are transparent in our decision making".

5.3 Shire decisions are made with transparent processes that are:

- undertaken in accordance with the Act and the Governance Rules;
- conducted in an open and transparent forum, unless in accordance with the provisions in the Act and Governance Rules;
- made fairly and on its merits, and where any person whose rights will be directly affected by a decision of the Shire, that person will be entitled to communicate their views and have their interests considered; and
- informed by community engagement, in accordance with the Community Engagement Principles and the Shire's Community Engagement Policy.

5.4 Shire information is made publicly available through:

- publication on one or more of the Shire's websites, social media pages and printed publications
- documents available for inspection at one or more Shire offices both on display and by request
- release under the *Freedom of Information Act 1982*.
- key Council budget briefings open to the public
- by any other appropriate means as determined by the Shire, the Chief Executive Officer, or the Manager – Legal and Governance

5.5 All Shire information will be made publicly available unless it is confidential, or its release would not be in the public interest. Examples of Shire information that is publicly available include:

- agendas and minutes of Council meetings
- adopted plans, policies and strategies
- financial and non-financial performance reports
- complaints handling processes
- community engagement processes
- statutory registers

A list of publicly available Shire information is provided in the Shire's Part II Statement published on the Shire's website in accordance with the *Freedom of Information Act 1982*.

Where information is not already available and not confidential, the Shire will facilitate direct release of the information (i.e. without needing to apply under Freedom of Information) where the Shire considers its release to be in the public interest.

Some Shire information may not be made publicly available. This will only occur if the information is confidential, or if its release would be contrary to the public interest or not in compliance with the *Privacy and Data Protection Act 2014*. The Shire will adopt a strict interpretation of *confidential* within the Act to ensure information is not inappropriately characterised as confidential when it should be made available to the public.

5.6 Shire information is understandable and accessible to members of the municipal community.

5.6.1 The Shire makes information understandable by:

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- promoting the use of legible, plain, jargon free language in written materials, publications and reports
- adhering to style guides and corporate templates that are set out to enhance understanding
- training staff in effective communication, presentation and report writing skills
- providing community engagement opportunities that facilitate discussion, clarification and explanation of Shire information

5.6.2 The Shire makes information accessible by:

- publishing information in a range of formats, including via social media platforms, on the Shire's website and in hard copy format and printed publications distributed across the municipality
- proactively and routinely releasing information for free or low cost
- responding to individual requests for information
- responding to applications made under the *Freedom of Information Act 1982*
- complying with the *Disability Discrimination Act 1992*
- considering accessibility and cultural requirements in accordance with the *Charter of Human Rights and Responsibilities Act 2006*
- complying with the Web Content Accessibility Guidelines 2.0
- advertising the availability of interpretation services and the National Relay Service

5.7 Public awareness of Shire information is facilitated by:

- promotion on the Shire's website, social media platforms such as 'Have Your Say', and printed publications (e.g. Peninsula Wide)
- community engagement opportunities
- publication of the Shire's Part II Statement in accordance with the *Freedom of Information Act 1982*
- public notices as required by legislation

6.0 HUMAN RIGHTS CHARTER COMPATIBILITY

This policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

7.0 ASSOCIATED DOCUMENTS

- *Local Government Act 2020*
- *Local Government Act 1989*
- *Privacy and Data Protection Act 2014*
- *Freedom of Information Act 1982*
- *Public Records Act 1973*
- *Equal Opportunity Act 2010*
- Mornington Peninsula Shire Community Engagement Strategy
- Mornington Peninsula Shire Community Engagement Policy
- Mornington Peninsula Shire Privacy Policy
- Governance Rules
- Governance Framework

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Council Policy

Public Transparency Policy

Objective Reference: TBA



8.0 DEFINITIONS

Confidential information: has the same meaning as defined in section 3(1) of the *Local Government Act 2020*

Information: For the purposes of this policy and the Public Transparency Principles, information includes documents.

Transparency: Organisations are transparent when they enable others to see and understand how they operate. To achieve transparency, an organisation must provide information about its activities and governance to stakeholders that is accurate, complete, and made available in a timely way. Transparency enables accountability. This does not mean all information should be made publicly available. There are certain types of information that may not be provided publicly, including personal information such as client records, and 'commercial in confidence' material such as tender submissions.

Public Interest: The Shire considers a range of factors when determining if the release of information is in the public interest. These include

- the aims of the *Freedom of Information Act 1982* (such as the scrutiny of government, inform debate, promote oversight of government spending)
- public participation in government decision-making

The Shire is not required to make information publicly available if its release would be contrary to the public interest, in accordance with the *Local Government Act 2020*. When considering the public interest, the Shire will apply the test that exists in the *Freedom of Information Act 1982*. The Shire may refuse to release information if it is satisfied that the harm to the community likely to be created by releasing the information will exceed the public benefit in it being released. When considering possible harm from releasing information, the Shire will only concern itself with harm to the community or members of the community. Potential harm to the Shire will only be a factor if it would also damage the community, such as where it involves a loss of public funds or prevents the Shire from performing its functions.

Information that might be withheld because it is not in the public interest may include:

- internal working documents that have not been approved or submitted to Council, especially where their release may mislead the public
- directions to Shire staff regarding negotiations in contractual or civil liability matters, where release may damage the Shire's capacity to negotiate the best outcome for the community; and
- correspondence with members of the community, where release may inappropriately expose a person's private dealings.

Approved by: Council
Approval date: XX/XX/XX
Scheduled Review Date: 2026

Page 4 of 5
Version #: 002

Document issue is correct at the time of print. For printed copies, use https://mornpen.sharepoint.com/Lists/Policies/Corporate_Policies.aspx

Council Policy

Public Transparency Policy

Objective Reference: TBA



9.0 POLICY SPONSOR

The Manager – Legal and Governance is responsible for overseeing the application and review of the Public Transparency Policy.

10.0 DOCUMENT CONTROLS

Council will review this policy within 4 years from the date of adoption or earlier as required.

Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, the change to an existing policy or document referred to in this policy, and minor updates to legislation and the like which does not have a material impact. However, any change or update which materially alters the document must be by resolution of Council.

Approved by: Council
Approval date: XX/XX/XX
Scheduled Review Date: 2026

Page 5 of 5
Version #: 002

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Tailored professional development just for Councillors

Online coaching programs commence Feb 2022

Get the most from the rest of your term

Plan what you'll do in '22

Master your role

Overcome persistent challenges

Make your difference, leave a legacy



Experienced Councillor coach, Ruth McGowan provides exceptional coaching programs to create a safe place for conversations about the art and science of positive politics.

Get the support you deserve. Ruth will help you to not only survive, but you will learn lasting skills to help you thrive.

ENROL NOW - places limited

IS COACHING RIGHT FOR YOU?

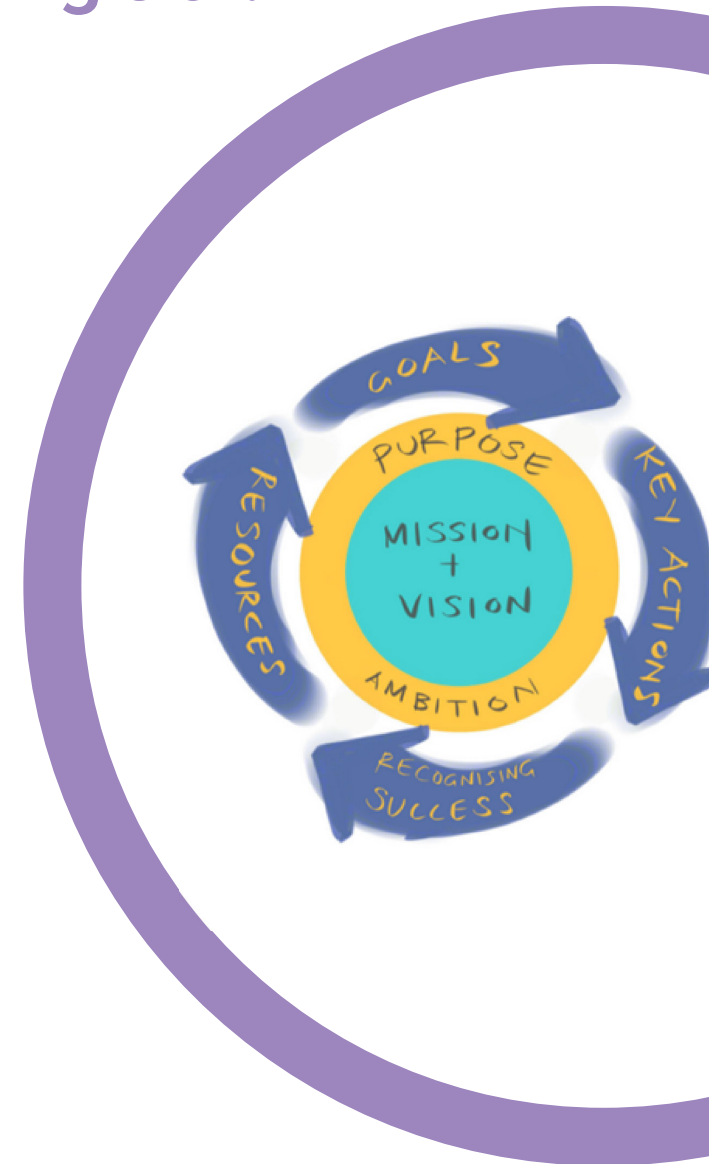
Are you:

- Motivated to accelerate your personal and professional growth?
- Ready to make an impact and be known as someone who gets stuff done?
- Wanting to get back in control of your time so your health, relationships and employment don't suffer from the 'time suck' of council?
- Feeling stuck and frustrated by some of the behaviour in your chamber?
- Concerned that after one year into your term, you still aren't cutting through on your goals?
- Feeling exhausted after 2021 and now you need to get your mojo back for 2022?
- Seeking support to set goals and actions for the rest of your term with an understanding coach who can help keep you on track?

If this resonates with you, then perhaps it's time to consider Councillor Coaching? Work with Ruth in 2022 for an unforgettable experience that will impact your life in positive ways, beyond your role as a Councillor.

If you are comfortable with cruising along at a 'good enough' pace and you're satisfied with your progress to date, then go well. Coaching is probably not for you.

*Coaching helps you to be the Councillor
your community hope they elected -
and to be the leader you aspire to be.*



2022 Programs

Invest your professional development allowance in tailored training that really works!
(Program fees include GST)

Master Class webinars

Throughout 2022, Ruth will hold regular online Masterclasses on topical issues. Includes resources and expert guests. Open to all Councillors throughout Australia. Dates to be announced.

Fee: approx. \$60

1. Group coaching

- Small group monthly sessions with other smart, focussed councillors
- Boost your political savvy, learn to master the politics of the chamber
- Develop your influence and persuasion skills for good!
- Powerup your communication and master the art of the message
- Build effective relationships with peers and across government
- Councillor First Aid provided when needed

Commences with a 2-hr, one-on-one personal session followed by six, monthly group sessions of 90 min, by zoom. Fee: \$3900

2. One-on-one coaching

- Bespoke coaching, tailored to your situation, challenges and opportunities
- Content covers: Political Intelligence, influence, building your professional brand, double your impact, networking, stakeholder mapping, vitality
- Coaching 'First Aid' provided when needed

Commences with a one-on-one personal session followed by five, one-hour, zoom sessions (monthly or fortnightly depending on preferences).

Fee: \$5500

3. Monthly online mentoring group

- These sessions are open to previous and current coaching clients
- Meet other successful councillors just like you. Join lively discussions on topical issues and engage with like-minded peers

Join Ruth on the last Thursday of each month for a thought-provoking and friendly lunch-time discussion from 12 midday - 12:45 pm.

Subscribe 10 workshops, 10 months \$2000

Coaching support for Councillors

Reach your potential as a leader with this exceptional support.

Coaching supports Councillors to:

- Boost political savvy and master the politics
- Manage the pressure and time demands to achieve a better work/life balance
- Learn how to build influence and expand your impact
- Make the most of the opportunities before you as a Councillor
- Build useful relationships so you can be a better advocate with key stakeholders
- Prioritise your workload to focus on what matters and be effective, not just 'busy'
- Build confidence and the ability to 'show up' with the authority you deserve
- Sharpen your communication skills. Learn simple scripts and frames that can be used anywhere, anytime for powerful impact
- Lift your online, professional brand

Skills learned are sustainable for the long term and can successfully be applied in other parts of your life

Ready to make your difference in 2022?

Don't do it alone. Get support to:

- ➔ Clarify your goals
- ➔ Develop a realistic action plan
- ➔ Manage the barriers to your success and start winning!



Benefits to council

Experienced CEOs recognise the value of engaging a coach or a mentor for themselves and their executive team leaders. This support is now also available to help Councillors fast track the leadership skills they need to thrive in public office.

The most effective Councillors are those that undertake professional development and seek to continuously learn and improve. PD is especially important for first-term Councillors. Coaching provides timely and informed feedback in a confidential environment and a non-judgemental 'listening ear'. This can make all the difference in supporting council's elected leaders to excel.

Invest a Councillor's training allowance in coaching and support them to:

- Focus on their strategic term goals
- Build positive political skills
- Develop stronger relationships, influence and networks with stakeholders
- Enhance their time management and build balance with other demands
- Build resilience in a stressful role and reduce frustration
- Develop leadership and good governance skills
- Nurture a culture of respectful and inclusive behaviour, to peers and officers
- Cut through with effective messaging rather than rambling

Coaching delivers a guaranteed return on your council's investment in Councillor PD.

Exceptional training for Councillors

- ✓ Confidential, private and discrete
- ✓ Tailored to an individual's needs
- ✓ Includes timely resources (books and articles)
- ✓ Access to backup support with 'Councillor First Aid' for those times when a quick call can reassure and bolster confidence



Testimonials

I loved working with Ruth as my Mayoral mentor! She was always available, insightful, analytical and driven by good governance and best practice.
Lisa Cooper Knox City Council Mayor 2020-21

Ruth has been an absolute god-send for me this year. She has empowered me and taught me so much already. Could not have survived my first year on council without her!
Cr Lauren Dempsey - Northern Grampians Council

As a new councillor, I enrolled in Ruth's group coaching program to develop my confidence in the unfamiliar role. Not only was I supported with confidence, Ruth also shared many skills, tips and tools so I could conduct myself professionally even in challenging situations. The connection with the other councillors in my coaching group was invaluable. We learned from each other's experiences and have formed a supportive network of strong, determined women who want great outcomes for our communities. I highly recommend Ruth's coaching to anyone wanting to ensure they perform at their very best.
Cr Linda Jungwirth - Loddon Council

I can confidently recommend Ruth as an experienced and skilled supporter of new Councillors as they navigate the trials and misunderstandings of council and the social and political world they have stepped into.
Pam Clarke, OAM (past Mayor Rural City of Horsham)

I have absolutely cherished my time as part of Ruth's executive group coaching alongside four other incredible women. The value of my investment was 100 times over and my Councillor journey was enriched because of this experience.
Cr Jenna Davey Burns - Kingston Council



About Ruth McGowan OAM

- Trained with the International Coaching Federation (ICF) Ruth is also an accredited trainer with UK-based, The Academy of Political Intelligence.
- A well known and admired leader for gender equality in politics, Ruth delivers candidate training around Australia. She is the author of Get Elected, a practical guide for winning public office in Australian politics.
- Before training as a Councillor Coach and Political Intelligence instructor, Ruth managed natural resource projects for the Victorian government. As an active community leader, she was twice successfully elected to council, including a term as Mayor. With her background, she understands the environment Councillors work in. She personally knows what it takes to not just survive your term on Council but to thrive and deliver a legacy of positive change.
- Now as a consultant and coach, Ruth supports well-intentioned Mayors and Councillors to step into their leadership potential and successfully manage the daily challenges, different personalities and council chamber politics.
- Ruth is a sought after trainer and facilitator for local councils and peak bodies and is an engaging keynote speaker.
- Ruth was honoured for her community leadership with a National Emergency Medal (2013) and an Order of Australia Medal (2014)

FIND OUT MORE

Email: ruth@ruthmcgowan.com

Phone: 0431 664 693

<https://ruthmcgowan.com>

Li: [ruth-mcgowan-oam](https://www.linkedin.com/company/ruth-mcgowan-oam)



Master
The
Politics

Date: 9 April 2022

Request For Proposal for the supply of

**Independent Advisor -
Chief Executive Officer
Performance and Remuneration Review**

for the Mornington Peninsula Shire Council
(ABN 53 159 890 143)

RFP Number:CN2634

PART A – GENERAL INFORMATION

Invitation

The Council is pleased to invite Requests for Proposals (RFP) for the Independent Advisor – Chief Executive Officer Performance and Remuneration Review (RFP Deliverables).

This request for RFP (RFP) consists of the following Parts (collectively the RFP Document):

- (A) Part A: General Information.
- (B) Part B: RFP General Terms and Conditions.
- (C) Part C: Consultancy Agreement.
- (D) Part D: Response Document.

The entity submitting a proposal (Contractor) confirms, by submitting their proposal, that the Contractor has read, understood and agrees to the terms of the RFP Document.

Overview

Council	<p>Name: Mornington Peninsula Shire Council</p> <p>Address: 90 Besgrove Street, Rosebud VIC 3939</p> <p>ABN: 53 159 890 143</p>
RFP Contact	All queries regarding the RFP must be directed to Amanda Sapolu, Manager Legal and Governance at amanda.sapolu@mornpen.vic.gov.au .
Project	<p>Mornington Peninsula Shire Council (MPSC) invites Independent Advisors to submit a Request for Proposal for the Chief Executive Officer Performance and Remuneration Review.</p> <p>The Independent Advisor is responsible for providing independent professional advice in relation to the matters dealt with under this Policy in accordance with section 45(2)(a) of the Local Government Act.</p>
Pricing	The Contractor must submit the rates it proposes to provide for the RFP Deliverables.
Agreement	The successful Contractor will be required to enter into an agreement with the Council in the form provided at Part C.
Site	90 Besgrove Street, Rosebud VIC 3939

RFP timetable

The Council proposes the following indicative timetable for the RFP (**RFP Timetable**):

Stage	Date
Issue RFP	9 April 2022
RFP Closing Date and Time	6 May 2022
Evaluation	9 May to 20 May 2022
Interviews	23 May to 27 May 2022
Council Decision	14 June 2022
Commence provision of RFP Deliverables	1 July 2022

Introduction and Description of the Deliverables

The Council is seeking the services of an experienced and suitably qualified, Independent Advisor to the CEO Performance and Remuneration Committee (Committee).

The Independent Advisor is responsible for providing independent professional advice in relation to the matters dealt with in accordance with section 45(2)(a) of the *Local Government Act 2020*.

Objectives

The Independent Advisor work with the Committee for the purpose of fulfilling its statutory responsibilities concerning the Chief Executive Officer employment matters.

These matters relate to the following:

- Annual Performance Reviews of the Chief Executive Officer, including assisting the Committee with recommendations to Council as a result of performance reviews.
- Review of Remuneration and conditions of employment of the Chief Executive Officer.
- The process relating to the appointment of Chief Executive Officer.

The successful consultant will work in close collaboration with the Committee and the Chief Executive Officer on the review and development of Key Performance Objectives which are reported on a quarterly basis.

The successful consultant is not expected to work full time and time required will vary over the term of the engagement subject to the requirements of Council's committee.

Key Outcomes

- Assist the Council to comply with its obligations under the *Local Government Act 2020* and the Chief Executive Officer Employment and Remuneration Policy.
- Assist the Council in preparing a Performance Plan.
- Assist the Council in evaluating the CEO's performance, including:
 - Providing a performance review framework
 - Assist Council in the development of appropriate key performance indicators.
 - Implementing a process for consultation with Councillors, facilitating engagement and discussion, driving consensus outcomes where possible, collating feedback and presenting feedback for endorsement.
 - Oversight and management of the CEO's achievement to key performance indicators
- Preparation of the Annual Performance Plan
- Providing professional advice to the Councillors in respect of performance management, remuneration management and management of the CEO's performance.
- Work with Council staff to facilitate reporting and record keeping.
- Provide advice on provisions to be included in the CEO contract of employment.
- Provide advice on the retention, renewal or recruitment of the CEO.
- Attend meetings as required.
- Other assistance as required.

Key Performance Indicators

The Independent Advisors success will be measured against these key performance indicators.

Key Performance Outcome	Key Performance Indicator
Comply with Obligations under the Act and Policy	Demonstrated knowledge and understanding of the Act and the Policy and their implementation
Preparation of a Performance Framework	Preparation of a Plan that is contemporary and innovative, which allows Council to effectively and meaningfully oversight the performance of the CEO. Preparation of KPIs that are measurable and achievable, appropriately linked to the Council and Wellbeing Plan and Council's strategic direction. Provision of templates and working documents to assist Councillors and the Council. Preparation of appropriately quarterly review documents and the Annual Performance Plan.
Provision of advice to Councillors	Provision of performance management/human resources/organisational development/governance advice that is appropriately informed by best and contemporaneous practice.
Preparation of Reports	High quality reports are prepared (with the assistance of Council) that reflect Council's decision making in a way that is transparent and defensible.
Engagement with Councillors	Councillors are professionally engaged in meaningful discussions.
Timeliness	Engagements, meetings, preparations of reports etc are completed in a timely manner.
Frank and fearless advice	Advice is provided without fear or favour to ensure that Councillors are provided with the best advice.

Evaluation Criteria

The following evaluation criteria are intended to give Contractors an indication of the factors used in evaluating Proposals. These criteria are not set out in any order of priority or weighting. The Council may at its sole and absolute discretion remove criteria stated below or add further criteria to the

The Council is not required to accept the lowest price offered.

Criteria	Weighting
Compliance with the RFP Document	Degree of compliance
Extent of proposed departures from the RFP Document	Degree of compliance

Skills Criteria	Weighting
Experience in similar positions	40%
Relevant Qualifications	20%
Experience in local government	20%
Capability	20%
Sub Total	100%
Price	

Date: 9 April 2022

Request For Proposal for the supply of

**Independent Advisor -
Chief Executive Officer
Performance and Remuneration
Review**

**for the Mornington Peninsula Shire Council
(ABN 53 159 890 143)**

RFP Number:CN2634

PART B: RFP TERMS AND CONDITIONS

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Part B – Terms and Conditions

- RFP General Terms and Conditions

1. Lodgement

1.1 Status of RFP

This RFP is an invitation to submit a Response for the provision of the Goods and/or Services as set out in this RFP.

1.2 Date and time and place of lodgement

The Contractor must submit a complete Proposal to the Place of Lodgement by no later than the Closing Date and Time specified below:

Closing Date and Time	Friday 29 April 2022 at 5.00pm (Melbourne time)
Type of Lodgement	Electronic
Place of Lodgement	Amanda.Sapolu@mornpen.vic.gov.au Hardcopy or delivered Proposals will not be accepted under any circumstances.

The Proposal must be submitted email no later than the Closing Date and Time.

1.3 Others to be bound

The Service Provider shall ensure that any of its Representatives, or any other person to whom it supplies this RFP and any other documents issued in relation to the RFP Process, will, in relation to use of, return of and liability for that material and documentation, be bound by the same terms in or to the same effect as those contained in this RFP.

1.4 Continuing obligations

The obligations of the Service Provider under this clause 1 survive the termination or expiration of the RFP Process.

2. Content and format

2.1 RFP content and structure

Contractors must structure the Proposal according to the requirements set out in this item 2. A Proposal that does not adhere to these requirements will be regarded as a non-conforming Proposal (**Non-conforming Proposal**).

The Proposal must:

- (a) be submitted in the form of the response document provided in **Error! Reference source not found.(Response Document)** and include all information required in the Response Document;
- (b) address how the Contractor will provide the RFP Deliverables described in this RFP Document clearly and concisely and identify all RFP Deliverables needed to meet the required outcomes, together with their costs;
- (c) provide any necessary explanatory or extra material with the Proposal;
- (d) not include irrelevant marketing material; and

(e) Contractors must base the Proposal on the best information available at the time of the response. Contractors acknowledge that the Council relies on the Contractor's knowledge and expertise as expressed in the Proposal.

2.2 Covering letter

A covering letter must accompany the Proposal. The covering letter must be printed on the Contractor's letterhead and signed by a person authorised to do so.

2.3 Conforming Proposals

A conforming Proposal is one that:

- (a) is in the form of the Response Document;
- (b) provides all information required by and in accordance with the requirements set out in this RFP Document (including the Response Document);
- (c) contains no qualifications or conditions except as permitted by this RFP Document; and
- (d) offers to provide all of the components of the RFP Deliverables described in the Description of RFP Deliverables.

2.4 Late Proposals

Proposals must be submitted by the Closing Date and Time. Late Proposals will not be considered.

2.5 Extensions

The Council may extend the Closing Date and Time in its sole and absolute discretion.

2.6 Alternative Proposal

Where the Contractor wishes to also submit an alternative Proposal not in conformity with the requirements of the RFP Document, it may do so but must ensure the Proposal is endorsed "Non-conforming Proposal – Alternative Proposal".

2.7 RFP validity

In submitting a Proposal, the Contractor is making an offer to the Council on the terms of the Proposal which is capable of acceptance by the Council. Proposals will remain open for a period of [six (6)] months from the Closing Date and Time and will not be capable of being withdrawn or varied without written approval of the Council.

2.8 Non-conforming Proposals

The Council reserves the right to accept or reject any Non-conforming Proposal in its sole and absolute discretion.

2.9 Proposal declaration

The Contractor must sign the Proposal declaration in Part D – Response Document.

3. Rights, obligations and acknowledgements

3.1 Council's rights in relation to the conduct of this RFP

The Council may at any time before or after the Closing Date and Time in its sole and absolute discretion, without any obligation to provide notice or reasons for doing so:

- (a) amend or suspend the proposed RFP Timetable;
- (b) conduct and terminate preliminary discussions or negotiations with one or more Contractors including contract negotiations;
- (c) conduct and attend presentations with one or more Contractors;
- (d) shortlist and de-shortlist one or more Contractors;

- (e) request any Contractor to submit an improved or an alternative offer;
- (f) suspend or cease negotiations or recommence negotiations with any Contractor;
- (g) obtain the work the subject of this RFP from a party outside of this RFP;
- (h) accept only part of a Proposal;
- (i) accept Proposals from more than one Contractor;
- (j) reject all Proposals; and
- (k) temporarily or permanently suspend, discontinue or terminate the RFP.

3.2 Contractor's acknowledgements

- (a) The Contractor acknowledges and agrees that:

- (i) the pricing and proposed terms set out in the Proposal will be deemed to remain valid and open to acceptance by the Council for at least the period stated in paragraph 2.7 of Part B after the Closing Date and Time;

- (ii) this RFP Document does not create any legal relationship and is not a recommendation, offer or invitation to enter into a legal relationship, contract, agreement or other arrangement in respect of the RFP Deliverables the subject of this RFP;

- (iii) the Contractor has made its own enquiries in deciding whether to submit a Proposal and in preparing the Proposal, the Contractor has not relied on any statement or representation from the Council or any employee, agent or contractor of the Council;

- (iv) participation in this RFP is at the Contractor's sole risk and all costs, losses, expenses and liabilities the Contractor incurs in any way arising out of or in connection with this RFP and preparation of a Proposal will be borne entirely by the Contractor; and

- (v) the Council will not be liable to the Contractor for any claim, cost, loss, expense or liability in any way associated with this RFP and the preparation of a Proposal.

- (b) By submitting a Proposal in accordance with this RFP Document, the Contractor agrees that it has not and will not:

- (i) seek in any way to influence any decisions made by the Council during the conduct of this RFP;

- (ii) communicate, meet with or arrive at any arrangement or understanding (express, implied, in writing or otherwise) with any other Contractor or potential Contractor concerning this RFP;

- (iii) engage in any behaviour that may be regarded as collusive or anti-competitive; and

- (iv) without derogating from the obligations in paragraphs 3.2(b)(i), (ii) and (iii) of Part B, if a Proposal includes the involvement of another party:

- (A) the Contractor has made full and frank disclosure of the nature of that involvement in the RFP;

- (B) the Proposal is made on the basis that if successful, the Contractor will contract directly with the Council and any other party's involvement in the provision of the RFP Deliverables will be in the role of subcontractor; and

- (C) the Contractor will remain liable for all rights and obligations under any agreement with the Council, notwithstanding the engagement of or the Council's approval of subcontractors,

- and the Contractor warrants and represents that it has not done any of these things at any time in relation to the RFP.

4. Communication

4.1 Communication protocol

- (a) Any questions or requests for clarification or further information regarding this RFP or the RFP Process must be asked via email at the address for lodgement.
- (b) The Council is not obliged to respond to any question or request, irrespective of when such question or request is received.
- (c) The Council may restrict the period during which it will accept questions or requests for further information or for clarification and reserves the right not to respond to any question or request, irrespective of when such question or request is received.
- (d) The Council may use any method of its choosing to provide answers to questions submitted in accordance with this clause 4.1
- (e) If a question or request relates to only a particular Service Provider, as determined by the Council, the Council may provide its response to that question or request (if any) only to that particular Service Provider.
- (f) Responses to questions or requests that do not specifically relate to a particular person or organisation may be published to all Service Providers by the Council without identifying the person or organisation having submitted the question or request, in which event such responses shall form part of this RFP.

4.2 Briefing session

There will be no briefing session.

4.3 Unauthorised communication and improper assistance

- (a) Communications (including promotional or lobbying activities) with the Council, its Representatives including Councillors are not permitted during the RFP Process.
- (b) Unauthorised communications with such persons may, in the absolute discretion of the Council, lead to disqualification of a Service Provider from further participating in the RFP Process.
- (c) Nothing in this clause 4.3 is intended to prevent communications with the Council's Representatives to the extent that such communications do not relate to this RFP or the RFP Process.
- (d) Service Providers must not seek or obtain the assistance of Representatives of the Council including Councillors in the preparation of their Responses. In addition to any other remedies available to it under Law or contract, the Council may, in its absolute discretion, immediately disqualify a Service Provider that it believes has sought or obtained such assistance.

4.4 Anti-competitive conduct

- a) Service Providers and their Representatives, including proposed subcontractors and suppliers, must not engage in any collusive, anti-competitive or similar conduct with any other Service Provider or person in relation to the:
 - i) preparation, content or lodgement of their Response;
 - ii) evaluation and clarification of their Response;
 - iii) conduct of negotiations with the Council; or
 - iv) RFP Process.
- b) For the purpose of this clause 4.4, collusion, anti-competitive conduct or any other similar conduct may include disclosure, exchange and clarification of information, whether or not such

Page 6

information is confidential to the Council or any other Service Provider or any person or organisation. It does not include discussions between members of a consortium or discussions between a Service Provider and a subcontractor to that Service Provider.

c) In addition to any other remedies available to it under Law or contract, the Council may, in its absolute discretion, immediately disqualify a Service Provider that it believes has engaged in, or whose Representatives it believes has engaged in, such collusive, anti-competitive or similar conduct.

4.5 Unlawful inducements

a) Service Providers and their Representatives must, at all times during the RFP Process, comply with any applicable Laws and State policies regarding the offering of unlawful inducements in connection with the preparation of their Response.

b) The Service Provider must not, and must ensure that its Representatives do not, make or provide any inducement, payment or promise to the Council or any of its personnel in connection with this RFP or the Goods and Services requested under it.

4.6 Legal entities and consortia

a) The Council will only enter into a Contract with a legal entity which has the capacity to enter into a binding contract. Service Providers must provide proof of their legal status if requested by the Council.

b) Where the Service Provider is a member of a consortium, the Response must stipulate which part(s) of the Goods and/or Services that each entity comprising the consortium would provide and how the entities would relate to each other to ensure full provision of the required Goods and/or Services. All consortium members are to provide details relating to their legal structure, and where applicable, provide details of any special purpose vehicle established to meet the requirements of this RFP.

c) Where the Service Provider consists of more than one entity, each of these entities will be jointly and severally liable to provide the Goods and/or Services.

4.7 Complaints about this RFP

Any complaint about this RFP or the RFP Process must be submitted in writing and sent by email to procurement@mornpen.vic.gov.au immediately upon the cause of the complaint arising or becoming known to the Service Provider. The written complaint must set out:

- a) the basis for the complaint (specifying the issues involved);
- b) how the subject of the complaint (and the specific issues) affects the person or organisation making the complaint
- c) any relevant background information; and
- d) the outcome desired by the person or organisation making the complaint.

Any complaint submitted to procurement@mornpen.vic.gov.au in accordance with this clause 4.7 that relates to the conduct or performance of the procurement contacts or Project Manager or the manner in which the procurement contacts or Project Manager has handled the RFP Process should be addressed to the Project Sponsor.

4.8 Conflict of interest

- a) Service Providers must not, and must ensure that their Representatives do not, place themselves in a position that may give rise to an actual, potential or perceived conflict of interest between the interests of the State and the Service Provider's interests during the RFP Process.
- b) Service Providers are required to disclose any conflicts of interest in their Response in accordance with the requirements in the response schedule.
- c) The Council may disqualify a Service Provider from the RFP Process if the Service Provider fails to notify the Council of any conflict of interest or if the Council determines that a conflict (whenever and howsoever arising) cannot be managed to the Council's satisfaction.

5. Evaluation

5.1 Evaluation process

- a) The Council will evaluate all Responses complying with the conditions of this RFP, including Late Responses where the Council is satisfied of the matters referred to in clause 3.2 of this Part B, in accordance with the evaluation process described in this clause 5.
- b) The Council will evaluate Responses in accordance with the Evaluation Criteria in Part A. In the event that one or more of the Evaluation Criteria are subjective, then the Council reserves the right to exercise discretion as to evaluation against that Evaluation Criteria.
- c) Responses which are significantly deficient as against one or more Evaluation Criteria may result in the Response not being further evaluated.
- d) The Council has absolute discretion in relation to the evaluation of a Response and the conduct of the evaluation process, including whether or not the proposed evaluation process set out in this clause 5 is followed in whole or in part by the Council. The commencement of negotiations by the Council with one or more other Service Providers is not to be taken as an indication that any particular Service Provider has been or has not been successful.
- e) A Response from a Service Provider will not be deemed to be unsuccessful until such time as the Service Provider is formally notified of that fact by the Council.
- f) Without limiting the Council's rights in relation to this RFP, the Council may, in its absolute discretion:
 - g) reject or accept any or all Responses in whole or in part;
 - I.reject a Response that does not include all the information requested or is not in the format required;
 - II.after concluding a preliminary evaluation, reject any Response that does not meet the mandatory pass/fail criteria specified in Item 5.2 or that, in its opinion, is unacceptable;
 - III.disregard any content in a response that is illegible without any obligation whatsoever to seek clarification from the Service Provider;
 - IV.disqualify an incomplete Response or evaluate it solely on the information contained within the Response;
 - V.shortlist one or more Service Providers to proceed to further negotiations;
 - VI.commence or continue discussions or negotiations with all or some Service Providers without shortlisting any Service Providers and allow any Service Provider to vary its Response;

- VII. conduct site visits, due diligence checks, reference checks, financial checks and panel interviews during the course of the evaluation;
 - VIII. invite some or all Service Providers to give a presentation to the Council in relation to their Responses and/or a demonstration of their goods and/or services;
 - IX. invite some or all Service Providers to submit a best and final offer in relation to all or certain aspects of their respective Responses;
 - X. conduct workshops on selected topics with some or all Service Providers, whether before or after the Closing Time;
 - XI. accept one or more of the Responses;
 - XII. alter the structure and/or the timing of this RFP or the RFP Process;
 - XIII. vary or extend any time or date specified in this RFP for any or all Service Providers;
 - XIV. elect not to appoint any Service Provider or enter into a contract with any Service Provider;
 - XV. cease to proceed with or suspend the RFP Process prior to the execution of a formal written contract;
 - XVI. consider Alternative Responses; or
 - XVII. call for new or revised Responses.
- h) The Council may, but is not in any way bound to, shortlist, select as successful, or accept the Response offering the lowest price.
- i) If the Council wishes to include a shortlisting stage in its evaluation process, the Council is not, at any time, required to notify Service Providers or any other person or organisation interested in submitting a Response.

5.2 Evaluation criteria

The evaluation criteria will be in accordance with Part A

5.3 Errors and omissions

The Council reserves the right to:

- (a) check Proposals for errors and omissions; and
- (b) by agreement, amend a Proposal to remedy any error or omission.

5.4 Illegible content, alteration and erasures

- a) Incomplete Responses may, at the Council's discretion, be disqualified or evaluated solely on the information contained in the Response.
- b) The Council may disregard any content in a Response that is illegible and will be under no obligation whatsoever to seek clarification from the Service Provider.

5.5 Responsibility for costs

- a) A Service Provider's participation or involvement in any stage of the RFP Process is at the Service Provider's sole risk, cost and expense. The Council will not be responsible for, nor pay for, any expense or loss that may be incurred by Service Providers in relation

to the preparation or lodgement of their Responses, any subsequent negotiations or any future process connected with or related to the RFP Process.

b) The Council is not liable to any Service Provider for any claim in respect of any costs, expenses or losses on the basis of any contractual, promissory or restitutionary grounds whatsoever as a consequence of any matter relating to the Service Provider's participation in the RFP Process, including instances where the:

I. Service Provider is not engaged to perform under any contract;

II. loss results from the exercise of the Council's rights (or failure to inform a Service Provider of the exercise of any of the Council's rights) in relation to the RFP Process, whether under this RFP or at Law; or

III. loss results from placing reliance on the RFP or any Additional Material or information supplied or made available by the Council.

5.6 Communication during the evaluation process

All communication with the Council in relation to this RFP must be in writing through email to amanda.sapolu@mornpen.vic.gov.au. The Contracts and Procurement unit will liaise and gather proposal information clarifications throughout the RFP. The Contractor may not otherwise contact any of the Council's representatives in relation to this RFP.

5.7 Clarification process

The Council may ask Contractor s to submit additional information (**Addenda**) at any time and may seek clarification of, or improvement of, a Proposal at any time during the evaluation process.

Requests for clarification, improvement or further information and notification of any discrepancy, omission or error in this RFP must be submitted via email.

The Council may, in its sole and absolute discretion, provide answers to requests for clarifications to one or more Contractor/s.

Contractors must acknowledge receipt of Addenda in Part D as part of their Proposal.

5.8 Changes to the RFP Timetable and evaluation criteria

The RFP Timetable and Evaluation Process represent the intended timing and conduct of this RFP. However, the Council may change the RFP Timetable and Evaluation Process at any time at its sole and absolute discretion.

5.9 Confidential information

This RFP Document and all information subsequently provided to the Contractor as part of this RFP Process is the Council's confidential information and must be kept confidential by the Contractor and only disclosed to the Contractor's employees, agents and advisors strictly on a need to know basis for the purpose of participating in the RFP and negotiating any resulting agreement.

The Council will keep each Proposal and any other information the Contractor submits in relation to this RFP (**Contractor Confidential Information**) confidential and only disclose Contractor Confidential Information to any employees, agents and advisors of the Council strictly on a need to know basis for the purpose of conducting the Evaluation Process and negotiating any resulting agreement.

A Contractor may not make any announcement or release any information regarding this RFP (including that it has been sent to the Contractor) without the Council's prior written consent.

5.10 Ownership of the Proposal

The copies (both in hard and electronic form) of the Proposal which the Contractor submits to the Council are the property of the Council and the Council is entitled to retain them in accordance with

its internal policies. The Council may reproduce and otherwise deal with the Contractor's Proposal solely for the purpose of the Evaluation Process and in relation to the conduct of this RFP.

Nothing in this paragraph or any other part of this RFP Document affects the ownership of any intellectual property that may exist in a Proposal submitted by a Contractor or otherwise.

5.11 Council's information

Any information the Council provides to the Contractor in this RFP Document and in relation to this RFP is based on the information available to the Council at the time. The Council makes no representation or warranty as to its accuracy or completeness and the Contractor must make its own enquiries and assessments without reliance on the information or data provided to the Contractor. The Council and any employees, agents and advisors of the Council will not be liable to the Contractor for any matter arising out of or in connection with this RFP Document or the Evaluation Process.

5.12 Information in proposal

The Council may rely on the statements made in a Proposal. The Contractor acknowledges that statements and information included in a Proposal may be included in and form part of any agreement that is executed between the Council and the Contractor as a result of this RFP.

6. Acceptance of Proposal

The Council will notify successful Contractor s in writing of the acceptance of their Proposal.

The Council is not obliged to disclose the results of the assessment of Proposals or the evaluation method used.

A Proposal is not accepted unless and until the Council executes a binding written contract for the RFP Deliverables.

6.1 No obligation to enter into contract

a) Notwithstanding the outcome of any evaluation conducted in accordance with clause 5 of Part B and without limiting any other rights the Council may have, the Council is under no obligation to appoint a successful Service Provider or to enter into a contract with a successful Service Provider or any other person, including where it is unable to identify an Response that complies in all relevant respects with the Council's requirements, or to do so would otherwise not be in the public interest.

b) Irrespective of whether the Council selects a successful Service Provider, if the Council decides not to enter into a contract, the Council will be free to proceed via any alternative process.

7. Disclosure requirements

7.1 Disclosure of Response contents and Response information

Responses will be treated as confidential by the Council. The Council will not disclose Response contents and information except:

a) as required by Law (including, for the avoidance of doubt, as required under the Freedom of Information Act 1982 (Vic) (FOI Act);

b) for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;

c) to Representatives (including external consultants and advisers to the Council) engaged to assist with the RFP Process, for the purposes of evaluating the Responses or making decisions or granting approvals in connection with this RFP or the RFP Process generally;

- d) as required by the office of the Auditor General appointed under section 94A of the Constitution Act 1975 (Vic) or the ombudsman appointed under the Ombudsman Act 1973 (Vic);
- e) as required by IBAC as established under the Independent Broad-based Anti-corruption Commission Act 2011 (Vic); or
- f) where general information from Service Providers is required to be disclosed by government policy, including in the circumstances described in clause 7.2.

7.2 Contract disclosure

It is the Councils general policy to consider reports recommending the awarding of contracts in open Council meetings. However, Council is committed to not disclosing information that is commercial in confidence. The Council has policies in place for Council and Council staff to avoid references to current or proposed contracts in discussion with acquaintances or outside interests
In submitting a Response, the Service Provider accepts that the Council may disclose (on the internet or otherwise):

- a) the name of the successful Service Provider(s);
- b) the estimated value of the Response(s) of the successful Service Provider(s); and
- c) the provisions of the contract generally.

7.3 Exemptions from disclosure

The Council will consider requests for exemption from disclosure in the evaluation of Service Providers' submissions and negotiations with Service Providers.

In determining whether any contractual clauses should be kept confidential, the Council will apply the exemptions from disclosure under the FOI Act. These exemptions include a public interest test under s36 of the FOI Act.

Any request by the successful Service Provider for non-disclosure of contract provisions must be justified by the successful Service Provider in accordance with s34(1) of the FOI Act. Under s34(1), information acquired by an organisation or a Minister from a business, commercial or financial undertaking is exempt from disclosure if the information relates to:

- a) trade secrets; or
- b) other matters of a business, commercial or financial nature and the disclosure would be likely to expose the undertaking unreasonably to disadvantage.

However, even if certain contractual clauses are redacted by agreement between the Council and the successful Service Provider, this will not:

- a) exempt the redacted clauses from the further operation of the FOI Act;
- b) reduce, limit or restrict in any way any function, power, right or entitlement of IBAC, the Privacy Commissioner or the Ombudsman; or
- c) constrain the Auditor General's power to secure and publish documents in accordance with the Audit Act 1994 (Vic).

In this clause 7:

- a) IBAC means the commission established under the Independent Broad-based Anti-corruption Commission Act 2011 (Vic) and includes any other organisation that may, from time to time, perform the functions of the commission;
- b) a reference to the "Privacy Commissioner" is a reference to the Commissioner for Privacy and Data Protection appointed under section 96 of the Privacy and Data Protection Act 2014 (Vic) or equivalent office holder (if any) with jurisdiction over the Council; and

- c) a reference to the "Ombudsman" is a reference to the Ombudsman or equivalent office holder with jurisdiction over the Council; and
- d) a reference to the "Auditor-General" is a reference to the Auditor-General or equivalent office holder with jurisdiction over the Council.

7.4 Unreasonable disadvantage

In determining whether disclosure of specific information will expose a Service Provider's business unreasonably to disadvantage, the Service Provider should consider s34(2) of the FOI Act. Broadly, the Service Provider should consider:

- a) whether the information is generally available to competitors; and
- b) whether the information could be disclosed without causing substantial harm to the competitive position of the business.

7.5 Service Provider warranties

By submitting a Response, a Service Provider warrants that:

- a) in lodging its Response, it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the organisation or its Representatives other than any statement, warranty or representation expressly contained in this RFP;
- b) it did not use the improper assistance of the Council or its Representatives or information unlawfully obtained from the Council or its Representatives in compiling its Response;
- c) it has examined this RFP, and any other documents referenced or referred to herein, and any other information made available in writing by the Council to Service Providers for the purposes of submitting a Response;
- d) it has sought and examined all necessary information which is obtainable by making reasonable enquiries relevant to the risks and other circumstances affecting its Response;
- e) it has otherwise obtained all information and advice necessary for the preparation of its Response;
- f) it has made proper allowance for all matters contained in or capable of inference from the information contained in this RFP or obtained as part of the RFP Process;
- g) it has made proper allowance for all matters which might impact upon the Service Provider's ability to provide the Goods and/or Services or provide the Goods and/or Services within any particular time, cost or quality constraints;
- h) it has, and will maintain, the necessary skill, qualification and experience to enable it to provide the Goods and/or Services or carry out the works in accordance with the Proposed Contract;
- i) it has, or will be able to, obtain all the necessary consents, permits and authorities necessary in order for it to provide the Services or carry out the works;
- j) it is satisfied as to the correctness and sufficiency of its Response;
- k) it is responsible for all costs and expenses related to the preparation and lodgement of its Response, any subsequent negotiation, and any future process connected with or relating to the RFP Process;
- l) its Response has been prepared professionally, with due care and skill;

- m) its Response has been prepared in accordance with all relevant Laws and mandatory codes of conduct;
- n) no inducement, payment or promise has been made by the Service Provider or any of its Representatives to any personnel of the Council in connection with this RFP or the Goods and/or Services requested under it;
- o) it does not, and will ensure that its Representatives do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, the interests of the State during the RFP Process;
- p) all statements made by the Service Provider with respect to its Response are true, not misleading and can be substantiated;
- q) it is not insolvent within the meaning of Section 95A of the Corporations Act 2001 (Cth) or otherwise and there is no unfulfilled or unsatisfied judgement or court order outstanding against the Service Provider and;
- r) it will provide additional information in a timely manner as requested by the Council to clarify any matters contained in its Response.

8. Council's rights

Notwithstanding anything else in this RFP, and without limiting its rights at Law or otherwise, the Council reserves the right, in its absolute discretion at any time, to:

- a) cease to proceed with or suspend the RFP Process;
- b) alter the structure and/or timing of this RFP or the RFP Process;
- c) vary or extend any time or date specified in this RFP for all or any Service Providers;
- d) terminate the participation of any Service Provider or any other person in the RFP Process;
- e) require additional information or clarification from any Service Provider or any other person or provide additional information or clarification;
- f) negotiate with any one or more Service Providers and allow any Service Provider to alter its Response;
- g) call for new Responses;
- h) reject any Response received after the Closing Time;
- i) reject any Response that does not comply with the requirements of this RFP; and/or
- j) consider and accept or reject any Alternative Response.

9. Law

9.1 Governing Law

This RFP and the RFP Process are governed by the Laws of Victoria.

9.2 Compliance with Law

- a) Service Providers must comply with all applicable Laws in preparing and lodging their Responses and in taking part in the RFP process.

- b) Any Service Provider, if requested by the Project Manager, must submit evidence of its compliance with any relevant Laws.



Date:

Consultancy Services Agreement

**CN2634 – Independent Advisor - Chief
Executive Officer Performance and
Remuneration Review**

**Mornington Peninsula Shire Council (ABN 53
159 890 143)**

and

[Insert Consultant name] (ABN/ACN [insert])

Part C: CONSULTANCY AGREEMENT

Consultancy Services Agreement



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Consultancy Services Agreement



General Terms and Conditions

1. Definitions and interpretation

1.1 Definitions

In this agreement unless the context clearly indicates otherwise:

Accounting Standards means the requirements of the Corporations Act, and any other relevant standards and generally accepted accounting principles applied from time to time in Australia for a business similar to the Consultant's business, in relation to the preparation and content of financial reports.

Address for Service means the address of:

- (a) the Client provided in Item 1; and
- (b) the Consultant provided in Item 2.

Associate has the same meaning as 'associate' in the Corporations Act.

Audit Notice has the meaning given to that term in clause 11.2.

Best Industry Practice means exercising the degree of skill, care and diligence to be expected from a skilled and competent service provider experienced in providing services commensurate to the type, size, value and complexity of the Services.

Business Day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria.

Breach Notice means a Notice issued by the Client specifying:

- (a) details of a breach of this agreement; and
- (b) requiring the Consultant to remedy that breach within 5 Business Days of the date of the Notice, or such other reasonable time as the Client may determine.

Change in Control in respect of a Party means where, at any time:

- (a) any person, together with any Associate or Associates, ceases to or commences to, directly or indirectly have Control of that Party (excluding to the extent such change is caught by this paragraph (a), a change in the membership of the board of the Party or a Related Body Corporate of the Party in the ordinary course of business); or
- (b) in the case of a trust, a change in the trustee, custodian or manager of that trust.

Claim means any claim, action, demand, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether in connection with this agreement, at Law, in equity, under statute or otherwise.

Client means the Party specified at Item 1.

Client Material means any material provided by or on behalf of the Client to the Consultant in connection with this agreement or the Services (including all modifications and improvements to such material developed under or in connection with this agreement or the Services).

Client Representative means the person specified at Item 3.

Client Supplied Information means any information provided by or on behalf of the Client (including any Client Material or use and access to any Information System).

Commencement Date has the meaning given at Item 5.

Confidential Information means any information in any form which:

- (a) is, by its nature, confidential or non-public;

Consultancy Services Agreement



- (b) is marked or designated or confirmed by a Party as confidential or proprietary at the time of its disclosure; or
- (c) a Party knows or ought to know is confidential, but excludes information that is:
 - (d) in or enters the public domain through no fault of either Party;
- (e) was made available to a Party by a person (other than the other Party) who, as far as that recipient Party knows, has or then had the unrestricted legal right to do so; or
- (f) was developed by a Party without that Party relying on, referring to, or incorporating any of the other Party's Confidential Information.

Consultant means the Party specified at Item 2.

Consultant Material means any material provided to the Client by the Consultant or on the Consultant's behalf in connection with this agreement including any plans, designs, engineering information, data, specifications and reports.

Consultant Representative means the person specified in Item 4.

Contract Details means the table so identified in Schedule 1.

Control means in respect of an entity:

- (a) control or influence of, or having the capacity to control or influence the composition of its board (or if the Party is a trust, the appointment or choice of the trustee of that trust), or decision making, directly or indirectly, in relation to its financial and operating policies;
- (b) being in a position to cast, or control the casting of, more than 20% of the maximum number of votes that may be cast at a general meeting of the members (or if the Party is a trust, a meeting of unitholders) of that entity;
- (c) having a relevant interest (as defined in section 608 of the Corporations Act) in more than 20% of the securities (as defined in the Corporations Act) of that entity; or
- (d) having a relevant interest (as defined in section 608 of the Corporations Act amended to replace each reference to 'security' in that definition with the word 'unit') in more than 20% of the units of that entity,

(whether alone or together with any Associates).

Controller means, in relation to a Change in Control of a Party, the person or body corporate to whom Control has or will pass.

Corporations Act means the *Corporations Act 2001* (Cth).

Deficient Services means Services or the results of any Services which are not in conformity with this agreement, are of inferior quality or workmanship or are otherwise unsatisfactory.

Dispute has the meaning given to that term in clause 21.

Dispute Notice means a notice issued pursuant to clause 21.

Expiry Date has the meaning given at Item 5.

Extension Notice has the meaning given at Item 5.

Fit for the Intended Purpose means that the Services satisfy the purposes, functions and requirements set out in, or which can reasonably be inferred from, this agreement.

General Terms and Conditions means these general terms and conditions and includes any schedules, annexures and attachments forming part of them.

GST means any form of goods and services tax payable under the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Consultancy Services Agreement



Government Authority means all persons and any government, government body, semi-government, local government, authority, administrative or judicial body, public authority, statutory corporation or instrumentality that has jurisdiction over the Services or the Premises.

Information System means any information system controlled or used by the Client, including any computer or network facilities.

Insolvency Event in relation to an entity, means:

- (a) a receiver, receiver and manager, administrator, trustee or similar official being appointed over any of the assets or undertaking of the entity;
- (b) the entity suspending payment of its debts generally;
- (c) the entity being or becoming unable to pay its debts when they are due or is unable to pay its debts within the meaning of the Corporations Act;
- (d) the entity entering into or resolving to enter into any arrangement, understanding or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an application or order being made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the entity or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the entity otherwise than for the purpose of an amalgamation or reconstruction which has the prior consent of all of the members of the entity; or
- (f) an administrator being appointed in accordance with the Corporations Act; and
- (g) in relation to an individual, means the individual being or becoming insolvent or committing an act of bankruptcy as those terms are used in the *Bankruptcy Act 1966* (Cth).

Insurance Policy means:

- (a) Public & Products Liability Insurance;
 - (b) Professional Indemnity Insurance;
 - (c) Property Insurance;
 - (d) Workers Compensation Insurance; and
 - (e) Motor Vehicle Insurance,
- for such period as specified in the Item 6 in respect of each insurance policy.

Intellectual Property Rights means all rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, inventions and Confidential Information, and all and any other results of intellectual activity in any field whether or not registrable, registered or patentable. These rights include rights that may exist in applications to register these rights and all renewals and extensions of these rights.

Item means an item of Schedule 1.

Key Deliverables means those deliverables more particularly specified in clause 0 of Schedule 2 and such other deliverables as the Client may specify in writing to the Consultant from time to time.

Key Performance Indicator means those key performance indicators specified in clause 1.3 of Schedule 2 and such other key performance indicators as the Client may advise the Consultant of in writing from time to time.

Law means:

- (a) all present and future Acts of Parliament of the Commonwealth of Australia or of any State or Territory of Australia, regulations, codes, ordinances, local laws, by-laws, rules and requirements of all Authorities;

Consultancy Services Agreement



- (b) any Licences; and
- (c) those principles of common law and equity established by decision of the courts.

Liability means any debt, obligation, Claim, action, cost (including legal costs on an indemnity basis, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, losses, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,
and whether incurred or payable under this agreement or otherwise at Law.

Licence means all licences, qualifications, registrations and other statutory requirements necessary for the performance of Services pursuant to and in compliance with this agreement.

Moral Right means the rights defined as 'Moral Rights' in the *Copyright Act 1968* (Cth).

Motor Vehicle Insurance means a policy of comprehensive motor vehicle insurance covering third party property damage, or any injury to or death of any person, arising from or in relation to any plant or vehicles (registered or unregistered) in connection with this agreement with a limit of indemnity of not less than the amount specified at Item 6.

Notice has the meaning given in clause 20.

Party means a party to this agreement and **Parties** has a corresponding meaning.

Payment Claim has the meaning given in clause 9.1.

Personnel means:

- (a) in the case of the Consultant, any of its employees, agents and representatives, any Subcontractors and any of the employees, agents and representatives of any Subcontractors, who are involved either directly or indirectly in the provision of the Services; and
- (b) in the case of the Client, any of their respective past or present officers, employees, agents or representatives.

Plant and Equipment includes labour, plant, equipment, tools, appliances and any other property or tangible goods.

Policy means any of the Client's rules, plans, policies, standards and procedures prepared and authorised in accordance with the Client's usual practices as communicated or made available to the Consultant on request.

Premises means any or all sites or premises at which the Services are provided, including those which are owned, controlled, managed or leased by the Client.

Price means the amount payable for the Services calculated in accordance with 0 and as adjusted in accordance with this agreement.

Professional Indemnity Insurance means a policy of insurance which covers any liability arising from an act or omission by the Consultant or its Personnel, whether owed in contract or otherwise, in relation to the performance of this agreement with a limit of cover not less than the amount set out at Item 6.

Project IP has the meaning given to that term in the clause 14.1(a) of this agreement.

Property Insurance means a policy of insurance covering any specialised plant and equipment used in relation to the provision of the Services, against the risk of loss, damage or destruction with a limit of cover not less than the amount set out at Item 6.

Public and Products Liability Insurance means a policy of insurance covering all liability in respect of:

Consultancy Services Agreement



- (a) loss of, damage to, or loss of use of property; and
- (b) the injury (including disease or illness) to, death of or illness of any person, in connection with this agreement and the provision of the Services with a limit of indemnity of not less than the amount set out at Item 6.

Related Body Corporate has the meaning given to the term 'related body corporate' in the Corporations Act.

Relevant Interest has the meaning given to that term in the Corporations Act.

Reputable Insurer means an insurance company with a credit rating of at least A- by Standard & Poors (Australia) Pty Limited or equivalent credit rating.

Security Interest means:

- (a) any security under the *Personal Property Securities Act 2009* (Cth); and
- (b) any mortgage, charge, pledge, hypothecation or lien or any security or preferential interest of any kind, or arrangement with any creditor.

Services means the services to be performed by the Consultant as more particularly specified in Schedule 2.

Subcontractor means any contractor or subcontractor (including consultants and suppliers) engaged by the Consultant and those contractor's or subcontractor's employees, officers, agents, consultants and contractors.

Suspension Notice means a notice issued pursuant to clause 16.8.

Tax means any present and future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature imposed or levied by a Government Authority, together with any penalties, fines or interest thereon.

Tax Invoice has the meaning given in the GST Law.

Term means the term of this agreement which commences on the Commencement Date and ends on the Expiry Date as determined in accordance with Item 5.

Variation Notice has the meaning given in clause 16.7.

Workers Compensation Insurance means a policy of insurance providing cover in respect of all liability (including at common law) for death of, or injury (including illness) to, persons employed by or deemed to be employed by the Consultant:

- (a) in a form prescribed or approved under or issued in pursuance of any workers' compensation legislation applicable to the Consultant; and
- (b) where permitted by law, extended to indemnify the Client for the Client's statutory liability to persons employed by the Consultant.

Written Claim has the meaning given in clause 16.7.

1.2 Interpretation

In this agreement unless the context clearly indicates otherwise:

- (a) a reference to this agreement, a Licence, Policy or another instrument means this agreement, that Licence, Policy or other instrument and includes any variation, supplement, assignment, novation, substitution or replacement of any of them;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a person includes a natural person, firm, partnership, body corporate, unincorporated association, authority, the Crown or any other organisation or legal entity;
- (d) a reference to a natural person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (e) a reference to a corporation includes its successors and permitted assigns;

Consultancy Services Agreement



- (f) a reference to a body or authority which ceases to exist is a reference to either a body or authority that the Parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (g) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (h) a reference to a time is to that time in the State or Territory in which the Services are performed;
- (i) a requirement to do any thing includes a requirement to cause or procure that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (j) a word that is derived from a defined word has a corresponding meaning;
- (k) the words "include", "includes" or "including" are not words of limitation; and
- (l) headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement.

1.3 Inconsistency

Unless expressly provided otherwise, to the extent of any inconsistency between the terms set out in this agreement, the following order of precedence will prevail to the extent of any inconsistency:

- (a) Schedule 2
- (b) Schedule 3;
- (c) the Contract Details;
- (d) these General Terms and Conditions; and
- (e) any other schedules or amendments to this agreement.

2. Provision of Services

2.1 Standard of care

The Consultant will provide the Services:

- (a) in accordance with:
 - (i) this agreement;
 - (ii) the Key Performance Criteria;
 - (iii) all relevant Laws and Policies;
 - (iv) Best Industry Practice; and
 - (v) any reasonable direction by the Client or its Personnel;
- (b) so that the Services are Fit for the Intended Purpose;
- (c) using only appropriately qualified, experienced and trained Personnel;
- (d) promptly and in accordance with any required timeframes;
- (e) at the Premises stated in this agreement or otherwise directed by the Client; and
- (f) so that the Consultant achieves the Key Deliverables.

2.2 Time

- (a) Where a date is specified for completion of the Services, the Consultant will provide the Services by the specified date.

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(b) The Client in its sole and absolute discretion may, at any time, by written notice to the Consultant extend the time for carrying out the Services for any reason. The exercise of such discretion will not entitle the Consultant to any Claim, including for further costs, fees or any other entitlements and will not set time at large for the Services.

3. Premises and health, safety and environmental obligations

3.1 Premises

- (a) The Consultant will, in performing the Services:
- (i) use its best endeavours not to interfere with any of the activities of the Client or its Personnel, or the activities of any other person, on the Premises; and
 - (ii) ensure that the Premises are left secure, safe, clean, orderly and fit for immediate use.
- (b) The Consultant acknowledges and agrees that it may not be given exclusive access to the Premises.

3.2 Health, safety and environment

- (a) The Consultant will, and will ensure that all of its Personnel:
- (i) adhere to all accepted safe working practices, comply with all applicable Law relating to health and safety to be expected of an experienced and competent service provider exercising Best Industry Practice;
 - (ii) comply with all Policies and safety standards including any incident reporting requirements;
 - (iii) participate in an induction program and any training and consultation processes as directed by the Client or any other entity in control of the Premises; and
 - (iv) only use equipment that is in safe working condition.
- (b) Prior to commencing performance of the Services, the Consultant will conduct a risk assessment on each aspect of the Services and will provide the Client with the results of each such risk assessment within a reasonable time.

3.3 Failure to comply

The Consultant:

- (a) must immediately notify the Client if the Consultant fails to comply with any health, safety and environment obligations under this agreement; and
- (b) agrees to immediately do all such things as directed by the Client, at the Consultant's cost, to remedy any non-compliance with any health, safety and environment obligations imposed by this agreement.

3.4 Policies

- (a) The Consultant acknowledges and agrees that it is responsible for ensuring that it and its Personnel are aware of and compliant with all of the Policies at all times.
- (b) The Consultant must ensure it has received copies of the Policies in effect on and from the Commencement Date.

4. Plant and Equipment

- (a) The Consultant will supply, at its own expense, all Plant and Equipment required to fulfil its obligations under this agreement.
- (b) If the Client provides or makes available to the Consultant any Plant and Equipment to enable the Consultant to comply with its obligations under this agreement, that Plant and Equipment remains the property of the Client at all times and the Consultant will:

Consultancy Services Agreement



- (i) only use that Plant and Equipment for the purposes of fulfilling its obligations under this agreement;
 - (ii) maintain that Plant and Equipment in good order and condition (subject to fair wear and tear); and
 - (iii) compensate the Client for any loss, damage to or waste of that Plant or Equipment by the Consultant or its Personnel.
- (c) The Consultant will ensure wherever the Services require that title to or ownership of any Plant and Equipment should pass to the Client, the Consultant must ensure that title or ownership is passed free of any Security Interest of the Consultant or any other person.

5. Information Systems

5.1 Provision of information

The Client will make available to the Consultant, at the Consultant's cost and in such form as the Client determines in its sole and absolute discretion, any information that:

- (a) the Consultant reasonably requests;
 - (b) the Client considers to be necessary for the performance of the Services; and
 - (c) the Consultant cannot readily access independently of the Client,
- and provided that the provision of such information will not cause the Client to breach any obligation arising by operation of any Law.

5.2 Access to Information Systems

- (a) The Client may give the Consultant access to any Information System or discontinue any such access, and may determine the means by, or conditions on, which access to any Information System is provided.
- (b) If the Client elects to give the Consultant or any of its Personnel access to any Information System, the Consultant must ensure that its Personnel, prior to accessing any Information System, agree to be bound by all relevant Policies and obligations of confidentiality by signing an acknowledgement in a form satisfactory to the Client.

5.3 No reliance

- (a) Except to the extent expressly provided otherwise, the Client makes no warranty and accepts no responsibility regarding, or liability resulting from, the accuracy or completeness of any Client Supplied Information.
- (b) The use or reliance by the Consultant or its Personnel upon any Client Supplied Information does not in any circumstances relieve the Consultant of its obligations under this agreement.

6. Exclusivity and minimum purchase

6.1 Agreement is non-exclusive

- (a) Nothing in this agreement imposes an obligation of exclusivity on the Client or the Consultant.
- (b) The Client may engage a third party to provide services of the same nature as the Services in addition to or in place of the Consultant at any time and from time to time.

6.2 No minimum quantity

- (a) Save as otherwise stated in this agreement, the Client is not required to purchase a particular quantity or minimum quantity of the Services during the Term or any part of it.

Consultancy Services Agreement



(b) Any estimate or forecast as to the consumption or requirements of the Client for the Services howsoever made is not binding on, or enforceable against, the Client and the Client is not liable to the Consultant or to any other person for any Liability suffered or incurred by the Consultant or any other person as a result of the Client not purchasing the Services in accordance with such estimates or forecasts.

7. Quality

7.1 Inspection

At any time during the Term, the Client may inspect or audit the performance of any or all of the Services provided by the Consultant.

7.2 Deficient Services

(a) If the Client determines that any of the Services provided or the results of those Services are Deficient Services, the Client may notify the Consultant in writing that the Services or the results of those Services are Deficient Services and, in its sole and absolute discretion:

- (i) reject the Deficient Services in whole or in part and direct the Consultant to:
 - (A) refund any payments made by it in respect of any Deficient Services; or
 - (B) re-perform or make good any of the Deficient Services (either itself or by having another person rectify the Deficient Services) within a reasonable timeframe that meets the requirements of the Client; or
- (ii) accept any of the Deficient Services and require the Consultant to reimburse the Client for any expenses incurred as a result of the Deficient Services (including a reduction in the Price to reflect the Deficient Services).

7.3 Consultant liability limited

The Consultant will not be liable under this clause in respect of any Deficient Services to the extent that an act or omission of the Client caused or contributed to the Services or the results of those Services being Deficient Services.

7.4 Rights to survive termination

The rights under this clause 7 survive the termination or expiry of this agreement.

8. Price

- (a) The Client agrees to pay the Price to the Consultant as calculated in accordance with 0.
- (b) Unless this agreement expressly provides otherwise, the Price is inclusive of all costs incurred by the Consultant in performing the Services.
- (c) The Price may not be increased without the Client's prior written consent, except as expressly provided in 0.

9. Invoicing and payment

9.1 Payment Claim

- (a) On completion of the provision of the Services, or if the Services are provided from time to time during the Term, at the end of each calendar month, the Consultant must submit a payment claim to the Client in respect of the Services provided (**Payment Claim**).
- (b) The Payment Claim must:
 - (i) in respect of Services:
 - (A) identify the Services to which the payment claim relates;

Consultancy Services Agreement



- (B) separately identify each variation; and
- (C) set out the Price claimed and how that amount was determined; and
- (ii) be in the form of a Tax Invoice.

9.2 Payment

- (a) The Client must pay the Consultant the amount certified by the Client as being due for payment in the relevant Tax Invoice within 20 Business Days of the end of the month in which the Tax Invoice was submitted.
- (b) Payment is payment on account only and is not evidence of the value of the Services, an admission of liability or an admission that the Services are in accordance with this agreement.
- (c) Except to the extent expressly provided otherwise in this agreement, the Consultant is solely responsible for any and all taxes, duties, levies, charges and deductions including stamp duty, payroll tax, customs duty and fuel excise (including any penalties and additional payments thereon), paid or payable in the performance of the Services and they are deemed to be included in the Price.

9.3 Set-off

The Client may deduct from any amount due or to become due to the Consultant, all debts and monies due and payable from the Consultant or its Personnel to the Client pursuant to or in connection with this agreement or any other agreement between the Consultant and the Client.

10. Taxes and GST

- (a) The Parties acknowledge that this agreement, including all pricing and compensation terms, whether by way or reimbursement, indemnity or otherwise has been drafted without taking into account the effect, if any, of GST.
- (b) Unless expressly provided otherwise, the Consultant is responsible for, and will pay, all Taxes incurred or imposed in connection with the Services and will provide documentary evidence of the payment of any Taxes made on behalf of the Client.
- (c) The recipient of a taxable supply will only be required to pay an amount of GST to the Party making the taxable supply if and when the Party making the taxable supply provides a valid tax invoice to the recipient of a taxable supply.
- (d) If there is an adjustment to a taxable supply made under this agreement then the Party making the taxable supply will provide an adjustment note to the recipient of the taxable supply.
- (e) The amount of a Party's entitlement under this agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that Party is entitled in respect of those costs, expenses or liabilities.

11. Audit

11.1 Records and information

The Consultant must:

- (a) keep full and proper records to demonstrate compliance with all aspects of this agreement (and where relevant in accordance with appropriate Accounting Standards); and
- (b) keep the Client fully informed of all aspects of the performance of the Services on request.

11.2 Audit of invoices

- (a) The Client may conduct an audit or inspection of the basis of the Consultant's invoicing and charges using the Consultant's records by giving the Consultant 5 Business Days written notice (**Audit Notice**).

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- (b) The Consultant will co-operate with the Client and provide the Client with all information reasonably requested by the Client or any third party engaged by the Client to conduct any audit or inspection and notified to the Consultant within the time specified in the Audit Notice.
- (c) If an audit or inspection reveals any breach of this agreement, then the Consultant must take all reasonably necessary remedial action, including complying with any direction of the Client.
- (d) If any audit or inspection reveals that the Consultant has been overpaid or underpaid in connection with this agreement then:
 - (i) in the event of an overpayment only, the Client's cost of conducting the audit or inspection, including the costs of engaging a third party to conduct the audit or inspection, will be a debt due and payable by the Consultant to the Client;
 - (ii) the amount of any overpayment will be a debt due and payable by the Consultant; and
 - (iii) the amount of any underpayment will be payable as part of the next payment claim submitted by the Consultant in accordance with this agreement.

11.3 Rights to survive termination

- (a) The rights under this clause 11 will continue for 12 months after the expiry or earlier termination of this agreement.
- (b) Nothing in this clause requires the completion or finalisation of any audit or inspection by any date or within any time provided that the Client does not unreasonably delay or hinder the conduct of such audit or inspection.

12. Insurance

12.1 Insurances required to be effected by the Consultant

The Consultant must, before performing any of its obligations under this agreement, effect and maintain each Insurance Policy with a Reputable Insurer.

12.2 Evidence of insurance

Before commencing the performance of its obligation under this agreement, and at other times requested by the Client, the Consultant must give the Client, in respect of each Insurance Policy, the original or a certified copy of renewal certificates or certificates of currency issued by the insurer.

12.3 Maintaining insurance and notices

The Consultant must:

- (a) not do, or omit to do, anything which might vitiate, impair or derogate from the cover under any Insurance Policy or which might prejudice any claim under any Insurance Policy;
- (b) promptly notify the Client of any proposed variation, amendment or endorsement to any Insurance Policy which materially adversely affects the amount, scope or terms of such policy or other cover and not effect, or consent to effect, any such variation, amendment or endorsement without the Client's written approval;
- (c) promptly give written notice to the Client if an insurer gives notice of cancellation, avoidance or other notice in respect of any Insurance Policy and provide to the Client a copy of such notice;
- (d) comply at all times with the terms and conditions of each Insurance Policy;
- (e) if any event occurs which may give rise to a claim involving the Client or any of its Personnel under any Insurance Policy, notify the Client within 5 Business Days of that event and keep the Client informed of any subsequent actions and developments concerning the relevant claim; and

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(f) promptly notify the Client if, at any point, it fails to comply with any of its obligations under this clause.

12.4 Deductibles and excess

The Consultant will be responsible for the payment of all amounts by way of deductibles or excesses which apply to a claim made under any Insurance Policy to the extent the Consultant or the Consultant's Personnel caused or contributed to the event giving rise to the claim.

12.5 Right to remedy

If the Consultant fails to comply with an obligation in respect of any Insurance Policy and that failure is capable of remedy, the Client may in its sole and absolute discretion remedy that failure for its own benefit or on behalf of the Consultant and the Consultant is liable to the Client for any expenses the Client incurs in taking such actions.

12.6 Consultant's liability

Nothing in this clause limits the Consultant's liability or responsibility under any other provision of this agreement.

13. Liability

- (a) Subject to this clause, the Consultant indemnifies and will keep indemnified the Client against any Liability arising out of or in connection with:
 - (i) any breach by the Consultant or its Personnel of any warranty;
 - (ii) any negligent, reckless or intentional act or omission of the Consultant or its Personnel; and
 - (iii) the:
 - (A) damage to or loss or destruction of any property of the Client or any third party; or
 - (B) personal injury, illness or death to any person,
 - arising out of or in connection with the Services;
 - (iv) any breach of Law by the Consultant or its Personnel; and
 - (v) any Claim, arising out of or in connection with the Services, regarding the infringement or alleged infringement of Intellectual Property Rights of any person.
- (b) The Consultant's liability under clause 13(a) will be reduced proportionally to the extent that the Liability is caused or contributed to by the Client.
- (c) Each indemnity in this agreement is a continuing obligation separate and independent from the Consultant's other obligations and survives termination of this agreement.
- (d) It is not necessary for the Client to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

14. Intellectual Property Rights

14.1 Project IP

- (a) All Intellectual Property Rights (including future Intellectual Property Rights) produced by the Consultant or the Consultant's Personnel in connection with this agreement or the performance of the Services, both present and future (**Project IP**) vest in and remain the property of the Client, and the Consultant assigns to the Client all Project IP with effect from the date of its creation.
- (b) The Client grants to the Consultant a revocable and non-exclusive licence to use and reproduce all Project IP for the purposes of the Consultant and the Consultant's Personnel providing the Services and otherwise complying with the terms of this agreement. This licence is

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non-transferable, other than to the Consultant's Subcontractors to which the Client has consented in accordance with this agreement.

(c) Without limiting the Consultant's obligations under clause 14.1(a) and in the event that the Consultant does not assign the Project IP to the Client pursuant to clause 14.1(a), the Consultant grants to the Client an irrevocable, fully paid-up, perpetual, exclusive, worldwide, transferrable and royalty-free licence (including the right to sublicense) to use and reproduce all Project IP for any purpose.

14.2 Client Material licence

(a) The Client grants the Consultant a non-exclusive, and revocable licence, for the Term, to use and reproduce the Client Material for the purpose of providing the Services and otherwise complying with the terms of this agreement. This licence is non-transferable, other than to the Consultant's Subcontractors to which the Client has consented in accordance with this agreement.

(b) The Consultant grants the Client a non-exclusive, fully paid-up, perpetual, transferable and irrevocable licence (including the right to sublicense) to exercise the Intellectual Property Rights in the Consultant Material for the purposes of receiving the benefit of the Services.

14.3 General

(a) The Consultant represents and warrants that the exercise of the Client's rights in respect of the Project IP and the Consultant Material will not infringe any person's rights in that material, including any Intellectual Property Rights and Moral Rights.

(b) The licences and obligations in this clause survive the termination or expiry of this agreement.

14.4 Moral Rights

(a) The Consultant:

(i) warrants that all Associates and Consultant's Subcontractors have provided consents and waivers, to the maximum extent permitted by law, in relation to their Moral Rights in the Services or any part of them, sufficient to ensure the Client's continued unimpeded use of the Project IP and the Consultant Material; and

(b) unconditionally and irrevocably consents to the Client, or persons authorised by the Client, doing or omitting to do with respect to the copyright work assigned or licensed to the Client under this agreement or impliedly by Law, any act which may infringe the Consultant's Moral Rights in the copyright work.

(c) To the extent that the Consultant engages Subcontractors, the Consultant must ensure that the Subcontractors agree to include in the relevant contract terms, warranties and indemnities in the terms set out in this clause 14, in favour of the Client.

15. Confidential Information & privacy

(a) Subject to this clause, each Party will maintain in confidence all Confidential Information and ensure that all Confidential Information is kept confidential.

(b) Nothing in this clause prohibits disclosure of Confidential Information which:

(i) is required to be disclosed by law, any Government Authority, or the rules of a recognised securities exchange;

(ii) is disclosed to a Party's professional advisers to obtain professional advice; and

(iii) is disclosed to a Related Body Corporate.

(c) The terms of this agreement may be disclosed to a bona fide prospective purchaser (in whole or in part) of a Party or the business of a Party provided the prospective purchaser agrees to an obligation of confidence on terms no less onerous than this clause.

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- (d) The Parties acknowledge and agree to comply with their obligations to each other under the *Privacy Act 1988* (Cth).
- (e) The obligations under this clause 15 survive termination of this agreement.

16. Termination, variation and suspension of this agreement

16.1 Breach Notice

If the Consultant is in breach of this agreement and that breach is capable of remedy, then the Client may issue the Consultant with a Breach Notice.

16.2 Termination for Breach

- (a) The Client may terminate this agreement immediately by written notice to the Consultant:
 - (i) if the Consultant is in breach of this agreement and:
 - (A) the Consultant has failed to remedy the breach in accordance with the terms of the relevant Breach Notice; or
 - (B) the breach is not capable of remedy,
 - (ii) if the Consultant creates or grants a Security Interest, assigns or novates this agreement other than in accordance with the terms of this agreement; or
 - (iii) on any other grounds specified in this agreement giving rise to a right of termination.
- (b) The Consultant may terminate this agreement immediately by written notice to the Client if the Client has failed to pay the Consultant in respect of any Services provided in accordance with this agreement and provided that the Consultant has issued the Client with a Notice which:
 - (i) details the relevant Tax Invoice and amount due and payable; and
 - (ii) requires the Client to make payment within a reasonable time which must not be less than 20 Business Days from the date of the notice,
 - (Overdue Notice) and the Client has failed to make payment in accordance with the Overdue Notice.

16.3 Damages not an adequate remedy for breach

The Consultant acknowledges and agrees that in the event of a breach of this agreement by the Consultant damages may not be an adequate remedy, and without limiting any other rights that the Client may have, the Client may seek an order for specific performance of this agreement.

16.4 Termination for Insolvency

Either Party may terminate this agreement immediately by giving written notice to the other Party if an Insolvency Event occurs in relation to that other Party.

16.5 Termination for convenience

The Client may terminate this agreement by written notice to the Consultant of not less than 3 months. In exercising its right under this clause, the Client is not required to exercise good faith.

16.6 Payment on termination

- (a) Notwithstanding any other provision of this agreement, on termination of this agreement for any reason, the sole liability of the Client to the Consultant will be the payment of amounts payable for Services performed up to the date of termination.
- (b) Nothing in this agreement will render the Client liable for any costs relating to redundancy or termination payments of any Consultant Personnel.

16.7 Variation

- (a) The Consultant will not vary this agreement except as directed by the Client in writing.

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- (b) The Client may issue a notice to the Consultant proposing a variation (**Variation Notice**).
- (c) The Consultant will, within 5 Business Days of receipt of a Variation Notice, advise the Client in writing of any resulting change to the Price (which must not include any allowance for anticipated profit, unperformed work or indirect or consequential loss) and the performance of the Services if the proposed variation was implemented (**Written Claim**).
- (d) The Client may audit the adjusted Price specified in any Written Claim.
- (e) The Client will, following receipt of a Written Claim, confirm in writing to the Consultant whether the proposed variation is to be implemented and, if so, this agreement will be adjusted in accordance with the Variation Notice.
- (f) No variation, either individually or in combination with other variations, will invalidate or constitute a repudiation of this agreement, regardless of the nature, extent, timing or value of that variation.

16.8 Suspension

- (a) The Client may suspend all or any part of this agreement at any time by giving a Notice to the Consultant (**Suspension Notice**) and the Consultant will suspend performance of this agreement as directed in the Suspension Notice.
- (b) The Client may extend, terminate or vary any suspension of this agreement (as applicable) by written notice to the Consultant in its sole and absolute discretion.
- (c) If this agreement is suspended, other than as a result of a Breach by the Consultant or its Personnel, the Client will be liable to the Consultant for any reasonable additional costs incurred directly from the suspension (such costs not to include any redundancy or termination costs of any Consultant Personnel).

16.9 Clause survives termination

This clause 16 survives the termination or expiry of this agreement.

17. Assignment, novation, subcontracting and Change in Control

17.1 Assignment & novation

- (a) The Consultant may not assign, novate or create a Security Interest over any or all of its rights or obligations under this agreement without the prior written consent of the Client.
- (b) The Client may assign, novate or create a Security Interest over, any or all of its rights or obligations under this agreement at any time to:
 - (i) a Related Body Corporate of the Client; or
 - (ii) any other party, (provided the Client reasonably considers that party is financially capable of meeting the Client's obligations under this agreement).

17.2 Subcontracting

- (a) The Consultant may not subcontract any or all of its obligations under this agreement without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed).
- (b) The Consultant acknowledges and agrees that subcontracting a right or obligation under this agreement does not relieve the Consultant from any liability or obligation under this agreement and the Consultant will remain liable to the Client for the acts and omissions of any Subcontractor (including any employee or agent of a Subcontractor) as if they were acts or omissions of the Consultant.

17.3 Change in Control

- (a) The Consultant will not permit a Change in Control in relation to the Consultant or a Related Body Corporate of the Consultant without the prior written consent of the Client.

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(b) If a Change in Control occurs due to the transfer of shares or other interests which are listed on a security exchange, the Client's consent may be sought after the occurrence of the Change in Control, but if the written consent of the Client is not subsequently obtained, the Consultant will procure that the Controller cease to have that Control which resulted in the Change of Control within 20 Business Days of the notice of non-consent from the Client.

(c) Any breach of this clause 17.3 will be deemed to be a fundamental breach of this agreement and the Client may, without prejudice to any other rights or remedies available to it, terminate this agreement immediately on notice to the Consultant.

18. Cooperation with others

The Consultant must use best endeavours to liaise, cooperate and confer with contractors and other consultants of the Client in order to coordinate its Services with the services of those contractors and consultants.

19. Notice of adverse events

The Consultant must, as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the performance of the Services, Notify the Client. The Notice must include reasonable detail describing the matter or circumstances and its anticipated effect on the Services.

20. Notices

20.1 Form of Notice

Any notice, demand, approval, consent, request or other communication in relation to this agreement (**Notice**) will:

- (a) be in writing in English;
- (b) be marked for the attention of the Client Representative or Consultant Representative (as applicable); and
- (c) be given at the recipient's Address for Service by being:
 - (i) hand delivered;
 - (ii) sent by email;
 - (iii) sent by prepaid mail within Australia; or
 - (iv) sent by prepaid Express Post International (or overseas equivalent) airmail if the sender and the recipient are in different countries.

20.2 Giving of Notice

- (a) A Notice is given if:
 - (i) hand delivered, on the date of delivery;
 - (ii) sent by email, on the date shown by a printed "read receipt" generated by the sender's computer;
 - (iii) sent by prepaid mail within Australia, on the third day after posting;
 - (iv) sent by airmail, on the seventh day after posting.
- (b) A Notice takes effect from the time it is given unless a later time is specified in it.

21. Disputes

- (a) Any dispute, controversy or Claim relating to this agreement (**Dispute**) will be dealt with in accordance with this clause.

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- (b) The Party claiming the Dispute will give notice of the Dispute to the other Party in writing which will include all facts on which that Party relies in relation to that Dispute (**Dispute Notice**).
- (c) Within 5 Business Days after service of a Dispute Notice, the Client's Representative and the Consultant's Representative will meet at least once to attempt, using their reasonable endeavours, to resolve the Dispute in good faith.
- (d) If the Dispute has not been resolved within 15 Business Days after the service of the Dispute Notice, a member of the senior management of each of the Client and the Consultant (or their respective nominees) with authority to settle the Dispute will meet within 15 Business Days after the Dispute Notice was given to attempt to resolve the Dispute in good faith or to mutually agree on an alternative dispute resolution process to be taken by the Parties in relation to the Dispute.
- (e) If, within 15 Business Days after the first meeting of the senior management, the Dispute has not been resolved or an alternate dispute resolution process has not been agreed, then the matter may be referred to court proceedings.
- (f) A Party may not start court proceedings in relation to a Dispute until it has complied with the procedures in this clause.
- (g) Nothing in this clause prevents a Party seeking urgent injunctive or interlocutory relief.
- (h) Notwithstanding the existence of a Dispute, both Parties will continue to perform their respective obligations under this agreement.

22. Application of agreement

This agreement applies to Services carried out by the Consultant, whether carried out before or after the date of this agreement.

23. General

23.1 Relationship of Parties

- (a) Nothing in this agreement creates a joint venture, partnership, or the relationship of the Client and agent, or employee and employer between the Parties.
- (b) Neither Party has the authority to bind the other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other Party or to pledge the other Party's credit.

23.2 Governing Law

- (a) This agreement is governed by the Laws of Victoria.
- (b) Both Parties irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and courts competent to determine appeals from those courts with respect to any proceedings which may be brought arising out of or in connection with this agreement.

23.3 Entire agreement

This agreement constitutes the entire agreement between the Parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the Parties, whether orally or in writing.

23.4 Waiver

A right created by this agreement cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

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23.5 Further assurances

Each Party will promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this agreement.

23.6 Time for doing acts

(a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this agreement,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

23.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

23.8 Preservation of existing rights

The expiration or termination of this agreement does not affect any right that has accrued to a Party before the expiration or termination date.

23.9 No merger

Any right or obligation of any Party that is expressed to operate or have effect on or after the completion, expiration or termination of this agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

23.10 Construction

Neither this agreement nor any part of it is to be construed against a Party on the basis that the Party or its lawyers were responsible for its drafting.

23.11 Rights in addition to Law

The rights, powers and remedies provided in this agreement are in addition to any rights, powers and remedies provided by Law.

23.12 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

23.13 Legal costs and expenses

Each Party will pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this agreement.

23.14 No reliance

Without limiting any other provision of this agreement, the Consultant represents and warrants that:

- (a) it has not entered into this agreement in reliance on any representation expressly or impliedly given by or on behalf of the Client; and
- (b) it has made its own inquiries as to the Licences which apply to the performance of the Services under this agreement.

Consultancy Services Agreement



23.15 Representations

Each Party warrants and represents to the other Party that each of the following statements is true and accurate as at the date of execution of this agreement:

- (a) it is validly existing under the Laws of its place of incorporation, creation or registration;
- (b) it has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) it has taken all necessary action to authorise its entry into and performance of this agreement and to carry out the transactions contemplated by this agreement; and
- (d) its obligations under this agreement are valid and binding and enforceable against it in accordance with their terms.

23.16 Other terms and conditions of no legal effect

To the extent that the Consultant's terms and conditions are supplied with or in the course of the Consultant's provision of the Services, such terms and conditions will be of no legal effect and will not constitute part of this agreement (notwithstanding the signing of any such document by a representative of the Client for any reason).

Consultancy Services Agreement



EXECUTION PAGE

Executed as an agreement

EXECUTED by THE Chief Executive)
Officer pursuant to the resolution of)
Council dated on behalf of the)
**MORNINGTON PENINSULA SHIRE)
COUNCIL:**)

.....)
Signature of authorised signatory)

.....)
Name of authorised signatory (block)
letters))

.....
Signature of witness

.....
Name of witness (block letters)

EXECUTED by **[INSERT CONSULTANT)
NAME]** in accordance with section)
127(1) of the *Corporations Act 2001*)
(Cth) by authority of its directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....
Signature of director/company secretary*
*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)
*delete whichever is not applicable

Consultancy Services Agreement



Schedule 1 – Contract Details

[Note: Square-bracketed details to be reviewed and inserted as needed.]

<p>1. Client</p>	<p>Mornington Peninsula Shire Council Address: 90 Besgrove Street, ROSEBUD VIC 3939 ABN: 53 159 890 143</p>
<p>2. Consultant</p>	<p>[insert long name] Address: [insert address] ABN/ACN: [insert]</p>
<p>3. Client Representative</p>	<p>[insert name], [insert title] Phone: [insert] Mobile: [insert] Email: [insert]</p>
<p>4. Consultant Representative</p>	<p>[insert name], [insert title] Phone: [insert] Mobile: [insert] Email: [insert]</p>
<p>5. Term and Extension</p>	<p>This agreement will become effective on [date] (Commencement Date).</p> <p>This agreement will expire on [two years from commencement], or such later date as determined in accordance with the following (Expiry Date).</p> <p>The Client may extend the term of this agreement by giving the Consultant at least 3 months written notice prior to the then prevailing Expiry Date (Extension Notice).</p> <p>Any single Extension Notice may extend the term of this agreement by up to 12 months.</p> <p>The Client may issue multiple Extension Notices from time to time, provided that the aggregate of all extensions of the term does not exceed [24] months.</p>
<p>6. Insurances</p>	<ul style="list-style-type: none"> • Public and Products Liability Insurance: [\$10] million per occurrence until the end of the Term. • Professional Indemnity Insurance: [\$5] million for each and every claim until the expiration of the period 6 years after the end of the Term. • Workers Compensation Insurance until the end of the Term.

Consultancy Services Agreement



Schedule 2 – Services

1. Description of Services

1.1 Overview

The Independent Advisor work with the Committee for the purpose of fulfilling its statutory responsibilities concerning the Chief Executive Officer employment matters.

These matters relate to the following:

- Annual Performance Reviews of the Chief Executive Officer, including assisting the Committee with recommendations to Council as a result of performance reviews.
- Review of Remuneration and conditions of employment of the Chief Executive Officer.
- The process relating to the appointment of Chief Executive Officer.

The successful consultant will work in close collaboration with the Committee and the Chief Executive Officer on the review and development of Key Performance Objectives which are reported on a quarterly basis.

The successful consultant is not expected to work full time and time required will vary over the term of the engagement subject to the requirements of Council’s committee.

1.2 Key Deliverables

The Services include the following Key Deliverables:

- Assist the Council to comply with its obligations under the *Local Government Act 2020* and the Chief Executive Officer Employment and Remuneration Policy.
- Assist the Council in preparing a Performance Plan.
- Assist the Council in evaluating the CEO’ s performance, including:
 - Providing a performance review framework
 - Assist Council in the development of appropriate key performance indicators.
 - Implementing a process for consultation with Councillors, facilitating engagement and discussion, driving consensus outcomes where possible, collating feedback and presenting feedback for endorsement.
 - Oversight and management of the CEO’s achievement to key performance indicators
- Preparation of the Annual Performance Plan
- Providing professional advice to the Councillors in respect of performance management, remuneration management and management of the CEO’s performance.
- Work with Council staff to facilitate reporting and record keeping.
- Provide advice on provisions to be included in the CEO contract of employment.
- Provide advice on the retention, renewal or recruitment of the CEO.
- Attend meetings as required.
- Other assistance as required.

1.3 Key Performance Indicators

The Services will reach each of the following Key Performance Indicators:

Key Performance Outcome	Key Performance Indicator
Comply with Obligations under the Act and Policy	Demonstrated knowledge and understanding of the Act and the Policy and their implementation

Consultancy Services Agreement



Preparation of a Performance Framework	<p>Preparation of a Plan that is contemporary and innovative, which allows Council to effectively and meaningfully oversight the performance of the CEO.</p> <p>Preparation of KPIs that are measurable and achievable, appropriately linked to the Council and Wellbeing Plan and Council's strategic direction.</p> <p>Provision of templates and working documents to assist Councillors and the Council.</p> <p>Preparation of appropriately Quarterly review documents and the Annual Performance Plan.</p>
Provision of advice to Councillors	Provision of performance management/human resources/organisational development/governance advice that is appropriately informed by best and contemporaneous practice.
Preparation of Reports	High quality reports are prepared (with the assistance of Council) that reflect Council's decision making in a way that is transparent and defensible.
Engagement with Councillors	Councillors are professionally engaged in meaningful discussions.
Timeliness	Engagements, meetings, preparations of reports etc are completed in a timely manner.
Frank and fearless advice	Advice is provided without fear or favour to ensure that Councillors are provided with the best advice.

Schedule 3 - Pricing

To reflect successful tenderer

Date: 9 April 2022

Request For Proposal for the supply of

**Independent Advisor -
Chief Executive Officer
Performance and Remuneration
Review**

**for the Mornington Peninsula Shire Council
(ABN 53 159 890 143)**

RFP Number:CN2634

PART D: RESPONSE DOCUMENT

Overview

1 Contractor details

Legal name	(Contractor)
Legal capacity	(company / partnership / person / trust)
Business name	
ABN	
Address	(Note: Must not be a post office box)
Fax	
Phone	
Representative name	
Representative email	

2 Basis of Proposal

The Contractor proposes to provide the RFP Deliverables in accordance with the Agreement, subject only to those qualifications listed in item 3 of this RFP, and on the following basis:

- (i) the Contractor undertakes to abide by and hold firm all of the terms and prices in this Proposal for the period stated in paragraph **Error! Reference source not found.** of Part B from the expiration of the Closing Date and Time;
- (ii) if selected as a preferred Contractor by the Council, the Contractor undertakes to execute and be bound by the Agreement; and
- (iii) to the extent permitted by law, the Contractor waives any right which it may have against the Council and its directors, employees and agents in respect of errors in, or omissions from, the RFP Document.

3 Officers of Contractor

Name of Directors / Partners [delete as applicable]	Address

4 Related Bodies Corporate

The Contractor must provide the name, ABN and address of any Related Body Corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of the Contractor:

Name	ABN	Address

5 Corporate profile

Number of employees:	
Licences / membership of professional bodies relevant to the RFP:	

6 Insurance policies

The Contractor must set out details of the relevant policies of insurance that it will hold for the duration of the Agreement. If the Contractor does not hold a relevant policy of insurance as required by the RFP at the time of submitting the RFP, the Contractor must make this clear in its RFP:

Insurance Policy	Insurer	Limit of Indemnity
Professional Indemnity		
WorkCover		
Workers' Compensation		

The Contractor must attach certificates of currency for each insurance policy stated above together with their Proposal.

7 Schedule of information

The Contractor must provide the information requested below and any additional information available that may highlight specific aspects and advantages of the Contractors offer. Where information requested in this section has been provided elsewhere in the Contractor's Proposal, the Contractor may reference the page number and section of the Proposal providing the necessary detail.

8 Policy agreement

The Contractor must acknowledge the policies and strategies listed below and to follow the policies and strategies whilst undertaking the services:

- Council and Wellbeing Plan
- Chief Executive Officer Performance and Remuneration Policy

9 Conflict of interest

If the Contractor has, or potentially has, a conflict of interest in relation to this project as specified in this RFP Document the Contractor must outline specifically in the box provided below:

- (i) any potential or actual conflict of interest;
- (ii) any commercial conflict of interest; and
- (iii) details as to how the potential or actual conflict of interest will be managed.

Details of Proposal

1 Executive summary

Outline your experience in delivering similar RFP Deliverables, placing emphasis upon how your Proposal meets the evaluation criteria specified in Part A. (500 word limit):

2 Pricing

The Contractor proposes the pricing schedule below:

3 Capability

Detail your methodology for to provide the RFP Deliverables, whilst managing obligations from concurrent and future clients (500 word limit).

4 Demonstrated previous experience

Outline your expertise in providing similar goods/services/projects to the RFP Deliverables.

Please include details of relevant current and previous engagements that you have undertaken with regards to similar goods/services/projects in local council or like industries (500 word limit).

5 Qualifications

Outline your qualifications and licences that are relevant to the provision of the Services (500 word limit).

6 Referees

Please provide three written references (and contact details for each) from current clients of a similar nature in support of your Proposal.

The Council reserves the right to contact persons other than those listed by the Contractor if it so determines. Any such persons may be treated as referees in the evaluation of proposals.

The Council shall not be obliged to give a Contractor any opportunity to respond to the comments of any referee.

Name:	
Position:	
Organisation:	
Telephone:	

Name:	
Position:	
Organisation:	
Telephone:	

Name:	
Position:	
Organisation:	
Telephone:	

Departures

- 1 The Contractor must provide full details of all qualifications and exceptions to the RFP Document, including any proposed departures from the Agreement.
- 2 Whilst qualifications and exceptions with the RFP Document will not preclude the Contractor's response from being evaluated, the Council reserves the right to consider the volume and type of changes requested as part of its overall evaluation of the RFP.
- 3 If the Contractor does not complete the Departure Scheduled below, they will be deemed to have accepted the terms and conditions of the RFP Document in every respect.
- 4 The Contractor does not accept all terms and conditions in accordance with the Departure Schedule below.

Reference (e.g. Item no.)	Objection	Proposal

4. Request for Proposal (RFP) Declaration

Authorisation

I hold the position of [insert Managing Director, owner or other title] of the Contractor and am duly authorised by the Contractor to make this declaration on its behalf.

Addenda

I acknowledge receipt of the following Addenda:

Addenda No	Description (page, clause or schedule)	Date received

Proposal Non-conformance:

If the Proposal is a Non-conforming Proposal, the Contractor must specify the extent of its non-conformance in the table below:

Area of non-conformance and reason	Value of non-conformance

Acknowledgement

The Contractor acknowledges that its Proposal complies with all terms and conditions in this RFP Document save as expressly stated in the RFP.

NAME OF CONTRACTOR :

SIGNATURE OF CONTRACTOR :

(or authorised representative)

DATE:

Stormwater in lieu contribution scheme

Mornington Peninsula Shire is introducing a Shire-run scheme for planning applicants to meet stormwater management obligations.

Applicants will have the option to:

- Continue to meet 100 per cent stormwater treatment compliance on site, **OR**
- Pay a voluntary contribution towards the Shire's Stormwater in lieu Scheme (up to 100 per cent) in lieu of meeting the remaining on site compliance.

Benefits include:



Simplifying the approval process



Flexible options for developers



Can be more **cost effective** compared to on site works



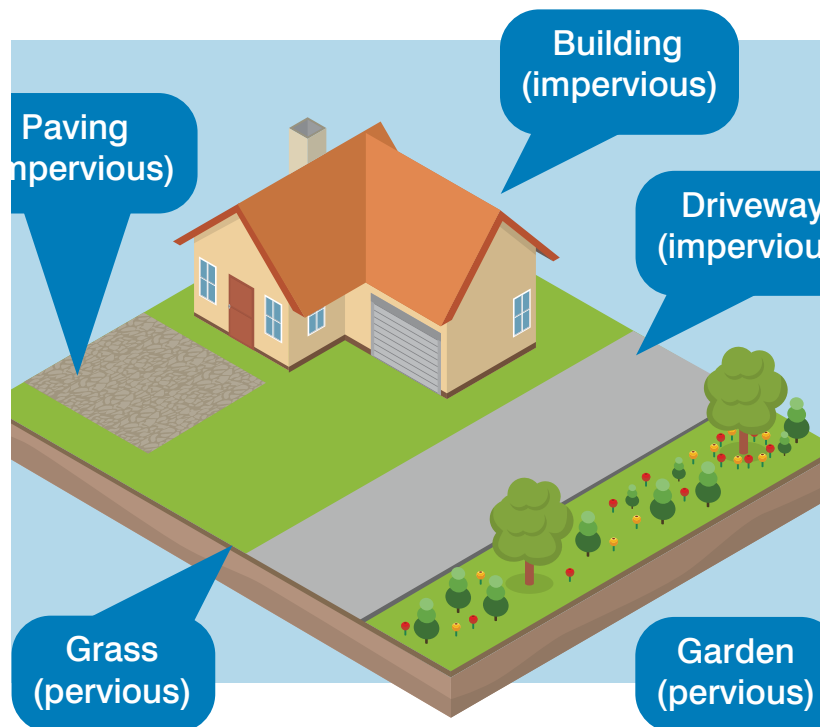
Deliver **local community** and **environmental** benefit



How is it calculated?

A square metre payment will be applied to:

- the total impervious area of each development.
- to the total area of the subdivision and be adjusted by land type and lot density.



Who is eligible?

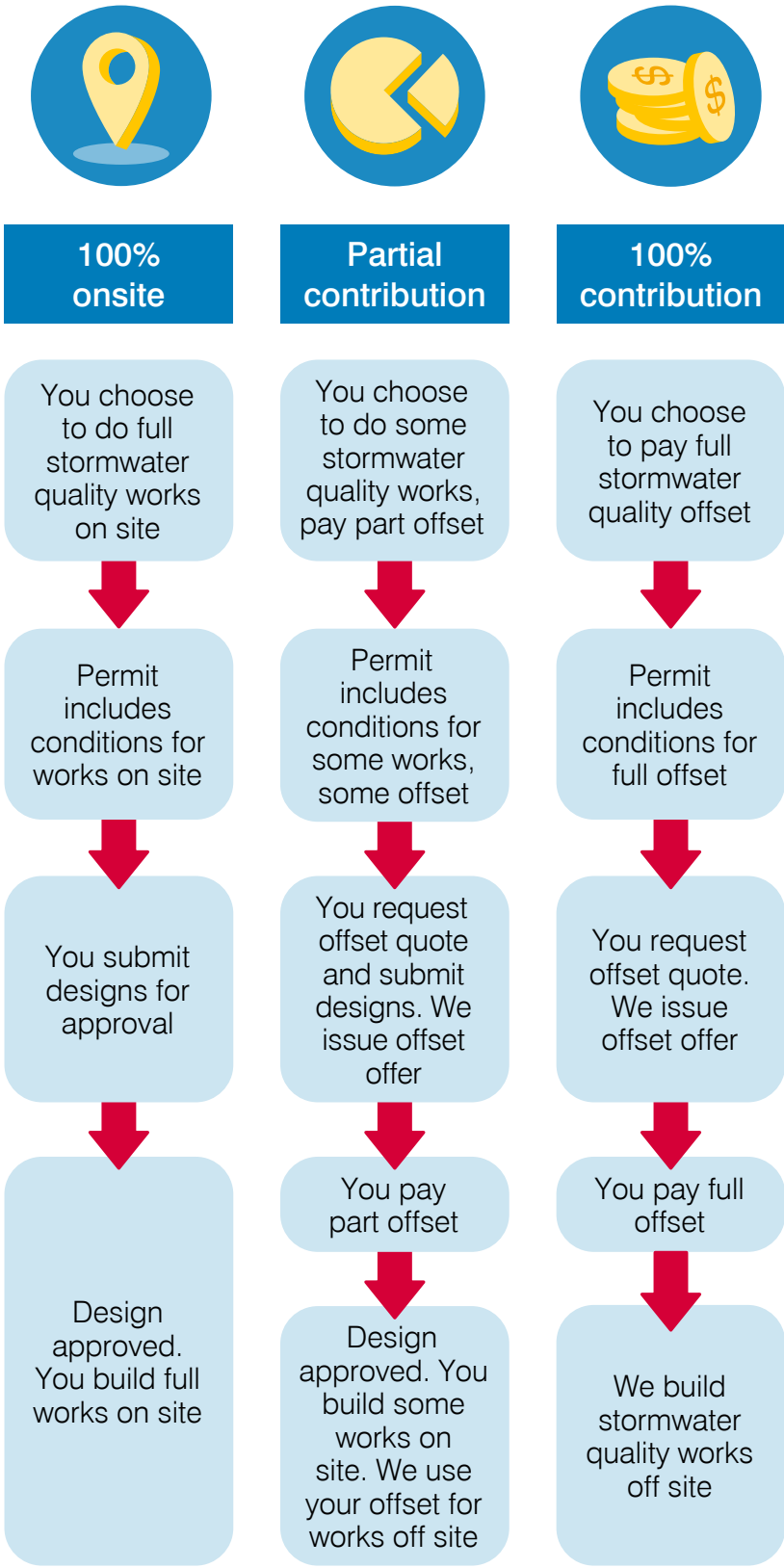
Most small and medium urban development and subdivisions:

- ✓ Residential and mixed use developments
- ✓ Commercial and industrial developments
- ✓ Residential and industrial subdivisions

Larger development and subdivisions: the preference is to provide 100 per cent compliance on site.

Note: If a development falls within a Melbourne Water Drainage Scheme area, then it will be subject to the conditions of that scheme.

How will it work?



How will the money be spent?

Funds collected through the Scheme will be used to deliver large scale stormwater quality treatment projects on the Mornington Peninsula.

These projects will improve the quality of stormwater entering Port Phillip and Western Port and may also be used to irrigate public open space (e.g. sports grounds).

Find out more:

 mornpen.vic.gov.au/stormwaterscheme



This brochure is printed on 100% recycled paper.



This Project has been assisted by the Victorian Government through Melbourne Water Corporation as part of the Living Rivers Stormwater Program.

Creative Peninsula: Performing Arts Fund

Program and Guidelines Draft

The Shire's Arts & Culture Plan 2024 guides Council's involvement and investment in cultural activities and arts practice within the community by developing strategic priorities to foster a rich, vibrant culture in our community. The Mornington Peninsula Shire's Performing Arts Fund furthers the Shire's commitment to promoting the role and value of arts and culture as important drivers for community development, economic stimulus, health and wellbeing, accessibility and inclusion and positions our region as the Creative Peninsula.

Mornington Peninsula Shire supports a vibrant performing arts ecology that is consistently growing and collaborating, producing new and diverse works, developing audiences, creating opportunities and employment for local artists and arts workers, and reflecting our unique Mornington Peninsula environment and identity.

We acknowledge the important contribution of performing arts companies, including in the fields of dance, theatre, orchestral and chamber music, and film to the Mornington Peninsula arts and culture landscape and support their ongoing artistic achievements and growth.

We also understand there are many individual practitioners in the Mornington Peninsula who have been deeply impacted by the loss of employment and income due to Covid-19 restrictions who need support to develop ideas for the future and build a sustainable professional practice to continue to thrive in the sector.

The Performing Arts Fund will invest in Mornington Peninsula-based creative organisations and individuals that seek to develop and deliver new and innovative artistic works, grow employment opportunities for creative and cultural workers, and engage communities with the performing arts.

Funding is available for new works at all stages of the creative life cycle, from development to presentation. Applications are encouraged from creative practitioners working across the following art forms with performance outcomes: dance, music, theatre, cabaret, puppetry, spoken word, circus and physical performance, live art, film making and multidisciplinary practice.

Program Objectives

This fund aims to:

- Support artists and organisations in the exploration and creation of innovative new performance-based work
- Support capacity building, mentoring, career pathways and collaboration opportunities in the performing arts sector and building broader cross-sector relationships
- Assist artists and artworkers to build sustainable professional practices and contribute to employment outcomes in the cultural sector
- Support arts and cultural organisations in the planning, development and delivery of performing arts outcomes, and rethinking strategies and business models
- Support business partnerships and increase opportunities for co-investment from private sector sources
- Increase Aboriginal and Torres Strait Islander representation within programming, new works, organisational workforce and leadership
- Support innovative approaches to audience development, digital technology, marketing and commercial opportunities for performing arts
- Address barriers and increase engagement across key diversity areas (including disability, gender, LGBTIQ+, age and cultural diversity) in arts practice
- Support the delivery of tour-ready performances, engagement and education activities to develop new audiences and contribute to the diversity of performing arts products available to the community
- Support resilience, sustainability and recovery of the Mornington Peninsula through performing arts practice

Assessment Criteria

1. Rationale

- A sound and clear rationale for the project idea including the reasons for the project, project aims, expected outcomes and why the funding is needed
- How the activities align with one or more of the strategies outlined in the Arts & Culture Plan 2024

2. Benefit to organisation / individual

- How the funding will help the applicant develop new opportunities or activities that contribute to employment, career and community outcomes
- Demonstrate cultural, artistic, social or economic returns on investment
- Opportunity for partnerships or co-investment

3. Benefit to the Mornington Peninsula's community and creative sector

- Positive impact for Mornington Peninsula audiences / communities through:
 - availability and access to creative offerings
 - demonstrated understanding of target audience/communities
 - representation of Aboriginal and Torres Strait Islander people and diverse communities

4. Capacity to deliver

- Identify your key stakeholders, and any artistic outcomes you / they have successfully delivered in the past
- Budget is viable and includes provision of appropriate fees to artists and collaborators
- Cultural permissions and key artists are cited and confirmed (if application includes involvement of Aboriginal and/or Torres Strait Islander artists/participants, a letter of confirmation is included)

Assessment Process

Funding is available through a two-month rolling grant round. Rounds will continue until all funding is allocated.

Mornington Peninsula Shire will appoint a peer assessment panel comprised of individuals including but not limited to panel members with specialist art form and cultural knowledge. The panel will be responsible for providing independent review and recommendations on applications to the Performing Arts Fund.

There is no upper limit to the amount of funding that can be applied for via this program, however, the level of assistance available is limited by Council's budget allocation and its priorities. No applicant can be guaranteed funding, nor can any applicant be guaranteed to receive the full requested amount; however officers will assist applicants to ensure that the funding request is commensurate to project viability.

Where total funding requested is more than the funding pool allocation, amounts granted may be reduced to meet the broader community's needs.

This funding program is subject to a two-stage assessment process. Stage One comprises of an initial expression of interest. Successful EOI applicants will be invited to submit a full application as part of Stage Two.

Assessment of applications undergo the following processes:

Stage One

- EOI is submitted and assessed by Officers
- An eligibility and finance check is conducted

- EOI submissions will be assessed and applicants notified by email within 10 working days whether their proposal will progress to full application
- Successful applicants will be invited to complete Stage Two application
- Unsuccessful applicants are notified that they will not proceed to Stage Two

Stage Two

- Applicants complete application, addressing additional criteria
- Applications are progressed to an Assessment Panel. Panel meets on prescribed bi-monthly dates
- If application is received within 10 working days prior to next prescribed date, application will be deferred to next available date
- Applicants may be requested to provide additional supporting information to assist with the assessment of their application
- The Assessment Panel will evaluate and score applications for compliance with the criteria of the program
- Applicants may be requested to meet with the panel to discuss their application in further detail
- A decision will be made by the panel and officers via delegated authority

Addressing the Assessment Criteria

Applicants are required to provide the following for assessment:

- A description of the activity or idea, and how the proposal addresses one or more of the goals in the Arts & Culture Plan 2024 (EOI only)

Once progressed to the Stage Two, the following will be required:

- Detailed responses to the assessment criteria. Accepted formats for this component are written, audio recording, video submission or mixed media:
 - Project rationale
 - Benefit to organisation / individual
 - Benefit to the Mornington Peninsula's community and creative sector
 - Capacity to deliver
- Provide a detailed budget outlining how grant funds will be spent, and any co-contribution
- Further supporting material that respond to the assessment criteria, including artist / participant CVs, examples of previous work, and current developments. Video and audio supporting material is welcomed.
- If you have accessibility needs or require assistance in completing this application, please get in touch with us

General Eligibility

Minimum eligibility requirements to be considered for funding:

- Applicants must be based within the Mornington Peninsula Shire Local Government Area.
- Program is open to creative and cultural sector incorporated not-for-profit community groups/organisations, commercial creative and cultural sector organisations and individuals (for the purpose of this grant referred to as 'artist') registered as a sole trader.
- Non-for-profit group applicants without incorporation or Sole Trader status are able to be auspiced by an eligible organisation. An Auspice Agreement must be completed and attached to the application. The organisation that agrees to auspice must be involved in the conduct and financial management of the project for which a grant is being sought. An auspice organisation is limited to auspice a maximum of 2 unincorporated groups.
- ABN status must be provided. Applicants without an ABN must submit an Australian Tax Office Statement by a Supplier Form with their application.
- The applicant must have a current and adequate level of public liability insurance relevant to the project.
- Only one application per organisation can be accepted to a maximum of 2 funding programs in a financial year.

- While there is no restriction on where activities during the development are undertaken, any associated performance outcome must debut within the Mornington Peninsula Shire Local Government area.
- The organisation/applicant must not be in debt to the Council and must have acquitted or is compliant with all grants previously awarded by Council

Ineligible for Funding

- Applicants not located within the Mornington Peninsula Shire Local Government Area.
- Activities that do not directly benefit the Mornington Peninsula region and/or community
- Activities, programs, projects and events currently supported by another Mornington Peninsula Shire funding source/grant per financial year.
- Sporting trips, educational, civic or political events, conferences, seminars or similar.
- Activities and projects that are the responsibility of a group under their incorporation or lease/license agreement.
- Applications for core business activities for which an applicant is already funded by a level of Government.
- Organisations that are politically based or those who operate principally as a lobby group/activist.
- Applicants in receipt of gaming machine revenue.
- Requests for contributions toward major capital work projects or capital expenses.
- Requests to fund purchases that would otherwise be covered by insurance.
- Gifts, prizes, appeals, donations, campaigns and general fundraising.
- Seeking retrospective funding for activities, programs and projects that have already started or have been completed.

Budget

- Budget must be GST exclusive.
- The budget should account for all expenses and income and must be calculated as the same amount.
- Budget income refers to all resources that will be directed towards the development, implementation and/or evaluation of proposed projects. Income includes the organisations financial co-contribution, additional grants or sponsorships. It does not refer to proposed income generated from a project, such as ticket or publication sales.
- Volunteer hours are calculated at \$46.87 per hour and are to be entered separately to project income as In-Kind contribution (if relevant)

Post Grant Report (Acquittals)

- All projects must be completed within 12 months of receipt of funding;
- A report and photographs (with consent from individuals in pictures) is required as evidence of the execution of the project, expenditure and outcomes;
- The report must include copies of media articles, collateral and/or evidence of attribution to Mornington Peninsula Shire's Performing Arts Fund
- The report must include project outcomes, variations, learnings and final budget
- Applicants will be notified via email when the acquittal form is available via SmartyGrants
- Applicants will receive a reminder email prior to the acquittal due date

Accessibility for applicants with disability

Applicants living with a disability are encouraged to contact staff to discuss any specific needs or additional support that may be required to complete and submit an application.

If you are deaf, or have a hearing or speech impairment, you can contact us through the National Relay Service.

Visit: National Relay Service website

TTY/voice calls: 133 677

Speak and listen: 1300 555 727

SMS relay: 0423 677 767

Draft

Council Policy

Risk Management Policy

Objective Reference:



1.0 AUTHORITY

- *Local Government Act 2020*, sections 9, 53 & 54
- Council and Wellbeing Plan 2021 - 2025
- Victorian Government Risk Management Framework

2.0 INTENT

The purpose of this policy is to provide commitment and a consistent and integrated approach to the management of risk to ensure all risks that could affect the achievement of our Council objectives are identified, assessed and managed to an acceptable level. The objective is to support well informed decision making to achieve our strategic objectives, including the protection & enhancement of our community, natural & built assets and financial sustainability. This commitment to each other and the community will provide confidence and trust in the good governance of the Shire.

This policy shall be read in conjunction with the Shires Risk Management Framework.

3.0 SCOPE

This policy is organisation-wide and applies to all Council activities and includes all employees, Councillors, volunteers and contractors alike.

4.0 GOVERNANCE PRINCIPLES

Under the *Local Government Act 2020*, Council must give effect to the following overarching governance principles:

- a) priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- b) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
- c) innovation and continuous improvement is to be pursued;
- d) the ongoing financial viability of the Council is to be ensured;

5.0 POLICY STATEMENT

The purpose of risk management is the creation and protection of value. It improves performance, encourages innovation and supports the achievement of our objectives. In recognising risk management is an essential element of good governance:

5.1 Our approach to risk management is aligned with ISO 31000:2018 Risk Management – Guidelines and the Victorian Government Risk Management Framework.

5.2 The principles for good risk management defined in ISO31000:2018 are aligned with our organisational values. We demonstrate our adherence to these principles by adopting the following values aligned behaviours:

Approved by: XXXXXX

Approval date: XX/XX/XX

Scheduled Review Date: xx/xx/xx

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Council Policy

Risk Management Policy

Objective Reference:



- We take a systematic, structured and timely approach to risk management, contributing to consistency, efficiency and reliability. We consider the nature of uncertainty and how it can be addressed. (Integrity)
- Our risk management practices form part of our informed decision making; they are forward looking, dynamic, iterative and responsive to change. (Courage).
- We are transparent and inclusive, ensuring appropriate and timely involvement of stakeholders and decision makers (Openness).
- Risk management considers human and cultural factors, recognising people's capabilities, perceptions and intentions (Respect)
- Through risk management we create and protect value; it is an integral part of our organisational processes that facilitates continual improvement to the organisation. Our processes are tailored to our external and internal context and we utilise the best information available to support our decisions. (Excellence)

5.3 Risk management is the responsibility of everyone connected to the Shire, not just one individual or business unit. Councillors, management, team leaders, staff, volunteers and contractors all play a part in making risk management a priority as they undertake their daily tasks. Specific responsibilities are set out in the Risk Management Framework.

5.4 An Audit & Risk Committee has been established pursuant to Section 53 of the *Local Government Act 2020*, to support Council in discharging its oversight responsibilities related to matters including risk management, fraud prevention, compliance with policy and legislative requirements and assurance activities including internal and external audit. The appointed independent members act in this capacity by monitoring, reviewing, endorsing and advising on matters set out in the Audit & Risk Committee Charter, developed in accordance with Section 54 of the Act.

5.5 A Risk Management Framework is maintained to provide a structured, systematic and timely approach for identification and management of risk ensuring communication and consultation in the process.

5.6 We maintain Risk Registers of known risks affecting the Shire, generally grouped into Strategic, Operational and Project risks.

5.7 We develop an annual Risk Management Plan, to ensure the regular and timely review of risks:

5.7.1 Strategic Risk Registers are developed and reviewed as part of the completion of the Shires annual Corporate Plan. Treatments and actions inform the development of annual Business Unit Plans.

5.7.2 Strategic Risk Registers are reviewed and updates on treatments and actions taken to address risk are reported:

- on a quarterly basis to the Risk Management Committee; and
- twice annually to the Audit & Risk Committee and Council.

5.7.3 'Extreme' and 'High' Operational risks shall be reviewed and an update on treatments and actions taken to address risk will be reported twice annually to the Risk Management Committee and annually to the Audit & Risk Committee.

Approved by: XXXXX

Approval date: XX/XX/XX

Scheduled Review Date: xx/xx/xx

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Council Policy

Risk Management Policy

Objective Reference:



5.7.4 Business units review progress on treatments and actions to all Strategic and Operational risks on a quarterly basis, including as part of the completion of annual Business Plans.

5.7.5 Annually we review our Strategic Risk Register with our long-term infrastructure maintenance service providers to ensure our joint risks are captured and managed in accordance with their contracts.

5.8 We allocate appropriate resourcing to ensure our operational capability to manage risk in an efficient and responsible manner. Risks classified as 'Extreme' and 'High' are considered a priority in terms of allocation of resources through the annual budget process.

5.9 To ensure we manage risk without stifling innovation, we have defined our understanding and willingness to accept or avoid risk to improve our decision making (our risk appetite or tolerance). This optimises performance, creates value and provides opportunity. The following statements provide an understanding of the level of risk we are prepared to accept based on identified risk categories. They define our approach to the management of risk in these categories. These tolerances are then used to determine our target Residual Risk ratings:

Risk Tolerances

- Progressive Approach – willingness to consider options with an enthusiasm for innovation; there is some higher risk associated with the opportunity being pursued, but there are treatments available to mitigate the risk to achieve an acceptable level of reward.
- Balanced Approach – there is some risk associated with the opportunity being pursued, however there is a preference for safe options or there are actions available to mitigate the risks, with the aim of relatively low degree of residual risk for potential reward.
- Conservative approach – preference for options that avoid risk or have low inherent risk.
- No tolerance – risk to be avoided.

Risk Categories & Approach

Strategy and Leadership

- Progressive – for risk associated with the implementation of change and key strategic plans.
- Conservative - for risk associated with failure to consider implications and impacts of decisions on the broader community and strategic objectives.

Financial Sustainability

- Balanced - for investigation into revenue strategies and review of services to improve our financial sustainability.
- Conservative - to avoid significant cost over run on programs and projects.
- No tolerance - for risks having a significant negative impact on long term financial sustainability.

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Scheduled Review Date: xx/xx/xx

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Council Policy

Risk Management Policy

Objective Reference:



Community & Stakeholder Engagement

- Progressive - for building stronger relationships and engagement with our broader community.
- Conservative - for risk arising from failure to appropriately engage stakeholders and community; and for risk arising from failure to meet customer commitments and/or suitability of advice.

Asset Management Lifecycle

- Progressive - for design and development outcomes that improve infrastructure sustainability and community accessibility.
- Conservative - for risk arising from degradation of major/critical assets; failure to adequately maintain, renew or plan for future requirements of all natural & built assets; and failure to achieve key deliverables within our strategies and plans.

Workforce

- Progressive - to being an employer of choice that attracts and retains high performing values aligned staff.
- Conservative - to inappropriate and unsuitable behaviour that is inconsistent with our values and code of conduct; and for risks arising from inadequately informed, trained and supported staff or failed internal processes.

Safety & Wellbeing (physical & psychological)

- Progressive - to ensure staff feel valued and consulted and engaged in matters that affect their health and wellbeing.
- No tolerance - for compromising the safety and wellbeing of staff, contractors, volunteers or members of our community.

Effective Management

- Progressive - to improve efficiency, excellence and strong collaboration in Shire operations and service delivery.
- Conservative - for third party partner (contractors) failure.
- No tolerance - for non-compliance with legal, professional and regulatory requirements; internal fraud, collusions, theft and associated reputational risk.

Information Technology

- Balanced - for innovation and improvement in technology to gain improvements in service and efficiency; but not at the expense of privacy and data security.
- Conservative - for systems, hardware and connectivity failures or information and data security breaches.

Climate Change

- Progressive - for decisions that seek to preserve and enhance our environment for future generations; for initiatives that divert waste from landfill; and to position the Shire as a leader in policies, planning, innovation and practices that respond to the climate emergency.

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Council Policy

Risk Management Policy

Objective Reference:



Natural & Built Environment

Progressive - for projects and activities that protect and enhance and improve access/connectivity to the natural environment; and for decisions that promote environmentally ecologically sustainable development.

Conservative - for decisions that may cause significant or irreparable damage to the environment or impact the character of the Shires Townships and Green Wedge.

Economic Change

Progressive - to creating local employment, education and training opportunities on the peninsula; and for decisions that seek to manage fluctuation of economic conditions impacting the community.

Balanced - for risks arising from economic and property development opportunities.

Seasonality

Progressive - for attracting business and industry investment on the peninsula; enhancing shoulder season and off-peak visitor experience; and education of visitors to the peninsula on their impacts on the environment and the risks associated with climate emergency.

Community Wellbeing & Social Change

Progressive - to enhance social inclusion and healthy lifestyles to support a healthy and vibrant community, including community resilience to impacts of the climate emergency.

Balanced - for programs that increase affordable housing and support families and persons at risk.

Conservative - to risk arising from failure to effectively identify and plan for social and community wellbeing issues.

Crisis

No tolerance - for risk arising from failure to adequately prepare for impacts of crisis.

6.0 HUMAN RIGHTS CHARTER COMPATIBILITY

This policy has been assessed as being compatible with *the Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

7.0 ASSOCIATED DOCUMENTS

- MPS Risk Management Framework
- MPS Audit and Risk Committee Charter
- MPS Fraud Risk Management Policy – including Fraud Control Plan
- Business Continuity Management Policy
- MPS Procurement Policy
- Our Safety Policy
- Municipal Emergency Management Plan
- ISO 31000 - Risk Management – Principles and Guidelines 2018
- ISO 22313 – Business Continuity Management Systems

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Council Policy

Risk Management Policy

Objective Reference:



8.0 DEFINITIONS

Risk	Is defined as “the effect of uncertainty on objectives”. At the Shire this is expressed in terms of the sources of risk, the potential consequences and the likelihood (probability or frequency) of the risk eventuating.
Risk Management Framework	The systematic application of management policies, procedures and practices to the tasks of communicating, establishing the context, identifying, analysing, evaluating, treating, monitoring and reviewing risk.
Risk Appetite or Tolerance	How much risk we are prepared to accept. Generally expressed in terms of an entire risk category.
Risk Approach	Guidance for decisions to accept, reduce or avoid risk.
Audit & Risk Committee (ARC)	An advisory committee established by Council in accordance with section 53 of the <i>Local Government Act 2020</i> .
Strategic Risks	Events or decisions that could potentially prevent our organisation from achieving its objectives and strategic goals.
Operational Risk	The uncertainties and hazards that emerge as a direct result of service units providing their day to day business activities.
Residual Risk	The level of risk to objectives (expressed as Extreme, High, Medium or Low) that remains after all current controls are effective, and any new treatments are implement and operating as planned.

9.0 POLICY SPONSOR

The Policy is endorsed and approved by Council. The Manager, People & Culture is responsible for overseeing the application and review of this Risk Management policy.

10.0 DOCUMENT CONTROLS

This policy will be reviewed within a four-year cycle in line with Council term to ensure consistency with the Council Plan.

Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, the change to an existing policy or document referred to in this policy, and minor updates to legislation and the like which does not have a material impact. However, any change or update which materially alters the document must be by resolution of Council or the Executive.

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Risk Management Framework

- Embracing uncertainty in pursuit of our community vision



Mornington Peninsula Shire is a Child Safe organisation.

V4. 2022

Approved by the Risk Management Committee on 03/02/2022

Endorsed by the Audit & Risk Committee on 24/02/2022

Adopted by Council on

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1.0 Introduction

This Risk Management Framework shall be read in conjunction with Councils Risk Management Policy.

Additionally, the Framework is supported by six Risk Management Guides (RMG) to aid the operational application of the framework:

- RMG 1 – Risk Analysis – Step by Step
- RMG 2 – Risk Matrix & Effectiveness Tables
- RMG 3 – Strategic & Operational Risk Register Template
- RMG 4 – Project Risk Register Template
- RMG 5 – OHS Risk Assessment Template
- RMG 6 – Risk Owner & Risk Lead Guidance

These are conveniently located in the 'Risk Management' section of 'Our Shire' Knowledgebase.

1.1 Our Commitment

A strong ***Risk Management Framework is essential*** to ensure we make well informed decisions **to achieve our strategic objectives** outlined in the Shire's Council and Corporate Plans.

This **framework enables you**, as key stakeholders, **to understand and confidently respond to the risks** affecting our business objectives and efficiency.

By understanding our risks and **keeping within the levels of risk we are prepared to accept**, we can operate efficiently and maximise the benefits gained from our resources and systems.

We cannot completely eliminate risk, and in fact doing so would stifle innovation and the pursuit of excellence. In many cases the failure to identify risk can also **lead to a failure to benefit from opportunities that arise**.

Our framework provides the **foundations and organisational arrangements** for continually improving risk management across our services.

The success of this framework depends on the willingness of people to support and play their part in fostering a **positive culture**. At the Shire, we are committed to building a culture that encourages deliberate and proactive risk management, where people are **empowered and have the courage to identify and manage risks**.

Our framework has been designed in line with the Australian Standard AS/NZS ISO 31000:2018 and represents our **commitment to each other and the community** of the Mornington Peninsula Shire **to manage risk to achieve community goals**. Managing risk is integral to everything we do.

1.2 Objectives of the Framework

This framework outlines the way we manage risk across all Shire operations and entities. The framework defines the Shires:

- operating model;
- willingness to accept risk (often referred to as tolerance or risk appetite);
- responsibilities;
- methodology; and
- monitoring & reporting obligations.

For every level of our teams, the framework aims to:

- Ensure managing risk is integral in our daily work; part of 'the way we do things here';
- Provide a systematic approach to aid early identification & management of risks;
- Provide consistent risk assessment criteria;
- Provide accurate and concise information that informs decision making;
- Implement treatment strategies that are efficient in reducing risk to an acceptable level and are cost effective;
- Monitor our risk ensuring it remains within acceptable levels; and
- Continually improve the management of risk in our service to the community.

1.3 Risk Management – What is it?

The Shire's operating environment is challenging and full of uncertainties. Our decisions are influenced by natural, political, socio-economic and cultural factors which may impact our ability to meet council and corporate objectives.

The potential impact of uncertainties on our organisational objectives is our *Risk*.

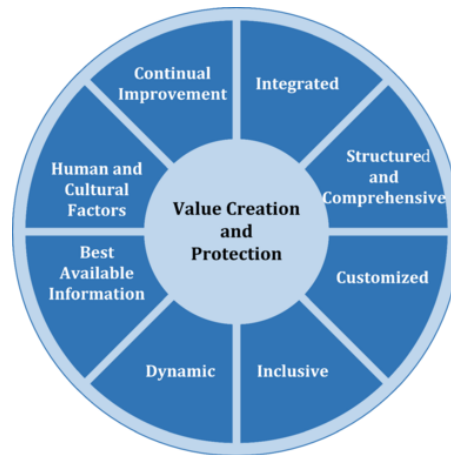
It is not possible to eliminate all risk, however if we actively identify and manage risks, we can be better prepared to respond quickly to take advantage of an opportunity (innovation) or to re-focus effort should things go wrong.

Hence, managing risk is about identifying and assessing these uncertainties and putting in place plans to minimise surprises. If we don't manage risk, the consequences can be significant and potentially high profile.

1.4 Risk Management Principles

We manage risk to create and protect value by improving performance, encouraging innovation and supporting the achievement of goals.

By following the principles in the figure below we are enabled to effectively and efficiently manage the effects of uncertainty on our objectives.



Reference ISO 31000:2018 Risk management – Guidelines

These principles are aligned with our organisational values and have been captured in our Risk Management Policy (Refer section 5.2 of our *Risk Management Policy*)

1.5 Framework Design

This framework is a set of components that provide the foundations and organisational arrangements for continually improving our approach to managing risk.

The organisational elements are:

- **Culture** – our organisational culture influences the way risk is managed. The principles for good risk management are aligned with our organisational values and form an integral part of “the way we do things here”. (refer 2.0 *Risk Culture* below)
- **Risk Policy** – providing commitment and consistency, this sets out the amount and type of risk that we are prepared to pursue, retain or take to meet objectives. (refer 3.0 *Risk Policy* below)
- **Operational Model** – This describes the relationships and accountabilities; including the relevant assessment criteria, reporting structure and framework review process. (refer 4.0 *Operational Model* below)
- **Risk Management Plan** – This sets out our actions to monitor risk and enhance the effectiveness of the framework and includes the technical aspects of framework development and education activities to improve staff awareness. (refer 5.0 *Operational Model* below)
- **Risk Management Process** – The procedures, roles, responsibilities, timings, tools and templates to adequately perform risk management activities in accordance with the Policy. (refer 6.0 *Risk Management Process* below)

In designing this framework, consideration has been given to the ‘Three Lines Model’ (refer section 5.1 *Three Lines Model*) which clarifies the distinct roles and responsibilities of key

players. As our culture matures, the Shire aims to achieve an integrated 'tripartite partnership model', building on the cornerstones of the Three Lines Model. This aims to foster an improved partnership approach between the functions to manage complexities together.

The implementation of a Risk Management Framework is a long-term proposition that will take some time to fully mature and produce the expected results. A considerable and concerted effort by senior management and employees is required from the outset to ensure commitment to the framework is maintained.

2.0 Risk Culture

Culture encompasses the behaviours and norms of our team members to identify, understand, discuss and act on risks they are confronted with or have identified. It is influenced by the knowledge, beliefs, laws, customs, capabilities and habits of our team members.

Our risk culture is influenced by formal and informal elements:

- Formal – Our governance structures provide important frameworks through which appropriate behaviours can be encouraged and supported and poor behaviours can be identified and acted upon.
- Informal – Expectations and behavioural practices through demonstrated actions against 'Our Values'.

Council and the Shire's Executive Leadership Team accept their key role in promoting risk management as a vital business principle and through the allocation of resources for risk management activities.

To ensure the success of our Council and Wellbeing Plan, leaders at all levels promote risk management as a vital business management practice, integral to everything we do - not an optional tack on.

The Shire's leaders support and encourage a positive risk culture by:

- ✓ Empowering management and employees to manage risks effectively;
- ✓ Acknowledging, rewarding and promoting good risk management;
- ✓ Having processes that promote learning from mistakes, rather than punishing errors;
- ✓ Encouraging discussion and analysis of unexpected results, both positive and negative.

Having been appropriately empowered, all employees, contractors, and volunteers have a part to play in having the courage to identify, report and actively managing risks within their sphere and scope of work.

3.0 Risk Policy

3.1 Risk Management Policy

Our Risk Management Policy provides our:

- commitment and a consistent approach to the management of risk;
- rationale & principles for managing risk;
- willingness to accept or avoid risk (risk tolerance & approach); and
- requirements for the development of Risk Registers and a Risk Management Plan.

which together will provide confidence and trust in the good governance of the Shire.

3.2 How Willing Are We to Accept Risk? (Our risk tolerance & approach)

Our willingness to accept risk is not the same across all types of risk. For example, our tolerance for risk to staff safety & wellbeing is lower than our willingness to take risks to improve efficiency.

Our levels of tolerance, referred to as our 'risk approach', are set by Executive and Council taking into consideration our organisational objectives. Our Risk Management Policy defines the level of risk we are prepared to tolerate through a series of statements based on identified risk categories. By defining our willingness to accept, reduce or avoid risk, these 'risk approach' statements provide guidance to improve decision making and ensure we manage risk without stifling innovation. (Refer *Risk Management Policy* and *RM Guide 1 – Risk Analysis-Step by Step*)

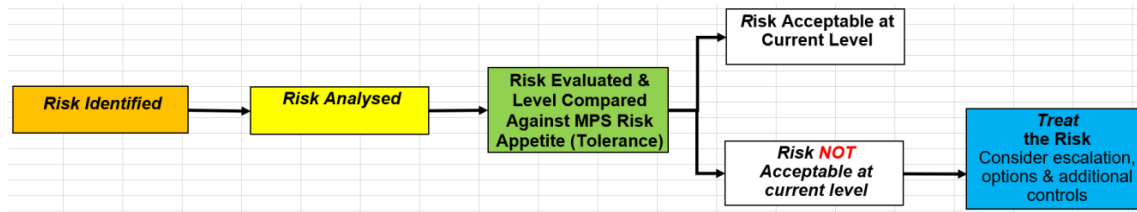
Once a risk has been analysed, a risk rating is used to determine if the level of risk is acceptable. Risk ratings are applied twice in the process:

1. An *initial risk rating* – based on existing controls we already have in place (sometimes referred to as the 'inherent risk').
2. A *residual risk rating* – if the existing controls are less than ideal, we identify additional treatments. The residual risk rating is then determined after all current controls are effective and any new treatments are implemented and operating as planned. The ratings and treatments are captured in the risk registers.

By correlating our risk approach with our risk consequences (refer consequence table found in *RM Guide 2 – Risk Matrix & Effectiveness Tables*), we have identified the following residual risk target levels. Our policy is to introduce controls and treatments that reduce residual risk ratings to these levels (or below):

Consequence Category	Acceptable levels of Residual Risk to achieve our objectives			
	Low	Moderate	High	Extreme
Financial		✓		
Reputation & Public Image		✓		
Business Interruption/Service Delivery		✓		
Health & Safety	✓			
Governance/Compliance	✓			
Project Consequences		✓		
Environmental Impact	✓			

If the assessed risk level is above the acceptable level for that category of risk, then escalation to the next level of authority and additional treatments may be required. If it is equal to or below the acceptable/tolerable level, then the risk can be accepted (and monitored).



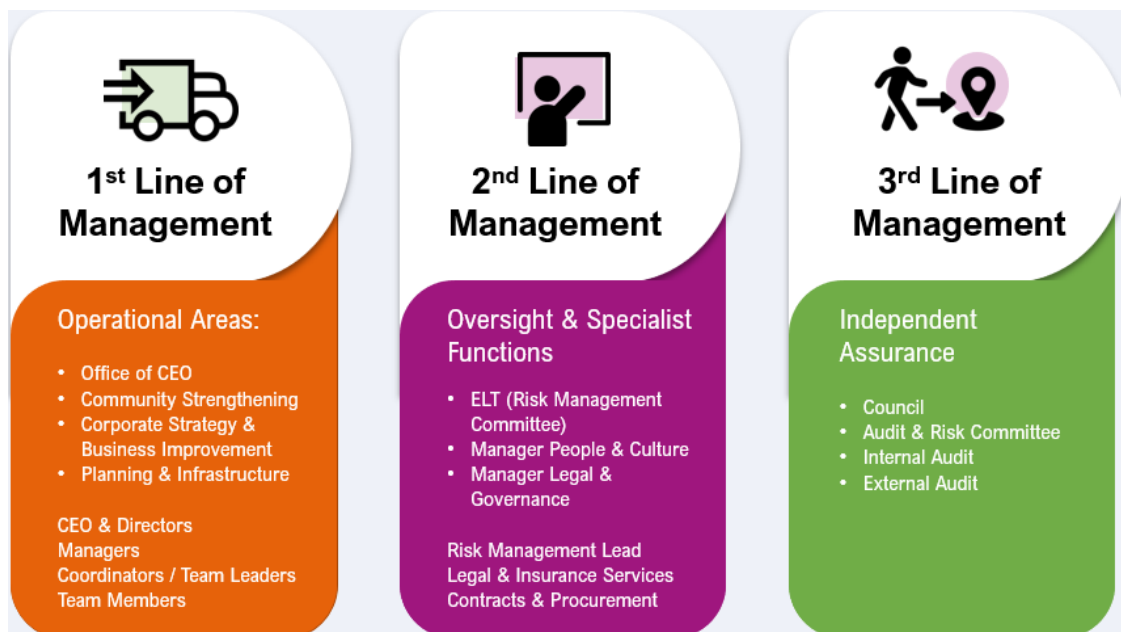
The Risk Management Committee, after due consideration, has the authority to accept risk levels above these targets.

The process to analyse and assess risk is explained in 6.0 Risk Management Process below.

4.0 Operational Model

4.1 Three Lines Model

Every person who engages in Shire activities is impacted in some way by risks, so every person has an active role in being 'risk aware'.



First Line

All operational areas of the Shire are considered '1st Line'. They are responsible for ensuring that risks (within their scope of operations) are identified, assessed, managed, monitored and reported. They bear ownership and responsibility for losses or opportunities from the realisation of risk.

The 1st Line is accountable for:

- Establishing and implementing appropriate processes and controls for the management of risk (in line with the framework);
- Undertaking adequate analysis to support informed decisions;
- Determining whether to accept, control, eliminate or transfer the risk; and
- Retaining primary accountability for the ongoing management of their risk and control environment.

In the 1st Line, Directors & Managers are delegated the accountability and authority to manage risk as 'Risk Owners'. A 'Risk Owner' may nominate a team member to act as a 'Risk Lead' to assist with day-to-day responsibilities.

Second Line

A Risk Management Committee, incorporating our Executive Leadership Team (ELT), provides effective oversight of the Shires Risk Management Framework and Plan, reviewing the adequacy of risk management policies and associated practices of the organisation. The Risk Management Committee also nominate our strategic risk owners.

The Manager People & Culture and Manager Legal & Governance share the primary roles of the '2nd Line'.

The Manager People & Culture owns and manages the Framework. Through the appointed Risk Management Lead, the Manager drafts and implements the framework components and provides the necessary tools, training and support to the 1st line. Maintaining oversight on the application of the Framework provides a transparent view and level of assurance to the 1st & 3rd lines. Additional responsibilities include:

- Providing independent oversight of risk matters as required.
- Monitoring and reporting on emerging risks.
- Co-ordinating our risk reporting for the ELT, Audit & Risk Committee (ARC) and Council.

The Manager Legal & Governance, provides support through:

- various tools for good governance;
- management of our fraud awareness; and
- management of insurance.

The Contracts & Procurement Manager also provides specialist support through development and implementation of procurement policies and frameworks, providing consistency and control over these activities and ensuring accountability and probity in public sector purchasing.

Third Line

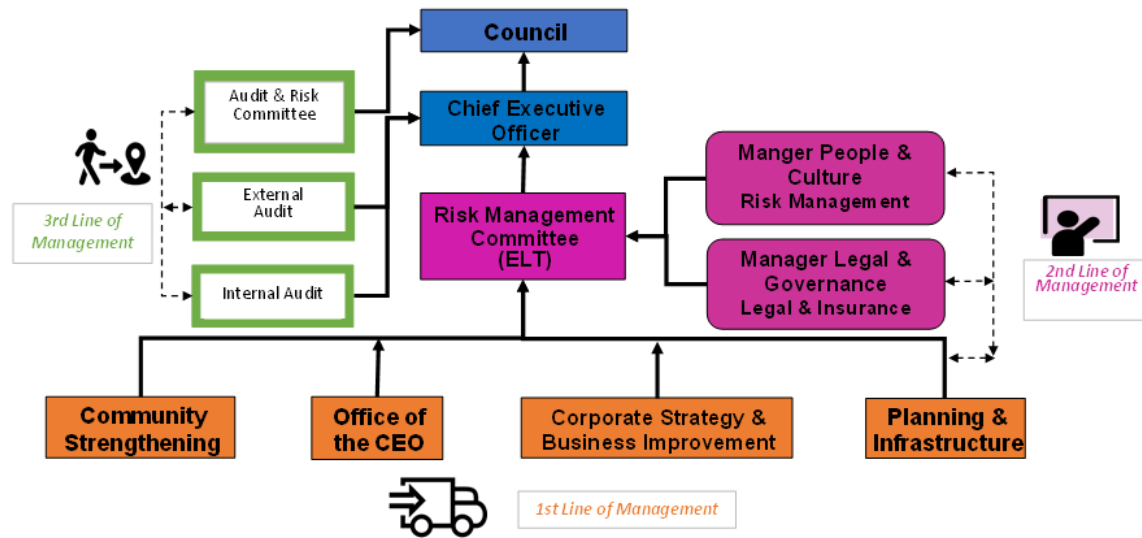
Internal & External Audit are the 3rd line of management, providing independent assurance to the Council, ARC and our Executive Leadership Team on the effectiveness of business operations and oversight frameworks (1st & 2nd Lines).

Internal Audit – is appointed by the CEO to report on the adequacy and effectiveness of internal control processes and procedures. Their scope is determined by the CEO with input from the ARC.

External Audit – Appointed by the Council on the recommendation of the ARC to report independently to the Mayor and CEO on the annual financial statements, and the review of the effectiveness of operational controls required by Local Government Act.

4.2 Operating Relationships & Accountabilities

The following diagram depicts the current operating structure for risk management within the Shire:



4.3 Integrated Business Management

Risk management processes are a key part of the cycle of corporate and operational planning activities. As the vision, strategy and business objectives are established for each Shire service unit, so too should the related risks be identified and assessed.

As council and corporate plans and budgets are prepared, all operational areas identify and assess risks to their objectives, leading to a ranking of risks, and finally, to the establishment of appropriate risk controls and treatments (for risk beyond our tolerance).



Importantly our Managers ensure risk management is not a once-a-year process, but rather is embedded in everyday business management and planning.

4.4 Practical Context

The Shire considers both internal and external environments when managing risk and undertakes a risk assessment to determine risk levels and implement risk controls. Practically, our risk is categorised into four (4) main groups:

1. Strategic Risks – Associated with achieving the Shires long-term objectives, these are events or decisions that could potentially prevent our organisation from achieving its objectives and strategic goals. Strategic risks are owned and identified at Executive level.

2. Operational Risks – These are uncertainties and hazards that emerge as a direct result of operational areas providing their day-to-day business activities and services. Operational risks are identified and managed at Level 1 of the Shires Service Catalogue with support from subject matter experts. Risk ownership is delegated to the relevant Service Catalogue Program Owner (Director). The Risk Management Committee also monitors these risks (Extreme & High) on a regular basis.

3. Team/Departmental Risks – Generally associated with risk to safety & wellbeing these are assessments of operational, day to day activities, functions, infrastructure and services. Team/Departmental risks are identified and managed at Manager / Coordinator level as necessary.

4. Project Risks – Captures risks and potential impacts associated with the delivery of the project itself. Project risks may include a mix of strategic and operational risks. Project Risks are identified and managed by the Project Management Group and the appointed Project Manager.

4.5 Roles & Responsibilities

All levels of the Shire have a responsibility and a role to play in risk management.

Council:

- adopting the Risk Management Framework and Policy, setting Council's risk appetite;
- establishing the Audit and Risk Committee;
- providing adequate budgetary provision for risk management and approved risk mitigation activities;
- utilising good risk management principles to guide decision making and good governance to achieve the Shires strategic goals.

Audit & Risk Committee

- monitor and review the appropriateness and effectiveness of the Risk Management Framework and improvement strategies;
- monitor changes to the Shires risk profile, highlighting material changes to Council;
- support Council to drive effective corporate governance.

Internal Audit

- providing independent review; assessing the effectiveness of the Shire's risk management and governance systems and practices through the delivery of the Annual Internal Audit Plan.

Chief Executive Officer:

- drives the risk management culture and responsible for strategic risk management;
- developing and maintaining good governance mechanisms that effectively monitor risks and their management;
- ensuring appropriate allocation of resources throughout the organisation to meet the Shires risk management needs.

Risk Management Committee (Executive Leadership Team)

- Oversight of the Shires Risk Management Framework and Plan, reviewing the adequacy or risk management policies, systems and procedures;
- Identifying and monitoring the management of identified risks and actions taken to control or minimise risk;
- Monitoring the current and residual rating of Strategic and Operational (Extreme & High) Risks, the consequence of these risks and the effectiveness of controls that are implemented to mitigate risk;
- Approve risk management priorities and resources, including nomination of strategic risk owners as appropriate;
- Report to the Audit & Risk Committee and Council on progress of risk management and matters that could impact on the objectives of Council including resourcing.

Directors

- support the CEO in promoting and driving the effective implementation of the Risk Management Framework for all functions of Shire operations;
- accountable for identification, ownership and management of strategic risks, ensuring risk is considered in decision making processes;
- accountable for approval, ownership and management of operational risks in their respective areas of responsibility or as delegated by the CEO;
- Role modelling the tone, culture, risk appetite and expectations for risk management and good governance;
- Identifying, assessing, treating and monitoring key risks that may impact the objectives of Council & Corporate Business Plans;
- monitoring and reporting of risks as required by the Plan;
- accountability for the risk management performance of staff in their respective areas of responsibility.

Manager People & Culture

- owns and manages the Risk Management Framework and drives the '2nd Line of Management' function of the operational model;
- facilitates the support of organisational units in the management of the '1st Line of Management' functions, including Business Continuity planning.

Manager Legal & Governance

- developing and maintaining systems and processes for good governance;
- managing our fraud prevention & awareness and insurance functions.

Managers

- promote and drive the effective implementation of the Risk Framework as a core element of strategic and business planning, major procurement, major projects and change programs;
- role modelling and promotion of a positive risk management culture by encouraging openness and honesty in reporting and escalation of risks;
- integrating risk management into team activities / meetings, openly discussing new or emerging risks, existing risks and control / treatment adequacy;
- identification, assessment, treatment and monitoring risks that might impact on achievement of objectives and recording such in the relevant risk register;
- reporting in accordance with the Plan where nominated as a risk owner or lead;
- reviewing and updating the risk assessments for each part of their operations;
- capturing active risk treatment plans in annual Business Plans and PDRs;
- ensuring resources are appropriately allocated to manage risk in line with the Shires risk appetite and tolerance.

Risk Management Lead

- supporting ELT and Managers to manage their risks through the provision of advice, guidance & training of staff;
- maintenance and monitoring of the risk management framework;
- risk reporting to the Audit & Risk Committee;
- recognising trends in risk exposure or risk management practice and bringing this to the attention of staff;
- maintenance of the Shires Business Continuity Plan.

Team Members, Volunteers & Contractors

- ensuring that his or her work environment and practices reflect good risk management standards;
- Informing Managers/Team Leaders of any specific risk observed or encountered;
- maintaining an awareness of risks (current and potential) that relate to their area of responsibility;
- actively supporting and contributing to risk management initiatives.

Risk Owners & Leads

- manage the categories of risk to which they are assigned, implementing the requirements of the annual Risk Management Plan;
- maintain appropriate risk registers, managing the review and update of their assigned risk profiles;
- monitor control / treatment owners to ensure these are developed and implemented;
- communication, reporting and escalation of risk;
- promoting a strong risk culture within their directorates.

5.0 Risk Management Plan

Our Risk Management Plan details the cycle of risk management activities required for the implementation and embedding of our processes into organisational practices. A planned approach helps to ensure continuous improvement in the management of uncertainty to our objectives.

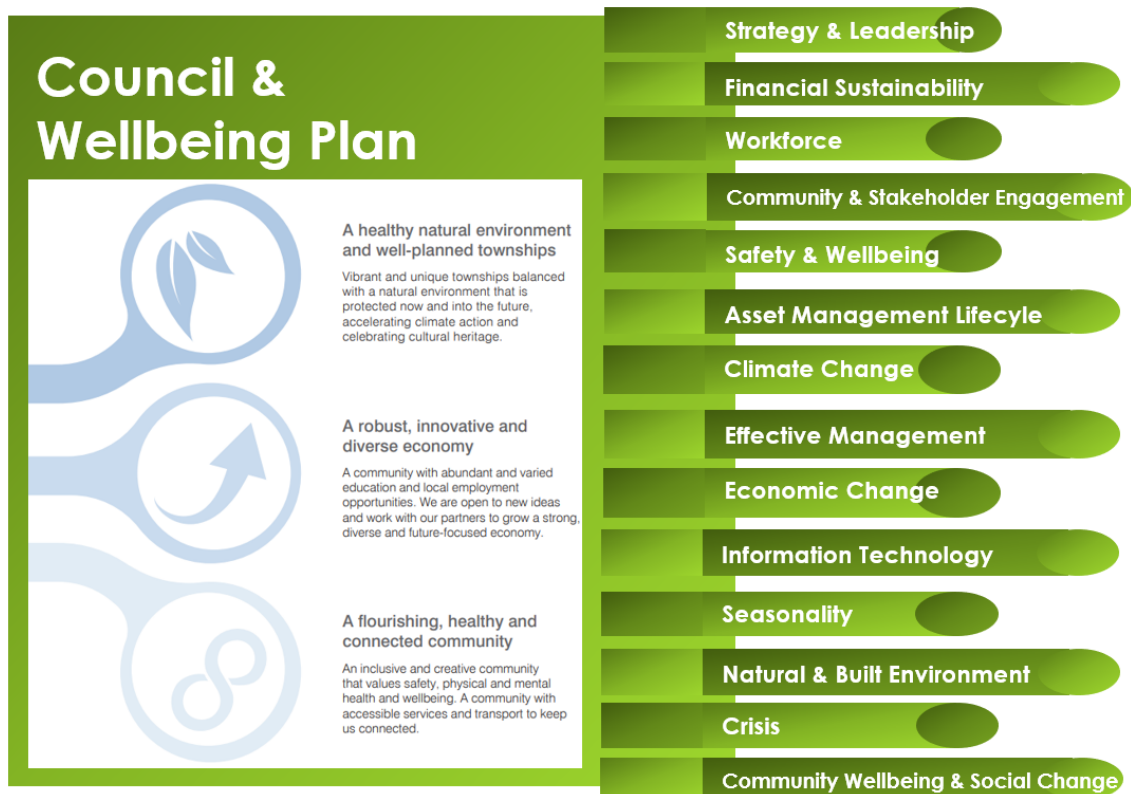
The Plan provides an annual calendar capturing frequency and timing for the review of activities, in particular strategic and operational risks, and it correlates their timing with business planning and reporting requirements. It also provides a long-term calendar for the review of the framework, policy and other associated elements.

The Plan is documented in *Appendix 1* of this framework.

6.0 Risk Management Process

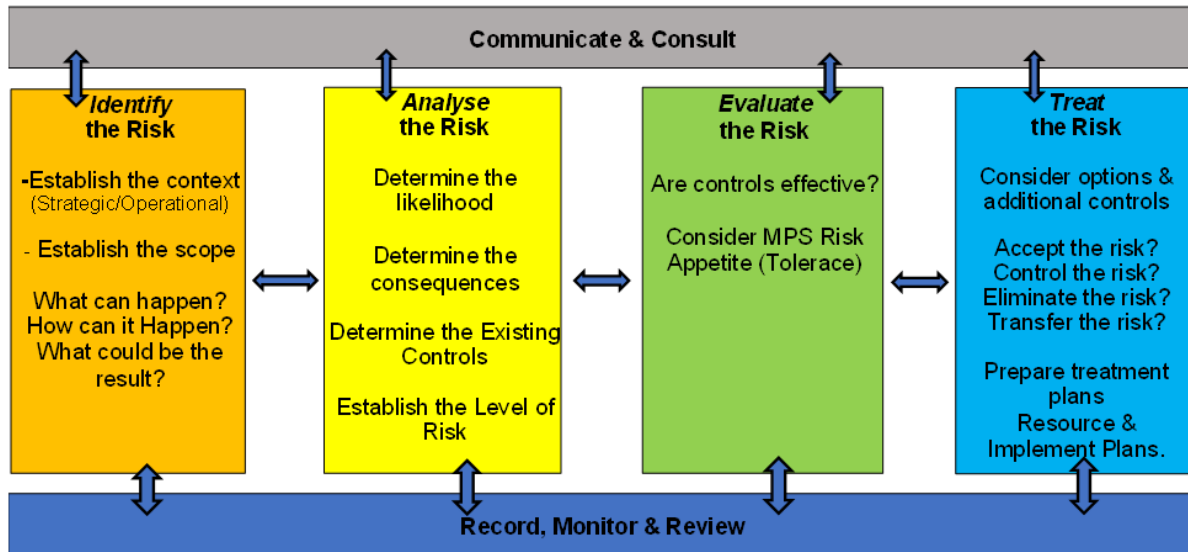
6.1 Risk Categories

To assist with risk identification, the Shire has identified a number of risk categories. These categories assist with identifying, analysing and reporting risk trends. Most risks on our profile will tie in with one or more of the categories below. (Examples of potential sources of risk within these categories are provided in *RM Guide 1 – Risk Analysis - Step by Step.*)



6.2 Risk Assessment

The Shire takes a planned and systematic approach to identify, evaluate and manage the range of business risks and opportunities impacting on our vision & objectives for our community. The Process is based on ISO 31000:2018 and involves the following steps:



Detail on the risk assessment process is contained in Risk Management Guide *RM Guide 1 – Risk Analysis - Step by Step*.

As part of our risk management tools and templates, to aid in the analysis of risks the Shire has developed a Risk Matrix to rate risks from low to extreme, based on the likelihood and consequence of an event.

In limited circumstances, separate risk matrices may be developed where technical and operational requirements require. For example: The determination of a risk rating and implementation of actions for the management of the Shires extensive number of trees is assessed by the Parks & Roadsides “Risk Matrix Works Prioritisation Tool”. Such tools shall be reviewed by the Risk Management Lead and Shire insurers, where appropriate, prior to implementation. They are maintained by the responsible operational areas.

6.3 Risk Registers

Our Risk Registers are the mechanism by which the identification, analysis and treatment of our risks are recorded. Our registers are split into two key areas:

- Strategic Risk Register – high level strategic risks that could impact on the ability of the Shire to achieve its key strategic targets. This register is maintained by the People & Culture team and ownership of these risks is with a designated Risk Owner.
- Operational Risk Registers – operational exposures that could impact on the day-to-day operations of the Shire. These registers are developed around the Shires Service Catalogue, incorporating ‘Community Facing’ Services and ‘Enabling’ Services. They are the responsibility of each Service Catalogue Program Owner (Director), supported by the relevant Level 1 Service Managers, to maintain, review and report to the Risk Management Committee.

The Risk Registers can be found under ‘Risk Management’ in our ‘Knowledgebase’. Reporting on these Risk Registers is detailed in the Risk Management Plan (Refer *Appendix 1 – RM Plan*).

Additionally, Project Risks and Team/Department risks are captured in registers as appropriate and maintained in their respective areas within Objective.

6.4 Monitor & Review

The designated Risk Owner (and/or nominated Risk Lead) is responsible for both monitoring and reviewing the risks assigned to them to ensure the treatment strategies have been implemented and are working effectively.

All risks must be monitored and reviewed in accordance with the Risk Management Plan to ensure the rating assigned, controls identified, and treatment options established remain valid. A review will also consider:

- Have there been changes in the internal / external operating environment?
- Are there issues that may influence the level of uncertainty?
- Is the level of risk increasing, decreasing or remaining stable (trend)?
- Have circumstances changed to the extent the risk may require escalation?
- Are the risk treatments progressing as planned, and reducing the residual risk as intended?

Results of reviews are captured in the relevant risk register. Further information on completing risk reviews can be found in *RMG 5 - Risk Owner/Lead Guidance*. Upon review, if a Strategic or Operational Risk is deemed by the Risk Management Committee to be adequately controlled with no clear need to improve the controls within the organisation's appetite for risk, the Committee under direction from the CEO, can decide to remove the risk from the relevant Risk Register, to be managed as a 'business as usual' activity.

Following a risk review the Risk Management Committee can also determine if a risk should be escalated or de-escalated by moving the risk from the Strategic to the Operational Risk Register (or vice versa).

6.5 Recording & Reporting

Recording and reporting takes place within and throughout all steps of the process. Whilst usually periodic (i.e. quarterly risk reporting), circumstances may arise requiring an ad-hoc response (e.g. as a result of incident or realisation of a risk)

Refer to the **Risk Management Plan** (*Appendix 1 – RM Plan*) for the annual schedule of RM reporting.

For additional guidance and expectations on recording and reporting of the Operational and Strategic risks, refer to *RM Guide 5 - Risk Owner & Risk Lead Guidance*.

6.6 Business Continuity Management

The Shires Business Continuity Management (BCM) process identifies potential threats to the Shire and the potential impacts to business operations, if realised.

A framework for building organisational resilience and an effective response to events that may interrupt business has been developed and documented in the Shires "Business Continuity Plan (BCP)". The BCP contains procedures that guide the Shire to respond,

recover, resume and restore business to a pre-defined level of operation following any incident that *significantly* disrupts Council operations and service delivery. The BCP is activated by the Shires Crisis Leadership Group.

Our BCP and BCM Policy can be found in our Knowledgebase on the Intranet.

6.7 Insurance

The Shire has a comprehensive range of insurance policies covering:

- Professional indemnity;
- Public Liability;
- Workcover;
- Motor Vehicles; and
- Property

Whilst a form of risk control, insurance cover does not replace appropriate risk management and will not cover all the risks of the Shire.

When assessing risk, Risk Owners / Leads should liaise with the Shires Legal and Governance team to identify any gaps in insurance cover.

6.8 Education & Training

An important element for the success of our risk management framework is the provision of training. In general, risk management training and awareness occurs as part of risk workshops and updates to risk assessments.

The following programs are designed to ensure that risk management awareness is consistent and thorough.

Induction

All new staff will receive training, via corporate induction sessions, on their responsibility to observe and report potential risks, as well as their responsibility to consider themselves, their work colleagues and the community in relation to risk management and minimisation.

RM Framework Awareness

Training on our framework and processes will be delivered as a refresher every 3 years to all staff at Coordinator level and above. This may be either in person or online training.

Specific Training

Specific risk management training will be provided on an 'as required' basis, with consideration given to a person's/team's role within the 'Three Lines Model'. Specific training needs are to be monitored and noted during the Shires Goals & Performance process. Teams with specific RM training needs can contact the Risk Management Lead to arrange a team specific presentation/workshop.

7.0 Assurance

The following approaches are undertaken to provide confidence in the implementation of this Risk Management Framework:

First Line of Management

- Position descriptions will emphasise risk management as a corporate responsibility with specific KPI's as appropriate;
- At least one Managers meeting annually has a 'risk management' theme;
- Managers & ELT undertake regular reviews of their portfolio;
- Managers validate/audit compliance with standard operating procedures and risk controls;
- Managers keep abreast of current and emerging risks through a 'Recent Issues Brief' provided by Internal Audit on a quarterly basis.

Second Line of Management

The Risk Management Lead will:

- regularly monitor and report on the performance of the Framework including implementation of the Plan;
- in accordance with the Victorian Government Risk Management Framework, undertake a maturity assessment of the Shires framework every 3 years;
- undertake proactive initiatives, e.g. 'Risk Week' or including validation of implementation/compliance of controls for high & extreme risks;
- maintain up to date and pertinent material on 'Our Shire' (intranet).

Third Line of Management

The following approaches will be taken:

- The ARC will provide independent assurance, advice and assistance to Council on risk management, control, governance and external accountabilities;
- Council will receive and consider reports from the ARC and is updated by the CEO on strategic risk management on a 6-monthly basis. Council will provide guidance and direction as necessary;
- Internal Audit will be responsible for conducting independent reviews of the performance of the Framework as part of the internal audit program. Findings will be reviewed by ELT and the ARC;
- The Office of the Victorian Auditor General from time-to-time audits local government in relation to their overall performance and governance. These audits will be used to benchmark our practices and inform our risk management practices;
- The Victorian Local Government Inspectorate carries out audits of Victorian councils to assess compliance with the Local Government Act 2020. Their reports are used to benchmark council practices.

8.0 References

This Framework must be considered in conjunction with:

- AS/NZS ISO 31000:2018
- Occupational Health & Safety Policy
- Fraud Control Plan
- Fraud Risk Management Policy
- Staff Code of Conduct
- Council & Corporate Plans
- Business Continuity Plan
- Internal Audit Program
- Contract Management Framework
- Project Planning & Delivery Framework
- Health, Safety & Wellbeing Strategic Plan

MPS RISK MANAGEMENT PLAN

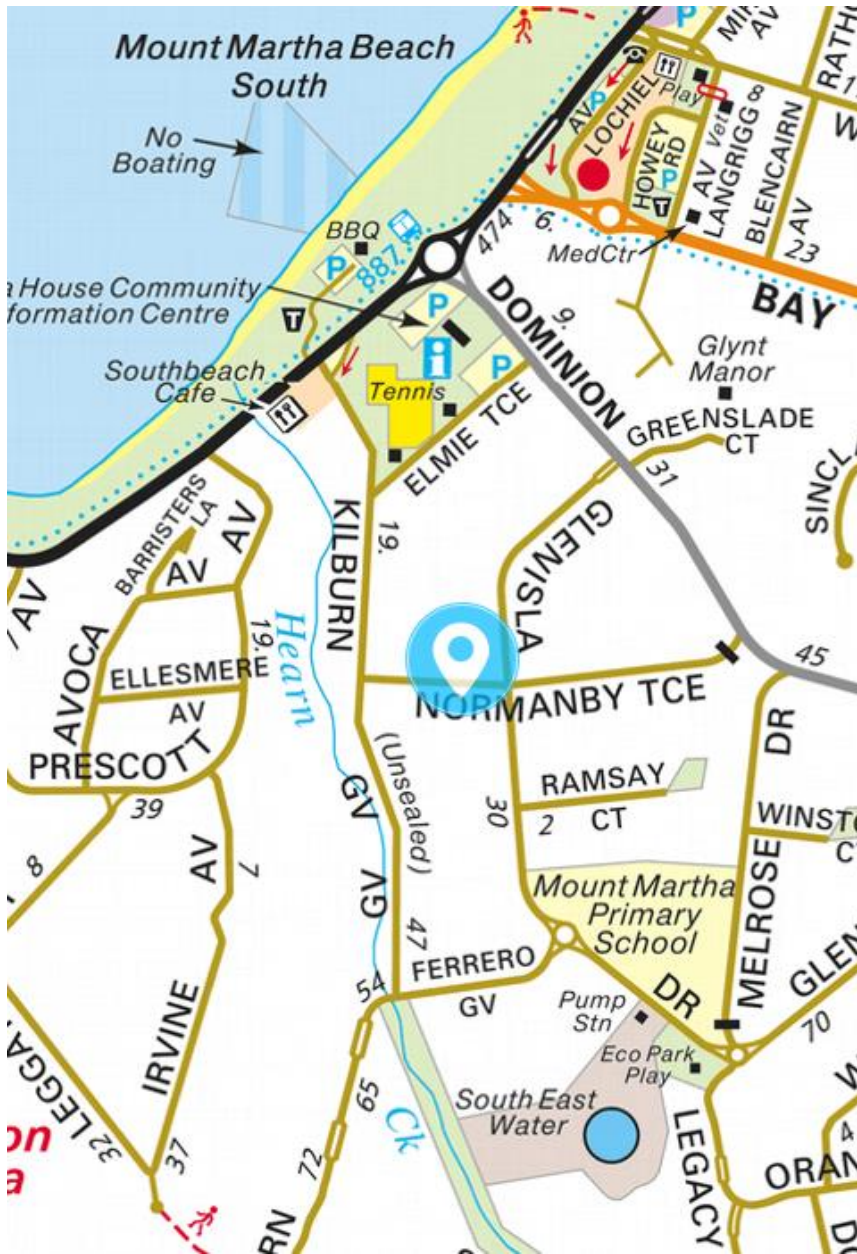
START Date

RM Framework Appendix 1

Annual Calendar

Risk Management (RM)	Qtr 1			Qtr 2			Qtr 3			Qtr 4		
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Council Briefings			Risk Briefing						Risk Briefing			
RM Committee Meeting		1st Week			1st Week			1st Week			1st Week	
ARC Meeting Dates		4th Week			4th Week			4th Week			4th Week	
ARC Report to Council			Activities Report						Activities Report			
Unit Business Planning	Annual Business Planning											
Strategic Risk Review	Prep for Business Planning			ELT & Managers			ELT & Managers			ELT & Managers		
Strategic Risk Review with Infrastructure Services Contractors			Major Service Providers									
Strategic Risk Reporting to RMC		All Strategic Risks			All Strategic Risks			All Strategic Risks			All Strategic Risks	
Strategic Risk Reporting to ARC					All Strategic Risks						All Strategic Risks	
Operational Risk Review	All Operational			All Operational		All Operational Risks - Extended				All Operational		
Operational Risk Reporting to RMC (Extreme/High/Emerging)		All Operational Risk Registers						All Operational Risk Registers				
Operational Risk Reporting to ARC (Extreme/High/Emerging)		Community Facing Services						Enabling Services				
Evaluation of Risk Management Plan											Report to ARC	
Project Risk Registers	Ongoing - As required											
Internal Audits	Ongoing - In accordance with ARC Approved Program											
Internal Training	Ongoing - Induction & Risk Management Training / Refresher Training											
Unit Meetings - Risk Conversations	Ongoing - Monthly Meeting Standing Agenda Item											

Long Term Calendar				
	Annual	Biennial	3 years	4 years
Insurance Program Review	Prior to Renewal			
Strategic Risk Register Review	Prior to Business Plan Development			
RM Framework Review				
RM Plan Review				
RM Policy Review				
Council / Corporate Business Plan Review				



LP 3015



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3.4 Footpath Trading Licence (with liquor) – Continental Hotel, Sorrento - Update

Prepared By	Jo Kaylock, Acting Team Leader – Property Operations
Authorised By	Director - Corporate Strategy and Business Improvement
Document ID	A10972995
Briefing Note Number	BN1493 – 12 October 2021
Attachment(s)	1. 14 December 2021 Council Report 2. 11 January 2022 Email (confidential) 3. 18 January 2022 Email (confidential) 4. 28 January 2022 Letter (confidential)

EXECUTIVE SUMMARY

Council resolved at its meeting on 14 December 2021 that if a footpath trading licence (with liquor) has not been executed with the Continental Hotel, Sorrento by 31 January 2022 a further report be presented to Council. As at the date of writing, the Continental Hotel has not executed the licence agreement or agreed to the terms outlined in Council's Resolution dated 14 December 2021.

This report provides an update on the proposed footpath trading licence (with liquor) for the Continental Hotel at 1-21A Ocean Beach Road, Sorrento.

RECOMMENDATION

That Council:

1. Notes the information provided in this report titled 'Footpath Trading Licence (with liquor) – Continental Hotel, Sorrento – Update'.
2. Authorises the Chief Executive Officer to enter into further negotiations with Continental Hotel Investments Pty Ltd and/or CFBP6 Pty Ltd in an effort to resolve the licence terms and annual licence fee with a further report to be presented to Council at the earliest opportunity.

Part B

That Council resolves that Attachments 2, 3 and 4 to this report be retained as confidential items pursuant to section 3 (1) (a) and (e) of the *Local Government Act 2020* as the contain Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released and legal privileged information, being information to which legal professional privilege or client legal privilege applies.

COUNCIL DECISION

Moved: Cr Bissinger
Seconded: Cr Race

That the recommendation be adopted.

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3.4 (Cont.)

Vote by Division (Requested by Cr Gill)

For: Cr Celi, Cr McCafferty, Cr Mar, Cr Bissinger, Cr Race, Cr Dixon and Cr Marsh

Against: Cr Gill

Carried

COUNCIL AND WELLBEING PLAN

- **Theme 1 – A healthy natural environment and well-planned townships**
- Vibrant and unique townships balanced with a natural environment that is protected now and into the future, accelerating climate action and celebrating cultural heritage.
- **Strategic Objective 1.4**

An accessible built environment that supports diverse, current and future community needs.

RELEVANT COUNCIL DECISIONS AND POLICIES

On 14 December 2021 a report was taken to Council for the Footpath Trading Licence (with liquor) – Continental Hotel, Sorrento (Attachment 1). Council adopted the following recommendations:

That Council:

1. *Resolves to enter into a Footpath Trading Licence (with liquor), on the proposed terms outlined below:*
 - A. *Proposed Licensee: Continental Hotel Investments Pty Ltd and/or CFBP6 Pty Ltd.*
 - B. *Licensed Area: 176 square metres of the footpath adjoining 1-21 Ocean Beach Road, Sorrento (as detailed in Image Three).*
 - C. *Permitted Use: Outdoor dining activities in accordance with Planning Permit P15/2392 as amended from time to time.*
 - D. *Term: 10 years*
 - E. *Licence Fee: Year One \$38,000 per annum (excluding GST)*
Year Two \$45,000 per annum (excluding GST)
Year Three \$50,000 per annum (excluding GST).
 - F. *Licence Fee Review: Commencement of year four, with the review and proposed licence fee to be presented to Council.*
 - G. *Commencement Date: On the commencement of operations.*
 - H. *Public Liability Insurance of \$20,000,000 to be maintained by the Proposed Licensee.*

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3.4 (Cont.)

2. *Resolves that the Common Seal of the Mornington Peninsula Shire Council be affixed where necessary and relevant documents are signed by one Councillor and the Chief Executive Officer (or delegate).*
3. *Resolves if the Licence Fee cannot be agreed with the Proposed Licensee and/or the Licence is not fully executed by 31 January 2022 a further report be brought to Council*

The licensee is yet to execute the licence and therefore as per the recommendations this licence had been brought back to Council.

DISCUSSION

Purpose

The purpose of this report is to update to Council on the current status of the execution of the licence agreement with the Continental Hotel on the terms detailed in Council's resolution of 14 December 2021.

Background

Subsequent to Council's resolution of 14 December 2021, Holding Redlich was engaged to draft the proposed licence agreement, incorporating the terms resolved by Council. The draft licence agreement was emailed to the lawyers acting for the Continental Hotel, Minter Ellison on 11 January 2022 (Confidential Attachment 2).

Holding Redlich received a response from Minter Ellison on 18 January 2022 (Confidential Attachment 3). The response, among other things, indicated the Continental Hotel did not agree to the proposed licence fee and sought exclusive possession of the licence area.

Holding Redlich issued a further letter on 28 January 2022 (Confidential Attachment 4) inviting, among other things, the Continental Hotel submit a proposal for the licence fee to be reconsidered by Council. No response has been received.

As a result of the above, the Continental Hotel does not presently have the appropriate approvals or rights to occupy the public area fronting Ocean Beach Road. If this matter is not resolved, any occupancy will be referred to the appropriate Shire departments for further action.

Options for consideration

The options presently available are for Council to authorise the Chief Executive Officer to enter into further negotiations with the Continental Hotel to reach an agreed position (tenure, terms, fee) for a licence to be issued or Council notes the refusal of the Continental Hotel to enter into a licence agreement and consider the appropriate enforcement options.

ENGAGEMENT

Not applicable.

COMMUNICATIONS PLAN

Not applicable.

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3.4 (Cont.)

LEGAL AND REGULATORY FRAMEWORK

Commercial Activities on Footpaths Policy 2008 (Policy)

The Policy is an attachment to the General Purposes Local Law 2012 and forms part of the local laws by reference. The Policy details at Section 1 – Scope that:

Where a liquor licence is being sought or permanent structures being placed on the footpath, a licence/lease to occupy the footpath must be obtained along with an associated planning permit.

The Policy further provides at Section 3.f (with similar wording at Section 3.s):

Where a liquor licence is to be extended over the footpath area or permanent structures are to be placed on the footpath a licence/lease to occupy the footpath must be obtained along with an associated planning permit.

Section 3.s of the Policy provides the following base calculation for a licence fee:

Outdoor Dining (with liquor licence or infrastructure)

The municipal site value of the licensee's property is used as a basis to calculate the value of the footpath space used for commercial activities. A discount of 50% is applied to the footpath value to allow for the limited occupancy rights of the licensee. The licence fee is then calculated as follows depending on the degree of exclusivity provided and the permanent nature of the use:

1. *Liquor licensed area with restricted hours of occupancy (no permanent fixtures) – 8% of encumbered value/m².*
2. *Areas with non-restricted hours of occupancy (exclusivity) with or without Liquor Licence – 10% of encumbered value/m².*

These percentages may be varied to reflect current market conditions. However, at all times the minimum amount of \$1,200 will be applied. The fee to use public land for commercial activities may vary as part of the Shire's annual budget process.

Currently all footpath trading licences issued by Council are for a term of no more than three years. Generally, the licences require all tables and chairs to be removed each day with no semi-permanent structures or fixtures, with some exceptions provided for fixed umbrella holders, awning and screen anchor points fixed onto footpath.

Planning permit P15/2392 (Permit)

The Landscape Plan lists the structures within the outdoor dining area fronting Ocean Beach Road to include, but not limited to, semi-permanent glass canopy, power blinds, semi-permanent pergola, lighting and raised planter boxes with limestone cladding.

Whilst an occupancy licence is contemplated at Condition 26 of the Permit, Condition 26 does not provide rights to occupy the public area fronting Ocean Beach Road. More generally the Permit does not provide any condition/s that provide rights of occupancy of the public area. Condition 26 serves to put the permit holder on notice that during times where the public area is *not* subject to an exclusive lease or occupancy licence, they must share the area with the public. This condition assumes that the area will in fact be subject to a lease or licence.

Council enters a licence agreement for footpath trading with liquor to ensure, among other things, any public liability risk is appropriately insured by the licensee, maintenance

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3.4 (Cont.)

obligations of the licensee are clear/documented and any make good requirements are agreed at commencement. All licence agreements require the licensee to hold public liability insurance of \$20 million.

SUSTAINABILITY CONSIDERATIONS

Not Applicable

FINANCIAL CONSIDERATIONS

Not Applicable

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.