SPECIAL COMMITTEES OF COUNCIL

COUNCIL POLICY NUMBER 139

Date Adopted 16 August 2016
Scheduled for review November 2017

PHILOSOPHY UNDERLYING THE POLICY

To ensure that members of special committees of council are aware of and follow public transparency requirements as detailed in the Local Government Act 1989 and maintain high levels of integrity and accountability.

PURPOSE

This policy establishes a framework for the guidance of Council with regard to Special Committees of Council (Section 86 Committees) established under section 86 of the Local Government Act 1989 (the Act) in relation to:

a. The establishment and operation of Section 86 Committees.
b. The compliance requirements of Section 86 Committees.
c. The financial record keeping, bank account and meeting procedure requirements of Section 86 Committees.
d. Register of Interests primary and ordinary returns and what factors should be considered when providing exemptions to committee members who are not a Councillor from being required to submit primary or ordinary returns.

POLICY IN EXPRESSED TERMS

This policy recognises the important role that committees play in providing advice and/or services to Council and outlines:

a. The guiding principles for the establishment and operation of Section 86 Committees.
b. The relationship between Council and Section 86 Committees.

1. Guiding Principles

Council recognises the valuable service that the volunteer members of Section 86 Committees and the contributions of these volunteer committees make to the Shire, the community and Council. The appointment of community based committees allows and encourages:

a. Networking and resource sharing between people working towards a common goal.
b. Strengthening the sense of community within the Shire of Campaspe.
c. Channels of communication.
d. Delegation of function, duties and powers to the community, providing direct community involvement, accountability and ownership for projects and properties.

2. Establishment of a Committee

There are two key Council documents to create a Section 86 Committee.

a. A Council report recommends Council creates a Section 86 Committee. This is prepared by Council officers, presented to a formal meeting of Council for Council’s consideration and voted upon by Council. The result of that vote is known as the resolution of Council.
b. When Council creates a Section 86 Committee, it also resolves to grant to (or to delegate to) the Section 86 Committee certain functions, duties and powers of Council. This is done through what is known as an Instrument of Delegation. An Instrument of Delegation is a written document sealed by Council that states what functions, duties and powers Council has granted or delegated to the Section 86 Committee and any limitations imposed, or conditions administrative/meeting and financial matters have been placed by Council on the exercise of those functions, duties and powers by the Special Committee of Council.

Council must keep a register of delegations made to Section 86 Committees.
Under section 86(6) of the Act, Council must review any delegations to a Section 86 Committee within 12 months after a general election.

The establishment of Section 86 Committees will be limited to the following circumstances:

- Council controlled Crown owned recreation, cultural and community facilities which are used for multi-purpose cultural, community or recreational purposes catering to active pursuits and organised cultural and sporting activities.
- Council owned community facilities where Council resolves exceptional circumstances so require.
- Such other purposes as resolved by Council.

The Section 86 Committee exists only as a Special Committee of Council. It is not a legal entity in its own right and therefore can only exercise the functions and powers and perform the duties that Council delegates to it. A Section 86 Committee cannot hold property in its name, nor can it be sued or initiate legal proceedings. A Section 86 Committee can enter into binding contracts provided the value of the contract is within the delegated authority nominated in the Instrument of Delegation.

3. Public Oversight of Special Committees

As the actions of a Section 86 Committee are legally the actions of Council, this means the activities of Council’s Section 86 Committees are subject to all the public oversight mechanisms that Council is subject to. This includes Municipal Inspectorate investigations, administrative law review, Ombudsman review, freedom of information disclosure, whistleblower disclosure and Auditor General reviews.

4. Compliance Requirements of Section 86 Committees

The Act is the legislative framework that provides for Councils to be accountable to their local communities in the performance of functions and the exercise of powers and the use of resources.

Section 86 Committees are managing public resources, spending public money and exercising functions, duties and powers granted to Council for the good governance of the municipality. The Act therefore extends many of the specific obligations imposed on Council to its Section 86 Committees. These include but are not limited to obligations about open and regular meetings, proper voting procedures, minutes of meetings, avoiding conflicts of interest and misuse of information.

If a Section 86 Committee does not follow the requirements of the Act and act within the authority granted to it by Council’s instrument of delegation, then its decisions and actions may be exposed to any of the public oversight reviews or processes referred to above. In some circumstances a decision may be set aside and/or Council may also be exposed to a claim for compensation.

Some of the obligations in the Act impose personal obligations on Section 86 Committee members, a breach of which is a criminal offence. For example, section 76D prohibits a member of a Section 86 Committee from using their position to gain or attempt to gain an advantage for themselves or for any other person or to cause, or attempt to cause, detriment to the Council or another person. A breach of this provision is a serious criminal offence which carries potential penalties of up to 5 years jail and fines of over $60,000.

5. Meeting Procedures

Section 86 Committees must follow the Local Law no 1 meeting procedures.

Confidential Information

Under Section 77(1) of the Act:

"A person who is, or has been, a Councillor or a member of a Special Committee, must not release information that the person knows, or should reasonably know, is confidential information".

Conflicts of Interest

Section 86 Committee members are in a position of trust and have obligations to the community and to Council. It must be clear that Section 86 Committee members are not using their position to serve their own interests or the interests of someone close to them.

Accordingly, under the Act members of Section 86 Committees must disclose conflicts of interest in committee meetings and not participate in a decision when they have a conflict of interest.
When disclosing a conflict of interest, members must:

a. Advise the committee of the conflict of interest immediately before the matter where the member has a conflict is considered;

b. Advise the Chair of the meeting that they are leaving the meeting; and

c. Leave the room and any area where they may be able to see or hear the meeting until the matter has been concluded.

Conflicts of interest disclosures are to be recorded in the minutes of the meeting.

Members of Section 86 Committees cannot be exempted from the conflict of interest requirements of the Act and failure to disclose a conflict of interest may result in a court prosecution. It is the responsibility of the Section 86 Committee members to identify and disclose conflicts of interest.

6. Register of Interest Primary and Ordinary Returns

It is a requirement for all members of Section 86 Committees to comply with Section 81 of the Act and complete the Register of Interests primary and ordinary returns. Primary returns must be completed within 30 days of becoming a Section 86 Committee member, and subsequent Ordinary Returns twice a year unless exempted by Council.

Register of Interest primary and ordinary returns are prescribed in the Act to promote openness and transparency in dealings with suppliers, contractors and other community members and are a good tool to prevent conflict of interest issues arising when Section 86 Committee members are making decisions. If Register of Interest primary and ordinary returns are not submitted to Council within the required timeframe, individual Section 86 Committee members could be fined more than $7,000. However, Section 81(2A) of the Act allows Council to exempt a member of a Section 86 Committee who is not a Councillor from being required to submit a Register of Interest primary return or an ordinary return.

Members of a Section 86 Committee who are not Councillors wishing to apply for an exemption from providing Register of Interest primary and ordinary returns should apply in writing. Their request for an exemption would be subject of a report to a Council meeting and Council would consider the application on its merits.

However, in accordance with Governance Practice Note No. 9 issued by Local Government Victoria on 20 August 2013, volunteer non-councillor members of committees of management for public halls and recreation reserves will be exempted from the requirement to provide Register of Interest primary and ordinary returns.

For Section 86 Committees that are not committees of management for public halls and recreation reserves, decisions regarding exemptions for Section 86 Committees will take into account:

a. Council’s financial contribution – exemption will not be provided if Council’s contribution is greater than $10,000;

b. Size of operational budget – exemption will not be provided if operational budget exceeds $30,000;

c. Bank balance – exemption will not be provided if funds held exceed $20,000;

d. Compliance of Section 86 Committee with requirements to provide of meeting minutes, provide financial accounts, hold funds controlled by the committee only with Authorised Deposit-taking Institutions – exemption will not be provided if the Section 86 Committee is non-compliant in any of the identified areas.

e. Scope of Section 86 Committee operations (ie what powers have been delegated to the committee); and

f. All other risk factors.

Should the Section 86 Committee that is not a committee of management for a public hall or a recreation reserve exceed any of the financial thresholds listed above, an exemption will not be provided to its members to provide primary and ordinary returns to ensure that the committee members are subject to the same level of transparency as Council, Councillors and Council staff.

An exemption may still be granted to an individual committee member where exceptional individual circumstances can be demonstrated. A request for exceptional exemption will be subject to a confidential Council resolution.

7. Financial records

Section 86 Committees are required to comply with the same principles of sound financial management as Council. The financial transactions of the Section 86 Committees with a turnover in excess of $10,000 will form part of the audited annual financial statement of the Council. Financial transactions of all Section 86 Committees are reported to the Australian Taxation Office as part of the Council’s compliance with the Goods and Services Tax legislation.
All money that the Section 86 Committees deal with are public funds and therefore must be dealt with in an open and honest manner.

Council must meet the financial requirements of:

1. The Local Government Act 1989
2. The Australian Accounting Standards
3. Relevant Local Government Regulations and other legislation

Significant detail is provided in each of the above publications and the audit of Council's Financial Statements will monitor compliance with these regulations and legislation. The Section 86 Committees appointed by Council must satisfy those requirements and shall be responsible to maintain the accounts of the Section 86 Committees to ensure that all monies received and paid by the Section 86 Committees are appropriately recorded.

8. Financial Delegation

A financial delegation should be set for each Section 86 Committee. A financial delegation of $5,000 would provide a balance between providing flexibility for Section 86 Committees to operate effectively and a measure of control for good governance.

9. Bank Accounts

Funds controlled by Section 86 Committee are only to be held in Authorised Deposit-taking Institutions as identified by the Australian Prudential Regulation Authority (APRA).

A bank account should be opened at a conveniently situated bank. There should be at least two cheque signatories required for the signing of cheques and transfer of funds by electronic transfer.

10. Goods and Services Tax (GST)

A Section 86 Committee is required to use Council’s ABN which is 23 604881620. Section 86 Committees are part of Council’s reporting requirements to the Australian Taxation Office and Council is required to report on expenditure and income and GST paid and payable by the Section 86 Committee.

If the GST on receipts is greater than the GST claimable on payments, the Section 86 Committee will be required to pay Council the net difference. If the GST on receipts is less than the GST claimable on payments, the Council will reimburse the Committee the net difference.

EXCLUSIONS

Nil

HUMAN RIGHTS

This report has considered and complies with the Human Rights and Responsibilities contained in the Victorian Charter of Human Rights and Responsibilities Act 2006.

DEFINITIONS

Section 86 Committee — Special Committee of Council
The Act — Local Government Act 1989

RELATED LEGISLATION

Local Government Act 1989

ATTACHMENTS

Governance Practice Note No. 9

REVIEW PERIOD RESPONSIBLE OFFICER

One year Governance Manager
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<td>117 (Item 6.3)</td>
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<td>17 September 2013</td>
<td>1253 (Item 6.9)</td>
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<td>905 (Item 6.2)</td>
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<td>Revised</td>
<td>16 August 2016</td>
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Chief Executive Officer

Dated

22/8/2016
Special Committees

Councillors may establish special committees with authority to exercise certain Council powers.

Special committees must operate in accordance with the Local Government Act and comply with the limits imposed by the Council’s instrument of delegation.

Members of special committees must disclose conflicts of interests and not misuse their positions.

What is a special committee?

A special committee is any committee to which the Council delegates a duty, function or power.

When exercising a delegated power, duty or function, a special committee effectively “is the Council”.

All special committees must comply with the rules for special committees in the Local Government Act 1989 (the Act). This includes delegation limits, meeting arrangements and conflicts of interest.

Section 86

Most Council special committees are specifically established under section 86 of the Act and are sometimes referred to as “section 86 committees”.

LOCAL GOVERNMENT ACT 1989

86 Special committees of the Council

(1) In addition to any advisory committees that a Council may establish, a Council may establish one or more special committees of the following—
(a) Councillors;
(b) Council staff;
(c) other persons;
(d) any combination of persons referred to in paragraphs (a), (b) and (c).

(2) A Council may appoint members to a special committee and may at any time remove a member from a special committee.

(3) Except as provided in subsection (4), a Council may by instrument of delegation delegate any of its functions, duties or powers under this or any other Act to a special committee.

(4) A Council cannot delegate to a committee the following powers—
(a) this power of delegation;
(b) to declare a rate or charge;
(c) to borrow money;
(d) to enter into contracts for an amount exceeding an amount previously determined by the Council;
(e) to incur any expenditure exceeding an amount previously determined by the Council;
(f) any prescribed power.

(5) A Council may require a special Committee to report to the Council at intervals determined by the Council.

(6) The Council must review any delegations to a special committee in force under this section within the period of 12 months after a general election.
87 Special committee meetings

(1) The Council must keep a register of delegations to special committees.
(2) The Council may appoint a Chairperson for a special committee.
(3) If the Council has not appointed a Chairperson under subsection (2), the members of a special committee must appoint a Chairperson.
(4) If the Chairperson is not present at a meeting of a special committee the members must appoint a Chairperson for that meeting.
(5) A meeting of a special committee must be held at a time and place determined by the special committee.
(6) If the special committee has not appointed a time and place for a meeting under subsection (5), the Chairperson, or if the Chairperson is incapable of doing so, the Council, must fix the time and place of the next meeting.
(7) Until approved by the Council a decision of a special committee which does not relate to a matter delegated to the special committee cannot be given effect to.
(8) A Council may specify in the instrument of delegation that a member of a special committee who is a member of the public or of Council staff does not have voting rights on the special committee.

89 Meetings to be open to the public

(1) Unless subsection (2) applies, any meeting of a Council or a special committee must be open to members of the public.
(2) A Council or special committee may resolve that the meeting be closed to members of the public if the meeting is discussing any of the following—
   (a) personnel matters;
   (b) the personal hardship of any resident or ratepayer;
   (c) industrial matters;
   (d) contractual matters;
   (e) proposed developments;
   (f) legal advice;
   (g) matters affecting the security of Council property;
   (h) any other matter which the Council or special committee considers would prejudice the Council or any person;
   (i) a resolution to close the meeting to members of the public.
(3) If a Council or special committee resolves to close a meeting to members of the public the reason must be recorded in the minutes of the meeting.
(4) Unless subsection (4A) applies, a Council must at least 7 days before the holding of—
   (c) a meeting of a special committee comprised solely of Councillors—
      give public notice of the meeting.
(4A) If urgent or extraordinary circumstances prevent a Council from complying with subsection (4), the Council must—
   (a) give such public notice as is practicable; and
   (b) specify the urgent or extraordinary circumstances which prevented the Council from complying with subsection (4) in the minutes.
(5) The Chairperson of a special committee that is not comprised solely of Councillors must provide reasonable notice to the public of meetings of the special committee.

91 Conduct of meetings

(1) A Council must make local laws governing the conduct of meetings of the Council and special committees.
(3) Except as provided in this Act and subject to any local laws and any resolutions of a Council, the conduct of meetings of a special committee is in the special committee's discretion.
(3A) A quorum at a meeting of the Council or a special committee must be at least a majority of the members of the Council or the special committee.
(4) Resolutions made at a meeting of a Council or special committee must clearly state the intention and effect of the resolution.
Other Acts

Special committees may also be established under other Acts. For example, a planning committee established under section 188 of the Planning and Environment Act 1987 is a special committee.

This is because the Local Government Act says that any committee that is delegated a Council power, duty or function, under any Act is a special committee.

Types of special committee

Examples of common types of special committee are:

- Committees which exercise specific Council powers, such as planning decisions;
- Committees of management for public facilities such as community halls and recreation reserves;
- Committees of management for retail shopping strip promotion, which may or may not have delegations to spend funds raised by council specifically for the purpose of business promotion.

Delegations

While it is desirable that major decisions be made by the Council, it is useful for lesser decisions to be delegated to committees or members of staff.

When a Council delegates a power, duty or function it invests the delegate (committee) with the authority to act as the Council.

Instrument of delegation

The process of delegating a power, duty or function must include Council formally approving an instrument of delegation. Without a formal instrument of delegation, a special committee may not exercise any Council powers.

An instrument of delegation defines what authorities are given to the committee, including setting limits on the amounts of any contracts or expenditure that the committee may approve.

Limits to delegation

While the Council may delegate most matters to a special committee, it is prohibited from delegating the following powers:

- Declaring a rate or charge
- Borrowing money
- Entering into contracts for amounts exceeding the limit set in the instrument of delegation
- Incurring expenditure beyond the limit set in the instrument of delegation.

In addition, the Council cannot allow a special committee to delegate any of its responsibilities to others. For example, a committee established to manage a Council facility cannot delegate its powers to approve expenditure to a single committee member or an employee.
Register of delegations

Council must maintain a current register of delegations to special committees. The register must be available for public inspection.

Review of delegations

Section 86(6) of the Act requires the Council to review all delegations to special committees within 12 months after a general election.

This ensures the new Council knows what decisions may be made in its name and who may make them.

Further, this is an opportunity to assess whether all the current committees are actually required.

Regular review of delegations is also important for probity reasons. Ultimately the Council must accept responsibility for the exercise of its powers, even when exercised by delegates.

Membership

Members

A special committee may include Councillors, Council staff or any other people as members. The membership of a special committee is a matter for the Council to decide.

It is recommended that Councils regularly review the membership of its special committees.

Appointing members

No appointment process is specified in the Act for the appointment of community members to special committees. However, it is common for Councils to use an application form to collect information about candidates.

Application forms should not collect personal information beyond the minimum required to satisfy council data requirements, relative to the level of responsibility of the special committee.

Application forms for committees of management for public facilities should only require name, address, email and telephone contact details and a recognition members will comply with conflict of interest requirements.

Where a council is appointing community members to a committee of management for a recreation reserve, public hall or other public facility with tenant sporting clubs or community organisations, it is encouraged to allow those clubs/organisations to nominate representatives to serve on the special committee. However, the council remains responsible for making the formal appointment. An example nomination form for such a committee is attached (Appendix A).

Councils are encouraged to minimise unnecessary red tape in this process.

A Council may at any time remove a member from a special committee.
Appointing a Chairperson

The Council may appoint a Chairperson for a committee. If it does not, the members must appoint a Chairperson.

If the Chairperson is not present at any meeting, the members present must appoint a Chairperson for that meeting.

Meetings

Conduct of meetings must comply with the Act, Council’s local law on meeting procedures, and any Council resolutions on the subject.

A quorum is at least a majority of the committee members.

A question before a special committee must be determined by majority vote of members present, following the procedures set out in section 90 of the Act.

Resolutions of the committee must clearly state their intention and effect.

Minutes of meetings must be kept as per the requirements set out in section 93 of the Act.

Caretaker restrictions

The restrictions on decision making by a Council during a caretaker period before an election under section 93A apply equally to special committees.

Responsibilities of Delegates

As delegates, special committees and their members have responsibilities that must be taken into account.

Delegation limits

Delegates’ powers are strictly limited to the powers described in the instrument of delegation. Any decision made that tries to exceed those powers is invalid and may result in legal action by anyone who is disadvantaged as a result.

Statutory limitations

Any laws that limit the powers that may be exercised by the Council also apply to a special committee exercising the same powers.

For example, the provisions of section 186 of the Act regarding contracts, apply equally to contracts entered into by a special committee as those decided by Council resolution.

No improper purpose or misuse

A special committee must not exercise a power, duty or function for any purpose other than that intended by the Act.

The provisions relating to misuse of position by Councillors apply equally to committee members (section 76D).
Confidentiality

Committee members must not disclose confidential information.

In this context, ‘confidential information’ means information which is:
• provided to the committee in relation to a matter considered at a closed meeting;  
• designated as confidential by resolution of the committee on specific grounds in section 89(2); or  
• designated as confidential by the CEO and the Council or committee has not resolved the information is not confidential.

No improper direction

Special committees must not be improperly directed in the exercise of the delegation. This includes by the Council or the CEO. However a special committee risks being terminated by the Council if deemed to be exceeding its delegated authority or improperly exercising its powers.

Further, many Councils have specific procedures for the Council to “call in” decisions, so they can be made by the Council, instead of the special committee.

The Council may require a special committee to report to it when required.

Register of interests

Under the Act, special committee members must complete and submit a primary return of interest within 30 days of becoming a member of the committee, in accordance with section 81(2). They must also complete and submit an ordinary return twice a year thereafter, by the dates specified in section 81(5).

The Act allows Council to exempt non-Councillor members from this requirement.

Councils are encouraged to exempt all volunteer non-councillor members of committees of management for public facilities, such as public halls and recreation reserves, from this requirement.

Conflict of Interest

The Act requires any member of a Committee with delegated powers to comply with conflict of interest rules.

Essentially, this involves procedures for:
• The disclosure of relevant interests and conflicts, and  
• The person removing him or herself from the decision making process.

Local Government Victoria’s ‘Conflict of Interest Guide for Council Committees’ sets out these requirements in detail, and is available online under ‘Publications & Research’ at www.localgovernment.vic.gov.au.

Councils are encouraged to make copies of this Guide available to Committees.

While this document provides general guidance, it is not intended as legal advice.
# Nomination Form – Public Facility

## President / Chairperson

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Nominating Organisation (if required)

## Secretary / Public Officer

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Nominating Organisation (if required)

## Vice President

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Nominating Organisation (if required)

## Treasurer

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The above named have acknowledged their obligation to disclose any relevant conflicts of interest. Any disclosed conflicts are attached.

Signed: ________________________________  Dated: ________________

Secretary