



## POLICY & PROCEDURE - COUNCIL – SPECIAL COMMITTEES OF COUNCIL

<b>DATE AMENDED:</b>	<b>07.01.2019</b>
<b>DATE OF NEXT REVIEW:</b>	<b>31.01.2022</b>
<b>ADOPTED BY:</b>	<b>Council</b>
<b>DATE ADOPTED:</b>	<b>19.02.2019</b>
<b>RESPONSIBLE OFFICER:</b>	<b>Director Corporate &amp; Community Services</b>
<b>RELATES TO POLICY:</b>	<b>Governance Policy (under development)</b>
<b>REFERENCES:</b>	<b>Local Government Act 1989</b>

### Best Value Principles

Pyrenees Shire Council has the responsibility to provide its ratepayers with best value, with all services provided by Council meeting the expectations in terms of quality and cost. In providing this, all services need to be accessible, responsive to the needs of the community, considerate of the natural environment and subject to continuous improvement.

To achieve the best over life outcome for Council's expenditures, which meets quality and service expectations, there will be periodic review of services against best on offer in both the public and private sectors.

All Council staff members are responsible for supporting best value principles in their normal day to day actions to ensure services are recognised by the community as delivering best value.

**Signed**

**Kathy Bramwell**  
Director Corporate & Community Services

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## 1 PURPOSE AND SCOPE

This policy & procedure:

- Establishes a framework for the guidance of Council with regard to Special Committees of Council established under section 86 (or any other section if the Act changes) of the Local Government Act 1989 (the Act) in relation to:
  - The establishment and operation of Section 86 Committees and Special Committees established under any other clause of the Local Government Act (if changes occur);
  - The compliance requirement of Special Committees;
  - The financial record keeping, bank account and meeting procedure requirements of Special Committees; and
  - Register of Interest primary and ordinary returns and what factors should be considered when providing exemptions to members of Special Committees who are not a Councillor from being required to submit primary or ordinary returns.
- Recognises the important role that Special Committees play in providing advice and / or services to Council and outlines:
  - The guiding principles for the establishment and operation of Special Committees; and
  - The relationship between Council and its Special Committees.
- Ensures that public transparency of involvement in issues of potential interest by individuals is maintained and the high integrity of the both the member and the organisation are provided for.

This procedure applies to all Special Committees of Council established under Section 86 or any other section of the Local Government Act.

## 2 GUIDING PRINCIPLES

Council recognises the valuable service and contribution that the volunteer members of Special Committees make to the Shire, the Community and Council. The appointment of community-based Special Committees allows and encourages:

- Networking and resource sharing between community members and representatives working towards a common goal;
- Strengthening the sense of community within the Pyrenees Shire;
- Appropriate channels of communication; and
- Delegation of function, duties and powers to the community – providing direct community involvement, accountability and ownership for community projects and property management.

## 3 COMMITTEE ESTABLISHMENT

To create a Special Committee of Council (formerly known as a Section 86 Committee), the following steps must be taken:

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### 3.1 Recommendation to Council via a Council report

Council staff will prepare a report to Council recommending the creation of a Special Committee of Council. This will be presented to a formal meeting of Council for consideration and formal voting. The result of that vote is known as the resolution of Council.

### 3.2 Delegation to a Special Committee of Council

When Council creates a Special Committee, it resolves to grant to (or to delegate to) that Special Committee certain functions, duties and powers of Council. This is conferred via an Instrument of Delegation.

An Instrument of Delegation is a formal, written document sealed by Council that states what functions, duties and powers Council has granted or delegated to the Special Committee and any limitations imposed, and any conditions imposed by Council on administration, meetings or financial matters and the exercise of those functions, duties and powers by the Special Committee.

### 3.3 Purpose of a Special Committee of Council

The establishment of a Special Committee of Council must be for the following purposes:

- The management of Council-owned community facilities; or Council-controlled Crown-owned recreation, cultural or community facilities; which are used for multipurpose cultural, community or recreational purposes catering for active pursuits and organised cultural or sporting activities; and/or
- Where Council needs community participation in the development, planning or delivery of a specific service or activity.

### 3.4 Legal compliance obligations

A Special 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 Special Committee of Council (or Section 86 Committee) cannot hold property in its name, nor can it be sued or initiate legal proceedings. A Special Committee of Council can enter into binding contracts provided the value of the contract is within the delegated authority nominated in the Instrument of Delegation.

The Manager Governance, Risk & Compliance will maintain a register of delegations made to Special Committees of Council.

A review of Special Committees of Council must review any delegations made within 12 months after a general election.

## 4 PUBLIC OVERSIGHT AND COMPLIANCE

As the actions of a Special Committee of Council are legally the actions of Council, such activities are subject to all the public oversight mechanisms that Council is subject to. This includes Municipal Inspectorate investigations; administrative law reviews; reviews and audits by the Victorian Ombudsman or the Victorian Auditor General's Office.

Actions and correspondence / records of a Special Committee are also subject to Privacy; Public Records; Freedom of Information and Protected Disclosure (Whistle-blower / fraud prevention and

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investigation) laws and as such must provide relevant information or documentation when requested by Council staff.

#### 4.1 Compliance requirements of Special Committees

The Local Government Act is the legislative framework providing for Council accountability to local communities in the performance of Council functions, and the exercise of powers and use of resources.

Section 86 of the Act provides for Council to establish one or more special committees of Councillors, Council staff, other persons or any combination of these. When Council delegates powers, functions or duties to a Special Committee through an instrument of delegation, it hands over the power to make decisions on behalf of, or acting in the place of Council.

Special Committees (Section 86) 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 Special Committees. These include, but are not limited to, obligations about open and regular meetings, proper voting procedures, maintaining minutes of meetings, and avoiding conflicts of interest and misuse of information.

If a Special Committee of Council does not follow the requirements of the Act and act within the authority delegated to it, 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 be exposed to a claim for compensation.

Some obligations within the Local Government Act impose personal obligations on members of Special Committees of Council, a breach of which is a criminal offence. For example:

- Section 76D of the Act prohibits a member of a Special Committee from using their position to gain or attempt to gain an advantage for themselves or for any other person. This section also prohibits a committee member from causing, or attempting to cause, detriment to the Council or another person. A breach of this provision is a serious criminal offence carrying potential penalties of up to 5 years' jail and fines over \$60,000.

### 5 MEETING PROCEDURES

Special Committees must following the Local Law No.1 meeting procedures and the Special Committee's Instrument of Delegation. In summary:

- **Election of Committee Chairperson:** A Chairperson must be elected annually.
- **Number of meetings:** At least five (5) meetings must be held annually, including one (1) Annual General Meeting (to be held between 1<sup>st</sup> July and 31<sup>st</sup> October of each year).
- **Meeting notices:** A notice of a meeting accompanied by an agenda must be delivered to Committee members at least 4 clear days before the meeting date. Reasonable notice should be provided to the public (at least 48 hours) by providing notice for inclusion on Council's website.

Notice of an AGM must be at least 21 days prior to the proposed meeting date and will be publicised in local media by Council.

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- **Agenda:** The notice of agenda for any meeting must state the date, time and place of the meeting; and the business to be dealt with.
- **Meeting quorum:** The quorum required for a special committee is attendance by a majority of members.
- **Voting:** Each committee member is entitled to one vote. If necessary, the Chairperson has a casting vote.

## 5.1 Minutes of meetings

The Secretary must prepare and circulate the minutes of all Special Committee meetings and forward to committee members and Council within 14 days of holding the meeting. Section 93(6) of the Local Government Act requires that the minutes must:

- Contain details of the proceedings and resolutions made;
- Be clearly expressed;
- Be self-explanatory; and
- In relation to resolutions recorded in the minutes, incorporate relevant reports or a summary of the relevant reports considered in the decision-making process.

The minutes of each meeting will be presented at the next meeting of the Special Committee for confirmation. The minutes will be signed by the Chairperson when confirmed.

All motions, carried or otherwise, must be minuted. If passed, the motion becomes a resolution. The name of the committee member who moved and seconded each motion must be recorded in the minutes. All resolutions made at a meeting must clearly state the intention and effect of the resolution.

Items that arise which are outside of the Special Committee’s delegation must be referred to Council for consideration.

## 5.2 Conflicts of interest

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

Accordingly, under the Local Government Act, members of Special Committees must disclose any interests or conflicts of interest in committee meetings and discussions and not participate in any decisions where a conflict of interest may occur or be perceived.

When disclosing a conflict of interest, committee members must:

- Advise the committee of the interest / conflict of interest immediately before the matter where the members has a conflict is considered;
- Advise the Chairperson of the meeting that they are leaving the meeting; and
- 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 must be recorded in the minutes of the meeting.

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Special Committee Members cannot be exempted from legal conflict of interest requirements and failure to disclose a conflict of interest may result in a court prosecution. It is the responsibility of individual committee members to identify and disclose conflicts of interest.

### 5.3 Public attendance at meetings

In accordance with Section 89 of the Local Government Act, any meeting of a Special Meeting of Council must be open to members of the public unless the Committee resolves that the meeting be closed to the public for any of the following reasons:

- Personnel matters;
- The personal hardship of any resident or ratepayer;
- Industrial matters;
- Contractual matters;
- Proposed developments;
- Legal advice;
- Matters affecting the security of Council property
- Any other matter which Council or the Committee considered would prejudice the Council or any other person;
- A resolution to close the meeting to members of the public.

If the Special Committee closes a meeting to the public, the reason must be recorded in the minutes.

## 6 PRIMARY AND ORDINARY RETURNS OF INTERESTS

In accordance with section 81 of the Local Government Act, all members of Special Committees must complete and return appropriate returns of interests. Primary Returns must be completed within 30 days of becoming a Committee member, and subsequent Ordinary Returns twice per year thereafter.

A register is maintained within Council of primary and ordinary returns, which are designed to promote transparency and are a good tool to prevent conflict of interest issues arising when Committee members are making decisions. Returns are prescribed in the Act to promote openness and transparency in dealings with suppliers, contractors and other community members.

Financial penalties may be imposed if returns are not submitted to Council within required timeframes.

### 6.1 Exemptions to submitting returns

Section 81(2A) of the Local Government Act allows Council to exempt a member of a Special Committee (who is not a Councillor) from being required to submit a Primary or Ordinary Return.

Special Committee members (who are not Councillors) wishing to apply for an exemption from providing Returns should apply in writing. Their request for an exemption will be submitted as a report to a Council meeting for Council consideration on the merits of the application. Decisions regarding exemptions for Special Committee members will take into account:

- Council’s financial contribution to the Committee – exemption will not be provided if Council’s annual financial contribution is greater than \$10,000;

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- Size of operational budget – exemption will not be provided if the Committee’s annual operational budget exceeds \$30,000;
- Bank balance – exemption will not be provided if funds held exceed \$20,000;
- Compliance of Special Committees to Council requirements – exemption will not be provided if the Special Committee is non-compliant to requirements relating to provision of meeting minutes, provision of financial accounts, or provision of funds controlled by the Committee with Authorised Deposit-taking Institutions;
- Scope of the Special Committee operations (i.e. what powers have been delegated); and
- All other risk factors.

Should the Special Committee 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 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.

Any exemptions in place for Special Committee members must be reviewed by Council within the period of 12 months after a general election.

## 7 FINANCIAL RECORDS

Special Committees of Council must comply with the same principles of sound financial management as Council. The financial transactions of Special Committees with a turnover in excess of \$20,000 will form part of the audited annual financial statement of the Council. Financial transactions of all Special Committees are reported to the Australian Taxation Office as part of Council’s compliance with the Goods & Services Tax legislation.

All monies dealt with by Special Committees are public funds and must be managed in an open and honest manner. Council and its Special Committees must meeting financial requirements of:

- The Local Government Act 1989
- The Australian Accounting Standards
- Relevant Local Government Regulations and other relevant legislation or regulation

Significant detail is provided in each of the above publications and audits of Council’s financial statements monitor compliance. Special Committees appointed by Council must satisfy those requirements and will be held responsible for maintaining Committee Accounts to ensure that all monies received and paid are appropriately recorded.

Special Committees must present the Financial Statements of the Special Committee as at 30<sup>th</sup> June of each year, to Council by 17<sup>th</sup> July each year.

### 7.1 Financial delegation

A financial delegation of \$5,000 is set for each Special Committee of Council. This provides a balance between providing flexibility for Special Committees to operate effectively and a measure of control for good governance.

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## 7.2 Bank accounts

Funds controlled by Special Committees of Council must only 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. The Council currently uses the Bendigo Bank. A cheque book, pay-in book and periodic bank statements (preferably monthly) must be arranged. There must be at least two cheque signatories required for the signing of cheques and the transfer of funds by electronic transfer.

## 7.3 Goods and Services Tax (GST)

A Special Committee is required to use Council's ABN which is 94 924 356 468. Special Committees are part of Council's reporting requirements to the Australian Taxation Office and Council is required to report on expenditure, income and GST paid and payable by the Special Committee.

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

## 8 IMPLEMENTATION

This procedure will be implemented by the Manager Governance, Risk & Compliance in personal attendance at a meeting of the relevant Special Committee of Council.

## 9 REFERENCE

Local Government Act 2989  
Pyrenees Shire Council Governance Policy

## 10 DOCUMENT HISTORY

Version Number	Issue date	Description of change
1.0	05.04.2013	Initial release of Council Policy document.
2.0 DRAFT	19/02/2019	Review of document. Proposed change from policy to procedure to sit beneath a Governance Policy (currently under development). Majority of policy wording retained with minor amendments and additions only. Checks made to ensure alignment with Instrument of Delegation and Local Law No.1.

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