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Governance Rules – Feedback Summary

(“LGA” means *Local Government Act*. “LGV” means Local Government Victoria)

Rules section	Comment/suggestion	Officer response
31 – Other meeting records	Should include specific reference to the electronic recordings of Council meetings and Submitters [Committee] meetings <i>(h) electronic records of Council meetings will be displayed on the Council’s website after 2 days. All such recordings will be permanently archived and made available on Council’s website</i>	No change proposed. Rules 30 and 31 concern the taking of written minutes (for Council and delegated committee meetings) and the creation of other written records for other forms of meetings (e.g. Councillor Briefing). The livestream and broadcasting of meetings is set out in Council’s existing <i>Livestreaming and Publishing Recording of Meetings Policy</i>
41 – Public question time	Concerned regarding Rule 41(e) (v) (vi) and (vii) that allows for a question from the public to be rejected if it relates to industrial matters, contractual matters or relates to proposed developments. No need for these sections to be specifically written in; goes against concept of good governance and transparency. Restriction contradicts Council’s draft Public Transparency Policy.	No change proposed. This section of the rules is identical to Council’s existing Meeting Procedure Local Law 11 (clause 39) and provides a mechanism aimed to prevent the disclosure of confidential or prejudicial information via questions from the public. As noted, subsection (f) provides that Council will endeavour to (where appropriate) answer questions from the public that relates to such matters in a way that does not disclose confidential information or compromise any other parties.
46 – Council may record meetings	Suggestion that wording that Council <u>may</u> resolve to broadcast meetings should be changed to “Council <u>will</u> record meetings’ and “Council <u>will</u> broadcast its scheduled and unscheduled meetings in any form.” Required to give community confidence in Council and its processes.	No change proposed. It is not a legislative requirement for Council to broadcast meetings. Both the existing Meeting Procedure Local Law 11, and the proposed Governance Rules, provide that Council may resolve to do so. At present, Council has resolved to do so and this is given effect in Council-adopted policy (refer section 6.1 of the <i>Livestreaming and Publishing Recording of Meetings Policy</i>).
Rule 72 – Election Period (Caretaker) Policy	Although Rule 72 refers to the policy being included in Appendix 3, the exhibited Rules themselves did not have an Appendix 3.	Comment noted. The draft Rules included a ‘placeholder’ page noting that Appendix 3 (the Election Period (Caretaker) Policy) would be attached. The policy was then exhibited alongside the Governance Rules on the Have Your Say page of Council’s website.

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Inclusion of references to LGA 2020	References of the 1989 Act are not replaced with references to relevant sections of the 2020 Act, e.g. definition of CEO.	Change made. LGA 2020 provision added to CEO definition (“section 44”)
Cross-referencing	Cross-referencing of clauses from Meeting Procedure Local Law requires updating (Rules 14, 16, 18, 36, 55, 63, 64)	Updated references to Rules 14, 16, 18, 36, 55, 63 and 64 made.
Use of terms ‘scheduled’ and ‘unscheduled’	“Unscheduled” meeting sounds as if it is not a formal meeting of a council / delegated committee. Would be easier if existing terminology (“ordinary” and “special” meetings) is retained.	No change made. “Ordinary” and “Special” Council meetings are terms specifically used in the LGA 1989 that no longer apply. Retaining this terminology may cause confusion regarding the currency of other LGA 1989 provisions that apply to the conduct of council meetings. The term “unscheduled” is also used in guidance material developed by LGV. Unscheduled meetings are formal meetings, but are simply additional to the annual schedule of meetings adopted by Council towards the end of the preceding calendar year.
Conflict of interest	Source of additional material has not been identified.	Comment noted, Rules 48-50 outline procedures for disclosures of conflicts of interest by councillors, members of delegated committees and members of council staff, as required by the LGA 2020 (refer s.60(1)(f), (g) and (h). This is new material drafted to be consistent with the requirements of the Act, and is also consistent with guidance material such as the LGV template Governance Rules.
Status of Governance Rules	Role and legal status of the Governance Rules versus the role and legal status of the Local Law is not clear. Where there are conflicts, which has precedence?	Upon adoption of the Governance Rules, any matters contained in the Governance Rules that also currently appear in Meeting Procedure Local Law 11 will have precedence under the Governance Rules. The Governance Rules are a statutory requirement of s.60(1) of the LGA 2020. Council’s local laws are subordinate instruments of legislation that are made in accordance with a power delegated to Councils by the LGA (refer ss.111 and 118 of the LGA 1989 and, from 1 July 2021, s.71(1) and (4) of the LGA 2020). The two matters that cannot be included in the Governance Rules (Regulation of the Common Seal of Council; and Enforcement and Penalties) will remain in force via the Meeting Procedure Local Law 11. Any required amendments to and/or revocation of parts of Meeting Procedure Local Law 11 can be undertaken following adoption of the Governance Rules.

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<p>Rule 1 – Purpose</p>	<p>Local Law 11’s Objective 2(d) “facilitating community participation in council-decision-making processes” is not included in the Governance Rules. This suggests a reduced Council commitment to community participation in decision-making processes.</p>	<p>Comment noted. The Governance Rules do not represent a reduced commitment by Council to community participation in decision-making. Councils are required, when making local laws, to comply with prescribed details relating to their preparation and content (refer s.111(6) LGA 1989). These prescribed details include that a local law must include a statement of <i>objectives</i>: “A Local Law must in the case of a principal Local Law, clearly set out as part of its text the objectives of the Local Law.” (Schedule 8 section 1(b)(i) LGA 1989). In the case of Governance Rules, the LGA 2020 clearly prescribes the matters that are to be included (refer s.60(1)(a) – (i)). Additionally, the Governance Rules must provide for a Council to institute decision-making processes to ensure that any person whose rights will be directly affected by a decision of the Council is entitled to communicate their views and have their interests considered. This requirement is reflected in Rule 4. The proposed Rules also retain existing procedures for the consideration of petitions/joint letters from the public and for the opportunity to submit questions to Council meetings.</p>
<p>Rule 3 – Overarching Governance Principles</p>	<p>Rule 3(1) uses the wording “Council will ...” instead of “Council must ...” This creates a conflict with the Act’s requirements and suggests a lack of commitment on Council’s part. Maintain “must”</p>	<p>Comment noted. The use of the word “must” in the LGA 2020 is appropriate as it expresses the obligations and requirements that are imposed on (all) councils by the legislation with regard to decision-making. The use of the word “will” in the Governance Rules reflects Council’s acknowledgement of, and positive response to, those obligations. The use of the word “will” should be read as a clear statement of Council’s present and future intentions to meet those obligations (i.e. because Council must [LGA], Council will [Governance Rules]). For consistency, a corresponding change has been made to Rule 4.1 from “Council must” to Council will”</p>
	<p>Rule 3(3) includes five ‘Supporting Principles’. It would be more informative if the locations of these principles in the LGA are identified.</p>	<p>Changes made. LGA 2020 provisions now included at Rules 3(a)-(e)</p>

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Rule 4 – Council Decision-Making	Repeats Rules 1(j) and 1(k) at Rule 4(1) and (2) while the Act's section 59 <i>Resolution of a council</i> is reworked into Rule 4(3) <i>Council decision-making</i> .	Comment noted. Rule 1 sets out the overarching purposes of the Governance Rules as outlined in ss.60(1) and (2) of the LGA 2020. Rule 4 expresses Council's intention to meet its obligations regarding Council decision-making as outlined in the Purpose and in the LGA and ensures it is clear that “a decision of the Council” is defined (and is consistent with the Act).
Rule 6 – Election of Mayor	Unlike the Local Law, the Governance Rules do not address process for election/appointment of a Chair of a Delegated Committee. For clarity, include in the Governance Rules.	No change made. The LGA 2020 sets out the requirements for the election of the Mayor and Deputy Mayor (ss.25-27) and that the election of same must be undertaken in accordance with a Council's Governance Rules. As such, this process is included. This is not the case with delegated committees, whose chairs are not elected but appointed. Further, it is a specific power of the <i>Mayor</i> to appoint a councillor to be the chair of a delegated committee (refer s.19(1)(a) LGA 2020)
Rule 10 – Calling and scheduling of meetings	Rule 10(c) conflicts with the Local Law as it does not carry forward all of the Local Law's options for Council to call unscheduled meetings. Reinstate omitted options: by Council resolution and by the CEO within 14 days of a general election.	Changes made. Additional options included at Rule 10(c), noting that s.89A of the LGA 1989 provided that the CEO may summon a <i>special meeting</i> of the Council within 14 days after election results are publicly declared. This provision was repealed on 1 July 2020. However, an option has been included that provides for the calling of an unscheduled meeting by the CEO, following consultation with the Mayor. The wording used is based on the draft Governance Rules template developed by LGV.
Rule 11 – Notice of meetings	Rule 11(a) provides for notice to only be given via Council's website. This change from current practice will exclude some in the community.	Change made to Rule 11(a). Existing local law wording that public notice will be given has been included.
Rule 12 – Agenda	Rule 12(a) applies to meetings of Council and Delegated Committees. While Local Law 11 at 11(a) applies to Special Committees comprising only Councillors, Governance Rule 12(a) applies to all delegated committees regardless of composition, creating conflict with Local Law.	As noted above, on adoption of the Governance Rules they will have precedence over Local Law 11 on matters also contained in the Local Law 11. If adopted, this Rule provides that at least five days before a Council or delegated committee meeting is scheduled to occur, an agenda be delivered to each Councillor or Member's residence, place of business or if determined by Council by electronic means; and published on Council's website.

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<p>Rule 16 – Notice must be listed in the agenda</p>	<p>Rule 14(c) says a notice of motion can also be made by members of delegated committees – this isn't addressed at Rule 16.</p>	<p>Change made. Rule 16 amended to include reference to notices of motion made by a member of a delegated committee.</p>
	<p>Rule 16 and 18 have the same title – consider different headings.</p>	<p>Change made. Title of Rule 18 amended to include “of amendment or rescission”.</p>
<p>Rule 31 – Other meeting records</p>	<p>Rule 31(b)(i) refers to an “advisory committee” which is not defined in the Governance Rules. Are these types of committees still available under the Local Government Act 2020?</p>	<p>Question noted. Other types of committees are permitted under the LGA 2020, such as advisory committees, reference groups, project groups, etc. As these groups do not exercise Council powers, duties or functions, they are not subject to the Governance Rules. However, Rule 31(a) provides that a written record of the matters discussed at such meetings that involve Councillors and Council staff, will be kept and reported at a scheduled Council meeting. This is consistent with the current practice regarding “Records of Assembly” – while this requirement of the LGA 1989 will be repealed on 24 October 2020, it is proposed this practice continue in accordance with the Governance Rules.</p>
	<p>Rule 31(c) says the “written record ... must include ... the names of ... other persons” – the Appendix 1 template does not provide for recording such names. Include a section in Appendix 1 where the names of other persons can be recorded.</p>	<p>Change made. Appendix 1 template amended to include table to record “Other persons present”</p>
<p>Rule 35 – inability to achieve or maintain a quorum</p>	<p>In relation to conflicts of interest, Rule 35(4)(b) says that for a Delegated Committee “any other person council considers suitable” can be appointed to vote in a Councillor’s stead to gain a quorum. Please provide a definition or give examples of the types of person Council could consider to be “suitable”.</p>	<p>Comment noted. It is not appropriate nor possible to provide for a definition or examples of “suitable people” within the Governance Rules, which deals with procedural matters. Rule 35 is consistent with the requirements of s.67 of the LGA 2020. Where a quorum cannot be maintained due to the number of councillors with a conflict of interest on a particular matter, Council <i>must</i> consider whether the decision can be made by dealing with the matter in an alternative manner. If an alternative manner is unable to be used, Council <i>must</i> decide to establish a delegated committee to make the decision, with the committee to consist of all Councillors who have not disclosed a conflict of interest on the matter, and “any other person or persons that the Council considers suitable.” (s.67(4)). The establishment of, and appointment of members to, a delegated committee for this</p>

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		purpose would therefore be a matter for the Council to determine at the time and on the particular issues.
Rule 41 – public question time	Rule 41(b) – proposed change to time by which questions must be received – this change does not allow any questions to be submitted at in-person (attendance) council meetings, reducing community participation in council decision-making processes. It creates conflict with Local Law 11 39(b). Change not supported.	Comment noted. This change is proposed in order to enable Council officers time to consider issues raised in questions and prepare advice in response. Questions asked “on the night” are often required to be taken “on notice” for consideration and preparation of a response sent directly to the questioner rather than being answered in the public forum. The proposed change seeks to increase the number of questions received that can be answered at the Council meeting.
Rule 44 – Mayor may remove member of the public; Rule 47 – no recording or broadcasting without authority	Governance Rules conflict with Local Law 11 (at Local Law 42(c) and 45 respectively) which both apply penalties for breaches. This difference creates a conflict with the Local Law.	Comment noted. Rules 44 and 47 of the Governance Rules do not apply penalties for breaches. They provide that the Mayor may direct a member of the public to leave (44) and that, without authority, a person must not record or broadcast any Council or delegated committee meeting without authority. As noted above in relation to the Common Seal, provisions regarding enforcement and penalties (Part 8 Local Law 11) will remain in Meeting Procedure Local Law 11. On adoption of the Governance Rules, minor amendments will need to be made to Part 8, Local Law 11 to make reference to the Governance Rules.
Rule 72 – Election Period (Caretaker) Policy	The policy exhibited with the Governance Rules contains incorrect section references to the LGA 2020 – page 1 (Background) – references to sections 62(4) and 62(5) should be sections 69(4) and 69(5).	Changes made.
	The policy at 6 (consultations) refers to section 223 of the Local Government Act 1989 but does not give an equivalent provision in the LGA 2020. If there isn't an equivalent provision, how does Council propose to provide an opportunity for residents to continue to make submissions and be heard in support of their submission on matters including, for example, the budget?	Section 223 of the LGA 1989 has not been repealed and continues to operate in relation to the hearing of submissions on specified matters. Additionally, s.55 of the LGA 2020 now requires all councils to adopt a Community Engagement Policy that is capable of being applied to matters such as the making of local laws, Council's budget and policy development, as well as include the deliberative engagement practices to be applied to the development of the Community Vision, Council Plan, Financial Plan and Asset Plan. Council must adopt its first community engagement policy under on or before 1 March 2021. At the time of consideration of adoption of these Governance Rules, Council is also scheduled to consider a report recommending establishment of the

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		<p>Submitters Committee as a delegated committee of Council. The proposed instrument of delegation for the committee includes a power to hear from submitters who have made submissions in accordance with section 223 of the LGA 1989 and on matters specified in Council’s Community Engagement Policy. With regard to the budget specifically, s.96 of the LGA 2020 (which will commence operation on 24 October 2020) provides that a Council must develop its budget (and any revised budget) in accordance with its community engagement policy. (Noting that s.96(2) also provides that the Council may develop its first budget under the LGA 2020 in accordance with s.223 of the LGA 1989 if it has not adopted its first community engagement policy at the time the budget is being adopted.)</p>
<p>Rule 73 – Community Asset Committees</p>	<p>This Rule says the Governance Rules do not apply to Community Asset Committees unless acting under delegated authority conferred by the CEO, in which case conflict of interest requirements (Rule 48) apply. Rule 4 (and s.59(2) of the LGA 2020 states a resolution of Council includes the exercise of a power, duty or function by a member of a Community Asset Committee under delegation. Does Rule 73 provide sufficient process and accountability for a Community Asset Committee operating under delegation.</p>	<p>It is not a requirement of the LGA 2020 that requirements relating to Community Asset Committees be included in the Governance Rules. This Rule has been included to assist understanding of the operation of these committees and seeks to distinguish the requirements would apply to a Community Asset Committee established to manage a community asset (e.g. a hall) from the requirements outlined in the LGA 2020 that <i>must</i> apply to meetings of the Council and its delegated committees (for example, the requirement to hold meetings open to the public).</p> <p>Rule 73(i) provides that where they exercise delegated authority, Community Asset Committee members will be required to disclose conflicts of interest. Additionally, such committees are required to keep and submit minutes (Rule 73(ii)) and to act in accordance with its Charter, Instrument of Delegation and any Terms of Reference (Rule 73(iii)).</p>
<p>Common Seal - Omitted</p>	<p>Although the Local Law addresses use of the Common Seal, the Governance Rules do not. As this is part of governance why are Local Law processes not included in the Governance Rules. Resolve this anomaly.</p>	<p>It is a requirement of the LGA 2020 that the Common Seal of Council be used “in accordance with any applicable local law” (refer s.14(2)(c)). The Act does not provide that use of the Common Seal can be included in the Governance Rules. As such, use of the Common Seal will continue to be regulated by Meeting Procedure Local Law 11.</p>

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Appendix 1 -	Councillor Briefing meetings (Assemblies of Councillors) previously recorded the time of arrival and departure of attendees. This recently ceased without explanation, resulting in a loss of transparency in Council operations. This information is of interest to the community as it allows assessment of a Councillor's commitment to their role ... add an ability to record the time of arrival and departure of participants to Appendix 1.	There is no legislative requirement to record the times of arrival and departure of Councillors at Councillor Briefings (other than to record where a Councillor leaves the meeting having declared a conflict of interest in relation to a matter). The 'interest factor' in Councillor arrival and departure times is arguable and the effort required to record same does not outweigh the administrative burden in recording unnecessary detail. As proposed in Rule 31, meeting records will record those Councillors in attendance.
	Although Rule 31(b) requires "other persons" in attendance be recorded, this is not included in the Appendix 1 template.	Addressed above.
Appendix 2 -	This is helpful. It would be more so if the types of motion provided were numbered with direct reference to the relevant number included where references to Appendix 2 are included in the Rules' text.	Comment noted and change made. Rule references included in Appendix 2.
	A procedural motion is not addressed. Include processes for a procedural motion.	The motions in Appendix 2 are procedural motions.
Typographical errors	Typographical errors in: 5 (Definitions), Rule 7(a)(1)(k); and Appendix 1 (2).	Changes made – errors corrected.