

# MANNINGHAM CITY COUNCIL

## ATTACHMENT 1

### Directions for a new Local Government Act

#### Draft Submission for Council 30 August 2016

#### Chapter 1: Introduction

No Directions

#### Chapter 2: Contemporary councils capable of meeting future challenges

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##### Direction 1 proposes to:

Require councils to take the following principles into account when performing their functions and exercising their powers:

- the need for transparency and accountability
- the need for deliberative community engagement processes
- the principles of sound financial management
- the economic, social and environmental sustainability of the municipality
- the potential to cooperate with other councils, tiers of government and organisations
- plans and policies about the municipality, region, state and nation
- the need for innovation and continuous improvement
- any other requirements under the Act or other state or federal legislation.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

The inclusion of good governance principles into the Act is supported provided they do not get too prescriptive and allow for flexibility to permit individual municipalities to adapt to suit local needs and circumstances.

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## Direction 2 proposes to:

Provide that the role of a council is to:

- plan for and ensure the delivery of services, infrastructure and amenity for its municipality, informed by deliberative community engagement
- collaborate with other councils, tiers of government and organisations
- act as an advocate for its local community
- perform functions required under the Act and any other legislation.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

**This Direction is supported provided it is the elected councillors who have the final decision making authority following engagement with the local community.**

## Direction 4 proposes to:

Make the following reforms to the election of mayors:

- Elect all mayors for two-year terms
- Retain election of the mayor by their fellow councillors for most councils
- Provide the minister with power to approve the direct election of mayors for councils where:
  - the size of the council is sufficient to support the additional costs of direct election
  - the significance of the council in its own terms or in terms of the region in which it is situated supports a directly elected mayor
  - community consultation provides evidence of strong support for a directly elected mayor, recognising the additional costs to the community.
- Should the minister approve direct election of a mayor for a municipality, the City of Melbourne model will apply. This is that the mayor and deputy mayor are jointly elected by voters and councillors are elected at large to represent the entire municipality.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

**Council believes that the current power in the Act for a council to elect a Mayor for a period of two years should remain at the discretion of the council and not be mandatory. The ability of a councillor to perform the role of the Mayor is never really known in advance of the person performing the role. Therefore, it is important to retain the term of office unencumbered by a two year term and allow a council to reappoint on merit. The imposition of a two year term may also inadvertently deny a good qualified councillor from taking on the demanding role of Mayor for such a long period of time due to family or work commitments. Council supports the election of the Mayor by his or her peers.**

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## Direction 5 proposes to:

Expand the role of the mayor to include the following powers and responsibilities:

- to lead engagement with the community on the development, and the reporting to the community at least annually about the implementation, of the council plan
- to require the CEO to report to the council about the implementation of council decisions
- to appoint chairs of council committees and appoint councillors to external committees that seek council representation
- to support councillors—and promote their good behaviour—to understand the separation of responsibilities between the elected and administrative arms of the council
- to remove a councillor from a meeting if the councillor disrupts the meeting
- to mutually set council meeting agendas with the CEO
- to be informed by the CEO before the CEO undertakes any significant organisational restructuring that affects the council plan
- to lead and report to council on oversight of the CEO's performance
- to be a spokesperson for the council and represent it in conduct of public civic duties.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

**Council does not fully support this Direction.**

**It agrees that the Mayor is the spokesperson for the council and represent it in the conduct of public civic duties as well as to support councillors in the performance of their duties and the promotion of the separation of responsibilities between elected councillors and the administrative arms of council under the control of the Chief Executive Officer.**

**Council does not agree that the Mayor should appoint the chairs of council committees and external committees as this may potentially result in a Mayor 'playing favourites'. Similarly, Council views the performance of the CEO as being a 'whole of Council' responsibility.**

**Council does not see the need for the Mayor, at a special meeting of council, to report on the Annual Report. This could more simply and less time consuming be undertaken each year at the last meeting of the term of council which corresponds in most years the with meeting to elect a Mayor.**

**Council disagrees that the Mayor should have a significant role in the setting of meeting agendas as this blurs the separation of responsibilities between Mayor and CEO.**

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## Direction 8 proposes to:

Require all councils to appoint a deputy mayor elected in a manner consistent with the mayor. That is:

- where councillors elect their mayor, councillors elect the deputy mayor for the same two-year period
- where the mayor is directly elected, a deputy mayor is jointly elected with the mayor on the same ticket.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

This Direction is not supported as Council does not agree that a two year term of office should be mandatory for the Mayor and therefore does not agree for the same to apply to a Deputy Mayor. Council is of the view that the new Act should allow for the automatic replacement of the Mayor by the Deputy when the Mayor is absent from a meeting instead of having to appoint by vote a councillor to be the temporary chairperson.

## Direction 10 proposes to:

Require councillors to actively participate in engagement processes mandated by the Act.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council agrees with a strengthening of engagement processes but does not believe that they should be mandated in the new Act as council need to be able to tailor their engagement activities to suit their individual communities and resources. Council also believes that all councillors should engage with their local communities and it not be left for the Mayor alone to lead the way.

## Direction 11 proposes to:

Require councillors to recognise and support the role of the mayor specified in the Act.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council supports the proposal for the Mayor to have a higher level of authority than previously existed, in order to support, promote and provide leadership amongst councillors. Council endorses the new provisions introduced by the Local Government (Improved Governance) Act in respect to the role of Mayor, Councillors and the CEO.

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## Direction 12 proposes to:

Provide that councillors are entitled to all relevant entitlements consistent with other significant public offices (such as for disability support, maternity leave and childcare).

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council is of the view that councillors are not employees of a council and as such, are not entitled to the same entitlements which are applicable to State Government public offices. If extended leave periods are granted as entitlements, Council is concerned about the loss of local community representation over a long period of time, the burden placed on other councillors and believe that the councillor allowance should not apply for such leave. Council believes that this Direction needs further clarification.

## Direction 13 proposes to:

Require the CEO to provide support to the mayor by:

- consulting the mayor when setting council agendas
- keeping the mayor informed about progress implementing significant council decisions, including reporting on implementation when asked to do so
- providing information the mayor requires to meet the responsibilities of the role
- informing the mayor before making significant organisation changes that that affect the council plan
- supporting the mayor in their leadership role (such as by ensuring adequate council resources and access to staff for the proper conduct of council meetings and for civic engagements).

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council believes strongly in the clear separation of responsibilities between a council, councillors and the CEO. The manner by which the Mayor is consulted when setting council meeting agendas should be structured in a way that the final determination as to what is published on agendas stays with the CEO. The involvement of the Mayor in setting agendas, organisational changes, etc involves the Mayor in administrative matters and can lead to the blurring of responsibilities between the Mayor and CEO.

## Direction 14 proposes to:

Require all councils to have a CEO remuneration policy that broadly aligns with the Remuneration Principles of the Victorian Public Sector Commission's *Policy on Executive Remuneration for Public Entities in the Broader Public Sector*.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council supports this Direction in principle, but further clarification is needed if included in the new Act.

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## Direction 15 proposes to:

Require the audit and risk committee to monitor and report on a council's performance against the remuneration policy.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council is of the firm view that this is a matter for Council itself and not one for the Audit and Risk Committee to be involved in, as it is the Council which employees the Chief Executive Officer.

## Direction 16 proposes to:

Require the mayor to get independent advice in overseeing CEO recruitment, contractual arrangements and performance monitoring.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

While it is customary for many Councils to engage external consultancies to assist with CEO recruitment, contractual arrangements and/or performance monitoring, Council does not consider this should be enshrined in legislation. Rather it is up to each Council to determine the best method for undertaken each.

Whilst the Mayor can often plays a coordination role in all of these matters, Council considers that they are 'whole of Council' responsibilities.

## Chapter 3: Democratic and representative councils

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### Direction 34 proposes to:

Extend the band (currently 5–12) for the number of councillors per council to 5–15 and provide the minister with the power to increase the number of councillors per council within this band after receiving advice of the VEC.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council supports the increase in the range of councillors to 5 – 15, but does not support the Minister having the power to appoint additional councillors to a municipality. Council is of the view that any consideration of an increase in council numbers should have both the council and local community support and not be mandated by the State Government.

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## Direction 35 proposes to:

Include in Regulations a formula for determining councillor numbers and require that the VEC consistently apply it. Base the formula on the ratio of councillors to residents, mediated by the geographic scale of the local government area, loading councillor numbers by one, two or three for geographically vast local government areas.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

It is agreed that a formula be determined to set the number of councillors a municipality needs. This ensures a politically neutral stance to councillor numbers and quickens the time to elect new councillors if needed over the representation reviews.

## Direction 36 proposes to:

Allow for one of two representative structures—unsubdivided or entirely uniform multi-member wards—to be applied in each municipality. (Option 1) or

Allow for one of three representative structures—unsubdivided, entirely uniform multi-member wards or entirely single-member wards—to be applied in each municipality. (Option 2)

Initially this would require the VEC to conduct representation reviews to arrive at new council structures for the first council elections after the Act is enacted.

Do you support option 1?  Yes  No

Do you support option 2?  Yes  No

What other comments would you make for this proposal?

Council prefers Option 2 as it offers the best range of representation models and retains the option of having single-member wards if the voter ratio of 10% variation can be adequately provided for. This currently exists successfully in several large populated metropolitan councils.

Council is of the view that multi-member wards set up a model of contestation between Councillors at the onset, which may result in disunity throughout a Council term

## Direction 37 proposes to:

Subject to fixing councillor numbers by formula and reducing the range of representative structures, conduct future electoral representation reviews by exception when the minister directs the VEC to conduct a review on the basis of:

- evidence of a marked increase in population in a municipality
- a request to the minister from a council or members of the community supported by evidence of the need for a review
- in response to a recommendation from the VEC
- on any grounds determined by the minister published in the government gazette.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council agrees with this approach provided it commences after the conduct of any representation review after the new Act is introduced.

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## Direction 38 proposes to:

Introduce partial preferential voting, consistent with Victorian Legislative Council elections, for multi-member wards and unsubdivided elections, such that the voter is only required to mark the ballot paper with the number of consecutive preferences for which there are vacancies to be filled.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

The introduction of partial (optional) preferential voting for only multi-member wards or unsubdivided municipalities as applied to the Victorian Legislative Council has a benefit over full (exhaustive) preferential voting in cutting the informal rate, and in not forcing voters to express preferences they do not have.

Council prefers the full preferential voting method if single member wards exist within a municipality.

## Direction 39 proposes to:

Implement a countback method to fill casual vacancies between general elections by which all valid votes cast at the general election would be counted, not just those of the vacating councillor (excluding the votes that made up the quotas of the continuing councillors).

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

The proposed voting change is fully supported by Council.

## Direction 41 proposes to:

Make the entitlement to vote in a council election to be on the register of electors for the Victorian Legislative Assembly (the state roll) for an address in their municipality. Grandfather the voting entitlement of existing property-franchise voters in that municipality. Institute compulsory voting for all enrolled voters. **(Option 1)** or

Maintain the existing franchise but cease automatic enrolment of property owners and require these voters to apply to enrol for future council elections if they choose to do so. Institute compulsory voting for all enrolled voters. **(Option 2)**

Do you support option 1?  Yes  No

Do you support option 2?  Yes  No

What other comments would you make for this proposal?

Council supports retaining the current provisions that permit non-resident property owners or ratepayers occupying a property within the municipality. These property owners and businesses (rate paying lessees) are a very important part of any Local Government's community and both make a significant contribution to the built form and economy of the municipality. Council believes that any person paying rates to the municipality whether they live within its borders or not or is an Australian citizen or not has a right to one vote within that municipality.

Council agrees with full compulsory voting being implemented in line with State and Federal Government elections.



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## Direction 42 proposes to:

Require the VEC to revise the candidate's nomination form to require candidates to explicitly state that no disqualification conditions apply to them.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council fully supports this direction to place the responsibility on to the candidate wanting to be elected to council.

## Direction 43 proposes to:

Require a council CEO to complete a police check and a check of the Australian Securities & Investments Commission (ASIC) register of persons disqualified under the *Corporations Act 2001* for elected candidates within three months after the general election. **(Option 1)** or

Require each candidate to submit a completed ASIC and police check when nominating. **(Option 2)**

Do you support option 1?  Yes  No

Do you support option 2?  Yes  No

What other comments would you make for this proposal?

Council considers that it should be the responsibility of individual candidates to provide the certification and not the CEO. This will assist in ensuring only persons seriously seeking election will nominate and will avoid the disruption caused by a countback if a police check is not provided within three months after an election.

## Direction 44 proposes to:

Require adoption of a uniform voting method for council elections as determined by the minister after receiving advice from the VEC. Have the minister publish the method to be used in the government gazette 12 months before the general elections.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Manningham City Council has used postal voting for all elections and has achieved higher participation rates than most councils using attendance voting. Council is of the view that individual municipalities should determine the method of voting as circumstances may vary from one municipality to another with differing communities of interest and resources.

## Direction 47 proposes to:

Require a council to conduct a deliberative community engagement process to prepare its council plan and to demonstrate how the plan reflects the outcomes of the community engagement process.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Whilst Council is supportive of community engagement processes the term 'deliberative' is not properly defined. Council is of the view that as elected representatives, it maintains final decision making responsibility.

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## Chapter 6: Ministerial oversight of councils

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### Direction 69 proposes to:

Empower the minister to recommend that a councillor be suspended by an order in council where the councillor is contributing to or causing serious governance failures at a council. This power to only be exercisable in exceptional circumstances in that:

- the councillor has caused or substantially contributed to a breach of the Act or Regulations by the council or to a failure by the council to deliver good government and
- a council (by resolution), a municipal monitor, the CMI, the Ombudsman or the Independent Broad-based Anti-corruption Commission have recommended that the minister suspend the councillor on these grounds and
- the council, the municipal monitor, the CMI, the Ombudsman or the Independent Broad-based Anti-corruption Commission have satisfied the minister that the councillor has been provided with detailed reasons for the recommendation and was given an opportunity to respond to their recommendation and
- the minister is satisfied that if the councillor is not suspended that there is an unreasonable risk that the council will continue to breach the Act or continue to be unable to provide good government for its constituents.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council supports this Direction for increasing Ministerial powers provided it is underpinned with protocols that clearly outline the roles and responsibilities of the Minister when exercising this power to ensure fair and due process.

### Direction 70 proposes to:

Retain the provisions in the Act about the suspension and dismissal of a council in their current form, including the provisions allowing appointment of administrators.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council supports this Direction for increasing Ministerial powers.

### Direction 74 proposes to:

Bring all provisions (and all other elements) of the Fair Go Rates System into the new Act consistent with the legislative hierarchy in Chapter 10.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council does not support this Direction, as the Directions Paper in one area calls for long term financial planning, but simultaneously seeks to enshrine a system whereby Councils do not know the quantum of their rates income from year to year.

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## Chapter 10: A rational legislative hierarchy

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### Direction 145 proposes to:

Require councils to take the following principles into account when performing their functions and exercising their powers:

- the need for transparency and accountability
- the need for deliberative community engagement
- the principles of sound financial management
- the economic, social and environmental sustainability of the municipality
- the potential for cooperation with other councils, tiers of government or other organisations
- plans and policies in relation to the municipality, region, state and nation

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

The inclusion of good governance principles into the Act is supported provided they do not get too prescriptive and allows for flexibility to permit individual municipalities to adapt to suit local needs and circumstances.

### Direction 146 proposes to:

Retain the current power of the minister to intervene where a council does not comply with the obligations set out in the Act or regulations by imposing a municipal monitor or by issuing a ministerial governance direction.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council supports this Direction for increasing Ministerial powers. See comments re: Direction 69.

### Direction 157 proposes to:

Consider matters relating to the *Municipal Associations Act 1907* independently of this directions paper in consultation with the Municipal Association of Victoria.

Do you support this direction?  Yes  No

What other comments would you make for this proposal?

Council supports this Direction.

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