

#### 4.6 **MONASH GALLERY OF ART REVISED TERMS OF REFERENCE AND GOVERNANCE RULES**

(Rob Pedder)

Responsible Director: Jarrod Doake

##### **RECOMMENDATION**

*That:*

*Council adopts the revised MGA Terms of Reference and Governance Rules.*

##### **INTRODUCTION**

The MGA Terms of Reference and Governance Rules have been updated for Council consideration.

##### **POLICY IMPLICATIONS**

There are no policy implications.

##### **DISCUSSION**

The MGA Committee of Management is a Community Asset Committee under s 65 of the *Local Government Act 2020* (the "Act").

As such, the Committee members require a delegation from the CEO under s 47 of the *Act* (see Attachment A). The exercise of a power, conferred by such a delegation, by a Community Asset Committee is the equal to a resolution of Council (s 59(2)(c)).

In addition to the delegation from the CEO, the conduct of the Committee is governed by its Terms of Reference and Governance Rules.

Staff have worked with the Committee to create the attached updated Terms of Reference and Governance Rules based on learnings from its operations (see Attachments B & C).

##### **CONSULTATION**

The MGA Committee have been consulted.

##### **SOCIAL IMPLICATIONS**

There are no social implications to this report.

***HUMAN RIGHTS CONSIDERATIONS***

There are no Human Rights implications.

***GENDER IMPACT ASSESSMENT***

This proposal does not raise issues of gendered impact and a GIA has not been undertaken.

***FINANCIAL IMPLICATIONS***

There are no significant financial implications.

***CONCLUSION***

The revised MGA Terms of Reference and Governance Rules are presented for Council's consideration.



**INSTRUMENT OF DELEGATION MADE PURSUANT TO SECTION 47(1)(B) OF THE LOCAL GOVERNMENT ACT 2020**

- 1 In the exercise of the powers delegated to me, Andi Diamond, in my capacity as Chief Executive Officer of Monash City Council, I hereby delegate to the Committee members of the Monash Gallery of Art Committee of Management (**Committee**) the powers, duties and functions set out in the Schedule to this Instrument of Delegation.
- 2 The delegation is subject to any conditions and limitations set out in the Schedule.
- 3 This instrument comes into force immediately upon its execution and shall continue to have effect according to its terms until it is varied, replaced, or revoked.

Dated: Updated Draft

Deleted: 1 MAY 2020

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**DR ANDI DIAMOND**  
Chief Executive Officer

**SCHEDULE****1 POWERS, DUTIES AND FUNCTIONS OF COUNCIL DELEGATED TO THE COMMITTEE**

1.1 Pursuant to section 47 of the Act, to permit the fulfilment of the Committee's functions as stated in the Terms of Reference, the Chief Executive Officer delegates to the members of the Committee the power to do all things necessary or convenient to be done for or in connection with the performance of its functions and the management and operation of the Monash Gallery of Art.

1.2 In exercising its delegated powers, duties and functions, the Committee and members of the Committee must comply with the requirements set out in the Terms of Reference and Governance Rules dated (*insent date*), including requirements as to governance, monitoring and reporting.

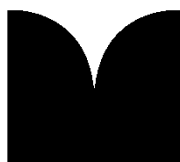
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**2 Without limiting the generality of the delegation at paragraph 1.1 above, the Chief Executive Officer delegates to the members of the Committee the power to:**

- 2.1 approve the acquisition, purchase or taking on hire, commissioning or production, or acceptance as a gift or on deposit or loan, any Works;
- 2.2 approve Works to be made available by the Gallery to others by hire or loan;
- 2.3 dispose of any Works in the Gallery's collection;
- 2.4 accept on behalf of the Gallery gifts, devises, bequests and assignments, whether on trust or otherwise;

**3 The members of the Committee are not authorised by this Instrument to:**

- 3.1 do anything that authorises, or involves, the use of Council's common seal;
- 3.2 do anything that is a breach or contravention of the Act or any other law;
- 3.3 do anything that is a breach or contravention of an adopted Council policy or written direction or resolution of Council that has been notified to the Committee;
- 3.4 employ or engage employees;
- 3.5 direct Council employees in performance of their powers, functions and duties;
- 3.6 acquire or disposal of land or an interest in land;
- 3.7 dispose of Works other than in accordance with clause 7 of the Terms of Reference;
- 3.8 delegate any of the powers delegated in this Schedule.



CITY OF  
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**MONASH GALLERY OF ART COMMITTEE OF MANAGEMENT**

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**Governance Rules**

**Draft update**

**1. Committee of Management**

The Monash Gallery of Art Committee of Management (“Committee”) is constituted as a community asset committee in accordance with section 65 of the *Local Government Act 2020* (the “Act”).

The operations of the Committee are pursuant to the *Instrument of Delegation* signed by the CEO under section 47(1)(b) of the Act, the *Terms of Reference* and these *Governance Rules*.

The Chief Executive Officer may, at any time, review and vary the *Instrument of Delegation* to the Committee and will notify any variations to the Committee by providing an updated instrument.

**2. Membership**

The Committee consists of the following members:

- 2.1 The Chair of the Committee;
- 2.2 The Deputy Chair of the Committee;
- 2.3 2 Councillors nominated by Council; and
- 2.4 not fewer than 3 and not more than 7 other members.

**3. Appointment of Committee members**

- 3.1 Committee members are appointed by resolution of Council, taking into account any recommendation of the Committee.
- 3.2 The Director will ensure that police checks are obtained as part of the vetting process for potential Committee members.
- 3.3 If, as a result of the expiration of the term, or the resignation or removal, of a Committee member, the total number of current Committee members falls below 5, Council must fill that vacancy in accordance with clause 3.1.

- 3.4 Before appointing a person as a Committee member under clause 3.1, Council must be satisfied that the person has knowledge or experience relevant and beneficial to the operations of the Gallery.
- 3.5 Subject to clause 3.1, a Committee member holds office:
- 3.5.1 For three years from the time of original appointment, or for the period specified in the Council resolution, which period must not exceed 3 years; or
- 3.5.2 If no period is specified in the Council resolution, for a period of 3 years.
- 3.6 Subject to clause 3.7, a current Committee member may be reappointed by Council, taking into account any recommendation of the Committee, for a further term not exceeding 3 years.
- 3.7 The Committee may recommend to Council that a Committee member be reappointed for a further term if the Committee forms the view that the Committee member's reappointment will be of specific benefit to MGA's strategic direction. In that case, the Committee will describe that specific benefit to Council.
- 3.8 The Director and employees of Council are ineligible to be appointed as Committee members.

#### **4. Chair and Deputy Chair**

- 4.1 A member of the Committee is to be appointed as the Chair of the Committee by Council resolution, taking into account any recommendation of the Committee.
- 4.2 A member of the Committee is to be appointed as the Deputy Chair of the Committee by Council resolution, taking into account any recommendation of the Committee

#### **5. Acting Chair and Deputy Chair**

- 5.1 The Deputy Chair is to act as the Chair:
- 5.1.1 during a vacancy in the office of Chair; and
- 5.1.2 during any period when the Chair is:
- (a) absent from duty; or
- (b) otherwise unable to perform the duties of the office.
- 5.2 At any time that:
- 5.2.1 there is a vacancy in the office of Deputy Chair; or
- 5.2.2 the Deputy Chair is:
- (a) acting as the Chair; or
- (b) absent from duty; or
- (c) otherwise unable to perform the duties of the office,

the Committee may, by resolution, appoint a Committee member to act as the Deputy Chair.

## **6. Leave of absence**

- 6.1 A Committee member, including the Chair, must request a leave of absence where they know that they will be absent from 3 or more consecutive meetings of the Committee.
- 6.2 The Committee will consider and resolve upon the request, which must not be unreasonably denied.
- 6.3 The Chair must notify Council if the Committee grants a leave of absence to a Committee member for a period exceeding 6 months.

## **7. Resignation**

- 7.1 A Committee member may resign their appointment by giving Council written notice of that resignation.
- 7.2 The resignation takes effect on the day it is received by Council or, if a later day is specified in the resignation, on that later day.

## **8. Termination of appointment**

- 8.1 Council may terminate the appointment of a Committee member if the Committee member:
  - 8.1.1 Has engaged in serious misconduct of any kind; or
  - 8.1.2 is unable to perform the duties of his or her office because of physical or mental incapacity.
- 8.2 Council must terminate the appointment of a Committee member if the Committee member:
  - 8.2.1 Is declared bankrupt or is disqualified to act as a Director of a company under the *Corporations Act 2001* (Cth);
  - 8.2.2 applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
  - 8.2.3 Is convicted of an indictable offence;
  - 8.2.4 is absent from three consecutive meetings of the Committee without the leave of Council or the Chair; or
  - 8.2.5 Fails, without reasonable excuse, to comply with an obligation imposed on him or her by the Act.

## **9. Convening of meetings**

- 9.1 Subject to clauses 9.2 and 9.3 the Chair will convene such meetings of the Committee as are, in their opinion, necessary for the efficient conduct of its affairs.
- 9.2 The Chair must convene at least 6 meetings of the Committee each calendar year.
- 9.3 The Chair must, on receipt of a written request signed by a majority of the current Committee members, convene a meeting of the Committee.
- 9.4 The Chair may determine that meetings will be held virtually and, in the absence of such a determination, meetings shall be held in person. .

## **10. Presiding at meetings**

- 10.1 The Chair must preside at all meetings of the Committee at which they are present.
- 10.2 If the Chair is not present at a meeting of the Committee, the Deputy Chair, if present, must preside at the meeting.
- 10.3 If neither the Chair nor the Deputy Chair is present at a meeting of the Committee, the Committee members present must elect one of their numbers to preside at the meeting.

## **11. Agendas**

- 11.1 Formulating the agenda for Committee meetings will be undertaken by the Director or their staff, with final approval by the Chair.
- 11.2 Any member of the Committee may submit an item to the Director for inclusion on the agenda.
- 11.3 Agendas and supporting documents will be circulated to all Committee members at least five (5) days prior to the meeting.

## **12. Voting**

- 13.1 If required, voting will be by show of hands, with a majority prevailing.
- 13.2 Where there is an equality of votes, the Chairperson shall have a second vote.
- 13.3 Voting may be by circular resolution where the Chair believes that the item is urgent and a decision cannot be delayed until the next Committee meeting.

## **13. Minutes**

- 14.1 The minutes of a Committee meeting will be taken by the Director or their delegate.
- 14.2 The minutes must:
  - (a) Contain the Committee resolution in relation to each item;
  - (b) Be clearly expressed;
  - (c) Be self-explanatory;
  - (d) Be distributed to the Committee in the papers for confirmation at the next meeting.

## **14. Quorum**

- 14.1 The quorum shall be at least half of the Committee membership.
- 14.2 No business shall be transacted in the absence of a quorum.

## **15. Disclosure of conflict of interest**

- 15.1 Where a Committee Member has a Conflict of Interest in a matter before the Committee, they shall:
  - 15.1.1 Advise the Chair prior to the meeting, or disclose the conflict immediately prior to the consideration of the item by the Committee, or where voting is by circular resolution immediately advise the Chair; and



- 15.1.2 Not participate in the debate or decision making process in relation to the item.

## 16. Sub-Committees

- 16.1 Subject to clause 17.3, the Committee may resolve to form a Sub-Committee for an assigned task or in a particular area and will determine the membership of that Subcommittee, who may be Committee members, employees of Council or any other person whom the Committee deems appropriate with the professional knowledge or experience that will facilitate the work of the Sub-Committee in a positive and productive manner in accordance with MGA strategic objectives.
- 16.2 A Sub-Committee's function is to act as an advisory body and make recommendations to the Committee and the Director.
- 16.3 At least one member of a Sub-Committee must be a Committee member.

## 17. Definitions

In this document, capitalised terms have the following meaning:

- 17.1 **Act** means the Local Government Act 2020 (Vic);
- 17.2 **Committee** means the Monash Gallery of Art Committee of Management constituted as a community asset committee by Council in accordance with section 65 of the Act;
- 17.3 **Committee Member** means a member of the Committee appointed under clause 9;
- 17.4 **Council** means the City of Monash;
- 17.5 **Director** means the director of the Gallery appointed by Council;
- 17.6 **Gallery** means the Monash Gallery of Art;
- 17.7 **MGA Foundation** means the Monash Gallery of Art Foundation established by Deed of Trust dated 6 October 2005;
- 17.8 **Strategic Plan** means the strategic plan for the Gallery in the form approved by Council from time to time;
- 17.9 **Sub-Committee** means any sub-committee formed by the Committee in accordance with clause 18; and



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## MONASH GALLERY OF ART COMMITTEE OF MANAGEMENT

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### Terms of Reference

#### Draft update

#### 1. Committee of Management

The Monash Gallery of Art Committee of Management (“Committee”) is constituted as a community asset committee in accordance with section 65 of the *Local Government Act 2020* (the “Act”).

The operations of the Committee are pursuant to the *Instrument of Delegation* signed by the CEO under section 47(1)(b) of the Act, these *Terms of Reference* and the *Governance Rules*.

#### 2. Purpose

2.1 The purpose of the Committee is to oversee the proper and efficient operation of the Gallery within the framework/constraints of the resources and budget provided by Council.

2.2 Specifically, the Committee exists to:

- Provide advice to the Gallery Director (“Director”) on a range of strategic and operational matters;
- Monitor the Gallery Budget and provide advice to the Director;
- Recommend to Council the adoption of the Gallery Budget
- Recommend to Council the adoption of the Gallery’s Strategic Plan;
- Recommend to Council the adoption of the annual Business Plan;
- Report annually to the Chief Executive Officer on the activities of the Committee and their oversight of the implementation of the Strategic Plan and annual Business Plan;
- Assist Council with the appointment of a new Director where required;
- Oversee the process by which the Gallery is managed under international and national codes of practice and guidelines for collections and gallery management, including International Council of Museums (ICOM) Code of Ethics for Museums; and

- Assist the Director to ensure that the collection management is in line with the MGA Collections Policy.

### **3. Strategic and operational advice**

The Committee will provide the Director with strategic and operational advice in the following areas:

- 3.1 development, acquisition, preservation, maintenance, promotion and provision of access to an art collection consisting primarily of photographs;
- 3.2 development and engagement of a local, national and international audience in relation to that collection including through exhibitions, education, research, publications and public and online programs;
- 3.3 development of a fundraising strategy for the Gallery in accordance with the Strategic Plan and the annual budget;
- 3.4 facilitating and growing the strategic partnership with the MGA Foundation to promote the objectives of the MGA Foundation and to support fundraising and promotional events for the Gallery, including agreeing with the MGA Foundation the terms of any such activity or event;
- 3.5 development and delivery of the exhibition, education and public program schedule for the Gallery in accordance with the objectives of the Strategic Plan; and
- 3.6 management and operation of the Gallery from commercial, visual arts, visitor experience, business and management perspectives.

### **4. Annual Budget**

- 4.1 Council may vary the Gallery's annual budget allocation as it sees fit but must, before adopting any varied annual budget, provide the Committee with a reasonable opportunity to comment on the proposed variations.
- 4.2 The Committee will monitor the Gallery's annual budget and provide advice to the Director.

### **5. Strategic Plan**

- 5.1 The Committee will assist the Director in the preparation of a Strategic Plan for the Gallery for recommendation to Council, at least 6 months prior to the expiration of the current Strategic Plan and provide it to Council for approval.
- 5.2 The Strategic Plan will cover a 4-year period, or such other period directed by Council.
- 5.3 The Strategic Plan will include:
  - 5.3.1 A statement of the vision, values and objectives of the Gallery;
  - 5.3.2 The strategies that the Gallery will adopt to achieve that vision and those values and objectives; and
  - 5.3.3 Such other matters (if any) as Council directs.
- 5.4 The Committee will inform the Chief Executive Officer of:
  - 5.4.1 Changes to the Strategic Plan; and

- 5.4.2 Any other matters that it considers could significantly affect the achievement of the objectives set out in the Strategic Plan, including any changes to the MGA Collections Policy, in a timely manner upon such changes being made.

## **6. Annual Business Plan**

- 6.1 The Committee will assist the Director, prior to the end of each financial year in the preparation of an annual Business Plan for the next financial year. The Business Plan will have regard to the Strategic Plan, the Gallery budget for the next financial year, and the Council Plan.

## **7. Reporting**

- 7.1 The Committee will report to the Chief Executive Officer on or before 20 August each year on the activities of the Committee and the implementation of the Strategic Plan and the annual Business Plan.
- 7.2 The Chief Executive Officer at their discretion may require that the Committee report more frequently.

## **8. Advice to Council**

- 8.1 The Committee will assist Council in the appointment of a Director should a vacancy arise and provide a recommendation on such appointment.

## **9. Collection Management**

- 9.1 The Committee shall:
- 9.1.1 approve the acquisition, purchase or taking on hire, commissioning or production, or acceptance as a gift or on deposit or loan, of any Works;
  - 9.1.2 approve Works to be made available by the Gallery to others by hire or loan;
  - 9.1.3 approve the disposal of any Works in the Gallery's collection;
  - 9.1.5 accept on behalf of the Gallery gifts, devises, bequests and assignments, whether on trust or otherwise;

## **10. Review**

- 10.1 A review of these Committee Terms of Reference will be conducted on a biennial basis to comply with Council's schedule.

## **11. Definitions**

In this document, capitalised terms have the following meaning:

- 11.1 **Act** means the Local Government Act 2020 (Vic);
- 11.2 **Committee** means the Monash Gallery of Art Committee of Management constituted as a community asset committee by Council in accordance with section 65 of the Act;
- 11.3 **Council** means the City of Monash;
- 11.4 **Director** means the Director of the Gallery appointed by Council;
- 11.5 **Gallery** means the Monash Gallery of Art;

- 11.6 **MGA Foundation** means the Monash Gallery of Art Foundation established by Deed of Trust dated 6 October 2005;
- 11.7 **Strategic Plan** means the strategic plan for the Gallery in the form approved by Council from time to time; and
- 11.8 **Work** means a work of art and includes a photograph and any other material held or obtained by the Gallery for the purposes of archiving, collection or exhibition.