

***Instrument of Delegation
by the CEO to a Community Asset Committee***

Yarriambiack Shire Council

Instrument of Delegation

by the Chief Executive Officer

to the Woomelang Retirement Units Community Asset Committee

In exercise of the power conferred by section 47(1)(b) of the *Local Government Act 2020* (Act), I, as Chief Executive Officer of Yarriambiack Shire Council, by this Instrument of Delegation:

1. delegate to each person who is from time to time appointed as a member of the Community Asset Committee, (Committee) established by resolution of Council passed on 26 August 2020 and known as the **Woomelang Retirement Units** Community Asset Committee, each power and/or function and/or duty set out in the Schedule;
2. declare that a delegate can only exercise the delegations contained in this Instrument of Delegation while acting as a member of the Committee at a meeting of the Committee;
3. declare that this Instrument of Delegation:
 - 3.1 comes into force immediately upon its execution;
 - 3.2 remains into force until varied or revoked;
 - 3.3 is subject to the conditions and limitations set out in paragraphs 4 and 5, and in the Schedule;
4. declare that the delegate must comply with the specified governance requirements to ensure appropriate standards of probity are met and monitor and report on the activities and performance of the Committee; and
5. declare that the delegate must not determine the issue, take action or do the act or thing if the determining of the issue, the taking of the action or the doing of the act or thing cannot be the subject of a lawful delegation, whether on account of section 47 of the Act or otherwise.

This Instrument of Delegation is dated **26 July 2023** and is made by the Chief Executive Officer.

Signed by the Chief Executive Officer of Council
in the presence of:

)
) 
)



Witness

SCHEDULE

Definitions

In this document, the terms below have the meaning indicate

- a) *Council representative* means the person appointed by the Chief Executive Officer to be the primary point of contact between the Council and the Committee; and
- b) *facility* means **the Woomelang Retirement Units and Land, located at 24 Gloucester Avenue Woomelang and 37 Brock Street Woomelang.**

Powers and functions and duties

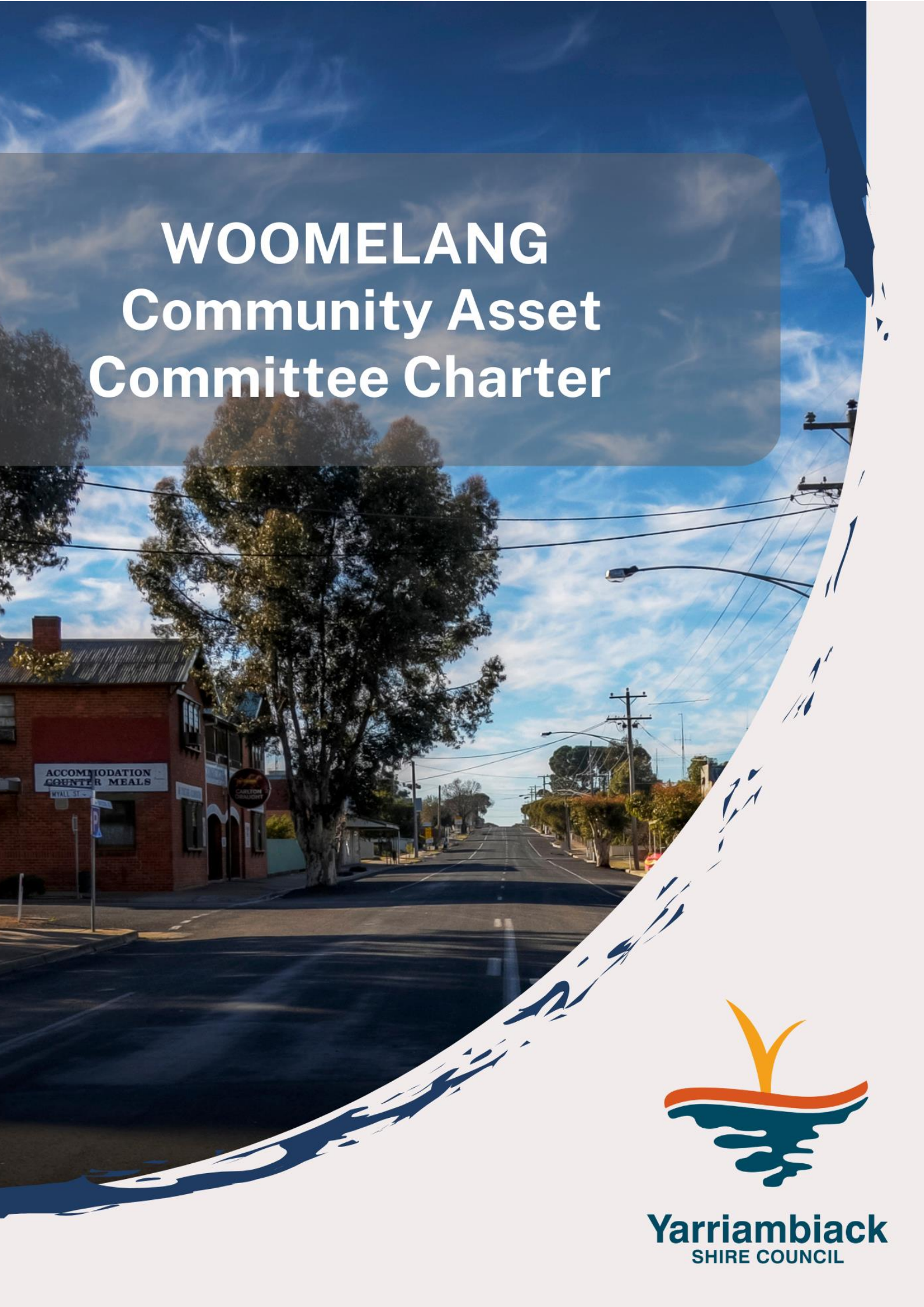
To manage the Facility in accordance with this Instrument of Delegation and the Committee's Charter (refer to the Appendix).

The general responsibilities of the Committee are to:

- a) oversee the proper and efficient operation of the Woomelang Retirement Units within the framework/constraints of the resources and budget provided by Council;
- b) provide direct management of the Retirement Units, including liaison with individual tenants, minor maintenance, reporting risk issues to Council and collection of income;
- c) liaise with the local community and assist Council to plan for future local needs;
- d) report all occupational health and safety issues to the Council representative immediately and engage only contractors suitably qualified, with the required licences, qualifications and insurance to conduct maintenance and repairs.
- e) Procure goods, services and works in accordance with the financial delegations outlined in the Community Asset Committee Charter - Woomelang Retirement Units and the Operations Manual - Woomelang Retirement Units.

Further details are provided in the Committee's Charter.

WOOMELANG Community Asset Committee Charter



Yarriambiack
SHIRE COUNCIL

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1 INTRODUCTION

Section 65 of the *Local Government Act 2020* (LGA 2020) provides that:

- i. a council may establish a community asset committee and appoint as many members to the Community Asset Committee as the Council considers necessary to enable the community asset committee to achieve the purpose specified in subsection (2); and*
- ii. a council may only establish a community asset committee for the purpose of managing a community asset in the municipal district.*

The LGA 2020 also provides (section 47) that the Council's Chief Executive Officer (CEO) may delegate powers, duties and functions to a community asset committee.

2 AUTHORISING PROVISION

While there is no requirement in the LGA 2020 for a community asset committee to have a Charter, this Charter is intended to complement the Instrument of Delegation issued to the **Woomelang Retirement Units** Community Asset Committee (Committee). Committee members should also familiarise themselves with the Community Asset Committee Operations Manual.

3 COMMENCEMENT DATE

This Charter was approved by the CEO on **26 July 2023** and replaces the Committee's previous Terms of Reference.

4 ACCESS TO THIS CHARTER

This Charter will be published on the Council website and be available for inspection at the Council's office(s).

5 ROLE OF THE COMMITTEE

The Committee's role is to exercise Council's functions and powers to perform Council's duties in relation to the management of the Facility including:

- a) developing and maintaining the Woomelang Retirement Units Facility (Facility) for the overall benefit of the community,
- b) preserving the historical integrity of the Facility,
- c) advising Council in relation to the general development of the Facility,
- d) managing and allocating units in a transparent and consistent manner,
- e) maintenance in accordance with Appendix 1,
- f) financial management including:
 - i. preparation of works to be undertaken at the Facility to inform the draft budget by 31 March each year for consideration by Council,
 - ii. reporting to the CEO on or before 31 July each year on the activities of the Committee,
 - iii. reporting to Committee meetings,
 - iv. providing an annual report including:
 - a report of the operations and activities of the Committee including measurable achievements in terms of patronage/usage of the Facility,

- a list of Committee members and the dates of their membership,
 - financial statements (operating statement and balance sheet),
 - details of Committee meetings held including:
 - ✓ dates,
 - ✓ meeting location,
 - ✓ attendance,
- h) by resolution and endorsement of the CEO, reducing or waiving fees where appropriate,
- i) preparation and submission of quarterly financial statements to the satisfaction of the CEO,
- m) ensuring effective management of the Facility as Retirement Units for the community,
- n) ensuring that tenants abide by the conditions of use imposed by the Council’s local laws and policies and statutory requirements,
- o) celebrating, through the Facility’s programs, the diverse cultures of the municipal district,
- p) facilitating and supporting community involvement in the programs and operations of the Facility (if any),
- q) seeking to maximise funding from external sources and minimise recurrent expenditure contributions from the Council,
- r) ensuring the Facility operates within the Committee’s objectives,
- s) adopting policies and strategies for the Facility,
- t) exploring and obtaining external funding contributions to the Facility through grants, sponsorships, gifts and donations,
- u) ensuring any proposals for capital works or significant maintenance are submitted annually to Council in time for consideration in the preparation of the Council’s annual budget; and
- v) ensuring financial contributions are credited to the Council’s **Woomelang Retirement Units** bank account.

6 GOVERNANCE

6.1 Status

The Committee has been established by the Council and is not a separate entity (e.g. company or incorporated association) and cannot therefore:

- a) enter into contracts or agreements in its own name; or
- b) employ staff.

6.2 Statutory Requirement

Section 47 of the LGA 2020 provides that:

- a) a delegation under this section to the members ¹ of a Community Asset Committee is to be exercised subject to the terms and conditions specified by the Chief Executive Officer, which must include:
 - i. the specified limit on any financial delegation and the specified purpose for which the financial delegation may be used,
 - ii. compliance with specified governance requirements to ensure appropriate standards of probity are met,
 - iii. specified monitoring and reporting of the activities and performance of the Community Asset Committee,
- b) a member of a Community Asset Committee to whom a delegation is given under this section can only exercise the delegation while acting as a member of the community asset committee at a meeting of the committee; and
- c) the Chief Executive Officer must submit an annual report to the Council in relation to the activities and performance of the Community Asset Committee.

6.3 Limitations

The Committee must not borrow money or obtain a bank overdraft without the prior written approval of the Council.

7 COMMITTEE MEMBERSHIP

7.1 General

The Committee may comprise **1 (one)** Councillor, **1 (one)** Council officer (appointed by the CEO) and a minimum of **5 (five)** external members (subject to a maximum of **12 (twelve)** external members). The external members appointed by Council:

- a) must be natural persons with relevant skills, experience, or expertise; and
- b) will be appointed for a two-year term.

Note – The membership may comprise:

- Councillors,
- Council officers,
- independent members; or
- any combination thereof.

The Committee membership details will be published on Council's website.

¹ The delegation must be to the members of the committee as the committee itself is not an entity.

7.2 Office Bearers

The President will be appointed by resolution of the Council. This will be via the endorsement of the General Meeting minutes, presented as part of an Ordinary Council Meeting Agenda. Office Bearers will be appointed for a two-year term.

The Committee shall elect the following office bearers from among its members:

- a) a Deputy President,
- b) a Secretary, and
- c) a Treasurer.

7.3 Vacancies

In the event of a casual vacancy on the Committee, the Council shall fill the vacancy, however:

- a) in the event of the Council being unable to fill the vacancy, the Committee may continue to operate providing the membership is at least **5 (five)** persons; and
- b) the Council is not obliged to fill a vacancy which occurs within the period of three months prior to a Council election if the remaining members of the Committee are sufficient in number to form a quorum.

7.4 Indemnity

Section 43 of the LGA 2020 provides that:

"A Council must indemnify and keep indemnified each Councillor, member of a delegated committee and member of a Community Asset Committee against all actions or claims whether arising during or after their term of office in respect of anything necessarily done or reasonably done or omitted to be done in good faith".

8 INSURANCES

The following provisions apply.

8.1 The Facility

The Facility is covered by Council's policies relating to:

- a) public risk,
- b) building and contents (limited to Council's contents only).

Noting, Council's insurance does not cover tenants' contents.

8.2 Committee Members

Committee members are covered by Council's public liability and personal accident insurance policies.

8.3 Volunteers

All Volunteers are to be approved by Council's CEO.

Volunteers appointed or authorised by the Council are covered by Council's public liability and personal accident policies whilst carrying out activities for and on behalf of the Committee. All volunteers are required to be registered by completing a Volunteer Induction and Registration via Happy HR prior to commencing any task for the Committee to ensure they are covered by the policies.

Asset Committee Members are not classified as Volunteers for the purpose of section 8.3.

Volunteer groups, such as, but not limited to, the Lions Club may perform volunteer working bee activities in accordance with Council’s policies, procedures and occupational health and safety requirements. Volunteer group members are not required to be registered via Happy HR.

9 TENANTS

All tenants are appointed in accordance with the Tenant Selection Policy and Procedure. The CEO delegates the interview and appointment of tenants to the Committee.

The details of the process to be undertaken is outlined in the Woomelang Retirement Units Community Asset Committee Operations Manual.

10 FEE SCHEDULE

The Committee is to make a recommendation to the Council by the 31 March each year to set the weekly rent and bond for each unit.

The fees are to be based off a Certified Valuers report, commissioned by the Council, that is to include the market rate for rental charge. The units are classified as affordable housing, and Council must only charge 80% of the market rate for the units.

11 REMUNERATION AND HONORARIUM

The LGA 2020 does not require councils to remunerate members of community asset committees.

Council does not remunerate members of the committee, and it does not pay honorariums related to this asset committee.

12 REIMBURSEMENT OF EXPENSES

Section 41 of the LGA 2020 provides that Councils must adopt and maintain an expenses policy in relation to the reimbursement of out-of-pocket expenses for Councillors and members of delegated committees.

Section 41 does not refer to community asset committees; and therefore, Council does not reimburse external Committee members expenditure.

13 COMMITTEE MEETINGS

13.1 Governance Rules

Meetings will be conducted in accordance with the Council’s *Governance Rules* subject to any adaptations as necessary.

In this context:

- a) the President must ensure meetings are conducted, where relevant, in accordance with the Council’s Governance Rules.
- b) the Secretary must:
 - i. provide the Council representative with copies of agendas for Committee meetings at least five business days prior to the Committee meeting; and
 - ii. provide the Council representative with copies of the minutes of Committee meetings within ten business days of the Committee meeting; and

- c) Committee members must comply with the conflict of interest and confidentiality provisions of the LGA 2020 and Council’s Governance Rules.

13.2 Attendance

Meetings will be generally held in Woomelang in a public space/building and attendance is encouraged.

A member who is unable to attend a meeting in person may participate by electronic means of communication.

Meetings are not open to the public; however, the Committee may resolve to invite and admit other persons to attend.

Meetings must be held quarterly or:

- a) more often by resolution of the Committee; or
- b) by the President giving Committee members at least seven days’ notice of a special meeting.

The CEO of the Council or his or her nominee may attend Committee meetings as an observer and may be called upon by the Committee for assistance.

14 CONVENING MEETINGS

14.1 Scheduled Meetings

Meetings of the Committee can be called by resolution of the Committee.

14.2 Non-scheduled Meetings

Non-scheduled meetings can be called by:

- a) the President; or
- b) three or more members of the Committee.

The Secretary must give members at least seven days’ notice of non-scheduled meetings.

14.3 Agendas

Agendas for meeting must include, but are not limited to:

- a) apologies,
- b) requests for leave of absence,
- c) requests to attend the meeting by electronic means,
- d) disclosures of conflict of interest,
- e) confirmation of minutes of previous meetings,
- f) presentations by Council staff,
- g) a regular financial report,
- h) confidential items.

14.4 Quorum

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

14.5 Voting

The following provisions apply:

- a) each Committee member has one vote,

- b) voting is by a show of hands,
- c) voting is not compulsory,
- d) the question is determined in the affirmative by a majority of the Committee members present at a meeting ² at the time the vote is taken voting in favour of the question; and
- e) in the event of a tied vote, the President has a casting vote.

14.6 Minutes

The Secretary shall keep proper minutes of all meetings and provide them to the Council’s representative within seven days of a Committee meeting.

Minutes of meetings must include, but are not limited to:

- a) the time the meeting commenced,
- b) names of attendees,
- c) apologies,
- d) requests for leave of absence,
- e) requests to attend the meeting by electronic means,
- f) disclosures of conflict of interest,
- g) confirmation of minutes of previous meetings,
- h) presentations by Council staff,
- i) a regular financial report,
- j) confidential items.

14.7 Confidentiality

While various confidentiality provisions of the LGA 2020 apply to meetings of Councils and delegated committees, they do not apply to meetings of community asset committees, however under section 47 of the LGA 2020, the CEO is required to establish governance requirements to ensure appropriate standards of probity are met by the Committee.

The definition of “confidential information” is shown in Appendix 2.

Accordingly, in the interests of transparency, the CEO has determined that confidentiality provisions should apply to members of the Committee.

Accordingly, a person who is, or has been, a Councillor, a member of the Committee, must not intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information.

14.8 Disclosures of Conflict of Interest

While the conflict-of-interest provisions of section 126 of the LGA 2020 apply to meetings of Councils and delegated committees, they do not apply to meetings of community asset committees (because a community asset committee is specifically excluded from the definition of “delegated committee”), however:

² Accordingly a member who refrains from voting is taken to have voted in the negative.

- a) Section 130(1)(c) refers to conflicts of interest being declared at a meeting of a community asset committee; and
- b) Section 47 of the LGA 2020, requires the CEO to establish governance requirements to ensure appropriate standards of probity are met by the Committee.

Accordingly, in the interests of transparency, the CEO has determined that the conflict-of-interest provisions should apply to meetings of the Committee.

Committee members must therefore:

- a) If attending a meeting (in person or by electronic means) of the Committee disclose any conflict of interest at the commencement of the meeting;
- b) Leave the meeting room while a vote is taken on the matter under discussion; and
- c) If *not* attending a meeting of the Committee, disclose any conflict of interest to the President or the CEO prior to the meeting.

In the case of a meeting conducted by electronic means, a member of Council staff will “suspend” the involvement of the Councillor, Committee member or member of Council staff by disconnecting their audio and visual attendance until the matter has been dealt with.

Appendix 3: Conflict of Interest Declaration Form

14.9 Personal Interest Returns

The LGA 2020 provides for personal interest returns (initial and biannual) to be submitted by specified persons and nominated officers. The provisions do not apply to community asset committees.

14.10 General Meeting

A general meeting of the Committee shall be held between 1 July and 30 September biennially (every two years) at which the Treasurer shall present a statement of receipts and expenditure for the preceding period.

The Secretary shall notify the key Council representative a minimum of five (5) weeks prior to the date of the general meeting so that Council can advertise the date by way of a notice in the public notices section of a newspaper generally circulating in the municipal district and on the Council website.

15 FINANCES

As indicated, the Committee has been created by Council and is not a separate legal entity.

Accordingly, all funds in the Committee’s bank account are Council funds. While the Committee can operate a bank account, whenever the balance in the account exceeds \$30,000 the excess shall be transferred into an account nominated by the Council.

The Committee’s bank accounts are required to have two signatories and internal controls implemented that meet Council’s fraud prevention requirements.

16 POLICE CHECKS

All members of the Woomelang Retirement Units Asset Committee must have a current National Police Check undertaken. This will be facilitated by a nominated

Council Officer. Police Checks are required to be renewed and updated every three years. Council will coordinate the check and is responsible for the fee.

17 WORKS AND MAINTENANCE

The responsibilities for works (capital and maintenance) are set out in Appendix 1.

18 REPORTING

The Committee must report:

- a) In accordance with its Instrument of Delegation,
In accordance with this Charter,
- b) By providing copies of the minutes of committee meetings to the Council’s representative with fourteen days of every meeting; and
- c) By providing a quarterly financial report to the Council’s representative within 14 days of the end of each quarter.

19 REVIEW OF THE CHARTER

The Charter is to be reviewed by the Committee biennially or more frequently if required and the CEO advised of any requested amendments.

The CEO may, at any time, review and vary the Delegation to the Committee and will notify any variations to the Committee by providing an updated Delegation.

20 AMENDMENTS TO THE CHARTER

Amendments to the Charter may be made by the CEO to reflect legislative or organisational changes. The CEO must notify the Councillors and the Committee of any such amendments.

Approved at Council Meeting

Charter Adopted:	Ordinary Meeting 26 July 2023	Minute Book Page 25
Charter Reviewed:	Ordinary Meeting 27 March 2024	Minute Book Page 37

Approved at Community Asset Committee – Woomelang Retirement Units Meeting

Charter Adopted:	Meeting: 07 March 2024
Charter Reviewed:	

21 APPENDIX 1: Works and Maintenance Responsibilities

WORKS AND MAINTENANCE

The Table below sets out the responsibilities of the Council and the Committee in relation to the Retirement Units.

Note – This Appendix should be adapted to suit the particular facility.

Task	Council responsibility	Committee Responsibility To the value of \$14,999
Capital works	Yes, subject to: <ul style="list-style-type: none"> • funding in Council’s annual budget; and • Council’s procurement practices. Major Capital works such as upgrades to building structure and fittings that require a building permit, or is greater than the procurement thresholds.	Committee may be delegated the responsibility to manage the task on the discretion of the CEO, based on value of the procurement. Procurement \$15,000 and over must be project managed by Council, Procurement less than \$15,000 maybe project managed by the Committee. Committee is endorsed to purchase capital assets such as stoves, hotplates, hot water service etc. in accordance with procurement delegation. Refer to Council’s Community Assets Committee Operations Manual for more detail.
Maintenance – outdoor (to the value of \$14,999)		
<ul style="list-style-type: none"> • <i>grass cutting</i> 	No	Yes
<ul style="list-style-type: none"> • <i>gardens</i> 	No	Yes
<ul style="list-style-type: none"> • <i>paths and driveways (structure)</i> 	Yes	No
<ul style="list-style-type: none"> • <i>rubbish</i> 	Supply of bins and a weekly collection	

Task	Council responsibility	Committee Responsibility To the value of \$14,999
Maintenance – indoor (to the value of \$14,999):		
<ul style="list-style-type: none"> <i>building inspection</i> 	Yes - annually	Yes – request tenant report issues to Committee.
<ul style="list-style-type: none"> <i>repairs and or replacement of assets (such as but not limited to):</i> 		
<ul style="list-style-type: none"> <i>hot water service</i> 	No	Yes
<ul style="list-style-type: none"> <i>fixed appliances (oven / stove)</i> 	No	Yes
<ul style="list-style-type: none"> <i>fire alarms</i> 	Yes	No
<ul style="list-style-type: none"> <i>fire extinguisher / blankets</i> 	Yes	No
<ul style="list-style-type: none"> <i>water leak</i> 	No	Yes
<ul style="list-style-type: none"> <i>burst or leaking down pipe</i> 	No	Yes
<ul style="list-style-type: none"> <i>roof leak</i> 	No	Yes
<ul style="list-style-type: none"> <i>vandalism</i> 	No	Yes
<ul style="list-style-type: none"> <i>toilets</i> 	No	Yes
<ul style="list-style-type: none"> <i>electrical</i> 	No	Yes
<ul style="list-style-type: none"> <i>plumbing</i> 	No	Yes
<ul style="list-style-type: none"> <i>carpentry</i> 	No	Yes
<ul style="list-style-type: none"> <i>lighting</i> 	No	Yes
<ul style="list-style-type: none"> <i>painting</i> 	No	Yes
Utility costs:		
<ul style="list-style-type: none"> <i>electricity</i> 	No	Yes
<ul style="list-style-type: none"> <i>gas (bottle)</i> 	No	Yes
<ul style="list-style-type: none"> <i>telephone</i> 	No	Yes
<ul style="list-style-type: none"> <i>water</i> 	No	Yes

22 APPENDIX 2 - DEFINITIONS

In this Charter, the following terms have the meaning indicated:

1. **Council representative** means the Council staff member appointed as the principal point of contact between the Council and the Committee.
2. **confidential information** means:
 - a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released.
 - b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person,
 - c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values,
 - d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person,
 - e) legal privileged information, being information to which legal professional privilege or client legal privilege applies,
 - f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affair,
 - g) private commercial information, being information provided by a business, commercial or financial undertaking that:
 - i. relates to trade secrets; or
 - ii. if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage,
 - h) confidential meeting information, being the records of meetings closed to the public under section 66(2)(a) of the *Local Government Act 2020*,
 - i) internal arbitration information, being information specified in section 145 of the *Local Government Act 2020*,
 - j) Councillor Conduct Panel confidential information, being information specified in section 169 of the *Local Government Act 2020*,
 - k) information prescribed by the Regulations to be confidential information for the purposes of this definition; and
 - l) information that was confidential information for the purposes of section 77 of the *Local Government Act 2020*.

23 APPENDIX 3: CONFLICT OF INTEREST DECLARATION



Yarriambiack Shire Council Conflict of Interest Declaration

See reverse side for Explanatory Material

Name	
Position	
Date	
Subject /Project/Report (if applicable)	

Please tick the relevant boxes

	I do not have a conflict or perceived conflict of interest to declare.
	I have a conflict or perceived conflict of interest to declare. [If you have answered yes to this question, please enter the details in the table below in consultation with the Committee President.]

Conflict of Interest Declared	Agreed Management Process
Controls	

Acknowledgement:

Name of Committee Member:	Signature:	Date:
Name of Secretary:	Signature	Date:
Name of President:	Signature:	Date:

Explanatory Material

Yarriambiack Shire Council Community Asset Committee Members declare and avoid conflicts of interest to help maintain community trust and confidence.

A conflict of interest can be actual, potential or perceived. This relates to circumstances where the committee member could be directly influenced or where it is perceived the committee member might be influenced.

Community Asset Committee Members ensure their personal or financial interests do not influence or interfere with the performance of their role. They seek to ensure the interests of family members, friends, or associates do not influence or could be perceived to influence their performance in the job.

If a Committee Member is unsure about a possible Conflict of Interest they should seek advice from the President of the Community Asset Committee.

What is a Conflict of Interest

A conflict of interest occurs when a committee member has a personal, professional or business interest that is likely to either influence their decisions or interfere with the proper performance of their committee duties. Conflicts of interest are not wrong in themselves, but such conflicts must be disclosed and effectively managed.

A perceived conflict of interest occurs when it may appear to others that personal, professional or business interests have the potential to interfere with the proper performance of official duties (in some circumstances, the appearance of a conflict of interest could itself jeopardise public integrity and must be recorded)

Interests are defined as those interests that can bring benefit or disadvantage to committee members or to others (for example family and friends) whom other committee members or residents may wish to benefit or disadvantage.

What is Delegated Authority

The Conflict Of Interest rules apply to situations where the person is exercising a statutory power, duty or function of the Council under delegation. This includes recruitment processes, resident acceptances, purchase orders and certain planning matters.

Council Procedure

Council and the Committee treats all personal information provided in a Conflict Of Interest Declaration in accordance with the *Privacy and Data Protection Act 2014* (Vic) and the *Public Records Act 1973* (Vic). Following review of the Declaration by the Community Asset Committee President and Secretary it will be securely retained on the Council maintained ShareFile.