

## 10.2 McLaren Vale & Fleurieu Visitor Information Centre

*An interim report on the progress of research into the establishment of, and costings associated with, a single Council subsidiary under Section 42 Local Government Act 1999 for the purposes of managing the McLaren Vale & Fleurieu Visitor Information Centre.*

*This is an update on a previously reported project, concept or issue.*

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### 1 Executive Summary

#### 1.1 Topic

An interim report on the progress of research into the establishment of, and costings associated with, a single Council Subsidiary under Section 42 Local Government Act 1999 for the purposes of managing the McLaren Vale & Fleurieu Visitor Information Centre (MV&FVIC).

#### 1.2 Context

At the Special Council meeting of the 22 October 2007 Council resolved as follows:

*That Council seek a report with costings on subsidiary charter options pursuant to Section 42 of the Local Government Act 1999 and subject to schedule 2 Part 7 for the purpose of managing the McLaren Vale and Fleurieu Visitor Information Centre for Council for its consideration and approval by 30 November 2007.*

#### 1.3 Suggested Outcome

That Council receive and note the progress of research into the establishment of and costs associated with a single Council subsidiary for the management of the MV&FVIC and that Council await the review of the research by the MV&FVIC Task Force.

### 2 Recommendation(s).

**That**

1. a) **under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.**

- b) the Council is satisfied that it is necessary that the public be excluded to enable the Council to [receive/discuss/consider] the [information/matter/report] at the meeting on the following grounds:
  - c) commercial information of a confidential nature (not being a trade secret) the disclosure of which -
    - could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
    - would, on balance, be contrary to the public interest;
  - d) That accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.
- 2. Council receive and note the progress of research into the establishment of and costs associated with, a single Council subsidiary for the management of the McLaren Vale & Fleurieu Visitor Information Centre.
- 3. That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the abovementioned document (or part of such document) including the minutes and the report of the Council relating to discussion of the subject matter of that document, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in 90(3)(d) until the future of the McLaren Vale and Fleurieu Visitor Information Centre is agreed between the parties.

## **Key Factors**

### **3 Discussion Council Subsidiary**

The research to date into the establishment of a Council subsidiary highlights the following characteristics:

#### **Legal Status and Powers**

A subsidiary is an entity which, although established by Council, is largely autonomous. It is a separate legal entity and is able to make its own decisions without the need to obtain council approval (although decisions are subject to

direction from the Council). It can enter into contracts and it has the capacity to sue and be sued. It can own property and engage and terminate staff. A single council subsidiary is, however, accountable to its parent Council and also to the Minister of Local Government.

### **Liability of Council**

The Council guarantees the liabilities of a subsidiary that it establishes and is liable for the acts and omissions of the subsidiary. Further, liability for the acts and omissions of the members of the Board of the subsidiary ultimately rests with Council in the same way and on the same basis that liability for elected members lies with the Council. (This indemnity applies only if a Board member is acting with “*reasonable care and diligence*” in the performance or proposed performance of their powers, functions and duties.)

### **Charter**

The rules of a subsidiary, including its accountability and reporting requirements to the Council, must be set out in its charter. The Local Government Act requires that the first charter be approved by the Minister but there is no requirement for public consultation prior to the adoption of the charter. Whilst Ministerial approval is required to establish or wind up a single council subsidiary it is not required for any of the amendments to the charter after the initial approval is obtained.

The charter provides autonomy to the subsidiary but sets the parameters for that autonomy within the objectives and powers of the subsidiary. The objectives and powers should therefore be clearly articulated having regard to the subsidiary’s relationship with the Council and the focus of the operations of the subsidiary in relation to the operations of the Centre.

The charter should require the subsidiary to obtain the approval of the Council prior to any borrowing (or any borrowing beyond a specific limit), and that such approval might be granted on an absolute or conditional basis.

Schedule 2, Part 1 of the Act details what (other) information the charter must address. For example, the charter will prescribe whether or not Board members must submit a return for the Register of Interest and whether meetings are to be open to the public. In the absence of such provisions in the charter, however, the subsidiary is required to comply with Chapter 6 Part 3 of the Act in relation to its meetings. Notwithstanding this Section 5 of Schedule 2 of the Act provides that meetings may be held and decisions made by ( amongst other things) video or teleconferencing.

### **Accountability of Subsidiary**

A subsidiary must;

- prepare and adopt (in consultation with Council) a business plan, to be reviewed annually in consultation with the Council;
- establish an audit committee;
- provide Council with an annual detailed budget;
- provide Council with an annual audited financial statement; and
- provide Council an annual report, to be incorporated into the Annual Report of Council.

As a subsidiary is subject to the direction and control of Council, the Council can direct which projects, or entities, including Council, will benefit from the profits of the subsidiary's activities. This must be set out in the subsidiary's charter.

From a risk assessment perspective, therefore, although a subsidiary has an element of independence from Council, various provisions in the Local Government Act reinforce the accountability requirements of a subsidiary to the Council and concurrently operate to protect the Council's interest.

### **Responsibilities of Board Members**

Section 4 of Schedule 2 of the Act provides that the Council may appoint members to the Board of Management of a subsidiary as long as the charter does not provide otherwise. The Council, therefore has control of who will be appointed to the Board and is not limited to consideration of members or employees of the Council only (subject to the subsidiary's charter)

With respect to the "Specific functions" of Board members, Section 6 of Schedule 2 of the Act provides that the Board is responsible for the administration of the subsidiary's affairs. In performing this function, the Board must ensure that;

- the subsidiary observes all "plans, targets, structures, systems and practices" of the subsidiary;
- all information furnished to the Council is accurate; and
- the Council is immediately advised of any "material development" affecting the financial and operating capacity of the subsidiary (including if the subsidiary is suspected not able to meet its debts).

In addition, the conflict of interest provisions of the Local Government Act apply to a Board member of the subsidiary in the same manner as they apply to an elected member of Councils (an exemption of this provision can be included

in the charter). Board members owe fiduciary duties to the subsidiary. There is, therefore, scope for a conflict of duties/roles where Board members of the subsidiary are also elected members or executive officers of Council.

This information and the costings associated with the establishment of a Council subsidiary will be provided to the MV&FVIC Task Force for its consideration prior to a further report being provided to Council

