



## **Appendix 7b**

### **16.3 Appointment of a Councillor Representative to the Association of Bayside Municipalities**

*Memorandum of Understanding 2021 – 2024*

# **Ordinary Meeting of Council**

Wednesday 28 July 2021 at 7:00pm

Via videoconference (Zoom)



ASSOCIATION OF BAYSIDE MUNICIPALITIES

# Memorandum of Understanding 2021 – 2024

## Association of Bayside Municipalities (ABM)

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MEMORANDUM OF UNDERSTANDING dated the \_\_\_\_\_ day of \_\_\_\_\_ 2021

BETWEEN

Municipal Association of Victoria of Level 12, 60 Collins St, Melbourne (“MAV”)

And

Council Name \_\_\_\_\_

of Address \_\_\_\_\_ (“Council”)

Being the parties to this Memorandum of Understanding (MoU)

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### 1. Introduction

The Municipal Association of Victoria (MAV) is the statutory peak body for local government in Victoria. It is incorporated by the Municipal Association Act 1907, which defines the MAV’s purpose and how the organisation operates. The MAV is governed by a State Council comprised of representatives of Member Councils.

\_\_\_\_\_ is a local government authority in Location Victoria.

The Association of Bayside Municipalities (ABM) is an unincorporated association of the 10 Victorian coastal councils with frontage to Port Phillip Bay. The ABM is recognised by MAV as the key representative of local government in relation to the sustainable management and health of Port Phillip Bay.

### 2. Objectives

The primary objective of this MoU is to provide a general framework for cooperation between the parties in the planning, development and delivery of Council’s involvement in the ABM for the period 2021 - 2024. It updates and replaces previous agreements between ABM Member Councils and the MAV.

Specifically, this document has been prepared to establish:

- Council’s membership commitment to the ABM;
- The roles and responsibilities of each party.

The MoU will remain operational from date of signing to 31 December 2024.

### **3. Support of Parties for the Memorandum of Understanding**

The parties acknowledge and support this MoU and further acknowledge and agree that they will work in a co-operative manner with the common intention of achieving the work of the ABM, as defined in the ABM Strategic Plan, and in accordance with the ABM Charter (Appendix A) and the principles described in this MoU.

### **4. Key principles**

The key principles of the MoU are as follows:

- The parties will work collaboratively to achieve the desired outcomes;
- The parties will monitor the success or otherwise of initiatives entered into as a result of the MoU;
- The parties will work collaboratively to solve problems as they arise.

### **5. Council obligations**

- Council agrees to cooperate with the MAV and to use its best endeavours to ensure that the work of the ABM is carried out, in accordance with the ABM Charter (Appendix A).
- As per the ABM Charter, Council agrees to nominate:
  - i. A Councillor Representative and Alternate; and
  - ii. A primary Officer contact for the ABM.
- As per the ABM Charter, every two years the primary Councillor representatives will elect amongst themselves a President, Vice President and one other representative – forming the ABM Executive Committee.
- Council agrees to pay an annual membership fee which is used to maintain ABM's operational functions, as managed by the ABM Executive Officer. Council agrees to pay invoices within 28 days of their issue. Membership fees are determined by the ABM Executive Committee in accordance with the ABM Charter. Upon payment of the invoice Council becomes a financial member of the ABM.

### **6. Council rights**

Subject to being a financial member of the ABM, and in accordance with the ABM Charter (Appendix A):

- Council has the right to have a single voting Councillor representative, noting additional Councillors as well as Council officers can attend ABM meetings and events.
- Council has the right to receive timely communication from the MAV and be allowed adequate time for considerations around decision making.
- Council has the right to publish ABM approved public information.

### **7. MAV obligations**

- The MAV agrees to cooperate with Council in carrying out the work of ABM in accordance with the ABM Charter (Appendix A), and to use its best endeavours to ensure that work is carried out.
- The MAV agrees to nominate a representative to the ABM Executive Committee.
- The MAV agrees to employ and manage the ABM Executive Officer on a day-to-day basis, towards the satisfactory completion of duties outlined in the Position Description, as updated from time to time, and to ensure that the decisions of the ABM Executive Committee are being implemented.
- The MAV agrees to employ and manage other ABM staff as proposed by the ABM Executive Committee, using available funds from the ABM budget.
- The MAV agrees to issue annual invoices to ABM councils and receive council financial contributions.
- The MAV agrees to manage the ABM funds in accordance with MAV procedures, and to provide quarterly reports on ABM finances to the ABM Executive Committee. Interest on the ABM funds in holding is retained by the MAV.
- The MAV acknowledges that the ABM Executive Committee is the decision-making body for the direction and management of the ABM.

## **8. MAV rights**

In accordance with the ABM Charter (Appendix A):

- The MAV has the right to have a single voting representative on the ABM Executive Committee.

## **9. Operational Arrangements**

The objectives of the MOU will be achieved using a range of operational mechanisms as follows:

### **A) ABM Executive Officer**

The ABM Executive Officer will report directly to relevant MAV Manager, directed by the ABM Executive Committee and Member Councils.

The position objectives of the ABM Executive Officer are to:

- Manage the operational requirements of the ABM.
- Lead the strategic direction setting for ABM.
- Develop a close working relationship with, and support, ABM Member Councils and ensure their needs are met.
- Coordinate the delivery of key projects and initiatives undertaken by ABM, including advocacy and knowledge sharing initiatives.
- Develop and strengthen partnerships with local government, associated government agencies and other stakeholders.
- Monitor issues and opportunities in marine and coastal management relevant to local government and Port Phillip Bay.
- Maintain an operational work plan with identified performance outcomes.
- Operate in accordance with MAV policies and procedures.

ABM Officer remuneration will be reviewed from time to time as the need arises by the relevant MAV Manager in collaboration with the ABM Executive Committee.

B) Membership Fees

ABM membership fees are determined on an annual basis by the ABM Executive Committee, with input from Member Councils (as per ABM Charter – Appendix A).

Membership Fees are determined based on an equitable split of the approved annual operating budget across all Member Councils; except for Borough of Queenscliffe whose Membership Fee will be 50%, due to its significantly smaller size and rate base.

Membership Fee invoices will be distributed to Members at the start of each financial year, for that year.

C) ABM funding and budget arrangements

The ABM is funded through annual membership fees paid by Member Councils.

Additional funding may also be sought through grants and partnership projects. Any grant application or new project would be developed in consultation with Member Councils, in accordance with MAV policies and procedures, and be endorsed by the ABM Executive Committee.

A draft annual financial year budget is developed by the ABM Executive Officer in March each year in consultation with Member Councils and adopted by the ABM Executive Committee. End of financial year reports are to be provided to the Executive Committee before 30 September each year.

The MAV, through the ABM Executive Officer, and in consultation with the ABM Executive Committee, will manage the funds on behalf of ABM. Operational items drawn from the ABM budget will include:

- Wages and Employment Costs of ABM staff. Employment Costs are a fee paid to the MAV and are a percentage (%) of wage costs as determined by the MAV from time to time (currently 30%). Employment Costs include all labour on costs (sick leave, annual leave, long service leave and work cover), computer and IT services, office space, desk, chair, stationery and printing, equipment costs, insurance, postage, meeting room access, reception, telephone and voicemail (excludes mobile phones).
- Other items as determined by the ABM Executive Committee.

*Note: MAV reserves the right to impose an appropriate administrative fee for any ABM Member Council who is not a member of the MAV or ceases to be a member of the MAV. This would be subject to approval of the MAV board based on the advice of the ABM Executive Officer.*

D) ABM Executive Committee

The ABM Charter sets out the roles and responsibilities of this committee. It includes the following:

- Financial management, including monitoring financial tracking, performance and preparing annual budget.
- Determining annual Membership fees.

- Undertaking, on behalf of Member Councils, any business that cannot be transacted at Member Meetings due to focus, timing or urgency.
- Employment or remuneration of the Executive Officer including input to and monitoring of Executive Officer annual work plan and performance plan.

#### E) Achievement of Strategic Plan

In participating in the work of the ABM, Council will seek to contribute to the preparation and achievement of the ABM Strategic Plan. A strategic plan is prepared every four years aligned to the term of this MOU.

The previous Strategic Plan (2017-2020) focused on:

- *Working with others to ensure our collective actions and achievements lead the way in protecting and managing our marine and coastal environment.*
- *Advocating on behalf of Member Councils on issues that relate to the health, protection and management of Port Phillip Bay.*
- *Growing and sharing knowledge, resources, and capability to protect and manage Port Phillip Bay.*
- *Strengthening our connections with Traditional Owners, coastal land managers and stakeholders within and beyond Port Phillip Bay.*

### **10. Public & Media Relations**

The ABM Executive Officer will be the primary contact for any public or media enquiries relating to the work of the ABM.

- The ABM Executive Officer will not provide any statement to the media on behalf of a Member Council.
- Member Councils, including Councillor Representatives, will not provide any statement to the media on behalf of the ABM.
- If requested by Member Councils, the Executive Officer will prepare a position statement in consultation with the MAV, and provide to Member Councils for local use.
- Any planned media events, media releases or correspondence will be prepared by the Executive Officer in consultation with Member Councils and the MAV.

#### Reputation

All parties agree they will not do, or neglect to do, anything which may:

- damage, bring into disrepute or ridicule the other party's name, messages or reputation; or
- attract public or media attention which may be prejudicial or otherwise detrimental to the other party's name, messages or reputation.

The MAV will be consulted in relation to any media or public enquiries that may impact MAV's reputation.

### **11. Information sharing and confidentiality**

The parties acknowledge that they have a mutual interest in the successful planning, development and delivery of ABM projects. It is recognised that the views and objectives of the parties may not

always coincide. The parties will work openly and constructively to resolve any differences which emerge.

The parties will aim, where reasonably possible, to share information relevant to ABM with each other. In the normal course of events, the parties will work on the assumption that information should be freely exchanged.

The parties agree that it may be necessary to share confidential information and that such information is to remain confidential.

The parties must keep confidentiality and not allow, make or cause any disclosure of or in relation to the confidential information without the prior written consent of the other party, which consent may be given or withheld, or given with directions, in the other party's sole discretion.

The parties must not:

- Use or permit any person to use the confidential information for any purpose other than for a purpose agreed by the parties which is in accordance with this MoU.
- Disclose or in any way communicate to any other person any of the confidential information except as authorised by the party who has disclosed the confidential information.
- Permit unauthorised persons to have access to places where confidential information is displayed, reproduced or stored.
- Make or assist any person to make any unauthorised use of the confidential information.
- Confidential information means any information provided by one party to the other party pursuant to the MoU, which that party specifies as being confidential, or if disclosed, would be contrary to the public interest or would damage the commercial interests of the party which provided the information.

## **12. Intellectual Property**

ABM owns all materials created for use by or for Member Councils on and from the date of its creation. MAV owns all employment related materials.

### Licence to use Contract Materials

ABM grants to MAV a non-exclusive, royalty-free licence (including the right to sub-license) for the term of this MoU to use, copy or adapt materials solely for the purpose of supporting the ABM.

### IP warranties

Each party represents and warrants that the use by the other party of any IP generated prior to this MoU will not breach the Intellectual Property Rights of any third party; and all information and material provided to the other party under this MoU will be correct, complete and not misleading.

## **13. Concern Arising from Action or Inaction of the ABM Executive Officer**

Where Council has a concern as a result of action or inaction of the ABM Executive Officer, notice of the concern will be provided to the MAV CEO (as employer) and ABM Executive Committee.

Where Council has a concern as a result of action or inaction of an ABM staff member, contractor or consultant to the ABM, notice will be provided to the ABM Executive Officer of the concern.

In consultation with the ABM Executive Committee, the MAV CEO will use best endeavours to resolve the concern and will keep the ABM Executive Committee informed.

#### **14. Dispute Resolution**

The parties agree to resolve disputes quickly to minimise any delay to the work of the ABM. If any dispute arises between the parties:

- The parties must meet within 5 business days of being notified in writing of a dispute to endeavour to resolve the matter promptly.
- If the matter cannot be resolved between the parties and remains unresolved within two weeks of notification of a dispute the matter may be referred to an independent mediator at the request of either party.
- An independent mediator will be selected by agreement of all parties but if such agreement is not obtained, then MAV will, after consultation with the parties, select the mediator.
- If the matter cannot be resolved by mediation and remains unresolved within two weeks of mediation the matter may be referred to an independent arbiter.
- An independent arbiter will be selected by agreement of all parties but if such agreement is not obtained, then MAV will, after consultation with the parties, select the arbiter; and
- The decision of the arbiter will be binding on all parties.

Despite the existence of a Dispute, the parties must continue to perform their obligations under this Agreement.

#### **15. Termination of MoU**

If a party wishes to cease being a party, they will notify the other party in writing of their intention to exit from the MoU, providing twenty-eight days' notice.

The party will fulfil any obligations committed to up until the time of exit and provide the ABM Executive Officer with information required to fulfil any contractual obligations beyond the time of exit.

Any unspent contribution made during the financial year that the party ceases to be a party, being a proportional amount effective from the date the termination comes into effect, will be returned to the contributor upon exit from the MoU.

If ABM membership falls below eight councils, MAV may at its absolute discretion:

- Transfer all obligations and responsibilities to another organisation, subject to all current members agreeing to its transfer; or
- Wind up the ABM.



If ABM is wound up, the MAV will proportion any unspent funds after covering ABM’s existing financial obligations, as follows:

- Members’ current at the time ABM is wound up will have their ABM membership fees for that year refunded in full or on a pro rata basis depending on the quantum of its funds to be disbursed.
- Any remaining funds will be disbursed to the previous year’s members as per their ABM membership for that year in full or on a pro rata basis, and so on until all funds have been disbursed.

### 16. Indemnity

All Council members indemnify the MAV in accordance with the following:

- Council agrees to indemnify and to keep indemnified the MAV, its servants and agents, and each of them from and against all actions, costs, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought or made or claimed against them, or any of them, arising out of, or in relation to the MoU between ABM Member Councils and the MAV, and be directly related to the negligent acts, errors or omissions of Council.
- Council’s liability to indemnify the MAV shall be reduced proportionately to the extent that any act or omission of the MAV, its servants or agents, contributed to the loss or liability.

The MAV will indemnify a Council member in accordance with the following:

- The MAV agrees to indemnify and to keep indemnified council, its servants and agents, and each of them from and against all actions, costs, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought or made or claimed against them, or any of them, arising out of, or in relation to the MoU between ABM Member Councils and the MAV, and be directly related to the negligent acts, errors or omissions of the MAV.
- The MAV’s liability to indemnify council shall be reduced proportionately to the extent that any act or omission of council, its servants or agents, contributed to the loss or liability.

### 17. Signatory

<i>signature</i>	.....
<i>name</i>	<b>KERRY THOMPSON</b>
Chief Executive Officer	Chief Executive Officer
(or delegate)	Municipal Association of Victoria
<i>Delegate name</i>	DATE: .....
<i>Delegate title</i>	
<i>Council name</i>	
DATE: .....	

**APPENDIX A: ABM Charter**

*Attached separately*