**RECOMMENDATION**

That

2. The Monash Gallery of Art Committee of Management Committee continue to be exempt from the requirement to provide a primary or ordinary return of interest in accordance with Section 81 of the Local Government Act 1989.

**INTRODUCTION**

The Monash Gallery of Art (MGA) Committee of Management proposes that Council approves amendments to the Committee of Management Charter (Attachment 1). The proposed amendments to the Charter better reflect the current functions of the Committee and provide for an enhanced strategic approach to the management of the Monash Gallery of Art.

**BACKGROUND**

Monash Gallery of Art is owned by Council and jointly managed by Council and the Monash Gallery of Art Committee of Management. The Committee of Management is constituted as a Special Committee of Council in accordance with Section 86 of the Local Government Act 1989. Council may establish a special committee under Section 86 and can delegate any of its functions, duties or powers under the Local Government Act or any other Act to a special committee. However Council cannot delegate the following powers:

(a) this power of delegation;
(b) to declare a rate or charge;
(c) to borrow money;
(d) enter into contracts for an amount exceeding an amount previously determined by the Council;
(e) to incur any expenditure exceeding an amount previously determined by the Council; or
(f) any prescribed power.
The current MGA Committee of Management Charter describes the functions of the Committee of Management as follows:

1. Provide expert business development advice to Council regarding operation of the Monash Gallery of Art;
2. Develop a three-year Strategic Plan;
3. Provide expertise to the Gallery Director regarding Gallery program in the context of the Business Plan; and
4. Recommend on future management arrangements for the Monash Gallery of Art linked to the Business Plan.

This report proposes changes to the current Charter that better and more fully describe the functions of the Committee of Management.

DISCUSSION

The Charter of the Monash Gallery of Art Committee of Management was last amended in November 2010, when Council endorsed a change to the membership of the Committee.

Throughout 2012 the Committee of Management has discussed the composition of the Charter and identified that in order to better reflect its current functions changes were required. These changes are chiefly concerned with articulating the strategic functions of the Committee, such as:

- fundraising;
- strategic planning;
- determining the exhibition program;
- strengthening the partnership with the MGA Foundation; and
- overseeing the acquisition of new artworks.

These functions now more appropriately reflect the role of the current Committee of Management and are described in clauses 1-7 under the phrase “The Council hereby delegates the following functions to the Committee:”.

The previous Charter made mention of the “Conditions and Limitations on the Exercise of a Power” of the Committee of Management. Changes have been made to Clauses 1.4 and 1.5 under this section so that they no longer make mention of expenditure of funds. This is to reflect the actual role of the Committee of Management which currently does not involve the expenditure funds on behalf of Council but rather advises Council in regard to these issues. The currently endorsed Charter states that the

“Committee must not determine an issue, take any action or do an act or thing - 1) if the action, act or thing, which involves:...

1.3 expenditure exceeding Council approved budgeted amounts;
1.4 awarding a contract, which will subject Council to an expenditure of $5,000 or more.....”
The above clauses are not relevant to the Committee of Management as the delegation to expend funds and enter into contracts in relation to Monash Gallery of Art is the function the Council and delegated Council Officers.

The Committee of Management have also requested that it be properly informed of current Council policy and direction that are relevant to the management of MGA. The Charter has been amended accordingly with the addition of a phrase “notified to the Committee” in clauses 1 – 4 under the heading “Conditions and Limitations on the Exercise of a Power”.

The Committee of Management has also inserted a section into the Charter that proposes a limit on the terms of appointment for existing Committee members. This proposal reflects the desire of the Committee of Management that opportunities be available for new members with new skills and areas of expertise to be reflected in the Committee’s membership.

At the Council Meeting of 27 October 2009, the role and function of Special Committees of Council was reviewed. At that meeting it was noted that exemptions under the Local Government Act 1989: Section 81 of the Act provides that members of Special Committees, who are not Councillors, may be given an exemption from being required to provide a primary or ordinary return of interests:

“ (2A) A Council may exempt a member of a special committee who is not a Councillor from being required to submit a primary return or an ordinary return.
(2B) The Council must review any exemptions in force under subsection (2A) within the period of 12 months after a general election.”

The members of the Monash Gallery of Art Committee of Management, who are not Councillors, currently have such an exemption. It is recommended that these exemptions continue for the non-Council members of the MGA Committee of Management.

CONCLUSION

Consultation has occurred between the Committee of Management relevant Council officers from governance and the Community Development and Services Division, to ensure that the amendments align with the intent of Section 86 of the Local Government Act 1989.

In order to provide for the efficient management of the Monash Gallery of Art Committee of Management, it is proposed that Council endorses the amendments to the Monash Gallery of Art Charter 2012, in relation to the aforementioned amendments. It is also proposed that non-Council
members of Committee of Management continue to be exempt from providing a primary or ordinary return of interests in accordance with Section 81 of the Local Government Act 1989.
MONASH GALLERY OF ART COMMITTEE OF MANAGEMENT

Constitution of the Committee
The Monash Gallery of Art Committee of Management (‘the Committee’) is constituted as a Special Committee of Council in accordance with Section 86 of the Local Government Act 1989 (‘the Act’). Meetings of the Committee are to be open to the public and the Committee is responsible for advertising its meetings in accordance with the provisions of the Act.

Membership of the Committee
The Committee shall comprise a maximum of 12 members appointed by Council, including one Councillor. Council will nominate one Councillor to act as a substitute, who will attend meetings when the nominated Councillor cannot attend. The Council shall appoint a Chairperson. Its members are exempted from the requirements of the Act regarding completion of primary and ordinary pecuniary interest forms.

Each member of the Committee appointed on or after the date of this Instrument is appointed for a term of three years. Those existing members of the Committee as at the date of this Instrument shall be deemed to be appointed for a term expiring on:

1. in the case of William Bowness and Bill Henson, the first anniversary of the date of this Instrument;
2. in the case of Alan Maclean and Debra Knight, the second anniversary of the date of this Instrument; and
3. in the case of David Rosenthal and Peter Horacek, the third anniversary of the date of this Instrument.

Any vacancy arising from the expiration of the term of a member or resignation by a member must be filled by the Council so as to ensure that the membership of the Committee at all times is a minimum of 6 members.

Any persons employed by the Monash Gallery of Art will be employed as Council staff. Staff employed at the Gallery are responsible to the Committee, only in relation to the functions and powers of the Committee and the implementation of the exercise of those functions and powers and are otherwise responsible to the Manager, Information and Arts. Any persons employed by the Monash Gallery of Art are not entitled to be members of the Committee.
Council will from time to time appoint members to the Committee upon recommendation of the Committee. The Council may at any time remove a member of the Committee.

A quorum at a meeting of the Committee must be at least a majority of the members of the Committee.

The Council hereby delegates the following functions to the Committee:

1) Develop and recommend a 3 Year Strategic Plan and annual business plan for Council’s endorsement. Report to Council on the implementation of the annual business plan.
2) Develop and implement a fundraising strategy and oversee its implementation with particular regard to the provision of major fundraising events.
3) Oversee and approve the acquisition and deacquistion of works in and for the collection in accordance with annual budget and the 3 Year Strategic Plan endorsed by the Council.
4) Determine the gallery’s exhibition and program schedule with regard to the objectives of the MGA’s 3 Year Strategic Plan and the cultural development of residents of the City of Monash.
5) Form a strategic partnership with the MGA Foundation with particular regard to fundraising opportunities to support the operations of MGA. Provide services or make resources available to the Monash Gallery of Art Foundation for the purpose of raising funds or otherwise promoting the Monash Gallery of Art, on terms agreed upon with the Monash Gallery of Art Foundation from time to time.
6) Provide business and management advice to the director of the Gallery and the Council in relation to the operation of the Gallery including advice in relation to the operation and lease of the Cafe.
7) Assist Council with the selection of the Director of MGA should a vacancy arise.
8) Assist Council with the selection of a member of the committee should a vacancy arise

The powers of the Committee are to:

a) determine any issue;
b) take any action; or
c) do any act or thing

on behalf of Council:
i. to ensure the performance and implementation of the functions of the Committee; or

ii. which otherwise arises out of or are connected with the management and operation of the Monash Gallery of Art.

**Conditions and Limitations on the Exercise of a Power**

The Committee must not determine an issue, take any action or do an act or thing-

1) if the issue, action, act or thing is an issue, action, act or thing, which involves:
   
   1.1 a departure from the terms, principles or objectives set out in any charter of the Committee or resolution of Council notified to the Committee;
   
   1.2 the use of Council’s Common Seal;
   
   [Note: The Chairperson of the Committee may, subject to any other conditions or limitations which are set out in this Schedule, sign any notice, order, agreement or contract “on behalf” of Council.]
   
   1.3 the purchase or disposal of land;
   
   1.4 acting in breach of any Act, Regulation or Local Law;
   
   1.5 acting in breach of any restrictions or limitations on the Gallery set out in the Council’s Corporate Plan as notified to the Committee.

2) if the issue, action, act or thing is an issue, action, act or thing which Council has designated, or after the date of this Instrument, designates (by informing the Committee, as an issue, action, act or thing which must be the subject of a resolution of Council).

3) if the determining of the issue, taking of the action or doing of the act or thing would or would be likely to involve a decision which is inconsistent with a
   
   3.1 policy; or
   
   3.2 strategy

   adopted by Council and notified to the Committee.

4) if the determining of the issue, the taking of the action or the doing of the act or thing is already the subject of an exclusive delegation to a member of Council staff which is notified to the Committee.
5) Where notwithstanding anything contained in this instrument, determining of the issue, taking of the action or doing of the act or thing involves a decision by the committee which it knows is unethical or brings the Council or its Councillors into disrepute

This document and the delegations in it ("Instrument") are authorised by a resolution of Council passed on 18 December 2012.