

BOARD POLICY 1.07

Governance Charter

Falls Creek Alpine Resort Management Board ('the Board')

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1. Introduction

1.1. Purpose

This Governance Charter of Falls Creek Alpine Resort Management Board (FCARMB) is a general guide to members appointed to the Board concerning the policy and legal environment within which FCARMB operates.

1.2. Amendments to Governance Charter

The Board will review this Governance Charter as required, including an annual review in conjunction with reviews of Board performance.

This Charter may only be amended by the Board as a whole. The Board may receive advice from a variety of advisory processes including the Chief Executive Officer (CEO), auditors, and external reviewers. The Charter and each page thereof shall specify the date adopted and any later modifications thereto.

1.3. Definition of Governance

Corporate governance may be described as the processes, systems and standards involved in directing, controlling and adding value to an organisation and its stakeholders. These entail the setting of strategic directions, the development of organisational policies, the establishment of expectations of management performance and the monitoring of achievements against these.

Governance policies are the basis for exercise of the Board's leadership role, establishing the framework for all organisational accountability and defining the boundaries between the roles and responsibilities of the Board and those of the executive staff.

Corporate governance is a means to corporate performance, not an end in itself. It encompasses both "conformance" and "performance".

The Board and management usually act as "partners", but the Board has ultimate responsibility and must also exercise independent judgement.

1.4. The Role of FCRM's Board

The role of the Board is to govern the organisation so that FCARMB fulfils its obligations under the relevant Act (refer [Section 2](#)) and policies and delivers its aims and outcomes while acting ethically and prudently, and remaining within the law. This involves ensuring good corporate governance, determining and approving corporate strategy and providing guidance and oversight to senior management.

1.5. Board Focus

The Board's focus is on the achievement of the objects of the *Alpine Resorts (Management) Act 1997*, together with those set out in other planning and policy documents of its shareholder, the Victorian Government and in adopted and approved plans of FCARMB.

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2. Duties and Responsibilities

2.1. Legislative and Governance Framework

In summary, the sources of legal responsibility of Board members include:

- The *Alpine Resorts (Management) Act 1997* (the Act);
- State and Commonwealth legislation;
- The common law, particularly regarding the fiduciary nature of directors' roles; and
- The Integrity Framework, released by the Department of Environment, Land, Water and Planning (DELWP), which incorporates the Director's Code of Conduct issued by the Victorian Public Sector Commission (VPSC) and other matters set out in the *Public Administration Act (2004)* [PAA].

Pursuant to the Act, the Board is the governing authority of Falls Creek Alpine Resort.

The objects of the Resort are as provided in [Section 1A](#) of the Act and the specific functions or responsibilities of the Board in relation to those objects are as laid out in [Section 38](#) of the Act. The Act also sets out the functions relating to the Alpine Resorts Coordinating Council (ARCC) in Section 18, the work of which FCARMB is required to support.

While this Act is the principal governing legislation, there are many other Acts which have an important influence on the day to day management of the resort, and the Board has a legislated responsibility to "carry out any other function conferred on the Board by or under this [the *Alpine Resorts (Management) Act 1997*] or any other Act."

Other Acts for which FCARMB has legal and compliance obligations are briefly listed per the following link (*insert link here*), though this list is not exhaustive. It is essential that management is fully acquainted with the content of FCARMB's enabling legislation (the Act) and other relevant legislation and regulations pertaining to their area of responsibility, and that any amendments are quickly identified and complied with where appropriate.

Operating underneath this body of legislation is the Board's policy framework. Policies record and promulgate the Board's position on key issues and provide a reference point for decision making on matters of importance to the resort. As a Victorian Government statutory authority, FCARMB is also required to comply with a range of Victorian Government policies which may have a bearing on the way in which the resort operates. These statements can take a variety of forms and are usually issued through Ministerial / Departmental channels.

Management will facilitate a cyclical board policy review process to ensure the Board's policies are kept current. Reviews shall be designed to continuously improve the policies and work practices under which the organisation operates and reflect changes in business/operations, legislation, technologies and best practice trends. It is essential that management and staff are familiar with the content of the Board's policies and other relevant Victorian Government policy, to facilitate supporting structures, processes and practices for policy compliance.

The primary Board responsibilities are reflected in the list of Board Functions included below in [Section 3](#) of this Charter.

The provisions of the Corporations Act 2001 do not apply directly but much of their effect is generally applicable due to the provisions of other Victorian legislation including the *Financial Management Act 1994*. Any Board member who becomes a director of a subsidiary or associated entity of FCARMB will however be directly subject to the Corporations Act and its compliance obligations.

Responsibility for compliance management is not the responsibility of Board members, but rests with the CEO, who may delegate specific compliance management functions to executive management and other FCRM employees. Management will develop a framework to monitor and improve legislative compliance within the organisation, and report regularly thereon to the Board and relevant sub-Committees. The Board shall be provided with specific compliance reports as and when required and an annual compliance report as part of the Standing Directions / Financial Management Compliance Framework attestation

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process to enable it to discharge its oversight responsibility in this regard.

2.2. Responsibilities of Board Members

- Attend, be prepared and participate in a constructive manner at Board meetings;
- Participate, as far as reasonably possible in events and functions of the Falls Creek Alpine Resort, where the attendance of Board members is appropriate;
- Be prepared to contribute to the functioning of FCARMB through membership of standing and ad-hoc committees of the Board and through membership of selection or other committees as may be required from time to time;
- Be prepared to contribute to the promotion and advancement of the Resort as may be requested;
- Maintain the confidentiality of information obtained in the course of one's duties;
- Have read and understood the good practice guidelines set down for members of public sector boards; and
- Observe the requirements of the Code of Conduct set out in this Governance Charter and any operational protocols adopted for conduct of Board members and meetings.

2.3. Integrity Framework (consolidated Code of Conduct)

A binding Integrity Framework (consolidated Code of Conduct) has been adopted for Victorian public entity Board members within the DELWP portfolio. DELWP's Integrity Framework is a consolidated code of conduct which incorporates the integrity standards that Board members must comply with and some integrity obligations within the PAA that are of a higher source than the VPSC Directors' Code of Conduct (e.g. sections 7, 8, 13A, 79, 80, 81, 82 and 85 of the PAA).

Further information is available from the following link: [DELWP Integrity Framework](#). An overview is provided in the Integrity Framework – Guidance Note.

Key requirements are as follows:

- Act with **honesty and integrity**. Be open, responsive and transparent in your dealings; use power responsibly; do not place yourself in a position of conflict of interest; strive to earn and sustain public trust of a high level.
- Act in **good faith in the best interests of the public entity**. Demonstrate accountability for your actions; accept responsibility for your decisions; do not engage in activities that may bring you or the public entity into disrepute.
- Act **fairly and impartially**. Avoid bias, discrimination, caprice or self-interest; demonstrate respect for others by acting in a professional and courteous manner.
- **Use information appropriately**. Ensure information gained as a director is only applied to proper purposes and is kept confidential.
- **Use your position appropriately**. Do not use your position as a director to seek an undue advantage for yourself, family members or associates, or to cause detriment to the public entity; ensure that you decline gifts or favours that may cast doubt on your ability to apply independent judgement as a Board member of the public entity.
- Act in a **financially responsible** manner. Understand financial reports, audit reports and other financial material that comes before the Board; actively inquire into this material.
- Exercise **due care, diligence and skill**. Ascertain all relevant information; make reasonable enquiries; understand the financial, strategic and other implications of decisions.

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- **Comply with the establishing legislation**, or its equivalent, for your public entity. Act within the powers and for the functions set out in your public entity's establishing legislation and/or ministerial charter.
- Demonstrate **leadership and stewardship**. Promote and support the application of the Victorian public sector values; act in accordance with the Directors' Code.
- Respect and promote the Charter of Human Rights and Responsibilities by making decisions and providing advice consistent with human rights and actively implementing, promoting and supporting human rights.

For members of the Board, management and employees of FCARMB this means:

- a) Acting always in the interest of FCARMB as a whole;
- b) Avoiding actual or potential conflicts of interest;
- c) Not acting improperly by using the position to gain an advantage for oneself or another;
- d) Exercising powers for their proper purposes and retaining discretionary powers;
- e) Acting in accordance with human rights; and
- f) Exercising due care, skill and diligence in one's duties.

2.3.1. Notes on conduct:

- a) Exercise of skill and care includes the responsibility to have informed oneself to the extent reasonably necessary to make a judgement.
- b) Delegation of responsibility is not a shield for this responsibility.
- c) In circumstances where a Board member possesses or is appointed to a Board on the basis of specialised skill, knowledge or experience, they are expected under the law, in addition to understanding the business of the organisation, to use that special knowledge or experience in the affairs of the organisation.

2.3.2. Dispute Resolution

In the event of a dispute between Board members, BP 1.20 Board Dispute Resolution will be applied.

2.4. Roles and responsibilities of the Chair, Board Members, and CEO

These roles are described in general terms in the publications available here: <http://vpssc.vic.gov.au/governance> and are adopted by the Board of FCARMB in principle to guide its operations and are further developed as set out in this Governance Charter and in the CEO's contract, annual plans and KPIs.

2.5. Responsibilities of FCARMB in respect of Board Members

FCARMB is responsible for:

- Providing Board members with complete and accurate information in respect of all matters to be considered by the Board or a Committee of the Board and in respect of all of the Board's identified functions, in sufficient time to allow proper consideration;
- Providing such legal and financial advice as may be necessary to enable members to discharge their director's duties;
- Providing members with access to records of Board proceedings and material placed before the Board and retaining such information for access as may be needed;

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- Ensuring that all requirements in respect of the Board as set out in the Act, and other applicable legislation and compliance requirements and processes approved by the Board, are met;
- Providing such administrative assistance as may be required from time to time including accommodation and / or reimbursement of expenses incurred by Board members in attendance at Board, Committee and other meetings and in attending events and functions of the Resort;
- Ensuring that all requirements in respect of the Board as set out in the Act, and other applicable legislation and compliance requirements and processes approved by the Board, are met; and
- Maintaining adequate levels of insurance cover to indemnify and keep indemnified each member of the Board and annually confirming this to Board members.

3. Functions of the FCARM Board

3.1. The Strategic Direction

- Shaping, approving and reviewing the Resort's vision (external), mission (operational goals and values), and strategic and operational plans being the Resort's Strategic Management Plan and annual Corporate Plan and Budget in accordance with the *Alpine Resorts (Management) Act 1997* and the Alpine Resorts 2020 Strategy.
- Monitoring Falls Creek Resort Management (FCRM) progress generally against performance indicators and, more specifically, against targets.
- Determining the planning framework for the Resort and the future development of the Resort including environmental management plans.

3.2. The CEO and Executive Officers

- Appointing the CEO of FCRM.
- Overseeing review of the CEO's performance and remuneration.
- Overseeing compliance with the requirements of Public Entity Executive Remuneration Survey (PEERS, previously GSERP) policies and requirements for all executive officers.

3.3. Key Policies, Legislation and Compliance

- Overseeing the establishment of key Board policies for FCRM and the Resort.
- Defining Board policies and procedures consistent with Government and community expectations where those expectations are relevant and can be identified.
- Contributing to the development of legislation and regulations governing and guiding the management of Alpine Resorts.
- Overseeing FCRM and lessee compliance with relevant legislation and policies, including with obligations set out in the *Alpine Resorts (Management) Act (1997)*.
- Overseeing compliance of other Resort operators and stakeholders with relevant legislation and policies to the extent this is within the powers of the Board.

3.4. Risk Management

- Overseeing the Board's risk management.
- Overseeing the protection and enhancement of the Resort's risk management and reputation to the extent that it is within the powers of the Board to influence.

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3.5. Control and Accountability

- Approving the Board's Strategic Management Plan (SMP).
- Considering the adequacy of the financial and resource requirements model linking the SMP of the Board, to FCRM's capital and strategic plans and to the annual Corporate Plan and budget.
- Approving the Board's Corporate plan and supporting budget and financial plans, including capital and project expenditure budgets and business cases.
- Approving individual major capital and strategic expenditure projects¹ or as otherwise specified in the budget approval.
- Monitoring FCRM performance against the budget and plans.
- Overseeing FCRM asset management.
- Overseeing the sound management of FCRM.

3.6. Commercial Partnerships and Activities

- Approving major FCRM commercial ventures, including involvement in any partnership, joint venture, company or legal entity.
- Overseeing the effective operation and performance of significant commercial activities and contracts.

3.7. Visitation and Customer Experience

- Ensuring adequate procedures for the improvement, maintenance and monitoring of guest experience and satisfaction with the Resort, and data collection and analysis on visitation and asset utilisation.

3.8. Falls Creek Culture

- Satisfying itself that the Board is fulfilling its obligations to its shareholder, guests, business operators, community and other stakeholders both as regards its operations and initiatives and the general experience of dealing with FCRM
- Satisfying itself that FCRM is fulfilling its obligations to staff both as regards its employment practices and their general development
- Satisfying itself that the FCARMB culture:
 - Is consistent with the FCARMB's vision and values;
 - Facilitates investment and strategic partnership; and
 - Encourages positive views and promotes Falls Creek to the wider community.

3.9. Board's Own Affairs

- Establishing procedures to meet the Board's responsibilities.
- Ensuring clear delegations as required.
- Managing the Board's own performance.

¹ Major capital expenditure projects are defined as being individual projects worth in excess of \$0.5 million or such other amount as is set out in financial delegations.

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4. Committees of the Board

The work of the Board shall be supported by Standing Committees of the Board and such ad hoc committees as may from time to time be agreed upon.

4.1. Standing Committees

The Standing Committees of the Board are:

- Planning and Land Management Committee (PLMC);
- Finance, Risk and Audit Committee (FRAC); and
- People, Culture and Remuneration Committee (PCRC).

Each Standing Committee shall have a Charter that is approved by the Board. The Board will also appoint the Chair and members to the Committee.

The Board will review the membership of each Standing Committee, its Chair and its Charter at least every second year. The membership, Chair and Charter of a Standing Committee may be reviewed outside this frequency where agreed by the Board.

The Board will review the performance of each Standing Committee annually.

4.2. Ad hoc Committees

Each ad hoc Committee of the Board shall have a Terms of Reference that is approved by the Board. The Board will appoint its representatives to the ad hoc Committee.

At the date this policy was most recently reviewed and adopted, the only ad hoc Committee is the Arts and Cultural Development Committee (ACDC).

The Board will review the membership of each ad hoc Committee, its Chair and its Terms of Reference annually. The membership, Chair and Charter of an ad hoc Committee may be reviewed outside this frequency where agreed by the Board.

The Board will review the performance of each ad hoc Committee annually.

4.3. Committee Charters

The Charters of the existing Committees are linked as follows:

BP 1.10 PCRC Charter

FA 1.2 FRAC Charter

CLP 6.3 PLMC Charter

BP 1.37 ACDC Terms of Reference

5. Board Dispute Resolution

5.1. Key Principles

The key principles are:

- a) **Relevant obligations:** the board operates in accordance with all relevant obligations.
- b) **Respect, courtesy and balance:** board members treat one another with respect and courtesy. They participate in board discussions in an active and constructive manner. There is a balanced opportunity for each board member to ask questions, express ideas and offer opinions.

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- c) **Public interest:** the board acts in the public interest at all times, collectively and individually. Disputes are avoided where possible. If a dispute occurs, it is resolved as soon as possible in the public interest.
- d) **Good faith:** board members who are in dispute make a reasonable, thorough, and conscientious effort to resolve the dispute in an informal manner. They act in good faith throughout the dispute resolution process.

5.2. Relevant Obligations

Disputes between board members will be resolved in accordance with all relevant obligations and with good public sector governance practice, including:

- the establishing Act, being *Alpine Resorts (Management) Act 1997*
- the public sector values in section 7 of the *Public Administration Act 2004* ('PAA');²
- the requirement in section 81(1)(d)(iii) of the PAA to ensure that adequate procedures are in place for resolving any disputes that arise between board members;
- the [Directors' Code of Conduct](#)³ and similar requirements in section 79 of the PAA and in the common law (e.g. to act honestly and legally);
- any directions, guidelines and/or statements of obligation or expectation issued by the Minister;
- government policy; and
- all other laws and obligations that bind the agency.

5.3. Definition of a dispute

For the purposes of this policy, a 'dispute' exists if:

- two or more board members have difficulty working together (e.g. for reasons not covered under professional differences); and
- the situation is unduly affecting the ability of a board member, or the board collectively, to perform their duties in an effective and efficient manner.

A difference of opinion in relation to a strategic, business, policy or other decision that is to be made by the board is not a dispute and should be resolved in accordance with the board's policy on *Meetings and Decision making*.

DISPUTES INVOLVING SUBCOMMITTEE MEMBERS

The definition of a dispute may be extended to cover subcommittee members who are not board members, to the extent that the board determines is in the public interest.

5.4. Avoiding and resolving disputes

Board members will treat one another with respect and courtesy and will perform their duties in a constructive manner, in accordance with the board's policy on *Meetings and Decision making*. Disputes will be avoided where possible. If a dispute arises, the parties will act in **good faith** to resolve it as soon as possible in the public interest.

5.5. Informal resolution must be attempted

If a dispute arises, the board members in dispute (the '**parties**') will make a **reasonable, thorough, and conscientious** attempt to resolve it on an informal basis.

² The public sector values are: integrity, impartiality, accountability, respect, responsiveness, human rights, and leadership.

³ Issued by Victoria's Public Sector Standards Commissioner pursuant to section 63 of the PAA.

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The chair will actively guide the parties towards informal resolution of the dispute.⁴ Other board members will assist, where required.

Noting the existence of a dispute

Where attempts to resolve a dispute on an informal basis are ongoing but the chair is of the view that the board should be notified of the existence of the dispute (e.g. because it may pose a major risk to the effective operation of the agency), the matter will be placed on the agenda of the next board meeting for noting and/or monitoring.

5.6. Notice of an unresolved dispute

If a reasonable, thorough, and conscientious attempt to resolve a dispute on an informal basis is not successful, the chair will place the matter on the agenda of the next board meeting. At the meeting, the board will invoke the **formal** dispute resolution process if it is satisfied that:

- a) a dispute exists;
- b) proper and sufficient effort (i.e. a reasonable, thorough, and conscientious attempt) has failed to resolve the dispute on an informal basis; and
- c) the formal resolution process will be completed before the term of appointment of a party to the dispute expires or otherwise terminates and thereby ends the dispute.

5.7. Formal dispute resolution process

Where the board decides to invoke the formal dispute resolution process:

- An independent, suitably qualified **mediator** will be appointed who is acceptable to all the parties. If the parties cannot agree on a mediator DELWP shall be approached to nominate a mediator who will be asked to organise a mediation using its mediators, in consultation with the parties and the chair.
- The parties will co-operate with the mediator, provide all reasonable assistance, and otherwise actively work in **good faith** to resolve the dispute.
- The chair will actively support the formal dispute resolution process. Other board members will support the process and, where appropriate, actively contribute to it.
- Where a dispute is resolved, unless good reason exists otherwise, the outcome will be recorded in writing by the mediator and signed by the parties, who will each receive a copy and will consent to the chair receiving a copy.
- If the dispute cannot be resolved and it is continuing to unduly affect the operation of the agency, DELWP will be contacted for advice.

5.8. Notification to the Minister and the Secretary

Consistent with section 81(1)(b) of the PAA, if a dispute poses a major risk (existing or emerging) to the effective operation of the agency, the Minister and the Secretary of DELWP will be notified of the risk by the Board Chair and of the management systems that are in place to address the risk.

6. Policy review frequency

The Board will review this policy on an annual basis or more frequently, if required, to keep up-to-date with changes to legislation, government policy, machinery of government changes and other impacting factors.

⁴ If the chair is a party to the dispute, this role will be undertaken by the deputy chair or other member nominated by the board.

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AUTHORISATIONS AND DOCUMENT PARAMETERS

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