

Guideline 3: Borrowing

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Guideline 3: Borrowing

LOCAL GOVERNMENT GUIDELINE NO. 3

Local Government Act 2019

Making of Guideline

I, Chanston James Paech, Minister for Local Government, under section 342 of the *Local Government Act 2019*, hereby make this Guideline for the purposes of the Act.



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Minister for Local Government

22/6 / 2021

Guideline 3: Borrowing

1 Title

1.1 This Guideline is titled *Guideline 3: Borrowing*.

2 Commencement

2.1 This Guideline commences on the day on which section 342 of the *Local Government Act 2019* commences.

3 Definitions

For the purposes of this Guideline:

Act means the *Local Government Act 2019*.

ADI is short for authorised deposit-taking institution (see section 5 of the *Banking Act 1959* (Cth)).

borrowing means the council obtains any form of financial accommodation (see section 196 of the Act).

financial accommodation does not include leases of land.

minor transaction, see clause 8.

4 Relevance to Act

4.1 Section 197(2)(b) of the Act states that the Minister's approval is not required for a transaction classified as a minor transaction under guidelines issued by the Minister.

5 Application to local government subsidiary

5.1 With the exception of clauses 7.3, 7.5, 7.6, 8.1 and 9.4, this Guideline applies to a local government subsidiary as if a reference to a council were a reference to a local government subsidiary.

6 Objectives

6.1 This Guideline establishes a decision framework to help councils ensure that:

- (a) funds are available as required to support approved outlays; and
- (b) interest expense and other risks (such as liquidity risks and investment credit risks) are acknowledged and responsibly managed.

7 General principles

7.1 A council must exercise reasonable care and diligence that a prudent person would exercise when borrowing funds.

7.2 A council must consider:

- (a) the type of borrowing it wishes to take out, namely:
 - (i) short term – less than 18 months; or
 - (ii) medium term – between 18 months and 5 years; or
 - (iii) long term – more than 5 years; and
- (b) the type of interest rate it wishes to consider for the borrowing (fixed, variable or a combination of both); and
- (c) if it will approve an overdraft facility for day-to-day transactions, and if so, the amount of such a facility.

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- 7.3 For a council, it is the duty of each council member to understand the impact of the terms and conditions of the borrowing arrangements and the risks before the council enters into the borrowing contract.
- 7.4 For a local government subsidiary, it is the duty of each constituent council to understand the impact of the terms and conditions of the borrowing arrangements and the risks before the local government subsidiary enters into the borrowing contract.
- 7.5 Any projected borrowings must be outlined in the council's annual municipal, regional or shire plan, including the purpose of the projected borrowings and the type of borrowing under clause 7.2(a).
- 7.6 As soon as a borrowing is approved and obtained, the borrowing must be reflected in the next budget review under regulation 9 of the *Local Government (General) Regulations 2021*.

Notes for clause 7

- 1 For a council, the decision to seek approval from the Minister to borrow money is one that requires a council resolution (see 197(3)(a) of the Act).
- 2 For a local government subsidiary, the decision to seek approval from the Minister to borrow money is one that requires written authorisation from each of its constituent councils (see section 197(3)(b) of the Act).

8 Minor transaction

- 8.1 For a council, a **minor transaction** means a borrowing transaction within a cumulative borrowing amount that is:
- (a) \$500 000 or less for a council for a municipality; or
 - (b) \$300 000 or less for a council for a region; or
 - (c) \$50 000 or less for a council for a shire.
- 8.2 For a local government subsidiary, a **minor transaction** means a borrowing transaction within a cumulative borrowing amount that is \$200 000 or less.
- 8.3 The cumulative borrowing amount is calculated by adding together all amounts borrowed for each current borrowing, excluding borrowings that have been approved by the Minister.

Notes for clause 8

- 1 In relation to a credit card, the credit card limit is taken to be the amount borrowed.
- 2 The Minister's approval to borrow money is not required if the transaction is classified as a minor transaction or an advance on overdraft that meets the requirements of section 197(2)(a) of the Act.

9 Procedure to seek the Minister's approval

- 9.1 To seek approval to borrow money, a council must request approval to borrow in writing to the Minister.
- 9.2 A request under clause 9.1 must include:
- (a) a formal cover letter setting out the request; and
 - (b) a business case; and
 - (c) if applicable – a request for approval to give security for a borrowing in the nature of a mortgage or charge over property; and
 - (d) the status of all other borrowings, including the following details for each borrowing:

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- (i) amount borrowed;
 - (ii) drawn and undrawn amount;
 - (iii) intention with regards to any undrawn amount;
 - (iv) plan to repay the borrowing; and
- (e) any other documents that are required or later requested by the Minister.

Note for clause 9.2(c)

Section 198(1) of the Act provides that security for a borrowing in the nature of a mortgage or charge over property of the council or local government subsidiary can only be given with the Minister's approval.

9.3 The business case must include the following information and details:

- (a) a statement that explains why the council needs to borrow the money;
- (b) the financial options available to the council, the council's preferred option and the reasons why that option is preferred;
- (c) the maximum amount intended to be borrowed and the transaction costs associated with the intended borrowing;
- (d) the council's financial capacity to service the debt;
- (e) the repayment schedule showing principal and interest repayments;
- (f) quotes or financial proposals from ADIs in support of borrowing parameters used in the repayment schedule;
- (g) any security that the council intends to give in order to secure the borrowing;
- (h) forward cash estimates that include the repayments for the borrowing;
- (i) details on how the council will manage risks;
- (j) evidence that future ongoing operations costs of the borrowing have been considered and accounted for in the council's future plans;
- (k) details on the types of reports the council will use to monitor and review the borrowing.

Note for clause 9.3(b)

Options may be partially funded from grant funding or from reserves.

Note for clause 9.3(g)

Refer to section 198(3) of the Act in relation to security for borrowing.

Note for clause 9.3(j)

If the borrowing has a variable interest rate, details should be provided to clarify at what point the repayment or payout the debt from reserves will be fixed.

9.4 For a council, a request under clause 9.1 must also attach a copy of the council meeting minutes showing council's resolution to seek approval of the Minister to borrow the money.

9.5 For a local government subsidiary, a request under clause 9.1 must also attach a copy of the written authorisations from each constituent council for the local government subsidiary to seek approval of the Minister to borrow the money.

Note for clauses 9.4 and 9.5

Section 197(5) of the Act provides that a council resolution or the written authorisations from each constituent council of a local government subsidiary to seek approval of the Minister to borrow money must specify the: amount to be borrowed; proposed lender or

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provider of financial accommodation; purpose of the loan or financial accommodation; and the terms of the loan or financial accommodation.

- 9.6** If the Minister grants approval to borrow money, a fresh approval from the Minister must be sought before any decision to:
- (a) increase the borrowed amount; or
 - (b) change the approved purpose.