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Development of Minority Reports in a Deliberative Process

MosaicLab Report to Nillumbik Shire Council and the GWMP Community Panel

November 27, 2018

Since the release of the final Nillumbik Green Wedge Management Plan Panel Report there has been feedback from some panel members to Council and the facilitators about their unease with the style, nature and approach taken with minority report #1.

In order to assist panelists, councillors and council officers in their consideration of this report going forward, MosaicLab has written this statement outlining what happened in relation to minority report #1 from the facilitators' perspective and setting out the usual and accepted practice of preparing minority reports in a deliberative process.

In relation to the Nillumbik GWMP:

In a deliberative panel process, if a panel recommendation does not gain a super majority (80% or higher level of 'support' of the panel members), there is an option for panel members to write a minority report in relation to that recommendation and these minority reports are placed at the end of the main panel report.

During the GWMP panel, the option to write a minority report was stated by the facilitators at the commencement of the panel and repeated at each decision-making step in the process.

No other rules were provided to panel members wishing to write a minority report. Even though it was expected that minority reports would be written in the room after the voting process, the facilitators provided no rules about how minority reports were to be written.

The usual process on the final day of a panel is for minority reports to be written once the review (voting) on all recommendations has been completed, as it is not known until this time which recommendations have fallen below the 80% super majority criteria. There is a small window of time between final review and presentation of the report for minority reports to be added.

The facilitators became aware that the 'minority report #1' group had decided to write and would be submitting a minority report when four members of this group left the panel room on day 6 stating that they were leaving to write their report. They did not wish to stay in the room to work on the vision with other panel members. We were surprised at the timing of this suggestion as, at this stage, they did not know what recommendations had super majority support or not.

While the panel was working in small groups to refine their recommendations (typing into the google document/report), the 'minority' group returned to the room and commenced putting their report into the google document. The facilitators were advised by the computer operator at this time that the group was downloading a pdf and it was a long document. At this stage, the facilitators were concentrating on getting the full panel to complete writing and move into the final review and voting process.

The Panel's report was finalised over afternoon tea. This involved the facilitators managing:

- the computer operator removing the recommendations that did not receive 80% and re-ordering recommendations (overseen by panel selected scrutineers)
- a small group writing minority report #2 that related to a recommendation that didn't meet the 80% criteria.
- panel members selecting representatives to make their presentation to Council.

At this point in time one of the scrutineers noticed the length and style of minority report #1 and raised it with the facilitators. It is at this stage, the facilitators could have stopped the process and raised this matter with the full panel, as they have done with all other issues that were raised during this panel process.

We, the facilitators, apologise to the panel for not bringing this matter to the attention of the panel and for not providing specific rules about how minority reports should be prepared.

At the time, we did nothing to address the situation, as we were under significant time pressure to have the panel finalise its report, to have the report presented to the Mayor and Councillors and to close by 5pm. On reflection this was poor judgement on our part and we should have halted the process regardless of the time pressure given the nature of minority report #1 (not written in the room, length and addressing issues beyond the 'below 80%' recommendations).

As a result, many panel members were unaware of the existence of minority report #1 until they received the final report. We understand this situation has created concern amongst some panel members and led to some panel members feeling that minority report #1 is outside the spirit of the rules or has stretched the rules.

Even though minority report #1 does not accord with the expected approach (written in the room, in relation to recommendations that did not receive a super majority), it was prepared in a situation without explicit rules.

As facilitators we do not consider it our role to disallow a minority report when this option has been provided. We believe our mistake was in not having rules in relation to the preparation of minority reports and not bringing this matter to the attention of the panel on the final day.

Even though it does not help the current situation, MosaicLab has learnt from this situation and for any future panels we will provide explicit guidance on the preparation of minority reports, namely that they be written in the room in relation to recommendations that did not receive 80% support and they are a maximum of one page and use the same format as the majority report.

Usual and Accepted Minority Report Practice

A community panel process (based on a citizens' jury methodology) contains the following elements in relation to a panel agreeing on their recommendations (and hence final report) to the sponsoring organisation):

- All recommendations written by the panel (panel members write recommendations in small groups) are individually rated by all panel members in terms of whether they can live with (agree with) that recommendation being in their report. Recommendations that receive 80% 'live it' or higher levels of comfort ('live with it', 'like it' or 'love it'), form the majority report to council.
- If a recommendation does not gain the 80% or higher level of 'support' of the panel members, there is an option for a group of people to write a minority report in relation to that recommendation.

The full panel does not usually see what is in a minority report/s partly because they are written in a break and also because they are only the views of a minority. The full panel do not give feedback on minority reports nor approve their inclusion/exclusion. This is normal and accepted practice in all deliberative processes.

Hence, it is our expectation based on past experience that:

- minority reports relate to recommendations before the panel.
- minority reports would be written in the room as it is not until the final feedback is complete that a panel member knows if a recommendation has received 80% super majority support or not.
- minority reports are written in the same style and length as the majority report

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