



LATROBE CITY COUNCIL

**AGENDA FOR THE
SPECIAL COUNCIL MEETING**

**TO BE HELD IN LATROBE PERFORMING ARTS
CENTRE, TOWN HALL, GREY STREET,
TRARALGON
AT 5.30PM ON
26 MARCH 2020**

SM545

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1. OPENING PRAYER

Our Father who art in Heaven, hallowed be thy name. Thy kingdom come, thy will be done on earth as it is in Heaven. Give us this day our daily bread, and forgive us our trespasses, as we forgive those who trespass against us, and lead us not into temptation but deliver us from evil. For the kingdom, the power, and the glory are yours now and forever. Amen.

2. ACKNOWLEDGEMENT OF THE TRADITIONAL OWNERS OF THE LAND

I would like to acknowledge that we are meeting here today on the traditional land of the Braiakaulung people of the Gunaikurnai nation and I pay respect to their elders past and present.

If there are other Elders present I would also like to acknowledge them.

3. APOLOGIES AND LEAVE OF ABSENCE

4. DECLARATION OF INTERESTS

ORGANISATIONAL PERFORMANCE

5. ORGANISATIONAL PERFORMANCE

Agenda Item: 5.1

Agenda Item: Council to Chief Executive Officer Delegations to preserve the effective running and decision making of the Council in emergency situations

Sponsor: General Manager, Organisational Performance

Council Plan Objective: Ensure Council operates openly, transparently and responsibly.

Status: For Decision

Proposed Resolution:

That Council:

- 1. Delegates to the person holding the position, acting in or performing the duties of Chief Executive Officer the powers, duties and functions as described in the attached '*Instrument of Delegation to the Chief Executive Officer*', subject to the conditions and limitations specified in that Instrument;**
- 2. Declares that the instrument comes into force immediately the common seal of Council is affixed to the instrument;**
- 3. Declares that on the coming into force of the instrument all previous delegations to the Chief Executive Officer are revoked;**
- 4. Declares that the duties and functions set out in the instrument must be performed, and the powers set out in the instruments must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt, except in the circumstance that Council is unable to meet and/or form a quorum, any applicable requirements of any guidelines or policies of Council that would prohibit or limit the exercising of delegated duties and functions set out in the instrument are suspended;**
- 5. Notes that the instrument includes a power of delegation to members of Council staff, in accordance with section 98(3) of the Act;**
- 6. Notes that prior to exercising of a delegation in relation to a matter referred to an Ordinary or Special Council Meeting that subsequently lapsed or was cancelled, the Chief Executive Officer, as outlined in this**

- report, undertakes a notification process to Council including**
- a. Communication with Councillors setting out the matters to be determined including which matters are to be deferred to a future meeting;**
 - b. Providing an opportunity to obtain views and respond to questions of Councillors within 3 days of the communication setting out the matters;**
 - c. Upon determination of the matters, circulate an email to Councillors of the decisions prior to advising the public.**
- 7. Requests a review of the delegation be completed as soon as the declared State of Emergency event has ceased.**
- 8. Amends the Council Meeting Policy March 2019 to include the following clause regarding speaking at a Council Meeting and Public Question Time:**
- a. During a declared State of Emergency public participation at Council meetings may be undertaken via tele or video conferencing as determined by Council.**
- 9. Requests a final formatted policy be provided to all Councillors and made available on Council's website.**

Executive Summary:

The purpose of this report is to enable Council to implement 'emergency powers' by way of delegation to the Chief Executive Officer. Implementing this delegation would ensure business continuity in the instance the Council is unable to meet and/or form a quorum as a result of the extraordinary circumstances created by the COVID-19 (Coronavirus) declared State of Emergency.

A revised Instrument of Delegation has been prepared.

Background:

COVID-19 presents a significant risk to the Australian (and the global) community. The implications of which are unknown. The situation is evolving rapidly, along with Australia's response and the measures imposed by the Federal and Victorian Governments.

One of the implications of the disease is the risk to vulnerable individual's health. This could lead to the Council not being able to establish a quorum at meetings.

There is also the possibility that the Government will impose a mandatory isolation period as has occurred in other countries as the disease has progressed. Given the potential for serious health impacts attendance at Council meetings may not always be possible or advisable.

In order to conduct Council business at Council Meetings a quorum is required. A quorum is the attendance of the majority of Councillors, in Latrobe City's case, five Councillors. Should a quorum not be formed then the meeting would lapse and the Council business would not be able to proceed until a future meeting occurred.

Currently the *Local Government Act 1989*, and the proposed *Local Government Act 2020* also do not provide for proxy voting or electronic attendance.

In light of this situation, it would be desirable that Council consider implementing its own '*emergency powers delegation to the Chief Executive Officer*'. If implemented this delegation would ensure business continuity in the instance the Council is unable to meet and/or form a quorum.

The key changes to the delegation include:

- Increasing financial delegation from \$500,000 to the value of \$5,000,000 for non-capital works items and to the adopted budget value of capital works items in the instance that Council is unable to meet and/or form a quorum;
- Extending the period that the Chief Executive Officer can appoint an acting Chief Executive Officer from four to eight weeks in the instance that Council is unable to meet and/or form a quorum; and
- Empowering the Chief Executive Officer to determine planning applications that has more than five objections in the instance that Council is unable to meet and/or form a quorum.

It is proposed that prior to exercising of a delegation in relation to a matter referred to an Ordinary or Special Council Meeting that subsequently lapsed or was cancelled, the Chief Executive Officer undertakes a notification process to Council. This process is proposed to be:

- An email to Councillors setting out the matters to be determined including which matters are to be deferred to a future meeting;
- Provide an opportunity to obtain views and questions of Councillors within 3 days of the email setting out the matters;
- Upon determination of the matters, circulate an email to Councillors of the decisions.

It is also proposed that Council amend the Council Meeting Policy March 2019 to provide for public participation at Council Meetings via video conferencing or other agreed virtual methods during a declared State of Emergency.

This will allow Council to continue to engage with the community who may not be able to or are prevented from attending a Council Meeting.

Issues:

Strategy Implications

Maintaining effective operations is a priority of Council.

Communication

Communication will occur within the organisation and externally as required to implement the delegations including making publicly available as required by the *Local Government Act 1989*.

Financial Implications

Not applicable.

Risk Analysis

The endorsement of a revised Instrument of Delegation to the Chief Executive Officer ensures that the operational functions of the Council are not impeded.

Legal and Compliance

Council officers are seeking to provide the best advice within the parameters of the relevant legislation.

Delegations to Council can be implemented in accordance with the *Local Government Act 1989*.

Community Implications

Community will expect Council business to continue. It is understood that other Victorian Councils have recently put in place similar responses.

Environmental Implications

Not applicable.

Consultation

There has been consultation with relevant staff to ensure the correct delegations have been appointed.

The revocation and conferring of delegations do not require any public consultation, however, Council is required to keep registers of all delegations made and revoked.

Other

Not applicable.

Declaration of Interests:

Officers preparing this report have declared they do not have a conflict of interest in this matter under the provisions of the *Local Government Act 1989*.

Supporting Documents:

Nil

Attachments

1. S5 - Instrument of Delegation, Council to CEO

5.1

Council to Chief Executive Officer Delegations to preserve the effective running and decision making of the Council in emergency situations

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Maddocks Delegations and Authorisations

S5 Instrument of Delegation to Chief Executive Officer

Latrobe City Council

Instrument of Delegation

to

The Chief Executive Officer



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Instrument of Delegation

In exercise of the power conferred by s 98(1) of the *Local Government Act 1989* (**the Act**) and all other powers enabling it, the Latrobe City Council (**Council**) delegates to the member of Council staff holding, acting in or performing the position of Chief Executive Officer, the powers, duties and functions set out in the Schedule to this Instrument of Delegation,

AND declares that

1. this Instrument of Delegation is authorised by a Resolution of Council passed on [##date];
2. the delegation
 - 2.1 comes into force immediately the common seal of Council is affixed to this Instrument of Delegation;
 - 2.2 is subject to any conditions and limitations set out in the Schedule;
 - 2.3 must be exercised in accordance with any guidelines or policies which Council from time to time adopts; and
 - 2.4 remains in force until Council resolves to vary or revoke it.
3. The member of Council staff occupying the position or title of or acting in the position of Chief Executive Officer may delegate to a member of Council staff any of the powers (other than the power of delegation conferred by s 98(3) of the Act or any other powers not capable of sub-delegation) which this Instrument of Delegation delegates to him or her.

The Common Seal of **Latrobe City Council**)
 was affixed in accordance with Local Law No. 1)
 this day of 2020 in the)
 presence of:)

Cr Dan Clancey - Mayor



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SCHEDULE

The power to

1. determine any issue;
2. take any action; or
3. do any act or thing

arising out of or connected with any duty imposed, or function or power conferred on Council by or under any Act.

Conditions and Limitations

The delegate must not determine the issue, take the action or do the act or thing

4. if the issue, action, act or thing is an issue, action, act or thing which involves
 - 4.1 awarding a contract exceeding the value of \$500,000 unless the Council is unable to meet and/or form a quorum, in which case the value is \$5,000,000 for non-capital works items and to the adopted budget value of capital works items;
 - 4.2 making a local law under Part 5 of the Act;
 - 4.3 approval of the Council Plan under s 125 of the Act;
 - 4.4 adoption of the Strategic Resource Plan under s 126 of the Act;
 - 4.5 preparation or adoption of the Budget or a Revised Budget under Part 6 of the Act;
 - 4.6 adoption of the Auditor's report, Annual Financial Statements, Standard Statements and Performance Statement under Part 6 of the Act;
 - 4.7 determining pursuant to s 37 of the Act that an extraordinary vacancy on Council not be filled;
 - 4.8 exempting a member of a special committee who is not a Councillor from submitting a return under s 81 of the Act;
 - 4.9 appointment of councillor or community delegates or representatives to external organisations; or
 - 4.10 the return of the general valuation and any supplementary valuations;
 - 4.11 the appointment of an acting Chief Executive Officer for a period exceeding four weeks unless the Council is unable to meet and/or form a quorum, in which case the time period is eight weeks.
5. if the issue, action, act or thing is an issue, action, act or thing which is required by law to be done by Council resolution;
6. if the issue, action, act or thing is an issue, action or thing which Council has previously designated as an issue, action, act or thing which must be the subject of a Resolution of



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Council except for planning applications made under the *Planning and Environment Act* that have more than five objections, if the Council is unable to meet and/or form a quorum;

7. 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
 - 7.1 policy; or
 - 7.2 strategyadopted by Council; or
8. if the determining of the issue, the taking of the action or the doing of the act or thing cannot be the subject of a lawful delegation, whether on account of s 98(1)(a)-(f) (inclusive) of the Act or otherwise; or
9. 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 another member of Council staff.

The Chief Executive Officer is empowered to delegate his or her power to other Council Officers.