



STRATHBOGIE SHIRE COUNCIL

Notice is hereby given that a Special Meeting of the Strathbogie Shire Council will be held on Tuesday 31 March 2020 at the Euroa Community Conference Centre commencing at 2.00 p.m.

Chair: Amanda McClaren (Mayor) (Lake Nagambie Ward)

Councillors: Robert Gardner (Lake Nagambie Ward)
Malcolm Little (Hughes Creek Ward)
John Mason (Seven Creeks Ward)
Alistair Thomson (Mount Wombat Ward)
Graeme Williams (Seven Creeks Ward)

Officers: Julie Salomon Chief Executive Officer (CEO)
Phil Howard Director, Community and Planning (DCP)
David Roff Director, Corporate Services (DCS)
Dawn Bray Project Officer Corporate Governance

BUSINESS

1. Welcome
2. Acknowledgement of Traditional Land Owners
'I acknowledge the Traditional Owners of the land on which we are meeting. I pay my respects to their Elders, past and present'
3. Apologies
4. Disclosure of Interests
5. Petitions
6. Reports of Council Officers
 - 6.1 Climate Change
 - 6.2 Infrastructure
 - 6.3 Private Enterprise
 - 6.4 Public Institutions
 - 6.5 Housing and Recreation
 - 6.6 Tourism
 - 6.7 Organisation

7. Closure of Meeting to the Public to consider matters listed for consideration in accordance with Section 89(2) of the Local Government Act 1989
8. Confirmation of 'Closed Portion' Decision/s

Julie Salomon
CHIEF EXECUTIVE OFFICER

27 March 2020

An audio recording of this meeting is being made for the purpose of verifying the accuracy of the minutes of the meeting, as per Local Law No. 1 - Meeting Procedure (2014) or as updated from time to time through Council Resolution

Council does not generally permit individuals to make audio recordings of meetings. Individuals are required to make a written request addressed to the Council (Group Manager, Corporate & Community) should they seek to obtain permission to do so.

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6.7 ORGANISATION

6.7.1 Interim Instrument of Expanded Emergency Delegation from Council to the Chief Executive Officer

(Project Officer Corporate Governance: File Ref: 623396)

Responsible Director: Chief Executive Officer

EXECUTIVE SUMMARY

Council has enacted its Business Continuity Plan following the escalation of the COVID-19 pandemic.

Legal experts and Local Government Victoria have advised that it is important that contingencies are put into place to ensure that as many functions of Council continue to operate as possible, not only to support our community through this crisis but to also ensure essential Council services are provided and decision making continues to occur.

Neither the current *Local Government Act 1989* (the Act) nor the new Local Government Bill 2020 provide for Council meetings to be held in any other way than by attendance in person.

There is a risk that Council's ability to reach a quorum may be compromised at times during the course of the pandemic. Many councils across the State are addressing this issue by approving emergency provisions for the Chief Executive Officer (CEO) to exercise increased delegations in the event a quorum cannot to be achieved.

This report seeks resolutions from Council to approve an Instrument of Expanded Emergency Delegations to the Chief Executive Officer, subject to consultation with all available Councillors and public transparency by submit a report to the next Council meeting listing the decisions made under these emergency provisions.

The authorisation of the procurement of goods, services or works by the CEO that are likely to exceed the existing financial delegations to the CEO prescribed by the Act and Council's Procurement Policy are identified in this report. Given these projects have been approved by Council through the 2019/20 and 2020/21 budget processes, the CEO is able to authorise payments that exceed the limits set by the Act. The recommendation to Council ensures that no other projects are subject to these emergency delegations.

6.7.1 Interim Instrument of Expanded Emergency Delegation from Council to the Chief Executive Officer (cont.)

RECOMMENDATION

That:

- 1. Council approve the S5 Instrument of Expanded Emergency Delegations to the Chief Executive Officer as attached to this report to ensure key decisions can be made for essential services in the event that a quorum of Council or a Planning Committee cannot be achieved for a scheduled meeting(s).**
- 2. The Instrument of Expanded Emergency Delegations to the Chief Executive Officer lapse upon the lifting of State emergency provisions around the COVID-19 Pandemic or if Council amends or revokes the delegation, whichever is the sooner.**
- 3. The provisions of clause 24 of Meeting Procedure Local Law No 1 – 2014 be suspended should a quorum not be obtained for a scheduled Council meeting or Planning Committee meeting to enable the Instrument of Expanded Emergency Delegations to the Chief Executive Officer to be used subject to consultation and public transparency requirements.**
- 4. The Policy for referral of matters to Council’s Planning Committee be suspended in the event that a quorum of the Planning Committee cannot be reached to enable the Instrument of Expanded Emergency Delegations to the Chief Executive Officer to be used subject to consultation and public transparency requirements.**
- 5. The Instrument of Expanded Emergency Delegations to the Chief Executive Officer will apply to:**
 - a) all urgent matters brought forward through Officer reports which cannot reasonably be delayed until the next scheduled Council Meeting; and**
 - b) approval of the procurement of goods, services and works for those projects approved by Council through the 2019/20 and 2020/21 budget processes.**
- 6. Prior to making any decisions under the Instrument of Expanded Emergency Delegations to the Chief Executive Officer, the Chief Executive Officer must consult with available Councillors electronically outlining the reasons as to why the decision cannot be deferred until the next scheduled Council meeting.**
- 7. The Chief Executive Officer must report to the next available meeting of the Council on decisions made under the expanded delegation.**

6.7.1 Interim Instrument of Expanded Emergency Delegation from Council to the Chief Executive Officer (cont.)

8. The Chief Executive Officer must not sub delegate any of the expanded delegations approved by Council, excluding an Acting Chief Executive Officer if one has been appointed by Council.

PURPOSE AND BACKGROUND

The purpose of this report is to ensure that essential Council services and decisions can be made in the event that a quorum cannot be reached for a Council meeting(s) due to the COVID-19 pandemic.

Legal advice provided to the local government sector from Maddocks in recent days has confirmed that Council meetings are unable to be held remotely via video links. This means contingencies must be put in place to reflect the emergency provisions being enacted across the State to ensure our essential services and support for our community continues over the next few months.

Council can delegate a wide range of decisions to the CEO, and has already done so, although it is important to note that there are some decisions that cannot be delegated (refer to legal considerations section for more detail).

Clause 24 of Council's Meeting Procedure Local Law No 1 – 2014 outlines provisions for the inability to raise a quorum, which are:

If a quorum is not present within thirty (30) minutes of the scheduled starting time of a meeting:

- (a) the meeting shall be deemed to have lapsed;*
- (b) the Mayor must convene another Council or Committee meeting and ensure that the agenda for such meeting is identical to the agenda for the meeting that was deemed to have lapsed; and*
- (c) the Chief Executive Officer must give all Councillors notice of the meeting convened by the Mayor.*

KEY ISSUES AND DISCUSSION

Essential Council operations must continue throughout the Covid 19 pandemic in accordance with the advice from Federal and State governments.

Decision making is an important means through which Council can keep its 'doors open' and continue to make key decisions in the event that a quorum of Councillors cannot be achieved.

6.7.1 Interim Instrument of Expanded Emergency Delegation from Council to the Chief Executive Officer (cont.)

The local law provides clarity around what occurs should a quorum not be achieved for a Council meeting or Planning Committee meeting. Given emergency measures are required, this report seeks the suspension of clause 24 of the Local Law and the Council policy around referrals to the Planning Committee in the event scheduled meetings cannot occur due to Councillors either being in forced isolation due to illness or in lockdown as ordered by Federal or State governments.

It is imperative from a good governance perspective that there are checks and balances in place around the use of the Instrument of Expanded Emergency Delegations in relation to:

- consultation with Councillors prior to the use of the additional delegated power through electronic means (eg phone, email, videolink)
- reporting to the next available Council meeting as to what Expanded Emergency Delegations have been exercised
- an expiry date on the whenever the State of Emergency is lifted or when the Council resolve to amend or withdraw the Instrument, whichever is the sooner
- ensuring that approval of procurement and payments by the CEO exceeding financial delegations as set out by Council's Procurement Policy are limited to those related to projects approved by Council through the 2019/20 and 2020/21 budget processes.

The last dot point is critical to ensure that infrastructure projects and other key initiatives are able to continue throughout this pandemic, unless advice from the State or Federal governments states otherwise.

COMMUNITY ENGAGEMENT

Given the escalating emergency around the COVID-19 pandemic, engagement has been limited to discussions with Councillors, however information has been circulated by:

- local government legal experts
- Local Government Victoria
- other councils across the region and the State

All have indicated that extending CEO delegations is a suitable measure to take in this current State of Emergency and that many councils are adopting interim CEO delegations as a business continuity measure.

POLICY CONSIDERATIONS

Council's Procurement Policy 2019 reflects the limits under the Act in relation to the entering of contracts.

6.7.1 Interim Instrument of Expanded Emergency Delegation from Council to the Chief Executive Officer (cont.)

LEGAL CONSIDERATIONS

Section 98 of the Act states that Council cannot delegate the following:

- (a) this power of delegation; and
- (b) the power to declare a rate or charge; and
- (c) the power to borrow money; and
- (d) the power to approve any expenditure not contained in a budget approved by the Council; and
- (e) any power, duty or function of the Council under section 223; and
- (f) any prescribed power including the awarding of contracts exceeding \$150,000 inclusive of GST for goods and services or \$200,000 inclusive of GST for works.

No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

FINANCIAL CONSIDERATIONS

The ability to continue to make decisions should a quorum of Council be unachievable is important, particularly in times of the State of Emergency however the limits on the awarding of contracts outlined previously must continue to apply to anything other than those projects or initiatives that have been approved by Council through the 2019/20 or 2020/21 budget processes.

Any resource or financial implications relating to this matter can be met from within existing budget allocations.

SOCIAL CONSIDERATIONS

It is essential that contingencies are in place to support decision making in what is becoming an ever-increasing likelihood that we are unable to reach a quorum.

The approval of emergency delegated powers for the CEO is, therefore, an important risk mitigation measure that means Council can continue to support the community and the local economy through ongoing service provision.

HUMAN RIGHTS CONSIDERATIONS

The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report and it's determined that the subject matter does not raise any human rights issues.

CONCLUSION

An important component of our Business Continuity Plan is implementing measures to keep essential functions of Council operating to support our community and local economy.

The approval of an Instrument of Expanded Emergency Delegations to the Chief Executive Officer is a key way in which we can keep essential and important functions going throughout the COVID-19 State of Emergency.

Our approach means that there is an expiry date for the Instrument and checks and balances to regulate the CEO's use of powers.

6.7.1 Interim Instrument of Expanded Emergency Delegation from Council to the Chief Executive Officer (cont.)

ATTACHMENTS

Attachment 1: Advice from Local Government Victoria – Council meetings in response to COVID-19.

Attachment 2: Draft S5 Instrument of Delegation to the Chief Executive Officer, March 2020.

6.7.1 Interim Instrument of Expanded Emergency Delegation from Council to the Chief Executive Officer (cont.)

ATTACHMENT 1:

ADVICE FROM LOCAL GOVERNMENT VICTORIA



BULLETIN: 9/2020

COUNCIL MEETINGS

A number of councils have been enquiring about contingencies they are considering relating to council meetings, in response to the challenges raised by COVID-19.

The following information is provided to assist councils to determine the most appropriate response for their circumstances.

Meetings open to the public

The Local Government Act 1989 (section 89(1)) requires all council and special committee meetings to be open to the public, unless the reason for closure meets one of the listed criteria in section 89(2) of the Act. The Act does not provide an opportunity to exempt this requirement.

Those councils that currently stream council meetings are encouraged to promote the availability of this medium as an alternative to attendance in person whilst social distancing is being encouraged.

Clause 66(1) of the Local Government Bill 2019 continues the requirement for council meetings to be open to the public, unless a circumstance in clause 66(2) applies. Clause 66(2) states those circumstances are:

- a. The meeting is to consider confidential information; or
- b. Security reasons; or
- c. It is necessary to close the meeting to enable the meeting to proceed in an orderly manner.

A council may close a meeting under b) or c) above, provided it enables the meeting to be viewed by the public e.g. streamed on the internet. The term "security" is not defined in the Bill, but would be broad enough to apply in the current circumstances relating to COVID-19.

Councillor attendance at meetings

Both the Local Government Act 1989 and the Local Government Bill 2019 provide that voting at council meetings is undertaken by councillors present at the meeting. 'Present' means physically present in the room where the decision making is taking place. There is no provision that allows a council to be exempted from this requirement, e.g. allowing presence by electronic means.

It is recommended that attendance at meetings have regard to the Commonwealth government's guidance on social distancing and hygiene.

Cancelling or postponing meetings

If a council wishes to cancel or postpone a council or special committee meeting – for example because a quorum cannot be formed due to the absence of councillors - it should give as much public notice as is practicable. Again, there is no capacity to exempt or vary quorum requirements under the Act.

Delegation

To enable continued council operations, councils may wish to consider the need to increase the exercise of delegated decisions to the council's chief executive officer and staff. Section 98 of the Act sets out the requirements for delegating council powers, duties and functions. Councils are encouraged to review their delegations to maximise the opportunity for business continuity.

The management of the COVID-19 pandemic is evolving and dynamic. Local government Victoria understands the important role councils are playing and is committed to keeping you informed and supported.

Regards

Graeme Emonson
Executive Director
Local Government Victoria

Authorised by Graeme Emonson, Executive Director, Local Government Victoria
Department of Environment, Land, Water and Planning, Level 35, 2 Lonsdale Street, Melbourne

6.7.1 Interim Instrument of Expanded Emergency Delegation from Council to the Chief Executive Officer (cont.)

ATTACHMENT 2:

Maddocks Delegations and Authorisations

S5 Instrument of Delegation to Chief Executive Officer



Strathbogie Shire Council

Instrument of Delegation

to

The Chief Executive Officer

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 \$150,000 for goods and services or \$200,000 for carrying out of works unless the project has been by Council through the 2019/20 and 2020/21 budget adoption process;
 - 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;
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 unless that matter has been placed on an agenda for a scheduled Council meeting but could not be considered at neither the scheduled meeting nor the rescheduled meeting due to a lack of quorum during the Covid 19 pandemic as per Clause 24 of Council's Meeting Procedure Local Law No 1 – 2014;
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 Council unless that matter has been placed on an agenda for a scheduled Council meeting but could not be considered at neither the scheduled meeting nor the rescheduled meeting due to a lack of quorum during the Covid 19 pandemic as per Clause 24 of Council's Meeting Procedure Local Law No 1 – 2014;
7. 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.
8. The Chief Executive Officer must consult with all available Councillors via electronic means (phone, email, teleconference) prior to exercising any extended emergency delegation.
9. A report identifying the decisions made in lieu of the ability to reach a quorum of Council under this Instrument must be listed on the next scheduled Council meeting agenda.

- 8. CLOSURE OF MEETING TO THE PUBLIC TO CONSIDER MATTERS LISTED FOR CONSIDERATION IN ACCORDANCE WITH SECTION 89(2) OF THE LOCAL GOVERNMENT ACT 1989**

- 9. CONFIRMATION OF 'CLOSED PORTION' DECISION/S**

THERE BEING NO FURTHER BUSINESS, THE MEETING CLOSED AT P.M.