



Southern Grampians
SHIRE COUNCIL

Council Meeting Minutes

Special Meeting
1 April 2020

Held at 4.30pm in the Council
Chambers at 5 Market Place, Hamilton

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The Meeting opened at 4:33pm

1. Present

Councillors

Cr Chris Sharples, Mayor
Cr Colin Dunkley, Deputy Mayor
Cr Cathy Armstrong
Cr Mary-Ann Brown
Cr Albert Calvano
Cr Greg McAdam
Cr Katrina Rainsford

Officers

Mr Michael Tudball – Chief Executive Officer

2. Welcome and Acknowledgement of Country

The Mayor, Cr Sharples, read the acknowledgement of country:

“Our meeting is being held on the traditional lands of the Gunditjmarra, Tjap Wurrung and Bunganditj people.

I would like to pay my respects to their Elders, past and present, and the Elders from other communities who may be here today.”

Please note: All Council meetings will be audio recorded, and may be livestreamed to Council's social media platform, with the exception of matters identified as confidential items in the Agenda.

By participating in open Council meetings, individuals consent to the use and disclosure of the information they share at the meeting (including any personal and/or sensitive information).

Other than an official Council recording, no video or audio recording of proceedings of Council Meetings will be allowed without the permission of Council.

3. Prayer

Cr Armstrong read the prayer.

4. Apologies

None. It was noted that no Directors were in attendance due to both social distancing measures implemented and only required staff attending.

5. Declaration of Interest

None declared.

6. Management Reports

6.1 Review of Instrument of Delegation - s5 Instrument of Delegation from Council to CEO

Directorate: Evelyn Arnold, Director Community and Corporate Services
Author: Karly Saunders, Governance Coordinator
Attachments: s5 Instrument of Delegation from Council to the Chief Executive Officer

Executive Summary

Section 98 of the *Local Government Act 1989* ('the Act') empowers Councils to delegate various duties, functions and powers to Council staff.

The s5 Instrument of delegation has been amended to ensure business continuity for operations of Council during the unprecedented COVID-19 pandemic event.

Discussion

The Act, and a variety of other legislation, makes express provision for the appointment of delegates to act on behalf of Councils and delegation of powers is essential to enable day to day decisions to be made and for the effective operation of the organisation.

The Instrument of Delegation from Council to the Chief Executive Officer was made in June 2017. Through this Delegation, Council delegates all of its powers to the CEO with a few exceptions which are detailed in the attached Instrument.

Council is a legal entity composed of its Councillors, which acts in one of two ways – by resolution or through another acting on Council's behalf. Resolutions made at Council meetings must be undertaken by Councillors being physically present at Council meetings.

The impact of the COVID-19 pandemic is still developing and could result in the inability to conduct business of Council via Ordinary meetings due to restrictions imposed externally; or the failure to gain a quorum owing to Councillors not being able to participate in person due to an inability to attend, illness or complying with isolation requirements.

Where Council does choose to act through others, this must be formalised through a written means known as an Instrument of Delegation. Wherever practical, the Instrument clearly articulates the nature of the delegation and any condition or limitation under which the delegation is to be exercised.

In the current environment, it is therefore essential to ensure that business continuity is maintained.

The attached Instrument has been updated and is provided to Council for review and consideration –

- The CEO financial delegation for awarding a contract has been increased from \$150,000 to \$250,000
- If Council is unable to meet to consider and approve contracts exceeding \$250,000, the financial limit that applies to the CEO delegation is limited to \$1,000,000.

Financial and Resource Implications

Council subscribes to the Delegations and Authorisations service provided by Maddocks Lawyers, the cost of which is provided for in Council's budget.

There are no other financial implications in reviewing the Instrument of Delegation.

Legislation, Council Plan and Policy Impacts

Objective 1 Leadership and Good Governance

Outcome 1.1 Soundly Based Decisions

Strategy 1.1.1 - Base decisions on the highest available level of professional advice and expertise

Strategy 1.1.2 - Develop and enact policies, plans and strategies to ensure consistency in decision making

Strategy 1.1.4 - Work together to develop a highly responsive Council organisation.

Strategy 1.1.5 - Provide timely and accurate advice.

Risk Management

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

In light of the current environment faced by Council during the COVID-19 pandemic event, it is essential that in these unprecedented time, a variation to the Instrument is endorsed to ensure Council operations are maintained.

The use of the Maddocks service alleviates the potential risk of staff not being appropriately authorised in the exercise of various powers and fractions. The updates are done regularly and capture any legislative changes. The service is available to all Victorian Councils which enables consistency.

Environmental and Sustainability Considerations

Many of the activities undertaken by staff on behalf of Council have social, economic or environmental effects, including many of the powers included in the instruments of delegation. The Instruments of Delegation ensure that the decisions are made by the most appropriate person or persons with the organisation.

Community Consultation and Communication

There is no requirement for community consultation in relation to the review of the Delegations.

The Instrument is available for viewing on Council's website and is also available for public inspection.

Affected staff will be provided with confirmation of the amendments to the Instruments of Delegation.

Disclosure of Interests

All Council Officers involved in the development and advice provided in this Report affirm that no direct or indirect interests need to be declared in relation to any matters in this Report.

RECOMMENDATION

1. In the exercise of the powers conferred by section 98(1) of the *Local Government Act 1989* and the other legislation referred to in the attached instrument of delegation, Council resolves that:
 - a) They be delegated to the person holding the position, acting in or performing the duties of Chief Executive Officer the powers, duties and functions set out in the attached *s5 Instrument of Delegation to the Chief Executive Officer* subject to the conditions and limitations specified in that Instrument.
 - b) The instrument comes into force immediately the common seal of Council is affixed to the instrument.
 - c) On the coming into force of the instrument all previous delegations to the Chief Executive Officer under previous s5 Instruments are revoked.
 - d) 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.
 - e) It is noted that the instrument includes a power of delegation to members of Council staff in accordance with section 98(3) of the Act.
 - f) This delegation is made specifically to address the unknown impacts of the current COVID-19 pandemic across Victoria and Australia and is only enacted where Council is unable to meet, and
 - g) This delegation is referred back to Council once the impacts of COVID-19 cease.

COUNCIL RESOLUTION

MOVED: Cr Brown
SECONDED: Cr Dunkley

1. In the exercise of the powers conferred by section 98(1) of the *Local Government Act 1989* and the other legislation referred to in the attached instrument of delegation, Council resolves that:
 - a) They be delegated to the person holding the position, acting in or performing the duties of Chief Executive Officer the powers, duties and functions set out in the attached *s5 Instrument of Delegation to the Chief Executive Officer* subject to the conditions and limitations specified in that Instrument.
 - b) The instrument comes into force immediately the common seal of Council is affixed to the instrument.
 - c) On the coming into force of the instrument all previous delegations to the Chief Executive Officer under previous s5 Instruments are revoked.
 - d) 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.
 - e) It is noted that the instrument includes a power of delegation to members of Council staff in accordance with section 98(3) of the Act.
 - f) This delegation is made specifically to address the unknown impacts of the current COVID-19 pandemic across Victoria and Australia and is only enacted where Council is unable to meet.
 - g) This delegation is referred back to Council once the impacts of COVID-19 cease or September 2020 whichever is later.
2. Prior to enacting the delegation to award a contract over \$250,000 and up to \$1,000,000 a briefing, including relevant documents will be circulated electronically to all Councillors seeking feedback that may be incorporated into the CEO delegated decision.
3. A summary report will be provided to Council if and when the delegation is enacted.

CARRIED

A division was called

| DIVISION | |
|--|---------------------|
| FOR | AGAINST |
| Cr Armstrong Cr Brown Cr Calvano Cr Dunkley Cr McAdam Cr Sharples | Cr Rainsford |

6.2 Acting Chief Executive Officer

Directorate: Michael Tudball, Chief Executive Officer
Author: Karly Saunders, Governance Coordinator
Attachments: None.

Executive Summary

This report requests Council to resolve to appoint one of Council's three directors as Acting Chief Executive Officer (CEO) in the event that the CEO is unable to perform his duties over the coming months as a result of the COVID-19 pandemic.

Discussion

Given the current environment in light of the COVID-19 pandemic, it is vital that the operations of Council are not disrupted over the coming months.

Therefore Council is being asked to consider a recommendation to allow any of the three directors (as detailed below) to be appointed as acting CEO, should the need arise.

If the CEO is unable to perform his duties as a result of COVID-19, in the first instance:

- The Director of Community and Corporate Services will be appointed to the role of Acting CEO; or
- Should the Director of Community and Corporate Services be unavailable to perform the role of Acting CEO, the Director of Shire Infrastructure will be appointed to the role of Acting CEO; or
- Should the Director of Shire Infrastructure be unavailable to perform the role of Acting CEO, the Director of Planning and Development will be appointed to the role of Acting CEO.

The above takes into consideration that a person must be appointed in the role as Acting Chief Executive Officer, but the availability of the Directors will be unknown until which time the need arises to appoint one.

The appointments do not state a specified time, as the duration of the appointment is unknown.

Financial and Resource Implications

There are no additional cost implications as leave is budgeted and allowed for.

Legislation, Council Plan and Policy Impacts

Under the *Local Government Act 1989* Council must appoint a Chief Executive Officer and others in an acting capacity as and when required.

As per the s5 Instrument of Delegation from Council to the CEO, the member of Council staff occupying the position or title of or acting in the position of CEO 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 the Instrument of Delegation delegates to him or her.

Objective 1 Leadership and Good Governance

Outcome 1.1 Soundly Based Decisions

Strategy 1.1.1 - Base decisions on the highest available level of professional advice and expertise

Strategy 1.1.2 - Develop and enact policies, plans and strategies to ensure consistency in decision making

Strategy 1.1.4 - Work together to develop a highly responsive Council organisation.

Strategy 1.1.5 - Provide timely and accurate advice.

Risk Management

The decision to implement a contingency plan, should the CEO be unable to perform his duties, will mitigate the risks of the core operations of Council being unable to continue.

Environmental and Sustainability Considerations

There are no Environmental and Sustainability Considerations.

Community Consultation and Communication

Should the need arise to implement the outcomes of this report and appoint an Acting CEO as an interim arrangement, Council staff will be informed via an all staff email from the Acting CEO and will be noted in the staff newsletter.

Disclosure of Interests

All Council Officers involved in the development and advice provided in this Report affirm that no direct or indirect interests need to be declared in relation to any matters in this Report.

RECOMMENDATION

That Council approve the following appointment(s) being in force immediately, should the Chief Executive Officer be unable to perform his duties as a result of the COVID-19 pandemic:

1. The Director of Community and Corporate Services will be appointed to the role of Acting CEO; or
2. Should the Director of Community and Corporate Services be unavailable to perform the role of Acting CEO, the Director of Shire Infrastructure will be appointed to the role of Acting CEO; or
3. Should the Director of Shire Infrastructure be unavailable to perform the role of Acting CEO, the Director of Planning and Development will be appointed to the role of Acting CEO;
4. These appointments will be in place for a period unspecified, until which time the CEO is able to return to work and perform his duties.

MOTION

MOVED: Cr Rainsford

That Council approve the following appointment(s) being in force immediately, should the Chief Executive Officer be unable to perform his duties as a result of the COVID-19 pandemic:

- 1. The Director of Shire Infrastructure will be appointed to the role of Acting CEO; or**
- 2. Should the Director of Shire Infrastructure be unavailable to perform the role of Acting CEO, the Director of Community and Corporate Services will be appointed to the role of Acting CEO; or**
- 3. Should the Director of Community and Corporate Services be unavailable to perform the role of Acting CEO, the Director of Planning and Development will be appointed to the role of Acting CEO;**
- 4. These appointments will be in place for a period unspecified, until which time the CEO is able to return to work and perform his duties.**

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COUNCIL RESOLUTION

MOVED: Cr Brown
SECONDED: Cr Calvano

That Council approve the following appointment(s) being in force immediately, should the Chief Executive Officer be unable to perform his duties as a result of the COVID-19 pandemic:

- 1. The Director of Community and Corporate Services will be appointed to the role of Acting CEO; or**
- 2. Should the Director of Community and Corporate Services be unavailable to perform the role of Acting CEO, the Director of Shire Infrastructure will be appointed to the role of Acting CEO; or**
- 3. Should the Director of Shire Infrastructure be unavailable to perform the role of Acting CEO, the Director of Planning and Development will be appointed to the role of Acting CEO;**
- 4. These appointments will be in place for a period unspecified, until which time the CEO is able to return to work and perform his duties.**

CARRIED

7. Close of Meeting

This concludes the business of the meeting.

Meeting closed at 5:04 pm.

Confirmed by resolution 8 April 2020.

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Chairman