



Special Council Meeting Agenda

Tuesday 31 March 2020
Commencing at 6.00pm

Council Chamber
Hobsons Bay Civic Centre
115 Civic Parade, Altona



THE COUNCIL'S MISSION

We will listen, engage and work with our community to plan, deliver and advocate for Hobsons Bay to secure a happy, healthy, fair and sustainable future for all.

OUR VALUES

Respectful

Community driven and focused

Trusted and reliable

Efficient and responsible

Bold and innovative

Accountable and transparent

Recognised

Council acknowledges the peoples of the Kulin Nation as the Traditional Owners of these municipal lands and waterways, and pay our respects to Elders past and present.

Chairperson:

Cr Colleen Gates (Mayor)

Wetlands Ward

Councillors:

Cr Angela Altair

Strand Ward

Cr Peter Hemphill

Strand Ward

Cr Jonathon Marsden

Strand Ward

Cr Tony Briffa

Cherry Lake Ward

Cr Sandra Wilson (Deputy Mayor)

Cherry Lake Ward

Cr Michael Grech

Wetlands Ward

Aaron van Egmond
Chief Executive Officer
Hobsons Bay City Council

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AGENDA

1 Council Welcome

The Chairperson will welcome members of the gallery and acknowledge the people of the Kulin Nation as the Traditional Owners of this land.

2 Purpose of Meeting

The purpose of the meeting is:

To consider extending the delegations granted to the Chief Executive Officer within the proposed Instrument of Delegation, enabling more responsive decision making during the coronavirus (COVID-19) pandemic in the event that Council is unable to maintain a quorum throughout the period of the State of Emergency and associated impacts of the pandemic. The extension of these delegations would enable the organisation to maintain business continuity until Council is in a position to reconvene following the cessation of the State of Emergency declared by the Premier of Victoria.

Council notes that this Special Council Meeting has been expedited and the 7 days public notice has not been observed due to the urgent and extraordinary circumstances as a direct result of the Coronavirus Pandemic and the various directives issued by both the Commonwealth and Victorian governments, which are becoming incrementally more restrictive by the week.

3 Apologies

4 Disclosure of Interests

In accordance with sections 77A, 77B, 78 and 79 of the *Local Government Act 1989* Councillors are required to disclose a "conflict of interest" in a decision if they would receive, or could be reasonably perceived as receiving a direct or indirect financial or non-financial benefit or detriment (other than as a voter, resident or ratepayer) from the decision.

In accordance with section 79B of the *Local Government Act 1989* Councillors who consider that they have a personal interest that is in conflict with their public duty in relation to a matter may, if they do not have a conflict of interest as described above, apply to Council to be exempted from voting on the matter.

Disclosure must occur immediately before the matter is considered or discussed.

5 Business

5.1 COVID-19 - State of Emergency - CEO Delegations

Directorate: Corporate Services

Councillor Portfolio: Not applicable

Appendices: 1 COVID-19 - State of Emergency - CEO Delegations - Instrument of Delegation - Council to CEO

Purpose

To consider extending the delegations granted to the Chief Executive Officer (CEO) within the proposed Instrument of Delegation as attached, enabling more responsive decision making during the coronavirus (COVID-19) pandemic in the event that Council is unable to maintain a quorum throughout the period of the State of Emergency and associated impacts of the pandemic. The extension of these delegations would enable the organisation to maintain business continuity until Council is in a position to reconvene following the cessation of the State of Emergency declared by the Premier of Victoria.

Recommendation

That Council pursuant to section 98 of the *Local Government Act 1989*:

1. **Endorses the State of Emergency and/or Extraordinary Circumstance provisions as detailed in this report to be enacted immediately upon Council's resolution and continue until the Premier of Victoria declares the cessation of the State of Emergency.**
 2. **Endorses the allocation of emergency delegation provisions to the Chief Executive Officer (CEO) to enable the CEO to transact Council business in the event that Council is unable to achieve quorum during the period of the State of Emergency with specific reference to financial, write off, planning and policy delegations.**
 3. **Endorses the following actions to enable the extended CEO delegations to be effected.**
 - a. **Revoke all previous related delegations to the CEO upon endorsement (by way of Council resolution) of the proposed Instrument of Delegation.**
 - b. **Endorse the increased delegations to the CEO or the person acting in or performing the duties of the CEO, of the powers, duties and functions set out in the proposed Instrument of Delegation, subject to the conditions and limitations specified in that instrument.**
 - c. **Modify and enact the proposed Instrument of Delegation immediately upon Council's resolution on the matter.**
 - d. **Require that the duties and functions set out in the Instrument of Delegation be performed and the powers set out be executed in accordance with any guidelines or policies of Council, which it may from time to time adopt.**
 - e. **Note that the Instrument of Delegation to the CEO includes the power of delegation to members of Council staff, in accordance with section 98(3) of the *Local Government Act 1989*.**
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- f. In circumstances where the CEO is to enact delegated authority beyond previous delegation limits, the CEO will undertake the agreed consultation process with Council, noting individual Councillor concurrence or dissent, prior to the exercise of such delegation.
- g. On receipt of communication from the Victorian Government that the State of Emergency has ceased, a report will be tabled at the next scheduled Ordinary Council Meeting to revoke this Instrument of Delegation and adopt a revised Instrument of Delegation.
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Summary

The endorsement of the State of Emergency and/or Extraordinary Circumstance provisions will enable Council to respond appropriately to an emergency and/or extraordinary circumstance (such as the declaration of a State of Emergency) without the need for a Council resolution.

The provisions should consider:

- a change in the current delegations from Council to the CEO to allow for faster and more responsive decision making and approvals
- the ability to suspend a Council Meeting where a quorum cannot be formed during times of an emergency and/or extraordinary circumstance. The suspension of the meeting will be by agreement between the Mayor and CEO

Background

It is necessary for Council to develop a response to an emergency and/or extraordinary circumstance considering the current COVID-19 pandemic.

The Victorian Premier Daniel Andrews declared a State of Emergency on Monday 16 March 2020 due to the serious risk to public health posed by COVID-19.

The declaration was imposed under the *Public Health and Wellbeing Act 2008* due to the unprecedented nature of the public health emergency and the need to stop the spread of COVID-19.

Subsequent announcements from the Australian Prime Minister Scott Morrison imposed social distancing requirements, declared many non-essential services to be suspended and directed that places of gathering be closed. Australians were encouraged to “work from home” to protect their health and wellbeing.

Since this time, Stage One and Stage Two response measures have been put in place by both the Australian and Victorian governments, with indications that intensified public restrictions are likely in the foreseeable future. These could have a significant bearing on the capacity for Ordinary Council Meetings to be held or for Councillors to attend a scheduled meeting in sufficient numbers to achieve a quorum.

Advice from Local Government Victoria on 18 March 2020 confirmed that Councillors must be physically in attendance at Council meetings for the meeting to be legally recognised. This advice prohibited the option for Councillors to “dial in” via teleconference at an Ordinary Council Meeting.

Unless alternative arrangements are made, it is conceivable that the business of Council and the effectiveness of the CEO will be negatively impacted during a time when, as a tier of

government and a service provider to the local community, such operational capacity will be urgently required.

Discussion

At the Ordinary Council Meeting held on 10 September 2019, Council adopted the revised Procurement Policy which included an increase to the CEO's financial delegation from \$500,000 to \$1 million.

This amount will be insufficient to address several specific capital works tenders due to be awarded and planning matters that arise needing to be approved throughout the State of Emergency.

It is anticipated that as the impact of COVID-19 progresses, the CEO may be required to undertake additional extraordinary functions or extend the application of existing functions currently not considered or explicitly addressed in the existing Instrument of Delegation.

These include to:

- waive, defer, suspend or reduce the rental payments for some Council owned buildings where the tenant may not be able to continue to pay the rent and/or where such payment could place their business at risk
- waive, defer, suspend, reduce or refund fees that have been paid, such as for permits e.g. footpath trading, food premises, parking
- waive, defer, suspend, reduce or refund fees for the hire of venues where events will no longer take place
- waive, defer, suspend, reduce or refund other fees and charges that may impose hardship on a member of our community
- allocate paid Council staff and resources to private, government, not for profit or volunteer organisations to assist the support effort of the COVID-19 pandemic or the recovery effort following its containment
- approve or amend specified planning permits, applications and/or schemes

The proposed Instrument of Delegation should allow for the CEO to write off debts, fees or payments. This should be considered and amended in light of the Council response packages outlined to date and any future Council commitment to extend these packages through additional financial or service support to the community of Hobsons Bay during the emergency.

The proposed Instrument of Delegation to the CEO excludes the powers to undertake any of the following actions:

- awarding contracts exceeding the value detailed in the proposed Instrument of Delegation
- making local Laws
- approving the Council Plan
- adopting the Budget
- appointing delegates to external organisations
- not taking any action that is required by law to be done by a Council Resolution

Strategic Alignment

This report specifically addresses the following goals and objectives of the Council Plan 2017-21:

Goal 4: A Council of excellence

4.2 Be a more efficient and effective organisation by having a strong focus on continuous improvement, innovation, strategic planning and responsible financial management

Policy and Previous Council Reports

Council endorsed the current delegations to the CEO at the Ordinary Council Meeting on 8 October 2019.

Council endorsed the revised Procurement Policy at the Ordinary Council Meeting on 10 September 2019.

Legal/Statutory Obligations/Risk

Section 98 (1) of the *Local Government Act* 1989 allows Council, by Instrument of Delegation, to delegate to a member of the staff certain powers, duties or functions under the *Local Government Act* 1989 or any other Act.

Under section 98 (3) of the *Local Government Act* 1989, the CEO is empowered to delegate a power, duty or function of Council other than the power of delegation to a member of Council staff.

Financial and Resource Implications

The recommendations in this report are made in response to the declared State of Emergency.

In the current circumstances Council has considered the impact of contracts that are outside the CEO's current delegation and require a resolution of Council, and has taken steps to increase the CEO's delegations to approve such contracts.

Environmental/Social/Economic Impacts

The report relates to operational and administrative processes only and no environmental issues or opportunities have been identified.

Consultation and Communication

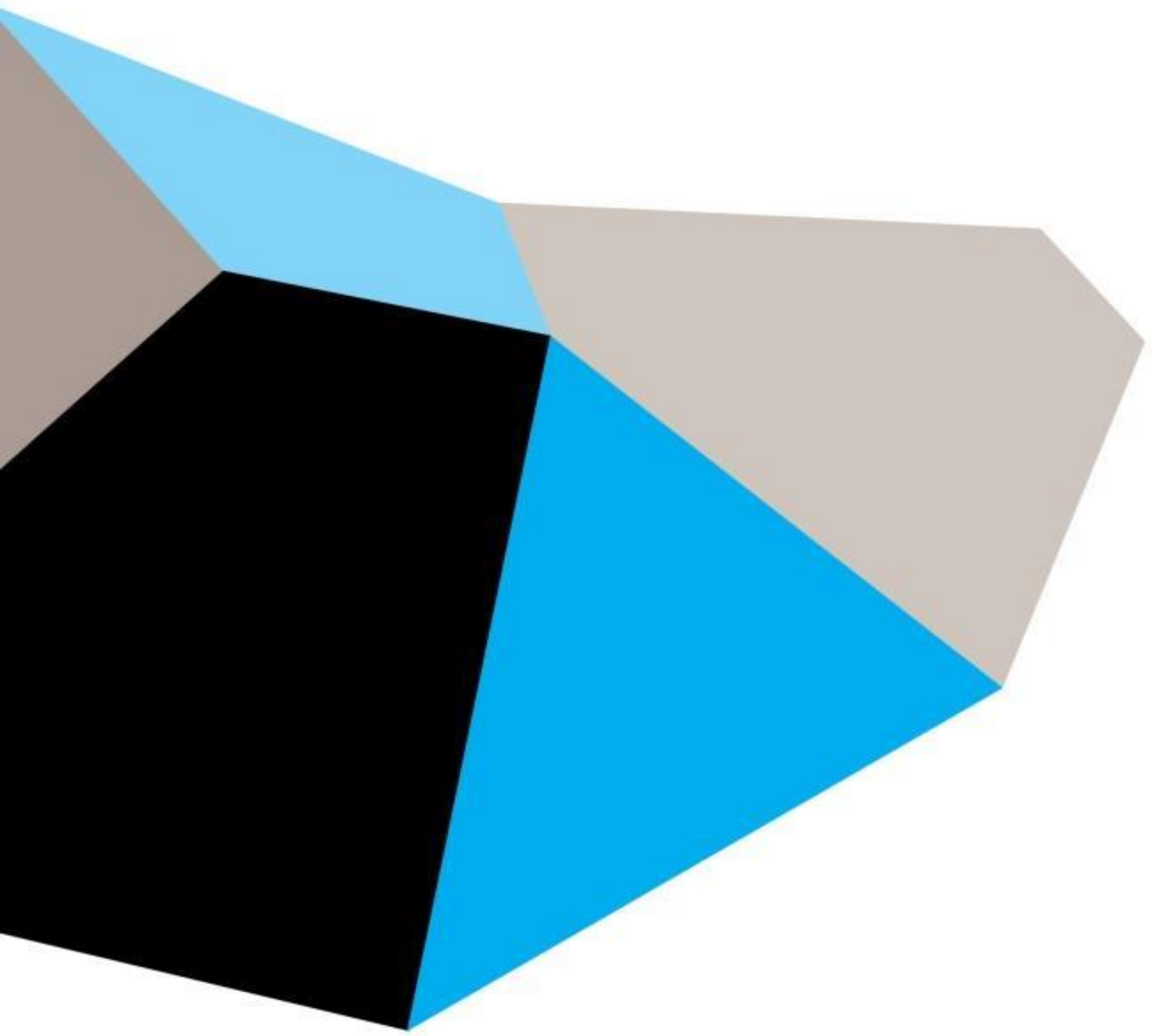
The change in delegations and process are internal and do not require community consultation.

Given the current exceptional circumstances, where the CEO is required to enact the new delegations as detailed in the proposed Instrument of Delegation – particularly those that exceed the existing delegation limits – it is envisaged that it would be done in consultation with, and upon obtaining a formal concurrence or dissent from, Council.

Officer Declaration of Conflict of Interest

Section 80C of the *Local Government Act 1989* requires members of Council staff and persons engaged under contract to provide advice to Council, to disclose any direct or indirect interest in a matter to which the advice relates.

Council officers involved in the preparation of this report have no conflict of interest in this matter.



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