

3.2 Revised Instrument of Delegation from Council to Chief Executive Officer

Abstract

Instruments of Delegation represent the formal delegation of powers by Council under Section 11(1)(b) of the *Local Government Act 2020* and enable the business of Council to be carried out efficiently and in line with Council approved policies.

Council subscribes to the Maddocks Authorisations and Delegations Service, which provides advice regarding legislative amendments and the provision of template instruments which are then tailored to organisational requirements.

In the context of the COVID-19 pandemic, an amended Instrument of Delegation from Council to the Chief Executive Officer (the Delegation) was adopted at the Special Council meeting on 23 March 2020.

The Delegation was prepared based upon legal advice from Maddocks for the possibility councillors may not be able to form a quorum due to the COVID-19 pandemic. The Chief Executive Officer gave specific instructions to ensure the Delegation could only be exercised should it not be possible to form a quorum; bearing in mind that councillors had to be physically present at this time. Further, the Delegation provided for the Chief Executive Officer to consult with those councillors who were available prior to using these powers of delegation. The Delegation was set up in this manner because the Chief Executive Officer acknowledges the importance of elected representatives in decision making.

With the ability to now conduct meetings remotely the Delegation is no longer required and it is appropriate to return to the previous version of the Instrument of Delegation from Council to the Chief Executive Officer.

Based upon advice from Maddocks, the previous version of the Instrument of Delegation from Council to the Chief Executive Officer has been updated to reflect the recent legislative changes as a result of the proclamation of the *Local Government Act 2020*.

Officers' recommendation

That Council resolve in the exercise of the power conferred by s 11(1)(b) of the *Local Government Act 2020* (the Act) that:

1. There be delegated to the person holding the position, or acting in or performing the duties, of Chief Executive Officer the powers, duties and functions set out in the attached Instrument of Delegation to the Chief Executive Officer (as annexed to the minutes), subject to the conditions and limitations specified in that Instrument.
2. The Instrument comes into force immediately the common seal of Council is affixed to the instrument.

3. On the coming into force of the Instrument the previous Instrument of Delegation to the Chief Executive Officer that was executed on 23 March 2020 is revoked.
4. 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.

Responsible director: David Thompson
Governance

1. Purpose

The purpose of this report is for Council to consider adopting the revised Instrument of Delegation to the Chief Executive Officer (the revised Instrument) because the previous Instrument of Delegation adopted by Council at the Special Council Meeting on 23 March 2020 is no longer required.

The revised Instrument (with changes tracked) is at **Attachment 1** and a clean copy is at **Attachment 2**.

2. Policy implications and relevance to community plan and council plan

The revised Instrument relates to Priority Theme 7: Civic Leadership and Governance in the Boroondara Community Plan 2017-2021.

Further, the revised Instrument is consistent with Strategic Objective 7: Ensure that ethical, financial and socially responsible decision making reflects community needs and is based on principles of accountability, transparency, responsiveness and consultation.

3. Background

At the Special Council Meeting on 23 March 2020 Council resolved to adopt an amended Instrument of Delegation to the Chief Executive Officer to ensure business continuity was maintained throughout the evolving COVID-19 pandemic. Amendments were made to the Conditions and Limitations to ensure the organisation could transact business in an efficient manner, in the event that a quorum of Council could not be obtained and a decision was ready to be made.

Since the Instrument of Delegation came into force on 23 March 2020, the *Local Government Act 2020* (the Act) has commenced operation and the Victorian Government has subsequently made amendments to the Act which allow for virtual council meetings to ensure local government decision-making can continue during the COVID-19 pandemic. These legislative amendments commenced on 1 May 2020 and are in place until 1 November 2020. As a consequence of the commencement of these new time bound legislative provisions the current Instrument of Delegation to the Chief Executive Officer no longer required and a revised Instrument is appropriate.

The new Local Government Act 2020 also requires some consequential amendments to the wording of the revised Instrument to take into account the legislative basis on which it is now made and associated provisions. For example Schedule 1 now includes new Conditions and Limitations such as:

- not appointing an Acting Chief Executive Officer for a period exceeding 28 days;
- adoption or amendment of the Governance Rules; and
- appointment of a chair or members of a delegated committee.

It is to be noted references remain to certain provisions in the *Local Government Act* 1989 as these provisions have not been repealed at this time.

To ensure that the Instrument of Delegation to the Chief Executive Officer reflects current legislative requirements it needs to be revoked and remade. The revised Instrument (with changes tracked) is at **Attachment 1**.

4. Outline of key issues/options

Based upon advice from Maddocks the revised Instrument has been drafted to take into account the matters that cannot be delegated by the Chief Executive Officer pursuant to section 11(2) of the Act. These matters are listed as Conditions and Limitations in the Schedule to the revised Instrument, including the condition under section 11(5) that any delegation to enter into a contract must include a financial limit.

In accordance with section 47(1) of the Act, the revised Instrument continues to empower the Chief Executive Officer to delegate a power, duty or function that has been delegated to the Chief Executive Officer by the Council to a member of Council staff.

It is appropriate the Instrument adopted by Council on 23 March 2020 be required and remade due to the amendments to the Act which enables virtual council meetings to be held between 1 May and 1 November 2020.

5. Consultation/communication

Council subscribes to the Maddocks Authorisations and Delegations Service, which provides advice regarding legislative amendments and template instruments.

Consultation has occurred with the Chief Executive Officer during the preparation of the revised Instrument.

6. Financial and resource implications

Overall, the costs to prepare and adopt the revised Instrument are minimal and will be met within the current Governance departmental budget.

7. Governance issues

The delegation of Council powers does not impact upon any of the protected rights or freedoms in the Victorian Human Rights Charter.

The officers responsible for this report have no direct or indirect interests requiring disclosure.

8. Social and environmental issues

Reviewing Council's delegations ensures Council continues to comply with its obligations under various Acts and Regulations, by facilitating and enabling the business of Council to be carried out efficiently and in line with Council approved policies.

Manager: David Thompson, Governance

Report officer: Celia Robinson, Coordinator Governance



Boroondara City Council

Instrument of Delegation

to

the Chief Executive Officer

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Instrument of Delegation

In exercise of the power conferred by section ~~98~~11(1) of the *Local Government Act 1989-2020* (**the Act**) and all other powers enabling it, the Boroondara 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 Schedules to this Instrument of Delegation,

AND declares that

- 1. this Instrument of Delegation is authorised by a Resolution of Council passed on ~~23 March~~1 June 2020;
- 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 Schedules;
 - 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 section 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 the Boroondara City Council was hereunto affixed in the presence of:

..... Mayor

..... Chief Executive Officer

..... Date

SCHEDULE 1

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

~~A. Only if there is a State of Emergency declared under the Public Health and Wellbeing Act 2008 or any other Act, or a State of Disaster impacting on the City of Boroondara declared under the Emergency Management Act 1986, or the delegate forms the opinion that any meeting at which Council would otherwise determine the issue, take the action, or do the act or thing, will lapse for want of a quorum and the delegate makes reasonable attempts to consult with every councillor, may the delegate:~~

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

- ~~1. if the issue, action, act or thing is an issue, action, act or thing which involves~~
 - ~~1.1 awarding a contract or approving a purchase or payment exceeding the value of \$500,000, unless the contract, purchase or payment has been previously approved by resolution of Council or a special committee;~~
 - ~~1.2 awarding a contract or approving a purchase or payment exceeding the value of \$500,000 unless the contract, purchase or payment relates to statutory charges such as superannuation, taxation, MFB levy and insurance charges generally consistent with the approved, revised or amended budget;~~
 - ~~1.3 appointing an Acting Chief Executive Officer for a period exceeding 28 days;~~
 - ~~1.4 election of a Mayor or Deputy Mayor;~~
 - ~~1.5 granting of a reasonable request for leave under section 35 of the Act;~~
 - ~~1.6 making any decision in relation to the employment, dismissal or removal of the Chief Executive Officer;~~
 - ~~1.7 approval or amendment of the Council Plan;~~
 - ~~1.8 adoption or amendment of any policy that Council is required to adopt under the Act;~~
 - ~~1.9 adoption or amendment of the Governance Rules;~~
 - ~~1.10 appointment of the chair or the members of the delegated committee;~~
 - ~~2. ———~~
 - ~~1.11 Making, amending or revoking a local law under Part 5 of the Act;~~
 - ~~2. ——— approve the Council Plan under s.125 of the Act;~~

~~3 — adopt the Strategic Resource Plan under s.126 of the Act;~~

~~1.12 approval of prepare or adopt the Budget or a Revised Budget under Part 6 of the Act;~~

~~1.13 borrowing money;~~

~~12 1.14 subject to section 181(H)(1)(b) of the *Local Government Act 1989*, declaring general rates, municipal charges, service rates and charges and specified rates and charges; or~~

~~2 — adopt the Auditor's report, Annual Financial Statements, Standard Statements and Performance Statement under Part 6 of the Act;~~

~~3 — note Declarations of Impartiality by Valuers pursuant to section 13DH(2) of the Valuation of Land Act 1960;~~

~~4 — determine pursuant to s.37 of the Act that an extraordinary vacancy on Council not be filled;~~

~~5 — exempt a member of a special committee who is not a Councillor from submitting a return under s.81 of the Act;~~

~~6 — appoint councillor or community delegates or representatives to external organisations;~~

~~7 — return the general valuation and any supplementary valuations; or~~

~~8 — determine an issue, take action, or do an act or thing which would otherwise be prohibited or limited by reason of something set out in the table below or in Schedule 2.~~

~~B. — The delegate must not determine the issue, take the action or do the act or thing:~~

~~2 if the issue, action, act or thing is an issue, action, act or thing which Council has previously designated as an issue, action, act or thing which must be the subject of a Resolution of Councils required by law to be done by Council resolution;~~

~~23 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;~~

~~34 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~~

~~4.1 policy; or~~

~~4.2 strategy~~

~~adopted by Council; or~~

~~5. 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 section 9811(12)(a)-(nf) (inclusive) of the Act or otherwise; or~~

~~6. 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.~~

TABLE OF CONDITIONS AND LIMITATIONS

Type of Expenditure or Item	Condition, Expenditure Limit for Individual or Prohibition
Acquisition or disposal of the fee-simple in any land	Prohibited - except where: <ul style="list-style-type: none"> the disposal results from a decision by the Chief Executive Officer not to challenge a claim for adverse possession. the disposal is in accordance with Schedule 2.
Acquisition or disposal of any other interest in land	\$500,000 excluding GST
Approval of the purchase or hire (other than taxi hire) of vehicles	\$500,000 excluding GST
Building and Capital Works - including repairs and alterations	\$500,000 excluding GST
Purchase or disposal of equipment and other fixed assets	\$500,000 excluding GST
Urgent repairs to buildings and equipment (including replacement of equipment)	\$500,000 excluding GST
Appointment or engagement of legal practitioners or external consultants	\$500,000 excluding GST
Leases or licences of land, buildings, vehicles or equipment	\$500,000 excluding GST
Provision, reduction or withdrawal of credit facilities provided by Council	\$5,000 excluding GST
Write off bad debt	\$20,000
Settlement of any claims and litigation (including WorkCare and WorkCover claims)	\$100,000 excluding GST
Enter into contracts for the acquisition of goods and services	\$500,000 excluding GST in respect of any one contract, unless the contract, purchase or payment has been previously approved by resolution of Council or a special committee, or relates to statutory charges such as superannuation, taxation, MFB levy and insurance charges generally consistent with the approved, revised or amended budget.

Type of Expenditure or Item	Condition, Expenditure Limit for Individual or Prohibition
<ul style="list-style-type: none"> • Extend the term of any contract which is lawfully capable of having its term extended • Authorise a variation to any contract 	<p>If the contract:</p> <ul style="list-style-type: none"> • has been entered into by the delegate in exercise of a power conferred by this Instrument of Delegation, the aggregate value of the contract (taking into account the value of expenditure for the further term and the value of the variation) must not then exceed \$500,000 excluding GST • has been entered into by Council, and the value of the contract is less than \$100,000, the aggregate value of the contract (taking into account the value of expenditure for the further term and the value of the variation) may not increase by more than twenty percent (20%). • has been entered into by Council, and the value of the contract is between \$100,000 and \$500,000, the aggregate value of the contract (taking into account the value of expenditure for the further term and the value of the variation) may not increase by more than \$50,000. • has been entered into by Council, and the value of the contract is greater than \$500,000, the aggregate value of the contract (taking into account the value of expenditure for the further term and the value of the variation) may not increase by more than or 10% or \$100,000 whichever is greater.

SCHEDULE 2**ROADS AND RESERVES: CONDITIONS AND LIMITATIONS**

1. The power conferred by section 207 of, and clause 3 of Schedule 10 to, the Act to propose that a road or part of a road:
 - 1.1 be discontinued; and
 - 1.2 sold, transferred to the Crown or Council or retained by Council upon the discontinuance taking effect.
2. The function conferred by sections 207, 207A(a) and 223(1)(a) of the Act of giving public notice of such proposal:
3. The power conferred by section 207 of, and clause 3 of Schedule 10 to, the Act to:
 - 3.1 discontinue; and
 - 3.2 sell, transfer to the Crown or Council or retain on behalf of Councila road or part of a road which has been the subject of a proposal under paragraph 1 of this Schedule.
4. The power conferred by section 24A(1) of the Subdivision Act 1988 to lodge at the Titles Office for registration a certified plan to do any of the things mentioned in that sub-section in relation to the whole or part of any drainage or sewerage reserve ("reserve").
5. The power conferred by section 189 of the Act to propose that a reserve be sold.
6. The function conferred by sections 189 and 223 (1) (a) of the Act of giving public notice of such proposal.
7. The power conferred by section 189 of the Act to sell a reserve which has been the subject of a proposal under paragraph 5 of this Schedule.

CONDITIONS AND LIMITATIONS

The powers described in paragraphs 3 and 7 of this Schedule must not be exercised if, after giving public notice of a proposal of the type described in paragraph 1 or 5 of this Schedule (as the case may be), Council receives a submission which:

- (a) is adverse to the proposal; or
- (b) contains comments which are adverse to the proposal.



Boroondara City Council

Instrument of Delegation

to

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- 2 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;
- 3 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;
- 4 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
 - 4.1 policy; or
 - 4.2 strategyadopted by Council; or
5. 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 section 11(2)(a)-(n) (inclusive) of the Act or otherwise; or
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SCHEDULE 2

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2. The function conferred by sections 207, 207A(a) and 223(1)(a) of the Act of giving public notice of such proposal:
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a road or part of a road which has been the subject of a proposal under paragraph 1 of this Schedule.
4. The power conferred by section 24A(1) of the Subdivision Act 1988 to lodge at the Titles Office for registration a certified plan to do any of the things mentioned in that sub-section in relation to the whole or part of any drainage or sewerage reserve ("reserve").
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6. The function conferred by sections 189 and 223 (1) (a) of the Act of giving public notice of such proposal.
7. The power conferred by section 189 of the Act to sell a reserve which has been the subject of a proposal under paragraph 5 of this Schedule.

CONDITIONS AND LIMITATIONS

The powers described in paragraphs 3 and 7 of this Schedule must not be exercised if, after giving public notice of a proposal of the type described in paragraph 1 or 5 of this Schedule (as the case may be), Council receives a submission which:

- (a) is adverse to the proposal; or
- (b) contains comments which are adverse to the proposal.