

3.2 Revised Instrument of Delegation from Council to the 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* (Act) and enable the business of Council to be carried out efficiently and in line with Council approved policies.

A Council meeting is proposed to be held on 16 November 2020 at which time all new (and re-elected) councillors will take the oath or affirmation of office. This means from 6am on 24 October 2020 until the proposed Council meeting on 16 November 2020 (post-election period) there will be no Council to make decisions.

Officers are of the view if circumstances were to arise during the post-election period, the Chief Executive Officer may not have sufficient delegated authority to deal with the matter.

A Post-Election Instrument of Delegation to the Chief Executive Officer has been drafted so the Chief Executive Officer can, if necessary, exercise additional powers and functions during the post-election period.

The proposed Post-Election Instrument of Delegation to the Chief Executive Officer is subject to:

- circumstances where in the opinion of the Chief Executive Officer the matter cannot reasonably wait until after the first meeting of Council following the general election; and
- if the power is used by the Chief Executive Officer a report will be provided as soon as practicable to a Council meeting.

Officers' recommendation

That Council resolve in the exercise of the power conferred by s 11(1)(b) of the *Local Government Act 2020* 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 Post-Election 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 common seal be affixed to the Instrument.
3. The Instrument comes into force immediately the common seal of Council is affixed to the Instrument.

**Responsible director: David Thompson
Governance and Legal**

1. Purpose

The purpose of this report is for Council to consider adopting the Post-Election Instrument of Delegation to the Chief Executive Officer.

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

The proposed Post-Election Instrument of Delegation to the Chief Executive Officer relates to Priority Theme 7: Civic Leadership and Governance in the Boroondara Community Plan 2017-2021.

Further, the amended 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.

With reference to the Election Period Policy adopted by Council on 24 August 2020, this report is being presented to Council to ensure the day to day business of Council can continue.

3. Background

Instrument of Delegations represent the formal delegation of powers by Council. Section 11 of the *Local Government Act 2020* provides that a Council may, by Instrument of Delegation, delegate to the Chief Executive Officer any power, duty or function of a Council under the *Local Government Act 2020* or any other Act, other than certain specified powers.

Delegations enable the business of Council to be carried out effectively, in line with Council approved policies.

The current version of the Instrument of Delegation from Council to the Chief Executive Officer was executed on 1 June 2020.

Council's General Election for the 2020-24 term is being held on Saturday 24 October 2020. The Victorian Electoral Commission (VEC) is conducting the election on behalf of all councils in Victoria.

The VEC has advised the election results will be declared by Friday 13 November 2020 at the latest. However, the Electoral Commissioner has been provided the authority to extend the postal voting timeline for the current Victorian local council elections if necessary to ensure that voter participation and election results are not affected by any possible mail delivery delays.

At the time of writing this report, based on current information, it is anticipated the new Councillors will be sworn in by taking the oath or affirmation of office at a meeting of Council on Monday 16 November 2020. This means from 6am on 24 October 2020 until the first meeting of Council (post-election period) there will be no Council to make decisions.

Officers are of the view if circumstances arise where in the opinion of the Chief Executive Officer the matter cannot reasonably wait until after the first meeting of Council following the general election the Chief Executive Officer may not have sufficient delegated authority to deal with the matter.

A Post-Election Instrument of Delegation to the Chief Executive Officer has been drafted (see **Attachment 1**) so the Chief Executive Officer can, if necessary, exercise additional powers and functions during the post-election period.

4. Outline of key issues/options

The proposed Post-Election Instrument of Delegation to the Chief Executive Officer is subject to:

- circumstances where in the opinion of the Chief Executive Officer the matter cannot reasonably wait until after the first meeting of Council following the general election; and
- if the power is used by the Chief Executive Officer a report will be provided as soon as practicable to a Council meeting.

Current Instrument

By Instrument of Delegation dated 1 June 2020 (Current Instrument), Council delegated to the Chief Executive Officer various powers, functions and duties. A copy of the Current Instrument is as at **Attachment 2**. The exercise and fulfilment of those powers, functions and duties is subject to various conditions. Most relevant for present purposes include the following:

1. Expenditure does not exceed \$500,000 (see 1.1 of the Current Instrument)
2. Prohibition on the acquisition or disposal of land (see the table of Conditions and Limitations of the Current Instrument)
3. Purchase or hire of vehicles limited to a value of \$500,000 (see the table of Conditions and Limitations in the Current Instrument)
4. Urgent repairs to buildings and equipment limited to the value of \$500,000 (see the table of Conditions and Limitations of the Current Instrument); and
5. Appointment or engagement of legal practitioners or external consultants limited to the value of \$500,000 (see the table of Conditions and Limitations in the Current Instrument)

Proposed Post-Election Instrument

To provide the Chief Executive Officer with further delegated authority during the post-election period, it is suggested Council adopt the Post-Election Instrument of Delegation as at **Attachment 1**.

By resolving to adopt the Instrument of Delegation in the form attached (Additional Instrument), the Additional Instrument will override the Current Instrument during the post-election period. The Chief Executive Officer will therefore not be subject to the same conditions and limitations as the Chief Executive Officer is under the Current Instrument.

This will enable the Chief Executive Officer to determine matters that cannot in his opinion, be safely left for a decision of Council following the first meeting of Council after the election.

It is to be noted:

1. the Additional Instrument is expressed to:
 - 1.1 operate only for the period commencing at 6pm on election day for a general election (i.e. at the end of the election period) and ending on the day on which the first meeting of Council is held after a general election;
 - 1.2 be subject to the same conditions and limitations as the Current Instrument, except that, where there is any inconsistency, the conditions and limitations on the Additional Instrument will prevail;
 - 1.3 operate only where the Chief Executive Officer forms the opinion the matter cannot reasonably be decided after the first meeting of Council following the general election; and
 - 1.4 permits the Chief Executive Officer to make decisions even when the matters the subject of those decisions have been reserved for resolution of Council or are inconsistent with policy - this is intended to address urgent situations but should only exercised in the most extraordinary circumstances; and
 - 1.5 imposes an obligation on the Chief Executive Officer to report to Council on matters where he exercises his delegation.

5. Consultation/communication

The Post-Election Instrument of Delegation to the Chief Executive Officer has been prepared based on advice provided by Council's lawyers Maddocks.

6. Financial and resource implications

Overall the costs to prepare and adopt the amended 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.

Manager: David Thompson, Governance

Report officer: Celia Robinson, Coordinator Governance



Boroondara City Council

Post-Election

Instrument of Delegations

to

the Chief Executive Officer

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Post-Election Delegations

In exercise of the power conferred by section 11(1) of the *Local Government Act 2020 (the Act)* and all other powers enabling it, 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 Delegations,

AND declares that

- 1. this Instrument of Delegation is authorised by a Resolution of Council passed on 12 October 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 Schedule;
 - 2.3 must be exercised in accordance with any guidelines or policies which Council from time to time adopts;
 - 2.4 remains in force until Council resolves to vary or revoke it; and
 - 2.5 is in addition to, and does not derogate from, the powers, duties and functions delegated to the Chief Executive Officer in the Instrument of Delegation from Council to the Chief Executive Officer dated 1 June 2020;
- 3. where there is any inconsistency between this Instrument of Delegation and the Instrument of Delegation from Council to the Chief Executive Officer dated 1 June 2020, this Instrument of Delegation will prevail to the extent of the inconsistency during the period commencing at 6pm on election day for a general election and ending on the date that the first meeting of Council held following the general election; and
- 4. the member of Council staff occupying, or acting in, the position of Chief Executive Officer must not delegate to any other member of Council staff any of the powers, functions or duties set out in the Schedule.

The Common Seal of the Boroondara City Council was hereunto affixed in the presence of:

..... Mayor

..... Chief Executive Officer

..... Date

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

1. The delegate must only exercise the powers, functions and duties specified in this Schedule:
 - 1.1 during the period commencing at 6pm on election day for a general election and ending on the date that the first meeting of Council is held following the general election; and
 - 1.2 in circumstances where, in the opinion of the delegate, the determination of the issue, taking of the action or doing the act or thing cannot reasonably wait until after the first meeting of Council following the general election.
2. Where the delegate exercises any power, fulfils any function or discharges any duty under this Instrument of Delegations, he or she must provide a report on all such activities as soon as practicable to a Council meeting.
3. This delegation is subject to the same conditions and limitations as those specified in the Instrument of Delegation dated 1 June 2020, except that the delegate may:
 - 3.1 award a contract or approve a purchase or payment provided that it does not exceed \$10 million (excluding GST);
 - 3.2 determine the issue, take the action or do the act or thing even if:
 - 3.2.1 it is an issue, action or thing which Council has previously designated as an issue, action or thing which must be the subject of a Resolution of Council; and
 - 3.2.2 determining the issue, taking the action or doing the act or thing would or would be likely to involve a decision which is inconsistent with a policy or strategy adopted by Council; and
 - 3.3 determine any other issue, take any other action or do any other act or thing referred to in the following table if the condition or expenditure limit in that table is not breached:

Type of Expenditure or Item	Condition or Expenditure Limit
Acquisition or disposal of the fee simple in any land	To be undertaken in accordance with the relevant legislative processes
Acquisition or disposal of any other interest in land	\$10 million excluding GST
Urgent repairs to buildings and equipment (including replacement of equipment)	\$10 million excluding GST
Appointment or engagement of legal practitioners or external consultants	\$10 million excluding GST
Leases or licences of land, buildings, vehicles or equipment	\$10 million excluding GST



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 11(1) of the *Local Government Act 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 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.

The Common Seal of the Boroondara City Council was hereunto affixed in the presence of:

.....
 Mayor

.....
 Chief Executive Officer

.....
 1 JUNE 2020 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

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;
 - 1.11 making, amending or revoking a local law;
 - 1.12 approval of the Budget or a Revised Budget;
 - 1.13 borrowing money;
 - 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. 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
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.