

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

19 May 2015

Agenda Item 5.2 Exercise of Delegations Policy

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GREATER SHEPPARTON CITY COUNCIL

Policy Number 37.POL2

Exercise of Delegations

Version 1.5

Adopted 7 August 2007

Last Reviewed 18 December 2012

Business Unit:	Office of the Chief Executive Officer
Responsible Officer:	Manager Corporate Performance
Approved By:	Chief Executive Officer
Next Review:	December 2016

PURPOSE

Delegations are a critical Governance tool of the Council. Most Council decisions are not made at Council meetings and the effective functioning of the Council would not be possible if they were. Instead, most decision-making power is allocated by formal delegations.

The Council is committed to ensuring that decisions made under delegation are legal, appropriate, open and transparent. The primary responsibility of delegates is to ensure that all decisions made under delegation are within their power to make and taken in full compliance with the Council's legal obligations. Once this responsibility has been met, delegates must consider the guidance provided in this Policy when making decisions under delegation.

OBJECTIVE

There are two forms of delegations which occur in Victorian local government:

- delegations to members of staff, and
- delegations to special committees.

Although a special committee is not a separate legal entity (being only a "committee" of persons), as a body it can act as a "delegate" of the Council. This applies to special committees comprising Councillors as well as to special committees which include officers and/or other persons;

The nature of a delegation is important to understand. The decision of a delegate of Council is "deemed" to be a decision by Council. It binds the Council in the same manner and to the same extent as a decision made at a Council meeting. Delegations are different in nature from authorisations. The decision by a person appointed by Council to a statutory position - for example, an authorised officer - is not a decision of the Council, but a decision of the authorised individual. That person's powers and responsibilities are quite distinct from Council's and derive from the statutory position to which they are appointed.

The delegation of powers is essential to enable day-to-day decisions to be made. Because it is a common feature of legislation, not all details about delegations are set out in the empowering Act - some general features of delegation are set out in the *Interpretation of Legislation Act 1984*. In particular:

- the decision, once made, is for all legal purposes a decision of the Council itself (section 42A of the *Interpretation of Legislation Act*);
- the "delegate" is in much the same position as the Council itself in terms of making the decision - for example, where the decision requires that opinion be formed, the delegate's opinion can be the basis for the decision (section 42 of the *Interpretation of Legislation Act*); and
- the fact that a delegation has been made does not affect the Council's powers in relation to the issue concerned (section 42A of the *Interpretation of Legislation Act*). This is subject, of course, to the rule that the delegate's decision (once made) is taken to be the decision of the Council itself. The Council can therefore find itself bound by a decision which it would not itself have made, and if this occurs the existence of this "residual" power may provide little solace.

It is therefore important that the Council have in place appropriate policies and guidelines under which delegation should be exercised. Delegates, whether individuals or Committees, need to be familiar with the delegation issued to them and ensure that decisions taken are within their power to make.

SCOPE

The scope of this Policy is to ensure that decisions made under delegation achieve the best possible outcome for the community. This will be achieved by delegates seeking appropriate input from the Councillors, the wider Council administration and the community. The Council affirms its responsibility to set and own, through consultation with the community:

- the vision for Greater Shepparton,
- its strategic direction,
- the policies necessary to pursue this vision and direction, and
- the funding of them.

Council also accepts its responsibility to be accountable to the community for the outcomes of its policies. Council acknowledges the responsibility of delegates to:

- implement the vision, strategies, direction and policies determined by Council;
- comply with all relevant legislation, strategies, plans, policies, CEO directives and guidelines;
- provide to the Council all information relevant to issues affecting it;
- advise honestly, loyally and professionally upon those issues;
- provide effective administration and staffing for these purposes, within the framework of Council's budget; and be accountable to Council for the outcomes achieved.

DEFINITIONS

Reference term	Definition
Special Committee	Means a committee appointed under section 86 of the Local Government Act 1989 that can act as a delegate of the Council

POLICY

The Council adopts the following processes in relation to the exercise of delegated authority:

1. Informing the Public

When a delegate informs members of the public of a decision made under delegation, this fact is to be clearly conveyed. Members of the public must always have decisions made under delegation relating to them confirmed in writing. Written confirmation must clearly state that the decision was made under delegation and contain:

- the Council contact in relation to the decision, and
- the avenue/s of appeal available, where applicable.

2. Referral to Council

A delegate shall refer to the Council with an appropriate recommendation any proposal, whether for a project or program, for work, for a contract, or for a planning decision, without prior decision by the delegate wherever and whenever:

- the proposal requires the letting of a contract exceeding the amount approved in the Instrument of Delegation – Council to the Chief Executive Officer;
- the proposal raises an issue of significant public interest, concern or controversy, or is likely to do so;
- the proposal raises an issue of policy or process not covered by existing policy or practice;
- the proposal has six or more public objections or appears likely to do so;
- the delegate recommends approval of the proposal, but such approval would be, or could reasonably appear to be, inconsistent with a previous decision or decisions by or on behalf of the Council;
- implementation of the proposal would require expenditure of Council funds, and such funds have not been specifically provided for in the budget;
- the delegate is not satisfied that the proposal has been the subject of appropriate consultation with those likely to be interested in or affected by it;
- the delegate is not satisfied that the proposal is one that is appropriate for the decision of the administration rather than the Council; or
- the delegate believes that it is more appropriate that the proposal or any issue arising in connection with it should be determined by the Council rather than the administration.

3. Limitation on Financial Delegations

Where the approval of a proposal would involve the expenditure of Council funds for which provision has been made in Council's budget, the authority of the delegate is nevertheless limited to the following amounts (exclusive of Goods and Services Tax):

Chief Executive Officer	<ul style="list-style-type: none"> Approval of contracts up to the value of \$400,000 Individual payments against Council approved contracts: \$2,000,000
Director	<ul style="list-style-type: none"> Approval of contracts: up to the values specified by Order in Council under s.186 of the Local Government Act 1989 as requiring public notice (currently \$150,000 Good and Services, \$200,000 works) Payments against Council approved contracts - \$750,000
Manager Transport and Road Reserve Manager Parks, Sport and Recreation Manager Projects Department Manager Strategic Assets	<ul style="list-style-type: none"> Approval of contracts and payments: \$100,000
Managers Operations Supervisor	<ul style="list-style-type: none"> Approval of contracts and payments: \$50,000
Senior Supervisors	<ul style="list-style-type: none"> Approval of contracts and payments: \$25,000
General Supervisors	<ul style="list-style-type: none"> Approval of contracts and payments: \$5,000
Executive Support Officers	<ul style="list-style-type: none"> Approval of contracts and payments: \$2,500
Support Officers	<ul style="list-style-type: none"> Approval of contracts and payments: \$500

The definitive financial delegations to Council officers are included in the Chief Executive Officer's sub-delegation to Council staff. The positions described above are also defined in that document. Where any conflict occurs between the amounts or positions specified in the sub-delegation and those contained in this Policy, the sub-delegation has precedence.

4. Ratification of Officer Decisions

Several Acts which confer powers of delegation provide that particular decisions by delegates are of no effect unless ratified by the Council:

Decision which requires ratification	Relevant Legislation
Refusal by an officer to grant, renew or transfer registration of food premises under the <i>Food Act 1984</i>	Section 58A(2) <i>Food Act 1984</i>
Refusal by an officer to issue a permit for a septic tank system	Section 53M <i>Environment Protection Act 1970</i>
Refusal by an officer to grant, renew or transfer registration of premises under Part 19 of the <i>Health Act 1958</i>	Section 374A of the <i>Health Act 1958</i>

A Council agenda report must be raised and submitted for all decisions which require ratification by the Council. The report must detail the decision made and the reasons for it and recommend to the Council that they ratify the decision made under delegation.

5. Declaration of Conflicts of Interest

The *Local Government Act 1989* prohibits a delegate from exercising any delegated power, or discharging any function or duty where they have a conflict of interest. Further, a delegate who has a conflict of interest in relation to a delegated power, function or duty must inform the Chief Executive Officer of that conflict in writing as soon as they become aware of it. Delegates must ensure that they are fully aware of what constitutes a conflict of interest as defined in the *Local Government Act 1989* and their obligations in relation to such conflicts.

6. Compliance with this Policy

When exercising delegated authority the delegate shall use his or her best judgement to ensure compliance with each and all of the requirements of this Policy.

7. Documentation and Transparency

It is important that decisions and actions taken under delegations be properly documented and transparent in nature. If delegations were not in place, the exercise of functions, powers and duties of the Council would be recorded in the Minutes of Council meetings.

It is possible that decisions taken under delegation will be reviewed in other spheres (eg: internal or management review, Council review, Ombudsman, Victorian Civil and Administrative Tribunal, Magistrates (or higher) Court. Therefore a proper record of delegated action must be kept to ensure that the decision or action can be substantiated at a later date.

The detail and method of recording will depend on the nature of the power, duty or function. However, the need for proper documentation should be uppermost in the minds

of all delegates. Guidelines on record keeping and reporting back in relation to the exercise of staff delegations are at Annex A.

Regular reports will be provided to the Council in relation to the exercising of the delegations.

RELATED POLICIES AND DIRECTIVES

Conflict of Interest Policy 37.POL6

Procurement Policy 13.POL1

RELATED LEGISLATION

This Policy should be read in conjunction with the Greater Shepparton City Council's most recent issued delegations, along with all legislation, strategies, plans, policies, directives and guidelines which relate to the delegate's position or committee.

REVIEW

The Manager Corporate Performance is to review the Exercise of Delegations Policy every four years in conjunction with the Executive Team.

Gavin Cator
Chief Executive Officer

Date

ATTACHMENTS

Appendix A: Guidelines - Delegations to Members of Council Staff

Record Keeping

Delegates are to keep appropriate records of all actions taken under delegation. The level of detail in record keeping will be in keeping with the nature of the delegation and any associated risks to the Council. For example, the routine issue of a permit would be recorded in a permits register, detailing relevant issues. In the event of more complex matters, delegates need to record the sort of information that would otherwise be available to the Council if the delegation did not exist.

Reporting Back

This guideline has been developed to support the concept of delegation as a means of ensuring that the functions of Council are conducted in an efficient and timely manner. Reporting back of delegations exercised is essential to ensure that adequate information regarding those actions is available to other staff, managers and the Council.

Such reporting back will be by:

- the presentation of reports to Council within the time specified in the table; or
- the preparation of a memorandum or written report to the Chief Executive Officer, or relevant Director or Manager within the prescribed time; or
- the production of a register that will be circulated or available for inspection at any time.

The following table specifies the minimum reporting back requirements that will apply. This means that, for example, a requirement to report back to Council also denotes the requirement to provide that information to the Chief Executive Officer and to appropriate Director(s) and Manager(s).

The Table is to be read in conjunction with the Schedule relating to contract payments, at Attachment 1.

TABLE

FUNCTION, DUTY OR POWER	MEANS OF REPORTING BACK	TIMING
Report Back to Council		
Delegations by CEO to members of staff	Register	Available
Details of any gifts devised to the Council and conditions attached [s 188 <i>Local Government Act 1989</i> ("LGA")]	Report	Next Meeting
Decision to prohibit use of a road by vehicles of a certain size or weight [cl 12(2), Schedule 11, LGA]	Report	Next Meeting
Details relating to amendments to the planning scheme	Report	Within 30 days
Details of applications for planning permits	Register	Available
Details of approval or refusal of planning permits under the <i>Planning and Environment Act 1987</i> ("P&E Act")	Register	Available
Action where Council is respondent to appeals to VCAT	Register	Available
Claims received for compensation (s98, P&E Act)	Register	Available
Applications for use or development as a brothel (s73-76 <i>Prostitution Control Act 1994</i>)	Register	Available
Applications received, granted and refused under <i>Subdivision Act 1988</i>	Register	Available
Action to authorise or vary contract payments in accordance with the schedule at Attachment 1	Report	Next Meeting

FUNCTION, DUTY OR POWER	MEANS OF REPORTING BACK	TIMING
Report to Chief Executive Officer		
Action to authorise or vary contract payments in accordance with the schedule at Appendix 1	Report	Next day
Details of payments or interest waived under s142 of LGA	Memorandum	Within 7 days
Report to Appropriate Director(s)		
Details of prosecutions instituted and outcome of prosecutions concluded	Memorandum	Monthly report
Details of action taken to suspend any permit or registration	Memorandum	Within 3 days
Details of all action taken toward compulsory acquisition of land under the <i>Land Acquisition and Compensation Act 1986</i>	Memorandum	Within 3 days
Details of rates waived under s171 or s171A of LGA	Memorandum	Within 7 days
Details of leases entered where s223 procedures not required	Memorandum	Within 7 days
Details of Agreements entered into under s173 of the P&E Act	Memorandum	Within 7 days
Details of authorisation of progression of staff member(s) to a higher level within their band	Memorandum	Within 7 days
Action to authorise or vary contract payments in accordance with the schedule at Appendix 1	Memorandum	Next day
Approval of claim under Workcover excess	Memorandum	Next day

Report to Appropriate Manager(s)		
Details of applications and decisions to grant, renew or refuse permits, registrations, etc	Register	Available
Details of removal of abandoned unregistered vehicles under cl 3, Schedule 11, LGA	Register	Available
Details of vehicles towed where deemed to have caused unlawful obstruction	Register	Available
Details of roads closed for a particular period (cl 7 Schedule 11, LGA)	Register	Available
Details of roads blocked etc by placement of a temporary barrier or obstruction (cl 10(1)(a) and (b), Schedule 11, LGA)	Register	Available
Details of exercise of power to prohibit or restrict traffic on a road if unsafe	Register	Available

Attachment 1: SCHEDULE

Each level of delegation is required to report back to their superior when they are approving a contact over a certain figure. The table below outlines these figures (exclusive of GST) and the method required to report back to the responsible delegate.

Advertising and Approval of Contracts – Report Back Requirements					
Level of Delegation for advertising and approving Contracts		Trigger figure for Report Back, required Report Back method & Authority			
		Manager	Director	CEO	Council
Support Officer \$0 - \$500	Report Back figure	All Payments			
	Report Back means	Email			
Executive Support Officer \$0 - \$2,500	Report Back figure	>\$1,000			
	Report Back means	Memo			
General Supervisor and EO United Tourism \$0 - \$5,000	Report Back figure	>\$2,000			
	Report Back means	Memo			
Senior Supervisor \$0 - \$25,000	Report Back figure	>\$10,000			
	Report Back means	Memo			
Operations Supervisor \$0 - \$50,000	Report Back figure		>\$20,000		
	Report Back means		Memo		
Manager \$0 - \$50,000	Report Back figure		>\$20,000		
	Report Back means		Memo		
Manager Transport and Road Reserve Manager Parks, Sport and Recreation Manager Projects Department Manager Strategic Assets \$0 - \$100,000	Report Back figure		>\$60,000		
	Report Back means		Memo		
Director \$0 - \$150,000 Goods & Services \$0 - \$200,000 Works	Report Back figure			>\$100,000	
	Report Back means			Memo	
CEO \$0 - \$400,000	Report Back figure				>\$300,000
	Report Back means				Council Report

The table below outlines the figure amount and which level of Authority is to authorise contract variations.

Contract Variation					
Value of Contract	Variation	Level of Authority			
		Manager	Director	CEO	Councillors
\$0 - \$50,000	Single Variation	\$0 - \$5,000	\$5,000 - \$10,000	\$10,000+	N/A
	Total of all Variations	\$0 - \$5,000	\$5,000 - \$10,000	\$10,000+	N/A
\$50,001 - \$250,000	Single Variation	\$Nil	\$0 - \$10,000	\$10,000 - \$15,000	\$15,000+
	Total of all Variations	\$Nil	\$0 - \$20,000	\$20,000 - \$30,000	\$30,000+
\$250,001+	Single Variation	\$Nil	0% - 5%	5% - 10%	10%+
	Total of all Variations	\$Nil	0% - 10%	10% - 20% (up to \$400,000)	20%+ (and over \$400,000)

Notes: Should any variation result in the total value of the contract exceeding the upper financial limit of the delegate, then the authorisation must be referred to the subsequent level of authority for approval. Under Report Back Requirements, all authorised variations must be reported to the subsequent level of authority in memo form.