

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

20 February 2018

Agenda Item 9.3 Exercise of Delegations Policy

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version 2.1.....465**

GREATER SHEPPARTON CITY COUNCIL

Policy Number 37.POL2

Exercise of Delegations

Version 2.1

Adopted 20 June 2017

Last Reviewed (insert date)

Business Unit:	Corporate Services
Responsible Officer:	Manager Corporate Governance
Approved By:	Chief Executive Officer
Next Review:	December 2020

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, corporate procedures 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 \$500,000 Individual payments against Council approved contracts: \$2,000,000
Director	<ul style="list-style-type: none"> Director Corporate Services approval of contracts up to the value of \$500,000 Director Corporate Services Individual payments against Council approved contracts: \$2,000,000 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 Works and Waste 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: \$1,000

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.

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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 Section 77 of the Public Health and Wellbeing Act	Section 77 of the Public Health and Wellbeing Act 2008

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.

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, corporate procedures and guidelines which relate to the delegate's position or committee.

REVIEW

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

Peter Harriott
Chief Executive Officer

Date

GREATER SHEPPARTON CITY COUNCIL

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Adopted:

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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.