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| **AGENDA****Special Council Meeting****Wednesday, 26 August 2020****In accordance with s. 395 of the COVID-19 Omnibus (Emergency Measures) Bill 2020, this meeting will not be available for public attendance, however will be streamed live via accessing the Council Internet site** |
| **I hereby give notice that a Special Meeting of Council will be held on:** |
| **Date:** | **Wednesday, 26 August 2020** |
| **Time:** | **6.00pm** |
| **Location:** | **Online** |
| **Derek Madden****Chief Executive Officer** |

**Order Of Business**

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1 Opening of Meeting and Prayer

Almighty God be with us as we work for the people of the Shire of Moorabool. Grant us wisdom that we may care for the Shire as true stewards of your creation. May we be aware of the great responsibilities placed upon us. Help us to be just in all our dealings and may our work prosper for the good of all. Amen.

2 Acknowledgement of Country

We respectfully acknowledge the traditional owners of this land, their spirits and ancestors.

3 Present

4 Apologies

5 Disclosure of Conflicts of Interest

Under the Local Government Act (1989), the classification of the type of interest giving rise to a conflict is; a direct interest; or an indirect interest (section 77A and 77B). The type of indirect interest specified under Section 78, 78A, 78B, 78C or 78D of the Local Government Act 1989 set out the requirements of a Councillor or member of a Special Committee to disclose any conflicts of interest that the Councillor or member of a Special Committee may have in a matter being or likely to be considered at a meeting of the Council or Committee.

Definitions of the class of the interest are:

* A direct interest (section 77A, 77B)
* An indirect interest (see below)
* indirect interest by close association (section 78)
* indirect financial interest (section 78A)
* indirect interest because of conflicting duty (section 78B)
* indirect interest because of receipt of gift(s) (section 78C)
* indirect interest through civil proceedings (section 78D)
* indirect interest because of impact on residential amenity (section 78E)

**Time for Disclosure of Conflicts of Interest**

In addition to the Council protocol relating to disclosure at the beginning of the meeting, section 79 of the Local Government Act 1989 (the Act) requires a Councillor to disclose the details, classification and the nature of the conflict of interest immediately at the beginning of the meeting and/or before consideration or discussion of the Item.

Section 79(6) of the Act states:

While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must:

1. Leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
2. Remain outside the room and any gallery or other area in view of hearing of the room.

The Councillor is to be notified by the Mayor or Chairperson of the special committee that he or she may return to the room after consideration of the matter and all votes on the matter.

There are important reasons for requiring this disclosure immediately before the relevant matter is considered.

* Firstly, members of the public might only be in attendance for part of a meeting and should be able to see that all matters are considered in an appropriately transparent manner.
* Secondly, if conflicts of interest are not disclosed immediately before an item there is a risk that a Councillor who arrives late to a meeting may fail to disclose their conflict of interest and be in breach of the Act.

6 Presentations/Deputations

The Council has made provision in the business of the Special Meetings of the Council for the making of presentations or deputations to Council in relation to matters presented on the agenda for Council consideration.

Presentations or deputations are required to be conducted in accordance with the requirements contained within the **Presentation/Deputations Protocols and Procedural Guidelines**.

Persons wishing to make a presentation or deputation to Council on a matter included in the agenda shall inform Council prior to the meeting by contacting the Chief Executive Officer’s office and registering their name and agenda item being spoken to.

At the meeting the Mayor will invite the persons wishing to make a presentation or delegation to address the Council on the agenda item.

The person making the presentation or deputation is to stand and address Council on the item.

No debate on the item is permitted between the person making the presentation or delegation and the Council.

A maximum of three minutes per presentation or delegation will be allocated. An extension of time may be granted at the discretion of the Mayor.

Councillors, through the Mayor, may ask the person making the presentation or delegation for clarification of matters presented.

The Mayor may direct that a member of the gallery ceases speaking if the above procedure is not followed.

7 Customer Care and Advocacy Reports

7.1 Governance Rules

**Author: Yvonne Hansen, Manager Governance, Risk & Corporate Planning**

**Authoriser: Caroline Buisson, General Manager Customer Care & Advocacy**

**Attachments: 1. Governance Rules (under separate cover)**

**2. Comparison between Meetings Procedure Local Law No.9 and the Governance Rules (under separate cover)**

**3. Summary of Community Feedback Received (under separate cover)**

Purpose

Council is required to have its Governance Rules in place to give effect to the Overarching Governance Principles contained in the recently proclaimed *Local Government Act 2020*. This report is presented to Council to consider the adoption of the Governance Rules.

Executive Summary

 The Governance rules as presented have been developed to effectively replace Council’s Meetings Procedure Local Law No.9 as Council’s primary document for regulating and guiding the conduct of Council and committee meetings.

 The Governance Rules also provide for electing the Mayor, the governance requirements of Committees, the declaration of conflicts of interest, use of the Council Seal and Councils Election Period Policy.

 It is recommended that Council adopts the Governance Rules as attached to this report, in order to comply with the requirements of section 60 of the *Local Government Act 2020,* by 1 September 2020.

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| RecommendationT**hat Council:****1. Adopts the Governance Rules in accordance with section 60 of the *Local Government Act 2020* (provided as Attachment 1).****2. Makes a copy of the Governance Rules available to the public on its website.** |

Background

In March 2020, the new Local Government Act 2020 (the Act) received Royal Assent, with the implementation to be achieved in four stages of proclamation.

The first Stage saw the enactment of overarching governance principles and supporting principles that Victorian Council’s must adhere to with regard to its performance.  These governance principles largely focus on areas of accountability, engaging with the community, public transparency, financial management, strategic planning and service performance.

Subsequently, Stage 2, as proclaimed on 1 May 2020, requires Council to develop, adopt and keep in force Governance Rules that describe the way it will conduct Council meetings and make decisions, by 1 September 2020.

Specifically, section 60 of the Act requires that Council develops and adopts Governance Rules for the following:

 the conduct of Council meetings;

 the conduct of meetings of delegated committees;

 the form and availability of meeting records;

 the election of the Mayor and the Deputy Mayor and appointment of an Acting Mayor;

 an election period policy;

 the procedures for the disclosure of a conflict of interest by a Councillor or a member of a delegated committee;

 the disclosure of a conflict of interest by a member of Council staff.

Councils Governance Rules must ensure that Council considers and makes decisions on any matter fairly and on the merits; and that any person whose rights will be directly affected by a decision of Council, is entitled to communicate their views and have their interests considered.

Proposal

The proposed Governance Rules provided as **Attachment 1**, have been developed in line with the Model Governance Rules provided by Local Government Victoria and will effectively replace Council’s Meetings Procedure Local Law No.9 as Council’s primary document for regulating and guiding the conduct of Council and committee meetings.

The Governance Rules also serve for the management of electing the Mayor, governance requirements of Committees, the declaration of conflicts of interest, use of the Council Seal and Councils conduct during the election period.

A comparison document has been provided as **Attachment 2**, which indicates the differences between Councils existing Meeting Procedure Local Law No.9 and the proposed Governance Rules. The comparison document also provides the rationale for any significant or notable changes made.

For ease of use, the proposed Governance Rules are broken up into the following individual sections:

**Part 1 Introduction**

The introduction provides a brief overview of Councils commitment to Good Governance and the purpose of the Governance Rules.

**Part 2 Definitions**

The definitions used in the Governance Rules are either from the Act itself or based on industry standard convention.

**Part 3 Meetings Procedure**

The Meetings Procedure has been developed so that Councils existing standards relating to the conduct of meetings have been mostly retained and transferred into the new Governance Rules.

**Part 4 Election of Mayor and Deputy Mayor**

This part outlines the process for the election of the Mayor & Deputy Mayor as set by the new Local Government Act 2020.

**Part 5 Council Committees**

This part outlines Councils requirements for the conduct of meetings and the reporting obligations of its Delegated Committees, Community Asset Committees, Audit Committee and Advisory Committees.

**Part 6 Conflicts of Interest**

The Conflict of Interest requirements contained in the new Act have changed somewhat, when compared with the those contained in the Local Government Act 1989. Therefore, the process for Conflicts of Interest specified in the Governance Rules has been based on the model provided by Local Government Victoria. Thus, in compliance with the Local Government Act 2020.

**Part 7 Use of Council Seal**

This part outlines the situations in which a seal is required, and how the seal is to be stored and used.

**Part 8 Election Period Policy**

The proposed Election Period Policy remains very similar to Councils existing Election (Caretaker) Period Policy which was adopted on 6 November 2019, however it has been amended to reflect the requirements of the new Act.

Council Plan

The Council Plan 2017-2021 provides as follows:

**Strategic Objective 1: Providing Good Governance and Leadership**

**Context 1C: Our Business and Systems**

The proposal to adopt the Governance Rules is consistent with the Council Plan 2017 – 2021.

Financial Implications

There are no financial implications associated with the adoption and implementation of the Governance Rules.

Risk & Occupational Health & Safety Issues

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| **Risk Identifier** | **Detail of Risk** | **Risk Rating** | **Control/s** |
| Reputational Risk |  Not meeting community expectations for upholding good governance; Non-compliance with Overarching Governance Principles under the *Local Government Act 2020* . | High |  Adoption of Governance Rules; Ongoing adherence to the Governance Rules. |

Communications & Consultation Strategy

It is a requirement under section 60(5) of the Act that Council undertake a process of community engagement each time it develops or amends its Governance Rules.

Given the impacts of the timeframes between proclamation and receipt of the Model Governance Rules, in order for Council to achieve its community engagement responsibilities, Council ran a public consultation process on it’s Have Your Say webpage which was promoted via Council web and social media sites.

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| **Level of Engagement** | **Stakeholder** | **Activities** | **Location** | **Date** | **Outcome** |
| Consult | Residents Community Groups, Local Business, Council Staff etc | Seek comment on the Draft Governance Rules  | Councils Your Say Website & Social Media | 6 – 19 August 2020 | The feedback received is provided as **Attachment 3** to this report and includes the analysis provided by Council officers |

Victorian Charter of Human Rights & Responsibilities Act 2006

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

Officer’s Declaration of Conflict of Interests

Under section 80C of the *Local Government Act 1989* (as amended), officers providing advice to Council must disclose any interests, including the type of interest.

*General Manager – Caroline Buisson*

In providing this advice to Council as the General Manager, I have no interests to disclose in this report.

*Author – Yvonne Hansen*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

Conclusion

The adoption of the Governance Rules would demonstrate to the greater Moorabool community, Council’s ongoing commitment to good governance in its decision-making processes and operations, whilst also contributing to Councils ongoing compliance with the Overarching Governance Principles as contained in the *Local Government Act 2020*.

7.2 Delegated Committees

**Author: Yvonne Hansen, Manager Governance, Risk & Corporate Planning**

**Authoriser: Caroline Buisson, General Manager Customer Care & Advocacy**

**Attachments: 1. Instrument of Delegation - Development Assessment Committee (under separate cover)**

**2. Instrument of Delegation - Moorabool Growth Committee (under separate cover)**

Purpose

Council must transition the existing Development Assessment Committee and Moorabool Growth Management Committee which were established under the *Local Government Act 1989*, into a new type of committee known as Delegated Committees in order to meet the requirements of the recently proclaimed *Local Government Act 2020*. This report is presented to Council to consider the adoption of new Instruments of Delegation for these committees.

Executive Summary

 The Instruments of Delegation for the Development Assessment Committee and Moorabool Growth Management Committee as presented, retain the same powers, conditions and limitations in the schedules as those contained in the Instruments of Delegation adopted by Council at its Statutory Meeting of 13 November 2019, however all references to the *Local Government Act 1989*, have been updated to meet the requirements of the new Act.

 It is recommended that Council adopts the Instruments of Delegation for its Development Assessment Committee and Moorabool Growth Management Committee as attached to this report, in order to comply with the requirements of section 11(9) of the *Local Government Act 2020,* by 1 September 2020.

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| Recommendation**That Council:****1. In exercise of the powers conferred by s 63 of the *Local Government Act 2020* and s 188 of the *Planning and Environment Act 1987*, resolves that:****(a) from the date of this resolution, establishes the delegated committee of Council known as the Development Assessment Committee;****(b) it adopts the Instrument of Delegation to the Development Assessment Committee (provided as Attachment 1); and****(c) it appoints all Councillors as members to the committee, until the end of the current electoral term.****2. In exercise of the powers conferred by s 63 of the *Local Government Act* *2020*, resolves that:****(a) from the date of this resolution, establishes the delegated committee of Council known as the Moorabool Growth Management Committee;** **(b) it adopts the Instrument of Delegation to the Moorabool Growth Management Committee (provided as Attachment 2); and****(c) it appoints all Councillors as members to the committee, until the end of the current electoral term.** |

Background

The Act defines a Delegated Committee as a:

 delegated committee established by a Council under section 63; or

 joint delegated committee established by 2 or more Councils under section 64; or

 committee, other than a Community Asset Committee, exercising any power of a Council under this Act or any other Act delegated to the committee under any Act.

Section 11(9) of the *Local Government Act 2020* (the Act) states that unless sooner revoked, a delegation made by a Council under the *Local Government Act 1989*, continues in force until 1 September 2020. Therefore, Council must update and adopt the Instruments of Delegation for its Development Assessment Committee and Moorabool Growth Management Committee in accordance with the Act.

Proposal

The Instruments of Delegation for the Development Assessment Committee and Moorabool Growth Management Committee as presented, retain the same powers, conditions and limitations in the schedules as those contained in the Instruments of Delegation adopted by Council at its Statutory Meeting of 13 November 2019, however all references to the Local Government Act 1989, have been updated to meet the requirements of the new Act.

Therefore, Council can be assured that Development Assessment Committee and the Moorabool Growth Management Committee can continue to operate in the same manner as they previously have, without change.

Council Plan

The Council Plan 2017-2021 provides as follows:

**Strategic Objective 1: Providing Good Governance and Leadership**

**Context 1C: Our Business and Systems**

The proposal to adopt new Instruments of Delegation for Councils Development Assessment Committee and Moorabool Growth Management Committee is consistent with the Council Plan 2017 – 2021.

Financial Implications

There are no financial implications associated with the adoption and implementation of new Instruments of Delegation for Councils Development Assessment Committee and Moorabool Growth Management Committee.

Risk & Occupational Health & Safety Issues

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| **Risk Identifier** | **Detail of Risk** | **Risk Rating** | **Control/s** |
| Reputational Risk |  Not upholding good governance in decision making processes; | Medium |  Adoption of Instruments of Delegation; Ongoing adherence to the conditions and limitation contained in the Instruments of Delegation. |

Communications & Consultation Strategy

The dates and times of the Development Assessment Committee and Moorabool Growth Management Committee meetings will continue to be communicated to the public via Councils website.

Victorian Charter of Human Rights & Responsibilities Act 2006

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

Officer’s Declaration of Conflict of Interests

Under section 80C of the *Local Government Act 1989* (in force until 24 October 2020), officers providing advice to Council must disclose any interests, including the type of interest.

*General Manager – Caroline Buisson*

In providing this advice to Council as the General Manager, I have no interests to disclose in this report.

*Author – Yvonne Hansen*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

Conclusion

The adoption of the Instruments of Delegation for the Development Assessment Committee and Moorabool Growth Management Committee will ensure that these committees can continue to operate in the same manner that they have in the past, whilst ensuring that Council is compliant with its obligation under the Act.

7.3 Establishment of the Audit and Risk Committee and Adoption of Charter

**Author: Yvonne Hansen, Manager Governance, Risk & Corporate Planning**

**Authoriser: Caroline Buisson, General Manager Customer Care & Advocacy**

**Attachments: 1. Audit and Risk Committee Charter 2020 (under separate cover)**

Purpose

Council is required to have its Audit and Risk Committee appointed and a new Charter in place in order to meet the requirements contained in the recently proclaimed *Local Government Act 2020*. This report is presented to Council to consider the adoption of the proposed Audit and Risk Committee Charter, appointment of committee members and setting of allowances for the independent committee members.

Executive Summary

 The Audit and Risk Committee Charter as presented, has been developed based on the Local Government Victoria model and is aligned to current local government industry best practice whilst being fully compliant with Councils obligations under sections 54 of the Local Government Act 2020.

 It is also a requirement that Council appoints the members to the newly constituted Audit and Risk Committee, therefore it is recommended that the current Independent Members and Council representatives of Councils existing Audit and Risk Committee, be transitioned and re-appointed to the new committee.

 Due to a new legislative requirement that requires a greater number of Independent Members than Councillors are appointed to the committee, a competitive recruitment process was undertaken to select an additional independent member. The preferred candidate is also recommended for appointment to the committee.

 It is recommended that Council adopts the Audit and Risk Committee Charter and appoints the committee members as proposed, in order to comply with the requirements of section 60 of the *Local Government Act 2020,* by 1 September 2020.

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| Recommendation**That Council:****1. Adopts the Audit and Risk Committee Charter in accordance with section 54 of the *Local Government Act 2020* (provided as attachment 1)****2. Revokes the Audit and Risk Committee Charter adopted on 4 May 2011;****3. Appoints Cr Dudzik and Cr Keogh as its representatives on the Audit and Risk Committee for the remainder of the current Council term.****4. Appoints the following Independent Members:****(a) Mike Said (for the period from 27 August 2020 to 30 September 2021);****(b) Linda MacRae (for the period from 27 August 2020 to 30 September 2022); and****(c) \_\_\_\_\_\_\_\_\_\_\_\_ (for the period 27 August 2020 to 30 September 2023).****5. Determines that the allowance to be paid to the Independent Members for attendance at each meeting of the Audit and Risk Committee, be set as follows:****(a) $1340 for the Chairperson; and****(b) $1,000 for the remaining Independent Members.****6. Notes that the Chairperson of the Audit and Risk Committee is appointed annually by the committee.** |

Background

The purpose of the Audit and Risk Committee is to support Council by providing oversight of its financial and performance reporting, risk management, fraud prevention systems and control, internal control environment, internal and external audit and Council’s performance with regard to compliance with its policies and legislative and regulatory requirements.

The provisions of the Local Government Act 2020 (the Act) relating to the Audit and Risk Committee were proclaimed on 1 May 2020 and require Council to prepare and approve a new Audit and Risk Committee Charter (the Charter) and make appointments to the committee before 1 September 2020.

The charter must specify the functions and responsibilities of the committee, including the following:

 monitor the compliance of Council policies and procedures with the overarching governance principles and the Act and any regulations and Ministerial directions

 monitor Council financial and performance reporting

 monitor and provide advice on risk management and fraud prevention systems and controls

 oversee internal and external audit functions.

Section 54 of the Act also describes the work an Audit and Risk committee must undertake and various administrative instructions.

Proposal

**Audit and Risk Committee Charter**

This report seeks the adoption of the Charter as attached, which has been prepared based on the Local Government Victoria model which has been aligned to current local government industry best practice and is fully compliant with Councils obligations under sections 54 of the Act.

The key elements incorporated into the Audit and Risk Advisory Committee Charter include:

 A requirement that there must be a greater number of Independent Members than Councillor members;

 Requirements that take account of the expanded role of the committee pursuant to Sections 53 and 54 of the Act;

 A stronger emphasis on the key role that the internal control environment plays and how the committee can monitor this area of Council’s performance more effectively. This change includes references to the impact of the new Governing Principles on Councils’ policies and procedures; and

 An Appendix that provides guidance to committee members on their regulatory responsibilities with regard to confidentiality, use of information and managing and reporting conflicts of interest.

**Appointment of Committee Members**

This report also recommends that the current sitting Independent Members and Council representatives of Councils existing Audit and Risk Committee, be transitioned and re-appointed to the new committee. However, due to a new requirement for there to be a greater number of Independent Members than Councillors on the committee, a competitive recruitment process was undertaken in order to enable the appointment of an additional Independent Member to the committee.

Accordingly, applications were sought from suitable candidates and interviews were conducted. The interview selection panel consisted of the Chief Executive Officer, the General Manager Customer Care and Advocacy and the current Audit and Risk Committee Chairperson. The selection panels preferred candidate, is recommended for appointment to the committee.

**Allowances for Independent Members**

It is appropriate for Council to determine the allowances payable to the Independent Members at the time that they are appointed, therefore a recommendation has been made which sets the allowances at the current levels that are currently paid to the Independent Members of Councils existing Audit and Risk Committee.

Council Plan

The Council Plan 2017-2021 provides as follows:

**Strategic Objective 1: Providing Good Governance and Leadership**

**Context 1B: Our People**

The proposal to adopt a new Audit and Risk Committee Charter and appoint committee members is consistent with the Council Plan 2017 – 2021.

Financial Implications

Due to the new requirement necessitating the appointment of an additional independent member of the Audit and Risk Committee, Council will be required to incur an unbudgeted expense of $5,000 per year, for the additional allowance payable.

Risk & Occupational Health & Safety Issues

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| **Risk Identifier** | **Detail of Risk** | **Risk Rating** | **Control/s** |
| Risk to Reputation |  Not meeting community expectations in relation to corporate integrity and responsibility; Non-compliance with the requirements relating to Audit and Risk Committees under the *Local Government Act 2020*. | High |  Adoption of the Audit and Risk Committee Charter and establishment of the committee in accordance with the *Local Government Act 2020.* Ongoing adherence to the requirements of the Charter |

Communications & Consultation Strategy

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| **Level of Engagement** | **Stakeholder** | **Activities** | **Location** | **Date** | **Outcome** |
| Consult | Councillors andCurrent Audit and Risk Committee Members | Circulation of draft Audit and Risk Committee Charter for comment | N/A | August 2020 | Appropriate, changes have been made to the draft Audit and Risk Committee Charter, based on the feedback received |

Victorian Charter of Human Rights & Responsibilities Act 2006

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

Officer’s Declaration of Conflict of Interests

Under section 80C of the *Local Government Act 1989* (as amended), officers providing advice to Council must disclose any interests, including the type of interest.

*General Manager – Caroline Buisson*

In providing this advice to Council as the General Manager, I have no interests to disclose in this report.

*Author – Yvonne Hansen*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

Conclusion

The adoption of the proposed Audit and Risk Committee Charter, appointment of committee members and setting of allowances for the independent committee members will ensure that Councils new Audit and Risk Committee has been established to meet industry best practice standards whilst also being in full compliance with the requirements of the Act.

7.4 Instrument of Delegation - Council to Members of Council Staff

**Author: Yvonne Hansen, Manager Governance, Risk & Corporate Planning**

**Authoriser: Caroline Buisson, General Manager Customer Care & Advocacy**

**Attachments: 1. Instrument of Delegation - Council to Members of Council Staff (under separate cover)**

Purpose

The purpose of this report is to present for Council adoption, a revised Instrument of Delegation to delegate Council powers, duties and functions to members of Council staff, as Council is required to review its delegations to staff, by 1 September 2020.

The Instrument of Delegation has been amended to reflect minor amendments that have become necessary to address recent legislative changes.

Executive Summary

 An Instrument of Delegation is a formal document that allows for certain duties, functions and decision-making powers to be delegated to a Council officer or a Delegated Committee, as a means of reducing the operational and decision-making workload upon the Council.

 Council’s Instruments of Delegation are routinely reviewed and updated to incorporate legislative changes that occur from time to time. A summary of all the proposed amendments is provided in the body of this report.

 The Instrument of Delegation as proposed does not introduce any new delegations that are not already assigned to Council staff.

 It is recommended that Council adopts the Instrument of Delegation to Members of Council Staff, as attached to this report, in order to comply with the requirements of section 11(9) of the *Local Government Act 2020,* by 1 September 2020.

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| Recommendation**That Council having undertaken a review of its delegations to staff, resolves that:****1. There be delegated to the members of Council staff holding, acting in or performing the duties of the offices or positions referred to in the Instrument of Delegation to Members of Council staff (provided as Attachment 1), the powers, duties and functions set out in that Instrument, subject to the conditions and limitations specified in that Instrument.****2. The Instrument of Delegation to Members of Council Staff (provided as Attachment 1) comes into force immediately upon the common seal of Council is affixed to the Instrument.****3. On the coming into force of the Instrument of Delegation to Members of Council Staff, all previous delegations to members of Council staff (other than the Chief Executive Officer) are 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.** |

Background

Councils have wide-ranging responsibilities and have been given many powers, duties and functions under variouspieces of legislation. It is impossible for a Council to exercise all of these powers, duties and functions itself**,** as Council would be required to pass a resolution each time it wished to act. For day to day operations, Councils need others to make decisions and act on their behalf.

The Chief Executive Officer has an instrument of delegation from Council which contains broad ranging powers that include the power to sub-delegate to Council staff. However, some legislation (such as the *Planning and Environment Act 1987*) does not allow for the Chief Executive Officer to sub-delegate these powers or responsibilities Council staff. Therefore, in these instances Council must delegate those powers, functions or duties directly to Council staff.

Section 11(9) of the *Local Government Act 2020* (the Act) states that unless sooner revoked, a delegation made by a Council under the *Local Government Act 1989*, continues in force until 1 September 2020. Therefore, Council must update and adopt the Instrument of Delegation to Members of Council Staff in accordance with the Act.

Proposal

Effectively, the attached Instrument of Delegation has not changed any current delegations already assigned to Council staff. However, the document itself has been amended to reflect:

 Alignment with the Local Government Act 2020;

 Introduction of new legislative requirements or amendments; and

 Acts that have been/repealed or have sunsetted.

To assist with interpreting the changes, following is a summary of key amendments that have been made:

1.1 Local Government Act 2020

a) Removal of references to s98(1) the *Local Government Act 1989* in the opening paragraph (as the requirements of s98 no longer exist in the *Local Government Act* *2020*);

b) Removal of the original clause 3.3.3, as it related to provisions contained in the *Local Government Act 1989*.

1.2 Introduction of new legislative requirements or amendments

a) The *Residential Tenancies Act 1997* contains new provisions which have been included in this Instrument for completeness, however no delegations have been assigned to these provisions.

b) All references to VicRoads contained in the *Road Management Act 2004*, have been amended to read “the Head, Transport for Victoria”.

1.3 Acts that have been/repealed or have sunsetted

All previous delegations relating to the *Rail Safety (Local operations) Act 2006*, have been revoked due the Act being repealed.

Other minor amendments have been made to rectify any typographical or formatting errors.

Council Plan

The Council Plan 2017-2021 provides as follows:

**Strategic Objective 1: Providing Good Governance and Leadership**

**Context 1C: Our Business and Systems**

The proposal to grant by Instrument of Delegation from Council to members of Council Officers is consistent with the 2017-2021 Council Plan.

Financial Implications

There are no direct financial implications associated with the preparation of this report or the amended Instrument of Delegation.

Risk & Occupational Health & Safety Issues

No Risk or Occupational Health and Safety issues apply to Council unless the relevant Council officers do not receive the appropriate delegations from Council.

Communications & Consultation Strategy

Section 11(8) of the Local Government Act 2020 requires Council to keep a register of delegations.

Victorian Charter of Human Rights & Responsibilities Act 2006

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

Officer’s Declaration of Conflict of Interests

Under section 80C of the *Local Government Act 1989* (in force until 24 October 2020), officers providing advice to Council must disclose any interests, including the type of interest.

*General Manger – Caroline Buisson*

In providing this advice to Council as the General Manager, I have no interests to disclose in this report.

*Author – Yvonne Hansen*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

Conclusion

Delegating a Council's powers, duties and functions is essential to fulfilling the responsibilities of local government. When a Council delegates a power, duty or function to a member of staff or to a committee ("the delegate"), the decision of the delegate is deemed to be a decision of the Council.

It is recommended that Council approve and adopt the Instrument of Delegation to Members of Council Staff, to ensure that the organisation is compliant with current legislative requirements and operates as efficiently as possible for the benefit of the Moorabool community.

8 Meeting Closure