



Special Council Meeting

23 March 2020

Trench Room, Town Hall, Sturt Street, Ballarat

AGENDA

Public Copy

NOTICE IS HEREBY GIVEN THAT A SPECIAL MEETING OF BALLARAT CITY COUNCIL WILL BE HELD IN THE TRENCH ROOM, TOWN HALL, STURT STREET, BALLARAT ON MONDAY 23 MARCH AT 1:00PM.

This meeting is being broadcast live on the internet and the recording of this meeting will be published on council's website www.ballarat.vic.gov.au after the meeting.

Members of the public attending this meeting may be filmed. By remaining in the public gallery once the meeting commences, members of the public give their consent to being filmed, and for the recording of them to be made publicly available and used by council.

Information about the broadcasting and publishing recordings of council meetings is available in council's broadcasting and publishing recordings of council meetings procedure is available on the council's website.

AGENDA

ORDER OF BUSINESS:

1. Opening Declaration.....	3
2. Apologies For Absence.....	3
3. Disclosure Of Interest	3
4. Officer Reports.....	4
4.1. S5 Instrument of Delegation - Council to CEO	4
5. Close	11

The next Ordinary Meeting of the Ballarat City Council will be held on Wednesday 1 April 2020.

1. OPENING DECLARATION

Councillors: *"We, the Councillors of the City of Ballarat, declare that we will carry out our duties in the best interests of the community, and through collective leadership will maintain the highest standards of good governance."*

Mayor: *"I respectfully acknowledge the Wadawurrung and Dja Dja Wurrung People, the traditional custodians of the land, and I would like to welcome members of the public in the gallery."*

2. APOLOGIES FOR ABSENCE

3. DISCLOSURE OF INTEREST

4. OFFICER REPORTS

4.1. S5 INSTRUMENT OF DELEGATION - COUNCIL TO CEO

Division: Business Services
Director: Glenn Kallio
Author/Position: Cameron Montgomery – Executive Manager Safety, Risk and Compliance Services

OFFICER RECOMMENDATION

In the exercise of the powers conferred by s 98(1) of the *Local Government Act 1989* (the Act) and the other legislation referred to in the attached instrument of delegation, Ballarat City Council resolves that:

1. There be delegated to the person holding the position, acting in or performing the duties of Chief Executive Officer the powers, duties and functions set out in the attached *Instrument of Delegation to the Chief Executive Officer*, subject to the conditions and limitations specified in that Instrument.
2. The instrument comes into force immediately the common seal of Council is affixed to the instrument.
3. On the coming into force of the instrument all previous delegations to 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.
5. It is noted that the instrument includes a power of delegation to members of Council staff, in accordance with s 98(3) of the Act.

EXECUTIVE SUMMARY

The purpose of this report is to enable Council to revoke the S5. Instrument of Delegation (Instrument) to the Chief Executive Officer (CEO) that was endorsed at the Council meeting held on 20 November 2019 (R308/19); and to endorse the S5. Instrument of Delegation (Instrument) to the Chief Executive Officer (CEO).

A revised Instrument has been prepared with primary consideration given to ensuring the operations of Council during the unprecedented COVID-19 pandemic event are capable of maximising business continuity potential.

RATIONALE

Section 98 of the *Local Government Act 1989* (the Act) enables Councils, by an Instrument of Delegation, to delegate to a member of staff, any duty and/or function and/or power under the Act or any other Act other than:

- The power of delegation;
- The power to declare a rate or charge;
- The power to borrow money;

- The power to approve any expenditure not contained in a budget approved by the Council;
 - Any power, duty or function of the Council under section 223; and
 - Any prescribed power*.
- * A prescribed power is the ability to establish rules, laws, guides or directions or to assert a title or right to something on the grounds of prescription.

Council is a legal entity composed of its Councillors, which acts in one of two ways – by resolution or through another acting on Council’s behalf. Resolutions made at Council meetings must be undertaken by Councillors present in the meeting. That is, they must be physically present at Council meetings and cannot participate by electronic or telephonic means.

The impact of COVID-19 pandemic is still developing and could result in the inability to conduct the business of Council via Ordinary Council meetings due to restrictions imposed externally; or the failure to gain a quorum owing to Councillors not able to participate in person due to an inability to attend, illness or complying with isolation requirements.

Where Council chooses to act through others, this must be formalised through a written means known as an Instrument of Delegation. Wherever practical, that Instrument clearly articulates the nature of the delegation and any condition or limitation under which the delegation is to be exercised.

In the current environment, it is therefore essential to ensure that business continuity potential of council operations can be maintained. The attached Instrument has been updated and is provided to Council for review and consideration.

LEGISLATION, COUNCIL PLAN, STRATEGIES AND POLICY IMPACTS

- *Charter of Human Rights and Responsibilities Act 2006*;
- *Local Government Act 1989*;
- *Local Government (General) Regulation 2015*;
- City of Ballarat Council Plan 2017-2021.

REPORTING AND COMPLIANCE STATEMENTS

Implications	Considered in Report?	Implications Identified?
Human Rights	Yes	No
Social/Cultural	No	No
Environmental/Sustainability	No	No
Economic	No	No
Financial/Resources	No	No
Risk Management	Yes	No
Implementation and Marketing	Yes	No
Evaluation and Review	Yes	No

Human Rights – It is considered that this report does not impact on any human rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

Risk Management - The endorsement of a revised Instrument of Delegation to the Chief Executive Officer ensures that the core operational functions of the Council are not impeded.

In light of the current environment faced by Council during the COVID-19 pandemic event, it is essential that in these unprecedented times, a variation to the Instrument is endorsed to ensure that Council operations are maintained, and business continuity is maximised.

Implementation/Marketing - Section 12 of the Local Government (General) Regulation 2015 requires Council to make the details of delegations under section 87 and 98 of the *Local Government Act 1989* available to the public in a register of delegations.

Evaluation and Review - Council continuously monitors and reviews all Council delegations. This S5 Delegation has been reviewed in conjunction with Council's pandemic plan to ensure Council's operations can continue during the COVID-19 pandemic event.

CONSULTATION

There has been consultation with relevant staff to ensure the correct delegations and authorisations have been appointed. The relevant ones that require Council endorsement shall be progressively brought forward once settled.

The revocation and conferring of delegations do not require any public consultation, however, Council is required to keep registers of all delegations and authorisations made and revoked.

Council subscribes to the Maddocks Delegations service which allows for regular updates to keep abreast of changes in legislation and to ensure the effective allocation and control of decision-making powers.

OFFICERS DECLARATIONS OF INTEREST

Council Officers affirm that no direct or indirect interests need to be declared in relation to the matter of this Report.

REFERENCE DOCUMENTS

- 20 November 2019 Council report and minutes – (R308/19)

ATTACHMENTS

1. S5 Instrument of Delegation to CEO [4.1.1 - 4 pages]



S5. Instrument of Delegation to Chief Executive Officer

City of Ballarat Council

Instrument of Delegation

to

The Chief Executive Officer

Instrument of Delegation

In exercise of the power conferred by section 98(1) of the *Local Government Act* 1989 (**the Act**) and all other powers enabling it, the City of Ballarat 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 Schedule to this Instrument of Delegation,

AND declares that

1. this Instrument of Delegation is authorised by a Resolution of Council passed on **##[#date#]**;
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; and
 - 2.4 remains in force until Council resolves to vary or revoke it.
3. The member of Council staff occupying the position or title of or acting in the position of Chief Executive Officer may delegate to a member of Council staff any of the powers (other than the power of delegation conferred by section 98(3) of the Act or any other powers not capable of sub-delegation) which this Instrument of Delegation delegates to him or her.

Dated:

The Common Seal of Ballarat City Council)
was affixed by authority of the Council in the)
presence of:)

..... Mayor/Councillor

..... Councillor

..... Chief Executive Officer

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

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

4. if the issue, action, act or thing is an issue, action, act or thing which involves
 - 4.1 awarding a contract exceeding the value of \$250,000, unless:
 - (a) the Contracts Special Committee is unable to meet to consider and approve contracts with a value of up to \$1,000,000; and/or
 - (b) Council is unable to meet to consider and approve contracts exceeding \$250,000,

in which case, the financial limit that applies under this condition is \$5,000,000;
 - 4.2 making a local law under Part 5 of the Act;
 - 4.3 approval of the Council Plan under s.125 of the Act;
 - 4.4 adoption of the Strategic Resource Plan under s.126 of the Act;
 - 4.5 preparation or adoption of the Budget or a Revised Budget under Part 6 of the Act;
 - 4.6 adoption of the Auditor's report, Annual Financial Statements, Standard Statements and Performance Statement under Part 6 of the Act;
 - 4.7 determining pursuant to s.37 of the Act that an extraordinary vacancy on Council not be filled;
 - 4.8 exempting a member of a special committee who is not a Councillor from submitting a return under s.81 of the Act;
 - 4.9 appointment of councillor or community delegates or representatives to external organisations; or
 - 4.10 the return of the general valuation and any supplementary valuations;
5. 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;
6. 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;
7. 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
 - 7.1 policy; or
 - 7.2 strategy

adopted by Council; or
8. 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 98(1)(a)-(f) (inclusive) of the Act or otherwise; or

9. 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.

The Chief Executive Officer is empowered to delegate his or her power to other Council Officers.

5. CLOSE