



# City of Whitehorse

## AGENDA

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### Special Council Meeting

To be held in the  
**Council Chamber**  
**Nunawading Civic Centre**

379 Whitehorse Road Nunawading  
on

**Friday 27 March 2020**

at 6:00pm

**Members:** Cr Sharon Ellis (Mayor), Cr Blair Barker, Cr Bill Bennett,  
Cr Raylene Carr, Cr Prue Cutts, Cr Andrew Davenport, Cr Tina Liu,  
Cr Denise Massoud, Cr Andrew Munroe, Cr Ben Stennett

**Mr Simon McMillan**  
Chief Executive Officer

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## **AGENDA**

### **1 WELCOME AND APOLOGIES**

Cr Bennett and Cr Liu have sought a leave absence for the Special Council Meeting held on the 27 March 2020.

#### **RECOMMENDATION**

*That the apology for Cr Bennett and Cr Liu be received and leave of absence be granted for tonight's Special Council Meeting 27 March 2020*

### **2 DISCLOSURE OF CONFLICT OF INTERESTS**

### **3 COUNCIL REPORTS**

#### **3.1 CORPORATE**

##### **3.1.1 Delegation to Chief Executive Officer: COVID19 Pandemic**

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#### **ATTACHMENT**

#### **SUMMARY**

*This report is to consider the need to increase the exercise of delegated decisions to the Council's Chief Executive Officer (via Instrument of Delegation) to ensure continuation of Council operations in response to the current COVID-19 pandemic should a quorum not be achieved for an Ordinary Council meeting, Special Council meeting or Special Committee of Council meeting.*

#### **RECOMMENDATION**

- 1. That Council in the exercise of the powers conferred by s98(1) of the Local Government Act 1989 (the Act) and any other Acts conferring a power of delegation on it, delegates 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 (Attachment 1), subject to the conditions and limitations specified in the Instrument.**
- 2. That the Instrument comes into force immediately the common seal of Council is affixed to the Instrument.**
- 3. That on the coming into force of the Instrument, all previous delegations to the Chief Executive Officer are revoked.**
- 4. That the duties and functions set out in the Instrument must be performed, and the powers set out in the Instrument must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt, unless otherwise provided by the Instrument.**
- 5. It is noted that the Instrument includes a power of delegation to members of Council staff, in accordance with s98 (3) of the Act.**

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#### **BACKGROUND**

Council's Lawyers Maddocks<sup>1</sup> and Local Government Victoria<sup>2</sup> have advised councils that physical attendance at council meetings is essential (i.e. Councillors cannot participate in council meetings by using electronic or telephonic means.)

With the onset and spread of COVID-19, Whitehorse City Council may be faced with the situation that a quorum may not be achieved at an Ordinary Council meeting, Special Council meeting, or Special Committee of Council meeting. This report is to consider the need to increase the exercise of delegated decisions to the Council's Chief Executive Officer (CEO) to ensure continuation of Council operations.

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<sup>1</sup> Maddock eAlert – Council meetings and spread of COVID-19, 17 March 2020

<sup>2</sup> Local Government Victoria Bulletin 9/2020, 18 March 2020

### **3.1.1** (cont)

#### **DISCUSSION**

##### **Delegations to the Chief Executive Officer**

The primary delegations to the CEO provide the CEO with powers assigned to a Council by any Act or Regulation, and identifies limitations to those powers as identified in the Schedule to the Instrument of Delegation. As per section 98(1) of the Local Government Act 1989 Council cannot delegate the following powers, duties or functions:

- 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.

In response to the uncertainty of the impact of the COVID-19 pandemic on Council's future operations, it is recommended that the existing Instrument of Delegation to the CEO be amended so that, in the circumstance that Council is unable to form a quorum, the CEO can act. As such it is proposed that Council delegates to the CEO all of its powers, functions and duties that it is legally able to delegate to him pursuant to the Act.

With respect to the following powers, functions and duties listed in the Instrument of Delegation Council to Chief Executive Officer as authorised by resolution of Council 16 July 2018:

1. Awarding a contract having a value of over \$750,000 (including GST)
2. The purchase or disposal of land with the exception of:
  - a) Land compulsorily acquired; or
  - b) Where the area of land to be acquired or transferred is:
    - i. Less than 10% of the total allotment area; or
    - ii. Is less than 10% of the unencumbered freehold value of the total allotment; or
    - iii. Is for an easement and the value of the proposed
3. Making a local law under part 5 of the Act
4. Adoption of the Council Plan under section 125 of the Act;
5. Adoption of the Strategic Resource Plan under section 126 of the Act;
6. Preparation or adoption of the budget or Revised Budget under Part 6 of the act
7. Adoption of the Auditor's report and annual Financial Statements, Standard Statements and performance statement under Part 6 of the Act;
8. Determining pursuant to section 37 of the Act that an extraordinary vacancy of the Council not be filled;
9. Exempting a member of a special committee who is not a Councillor from submitting a return under section 81 of the Act;
10. Appointment of Councillor or community delegates or representatives to external organisations;
11. The return of the general valuation and any supplementary valuations;
12. 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;

**3.1.1**  
(cont)

13. 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:
  - a) Policy; or
  - b) Strategyadopted by Council
- 14 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
- 15 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;
- 16 Resort and recreation and cash in lieu of car parking contributions where either of the matters will be inconsistent with Council policy;
- 17 Liquor licensing or gaming licensing applications contrary to Council policy;
- 18 Adoption of Council policy other than policy relevant to the day to day administration of Council; and
- 19 Major policy or strategic matters which will have a significant impact on the operation of Council.

**the CEO can exercise or fulfil them only if he:**

1. Forms the view that a quorum of Council cannot be achieved; and
2. Provides seven (7) days or as practicable, notice to all Councillors of his intention to exercise those powers, or fulfil those functions and duties; and
3. Considers and takes into account the views of Councillors expressed in response to the notice provided under paragraph 2 (noting that Councillors cannot direct the Chief Executive Officer with respect to his exercise of delegation, and that the Chief Executive Officer is not bound to exercise his delegation consistently with those views); and
4. Considers and takes into account any views expressed by residents, ratepayers and/or stakeholders responding to reports and issues (noting that the Chief Executive Officer is not bound to exercise his delegation consistently with those views); and
5. Having exercised his delegation, records and publishes on Council's website the exercise of delegation so that decision-making continues to be as accessible, transparent and visible to the community, and consistent with what it would be if these decisions were made by Council at a formal public Council meeting, as possible.

**CONCLUSION**

It is recommended that the Instrument of Delegation to the Chief Executive Officer, as recommended in this report be made by Council.

**ATTACHMENT**

- 1 Instrument of Delegation Council to Chief Executive Officer

#### **4        CLOSE MEETING**