

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

17 October 2017

Agenda Item 7.4	Australian Botanic Gardens Special Committee - Instrument of Delegation and Returns Exemption	
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**GREATER SHEPPARTON CITY COUNCIL
INSTRUMENT OF DELEGATION
AUSTRALIAN BOTANIC GARDENS SHEPPARTON
SPECIAL COMMITTEE**

Greater Shepparton City Council (Council) delegates to the special committee established by resolution of Council passed 17 October 2017 and known as the *Australian Botanic Gardens Special Committee* (the Committee), the powers and functions set out in the Schedule, and declares that:

1. this Instrument of Delegation is authorised by a resolution of Council passed on

2. the delegation:
 - 2.1 comes into force immediately the common seal of Council is affixed to this Instrument of Delegation;
 - 2.2 remains in force until the Council resolves to vary or revoke it; and
 - 2.3 is to be exercised in accordance with the guidelines or policies which Council from time to time adopts; and

3. all members of the Committee with the exception of co-opted members will have voting rights.

THE COMMON SEAL of the **GREATER**)
SHEPPARTON CITY COUNCIL was)
affixed on the day of)
2017 in the presence of the Chief)
Executive Officer being a delegated officer)
pursuant to Local Law No. 2 of the
Council.

.....
CHIEF EXECUTIVE OFFICER
Peter Harriott

SCHEDULE TO INSTRUMENT OF DELEGATION

POWERS AND FUNCTIONS

To exercise Council's functions and powers to perform Council's duties in relation to the management of the *Australian Botanic Gardens* ("Site") and for those purposes:

- a) to enter into contracts, and to incur expenditure;
- b) providing effective administration and cost effective financial management of the Site;
- c)
- d) maximising the sustainable use of the Site;
- e) minimising the Council's public liability risk exposure;
- f) encouraging public interest and maximising involvement and participation of the community in the development and use of the Site
- g) establishing and implementing policies for the successful management of the Site which are consistent with the directions and instructions of the Council;
- h) deposit any surplus funds from time to time in an account, entitled with the joint names of the Council and the Committee of Management.
- i) to do all things necessary or convenient to be done or in connection with the performance of those functions, duties and powers.

EXCEPTIONS, CONDITIONS AND LIMITATIONS

The *Australian Botanic Gardens Shepparton Special Committee* is not authorised by this instrument to:

- a) carry out capital works other than those outlined in any plan of development approved in advance by the Council;
- b) enter into any contracts, or incur expenditure, on behalf of the Council for amounts exceeding \$2,000 until approved by the Council;
- c) exercise the powers which, by force of section 86 of the Act, cannot be delegated.

GUIDELINES

INTRODUCTION

1 APPLICATION OF GUIDELINES AND DATE EFFECTIVE

These guidelines have been adopted by the Greater Shepparton City Council (Council) for the guidance of the Australian Botanic Gardens Shepparton Special Committee

2 DEFINITIONS

In these Guidelines, the following terms have the meanings indicated:

- 2.1 “Act” means the *Local Government Act 1989*;
- 2.2 “Committee” means the committee established by the Council under section 86 of the Act and named in the Instrument of Delegation to that Committee;
- 2.3 “Council” means the Greater Shepparton City Council; and
- 2.4 “Site” means the Australian Botanic Gardens as defined in the Instrument of Delegation.

3. EXERCISE OF POWERS

- 3.1 The powers, duties and functions set out in the Instrument are delegated to the Committee. This means that the Committee can only act under delegation when sitting in a formally constituted meeting.
- 3.2 This means that the meeting must be called and conducted in a manner that complies with the provisions of the *Local Government Act 1989* (the Act).
- 3.3 The committee cannot exercise its delegated powers when gathered outside the formal meeting structure as described above. For example, an informal coming together of members would not resolve to act under delegation.
- 3.4 Similarly, the delegations do not extend to individual members of the Committee.
- 3.5 The only opportunity for individual Committee members to be granted delegated powers exists where the Committee member is a member of Council staff and subject to a delegation under section 98 of the Act.
- 3.6 All delegations must be read in conjunction with this document and any other policies and guidelines that may be adopted by Council from time to time.

4. REPORTING BACK

- 4.1 These guidelines have 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.

- 4.2 Reporting back of delegations exercised may be necessary to ensure that adequate information regarding those actions is available to other staff, managers and the Council.
- 4.3 Such reporting back would be by presentation of reports to Council within the time specified in the Instrument of Delegation and production of minutes of meetings that will be circulated or available for inspection at any time.
- 4.4 It is to be noted that the reporting back requirements on this policy are a minimum standard only and that nothing will preclude more detailed or extensive reporting back of delegated actions if individual circumstances warrant.

COMMITTEE STRUCTURE

5 POLICY, RULES AND PROCEDURES

In furtherance of its power and functions, the Committee must:

- 5.1 make procedures, rules and conditions of use necessary for the proper management of the site;
- 5.2 in making any procedures, rules and conditions of use, the Committee must act consistently with the objectives of the Committee stated in the Instrument of Delegation, these Guidelines and any policies of the Council;
- 5.3 require all users of the site to abide by any conditions of use or rules made by the Committee which are applicable to the site;
- 5.4 require all users of the site to abide by any conditions of use, rules or local law made by the Council which are applicable to the site; and
- 5.5 report any breaches of rules, conditions of use and local laws, which cannot appropriately be dealt with by the Committee, to the Council.

6 CAPITAL WORKS

The Committee must:

- 6.1 not carry out or authorise any capital works, extensions or additions which materially alter the buildings or surrounds of the site without prior approval from the Council; and
- 6.2 make recommendations to the Council on the development of future capital works and the provision of future facilities and amenities for the site.

7 GOVERNANCE AND GOOD MANAGEMENT PRACTICE

The Committee has the authority to seek advice, assistance and expertise as is necessary for the proper and efficient management of the site within the constraints of its budget and delegation, including the ability to invite persons to the meetings of the Committee as observers or advisers.

8 REPORTING

The Committee must:

- 8.1 provide a written report to the Council on the operation of the site on an annual basis (which shall be deemed to be the annual report). This report will be due by 30 December each year.
- 8.2 resolve conflicts where these occur in the requirements of the community using the site;
- 8.3 convene or cause to be convened such meetings, forums, seminars or other activities as may be deemed of value by the Committee to meet or assist in meeting its objectives;
- 8.4 liaise with the Council and its staff to ensure continuing co-operation and co-ordination of the site;
- 8.5 ensure compliance with all Acts, regulations and other legal requirements concerning safety at the site;
- 8.6 not commit, or permit to be committed, any act which will render the operation of any of the Council's insurance policies invalid;
- 8.7 publicise and promote interest in the site;
- 8.8 ensure that the site is kept in a clean condition at all times and is used in a reasonable and lawful manner by organisations and individuals; and
- 8.9 promptly report to the Council any breakage, damage or mechanical hazard which appears likely to give rise to a risk management issue or any abnormal damage to playing surfaces or surrounds or any other equipment.

9 FINANCE

- 9.1 The Committee must ensure the effective financial control of the Committee by ensuring, including the submission of an annual budget to Council for consideration and approval by 30 April each year (for each financial year beginning on 1 July and ending the following 30 June).
- 9.2 The Committee must ensure that all accounting functions of the Committee conform to the requirements of Australian Accounting Standards, the *Local Government Act 1989* and relevant regulations.
- 9.3 The Secretary/Treasurer of the Committee must present an operating statement and statements of financial position at the conclusion of each financial year for presentation to the annual general meeting of the Committee.
- 9.4 The Committee may enter into contracts, leases or rental agreements on behalf of the Council associated with the management of the site with the consent of Council and subject to any requirements of the Act. Specific contracts shall not exceed \$2,000 p.a. without Council consent.

- 9.5 The Committee shall have the power, on behalf of the Council, to raise funds, solicit and receive donations and secure government grants, in accordance with the objectives of the Committee, policies of Council and the budget, subject to the consent of the Council.
- 9.6 The Committee shall have the power, on behalf of the Council, to hold or sponsor functions, stalls and other fundraising means, within the constraints of the budget, to enhance the objectives of the Committee.
- 9.7 The Committee may pay from funds received the cost of minor maintenance, contents insurance, electricity, water charges or gas used, honorariums, petty cash and secretarial expenses as the Committee determines.
- 9.8 All monies received by the Committee must be paid promptly into the bank account referred to in the Schedule to the Instrument of Delegation. Money must only be able to be drawn from that account on the signature of any two of the following office bearers:
- Chairperson;
Secretary;
Treasurer or any other authorised Committee member.
- 9.9 The Committee must forward to the Council an Annual Report including an annual statement of accounts for audit purposes bearing the auditor's certificates. The Chairperson of the Committee shall be responsible for ensuring that the report is lodged with the Council by 30 December each year.

10 COMMITTEE MEMBERSHIP

- 10.1 The Committee shall comprise, at a minimum, 5 members representative of the local community, appointed by resolution of the Council.
- 10.2 Members will be appointed for a period of four years (but may resign or be removed by the Council at any time) with a call for applications to occur every two years. A member of the Committee shall be eligible for re-election or re-nomination at the expiration of his or her period of office.
- 10.3 The Committee may co-opt as many additional members as it sees fit, but:
- 10.3.1 no such co-option will take effect until the Council has passed a resolution appointing the co-opted person as a member of the Committee; and
- 10.3.2 no such co-opted members shall have any voting rights at Committee meetings.
- 10.4 Within three months of the expiry of the term of appointment of a Committee, the Council will call for registrations of interest from the community by way of a notice in the public notice section of the Shepparton News before appointing community representatives to the Committee.

- 10.5 Notwithstanding anything else contained herein, a Committee member who is absent from three consecutive committee meetings without approval by the Committee shall cease to be a member of the Committee.

11 MEETINGS

11.1 Annual General Meeting

The Committee shall hold an Annual General Meeting on a date fixed by the Chairperson. The business of the Annual General Meeting shall be:

- (a) to receive the annual report;
- (b) to receive a report on the programme of activities proposed for the following year;
- (c) to receive and adopt the annual financial statement;
- (d) setting of ordinary meeting dates for the coming year;
- (e) ;
- (f) contents inventory;
- (g) to elect office bearers to the positions of Chairperson, Secretary, Treasurer and other positions determined by the Committee as being necessary for the efficient functioning of the Committee.

11.2 General Meetings

- 11.2.1 The Committee shall hold at least four other meetings during the year on such dates as the Chairperson appoints.
- 11.2.2 The Secretary shall give reasonable notice of all meetings by distributing a notice of the meeting to all members at least seven clear days prior to the meeting.
- 11.2.3 The secretary must notify Council of future meeting dates and submit a copy of the meeting agenda to Council.

11.3 Special Meetings

The Chairperson may call a special meeting on his or her own initiative and must call a special meeting forthwith upon receiving from any three members of the Committee a written request that such a meeting be so called. The notice of the meeting by the Chairperson and the request by the three Committee members shall contain a statement of the purpose of the meeting.

The meeting must be held on such date and at such time as fixed by the Chairperson, provided that, in cases where the Chairperson calls a meeting in response to a request, the meeting shall be held within 21 days of the Chairperson receiving such request.

The Chairperson shall arrange for notice of the meeting to be given to all Committee members. No other business shall be transacted at that meeting except that specified in the notice.

11.4 Notice to the public

The Secretary shall notify Council of the date of the Annual General Meeting so that Council can advertise the date by way of a notice in the public notices section of the local newspaper circulating in the area.

The Secretary must provide reasonable notice to the public of all meetings of the Committee. Meeting dates are to be provided to Council so that they can be advertised on Council's website.

12 MEETING PROCEDURES

- 12.1 The Committee is not required to comply with Council's Local Law No. 2 – Processes of Municipal Government (Meetings and Common Seal).
- 12.2 The quorum at any Committee meeting shall be a majority of members of the Committee.
- 12.3 A motion before a meeting of the Committee is to be determined as follows:
 - 12.3.1 each member of the Committee who is entitled to vote is entitled to one vote;
 - 12.3.2 unless otherwise prohibited by the Act, each member of the Committee present must vote;
 - 12.3.3 unless the procedures of the Committee otherwise provide, voting must be by show of hands;
 - 12.3.4 the motion is determined by a majority of the vote; and
 - 12.3.5 if there is an equality of votes, the Chairperson has a second vote.
- 12.4 The Chairperson shall take the chair at all meetings at which he or she is present. In the Chairperson's absence, the members present may appoint one of their members to chair the meeting by way of a vote with a mover and seconder.
- 12.5 Minutes shall be kept of the proceedings at all meetings. After confirmation of the minutes, they must be signed and certified by the chairperson of the meeting at which they are confirmed. Copies of minutes must be forwarded to Council within fourteen days of a meeting.
- 12.6 In accordance with section 81(2A) of the Act each member of the Committee has been exempted from the requirement to submit primary and ordinary returns to the Chief Executive Officer.

Each member of the Committee must still comply with the Act with respect to any conflicts of interest of members and all agendas for committee meetings must contain an item for consideration of conflicts of interest.

- 12.7 Any meeting or special meeting of the Committee must be open to members of the public, subject to clause 12.8.
- 12.8 The Committee may resolve that a meeting be closed to members of the public if the meeting is discussing any of the following:
- 12.8.1 personnel matters;
 - 12.8.2 the personal hardship of any resident or ratepayer;
 - 12.8.3 industrial matters;
 - 12.8.4 contractual matters;
 - 12.8.5 proposed developments;
 - 12.8.6 legal advice;
 - 12.8.7 matters affecting the security of Council property;
 - 12.8.8 any other matters which the Committee considers would prejudice the Council or any person; or
 - 12.8.9 a resolution to close the meeting to members of the public.
- 12.9 If the Committee resolves to close a meeting to the public, the reason must be recorded in the minutes of the meeting.
- 12.10 Any decision of the Committee which the Committee does not have delegated power to implement, cannot be implemented until approved by the Council.
- 12.11 In the event of any unresolved dispute arising, the matter shall be submitted to the Council in writing and any decision made thereon by the Council shall be final.
- 12.12 The Committee may form sub-committees from among its members for the purpose of recommending on matters, provided that no decision may be acted upon until adopted by the full Committee.

The Chairperson shall be an ex-officio member of all sub-committees.

Sub-committees shall only be established by resolution of the Committee and shall only carry out those functions stated in such resolution.

13 OFFICE BEARERS

As the last item of business at an annual general meeting, the Committee shall elect the following office bearers:

- 13.1 Chairperson;
- 13.2 Secretary;
- 13.3 Treasurer; and

13.4 any other office the Committee may wish to appoint.

Office bearers shall hold office until -

13.5 the next Annual General Meeting,

13.6 they resign their office; or

13.7 they cease to be a member of the Committee -

whichever first occurs.

14 TERMS OF REVIEW

In accordance with section 86(6) of the *Local Government Act 1989* Council will review the *Instrument of Delegation* and *Guidelines – Delegation* documentation appropriate to the Australian Botanic Gardens Shepparton Special Committee within a period of 12 months after a general election.