

AGENDA

Greater Shepparton City Council

ADDITIONAL COUNCIL MEETING

1:00pm, Friday 4 September 2020

VIRTUALLY VIA ZOOM

COUNCILLORS

Cr Seema Abdullah (Mayor)
Cr Dinny Adem (Deputy Mayor)
Cr Bruce Giovanetti
Cr Chris Hazelman OAM
Cr Kim O'Keeffe
Cr Les Oroszvary
Cr Dennis Patterson
Cr Fern Summer
Cr Shelley Sutton

VISION

GREATER SHEPPARTON, GREATER FUTURE

A thriving economy in the foodbowl of Victoria with excellent lifestyles, innovative agriculture a diverse community and abundant opportunities

Values

Values reflect what we feel is important. Organisations may have core values that reflect what is important in the organisation. These values may be guiding principles of behaviour for all members in the organisation.

Respect first, always

We are attentive, listen to others and consider all points of view in our decision making.

Take ownership

We take pride in honouring our promises and exceeding expectations, and are transparent with and accountable for our actions.

Courageously lead

We lead with integrity, and stand up and stand by what is in the best interests of the Greater Shepparton community.

Working together

We work collaboratively to create higher quality outcomes that are more efficient, thoughtful, effective and responsive. We cannot accomplish all that we need to do without working together.

Continually innovate

We are open to new ideas and creatively seek solutions that encourage us to do our best for our community.

Start the celebration

As ambassadors for our people and place, we proudly celebrate the strengths and achievements of Council and the Greater Shepparton community.

**A G E N D A
FOR THE
ADDITIONAL COUNCIL MEETING
HELD ON
FRIDAY 4 SEPTEMBER 2020 AT 1:00PM**

**CHAIR
CR SEEMA ABDULLAH
MAYOR**

INDEX

1 ACKNOWLEDGEMENT5

2 PRIVACY NOTICE.....5

3 GOVERNANCE PRINCIPLES5

4 APOLOGIES6

5 DECLARATIONS OF CONFLICT OF INTEREST.....6

6 CORPORATE SERVICES DIRECTORATE7

 6.1 Instrument of Delegation to the Chief Executive Officer.....7

 6.2 Instrument of Delegation to Members of Council Staff.....10

7 SUSTAINABLE DEVELOPMENT DIRECTORATE13

 7.1 Development Hearings Panel - Planning Committee13

8 CLOSE OF MEETING18

 8.1 Close of Meeting18

Risk Level Matrix Legend

Note: A number of reports in this agenda include a section on “risk management implications”. The following table shows the legend to the codes used in the reports.

| Likelihood | Consequences | | | | |
|--|----------------|-----------|--------------|-----------|-------------|
| | Negligible (1) | Minor (2) | Moderate (3) | Major (4) | Extreme (5) |
| Almost Certain (5) Would be expected to occur in most circumstances (daily/weekly) | LOW | MEDIUM | HIGH | EXTREME | EXTREME |
| Likely (4) Could probably occur in most circumstances (i.e. Monthly) | LOW | MEDIUM | MEDIUM | HIGH | EXTREME |
| Possible (3) Reasonable probability that it could occur (i.e. over 12 months) | LOW | LOW | MEDIUM | HIGH | HIGH |
| Unlikely (2) It is not expected to occur (i.e. 2-5 years) | LOW | LOW | LOW | MEDIUM | HIGH |
| Rare (1) May occur only in exceptional circumstances (i.e. within 10 years) | LOW | LOW | LOW | MEDIUM | HIGH |

Extreme Intolerable – Immediate action is required to mitigate this risk to an acceptable level. Event/Project/Activity is not to proceed without authorisation

High Intolerable – Attention is needed to treat risk.

Medium Variable – May be willing to accept the risk in conjunction with monitoring and controls

Low Tolerable – Managed by routine procedures

PRESENT:

1 Acknowledgement

“We the Greater Shepparton City Council, begin today’s meeting by acknowledging the traditional owners of the land which now comprises Greater Shepparton. We pay respect to their tribal elders, we celebrate their continuing culture, and we acknowledge the memory of their ancestors.”

2 Privacy Notice

This public meeting is being streamed live via our Facebook page and made available for public access on our website along with the official Minutes of this meeting.

3 Governance Principles

Council considers that the decisions contained in this Agenda gives effect to the overarching governance principles stated in Section 9 (2) of the *Local Government Act 2020*. These principles are as follows:

1. Council decisions are to be made and actions taken in accordance with the relevant law;
2. priority is to be given to achieving the best outcomes for the municipal community, including future generations;
3. the municipal community is to be engaged in strategic planning and strategic decision making;
4. innovation and continuous improvement is to be pursued;
5. collaboration with other Councils and Governments and statutory bodies is to be sought;
6. the ongoing financial viability of the Council is to be ensured;
7. regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
8. the transparency of Council decisions, actions and information is to be ensured.

4 Apologies

Nil Received.

5 Declarations of Conflict of Interest

In accordance with sections 77A, 77B, 78 and 79 of the Local Government Act 1989 Councillors are required to disclose a “conflict of interest” in a decision if they would receive, or could reasonably be perceived as receiving a direct or indirect financial or non-financial benefit or detriment (other than as a voter, resident or ratepayer) from the decision.

Disclosure must occur immediately before the matter is considered or discussed.

6 Corporate Services Directorate

6.1 Instrument of Delegation to the Chief Executive Officer

Author Team Leader Governance
 Approved by Director Corporate Services
 Purpose For Decision by Council

Disclosures of Conflict of Interest in Relation to this Report

Under section 80C of the *Local Government Act 1989* officers and persons engaged under a contract providing advice to Council must disclose any conflicts of interests, including the type and nature of interest.

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

RECOMMENDATION

In the exercise of the power conferred by S11(1)(b) of the *Local Government Act 2020* (the Act), Greater Shepparton City Council (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.**

Executive Summary

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 most important delegation issued by the Council is to the Chief Executive Officer (CEO). This delegation allows the CEO to then sub-delegate powers, duties and functions to Council officers, to allow them to make the day to day decisions necessary to provide responsive and high quality services to the community.

Following the introduction of the *Local Government Act 2020* (the Act), Council was required to review and amend its Instruments of Delegation to ensure they remain current.

The attached instrument reflects such changes.

Report Detail

The previous Instrument of Delegation from the Council to the CEO was authorised by resolution at a Council meeting held on 19 May 2020.

Changes to the Act have since taken effect which has prompted the additional review of this instrument.

This review has been undertaken in accordance with the template provided by Maddocks Lawyers, as part of Councils subscription to their Delegations and Authorisation service.

Council Plan/Key Strategic Activity

LEADERSHIP AND GOVERNANCE

Provide strong civic leadership, advocacy and good governance in the operation of Greater Shepparton City Council.

1.3 Council demonstrates strong leadership and sound decision making in the best interests of the community.

1.4 Financial management is responsible and effective in responding to challenges and constraints with a focus on the financial sustainability of the Council.

Risk Management

The review and adoption of the CEO's delegation ensures that it remains current, valid, and legal and that there is no temptation to operate outside a delegation which has become dated and unworkable over time.

Subscribing to the Maddocks service reduces the risk that legislative changes which have implications for the Council's delegations and authorisations are not properly identified and implemented.

Policy Considerations

The Council adopted Exercise of Delegations policy provides guidance to delegates on how they should exercise their delegations. This delegation is in accordance with the Exercise of Delegations policy.

There are no conflicts with Council policies associated with the matters outlined in this report.

Financial Implications

There are no direct financial implications arising from the *Instrument of Delegation to the Chief Executive Officer*.

Legal/Statutory Implications

There are no direct legal or statutory implications arising from the *Instrument of Delegation to the Chief Executive Officer*.

Environmental/Sustainability Impacts

There are no environmental or sustainable impacts associated with this report.

Social Implications

There are no social implications associated with this report.

Economic Impacts

There are no economic impacts associated with this report.

Consultation

Officers believe that appropriate consultation has occurred and the matter is now ready for Council consideration.

Strategic Links

a) Greater Shepparton 2030 Strategy

There are no direct links to Greater Shepparton 2030 Strategy

b) Other strategic links

No other strategic links have been identified.

Conclusion

It is recommended that the amended Instrument of Delegation to the Chief Executive Officer be approved, as regular reviews are undertaken in accordance with best practice guidelines and meet the current legislative requirements.

Attachments

1. S5 Instrument of Delegation to Chief Executive Officer September 20 [6.1.1 - 4 pages]

6.2 Instrument of Delegation to Members of Council Staff

Author Team Leader Governance
 Approved by Director Corporate Services
 Purpose For Decision by Council

Disclosures of Conflict of Interest in Relation to this Report

Under section 80C of the *Local Government Act 1989* officers and persons engaged under a contract providing advice to Council must disclose any conflicts of interests, including the type and nature of interest.

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

RECOMMENDATION

In the exercise of the powers conferred by the legislation referred to in the attached instrument of delegation, Greater Shepparton City Council (Council) 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 attached *Instrument of Delegation to Members of Council Staff*, the powers, duties and functions set out in that instrument, 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 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.**

Executive Summary

As the Council is not a “natural” person, it can act in only two ways, which is by resolution or through others acting on its behalf. For others to act on the Councils behalf, the relevant Council powers must be delegated by the Council.

The Council has delegated the majority of its delegable powers to the Chief Executive Officer (CEO), who is permitted under the act to further sub-delegate these powers to other members of Councils staff. The powers conferred on the Council under some legislative instruments cannot be delegated through the CEO, and must be delegated by resolution of Council directly to Council officers.

The purpose of this report is to delegate certain powers and functions of Council which cannot be sub-delegated by the CEO to Members of Council staff, in accordance with Section 11 of the *Local Government Act 2020* (the Act).

The Instrument of Delegation to Members of Staff and Development Hearings Panel was last adopted by Council on 21 July 2020.

This review has been prompted by recent changes in the Act which have taken effect in September, and will ensure Council continues to operate in accordance with current legislative requirements.

Report Detail

The Council is not in a position to exercise all the powers conferred upon it by resolution and requires others to act on its behalf. This is made possible under section 11 of the Act which provides that a Council may, by Instrument of Delegation, delegate to a member of its staff any power, duty or function of a Council under the *Local Government Act 2020* or any other Act, other than certain specified powers.

The Council has delegated the majority of its delegable powers to the CEO. The CEO, through an instrument of sub-delegation, then has the ability to delegate these powers to Council staff.

However, the powers conferred on the Council under some legislative instruments cannot be delegated through the CEO, and must be delegated by resolution directly to Council officers. The Acts and Regulations referred to in the attached *Instrument of Delegation - Members of Council Staff* are among those which require direct delegation.

This Instrument has been updated to reflect recent changes to the Act, which has also resulted in the removal of delegations to the Development Hearings Panel (DHP). The DHP will establish a separate instrument of delegation and terms of reference document to govern its operations going forward. These changes are necessary to ensure staff continue to have the delegation required to effectively perform their roles, in accordance with the Act.

Council Plan/Key Strategic Activity

LEADERSHIP AND GOVERNANCE

Provide strong civic leadership, advocacy and good governance in the operation of Greater Shepparton City Council.

1.3 Council demonstrates strong leadership and sound decision making in the best interests of the community.

1.4 Financial management is responsible and effective in responding to challenges and constraints with a focus on the financial sustainability of the Council.

Risk Management

The review of Instruments of Delegation ensures that they remain valid, legal and that generally routine decisions are able to be made without the need for a Council meeting.

The Council subscribes to the Delegations and Authorisations Service provided by Maddocks Lawyers. Subscribing to the Maddocks service ensures that legislative changes which have implications for the Council's delegations and authorisations are identified and implemented accordingly.

Policy Considerations

All Instruments of delegation must be exercised in accordance with the Council's Exercise of Delegations policy.

Financial Implications

There are no direct financial implications arising from the *Instrument of Delegation to Members of Council Staff*. Financial delegations have been made by the CEO and are consistent with the Council's Exercise of Delegations Policy.

Legal/Statutory Implications

The *Instrument of Delegation to Members of Council Staff* ensures that decisions made by Council officers are legally compliant and enforceable.

Environmental/Sustainability Impacts

There are no environmental/sustainability impacts on the coming into force of the *Instrument of Delegation to Members of Council Staff*.

Social Implications

There are no social implications with the coming into force of the *Instrument of Delegation to Members of Council Staff*.

Economic Impacts

There are no economic impacts with the coming into force of the *Instrument of Delegation to Members of Council Staff*.

Consultation

The review of the Instrument of Delegation was completed through Councils delegations software. Consultation was conducted with the relevant staff on any proposed changes to the Instrument.

Officers believe that appropriate consultation has occurred and the matter is now ready for Council consideration.

Strategic Links

a) Greater Shepparton 2030 Strategy

There are no direct links to the Greater Shepparton 2030 Strategy

b) Other strategic links

There are no other strategic links

Conclusion

It is important that all of Council's Instruments of Delegation remain up to date with the latest versions of legislation and that the document reflects the current organisation structure. The amended Instrument of Delegation reflects such changes and it is therefore recommended that the updated document comes into force and the previous Instrument is revoked.

Attachments

1. Report Attachment - S 6 Instrument of Delegation to Members of Council Staff - September 2020 [6.2.1 - 88 pages]

7 Sustainable Development Directorate

7.1 Development Hearings Panel - Planning Committee

Author Team Leader - Statutory Planning
 Approved by Director Sustainable Development
 Purpose For Decision by Council

Disclosures of Conflict of Interest in Relation to this Report

Under section 80C of the *Local Government Act 1989* officers and persons engaged under a contract providing advice to Council must disclose any conflicts of interests, including the type and nature of interest.

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

RECOMMENDATION

That the Council:

1. dissolve and discontinue the Development Hearings Panel established by the Council on 15 August 2017.
2. establish a Delegated Committee called the Development Hearings Panel (the Committee) pursuant to section 63 of the *Local Government Act 2020 (LGA 2020)*
3. affix the Common Seal of the Greater Shepparton City Council to the attached Instrument of Delegation and by this Instrument of Delegation, delegate to the members of the Committee the powers, duties and functions relevant to the Committee's governance arrangements in accordance with the Instrument of Delegation, Schedule and attached Terms of Reference, pursuant to section 11(1) of the *Local Government Act 2020*.
4. appoint as voting members of the Committee, effective immediately, the persons from time to time holding the positions of:
 - Two appointed Councillors;
 - Director Sustainable Development;
 - Manager Building, Planning and Compliance;
 - Team Leader Development;
 - Team Leader Strategic Planning;
 - Any two external members, as defined in the attached Terms of Reference for the Development Hearings Panel;
5. until further resolution, appoint:
 - a. Councillor [insert name] as Chair of the Committee;
 - b. Councillor [insert name] as Deputy Chair of the Committee;

6. resolve that the following components of Chapter 2 of Council's Governance Rules do not apply to the Committee.
 - a. Part 2 - Election of Mayor, Deputy Mayor and other Chairs
 - b. Part 3 - Division 2 - Chairing of Meetings
 - c. Part 3 - Division 8 - Notice of Motions
 - d. Part 4 - Public Question Time
7. adopt the attached Terms of Reference for the DHP Committee, in accordance with which the Committee is to act and operate.

Executive Summary

The Development Hearings Panel (DHP) is delegated by the Council as the decision-making body for certain planning permit applications. Primarily, this is the determination of applications where up to 5 objections have been received or if there is a recommendation to refuse an application. The DHP operated as a section 86 committee under the *Local Government Act 1989* (LGA 1989).

For a number of years, the DHP has provided a forum for the meditation of planning disputes that has assisted in reducing the number of appeals being made to the Victorian and Civil Administrative Tribunal.

Positive feedback has been received from both applicants and objectors in relation to the DHP's ability to achieve good outcomes for all parties involved in the process.

On 1 May 2020, section 86 of the LGA 1989 was repealed, removing the provision for Special Committees of the Council. On 1 September 2020, all delegations made under the LGA 1989 ceased to be in force. The delegated powers of the existing DHP therefore ceased effect and the DHP became unable to make any decisions previously delegated to it.

The *Local Government Act 2020* (LGA 2020) provides for councils to establish a Delegated Committee. This means that the DHP must be established as a Delegated Committee and its members delegated powers under the LGA 2020 to comply with the provisions of the LGA 2020.

Although procedural changes are required, the functions of the DHP will not differ from those of the previous DHP.

Report Detail

Under the LGA 1989 Council was able to create 'special' committees under the provisions of Section 86 of that Act, commonly referred to as 'Section 86 Committees'.

The LGA 2020 brings into operation a series of changes which affect Council committees. In particular, the LGA 2020 provides for 'delegated' committees, rather than 'special' committees, which may be established for the same purposes as the former section 86 committees.

A delegated committee exercises the powers, duties or functions of council. Therefore, these committees are subject to the Council's Governance Rules. A resolution of a delegated committee holds the same weight as a resolution of council (provided it falls within the committee's delegated powers).

Delegated committees operate under delegation of the council (albeit for limited purposes), therefore the members are subject to many of the same requirements as councillors, such as conflicts of interest, personal interest returns and standards of conduct.

The Development Hearings Panel Guidelines 2017 have been revised to accord with the LGA 2020 and Council's Governance Rules to form the Committee Terms of Reference.

Under section 63 of LGA 2020, a delegated committee to be comprised of at least two Councillors and must be chaired by an appointed Councillor. A delegated committee can also include any other person appointed by Council who is entitled to vote. The existing DHP has 2 Councillors appointed to the Committee, and the Councillor in attendance is the chair of the DHP. The DHP will continue to have two external Council officers as part of the decision-making quorum. This existing requirement is retained in the new Committee format.

Delegations made under the *Local Government Act 1989* remained in force until **1 September 2020**, therefore any existing committees operating under delegation no longer have the power to exercise these delegations, until new committees are established and new instruments of delegation are made.

The primary purpose of DHP is that it serves as a timely decision-making forum for planning applications and decisions with up to 5 objections or that are recommended for refusal.

Without a DHP in place a backlog of applications is created which leads to a reduction in overall performance figures for the Statutory Planning Team. The backlog of applications also leads to frustration and delays for the development industry. This situation is not acceptable in normal practice but even less so in the current COVID situation.

Officers seek the establishment of a new DHP and the associated recommendations set out in this report in order to comply with the provisions of the LGA 2020 and ensure that the proposed newly-established DHP is validly delegated the necessary and relevant powers to carry out its functions.

It is proposed that the new DHP will serve the same functions as the existing DHP served.

Council Plan/Key Strategic Activity

LEADERSHIP AND GOVERNANCE

Provide strong civic leadership, advocacy and good governance in the operation of Greater Shepparton City Council.

1.3 Council demonstrates strong leadership and sound decision making in the best interests of the community.

1.5 Council is high performing; customer focused and is marked by great people and quality outcomes.

1.9 Service standards and service delivery models are realistic and meet community expectations and demand while being financially viable and in line with Council's core business.

ECONOMIC

Build a thriving, resilient economy where Greater Shepparton is recognised as a competitive place to invest and grow business.

3.1 The Greater Shepparton economy is prosperous, high value and a focus of choice for business, investment and employment.

BUILT

Provide and support appealing relevant infrastructure that makes Greater Shepparton an attractive, liveable regional city.

4.2 Urban and rural development is sustainable and prosperous.

Risk Management

Ensuring the DHP continues to operate will ensure planning permit applications can continue to be assessed in a timely manner.

Policy Considerations

The proposed changes to the DHP must be exercised in accordance with the Council's Exercise of Delegations policy and new Terms of Reference for the DHP.

Financial Implications

Ensuring the DHP continues to operate will ensure any financial impacts on planning permit applicants as a result of delayed decision making are minimised.

Legal/Statutory Implications

The continued operation of the DHP will reduce the likelihood of planning permit applicants lodging a failure to determine appeal against Council at the Victorian Civil and Administrative Tribunal due to delays in the decision making process.

Environmental/Sustainability Impacts

There are no Environmental/Sustainability impacts relating to the proposed changes to the DHP.

Social Implications

There are no Social impacts relating to the proposed changes to the DHP

Economic Impacts

The inability to conduct DHP hearings will result in more protracted decision making for matters currently delegated to the DHP, potentially leading to delays in decision making.

Delays in the planning system can impact financially on developers and have flow on economic impacts within the community.

Consultation

Consultation was not required as this is an administrative change required by changes to the LGA and the matter is now ready for consideration.

Strategic Links

There are no relevant strategic links

Conclusion

The dissolution of the existing DHP is necessary as its delegated powers are no longer in force, pursuant to section 11 of the Act.

Officers seek the establishment of a new DHP pursuant to section 63 of the Act, in essence, to replace the existing and now non-operational DHP. The changes to the *Local Government Act 2020* have necessitated the requirement to reconstitute the DHP based on the new legislative requirements. The changes are administrative only and do not change the intent, purpose or membership of the current DHP.

Attachments

1. Terms of Reference for Development Hearings Panel [7.1.1 - 5 pages]
2. Instrument of Delegation Development Hearings Panel [7.1.2 - 2 pages]



8 Close of Meeting

8.1 Close of Meeting