



4.1 ADDITIONAL DELEGATIONS TO THE CEO

EXECUTIVE MEMBER: KYLIE BENNETTS, DIRECTOR, OFFICE OF THE CEO

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1. PURPOSE

- 1.1 This report provides an update to Councillors and the community on the delegations that have been exercised by the CEO since the Special Council meeting held on 19 March 2020 to manage the State of Emergency related to COVID-19.
- 1.2 This report also contains a copy of the legal advice received, as requested by Council at its Special Council meeting held on 19 March 2020 and provides an update on advocacy efforts to enable Council and Committees of Council to meet digitally.
- 1.3 In light of the legal advice outlined in 1.2, this report seeks to confirm the additional planning delegations to be granted to the Chief Executive Officer (CEO) with the power for the CEO to on delegate to appropriate staff to enable specific activities to be undertaken whilst Victoria is in a declared State of Emergency related to COVID-19 (or a State of Disaster, if activated) and where Council and/or the Planning Committee either cannot meet or if they can meet cannot maintain a quorum.
- 1.4 This report also seeks to confirm the delegation of powers to the CEO to adjust service levels and make urgent decisions to respond to public health, occupational health and safety as well as announcements from the Australian and Victorian Governments for the period of the State of Emergency related to COVID-19 (or a State of Disaster, if activated).

2. EXECUTIVE SUMMARY

- 2.1 On 16 March 2020, the Premier of Victoria declared a State of Emergency under the provisions of the Public Health and Wellbeing Act 2008 in response to the Coronavirus (COVID-19) pandemic.
- 2.2 On 19 March 2020, Council held a Special Meeting to consider a proposal to provide certain additional delegations to the CEO to enable quick decision making given the dynamic nature of the current situation and if Council was not able to meet due to an inability to maintain quorum.
- 2.3 At this meeting, Council resolved to provide these additional delegations effective immediately in response to the State of Emergency related to COVID-19, however noted that legal advice would be brought back to the Council, at a special or ordinary meeting around any provisions in the Local Government Act that could be relied upon to form quorum, including Call of the Council. Council also noted that the CEO would engage with Councillors wherever possible before exercising these delegations and would provide regular reports to Councillors and communities to ensure transparency.
- 2.4 This report provides Council with the associated legal advice, a report on use of the delegations since 19 March 2020, providing an update on advocacy to shift towards



digital meetings and seeking confirmation of delegations going forward for the period of the Victorian Government State of Emergency related to COVID-19 (or a State of Disaster, if activated).

- 2.5 It is intended that the additional delegations will be reviewed by Council at their ordinary meeting on 15 April 2020. This specific time restriction has not been outlined in the officer's recommendation, in the event that Council is not able to meet on this date for some reason, including inability to maintain quorum.

3. RECOMMENDATION

That Council:

- 3.1 Delegates to the CEO, including the power to on delegate, noting that these powers can only be used as a result of COVID-19 State Emergency (or a State of Disaster, if activated) and where, in the opinion of the CEO, Council and/or the Planning Committee cannot meet or if they can meet cannot maintain a quorum, the following additional planning powers in relation to determining all planning permit applications or amendments to planning permits, as detailed in 3.2 and 3.3 where:
- 3.2 In relation to determining all planning permit applications or amendments to planning permits where:
- 3.2.1 The application has not been refused under delegation and 16 or more objections are received.
 - 3.2.2 The application raises strategic or substantive policy issues.
 - 3.2.3 The application involves substantive non-compliance with the Planning Scheme or Council Policy, but officers consider the application should be supported.
 - 3.2.4 The application involves non-compliance with residential parking requirements.
 - 3.2.5 The application involves the total demolition of a building in a heritage overlay.
 - 3.2.6 The application involves non-compliance with Performance Measure 1 (Line of sight) of the Heritage Policy.
 - 3.2.7 The application involves land use for accommodation in the Fishermans Bend Urban Renewal Area.
 - 3.2.8 The application involves all development including development for the purposes of accommodation in the Fishermans Bend Urban Renewal Area.
 - 3.2.9 The application exceeds six storeys in height in the area covered by Sub precinct 2 in Schedule 26 to the Design and Development Overlay in the Port Phillip Planning Scheme, for the St Kilda Road North precinct.
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- 3.2.8 The application involves all development including development for the purposes of accommodation in the Fishermans Bend Urban Renewal Area.
- 3.2.9 The application exceeds six storeys in height in the area covered by Sub precinct 2 in Schedule 26 to the Design and Development Overlay in the Port Phillip Planning Scheme, for the St Kilda Road North precinct.
- 3.2.10 The application is in relation to all land use, design and structural matters, including amendments and secondary consents to the approved Seabaths Development Plan.
- 3.2.11 The application requires comments to be provided to the Minister for Planning where the Minister is the Responsible Authority for a statutory planning application or a matter before an Advisory Committee.
- 3.2.12 The application requires the instruction of Council's Statutory Planners and/or Council's solicitors in relation to any application for review lodged with VCAT, or an application for a planning scheme amendment or an application before an Advisory Committee.
- 3.3 The power to object to an application within an abutting municipality.
- 3.4 Delegates to the CEO the ability to adjust Council service levels as a result of COVID-19 State Emergency (or a State of Disaster, if activated), to enable the organisation to mitigate risks associated with COVID-19 or comply with Australian and or Victorian Government requirements. The CEO will arrange to pre-brief Councillors on the intention to exercise this delegation and seek advice from Councillors on each occasion prior to its use, wherever practicable, and will notify the Council on each occasion that this delegation is exercised as well as ensuring that any instance that this delegation is utilised is also placed on Council's website to ensure transparency of decisions made.
- 3.5 Delegates to the CEO the ability to make urgent decisions as a result of COVID-19 State Emergency (or a State of Disaster, if activated), if Council is, in the opinion of the CEO, incapable of forming a quorum at an Ordinary or a Special meeting to pass a resolution. The CEO will arrange to pre-brief Councillors on the intention to exercise this delegation and seek advice from Councillors on each occasion prior to its use, wherever practicable, and will notify the Council on each occasion that this delegation is exercised as well as ensuring that any instance that this delegation is utilised is also placed on Council's website to ensure transparency of decisions made.
- 3.6 Notes that all planning determinations made under this delegation, will be reported monthly to Councillors and also placed on Council's website to ensure transparency of the decisions made.
- 3.7 Makes these delegations and any further amendments to them by Council resolution or in the event that a quorum cannot be formed or maintained, then the delegations may be amended by agreement of both the Mayor and the CEO.
- 3.8 Notes the register of use of additional delegations from 19 March 2020 to 24 March 2020 and the cost of legal advice related to quorum requirements.
- 3.9 The delegations above be incorporated into a new instrument of delegation, and that Council affix the common seal to such an instrument.



SPECIAL MEETING OF COUNCIL 25 MARCH 2020

4. KEY POINTS/ISSUES

- 4.1 Council is a legal entity composed of Councillors and is not a “natural person”, so Council can only act in one of two ways: either by resolution of Council in a Council meeting, or through others acting on its behalf as delegates.

Use of Delegations

- 4.2 Since 19 March 2020, the CEO has utilised the additional delegations to alter the service levels of a range of Council services in direct response to the State Emergency declared by the Victorian Government in response to COVID-19. These are outlined in the delegations register on Attachment 1.
- 4.3 Wherever possible, the CEO has briefed the Councillors virtually or through email of the intent to exercise these delegations prior to these being enacted.

Legal Advice Regarding Council Quorum

- 4.4 Following on from the Council meeting on 19 March 2020, officers obtained legal advice on quorum requirements and any provision in the Local Government Act that may enable decision making without quorum.
- 4.5 This legal advice, included at Attachment 2, highlights that this is not possible.
- 4.6 In light of this legal advice, it is recommended that Council confirm the delegations that were given at the Special Council meeting on 19 March 2020 and extend these to also cover a State of Disaster if this is called in response to COVID-19.

Advocacy for Electronic Meeting Provisions

- 4.7 Officers have been working with other inner metropolitan Councils to urgently advocate to the State Government seeking provisions to enable Councillors to meet electronically.
- 4.8 To date officers have been advised that this is not possible through the Local Government Act, however officers are continuing to explore other legislative options through the Emergency Management Act. Further updates will be provided as these come to hand.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 N/A

6. LEGAL AND RISK IMPLICATIONS

- 6.1 As requested by Council at its Special Council meeting held on 19 March 2020, legal advice was requested regarding whether Council could meet and make decisions without a quorum and whether the Minister for Local Government could exempt Council from the quorum requirements of the Local Government Act. The advice was clear that Council cannot validly transact business without a quorum and nothing in the Local



Government Act empowers the Minister to exempt a Council from quorum requirements.

7. FINANCIAL IMPACT

7.1 The quoted price for the legal advice was \$1500.

8. ENVIRONMENTAL IMPACT

8.1 There are no environmental impacts for Council.

9. COMMUNITY IMPACT

9.1 The additional planning delegations allow for the timely actioning of powers, duties and functions arising under the Planning and Environment Act 1987 to assist the smooth operation of the planning system and to enable reasonable timeframes for decisions affecting the community. All determinations made under this delegation, will be reported monthly on Council's website and to Councillors to ensure transparency of the decisions made.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 The functions, duties and powers delegated to staff to ensure the efficient and effective functioning of the organisation are consistent with Council's strategic direction and commitment to the community of a financially sustainable, high performing, well governed organisation that puts the community first.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 The proposed planning and urgent decisions delegations will come in immediately in the scenario of a declared State of Emergency by the Victorian government (or a State of Disaster, if activated) and where Council and / or the Planning Committee cannot meet or if they can meet cannot maintain a quorum.

11.2 COMMUNICATION

11.2.1 The additional delegations will be published on Council's website.

12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

TRIM FILE NO: 18/02/19

ATTACHMENTS

1. Legal Advice regarding Council meeting quorums
2. Register of exercise of Delegation by CEO
3. Council delegation to the CEO 25 March 2020