



SPECIAL MEETING OF COUNCIL

AGENDA

19 MARCH 2020



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Welcome

Welcome to this Special Meeting of the Port Phillip City Council.

Council Meetings are an important way to ensure that your democratically elected representatives are working for you in a fair and transparent way. They also allow the public to be involved in the decision making process of Council.

About this meeting

There are a few things to know about tonight's meeting.

Only the items specified in the agenda will be considered unless all Councillors are present and unanimously agree to include another matter on tonight's agenda.

Each item has a report written by a Council officer outlining the purpose of the report, all relevant information and a recommendation. Council will consider the report and either accept the recommendation or make amendments to it. All decisions of Council are adopted if they receive a majority vote from the Councillors present at the meeting.

Public Question Time

There is no opportunity at this meeting for the public to ask general questions unless the Chairperson determines otherwise.

Public Comment

Any person who has made a written submission on an item pursuant to section 223 of the Local Government Act and requested that she or he be heard in support of that written submission will be entitled to address Council and / or ask a question. Any other public comment at this meeting is at the discretion of the Chairperson.

If you would like to ask a question and / or address the Council on any of the items being discussed tonight, please fill in the blue 'Do You Wish to make a Public Comment' form located outside the Chamber and give to the Administrative Officer.

When your item is being discussed the Chairperson will call your name and ask you to address the Council and / or ask your question. If somebody has already raised an issue you agree with, there is no need to repeat it.





**PORT PHILLIP CITY COUNCIL
SPECIAL MEETING OF COUNCIL**

To Councillors

Notice is hereby given that a **Special Meeting** of the **Port Phillip City Council** will be held in **St Kilda Town Hall** on **Thursday, 19 March 2020 at 6.30pm**. At their discretion, Councillors may suspend the meeting for a short break at 8pm and 10pm as required.

AGENDA

- 1 APOLOGIES**
- 2 CONFLICTS OF INTEREST**
- 3 ORGANISATIONAL PERFORMANCE**
 - 3.1 Proposed additional delegations to the CEO.....7*



3. ORGANISATIONAL PERFORMANCE

3.1 *Proposed additional delegations to the CEO*..... 7



3.1 PROPOSED ADDITIONAL DELEGATIONS TO THE CEO

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

PREPARED BY: MURRAY CHICK, COORDINATOR GOVERNANCE

1. PURPOSE

- 1.1 This report proposes 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 and where Council and/or the Planning Committee either cannot meet or if they can meet cannot maintain a quorum.
- 1.2 The report also proposes 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.

2. EXECUTIVE SUMMARY

- 2.1 On 16 March 2020, the Premier of Victoria declared a State of Emergency under the provisions of the Emergency Management Act 2013 in response to the Coronavirus (COVID-19) pandemic.
- 2.2 It is recommended in this report that the proposed additional delegations relating to planning and urgent decisions can only be used by the delegated officers whilst Victoria is in a declared State of Emergency and where Council and/or the Planning Committee either cannot meet or if they can meet cannot maintain a quorum.
- 2.3 The proposed additional delegation in relation to adjusting Council service levels would take effect immediately after the Council resolution and is in place to enable urgent decisions to be made to manage occupational, health and safety and public health risks as well as enabling a quick response to announcements made by the Australian and Victorian Governments, where it may not be practicable to take the item to a Council meeting or call a Special Council meeting.
- 2.4 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 specifically outlined in the officer's recommendation however, in the event that Council is not able to meet on this date for some reason, including inability to maintain quorum.
- 2.5 It is also proposed that Councillors will be advised of any occasions when the CEO discharges these additional delegations. Where practical, the CEO would also communicate the intent to exercise these prior to this occurring.



3. RECOMMENDATION

That Council:

- 3.1 Delegates to the CEO, including the power to on delegate, noting that these powers can only to be used whilst Victoria is in a declared State of Emergency and where Council and/or the Planning Committee either 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, or objecting to an application within an abutting municipality 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.
 - 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 from 19 March 2020 until further notice 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 when a State of Emergency has been declared and Council is incapable of forming a quorum at its Ordinary 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.

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.
- 4.2 Currently Council has delegated powers to various members of staff under the Planning and Environment Act 1987. Council's planning delegations to staff have a number of restrictions which require certain decisions to be made by Council or the Planning Committee and consequently cannot be done by staff under delegation.
- 4.3 The recommendations in this report includes the additional delegations to staff that are currently restricted to decision by Council and / or the Planning Committee.
- 4.4 The proposed additional planning delegations in this report would only apply in the event of a declared State of Emergency by the Victorian government and where Council and / or the Planning Committee cannot meet or if they can meet cannot maintain a quorum.
- 4.5 The additional planning delegations would ensure that critical decisions can be made under delegation. The alternative would be that certain decisions would have to be put on hold until Council and / or the Planning Committee can meet and maintain a quorum.
- 4.6 To ensure transparency of planning decisions made, all determinations made under this delegation will be reported monthly to Councillors and also placed on Council's website.
- 4.7 At the Ordinary Council meeting on 18 March 2020, the Council resolved to alter the service levels of some Council services. This is a decision not taken lightly and was made after a full assessment of the occupational, health and safety, public health risks as well as the community and economic impact of adjusting these service levels.



- 4.8 Council delivers a large number of essential and important but discretionary services. Officers are currently working through assessments of these services in a structured and ordered manner.
- 4.9 As the situation is changing rapidly, it is essential that there is an ability to be agile and respond quickly to adjust service levels. As a result, it is requested that the CEO be given authority to adjust service levels from 19 March 2020 until further notice to ensure that appropriate risk mitigation can be put in place. The intent would be that this arrangement would be reconsidered by Council at the Ordinary meeting of 15 April 2020, if this meeting occurs and if this meeting is quorate. On each occasion that this delegation is exercised the CEO will report that this has occurred. Notwithstanding this delegation, in the event that the CEO is able to bring this decision to Council, the CEO will bring these decisions to Council.
- 4.10 Under the Local Government Act, there is currently no provisions for Council or its associated Committees to meet electronically. Advocacy is currently occurring across the sector to seek urgent change to this requirement given the current circumstances.
- 4.11 Over the coming months there may be times due to illness, absence or self-isolation that the Council is unable to achieve a quorum.
- 4.12 In the event that Council is unable to meet or maintain a quorum, it is recommended that Council amend the delegations conferred upon the CEO on 6 September 2017 to enable the CEO to make urgent decisions when a State of Emergency has been declared and Council is incapable of forming a quorum at its ordinary meeting to pass a resolution. The current delegation from Council to the CEO only refers to emergency situations relating to awarding a contract up to a limit of \$5M. The CEO would only use this delegation where the need to make the decision is essential and the CEO will wherever possible seek to discuss the decision with Councillors prior to exercising this delegation. The CEO will notify the Council on each occasion this delegation is exercised.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 N/A

6. LEGAL AND RISK IMPLICATIONS

- 6.1 In relation to planning, if Council fails to provide the Minister with comments or fails to participate in negotiations for an application for review before VCAT or the Minister or an Advisory Committee, then Council may lose the opportunity to influence the decision-making process to ensure appropriate development outcomes.

7. FINANCIAL IMPACT

- 7.1 If no planning decisions are made within the statutory period, there is a risk that an applicant may seek an application for review to VCAT against Council for not determining a matter within the prescribed time. The implications of this outcome are that costs may be awarded against Council for not determining an application within the prescribed time.

8. ENVIRONMENTAL IMPACT

- 8.1 There are no environmental impacts for Council.



9. COMMUNITY IMPACT

9.1 The additional planning delegations proposed 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 and where Council and / or the Planning Committee cannot meet or if they can meet cannot maintain a quorum. The delegation relating to service levels will come in immediately after the council resolution.

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 Nil