



**14.7** **PROPOSED DELEGATION TO THE CEO - POWER TO CALL SPECIAL MEETINGS**

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

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**1. PURPOSE**

- 1.1 To seek Council endorsement of the delegation of power to the CEO to call a Special Meeting of Council, to address a gap in transitional arrangements between the Local Government Act 1989 and the Local Government Act 2020.

**2. EXECUTIVE SUMMARY**

- 2.1 The Local Government Act 2020 (Act) recently received Royal Assent. The Act is the result of a four-year review of the Local Government Act 1989. The Act is proclaimed in four stages, with Stage 1 receiving proclamation on 6 April 2020. This stage brings into operation the overall architecture of the new Act without any council obligations, except those that relate to elections. Stage 2 will be proclaimed on 1 May 2020, Stage 3 on 24 October 2020 and Stage 4 on 1 July 2021. Officers are working through the detailed requirements of the new Act and finalising an implementation plan to cover each Stage of proclamation.
- 2.2 An immediate requirement of the Act is for Council to consider its approach with respect to Special Meetings. Section 84 of the Local Government Act 1989 provided that the Mayor or three Councillors could ask that the CEO call a special meeting of Council. This provision has not been included in the Local Government Act 2020.
- 2.3 The Victorian Ombudsman has reported that best practice in meeting procedure local laws is not to replicate legislative provisions in local laws. This practice has been confirmed by Council's legal advisors. As a result, Council's Meeting Procedure Local Law is silent on the calling of special meetings as it relied on the legislation. The necessary provisions can be included at the time Council adopts its new statutory Governance Rules under the Act (by September 2020).
- 2.4 This report identifies ways to address the gap in legislation and recommends that Council temporarily provides to the CEO, through an instrument of delegation, the power to call a Special Meeting. The instrument is time-capped until Council adopts its Governance Rules under the 2020 Act and provides conditions on use of the delegated power.



# ORDINARY MEETING OF COUNCIL 6 MAY 2020

### 3. RECOMMENDATION

That Council:

- 3.1 Delegates to the Chief Executive Officer the power to call a Special Meeting of Council, set out in the Instrument of Delegation (Attachment 1), subject to the conditions and limitations specified in that Instrument.
- 3.2 Affixes the common seal of Council to the Instrument of Delegation to the Chief Executive Officer.
- 3.3 Notes that the Instrument of Delegation comes into force immediately when the common seal of Council is affixed to the Instrument.

### 4. KEY POINTS/ISSUES

- 4.1 Section 84 of the Local Government Act 1989 provides that the Mayor or at least 3 Councillors may by a written notice specifying a date, time and business to be transacted, call a special meeting of the Council. The Chief Executive Officer must call the special meeting as specified in the notice.
- 4.2 An equivalent provision has not been included in the Local Government Act 2020.
- 4.3 In line with recommendations of the Victorian Ombudsman, and on the advice of Council's legal advisors, Council's Meeting Procedure Local Law does not provide for the calling of a Special Meeting. This issue can be remedied when Council adopts its new statutory Governance Rules under the Act (by September 2020).
- 4.4 Council was prompted to consider its exposure to the gap in legislation by advice sent to the sector by Maddocks Lawyers.
- 4.5 Two avenues have been identified to address the gap:

#### 4.5.1 **Council Meeting Procedure Local Laws be updated to include provision for Special Meetings**

An amendment to a Local Law must be done in the same way as a Local Law was made. An amendment (by way of change or addition of further provisions) can be achieved by either re-adopting the whole Local Law with the amendment or by adopting an amending Local Law. At a minimum, this involves compliance with the provisions of section 119 of the Local Government Act:

- Public notice
- Government gazetted
- Formal submissions and hearings process.

When Council adopts its Governance Rules under the 2020 Act (by 1 September 2020), the Meeting Procedure Local Law will be revoked.

#### 4.5.2 **Council delegates to the CEO the power to call a Special Meeting**

Council may choose to adopt a temporary delegation to the CEO to continue provision of Special Meetings.



An instrument of delegation can include any conditions or limitations imposed by the Council, including a specified revocation date.

- 4.6 Noting that updating the Local Law would be an approximately 6-week process, officers recommend that temporarily delegating the power to the CEO is the most effective option.

#### **4.7 The Instrument of Delegation**

The instrument is time-capped until Council adopts its Governance Rules under the 2020 Act, meaning Council can at that time, transfer the power to call a Special Meeting back to itself under the Rules.

The conditions on use of the delegated power mirror the provisions of the Local Government Act 1989, specifically:

- 1. A Special Meeting may only be called if the Mayor or three Councillors give written notice of a request that a meeting be called.*
- 2. The notice must specify the date and time of the special meeting and the business to be transacted.*
- 3. The Chief Executive Officer must call the special meeting as specified in the notice or resolution.*
- 4. Unless all Councillors are present and unanimously agree to deal with another matter, only the business specified in the notice or resolution is to be transacted.*

#### **4.8 State enquiry**

Officers have made enquiries with the State Government about proposed mitigation strategies including seeking exemption from local law requirements for the purposes of including this provision; or the inclusion of Special Meetings in the yet to be released Regulations. In the event an exemption is received, the delegation will be immediately revoked (or removed from the agenda if prior to Council decision).

#### **4.9 If no action taken by Council**

If Council takes no steps to address the legislative gap, nothing will govern who can convene a meeting between Ordinary Meetings previously fixed by resolution. The only way Council could call a Special Meeting would be to know in advance and pass a resolution in the Chamber. In some cases, Council would need to wait up to 3 weeks to pass a resolution. If a Special Meeting was called, without resolution or the authority of local law or delegation, any decisions made at that meeting could be invalid.

### **5. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY**

- 5.1 The power delegated to the CEO to ensure the efficient and effective functioning of the organisation is 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.

### **6. IMPLEMENTATION STRATEGY**

#### **6.1 TIMELINE**

- 6.1.1 The Instrument of Delegation (Attachment 1) comes into force immediately when the common seal of Council is affixed to the Instrument.



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### 6.2 COMMUNICATION

6.2.1 The Instrument of Delegation will be published on Council's website.

### 7. OFFICER DIRECT OR INDIRECT INTEREST

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

**TRIM FILE NO:** F20/1

**ATTACHMENTS** 1. DRAFT Delegation to the CEO - Special Meetings