

Agenda

Special Meeting of Council

Tallangatta Council Office

Tuesday 17 October 2017

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AGENDA FOR THE SPECIAL MEETING OF COUNCIL TO BE HELD AT TOWONG SHIRE COUNCIL, TALLANGATTA OFFICE ON TUESDAY 17 OCTOBER 2017 COMMENCING AT 3.00 PM.

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1 Opening Prayer

"Almighty God, we ask that you be present at this meeting to assist us in our service to the Community through Local Government.

We pray that our decisions will be wise and taken with goodwill and clear conscience.

Amen."

2 Councillor and Officer presence at the meeting

3 Apologies and granting of leave of absence

4 Organisational improvement

4.1 2016/17 Annual Report (10/13/0001-CEO)

Disclosure of Interests (S.80C):

This report was prepared by Ms Jo Shannon, Director Community and Corporate Services.

At the time of preparation and presentation of the report the officer did not have a direct or indirect interest in any matter to which the report advice relates.

Background/History:

The 2016/17 Annual Report has been prepared and forwarded to the Minister for Local Government. The report has been prepared in accordance with Sections 131 of the *Local Government Act 1989* and the requirements of the *Local Government (Planning and Reporting) Regulations 2014*.

The Annual Report includes a report of operations, the audited performance statement and the audited financial statements and is attached at [Appendix 1](#).

A public notice was placed in the Border Mail advising that the Annual Report had been prepared and was available for inspection at both Council Offices in accordance with section 131 of the Act. The report is also available on Council's website.

Under section 134 of the Act Council is required to consider and discuss the Annual Report at a meeting of the Council within one month of submitting the report to the Minister for Local Government or in the year of a general election prior to election day.

Impact on Council Policy:

Not applicable.

State Government Policy Impacts:

Council has complied with sections 131, 132 and 133 of the *Local Government Act 1989* as well as the requirements of the *Local Government (Planning and Reporting) Regulations 2014*.

Section 134 of the Act requires Council to consider the Annual Report at a meeting of the Council which is to be held as soon as practicable but within the time required by the Regulations, after the Council has sent the Annual Report to the Minister. The meeting must be advertised at least 14 days before the meeting is held in a public notice that states:

- i. that the Annual Report will be discussed at the meeting, and
- ii. the place from which copies of the Annual Report can be obtained before the meeting.

Consideration of the Annual Report by the Council will ensure compliance with Section 134.

Budget Impact:

Council has continued to prepare the report in-house to minimise costs. It is available to the general public in an electronic format and only few printed copies are produced. Other costs associated with the production of the Annual Report are the front cover design, copying costs (using the in-house photocopier) and the cost of the Public Notice.

Risk Assessment:

Compliance with the Act will ensure that risk implications for Council are minimised.

Community Consultation/Responses:

Public Notice has been given and the Annual Report is now available on Council's website.

Discussion/Officers View:

In order to comply with the provisions of section 134 of the Local Government Act Council should consider and discuss the 2016/17 Annual Report.

RECOMMENDATION:

THAT COUNCIL CONSIDER THE 2016/17 ANNUAL REPORT INCLUDING THE AUDITED FINANCIAL STATEMENTS AND PERFORMANCE STATEMENT FOR THE YEAR ENDED 30 JUNE 2017.

4.2 Delegation to members of Council staff (07/05/0007-DCCS)

Disclosure of Interests (S.80C):

This report was prepared by Ms Jo Shannon, Director Community and Corporate Services.

At the time of preparation of the report the officer did not have a direct or indirect interest in any matter to which the report or advice relates.

Background/History:

Most statutory bodies have a power of delegation - delegation of powers is generally considered essential to enable day-to-day decisions to be made.

The three instruments of delegation currently used to deliver on Council's legislative responsibilities are as follows:

- Instrument of Delegation from Council to the Chief Executive Officer

- Instrument of Delegation from Council to members of Council staff relating to specified legislation.

- Instrument of Delegation from the Chief Executive Officer to Council staff.

The reason for these three instruments of delegation turns on the source of the powers of delegation.

Section 98(1) of the Local Government Act 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 or any other Act, other than certain specified powers. The first two of the above delegations fall under this section and are the primary matter of this report. Further detail on each of these delegations is provided later in this report.

Section 98(2) of the Act provides that the Chief Executive Officer may, by instrument of delegation, delegate to a member of the Council staff any power, duty or function of his or her office except the power of delegation itself. The final delegation above falls under this section.

Some general features of delegation are set out in the Interpretation of Legislation Act 1984. The following principles in particular are provided for your information:

- the decision, once made, is for all legal purposes a decision of the Council itself (section 42A of the Interpretation of Legislation Act);

- the "delegate" is in much the same position as the Council itself in terms of making the decision - for example, where the decision requires that opinion be formed, the delegate's opinion can be the basis for the decision (section 42 of the Interpretation of Legislation Act);

- The fact that a delegation has been made does not affect the Council's powers in relation to the issue concerned (section 42A of the Interpretation of Legislation Act). This is subject, of course, to the rule that the delegate's decision (once made) is taken to be the decision of the Council itself. The Council can therefore find itself bound by a decision that it would not itself have made, and if this occurs the existence of this "residual" power may provide little solace.

For this reason, it is important that the Council have in place appropriate policies and guidelines under which delegation should be exercised.

Delegation from Council to the Chief Executive Officer

Most statutes impose limitations on the powers that may be delegated. Usually one of the powers that may not be delegated is the delegation power itself.

This limitation does not apply in respect of a delegation to the Chief Executive Officer. Under section 98 of the Local Government Act 1989 -

"(3) The instrument of delegation to the Chief Executive Officer may empower the Chief Executive Officer to delegate a power of the Council other than the power of delegation to a member of Council staff."

Thus the instrument of delegation to the Chief Executive Officer may (and currently does) empower the Chief Executive Officer to exercise various powers of the Council, including the power to delegate powers to Council officers.

The possibility that the Chief Executive Officer might further delegate Council powers does carry potential for loss of control. However, the advantage for a Council in conferring on its Chief Executive Officer the power of sub-delegation is that it need not concern itself with many of the details of Council administration, allowing the Chief Executive Officer to issue and revoke instruments of delegation at regular intervals without the need to resubmit the issue to Council.

The Council may wish to direct its Chief Executive Officer to report to it on any use made of the power of sub-delegation.

The last delegation to the Chief Executive Officer was prepared, considered and resolved at the 1 October 2013 Ordinary Meeting of Council.

A subscription is maintained to a local government delegation update service provided by Maddocks lawyer. A draft delegation from Council to the Chief Executive Officer has been prepared based on the most recent template provided by Maddocks. The delegation template has one additional item (no 5) under 'Conditions and Limitations' that is not listed in the current delegation. It limits the Chief Executive Officer from determining an issue or taking an action "if the issue, action, act or thing is an issue, action, act or thing which is required by law to be done by Council resolution".

There are no other proposed amendments to the current level of delegation. The draft delegation from Council to the Chief Executive Officer is attached for your consideration at [Appendix 2](#).

Delegation from Council to Council staff relating to specified legislation

Other Acts also empower a Council to delegate certain powers, duties or functions. For example, section 188 of the Planning and Environment Act 1987 and section 58A of the Food Act 1984, empower Councils to delegate their powers under those Acts to members of Council staff.

There is a presumption that a power of delegation cannot be sub-delegated in the absence of express authority to do so.

A number of relevant statutes, including the Planning and Environment Act, the Food Act, Part 9B of the Environment Protection Act and Part III of the Health Act, contain specific powers of delegation, but do not contain an express power of sub-delegation. Therefore, it is assumed that the power of delegation cannot be sub-delegated. This means it is necessary for the delegation to come from Council to the staff members directly.

The last delegation to Council Officers was prepared, considered and resolved at the 1 October 2013 Ordinary Meeting of Council.

A draft delegation from Council to Council staff has been prepared based on the latest template provided by Maddocks. All proposed amendments to the current level of delegation to Council staff have been recorded as tracked changes for your consideration at [Appendix 3](#).

Use of Council Officer position titles

A recurring problem with delegations to Council officers is that changes occur in personnel - if delegations are to named officers, each time a new officer is appointed a further instrument of delegation must be made.

A solution to this problem is to delegate to the person who, for the time being, occupies a specified office - for example, to the "Manager Corporate Services".

If a restructuring of positions occurs, any delegation made in this form should be remade to refer to the new positions.

Unlike delegations to special committees, there is no express legislative provision for the Council to "require" officers to report to Council at intervals about decisions made under the delegation. However, officers are employees of Council, so this requirement can be imposed as one of the requirements of the job. One approach is to have the Chief Executive Officer report to Council at regular intervals about decisions made by officers under delegation.

Documentation

Whatever reporting requirements are imposed on each delegate, it is important that decisions and actions taken under delegations be properly documented.

If the delegations were not in place, the exercise of functions, powers and duties of Council would be recorded in the minute book of the Council.

It is possible that decisions taken under delegation will be reviewed in other spheres (i.e. internal or management review, Council review, Ombudsman, Administrative Appeals Tribunal, Magistrates' (or higher) Court).

Therefore a proper record of delegated action must be kept to ensure that the decision or action can be substantiated at a later date.

The detail and method of recording will depend on the nature of the power duty or function. However, the need for proper documentation should be uppermost in the minds of all delegates.

Register of delegations

Under section 98 of the Local Government Act a register of delegations to members of Council staff must be kept. It is prudent to keep in that register a record of all delegations from the Council to members of Council staff, whether those delegations are authorised by the Local Government Act alone, or whether they are also authorised under specific purpose legislation. A register of delegations is maintained for this purpose.

Review of delegations

A review of Council delegations to Council staff is required within 12 months of local government elections (s98). This review of delegations will meet this requirement.

Impact on Council Policy:

Nil.

State Government Policy Impacts:

Nil.

Budget Impact:

Nil.

Risk Assessment:

A subscription is maintained to a local government delegation update service provided by Maddocks lawyers. This ensures that the delegation document is a complete listing of all the relevant legislative sections available for delegation by Council.

Community Consultation/Responses:

Nil.

Discussion/Officers View:

The delegations have been reviewed against the most recent delegations template provided by Maddocks and clearly indicate where a change to the current delegation is proposed.

It is recommended that the delegations be considered as attached.

RECOMMENDATION:

DELEGATION TO CHIEF EXECUTIVE OFFICER:

IN THE EXERCISE OF THE POWERS CONFERRED BY SECTION 98(1) OF THE LOCAL GOVERNMENT ACT 1989 (THE ACT) AND THE OTHER LEGISLATION REFERRED TO IN THE ATTACHED INSTRUMENT OF DELEGATION, COUNCIL RESOLVES THAT –

- 1. THERE BE DELEGATED TO THE MEMBER OF COUNCIL STAFF HOLDING, ACTING IN OR PERFORMING THE DUTIES OF THE OFFICE REFERRED TO IN THE ATTACHED INSTRUMENT OF DELEGATION TO THE CHIEF EXECUTIVE OFFICER, 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 THE PREVIOUS DELEGATION TO THE CHIEF EXECUTIVE OFFICER INSTRUMENT IS 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.

DELEGATION TO MEMBERS OF COUNCIL STAFF

IN THE EXERCISE OF THE POWERS CONFERRED BY SECTION 98(1) OF THE LOCAL GOVERNMENT ACT 1989 (THE ACT) AND THE OTHER LEGISLATION REFERRED TO IN THE ATTACHED INSTRUMENT OF DELEGATION, 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 COUNCIL 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.**