



Shire of
Serpentine
Jarrahdale

Special Council Meeting Minutes

7.30pm

Tuesday 19 December 2017

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In Person

Shire of Serpentine Jarrahdale

6 Paterson Street, Mundijong WA 6123

Open Monday to Friday 8.30am-5pm (closed public holidays)



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Minutes of the Special Council Meeting of the Shire of Serpentine Jarrahdale held on Monday 19 December 2017 in the Council Chambers, Civic Centre, 6 Paterson Street, Mundijong.

The Shire President, Cr Rich declared the meeting open at 7.30pm and welcomed Councillors, Staff and members of the gallery, and acknowledged that the meeting was being held on the traditional land of the Noongar People and paid her respects to their Elders past and present.

Minutes

1. Attendances and apologies (including leave of absence):

In Attendance:

Councillors: M Rich Presiding Member
D Atwell
M Byas
R Coales
B Denholm
J See

Officers: Mr K Donohoe Chief Executive Officer
Mr A Schonfeldt Director Development Services
Mr P Balley Acting Director Infrastructure Services
Mr P Kocian Acting Director Corporate and Community Services
Ms A Liersch Agendas and Minutes Officer (Minute Taker)

Leave of Absence: Nil

Apologies: Councillor Gossage; Councillor McConkey; Councillor Piipponen

Observers:

Members of the Public – Nil

Members of the Press – Nil

Shire Officers - 1

2. Public question time:

2.1 Response to previous public questions taken on notice

Nil

2.2 Public questions

Nil

3. Public statement time:

Nil



4. Petitions and deputations:

Nil

5. Declaration of Councillors and Officers interest:

Nil

6. Receipt of minutes or reports and consideration of adoption of recommendations from Committee meetings held since the previous Council meetings:

6.1 Reports for consideration:

SCM163/12/17 – 2017 Annual Review of Delegations (SJ374)	
Author:	Kellie Bartley – Manager Corporate Services
Senior Officer/s:	Peter Kocian – Acting Director Corporate & Community
Date of Report:	21 November 2017
Disclosure of Officers Interest:	No officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

Introduction

It is requested that Council consider and adopt the annual review of the delegations register.

Relevant Previous Decisions of Council

OCM118/06/16 – Council reviewed and reaffirmed Council Delegations for the 2015/16 financial year at the June Ordinary Council Meeting

Background

Delegations are commonly used in Local Government where the business of the organisation could not be efficiently carried out if the Council were to exercise their discretion to enforce all the rights or discharge all the duties.

Section 5.42 of the *Local Government Act 1995* provides Council with the ability to delegate many duties under the *Local Government Act 1995*. To delegate is to appoint another person to exercise a power or discharge a duty. It is important to be aware that the delegator retains the power to make decisions if need be, despite the fact that a delegation has occurred.

The purpose of delegating authority to the Chief Executive Officer is to provide for the efficient and orderly administration of the day to day functions of the Shire. The Chief Executive officer exercises the delegated authority in accordance with the Instrument of Delegation Register and Council Policies.



The *Local Government Act 1995* requires that each financial year, the delegator (in the case of delegations to the CEO, the Council) reviews delegations and therefore this report is presented to Council. The annual review of the delegations register was not carried out by 30 June 2017 as required by section 5.46(2) of the *Local Government Act 1995*, due to the organisational restructure and therefore annual review of delegations was delayed. This non-compliance was noted in the Shire's Audit Report for 2016/17.

The Delegation Register is a comprehensive document that also includes delegations made under legislation other than the *Local Government Act 1995*. Section 5.18 and 5.46(2) of the Act requires that a Local Government keep a register of delegations of authority made under the Act and that these are reviewed at least once every financial year. The report of these delegations will be presented monthly through the Councillor Information Bulletin.

Community / Stakeholder Consultation

Policy Concept Forum

There is no requirement for community consultation in this instance. Consultation undertaken involved Councillors, Chief Executive Officer, Directors and Responsible Officers.

Meeting Date	4 December 2017
Councillors in Attendance	Cr Coales, Cr Byas, Cr Denholm, Cr Atwell, Cr Rich, Cr McConkey

A workshop is scheduled for the 19 December 2017, prior to the Special Council Meeting.

Statutory Environment

Section 5.42 of the *Local Government Act 1995* (the Act) enables Council to delegate to the CEO the exercise of any of its powers or the discharge of any of its duties under the Act, subject to the limitations prescribed in section 5.43.

Section 5.16 of the Act provides for the delegation of some powers and duties to certain Committees of Council, subject to the limitations prescribed in section 5.17.

Other legislation such as the *Bush Fires Act 1954*, the *Planning and Development Act 2005*, the *Food Act 2008*, the *Building Act 2011*, the *Dog Act 1976* or the *Cat Act 2011* enables Council to delegate specific powers and duties to employees.

Sections 5.18 and 5.46 of the Act require that a delegations register be maintained and reviewed at least once each financial year.

Sections 5.74 to 5.76 of the Act require that an employee to whom a duty or power has been delegated under the Act must lodge an Annual Return by 31 August each year.

In addition to covering delegations, section 5.45 states that nothing prevents a local government from performing any of its functions by acting through a person other than the CEO or a CEO performing any of his or her functions by acting through another person. The meaning of 'acting through' is not defined in the Act, but it is generally accepted that where a person has no discretion in carrying out a function, that function can be undertaken by "acting through".



Comment

Local governments utilize levels of delegated authority to undertake day-to-day statutory functions, thereby allowing Council to focus on policy development, representation, strategic planning and community leadership, with the administration focusing on the day-to-day operations of the Shire. The use of delegated authority means the large volume of routine work of a local government can be effectively managed and acted on promptly, which in turn facilitates efficient service delivery to the community. The 2017 review has resulted in refining delegations to ensure the Shire has continued ability to build high standards of service delivery and approvals.

This review has now incorporated the new model Delegation template that Western Australia Local Government Associations (WALGA) has provided to Local Governments. This new format as detailed in attachment – SCM163.3/12/17 clearly identifies the following:

- Title – making it easier to identify the purpose of the delegation
- Delegator – Power/Duty assigned in Legislation to the CEO.
- Express Power to delegate – The Head of Power and Express power to delegate i.e. *Local Government Act 1995*, s 5.42 – Delegation of some powers or duties to the CEO.
- Express Power or Duty Delegated – Head of Power and express power or duty
- Delegate – The Officer (CEO)
- Function – A short description of the functions and duties delegated
- Conditions – The conditions of Use of the Delegation as determined by the Delegator
- Express Power to Subdelegate – Head of Power and Express power to subdelegate
- Sub-delegate – The Sub-delegate/s as appointed by the CEO
- Sub-Delegate Conditions – These the conditions of use of the Sub-Delegation as determined by the Delegate
- Compliance Links – This identifies the relevant statutory compliance links that will assist when making decisions under the delegated authority. This will also identify any Council, Business Operating Policies or Local Planning policies that may be effected or conditions that are related to the relevant delegation.
- Record Keeping – This is the area that may be recorded against Council's record keeping system and the Register of Delegations (ROD).
- Version Control – A record of when and how the delegation has been made or modified.

The Chief Executive Officer, Executive Management Group and Responsible Officers have reviewed the current delegations. The Instrument of Delegation Register, with amendments marked, forms an Attachment to this report. Additions or revisions are in red and any text to be deleted is struck through.

It should be noted that Section 5.44 of the Act allows for the Chief Executive Officer to sub-delegate to any employee of the Local Government the exercise of any of the Chief Executive Officer's powers or the discharge of any of the Chief Executive Officer's duties under the Act, other than the power of delegation. Sub delegations are included in the Shire of Serpentine Jarrahdale Instrument of Delegation Register for consolidation purposes only and are not a matter for Council consideration.

A summary of proposed amendments to the delegations are detailed in attachment – SCM163.2/12/17.



Options and Implications

Council has 3 options:

1. Approve the register as proposed.
2. Approve the register with modifications.
3. Refuse the amended delegations register and reaffirm the current register.

Option 1 is recommended.

Conclusion

Included with the attachments is a table summarising the proposed changes to individual delegations. Most of the proposed changes are minor in nature and relate to such things as; adding delegates, amending titles, some minor rewording and changes to legislative references as a result of legislative amendments. It is recommended that Council adopts the amended register of delegations as contained in the attachments.

Attachments

- [SCM163.1/12/17](#) – Current Register of Delegations (E14/5516)
- [SCM163.2/12/17](#) – Table of proposed changes to Council Delegations (E17/12359)
- [SCM163.3/12/17](#) – Draft Register of Delegations 2017 / 2018 (E17/12356)

Alignment with our Strategic Community Plan

Outcome 4.2	A strategically focused Council
Strategy 4.2.1	Build and promote strategic relationships in the Shire's interest.

Financial Implications

There are no direct financial implications regarding this matter.



Risk Implications

Risk has been assessed on the basis of the Officer's Recommendation.

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council not determine appropriate Delegations for the Local Government which may adversely impact on decision making processes.	Unlikely (2)	Major (4)	Moderate (5-9)	Compliance - 3 Moderate - Non-compliance with significant regulatory requirements imposed	Accept Officer Recommendation

Risk Matrix

Consequence		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Likelihood	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

A risk is often specified in terms of an event or circumstance and the consequences that may flow from it. An effect may be positive, negative or a deviation from the expected and may be related to the following objectives; occupational health and safety, financial, service interruption, compliance, reputation and environment. A risk matrix has been prepared and a risk rating of 8 has been determined for this item. Any items with a risk rating over 10 (considered to be high or extreme risk) will be added to the Risk Register, and any item with a risk rating over 17 will require a specific risk treatment plan to be developed.



Voting Requirements: Absolute Majority

OCM163/12/17 COUNCIL DECISION / Officer Recommendation

Moved Cr See, seconded Cr Byas

That Council

- 1. Authorises and grants the powers and duties as detailed in the Register of Delegations 2017, as provided in attachment SCM163.3/12/17, in accordance with section 5.42 of the *Local Government Act 1995*.**
- 2. Notes the table of changes to delegations as contained in attachment SCM163.2/12/17.**

CARRIED BY ABSOLUTE MAJORITY 6/0

7. Motions of which notice has been given:

Nil

8. Urgent business:

Nil

9. Closure:

There being no further business the Presiding Member declared the meeting closed at 7.31pm.

I certify that these minutes were confirmed at the
Ordinary Council Meeting held on 26 February 2018.

.....
Presiding Member

.....
Date