



LATE ITEMS BUSINESS PAPER

General Meeting

Wednesday 8 November 2017

Roma Administration Centre

NOTICE OF MEETING

Date: 7 November 2017

Mayor:

Councillor T D Golder

Deputy Mayor:
Councillors:

Councillor J L Chambers
Councillor N H Chandler
Councillor P J Flynn
Councillor G B McMullen
Councillor W M Newman
Councillor C J O'Neil
Councillor D J Schefe
Councillor J M Stanford

Chief Executive Officer:

Ms Julie Reitano

Senior Management:

Mr Cameron Castles (Director Infrastructure Services)
Mr Rob Hayward (Director Development, Facilities &
Environmental Services)
Ms Sharon Frank (Director Corporate, Community & Commercial
Services)

Officers:

Ms Jane Frith (Coordinator Communications)

Please find attached agenda for the **General Meeting** to be held at the Roma Administration Centre on
November 8, 2017 at 9.00AM.

Julie Reitano
Chief Executive Officer

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OFFICER REPORT

Meeting: General 8 November 2017

Date: 7 November 2017

Item Number: L.1

File Number: D17/89898

SUBJECT HEADING: Delegation of Council Powers to the Chief Executive Officer

Classification: Open Access

Officer's Title: Associate to the Director - Corporate, Community & Commercial Services

Executive Summary:

This reports seeks Council's approval for delegation of Council powers under State Legislation to the position of Chief Executive Officer. Council's Delegations are reviewed and updated according to changes in State Government legislation, as they occur throughout the year.

As part of Council's ongoing monthly reviews of its delegations, they are updated as required.

Officer's Recommendation:

Under section 257 of the *Local Government Act 2009*, Council resolve to delegate the exercise of powers contained in Schedule 1 of the Instruments of Delegation included in the officer's report, to the Chief Executive Officer. These powers must be exercised subject to any limitations contained in Schedule 2 of the attached Instruments of Delegation for the following legislation:

- **Local Government Act 2009**

Body of Report:

This report proposed to delegate local government powers to the Chief Executive Officer for State Legislation as outlined below;

Chapter 3 – The Business of Local Government
Part 3 – Roads and Other Infrastructure
Division 1 - Roads

69(1)	In certain circumstances, power to close a road.	Update on wording. Previously, the section wrote 'Power to close a road'.
69(2)(a)	Power to close a road during a temporary obstruction to traffic.	Additional section added to the table
69(2)(b)	Power to close a road if it is in the interests of public safety	Additional section added to the table

Chapter 5 – Monitoring and Enforcing the Local Government Acts

Part 2 – The Public

Division 2 – Powers of other persons

138(a)	Power to authorise a local government worker	<p>Previously placed under Chapter 5, Part 2, Division 1 (Powers of Authorised Persons). This has now been moved to Division 2 (Powers of other persons)</p> <p>Under previous legislation, the CEO was directly given the power to appoint Local Government Workers. This has since been changed and now requires Council to delegate the power to the CEO.</p>
138AA(3)(b)	Power to give reasonable entry notice	<p>Previously placed under Chapter 5, Part 2, Division 1 (Powers of Authorised Persons). This has now been moved to Division 2 (Powers of other persons)</p> <p>Under previous legislation, the CEO was directly given the power to give reasonable entry notice. This has since been changed and now requires Council to delegate the power to the CEO</p>

Chapter 7 – Other Provisions

Part 2 – Superannuation

Division 3 – Superannuation contributions for particular employees

219(2)	Power to declare and employee to be a permanent employee by a written notice given to the super board.	Repeal of power as it has been removed from the Act.
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Background to the Delegation of Powers

Council is vested with the power to make a range of decision and various actions under legislation and other statutory instruments. Council derives those powers from State law, such as the *Local Government Act 2009*, and under its local laws and planning scheme.

Section 257 of the *Local Government Act 2009* allows Council, by resolution, to delegate its powers under State and other laws, to one or more individuals or standing committees, including to the Chief Executive Officer.

The delegation of a Council's power does not involve Council parting with or surrendering those powers. Council continues to retain all powers which are the subject of delegation. A delegation involves the "sharing" of power, so that both Council and the Chief Executive Officer can exercise the same power.

Other important legal principles which apply to the delegation proposal set out in the report are:

- a) Council at all times retains the power to revoke the delegation. Accordingly Council retains ultimate control.
- b) Council, as the delegator, still has responsibility to ensure that the relevant power is properly exercised. Council will therefore continue to supervise and oversee the exercise of its powers.
- c) A delegation of power by Council may be subject to any lawful conditions which Council wishes to impose. The imposition of conditions enables Council to impose checks and balances on its delegations. However, as with any vesting power, the delegated power cannot be unduly fettered.
- d) The delegate must exercise a delegated power fairly and impartially, without being influenced by or being subject to the discretion of other individuals.
- e) A local government must not delegate a power that an Act states must be exercised by resolution.

Consultation (internal/external):

MacDonnells Law

Director – Corporate, Community & Commercial Services

Risk Assessment (Legal, Financial, Political etc.):

The delegation of Local Government powers is important and necessary for the effective operation of Council.

Policy Implications:

This report has been provided in compliance with section 257(1) of the *Local Government Act 2009*, which allows for the Local Government, by resolution, to delegate power under the *Local Government Act 2009* or another act to the Chief Executive Officer

Financial Resource Implications:

N/A – delegation update service is funded in the current financial year's budget

Link to Corporate Plan:

Corporate Plan 2014-2019

Strategic Priority 10: Organisational Management

10.4 Building Capability and Performance

10.4.1 Defining expectations and boundaries

Supporting Documentation:

[1](#) Local Government Act 2009 - Instrument of Delegation D17/88643

Report authorised by:

Director - Corporate, Community & Commercial Services

INSTRUMENT OF DELEGATION

Maranoa Regional Council *Local Government Act 2009*

Under section 257 of the *Local Government Act 2009*, **Maranoa Regional Council** resolves to delegate the exercise of the powers contained in Schedule 1 to the Chief Executive Officer.

These powers must be exercised subject to the limitations contained in Schedule 2.

All prior resolutions delegating the same powers to the Chief Executive Officer are repealed.

Local Government Act 2009 ("LOGA")**CHAPTER 3 - THE BUSINESS OF LOCAL GOVERNMENT****Part 1 - Local Laws****Division 2 - Making, recording and reviewing local laws**

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Local government	29(1)	Power to decide local government process for making a local law to the extent that the process is not inconsistent with this part.	

Division 5 - Miscellaneous

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Chief Executive Officer	38B(9)	Power to ask the police commissioner to give the chief executive officer information about noise abatement directions given to persons in the local government area.	This power does not need to be delegated as it is given directly to the CEO under the Act.

Part 3 - Roads and other infrastructure**Division 1- Roads**

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Local government	61(1)	Power to give the owner of land the local government wants to acquire, a notice of intention to acquire land.	
Local government	61(5)	Power to give permission to an owner to erect, place, re-erect, replace or repair any structure or part of a structure on the land.	
Local government	62(6)	Power to reasonably require information to decide the claim.	
Local government	62(7)	In the specified circumstances, power to give the claimant written notice of Council's decision on the claim.	
Local government	64(4)	Power to agree on compensation for the acquisition of the land.	
Local government	65(1)	Power to decide not to proceed with the realignment of a road or part of a road after giving a notice of intention to acquire land.	
Local government	65(3)	Power to serve notice of Council's decision on all owners of land who were served with the notice of intention to acquire land.	
Local government	65(4)(a)	Power to withdraw the notice of intention to acquire land.	

Local government	65(4)(b)	Power to lodge with the registrar of titles for registration a notice of Council's decision not to proceed with the realignment of the road, or part of the road.	
Local government	66(4)	Power to agree on an amount of compensation.	
Local government	67(1)	Power to acquire land that adjoins a road for use as a footpath.	
Local government	67(2)	In the specified circumstances, power to decide whether any of the rights specified in this subsection are appropriate.	
Local government	67(3)	Power to consider necessary structural alterations to the structure, room or cellar.	
Local government	68(4)	Power to object to the opening or closing of the road.	
Local government	69(1)	In certain circumstances, power to close a road.	
Local government	69(2)(a)	Power to close a road during a temporary obstruction to traffic.	
Local government	69(2)(b)	Power to close a road if it is in the interests of public safety.	
Local government	69(2)(c)	Power to decide that it is necessary or desirable to close a road for a temporary purpose in the circumstances specified.	
Local government	69(4)	Power to do everything necessary to stop traffic using the road after it is closed.	
Local government	69(5)	If a road is closed to traffic for a temporary purpose, power to permit the use of any part of the road on the conditions considered appropriate.	
Local government employee or contractor	70(3)	In the specified circumstances, power to: (a) make an agreement with the owner or occupier of the land; or (b) give the owner or occupier of the land at least 3 days written notice.	
Local government	70(4)	In the specified circumstances, power to give the owner or occupier of the land oral notice of the matters mentioned in subsection (3)(b).	
Chief Executive Officer	70(6)(b)	Power to allow a later time for receipt of a claim for compensation.	This power does not need to be delegated as it is given directly to the CEO under the Act.
Local government	70(7)(a)	Power to make an agreement with a person for the amount of compensation.	
Local government	71(2)	Power to give the owner or occupier advice about the permanent level of the road.	
Local government	71(4)(a)	Power to make an agreement with the owner of occupier, or their successor in title, for the amount of compensation.	
Local government	72(1)(b)	Power to consider that the conduct of the activity is having, or will have, a significant adverse impact on a road in the local government area.	

Local government	72(2)	Power to require the entity which is conducting an activity to provide information, within a reasonable time, that will enable the local government to assess the impact of the activity on the road.	
Local government	72(3)	After assessing the impact of the activity on the road, power to do one or more of the following: (a) give the entity a direction about the use of the road to lessen the impact; (b) require the entity: (i) to carry out works to lessen the impact; or (ii) to pay an amount as compensation for the impact.	
Local government	74(2)	Power to consider appropriate particulars to be shown on the register of roads.	
Local government	75(2)	For the specified reasons, power to give written approval.	
Local government	75(4)	Power to decide the conditions of an approval under subsection (2).	

Division 2 - Stormwater drains

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Local government	77(1)	Power to, by written notice, require the owner of a property to connect a stormwater installation for the property to the local government's stormwater drain in the way, under the conditions and within the time stated in the notice.	
Local government	77(3)(b)	Power to give approval for the connection to a local government stormwater drain.	
Local government	77(4)	Power to impose conditions on approval for the connection, including about the way the connection must be made.	
Local government	78(4)	Under the specified circumstances, power to, by written notice, require the owner of the property to perform the work stated in the notice, within the time stated in the notice.	
Local government	78(5)	For a notice provided in subsection (4), power to decide a time that is reasonable.	
Local government	79(4)(e)(i)	Power to approve the maximum temperature for a substance.	

Part 4 - The business of indigenous local governments

Division 2 – Managing Trust Land

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Trustee Council	85(6)	Power to give written notice of the reasons for the proposed decision to the community forum.	

Part 5 - Caretaker period arrangements

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Local government	90B(2)	Power to consider it is necessary to make a major policy decision in the public interest, and power to apply to the Minister for approval to make the decision.	

CHAPTER 4 - FINANCES AND ACCOUNTABILITY**Part 1 - Rates and charges**

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Local government	95(3)(a)	Power to sign and lodge for registration a request to register a charge over the land on behalf of the local government.	
Chief Executive Officer	95(3)(b)	Power to sign a certificate that states there is a charge of the land for overdue rates and charges.	This power does not need to be delegated as it is given directly to the CEO under the Act.
Chief Executive Officer	95(5)(b)	Power to sign a certificate that states the overdue rates and charges have been paid.	

CHAPTER 5 - MONITORING AND ENFORCING THE LOCAL GOVERNMENT ACTS**Part 1 - Local governments****Division 3 – Action by the Minister**

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Local government	120(5)	Power to make submissions within the time specified in the notice.	

Part 2 - The public**Division 1 - Powers of authorised persons**

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Local government	133(3)	Power to give, or make a reasonable attempt to give, the occupier of the property a written notice that informs the occupier of the following: (a) the intention to enter the property; (b) the reason for entering the property; (c) an estimation of when the property will be entered.	
Local	133(4)	Power to give, or make a reasonable attempt to give,	

government		written notice to the occupier within a reasonable time before the property is to be entered.	
Local government	137(2)(a)	Power to agree on an amount of compensation for a person who has incurred damage or loss because of the exercise or purported exercise of a power under this division.	

Division 2 - Powers of other persons

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Local government	138(a)	Power to authorise a local government worker	
Local government	138AA(3)(b)	Power to give reasonable entry notice	
Local government	140(1)(a)	Power to give a remedial notice to the owner of a property.	
Owner or Owner's agent	140(2)	Power to enter property at the times stated in the reasonable entry notice and take the action that is required under the remedial notice.	
Local government	142(6)	In the specified circumstances, power to give the person who failed to take the action, written notice of the amount of the debt.	
Local government	143(1)	Power to form a belief that there is no reasonably practicable way of obtaining materials other than by removing the materials from the relevant land.	
Person	146(1)	Power to enter the property in accordance with a Court order made under this section.	
Person	146(2)	Power to apply to a Magistrate for a Court order.	
Local government	147(3)(a)	Power to agree on an amount of compensation for a person who has incurred damage or loss because of the exercise or purported exercise of a power under this division.	

Part 3 - Investigation of local government records

Division 3 – Investigations by local government

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Chief Executive Officer	148F(2)	Power to make all inquiries the Chief Executive Officer considers to be reasonable to find out whether and to what extent the register or record is incorrect/power to direct an authorised person to make such enquiries.	This power does not need to be delegated as it is given directly to the CEO under the Act.
Chief Executive Officer	148G(2)	Power to, in the circumstances in subsection (1) require a person to give information or produce a document, or direct an authorised person to require a person to give information or produce a document.	This power does not need to be delegated as it is given directly to the CEO under the Act.

CHAPTER 6 - ADMINISTRATION**Part 2 - Councillors****Division 3 - Vacancies in councillor's office**

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Chief Executive Officer	162(1)(e)	Power to give leave.	This power does not need to be delegated as it is given directly to the CEO under the Act.
Chief Executive Officer	166(6)	In the specified circumstances, power to request the political party to advise the full name and address of its nominee.	This power does not need to be delegated as it is given directly to the CEO under the Act.
Chief Executive Officer	166(8)	Power to, within 14 days after the office become vacant, invite nominations.	This power does not need to be delegated as it is given directly to the CEO under the Act.

Division 6 - Conduct and performance of councillors

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Entity dealing with the complaint under this division	176A(2)	The power to decide not to take any further action in relation to a complaint about the conduct of a person who is no longer a councillor in the prescribed circumstances.	
Entity that makes a decision under subsection (2)	176A(3)	The power to give to an entity that made the complaint, and the accused person, a written notice that states: (a) No further action will be taken in relation to the complaint; and (b) The reasons for the decision.	

Part 5 - Local government employees**Division 3 - Common provisions**

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Local government	198(2)	Power to make an agreement with other local governments that an employee may be employed by more than one local government.	

CHAPTER 7 - OTHER PROVISIONS**Part 4 - Legal provisions**

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Local government	236(1)	The power to sign a document on behalf of a local government.	

Part 6 - Other provisions

Entity power given to	Section of LOGA	Description	Delegation to the CEO / Date of Resolution
Local government	262(2)	In the specified circumstances, power to do anything that is necessary or convenient for performing the responsibilities.	
Chief Executive Officer	265A(1)(b)	Power to authorise an employee of a local government to conduct searches of registers or documents about the land in the land registry.	This power does not need to be delegated as it is given directly to the CEO under the Act.
Local government	268A	The power to decide the way in which a local government will conduct a voluntary poll of electors in its area.	

Limitations to the Exercise of Power

1. Where Council in its budget or by resolution allocates an amount for the expenditure of Council funds in relation to a particular matter, in exercising delegated power in relation to that matter, the delegate will only commit Council to reasonably foreseeable expenditure up to the amount allocated.
2. The delegate will not exercise any delegated power in relation to a matter which, to the delegate's knowledge, adversely affects, or is likely to adversely affect, Council's relations with the public at large.
3. The delegate will not exercise any delegated power contrary to a resolution or other decision of Council (including a policy decision relating to the matter).
4. The delegate will not exercise any delegated power in a manner, or which has the foreseeable effect, of being contrary to an adopted Council policy or procedure.
5. The delegate will only exercise a delegated power under this resolution in a manner which complies with the requirements of Council's Planning Scheme, and any exercise of power which involves a departure from or variation of those requirements will only be undertaken by Council.
6. The delegate will not exercise any delegated power which cannot lawfully be the subject of delegation by Council.

[2017 07 03 - LOGA - Delegation Instrument - Maranoa]