

Establishment of a section 86 Committee

Council

Presenter: Keith Williamson, Manager Governance and Legal

11 December 2018

Purpose and background

1. The purpose of this report is to establish the Legal Proceedings Committee (the Committee) to make decisions on matters referred to it by the Chief Executive Officer, concerning Supreme Court proceedings by Robert Doyle against the Council or its officers(the Proceedings).
2. The *Local Government Act 1989* (Act) empowers councils to establish special committees of the Council and delegate certain powers, duties and functions to the special committee. The Council may appoint members to a special committee and may at any time, remove a member from a special committee.
3. It is proposed that the Committee be established as a special committee, pursuant to section 86 of the Act.

Key issues

4. The Proceedings were issued on 30 November 2018 and a temporary injunction was granted by order of Justice McDonald of the Supreme Court on 4 December 2018. A trial is fixed for 18 February 2019.
5. The management of the Proceedings moving forward may require an ability to make decisions expeditiously.
6. The establishment of the Committee comprising a smaller number of Councillors is recommended as:
 - 6.1. the next scheduled Council meeting is not until 26 February 2019
 - 6.2. there may be circumstances where the Chief Executive Officer considers it appropriate that decisions in respect to the Proceedings be referred to Council in accordance with the Council's Delegations Policy.

Recommendation from management

7. That Council:
 - 7.1. Establishes the Legal Proceedings Committee (the Committee), pursuant to section 86 of the *Local Government Act 1989* (Act).
 - 7.2. Appoints the Lord Mayor and three Councillors to be members of the Committee.
 - 7.3. By Instrument of Delegation pursuant to section 86 of the Act, delegates to the Committee the powers, duties and functions of Council to make decisions in respect to Supreme Court proceedings by Robert Doyle against the Council or its officers, where the Chief Executive Officer is of the view that the matter should be referred to the Committee, subject to the conditions and limitations identified in the Instrument of Delegation as detailed in Attachment 2 to this report.

Attachments:

1. Supporting Attachment (Page 2 of 3)
2. Instrument of Delegation and Terms of Reference of the Legal Proceedings Committee (Page 3 of 3)

Supporting Attachment

Legal

1. The establishment of the committee will enable the expeditious response to issues that arise in the course of the Proceedings. As the Committee is of Councillors only, its operation will be in accordance with the Council's Meeting Procedure Code incorporated into the Council's *Conduct of Meetings Local Law 2010*.

Finance

2. No direct financial issues arise from the establishment of the Committee.

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Occupational Health and Safety

4. No Occupational Health and Safety issues or opportunities have been identified as arising from the recommendation from management.

Stakeholder consultation

5. No external consultation has been undertaken as this is a special committee formed by the Council.

Environmental sustainability

6. There is no significant sustainability impact arising from the recommendation in this report.

Melbourne City Council (Council)

Instrument of Delegation

1. By this instrument of delegation (Instrument) sealed by the Council under section 86(3) of the *Local Government Act 1989* (the Act) the Council delegates to the Legal Proceedings Committee (the Committee) the powers, duties and functions of the Council to make decisions on matters referred to the Committee by the Chief Executive Officer, in respect to Supreme Court proceedings by Robert Doyle against the Council or its officers and any related proceedings.
 2. This Instrument:
 - 2.1. has been authorised by a resolution of the Council on 11 December 2018
 - 2.2. pursuant to section 86(4) of the Act, does not delegate any of the following:
 - 2.2.1. this power of delegation
 - 2.2.2. the power to declare a rate or charge
 - 2.2.3. the power to borrow money
 - 2.2.4. the power to enter into contracts for an amount exceeding an amount previously determined by the Council
 - 2.2.5. the power to incur any expenditure exceeding an amount previously determined by the Council
 - 2.3. comes into force immediately the common seal of the Council is affixed to it
 - 2.4. remains in force according to its terms until the Council resolves to revoke it
- must be exercised in accordance with any lawful guidelines or policies, which the Council from time to time adopts.

Date of Affixing of Common Seal _____ day of December 2018.

The **COMMON SEAL** of the **MELBOURNE**)
CITY COUNCIL was affixed hereto)
in accordance with the **Conduct of**)
Meetings Local Law 2010)

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Lord Mayor

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Chief Executive Officer