

Agenda – Late Items

Ordinary Meeting

Wednesday, 27 November 2024

Time: 9.00 am
Location: Council Chambers
82 Brisbane Street
BEAUDESERT QLD 4285

**Scenic Rim Regional Council
Ordinary Meeting
Wednesday, 27 November 2024
Agenda – Late Items**

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11 Consideration of Business of Meeting

Additional Items

11.12 Delegation of Powers under the Environmental Protection Act 1994

Executive Officer: Manager Regional Development, Health and Biodiversity /
Acting General Manager Customer and Regional Prosperity

Item Author: Senior Development Compliance Officer

Attachments: Nil

Councillor Portfolio / Representation

Not applicable.

Local Government Area Division

This report relates to the whole Scenic Rim region.

Executive Summary

The *Environmental Protection Act 1994* has recently been amended, affecting a number of delegations provided to officers to effectively administer the provisions of the Act. It is requested that delegation of the relevant powers, as outlined in this report, be provided to the Chief Executive Officer (CEO) to administer on behalf of Council.

Recommendation

That:

1. Pursuant to section 257(1)(b) of the *Local Government Act 2009*, Council delegate the following powers under the *Environmental Act 1994* to the Chief Executive Officer:

Description of Power Delegated	Legislation
Power, as an administering authority, to issue an environmental enforcement order.	Section 362 <i>Environmental Protection Act 1994</i>

2. Pursuant to section 257(1)(b) of the *Local Government Act 2009*, Council note that the following powers under the *Environmental Act 2009* have been repealed or consolidated, and acknowledge that associated delegations will be rescinded from the Chief Executive Officer:

Description of Power Delegated	Legislation
Power, as an administering authority, to issue an environmental protection order.	Section 358 <i>Environmental Protection Act 1994</i>

Previous Council Considerations / Resolutions

Not applicable.

Report / Background

In June 2024, Council received notification from the Department of Environment, Science and Innovation that powers and penalties under the *Environmental Protection Act 1994*, had been amended to strengthen and clarify a number of sections within the act.

Pursuant to section 514(3) of the *Environmental Protection Act 1994*, these powers are exercisable by Council as the administering authority (as the local government), rather than the CEO as the administering executive.

The recent changes to the delegations under the *Environmental Protection Act 1994* have impacted officers ability to issue the appropriate rectification notices and take appropriate enforcement action. As an example of the restrictions, Council are currently experiencing concerns with erosion and sediment control in a number of developments across the region, exacerbated by the recent weather events. Noting the above, officers do not currently have the appropriate delegation to act in the best interests of the community.

Under section 257 of the *Local Government Act 2009* (LGA), Council can, by resolution, delegate power under the LGA to the Mayor, the CEO, a committee or a committee Chairperson. To ensure officers have the appropriate delegations, it is requested that the Council delegate the relevant powers under the *Environmental Protection Act 1994* to the CEO. These powers can then be sub-delegated to officers to allow them to issue notices and undertake appropriate enforcement action where required.

It is noted that should this delegation not be provided, each matter will need to be brought to Council for consideration, resulting in delays in enforcement action and ensuring timely rectification of major environmental issues.

Budget / Financial Implications

Expenses relating to legal advice has been funded under the 2024-2025 governance operational budget.

It is anticipated that future enforcement activities are conducted within available resources and budget, while achieving an appropriate action level.

Strategic Implications*Operational Plan*

Theme: 3. Open and Responsive Government

Key Area of Focus: Ongoing integrity of Council's practice and processes

Legal / Statutory Implications

The power to issue delegations can be found in the authorising legislation.

- The *Local Government Act 2009* (for Council powers, section 257, noting there are specific powers which may not be delegated; for the Mayor section 258; and for the CEO section 259); and
- The *Acts Interpretation Act 1954* (section 27A).

Council is required to keep a register of delegations under section 260.

Risks

Strategic Risks

The following Level 1 and Level 2 (strategic) risks are relevant to the matters considered in this report:

SR46 Inadequate or lack of Governance (including procurement) Framework (systems, policies, procedures, delegations and controls) in place to ensure compliance by Council's Councillors and Officers with all relevant State and Federal legislation and regulations.

Risk Summary

Category	Explanation
Governance, Risk & Compliance Council failing to make a decision in accordance with statutory timeframes or otherwise inefficiently due to a delegation being retained by Council.	Ongoing reviews by Governance of the Delegations Register service combined with active reviews of the recommended delegations and appropriate delegation requests being made to Council as the need arises. Failure to review these annually is in breach of legislation.
Governance, Risk & Compliance Council staff acting inappropriately or failing to act appropriately due to expiration of or lack of delegations.	Ensuring that Council's Delegations Register remains up to date, is easily accessible by staff and amendments to the register are publicised to staff members.
Governance, Risk & Compliance Council has options and responsibilities to enforce legislation.	Council must provide clear and consistent legislative enforcement to protect Council and its community.
Governance, Risk & Compliance Consistency in application of enforcement options to ensure Council is seen as being fair and reasonable	Ensure consistent application of enforcement powers in line with the principles of a model litigant and procedural fairness.

Human Rights Implications

No human rights have been impacted by any actions recommended in this report.

Consultation

Upon notification of the change of legislation, governance and legal advice was sought to determine the most appropriate manner in enforcing the legislation.

Conclusion

It is requested that Council delegate to the CEO the power under Section 362 of the *Environmental Protection Act 1994*, to allow officers to issue appropriate notices and undertake enforcement action where necessary and in the best interest of the community.

Options

Option 1

That:

1. Pursuant to section 257(1)(b) of the *Local Government Act 2009*, Council delegate the following powers under the *Environmental Act 1994* to the Chief Executive Officer:

Description of Power Delegated	Legislation
Power, as an administering authority, to issue an environmental enforcement order.	Section 362 <i>Environmental Protection Act 1994</i>

2. Pursuant to section 257(1)(b) of the *Local Government Act 2009*, Council note that the following powers under the *Environmental Act 2009* have been repealed or consolidated, and acknowledge that associated delegations will be rescinded from the Chief Executive Officer:

Description of Power Delegated	Legislation
Power, as an administering authority, to issue an environmental protection order.	Section 358 <i>Environmental Protection Act 1994</i>

Option 2

That Council not delegate the relevant powers under the *Environmental Act 1994* to the Chief Executive Officer, and request each matter be brought to Council for consideration prior to enforcement notices and action being undertaken.

12 Confidential Matters

**12.2 Governance Update - Legal Advice for Confidential Investigation
[Closed s.254J(3)(e)]**

Executive Officer: General Manager Council Sustainability

Item Author: Principal Specialist Governance and Assurance

This report is **CONFIDENTIAL** in accordance with Section 254J(3)(e) of the *Local Government Regulation 2012*, which permits the meeting to be closed to the public for business relating to the following:

- (e) legal advice obtained by the local government or legal proceedings involving the local government including, for example, legal proceedings that may be taken by or against the local government.