

REVIEW OF PLANNING DELEGATIONS

Report Author: Manager Planning and Building
Responsible Officer: Director Planning & Sustainable Futures
Ward(s) affected: (All Wards);

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

SUMMARY

The report outlines proposed amendments to the conditions in the current planning delegations from the Council to officers in accordance with the *Planning and Environment Act 1987*. These amendments are informed by recommendations from Operation Sandon and align with the best practices of routinely updating delegations to support effective governance.

The current planning delegations have been in operation since 2016, and since then there have been notable changes in the political, economic, and planning landscape, including increased planning application volumes, population growth, housing challenges, and a more complex planning framework. In addition, there has been a significant rise in construction costs which has resulted in the current planning delegations capturing low scale planning applications and are considered to be outdated.

The proposed changes to the planning delegations will ensure Council will still oversee major applications that influence long-term strategic planning and applications which generate community interest, while granting delegation to officers for applications with less economic significance, low community interest or where applications are consistent with approved plans.

The proposed changes relate to the Instrument of Delegation for the *Planning and Environment Act 1987*. There are no other changes to the Instrument of Delegation associated with this report. The proposed changes, shown by way of “track changes” in Attachment 1 to the report update planning delegations following recommendations from Operation Sandon and align with best practice.

Council is asked to approve the updated Instrument.

RECOMMENDATION

That Council in the exercise of the powers conferred by the legislation referred to in the Instrument of Delegation included at Attachment 1, Council resolves that:

- 1. The delegations made 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 be approved, subject to the conditions and limitations specified in that Instrument.*
- 2. That the delegations are modified to reflect the following changes:*
 - a) Increase the automatic call-in triggers for the cost of development from \$3 million to \$5 million for a planning application and for an amendment to an existing planning application, where the value of additional works is greater than \$5 million.*
 - b) Delegate decisions to Council officers where the application is generally consistent with the approved Former Lilydale Quarry Comprehensive Development Plan (CDP).*
 - c) Delegate any applications for Certificates of Compliance under Section 97N of the Planning and Environment Act 1987 to officers.*
 - d) Delegate all applications for covenant variations or removal to officers.*
 - e) Minor changes are also proposed for the call in/call out process to align both processes to require the mayor and two other councillor signatures including the ward councillor.*
 - f) Consider multi-signatory objections and/or petitions to be counted as a single objection in line with the Planning and Environment Act 1987.*
- 3. The Instrument comes into force immediately the common seal of Council is affixed to the Instrument.*
- 4. On the coming into force of the Instrument all previous delegations to members of Council staff (other than to the Chief Executive Officer) are revoked.*
- 5. The duties and functions set out in the Instrument must be performed, and the powers set out in the Instrument must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt.*

RELATED COUNCIL DECISIONS

The current Instrument was approved at the Council meeting on 12 September 2023.

DISCUSSION

Purpose and Background

The current planning delegations have been operation since 2016. The realm of planning has become more complex with additional considerations, an increase in application numbers and rising construction costs. There has also been changes to the *Local Government Act* and through the release of Operation Sandon Special report, that recommended removing planning decisions from Council. It is proposed to shift the criteria on some application types to better reflect the current circumstances across the municipality and broader metropolitan areas. It is also to ensure that planning decisions are able to be processed expeditiously and that only in cases where applications will create precedent or will result in a new strategic direction for the municipality that decisions are not delegated to officers.

The goal is to keep strategic decision-making within the Council's purview while streamlining other processes to minimise economic impact and delays to support efficient decision making of low scale and low impact planning applications.

KEY ISSUES

The revisions captured in the updated Instrument cover the following:

1. The following changes have been made to the S6 Instrument of Delegation, Council to other Members of Council staff (S6):
 - Sections S61(1) under the instrument of Delegation under the This report outlines proposed amendments to the conditions in the current planning delegations from the Council to officers in accordance with the *Planning and Environment Act 1987* -Increase the automatic call-in triggers for the cost of development from \$3 million to \$5 million for a planning application and for an amendment to an existing planning application, where the value of additional works is greater than \$5 million.
 - Delegate decisions to Council officers where the application is generally consistent with the approved Former Lilydale Quarry Comprehensive Development Plan (CDP).
 - Delegate any applications for Certificates of Compliance under Section 97N of the *Planning and Environment Act 1987* to officers.
 - Delegate all applications for covenant variations or removal to officers.
2. Minor changes are also proposed for the call in/call out process to align both processes to require the mayor and any two other councillor signatures.
3. To consider multi-signatory objections and /or petition to be counted as a single objection in line with the *Planning and Environment Act 1987*.

The updates are shown in the Instrument included at Attachment 1 as “track changes”. Once the Instrument has been approved, a “clean” version will be sealed and published to Council’s website, in accordance with Council’s obligations under the Act and the Public Transparency Policy.

Recommended option and justification.

Kinley Development

It is recommended to grant delegation to officers to allow planning applications that are generally consistent with the approved Former Lilydale Quarry Comprehensive Development Plan (CDP) under the Comprehensive Development Zone 1 to be decided under delegation. The amendment to approve these planning controls has already undergone a comprehensive planning process, including a panel hearing where community were given the opportunity to present their submissions to an independent panel. In addition, the CDP has previously been considered by Council in a public forum during the rezoning of the site, and decisions currently being made are required to be generally consistent and in line with CDP. Under the CDZ1, any application that is deemed to be generally consistent with the CDP is exempt from third-party public notifications and appeal rights.

The Comprehensive Development Plan was established through a robust planning process in consultation with the State Government and Council officers and sets out an extensive plan of the future development of the Kinley site, the plan sets housing and commercial targets and nominates where these activities should be occurring. The Comprehensive Development Zone requires development to be consistent with the endorsed plan, resulting in decision making to be around compliance with the plan and in accordance with the set strategic direction.

It is still proposed to maintain that decision making power for councillors for any application which proposes development which is inconsistent with the approved Comprehensive Development Plan. In addition, where development is not consistent with the approved plan it would also trigger public notice and the ability for community to make submissions.

Cost of Development

The current \$3 million value is intended to indicate a major or significant development and therefore act as the threshold to shift from officer decision-making authority to Council deliberation in the chamber. The current threshold has been in place since 2016 and since this time construction costs have increased, meaning this threshold now includes developments that are not categorised as major and does not pose the potential to establish precedents or alter the strategic trajectory of a region.

The increase to \$5 million will assist with ensuring that minor development will less likely fall within the automatic call-in trigger while still providing applications with high economic investment to be considered by councillors.

In addition, it is proposed to include a condition where there is an amendment to an existing planning permit and the cost of the amendment is greater than \$5 million the this would trigger an automatic call in to the chamber.

Delegate any application for a Certificate of Compliance under Section 97N of the Planning and Environment Act 1987 to officers

It is recommended to give delegation to officers to assess and decide all applications under Section 97N. Assessment of a Section 97N application for Certificate of Compliance applications involves a standardised procedure that excludes considerations of amenity. Decisions on these application types are decided solely on the level of evidence submitted to support the application and not against planning policy. Due to the administrative assessment process which excludes any public notification or third party appeal rights for the application, which is granted through a normal planning application process, it recommended that officers are granted delegation as it would not be appropriate to make the decision on the application in a public forum or based on other factors other than based on the evidence. Changes to Section 97(O) *duty to consider application and issue or refuse to issue certificate of compliance* are proposed to facilitate this recommendation.

Delegate any application for a covenant removal or variation to officers

A planning application can be sought to seek to remove or vary a covenant on the title. The *Planning and Environment Act 1987* requires notification to be given to all beneficiaries of the covenant. If any of the covenants beneficiary's object to the removal or variation of the covenant, Council is bound by the Act to refuse the application.

As there is no discretion for Council to make a different decision it is recommended that delegation be granted to officers.

Call in / Call out process

There is currently a process in place where Councillors with the support of the Mayor or another Councillor can request that any planning applications be referred to a full Council Meeting for a decision. In addition, there is the ability for Councillors to call out a planning decision that may end up in the chamber so that a decision can be made under delegation. For both scenarios Councillors must state their reasons for doing so.

It is proposed to update and ensure consistency in the 'call in' and 'call out' process to require the signature of the Mayor and two Councillors, including the Ward Councillor. The proposed change is to provide improved transparency on decisions being made when changing the delegation on who will have delegation to determine a planning application.

The change will also ensure that the significant action of removing officer delegation through the 'call in' process or the removing Councillor deliberation of an application in the chamber through the 'call out' process to have the support of one third, three out of the nine elected councillors, to agree before the change in the delegated decision maker is made.

The consistent and improved transparent approach being proposed is viewed as best practice decision making and governance model and will provide a greater transparent and robust process for the councillor group when making decisions on altering delegation of a planning application.

Definition of Objections

It is recommended that multi-signatory objections and/ or petition are considered as one objector under the planning delegations to be consistent with how objections are considered under the *Planning and Environment Act 1987*.

The statutory planning framework draws a distinction between 'objectors' and 'objections'. An 'objector' is a person who was entitled to and did object, while a number of objectors can join together to lodge one objection against an application, which would be a multi-signatory objection/ petition. It is sufficient compliance against The Act with the granting of a permit under the Act for the Council to give notice to one person.

VCAT has also made several rulings on how the number of objections against an application *cannot dictate a planning decision because the popular view may be contrary to the factors that a decision maker must consider* when assessing an application. VCAT has also commented *that the number of objections must be considered in the context of relevant planning issues*.

It is advised that planning delegation practices comply with the requirements of legislation and best practice. The best practice model, which is supported by legal advice, would be a uniformed approach to multiple signature objections for both the purpose of complying with the *Planning and Environment Act 1987* and for the Council's delegations' arrangements.

Officers recommend that delegations to Council is updated to treat a multi-signatory objection and/ or petition as one objection against the application and to not count each signature as a separate objection when considering the number of objections for the automatic call-in trigger to a Council meeting. If the proposed changes are accepted, Council's planning website pages will be updated to reflect the changes, including the information and clear definitions on how to make a submission and the use of petitions and multi signatory objections.

Councillors can still exercise their discretion and call in a matter to the chamber under the call in process.

Recommendations

The recommendation is to approve the Instrument of Delegation in Attachment 1 with this report to ensure Council can meet its obligations under the Local Government Act 2020, the *Planning and Environment Act 1987* and other Acts where Council holds authority.

FINANCIAL ANALYSIS

The cost to prepare and adopt the Instrument of Delegation is minimal and can be met from within current operational budgets.

APPLICABLE PLANS AND POLICIES

No regional, state or national plans and policies are applicable to the recommendation in this report.

RELEVANT LAW

The power of delegation under section 11 of the *Local Government Act 2020* (the Act) is a power to delegate Council's powers under that Act or any other Act (with specific exceptions) to the Chief Executive Officer.

Section 47(1) of the Act provides that the Chief Executive Officer may, by instrument of delegation, delegate to a member of the Council staff or members of a community asset committee any power, duty or function of their office, except the power of delegation itself.

Legal advice has also been received which recommends that planning delegations be updated to be consistent with the *Planning and Environment Act 1987*.

SUSTAINABILITY IMPLICATIONS

Economic Implications

There are no direct economic impacts associated with the delegation of powers by Council discussed in this paper.

Social Implications

There are no direct social impacts associated with the delegation of powers by Council. The wider potential social impacts of planning decision making processes are broadly noted in this report.

Environmental Implications

There are no direct environmental impacts associated with the delegation of powers by Council.

COMMUNITY ENGAGEMENT

There has been no community consultation in respect of the proposed changes to the Instrument of Delegation as there is no requirement to do so.

Annual community surveys are undertaken with respect to Council's Planning Services, key feedback from the community has related to the length decision take to be made and the perceived amount of red tape that exists around the decisions. A

review of the delegations helps to address some of the concerns and reduce some of the timeframes.

If the recommended changes to delegation are made, relevant updates will be provided to our website. The planning pages of Council's website has been recently updated to help community better understand planning. There is a dedicated page that provides information to community on how to make a submission and what information should be included in the submission.

RISK ASSESSMENT

There are no proposed changes to the delegated officer Instrument, only to the conditions associated with the types of applications to be determined by Delegates of Council rather than Council in the chamber.

The proposed amendments will streamline the way in which planning applications are dealt with, reduce the timeframes associated with most applications, and retain the opportunity for Councillors to call in applications which have municipality-wide impact that they wish to see considered by the Council.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS TO THE REPORT

1. S6 Instrument of Delegation – Council to Staff – August 2024