

APPOINTMENT AND AUTHORISATION UNDER THE ENVIRONMENT PROTECTION ACT 2017 AND THE PLANNING AND ENVIRONMENT ACT 1987

Report Author: Governance Coordinator
Responsible Officer: Director Corporate Services
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

To perform all functions and powers required to meet Council's legislative obligations, Council must delegate powers and duties to Council officers to ensure services are delivered in a timely and coordinated manner. This is achieved through Instruments of Appointment and Authorisation. Such Instruments enable the organisation of Yarra Ranges Council to perform its role, serving the community, in a compliant and safe manner.

This report provides for an update to the previous appointment of Council officers as Authorised Officers pursuant to Section 147(4) of the *Planning and Environment Act 1987* and Section 242(2) of the *Environment Protection Act 2017*. Council is asked to approve the updated Instruments attached to this report, see Attachment One and Attachment 2. The current Instrument of Appointment and Authorisation was authorised by Council, 12 September 2023.

RECOMMENDATION

That Council

- 1. Formally appoint the officers referred to in***
 - (a) the Instrument of Appointment and Authorisation included at Attachment 1 to the report as an Authorised Officer, pursuant to Section 147 (4) of the Planning and Environment Act 1987 and Section 313 of the Local Government Act 2020.***
 - (b) the Instrument of Appointment and Authorisation included at Attachment 2 to the report as an Authorised Officer, pursuant to Section 242(2) of the Environment Protection Act 2017 and the Instrument of Delegation of the Environment Protection Authority under the Act dated 4 June 2021.***

2. ***Request that both Instruments of Appointment and Authorisation, as outlined in this recommendation, be signed and sealed by the Chief Executive Officer.***
3. ***Note that both Instruments come into force immediately the common seal of Council is affixed to the Instruments and remain in force until Council determines to vary or revoke them.***

RELATED COUNCIL DECISIONS

The Instrument of Appointment and Authorisation under the *Planning and Environment Act 1987* was last authorised by a resolution of Council on 12 September 2023.

The Instrument of Appointment and Authorisation under the *Environment Protection Act 2017* was last authorised by a resolution of Council on 12 September 2023.

DISCUSSION

Purpose and Background

The purpose of this report is to appoint the officers referred to in the Instruments of Appointment and Authorisation as an Authorised Officer under their respective legislation.

The Instruments have been prepared for Council's consideration based on advice from the Maddocks Authorisations and Delegations Service. The Instruments:

- Appoint the officers named to be Authorised Officers for the purposes of the *Planning and Environment Act 1987* and the *Environment Protection Act 2017* and the regulations made under these Acts.
- Authorise the officers generally to institute proceedings for offences against the Acts and regulations.

S11A Instrument of Appointment and Authorisation (Planning and Environment Act 1987)

It should be noted that section 147(4) of the *Planning and Environment Act 1987* only allows Council to appoint its employees as authorised officers. The Instrument therefore only seeks to appoint an "officer or employee" of Council as an authorised officer.

Maddocks recommends that the appointment of Authorised Officers under the *Planning and Environment Act 1987* requires a formal resolution of Council. Where such authorisation is proposed to be granted provision is also made to allow the respective officer to also initiate proceedings on behalf of Council (as provided in Section 313 of the *Local Government Act 2020*).

S11B Instrument of Appointment and Authorisation (Environment Protection Act 2017)

In appointing authorised officers under the *Environment Protection Act*, Council should note:

- Council's power of appointment may be delegated to the Chief Executive Officer in future, who can then sub-delegate the power to members of Council staff. This is on the basis that section 437(2) of the Act is to be interpreted as meaning Council only needs to have been delegated a power or function under section 437(1) in order to appoint an authorised officer.
- Contractors cannot be appointed as authorised officers for any purpose of the delegation, as the Act only allows Council to appoint an officer or employee as an authorised officer. Council should note that it may be possible for contractors to carry out some duties related to the regulation of Onsite Wastewater Treatment Systems less than 5000 litres and noise from residential construction, for example, administration or desktop assessments.
- Section 254 of the Act includes a new requirement for authorised officers appointed under section 242(2) to issue an entry report to the occupier or apparent occupier when they use a power of entry or inspection.

Recommendation and justification

The recommendation is to approve both Instruments of Authorisation associated with this report to ensure Council can meet its obligations under the *Local Government Act 2020* and other Acts where Council holds authority.

FINANCIAL ANALYSIS

There are no direct financial implications arising from the appointment of an Authorised Officer.

APPLICABLE PLANS AND POLICIES

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

This report contributes to the following strategic objective(s) in the Council Plan:

High Performing organisation: By Council approving Delegations and or Authorisations made to Council staff the organisation can operate effectively. It is unreasonable for elected Council members to perform all functions and powers required to meet its legislative obligations. Therefore, Council must delegate powers and duties to ensure services are delivered in a timely and coordinated fashion. This instrument enables the organisation to perform its role, serving the community, in a compliant manner.

RELEVANT LAW

Under section 242(2) of the *Environment Protection Act 2017* and Section 147(4) of the *Planning and Environment Act 1987*, Council officers must be appointed and authorised directly by Council, in order that they may execute relevant powers.

SUSTAINABILITY IMPLICATIONS

There are no direct economic, social or environmental impacts associated with the appointment of an Authorised Officer.

COMMUNITY ENGAGEMENT

No community consultation has been held or is proposed in relation to this matter.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

No external collaboration, sectoral innovation or continuous improvements activities have been completed in preparing this report.

RISK ASSESSMENT

The Instruments attached to this report are based on templates and advice provided by the Maddocks Delegations and Authorisations Service. The use of these documents ensures Council has compliant appointments, authorisations and delegations to relevant Council staff in place that meet the requirements of the Acts.

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. S11A Instrument of Appointment and Authorisation (*Planning and Environment Act 1987*) tracked Nov 2024
2. S11B - Instrument of Appointment and Authorisation under the EPA 2017 - tracked Nov 2024