

REVIEW OF DELEGATIONS MADE TO CHIEF EXECUTIVE OFFICER AND COUNCIL STAFF

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Responsible Officer: Director Corporate Services

Ward(s) affected: (All Wards);

CONFIDENTIALITY

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

SUMMARY

Updates have been made to the Instrument of Delegation to members of Council staff (the Instrument) to reflect several legislative and administrative changes.

The S5 delegation under the *Local Government Act 2020* (the Act) enables a Council to delegate its powers, duties, and functions to the Chief Executive Officer (CEO), except for certain responsibilities that must remain with the Council as prescribed by legislation. This delegation allows the CEO to make decisions and carry out functions on behalf of the Council, ensuring efficient administration and operational effectiveness. By granting this authority, the Council can focus on strategic decision-making while the CEO oversees day-to-day governance and service delivery.

The S6 Instrument of Delegation to members of Council staff covers delegations from a range of legislative instruments. These Acts and Regulations contain a specific power of delegation. The instrument delegates these powers from Council directly to staff, as opposed to many other pieces of legislation and regulations where Council may delegate powers, duties and functions to the CEO, who may then subdelegate to Council staff.

While it is considered good governance to regularly review and update Instruments of Delegation, the Act also mandates that Council review the delegations it has made within 12 months following a general Local Government Election.

The proposed changes in this report ensure that the CEO and appropriate members of Council staff holding, acting in, or performing, the duties of the positions described in the Instrument are nominated to act as delegates.

RECOMMENDATION

In the exercise of the powers conferred by the legislation referred to in the S5 Council to Chief Executive Officer and S6 Council to Members of Staff Instrument of Delegations included at Attachment Three and Four, Council resolves that

- 1. The delegations made to the Chief Executive Officer and 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. The Instrument comes into force immediately the common seal of Council is affixed to the Instrument.***
- 3. 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.***
- 4. 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 S5 instrument was approved at the Council meeting on 12 September 2023.

The current S6 instrument was approved at the Council meeting on 27 August 2024.

DISCUSSION

Purpose and Background

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

Section 47(1) of the Act provides that the CEO 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.

The Instruments previously approved by Council have been reviewed and the proposed updates have been prepared in line with advice provided by Maddocks Lawyers and Council officers.

KEY ISSUES

S5 Instrument of Delegation – Council to the Chief Executive Officer

The Instrument of Delegation to the CEO based on the previous Instrument approved by Council and incorporates the most recent update from Maddocks Lawyers. The update covers the following:

- Legislative changes simplifying the language of the conditions and limitations and renumbering.
- Administrative changes removing (including GST) from the value of contract and expenditure.

The updates in the Instrument (Attachment Three), once approved, will be sealed and published to Council's website, in accordance with Council's obligations under the Act and the Public Transparency Policy.

S6 Instrument of Delegation – Council to Members of Staff

The Instrument of Delegation to members of Council staff is based on the previous Instrument approved by Council and incorporates the most recent update from Maddocks. The update covers the following:

- Administrative Changes: Update to several role names (initials) that feature in the Delegate column of some of the tables within the Instrument.
- Legislative Changes: *Food Act 1984* – Four new provisions under Section 19, relating to food safety premises, where Council is the registration authority, to refuse, revoke, or suspend a registration when failing to comply with a direction.
- Legislative Changes: *Road Management Act 2004* – One new provision under Section 12, relating to providing consent to the Head of Transport for Victoria for the discontinuance of a road.
- Legislation and Administrative Changes: *Residential Tenancies (Caravan Parks and Moveable Dwellings Registration and Standards) Regulations 2020* – Two new provisions under Section 45, relating to the display of emergency contact details and registration certificate. Administrative updates including renumbering of provisions that were previously incorrect and updating delegation roles in line with operational requirements.
- Administrative Changes: *Planning and Environment Act 1987* – Three administrative updates have been included to clarify delegated authority relating to the former Lilydale Quarry site. These include changes to the Conditions and Limitations column under Section 61(1) - power to determine an application and under Section 73 - power to decide to grant an amendment to an existing permit. The definition of a Major Development has also been modified to exclude applications under Schedule 1 to the Comprehensive Development Zone – Former Lilydale Quarry. The above changes do not alter the intent of the previous document and are consistent with the Council resolution of 27 August 2024 where Council resolved to delegate decisions to Council officers where the application is generally consistent with the Former Lilydale Quarry

Comprehensive Development Plan. Conditions have been renumbered accordingly.

The updates in the Instrument (Attachment Four), once approved, will be sealed and published to Council's website, in accordance with Council's obligations under the Act and the Public Transparency Policy.

Tracked changes versions of the proposed updates (Attachment One and Two), are attached to this report for public transparency.

FINANCIAL ANALYSIS

All costs associated with prepare and adopt the Instrument of Delegation were 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.

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

High Performing organisation: By Council approving the Delegations 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

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

Section 47(1) of the *Local Government Act 2020* provides that the CEO 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.

SUSTAINABILITY IMPLICATIONS

Economic Implications

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

Social Implications

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

Environmental Implications

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

COMMUNITY ENGAGEMENT

Public consultation is not required in respect of the recommendations in this report.

RISK ASSESSMENT

The Instrument attached to this report is based on a template and written advice provided by the Maddocks Delegations and Authorisations Service. The use of such templates ensures Council has compliant appointments, authorisations and delegations to relevant Council staff in place that meet the requirements of the Acts.

This addresses the risk of Council relying on the general delegation powers in the Act to delegate matters under other Acts and ignoring the specific delegation powers contained in those other Acts.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instruments 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. Tracked changes version - S5 Instrument of Delegation – Council to Chief Executive Officer
2. Tracked changes version - S6 Instrument of Delegation – Council to Members of Staff
3. Clean version - S5 Instrument of Delegation – Council to Chief Executive Officer
4. Clean version- S6 Instrument of Delegation – Council to Members of Staff