

## REVIEW OF DELEGATIONS MADE TO CHIEF EXECUTIVE OFFICER AND COUNCIL STAFF

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Report Author: Coordinator Governance & Integrity

Responsible Officer: Director Corporate Services

Ward(s) affected: (All Wards);

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### 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.

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 One and Two, 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 10 June 2025.

The current S6 instrument was approved at the Council meeting on 10 June 2025.

## 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 including an optional requirement for the Mayor to sign the instrument as an alternative to applying the Council Seal and replacing the example of the fire services levy with the new emergency services and volunteers funding levy.

The updates in the Instrument (Attachment 1), 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.
- Legislation Changes: *Planning and Environment Act 1987*– Three new Delegations and one changed Delegation, relating to the deciding of a planning scheme or permit and Council's consent or endorsement.
- Administrative Changes: *Planning and Environment Act 1987*

### **An administrative update has been included to clarify delegated authority relating to the former Lilydale Quarry site**

This includes referencing the full title of the Incorporated Document Former Lilydale Quarry Comprehensive Development Plan October 2021 (Amended August 2022) and excluding applications made under Schedule 1 to the Comprehensive Development Zone from Condition A – Objections.

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.

### **Administrative update to correct a clerical error under summer recess and emergency delegation provisions**

In the current set of delegations, the requirement for the Director of Planning and Sustainable Futures to consult the Ward Councillors was removed in error. The amendment is proposing to reinstate the requirement to consult with the Ward Councillor to be able to exercise Condition G of the Conditions that apply to specific

delegations under the Planning and Environment Act 1987 documents to enable a planning decision to be made during summer recess and for emergency delegations.

**The introduction of Condition E into the conditions for specific delegations under the *Planning and Environment Act 1987* to grant delegation for all applications which meet the applicable 'Deemed to Comply' standards under Clause 54 and Clause 55 to be delegated to staff, and renumbering of subsequent conditions F and G.**

The Victorian State Government has implemented significant changes to all planning schemes through Amendment VC267 for Clause 55, and VC287 for Clause 54. This amendment introduced deemed-to-comply provisions under Clause 54 (One dwelling on a lot or a small second dwelling on a lot) and Clause 55 (Townhouse and Low-Rise Code) and establishes a codified assessment process.

The reforms aim to streamline approvals, reduce delays, and provide greater certainty for applicants, while ensuring developments continue to meet clearly defined standards for neighbourhood character and amenity.

These provisions now apply to both applications for a single dwelling on a lot or a small second dwelling, and for multiple dwelling developments up to three storeys.

Fifteen standards within Clause 54 (One dwelling on a lot or a small second dwelling on a lot) have been codified:

- Standard A3, A4, A5, A6, A9, A9.1, A10, A11, A12, A13, A14, A15, A16, A17 and A20

Thirteen standards within Clause 55 (Townhouse and Low-Rise Code) have been codified:

55.02-1 Street setback

55.02-2 Building height

55.02-3 Side and rear setbacks

55.02-4 Walls on boundaries

55.02-5 Site coverage

55.02-6 Access

55.02-7 Tree canopy

55.02-8 Front fences

55.04-1 Daylight to existing windows

55.04-2 Existing north-facing windows

55.04-3 Overshadowing secluded open space

55.04-4 Overlooking, and

55.05-2 Overshadowing domestic solar energy systems

Where a development meets all of the applicable standards, Council is not able to assess the application against alternative or broader planning considerations, including Local Planning Policy or the decision guidelines under Section 60 of the *Planning and Environment Act 1987*. Council must issue a planning permit, even when there are objections to the application.

Although Council is still required to notify adjoining landowners and occupiers through public advertising, third-party appeal rights have been removed with application assessed as meeting deem to comply. This means objectors cannot seek a review of the decision at the Victorian Civil and Administrative Tribunal (VCAT).

Given that Council has no discretion to refuse an application that meets the applicable standards, it is recommended that delegation be granted to officers to determine such applications under Clause 54 and Clause 55.

The updates in the Instrument, 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.

## **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. S5 Instrument of Delegation – Council to the Chief Executive Officer
2. S6 Instrument of Delegation – Council to Members of Staff