

REVIEW OF DELEGATIONS MADE TO COUNCIL STAFF

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 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 changes to the Planning and Environment Act 1987.

The proposed changes, shown by way of “track changes” in Attachment 1 to the report, ensure that 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.

Council is asked to approve the updated Instrument.

RECOMMENDATION

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. 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 Instrument was approved at the Council meeting on 10 May 2022.

DISCUSSION

Purpose and Background

It is proposed that Council approve the updated Instrument, as included at Attachment 1.

The power of delegation under section 11 of *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.

Although it may be argued that Council could simply rely on the general delegation powers in the Act to delegate matters under other Acts and ignore the specific delegation powers in those other Acts, there is an appreciable risk in doing so. This would be to ignore a rule of statutory interpretation which dictates that the specific takes priority over the general.

There is a presumption that a power of delegation cannot be sub-delegated in the absence of express authority to do so. The *Planning and Environment Act 1987*, *Food Act 1984* and other Acts contain specific powers of delegation, but do not contain an express power of sub-delegation. Therefore, it is assumed that the power of delegation cannot be sub-delegated.

This means, in respect of the specific legislation included within the Instrument of Delegation at Attachment 1, it is necessary for the delegation to come directly from Council to members of Council staff.

The Instrument approved by Council on 10 May 2022 has been reviewed and the proposed updates to this have been prepared in line with advice provided by Maddocks Lawyers.

KEY ISSUES

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:

- Section 41 of the Act has been amended to refer to the duty to make a copy of the Victorian Planning Provisions and other documents available in accordance with the public available requirements;

- Amendment of a typographical error at s.14 of the Act;
- Sections 18, 21(2), 26(2) and 46V(3) of the Act have been amended to include a note as to the period the documents must be made available in accordance with the public availability requirements;
- Section 22(1) of the Act has been amended to clarify which submissions must be considered;
- Section 22(2) of the Act has been inserted in two parts, which relate to the power to consider late submissions and the separate duty to consider late submissions;
- Sections 46V(4), (5) and (6) of the Act have been included with respect to the Melbourne Airport Environs Strategy Plans. This will only be relevant to those councils whose municipal district is wholly or partly within the Melbourne Airport Environs Area;
- Section 96J of the Act has been amended to refer to the duty rather than as a power;
- Section 185B of the Act has been inserted, which relates to the duty to comply with a request from the Minister for information; and
- In addition, administrative changes have been proposed in respect of the members of Council staff nominated to act as delegates.

The updates made 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.

FINANCIAL ANALYSIS

The cost to prepare and adopt the Instrument of Delegation is minimal and will be met from within the current approved departmental budget.

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 *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.

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

There has been no public consultation undertaken in respect of the recommendations in this report.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

Not relevant.

RISK ASSESSMENT

The Instrument of Delegation to members of Council staff has been prepared in accordance with the advice provided by Maddocks. 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 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 - Oct 2022