

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 several legislative and administrative changes.

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 25 October 2022.

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 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 rely on the general delegation powers in the Act to delegate matters under other Acts and ignore the specific delegation powers in 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 25 October 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 the following:

- 2.1. The execution of the S6 Instrument has been amended to enable Council's Chief Executive Officer (CEO) to sign the Instrument, where a resolution has been made by Council for the CEO to sign the Instrument.

Officer comment: Although this function is new and gives the Chief Executive Office power to authorise the Instrument on a resolution of the Council, in this

instance, Council will proceed with the current process and bring these decisions through the Chamber for transparency.

- 2.2. Regulations 25(a) and (b) of the Planning and Environment Regulations 1987 have been slightly amended by the Planning and Environment Amendment Regulations 2022, to refer to the public availability requirements.

Officer comment: Administrative amendment.

- 2.3. Section 52 of the Cemeteries and Crematoria Act 2003 has been inserted relating to the duty to report annually to the Secretary. In addition, administrative changes have been proposed in respect of the members of Council staff nominated to act as delegates.

Officer comment: This does not apply to Yarra Ranges Council.

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.

Recommendation and justification

The recommendation is to approve the instrument of delegation 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

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.

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 *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

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

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

Consultation has been undertaken with the relevant internal departments in the preparation of the revised Instrument in order to ensure that appropriate officers are appointed to exercise the powers granted.

RISK ASSESSMENT

The Instrument attached to this report is based on a template 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 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 - April 2023