

STRATEGY AND POLICY REVIEW COMMITTEE
3 OCTOBER 2005 **GOVERNANCE AND COMPLIANCE**

A10	DELEGATIONS FROM COUNCIL TO MEMBERS OF COUNCIL STAFF
LOCATION/ADDRESS:	N/A
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FILE NO.:	18/02/13
ATTACHMENTS:	INSTRUMENT OF DELEGATIONS FROM COUNCIL TO THE CEO; AND FROM COUNCIL TO MEMBERS OF COUNCIL STAFF

1. KEY ISSUES

- 1.1. Council is required by the Local Government Act 1989, to conduct a review of its current delegations to members of council staff. This must be done within twelve months of a general election (i.e. November 2005).
- 1.2. Attached to this report are the two proposed instruments of delegation and supporting schedules from Council to members of council staff that require review. Instrument of Delegation 1 is from Council to the Chief Executive Officer and has been in force since 28 May 2001. The second instrument details a consolidated schedule of delegations from Council to members of council staff covering legislation such as Planning and Environment Act 1987 and regulations; Road Management Act 2004 and regulations; Domestic (Feral & Nuisance) Animals Act 1994; Food Act 1984 and the Health Act 1958 together with some miscellaneous finance delegations.
- 1.3. This report does not recommend any significant changes to the current schedule of delegations save for minor amendments to account for recent changes in legislation and officer titles.

2. CONTEXT

- 2.1. The Council as a legal entity can only act in the following ways: by Council resolution or through others acting on Council's behalf. Where Council acts through others legal advice recommends that this be formalised through written 'instruments of delegation' wherever practicable. The decision of a delegate with delegated power is legally binding on the Council as if the Council had made the decision itself. The instruments of delegation submitted in this report have been prepared in accordance with recommendations received from council's legal advisors.

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- 2.2. Council's power to delegate has its primary source of power from section 98 (1) of the Local Government Act 1989. Under this section Council can delegate to a Council staff member any Council power, duty or function of the Local Government Act 1989 and any other Act. In addition, Council can empower the CEO to sub-delegate to members of Council staff any Council power that has been delegated to the CEO. However certain powers, duties and functions of certain acts and Regulations as contained in Instrument of delegation 2, can only be delegated to staff by a formal Council resolution.
- 2.3. The current delegations have been operating for a number of years. Council at its meeting held on 28 May 2001, delegated to the CEO the power to:
1. Determine any issue;
 2. Take any action; or
 3. Do any act or thing
- arising out of or connected with any duty imposed, or function or power conferred on Council by or under any Act subject to a number of conditions and limitations. Council also granted the CEO the power to further delegate to members of Council staff any power that has been delegated to the CEO.
- 2.4. Council has also previously resolved to delegate a number of its powers, duties and functions to members of council staff in relation to the Planning and Environment Act 1987, Domestic (Feral and Nuisance) Animals Act 1994, Food Act 1984, Health Act 1988, and Road Management Act 2004.
- 2.5. This review is primarily administrative in nature and is required due to changes in legislation that have occurred since Council last amended its delegations to staff together with changes in some delegate's position titles.
- 2.6. Council is required by the Local Government Act 1989 to maintain a Register of Delegations to members of council staff and to have this register available for public inspection.
- 2.7. The proposed Schedule of Delegations is in a format as recommended by Council solicitors. A number of other councils throughout Victoria also use this model. This format details by specific Act or Regulation, each authority delegated by reference to the particular clause or regulation, the delegate's current position title and any internal organisational condition or limitation imposed on the delegate.
- 2.8. To assist in maintaining the currency of the delegated powers, duties and functions in respect of the numerous Acts and Regulations contained in the Delegation Register, Council updates the register upon receipt of advice of legislative changes.

3. PROPOSAL

- 3.1. The existing delegations from Council to members of Council staff are primarily operational in nature. The proposed changes to the Schedule of Delegations are required to maintain currency with legislative updates and the current organisation structure. The proposed changes cover a number of Acts and Regulations as referred to previously in this report.
- 3.2. The impact on the organisation that this review will have will be that:
 - 3.2.1. Council complies with a legislative requirement to review its delegations within twelve months of a general election.
 - 3.2.2. Council and its officers remain clear on the powers of delegations that have been granted and their conditions including the requirement to advise council of the exercising of certain powers.
 - 3.2.3. Council's potential risk exposure in relation to the unlawful exercise of a Council power, duty or function is significantly reduced.
 - 3.2.4. An up to date Register of Delegations will be publicly available.

4. OPTIONS

- 4.1. The proposed option in this report is premised on the fact that it is appropriate and efficient for Council to delegate some of its powers, duties and functions to members of Council staff. The majority of the proposed delegated powers to staff are operational in nature and have been delegated previously by specific Council resolutions. This report provides Council with the opportunity to confirm and make minor updates to its delegations to staff in light of legislative and officer title changes.
- 4.2. An alternative option is that Council as part of this review requires significant changes to the current delegations to members of council staff and request that supplementary information be presented to a future meeting of Council.

5. POLICY IMPLICATIONS

- 5.1. Council at all times retains the power, to amend or to revoke any delegations previously granted to members of Council staff.
- 5.2. It is Council's current practice to delegate powers to its officers. Council has previously on numerous occasions adopted resolutions delegating specified powers, duties and functions of various Acts and Regulations to Council staff.
- 5.3. Certain powers of Council can only be delegated by Council itself and cannot be delegated by the Chief Executive Officer. These proposed delegations are contained in Instrument of Delegation 2.

6. SUSTAINABILITY IMPLICATIONS

6.1. Social

This review will assist in providing appropriate provision of services to the community by clearly documenting the operational responsibilities and delegated powers of Council staff.

6.2. Economic

This review will enable the organisation to lawfully levy and collect fees and charges under a variety of Acts and Regulations.

6.3. Environmental

Clear delegations to council officers assists them in performance of their regulatory powers of inspection and enforcement under legislation including the Health Act 1958, Food Act 1984 and Planning and Environment Act 1987.

6.4. Cultural

The proposed delegations review supports the provision of open and transparent governance processes by clearly documenting the powers, duties and functions delegated to Council staff by Council and / or the CEO together with any limitations or reporting requirements.

7. RESOURCE IMPLICATIONS

7.1. The Governance Projects unit has conducted this review. Through existing resources this unit will be responsible for maintaining and updating the Register at six monthly intervals as a minimum.

8. INTERNAL CONSULTATION

8.1. The compilation and subsequent review of the Delegations Register has involved discussions with relevant senior members of council staff. The matter is also scheduled for discussion at a Councillor briefing on 3 October.

9. EXTERNAL CONSULTATION

9.1. The proposed instruments of delegations and supporting schedules have been provided by and in the format recommended by Council's solicitors.

10. CONCLUSION

- 10.1. It is imperative from an accountability, transparency and risk management perspective, that Council delegations to staff are legislatively compliant, and accurately maintained. The proposed delegations before Council are generally operational in nature and have been updated to reflect minor changes in legislation and in the structure of the organisation. These delegations to staff require a Council resolution to amend and they cannot be sub-delegated by any other officer including the CEO.
- 10.2. The proposed delegations have been provided by Council's solicitors and are legislatively compliant. The Governance Projects unit will maintain the delegations register that is a document available for public inspection.

11. RECOMMENDATION

- 11.1. That Council adopts the revised Schedule of Delegations from Council to members of Council staff and that the Common Seal of Council be affixed to the Instruments of Delegation 1 and 2.
- 11.2. Instrument of Delegation 1 and supporting schedule is from Council to the Chief Executive Officer. It refers to a general delegation of council powers, duties and functions to the Chief Executive Officer inclusive of the power to sub delegate to other members of council staff.
- 11.3. Instrument of Delegation 2 and supporting schedule is from Council to members of council staff covering legislation such as Planning and Environment Act 1987 (and regulations); Road Management Act 2004 (and regulations); Domestic (Feral & Nuisance) Animals Act 1994; Food Act 1984 and the Health Act 1958 together with some miscellaneous finance delegations.