



**13.5** **UPDATES TO THE S5 INSTRUMENT OF DELEGATION - COUNCIL TO THE CHIEF EXECUTIVE OFFICER**

**EXECUTIVE MEMBER:** **JOANNE MCNEILL, GENERAL MANAGER, GOVERNANCE CAPABILITY AND EXPERIENCE**

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**1. PURPOSE**

1.1 To recommend to Council that an updated S5 Instrument of Delegation (delegation) be issued to the Chief Executive Officer.

**2. EXECUTIVE SUMMARY**

- 2.1 The *Local Government Act 2020* (the Act) provides for the delegation of Council's powers, duties and functions under that Act or any other Act.
- 2.2 The current delegation to the Chief Executive Officer was adopted by Council on 20 October 2021.
- 2.3 Council subscribes to Maddocks Lawyers delegations and authorisation service which provides six-monthly updates ensuring changes to legislation are captured.
- 2.4 Council's solicitors, Maddocks, have provided an update for the ongoing maintenance of Council's Delegation Manual. This update has changes with respect to expenditure limitations.
- 2.5 Under the current Instrument of Delegation, the Chief Executive Officer is specifically permitted to exceed the financial limit emergency situations in accordance with Council's Procurement Policy.
- 2.6 It is proposed to update the current Instrument of Delegation in line with section 11(5) of the Act to include a specific maximum limit for expenditure required under legislation that is above the Chief Executive Officer's normal financial delegation.
- 2.7 It is also proposed to update to the Instrument of Delegation to provide for the Chief Executive Officer to exceed the financial delegation where the expenditure is by or under legislation such as statutory insurance, fire services levy, WorkCover etc or compulsory insurance such as public liability, professional indemnity.
- 2.8 This proposed change is particularly applicable to the routine payment of Council's insurance premiums that currently exceed the Chief Executive Officer's financial delegations. The relevant expenditures are shown at Attachment 2.
- 2.9 This proposed change aligns with current practice and what has been documented in the Procurement Policy in the past, but which now needs to be updated to be more specific due to recent changes to the Policy.
- 2.10 When sourcing compulsory insurance, Council adheres to a separate tender process to procure an insurance broker. The broker is required to test the market on Council's behalf, ensuring that value for money is being considered each cycle.
- 2.11 Oversight of the compulsory insurance acquisition process aligns with the Audit & Risk Committee (ARCO) Charter. ARCO are provided with an annual insurance update which includes details of Council's insurance suite of policies and assesses whether



they respond to any identified risks, what policies Council has, what they cover, how much they cost and how they were sourced.

- 2.12 It is recommended Council support within this report, a minor amendment to the Procurement Policy to reflect the changes proposed in Attachment 2 to enable the CEO to authorise expenditure above the normal delegation for routine expenditure required under legislation.

### 3. RECOMMENDATION

That Council:

- 3.1 Approves an update to the Chief Executive Officer's S5 Instrument of Delegation to allow for making expenditure that exceeds \$1m (including GST), unless it is expenditure made under a contract already entered into, or is expenditure which Council is, by or under legislation, required to make (such as WorkCover and fire services property levy) in which case it must not exceed \$2m (including GST)
- 3.2 Approves an update to the Chief Executive Officer's S5 Instrument of Delegation to allow for the purchase of compulsory insurance such as Public Liability/Professional Indemnity and Asset insurance renewals in which case it must not exceed \$2m (including GST)
- 3.3 Delegates to the person holding the position, acting in or performing the duties of Chief Executive Officer the powers, duties and functions set out in the Instrument of Delegation to the Chief Executive Officer (Attachment 1), subject to the conditions and limitations specified in that Instrument.
- 3.4 Affixes the common seal of Council to the Instrument of Delegation to the Chief Executive Officer.
- 3.5 Notes that this Instrument of Delegation to the Chief Executive Officer comes into force immediately when the common seal of Council is affixed to the Instrument.
- 3.6 Revokes the current Instrument of Delegation to the Chief Executive Officer dated 20 October 2021 upon the coming into force of the Instrument. (Attachment 1)
- 3.7 Notes that 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 policies of Council that it may from time to time adopt.
- 3.8 Authorises the CEO or delegate to update table four of the Procurement Policy to align with the S5 Instrument of Delegation. (Attachment 3)

### 4. KEY POINTS/ISSUES

- 4.1 It is important to ensure that Council has properly delegated powers, duties and functions, in order to avoid any issues arising regarding the legality of a decision or an action purportedly made or taken on behalf of the Council.
- 4.2 Re-making the instrument of delegation to the Chief Executive Officer captures any new legislative powers, duties or functions enacted since the instrument of delegation was last made.
- 4.3 The Instrument of Delegation from Council to the Chief Executive Officer has been reviewed. It is proposed to clarify the intention of the Instrument in line with section 11(5) of the *Local Government Act 2020* to specify a maximum monetary limit where Council's expenditure is required by legislation but exceeds the Chief Executive Officer's financial delegation.



4.4 The Instrument of Delegation is based on model templates provided and regularly updated by Council's lawyers. This format of delegations is used extensively by Councils across the local government sector.

## 5. CONSULTATION AND STAKEHOLDERS

5.1 The instrument of delegation is a statutory document under the *Local Government Act 2020* and is based on information supplied by Council's solicitors.

5.2 The attached Instrument has been prepared in consultation with relevant Council officers.

## 6. LEGAL AND RISK IMPLICATIONS

6.1 The risks associated with establishing a limit for expenditure above the Chief Executive Officer's financial delegation but required under legislation are mitigated through the application of the Procurement Policy to Council expenditure.

## 7. FINANCIAL IMPACT

7.1 Establishing a limit for expenditure above the Chief Executive Officer's financial delegation but required under legislation provides transparency for the procurement of Council's insurance.

## 8. ENVIRONMENTAL IMPACT

8.1 There are no environmental impacts arising from this report.

## 9. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

9.1 Ongoing maintenance of the Instrument of Delegation supports Council's Strategic Direction 5 – Well Governed Port Phillip.

9.2 Procurement under the Chief Executive Officer's financial delegation occurs in accordance with Council's Procurement Policy.

## 10. IMPLEMENTATION STRATEGY

### 10.1 TIMELINE

10.1.1 If approved by Council, the delegation will apply with immediate effect. All delegations must, pursuant to section 11(7) of the *Local Government Act 2020*, be reviewed within 12 months of each general election.

### 10.2 COMMUNICATION

10.2.1 Under the *Local Government Act 2020*, and according with Council's Public Transparency Policy, a Register of Delegations must be maintained and made publicly available on Council's website.

## 11. OFFICER DIRECT OR INDIRECT INTEREST

11.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

## ATTACHMENTS

1. **S5 Instrument of Delegation - Council to Chief Executive Officer - August 2023 - Final** [↗](#)
2. **S5 Instrument of Delegation - Council to Chief Executive Officer - August 2023 - Draft** [↗](#)
3. **Procurement Policy - Version 6.2.2 - Marked-up** [↗](#)