



8.10

REVIEW OF COUNCIL DELEGATIONS TO STAFF

WARD:

WHOLE OF MUNICIPALITY

GENERAL MANAGER:

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ATTACHMENTS:

- 1. Revised Council delegation to CEO**
- 2. Council delegation to CEO with tracked changes**
- 3. Council delegations to staff**
- 4. Council delegations to staff with tracked changes**
- 5. Council delegation to staff Fishermans Bend**
- 6. Council delegation to staff - St Kilda Road North Precinct**
- 7. St Kilda Protocol Seabaths**

PURPOSE

This report details the delegations from Council to members of Council staff that are currently in place under various Acts and Regulations, and which are required to be reviewed pursuant to the Local Government Act (the Act).

This report recommends that Council continues to delegate specific powers, duties and functions to the CEO and Council staff under various Acts and Regulations.



I. RECOMMENDATION

That Council:

- 1.1 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.
- 1.2 Affixes the common seal of Council to the Instrument of Delegation to the Chief Executive Officer (Attachment 1).
- 1.3 Notes that this Instrument of Delegation to the Chief Executive Officer (at Attachment 1) comes into force immediately when the common seal of Council is affixed to the Instrument.
- 1.4 Revoke the current Instrument of Delegation to the Chief Executive Officer dated 25 June 2013 upon the coming into force of the Instrument (at Attachment 1).
- 1.5 Notes that the Instrument of Delegation to the Chief Executive Officer includes a power of delegation to members of Council staff, in accordance with section 98(3) of the Local Government Act 1989.
- 1.6 Delegates to the members of Council staff holding, acting in or performing the duties of the offices or positions referred to in the Instrument of Delegation from Council to Members of Council Staff (at Attachment 3) the powers, duties and functions set out in that Instrument, subject to the conditions and limitations specified in that instrument.
- 1.7 Affixes the common seal of Council to Attachment 3 – Instrument of Delegation from Council to Members of Council Staff.
- 1.8 Notes that this Instrument of Delegation from Council to Members of Council Staff (at Attachment 3) comes into force immediately the common seal of Council is affixed to that Instrument.
- 1.9 Revoke the current Instrument of Delegation from Council to Members of Council Staff dated 9 February 2016 upon the coming into force of the Instrument (at Attachment 3).
- 1.10 Confirms the previous resolution of Council dated 28 July 2015 delegating certain statutory planning powers relating to the Fishermans Bend Urban Renewal Area to members of Council staff (Attachment 5).
- 1.11 Confirms the previous resolution of Council dated 2 August 2017 delegating certain statutory planning powers relating to the St Kilda Road North Precinct to members of Council staff (Attachment 6).
- 1.12 Confirms the 'St Kilda Protocol' being that in relation to the St Kilda Seabaths that any major land use or major design matters are to be presented to Council for determination following an officer report that provides analysis on the topic (Attachment 7).



2. BACKGROUND

- 2.1 Council is required by the Act to conduct a review of its delegations to members of Council staff (including the CEO) within 12 months of a general election - by 22 October 2017. (Council is also required to review its delegations to Special Committees within that timeframe, however those delegations will be subject of a separate report).
- 2.2 The Act expressly provides for a Council to delegate a power duty or function to a member of Council staff, to act on behalf of Council. The Council is a legal entity composed of Councillors and is not a “natural person”, so Council can only act in one of two ways: either by resolution of Council in a Council meeting, or through others acting on its behalf as delegates. It is impractical for Council to deal with all day to day issues, therefore many operational actions are performed by staff under delegation from Council.
- 2.3 Council currently has in place two separate types of delegations from Council to Council staff, being delegations to:
 - 2.3.1 The Chief Executive Officer (CEO), which also includes the power for the CEO to sub-delegate to Council staff; and
 - 2.3.2 Members of Council staff.
- 2.4 There are two key Instruments of Delegation currently used by Council - Council’s delegations to the CEO, and Council’s delegations to Members of Council Staff. These are also available to view on Council’s website.
- 2.5 These Instruments of Delegation are based on ‘model delegations’ provided and regularly updated by Council’s lawyers. This format of delegations is used extensively by Councils across the local government sector.
- 2.6 Whilst Council is required to conduct this review of these delegations within the specific timeframe, it is open to Council to amend and update these delegations from time to time when considered appropriate, and when otherwise required (for example, to reflect changes in legislation).
- 2.7 Generally speaking, officers consider that the delegations from Council to CEO and to staff do not “stand alone” and would not be amended in isolation. Rather, these delegation documents are intended to reflect and be consistent with policy positions that Council has adopted. (For an example, see the updated Procurement Policy, which was amended recently by Council at the meeting on 21 June 2017). Officers consider that Council’s delegations to staff should be considered for update as required when Council adopts new or updated policy, because of changes to staff roles, or when there are changes to relevant legislation.

3. KEY INFORMATION

Council delegation to the CEO

- 3.1 Section 98 of the Act provides that a Council may, by instrument of delegation, delegate to a member of its staff any power, duty or function of a Council under the Act or any other Act, other than:
 - 3.1.1 (a) the power of delegation;



- 3.1.2 (b) the power to declare a rate or charge;
 - 3.1.3 (c) the power to borrow money;
 - 3.1.4 (d) the power to approve any expenditure not contained in a budget approved by the Council;
 - 3.1.5 (e) any power, duty or function of the Council under section 223 (the requirements for Council when the Act specifies that a person has a right to make a submission); and
 - 3.1.6 (f) any prescribed power.
- 3.2 **Attachment 1** is the proposed revised Instrument of Delegation from Council to the CEO which grants powers, duties and functions to the CEO subject to conditions and limitations, as set out in the Schedule. This enables the CEO to perform the role of a CEO, and also empowers the further delegation of powers, duties and functions to members of Council staff. These sub-delegations to staff are operational in nature and facilitate the efficient and effective functioning of the organisation.
- 3.3 This form of delegation from Council to the CEO has been in force with minor amendments since 2001, and was previously reviewed by Council in 2013.
- 3.4 The delegation from Council to the CEO is subject to detailed conditions and limitations which restrict the CEO from acting in certain circumstances, as set out in the Schedule. For example the CEO must not make decisions on a matter which Council has resolved that the matter must be determined by a Council resolution. Other limitations on the power of the CEO include not making local laws, not adopting the Budget or Council Plan, and not returning a general or supplementary revaluation. Where the CEO's power has been limited in the delegation, these functions must be exercised by the Council as the subject of a Council resolution.
- 3.5 **Attachment 2** has been marked up from the current version to show the changes that are now proposed in this report. The proposed changes (apart from the expected date of the Council resolution in paragraph 1) are to include new conditions/limitations in the Schedule at paragraphs 4.1 regarding the CEO's power to award, enter into and sign contracts in ordinary situations and emergency situations. These new conditions/limitations have been included to reflect the change in financial delegations granted to the CEO in the Procurement Policy adopted by Council on 21 June 2017.
- 3.6 **Attachment 3** is the proposed updated Instrument of Delegation from Council to members of Council staff. This form of delegation to staff from Council has been in force since 2001, with amendments made from time to time to reflect changes in legislation and officer titles.
- 3.7 The exercise of these delegated powers by a delegated member of Council staff remains subject to conditions and limitations, for example decisions must be made in accordance with the guidelines and policies adopted by Council, and a delegate must not make a decision about matters that Council has decided must be the subject of a Council resolution.



Delegations under Specific Acts

- 3.8 This Instrument largely contains delegations by Council of specific powers, duties and functions under various Acts (e.g. the Domestic Animals Act 1994; the Food Act 1984; the Heritage Act 1995; the Planning and Environment Act 1987 and certain regulations; the Residential Tenancies Act 1997 and certain regulations; the Road Management Act 2004 and certain regulations). These delegations were last reviewed in February 2016.
- 3.9 These powers, duties and functions under provisions of various Acts can only be delegated to staff by Council directly – and cannot be delegated to staff by the CEO. The Instrument document at Attachment 3 is set out by Act, listing the provision of the Act and the thing delegated (the power, duty or function), and the delegate (person who is delegated to exercise the power, duty or function).
- 3.10 **Attachment 4** contains proposed updates that have been marked up as tracked changes from the current version. Generally these are minor in nature and reflect amendments to legislation, staff position titles and corrections to the officers delegated (e.g. the Food Act 1984 now only contains delegations to officers at the Coordinator and Environmental Health Officer level). The legislative changes include the Planning and Environment (Fees) Regulations 2016 replacing the Planning and Environment (Fees) Regulations 2015, and the Road Management (General) Regulations 2016 replacing the Road Management (General) Regulations 2005. Delegations to staff under the Food Act 1984 have been amended to reflect that the powers, duties and functions under this Act are performed by qualified Environmental Health Officers and under the Domestic Animals Act 1994 to reflect that the power to declare a menacing dog can only be issued by an Authorised Officer.

Financial Delegations

- 3.11 Attachment 2 (under the “Miscellaneous” heading) also sets out financial delegations from Council to the CEO. These relate to the power to award, enter, sign and vary contracts; to declare that a contract is required to be entered due to an emergency; and to authorise payment of annual insurance premiums. These financial delegations have been updated in the attached proposed Instrument to reflect and be consistent with the levels of authority in Council’s updated Procurement Policy which was adopted by Council on 21 June 2017.

Planning Delegations

- 3.12 The majority of delegations from Council to Council staff in Attachment 3 are operational in nature and allow for the timely actioning of powers, duties and functions arising under the Planning and Environment Act 1987. Officers consider that the delegation of decision-making in this area is essential to manage the effective use of Councillors’ time, for the smooth operation of the planning system and to facilitate reasonable timeframes for decisions.
- 3.13 However as detailed in the schedule of delegations, Council has decided that certain powers in relation to the determination of planning permit applications under the Planning and Environment Act 1987 are not delegated to Council staff. Consequently, those planning permit applications must be brought to Council for decision.



- 3.14 The current criteria as contained in the Attachment 3 schedule of delegations state that a planning permit must come before Council where:
- 3.14.1 An application has 16 or more objections are received and where the application has not been refused under delegation.
 - 3.14.2 A Councillor requests the application be determined by the Council.
 - 3.14.3 An application that raises issue of policy that should be debated at Council (strategic or substantive policy issues), as determined by the Manager City Development and/or Neighbourhood Coordinators.
 - 3.14.4 An application that involves substantive non-compliance with the Planning Scheme or Council policy but officers consider the application should be supported.
 - 3.14.5 An application that involves non-compliance with residential parking requirements (except that a minor dispensation can be determined by the Manager City Development or Neighbourhood Coordinators unless a Councillor requests that the application be determined by Council).
- 3.15 In addition to the planning delegations contained in Attachment 3, Council has also carried two specific Council resolutions regarding planning applications in the Fishermans Bend Urban Renewal Area and the St Kilda Road North Precinct.
- 3.16 At the Ordinary meeting of Council held on 28 July 2015, Council resolved (see **Attachment 5**):
- 3.16.1 That Council reinstates decision making powers to Council Officers where Council is the Responsible Authority in the Fishermans Bend Urban Renewal Area with:
 - 3.16.1.1 The power to refuse planning permit applications where inconsistent with the Planning Scheme and the Strategic Framework Plan;
 - 3.16.1.2 The power to determine planning permit applications or amendments to a planning permit for:
 - 3.16.1.2(a) Land uses except for Accommodation
 - 3.16.1.2(b) Development except for the purposes of Accommodation provided that no building exceeds four storeys.
 - 3.16.1.3 The power to provide comments to the Minister for Planning for permit applications referred to Council.
- 3.17 At the Ordinary meeting of Council held on 2 August 2017 Council resolved (see **Attachment 6**):
- 3.17.1 That Council determines all new planning permit applications that exceed six storeys in height in the area covered by Sub Precinct 2 in Schedule 26 to the Design and Development Overlay in the Port Phillip Planning Scheme, for the St Kilda Road North Precinct.
- 3.18 In addition to these two Council resolutions outlined in paragraphs 3.16 and 3.17, over 17 years ago an informal protocol was made between the then Manager Strategic



Planning and the then Councillors in relation to the St Kilda Seabaths. The “St Kilda Protocol” stated *that in relation to the St Kilda Seabaths that any major land use or major design matters are to be presented to Council for determination following an officer report that provides analysis on the topic.* Council reports in 2003, 2005 and 2006 refer to this protocol. As this protocol has never been formalised into any of Council’s delegation registers, this report recommends that Council confirms this protocol (see **Attachment 7**).

Regular Reporting of Actions by Delegates

- 3.19 In some cases the delegations to Council staff in Attachment 3 include a requirement for specific actions taken by delegates to be reported to Councillors as soon as practicable. Examples of these are agreements under the Planning and Environment Act 1987 entered into with an applicant relating to the payments of a development infrastructure levy or a community infrastructure levy (refer page 24 of Attachment 3).
- 3.20 In addition, officers provide a regular monthly report to Council of planning permit decisions made by officers under delegation.

Officers’ Views

- 3.21 Noting the changes set out in Attachment 3 and discussed above, officers currently consider that the delegations set out an appropriate balance between staff acting on operational matters, and Councillors making decisions of a strategic nature by way of formal Council resolutions.
- 3.22 Relevant senior management have been consulted and they confirm that:
 - 3.22.1 The power, duty or function is appropriate to be delegated to the member of staff nominated in the schedule;
 - 3.22.2 The officer titles as delegate are current; and
 - 3.22.3 The correct officer title has been delegated the power, duty or function.
- 3.23 Feedback was received from Council’s solicitors that 76 Victorian Councils currently subscribe to the model delegations and legislation update service. Council implements the model delegations in the form of the two Instruments of Delegation that are attached. As this model of delegations is used extensively across the local government sector, it is not intended to change the format of the delegations.



FURTHER SUPPORTING INFORMATION

4. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 4.1 The functions, duties and powers delegated to staff to ensure the efficient and effective functioning of the organisation are consistent with Council's strategic direction and commitment to the community of a financially sustainable, high performing, well governed organisation that puts the community first.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 This review of delegations has involved discussions with relevant senior members of Council staff, Councillors, Council's solicitors and some benchmarking has been undertaken within the local government sector.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 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, it is recommended that this be formalised through written instruments of delegation. 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 attached to this report have been prepared in accordance with recommendations received from Council's legal advisors.
- 6.2 The proposed delegations contain exceptions, conditions and limitations which must be adhered to by the delegate.
- 6.3 Council is required to conduct this review of these delegations within a specific timeframe required under the Act. However it is open to Council to amend and update its delegations at any other time when considered appropriate, or when necessary (for example, to reflect changes in legislation or to address risks that arise).

7. SUSTAINABILITY – Triple Bottom Line

- 7.1 ENVIRONMENTAL IMPLICATIONS
- 7.1.1 N/A
- 7.2 SOCIAL & CULTURAL IMPLICATIONS
- 7.2.1 N/A
- 7.3 ECONOMIC IMPLICATIONS
- 7.3.1 N/A
- 7.4 FINANCIAL IMPLICATIONS
- 7.4.1 N/A

8. IMPLEMENTATION STRATEGY

- 8.1 TIMELINE



8.1.1 The proposed delegations in this report will come into force immediately the common seal is affixed to each Instrument of Delegation.

8.2 **COMMUNICATION**

8.2.1 Council must keep a register of its delegations and this must be publicly available for inspection. The register will be updated according to the resolutions carried by Council and it and the instruments of delegation will be available for public inspection, and on Council's website.

9. OFFICER DIRECT OR INDIRECT INTEREST

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