



**13.3** **S6 INSTRUMENT OF DELEGATION - COUNCIL TO MEMBERS OF STAFF**

**EXECUTIVE MEMBER:** **CLAIRE STEVENS, GENERAL MANAGER, GOVERNANCE AND ORGANISATIONAL CAPABILITY**

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**1. PURPOSE**

1.1 To present to Council an updated S6 Instrument of Delegation from Council to Members of Council Staff.

**2. EXECUTIVE SUMMARY**

- 2.1 The current delegation from Council to Members of Council Staff was adopted by Council on 2 February 2022, and provides for Council staff to exercise the powers, duties and functions under various Acts and Regulations.
- 2.2 Council's lawyers have provided an update for the ongoing maintenance of Council's Delegation Manual and considers important changes to legislation that were assented to, or made, on or after 8 July 2021 which affect Council's powers, duties and functions.
- 2.3 The changes proposed to the delegation from the current version are generally minor in nature and reflect amendments to legislation and corrections to the officers delegated. Amendments have also been made to titles of officers as a result of the organisational realignment which commenced on 31 January 2022.
- 2.4 This report presents to Council the updated S6 Instrument of Delegation from Council to Members of Council Staff.

**3. RECOMMENDATION**

That Council:

- 3.1 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 (Attachment 1) the powers, duties and functions set out in that Instrument, subject to the conditions and limitations specified in that instrument.
- 3.2 Affixes the common seal of Council to the Instrument of Delegation from Council to Members of Council Staff.
- 3.3 Notes that this Instrument of Delegation from Council to Members of Council Staff comes into force immediately the common seal of Council is affixed to that Instrument.
- 3.4 Revokes the current Instrument of Delegation from Council to Members of Council Staff dated 2 February 2022 upon the coming into force of the Instrument (Attachment 1).
- 3.5 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.
- 3.6 Authorises the CEO to make administrative changes to the document to correct any titles and typographical errors, to enable the documents to be appropriately sealed.



#### 4. KEY POINTS/ISSUES

- 4.1 The *Local Government Act 2020* expressly provides for a Council to delegate a power, duty or function to the Chief Executive Officer or a member of a delegated committee, to act on behalf of Council.
- 4.2 Additionally, in the exercise of the powers conferred by the legislation referred to in the S6 Instrument of Delegation, Council may also delegate certain powers, duties and functions directly to members of Council staff.
- 4.3 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.
- 4.4 Council currently has in place two separate types of delegations from Council to Council staff, being delegations to:
  - The Chief Executive Officer (CEO), which also includes the power for the CEO to sub-delegate to Council staff; and
  - Members of Council staff.
- 4.5 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. This form of delegation to staff from Council has been in force since 2001. Reviews are undertaken regularly, and amendments are made from time to time to reflect changes in legislation and officer titles.
- 4.6 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

- 4.7 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 2017*; the *Planning and Environment Act 1987*; the *Residential Tenancies Act 1997*; the *Road Management Act 2004* and associated regulations).
- 4.8 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.
- 4.9 The changes proposed from the current version are generally minor in nature and reflect amendments to legislation and corrections to the officers delegated. Amendments have been made to titles of officers as a result of the organisational realignment which commenced 31 January 2022.

##### Planning Delegations

- 4.10 The majority of delegations from Council to Council staff 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.

- 4.11 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.
- 4.12 The current criteria as contained in the schedule of delegations state that a planning permit must come before Council where:
- 4.12.1 Applications where 16 or more objections are received and where the application has not been refused under delegation.
  - 4.12.2 A Councillor requests the application be determined by the Council.
  - 4.12.3 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 Coordinators.
  - 4.12.4 An application that involves substantive non-compliance with the Planning Scheme or Council policy but officers consider the application should be supported.
  - 4.12.5 An application that involves non-compliance with residential parking requirements (except that a minor dispensation can be determined by the Manager City Development or Coordinators unless a Councillor requests that the application be determined by Council).
- 4.13 In addition to the planning delegations, 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.
- 4.13.1 At the Ordinary meeting of Council held on 28 July 2015, Council resolved to reinstate decision making powers to Council Officers where Council is the Responsible Authority in the Fishermans Bend Urban Renewal Area with:
- The power to refuse planning permit applications where inconsistent with the Planning Scheme and the Strategic Framework Plan;
  - The power to determine planning permit applications or amendments to a planning permit for:
    - Land uses except for Accommodation
    - Development except for the purposes of Accommodation provided that no building exceeds four storeys.
  - The power to provide comments to the Minister for Planning for permit applications referred to Council.
- 4.13.2 At the Ordinary meeting of Council held on 2 August 2017 Council resolved that the Council will determine 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.



- 4.14 In addition to these two Council resolutions, 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.*
- 4.15 These protocols have, for completeness, have now been incorporated into Council’s S6 Instrument of Delegation to Members of Council Staff.

#### Regular Reporting of Actions by Delegates

- 4.16 In some cases the delegations to Council staff 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.
- 4.17 In addition, officers provide a regular monthly report to Council of planning permit decisions made by officers under delegation.

### **5. CONSULTATION AND STAKEHOLDERS**

- 5.1 The instrument of delegation is a statutory document under the legislation referred to in the S6 Instrument of Delegation, and is based on information supplied by Council’s solicitors.

### **6. LEGAL AND RISK IMPLICATIONS**

- 6.1 Delegations reflect the powers, duties and functions that can be delegated under the legislation referred to in the Instrument and are essential to enable the day to day operations of the Council to be performed.

### **7. FINANCIAL IMPACT**

- 7.1 The Instrument of Delegation is consistent with Council’s *Procurement Policy*.
- 7.2 Funding for governance compliance work required under the *Local Government Act 2020* has been provided for in existing budgets.

### **8. ENVIRONMENTAL IMPACT**

- 8.1 There are no environmental impacts arising from this report.

### **9. COMMUNITY IMPACT**

- 9.1 There are no community impacts arising from this report.

### **10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY**

- 10.1 The delegation reflects the legislative and policy influence provisions of the Council Plan 2017-2027.

### **11. IMPLEMENTATION STRATEGY**

- 11.1 TIMELINE

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## 16 MARCH 2022



11.1.1 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.

### 11.2 COMMUNICATION

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

## 12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

### ATTACHMENTS

1. S6 Instrument of Delegation - Council to Members of Staff