



13.1 REVIEW OF COUNCIL'S DELEGATIONS TO SPECIAL COMMITTEES AND MEMBERS OF COUNCIL STAFF

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1. PURPOSE

- 1.1 To present to Council the delegations from Council to members of Council staff and Special Committees 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).

2. EXECUTIVE SUMMARY

- 2.1 Council is required by the Act (Section 11(7)) to conduct a review of its delegations to members of Council staff (including the CEO) and to Special Committees within 12 months of a general election.
- 2.2 The Act 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:
- The Chief Executive Officer (CEO), which also includes the power for the CEO to sub-delegate to Council staff; and
 - Members of Council staff.
- 2.4 These Instruments of Delegation are based on 'model delegations' provided by and regularly updated by Council's lawyers. This format of delegations is used extensively by Councils across the local government sector.
- 2.5 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).



3. RECOMMENDATION

That Council:

- 3.1 Notes the review of delegations from Council to members of Council staff and Special Committees 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);
- 3.2 Delegates to the members of Council staff holding, acting in or performing the duties of the offices or positions referred to in the following Instrument of Delegations from Council the powers, duties and functions set out in that Instrument, subject to the conditions and limitations specified in that instrument:
 1. Instrument of Delegation from Council to the CEO (**Attachment 1**)
 2. Instrument of Delegation from Council to the CEO – South Melbourne Market (**Attachment 2**)
 3. Instrument of Delegation from Council to Members of Council Staff (**Attachment 3**)
- 3.3 Delegates to the members of the Planning Committee the powers, duties and functions set out in the Instrument of Delegation (**Attachment 4**).
- 3.4 Affixes the common seal of Council to the above Instruments (Attachments 1-4).
- 3.5 Notes that these Instruments come into force immediately upon resolution.
- 3.6 Notes that the duties and functions set out in the instruments must be performed, and the powers set out in the instruments must be executed, in accordance with any policies of Council that it may from time to time adopt.

4. KEY POINTS/ISSUES

4.1 Delegation to the CEO

- 4.1.1 The current delegation to the CEO was approved by Council on 19 August 2020. The Instrument of Delegation enables the CEO to perform the role of a CEO, and 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. This form of delegation from Council to the CEO has been in force with minor amendments since 2001.
- 4.1.2 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. The only change proposed to this delegation is the expected date of this Council resolution (**Attachment 1**).
- 4.1.3 South Melbourne Market

At its meeting of 2 September 2020, Council transitioned the South Melbourne Market Committee from a delegated committee under the 1989 Local



Government Act to an Advisory Committee of Council, and delegated to the Chief Executive Officer the powers, duties and functions set out in the Instrument of Delegation. The only change proposed to this delegation is the expected date of this Council resolution (**Attachment 2**). This will be considered further by Council once the review of the South Melbourne Market governance structure has been completed.

4.2 Delegation to Members of Council Staff

4.2.1 The current delegation to Members of Council Staff was approved by Council on 2 September 2020. 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. This has been updated to align with the current organisational structure as a review of the delegations is required within 12 months of a general election. There has recently been an announcement of a move to a new organisational structure in the coming months. As it must be abundantly clear at any point in time which role is responsible for each delegated power, the current delegation listings will be represented to Council closer to the time that the new structure takes effect to reflect changed responsibilities.

4.2.2 Delegations under Specific Acts

This Instrument largely contains delegations by Council of specific powers, duties and functions under various Acts (e.g. the Domestic Animals Act; the Food Act; the Heritage Act; the Planning and Environment Act; the Road Management Act and certain regulations).

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.

4.2.3 The changes proposed from the current version are generally minor in nature and reflect amendments to legislation and corrections to the officers delegated.

Planning Delegations

4.2.4 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.

4.2.5 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.

4.2.6 The current criteria as contained in the schedule of delegations states that a planning permit must come before Council where:



- a) Applications where 16 or more objections are received and where the application has not been refused under delegation.
- b) A Councillor requests the application be determined by the Council.
- c) 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.
- d) An application that involves substantive non-compliance with the Planning Scheme or Council policy, but officers consider the application should be supported.
- e) 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).

4.2.7 In addition to the planning delegations, Council has also carried specific Council resolutions regarding planning applications in the Fishermans Bend Urban Renewal Area and the St Kilda Road North Precinct.

- a) 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.
- b) 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.
- c) 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.*

4.2.8 These protocols have, for completeness, now been incorporated into Council's delegation to members of Council staff (Attachment 3).



4.2.9 Regular Reporting of Actions by Delegates

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. In addition, officers provide a regular monthly report to Council of planning permit decisions made by officers under delegation.

4.3 Delegation to Special Committees

Council established the Statutory Planning Committee on 25 June 1997 for the purpose to exercise Council's powers, duties and functions under the Planning and Environment Act 1987 in accordance with relevant policies and guidelines of the Council. The Statutory Planning Committee comprises all Councillors and meets monthly. It is charged with the authority to deal with statutory planning matters only. The delegation to the Committee was most recently approved by Council on 19 August 2020.

Attachment 4 is a general delegation of Council's powers, duties and functions under the Planning and Environment Act 1987 to the Statutory Planning Committee. The only change proposed to this delegation is the expected date of this Council resolution.

5. CONSULTATION AND STAKEHOLDERS

5.1 The instruments of delegation are statutory documents under the Local Government Act 2020 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 a wide range of Acts and Regulations and are essential to enable the day to day operations of the Council to be performed.

6.2 The proposed delegations contain exceptions, conditions and limitations which must be adhered to by the delegate.

6.3 This review of delegations confirms Council's compliance with the Local Government Act 2020.

7. FINANCIAL IMPACT

7.1 The Instruments of Delegation are consistent with the financial delegations included in Council's *Procurement Policy*.

8. ENVIRONMENTAL IMPACT

8.1 There are no environmental impacts arising from this report.

9. COMMUNITY IMPACT

Accurate and accessible instruments of delegation assist the community to:

9.1 Ensure decision making by Council is transparent and understandable.

9.2 Ensure decision making is conducted in accordance with the principles of procedural fairness and good governance.

9.3 Ensure decision making is made in a safe and respectful environment.



10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 This report supports Direction 5 of the Council Plan – Well Governed Port Phillip, by providing a transparent and responsible approach to decision making.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 Delegations will apply with immediate effect.

11.2 COMMUNICATION

11.2.1 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.

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. Council to CEO
2. Council to CEO - SMM
3. Council to Members of Council Staff
4. Council to Planning Committee