



WARRNAMBOOL  
CITY COUNCIL

# Delegations & Authorisations Policy

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TABLE OF CONTENTS

1. INTRODUCTION.....4

    1.1. Purpose.....4

    1.2. Scope.....4

    1.3. Definitions.....4

    1.4. References.....4

2. POLICY.....5

    2.1. Delegations.....6

        2.1.1. Instruments of Delegation .....6

        2.1.2. Delegations to staff .....7

        2.1.3. Delegations to delegated committees .....7

        2.1.4. Exercising delegated authority .....7

        2.1.5. Delegations training .....8

        2.1.6. Acting Chief Executive Officer and delegation of legislative CEO powers .....8

        2.1.7. Referral to Council.....9

    2.2. Authorisations.....9

3. GOVERNANCE .....9

    3.1. Owner .....9

    3.2. Review.....9

    3.3. Compliance Responsibility .....9

        3.3.1. Management Executive Group (Chief Executive and Directors) .....9

        3.3.2. Managers and Supervisors.....9

        3.3.3. Governance .....10

        3.3.4. All Employees .....10

    3.4. Charter of Human Rights Compliance .....10

## 1. INTRODUCTION

### 1.1. Purpose

There are many Acts and Regulations that confer responsibility on councils to take action or determine matters. Council as a legal entity can only make decisions or exercise its powers under these Acts and Regulations by a resolution made at a Council meeting. As it is not practical for Council alone to exercise all the powers, duties and functions bestowed on the Council, decision making must be devolved effectively from the central source of authority downwards and powers allocated to certain groups or individuals.

The purpose of this policy is to establish a framework for how delegations of Council authority and the authorisation of officers is to be implemented and managed.

### 1.2. Scope

This policy applies to the Warrnambool City Council – including staff, authorised officers, and members of delegated committees of Council – and any instruments of delegation or authorisation established by the Council, the Chief Executive Officer, Municipal Building Surveyor, and the Municipal Fire Prevention Officer under the *Local Government Act 2020* and any other Acts or Regulations.

### 1.3. Definitions

Term	Definition
Authorised Officer	An individual appointed to a position under an Instrument of Appointment and Authorisation who holds and exercises the statutory powers, duties and functions of that position
CEO	Chief Executive Officer
EMT	Executive Management Team
Instrument of Appointment and Authorisation	A document that appoints an officer to a statutory position. Once the person is authorised and appointed by Council, that person has the powers of that statutory position
Instrument of Delegation	A document that appoints an officer to a statutory position.
Legislative CEO powers	Means powers directly bestowed upon the CEO by legislation such as the <i>Local Government Act 2020</i> , as distinct from powers delegated to the CEO by Instruments of Delegation
MBS	Municipal Building Surveyor
MFPO	Municipal Fire Prevention Officer

### 1.4. References

*Building Act 1993*  
*Fire Rescue Victoria Act 1958*  
*Local Government Act 1989*  
*Local Government Act 2020*

## 2. POLICY

Council is a statutory entity. This means that it is only able to do things that statutes confer power upon it to do.

Council's powers and their statutory sources are:

- The general power to do all things necessary or convenient to be done in connection with the performance of its role conferred by section 10(1) of the *Local Government Act 2020*.
- Specific statutory powers conferred by provisions of acts and regulations, such as the *Planning and Environment Act 1987* and *Domestic Animals Act 1994*.
- The power to appoint any person other than a Councillor to be an authorised officer for the purposes of the administration and enforcement of any Act, regulations or local laws which relate to the functions and powers of the Council conferred by section 224(1) of the *Local Government Act 1989*.
- Powers conferred by other forms of statutory instrument.

### Using Council power and the power of delegation

Council as a statutory body is not a natural person and can only act by a resolution of its members, or through others acting on its behalf.

### Power of the Council to act by resolution

The power of the Council to act by resolution is prescribed by section 59 of the *Local Government Act 2020*:

- 1) *Where a Council is empowered to do any act, matter or thing, the decision to do the act, matter or thing is to be made by a resolution of the Council.*
- 2) *For the purposes of subsection (1), resolution of the Council means the following –*
  - a) *a resolution made at a Council meeting;*
  - b) *a resolution made at a meeting of a delegated committee;*
  - c) *the exercise of a power or the performance of a duty or function of the Council by a member of Council staff or a Community Asset Committee under delegation.*

### Power of the Council to delegate

Section 11 of the *Local Government Act 2020* provides that Council may delegate any power, duty or function to the CEO or to members of a delegated committee.

Therefore, the Council may:

- a) Retain a power for a decision by the Council at a council meeting;
- b) Delegate a power to the CEO and/or other officers; or
- c) Delegate a power to a committee of the Council.

The decision of a delegate is considered a decision of Council.

### Power of the CEO to sub-delegate and power of the CEO to delegate

Section 47(1) of the *Local Government Act 2020* provides that the CEO may sub-delegate any power, duty or function of the Council that has been delegated to the CEO to staff or to members of a Community Asset Committee, other than the power of delegation.

Section 47(2) of the *Local Government Act 2020* provides that the CEO may delegate any power, duty or function of the CEO to staff, other than the power of delegation.

## **Power of the Municipal Building Surveyor to delegate powers**

Under the *Building Act 1993*, the Municipal Building Surveyor has certain powers by virtue of being an MBS. The MBS has the power to delegate these powers, and to authorise certain persons to exercise some of the powers of the MBS. This is different to the other delegations and authorisations as these powers are specific MBS powers and not powers of Council. More specifically:

- Section 216B of the *Building Act 1993* allows the MBS appointed by Council to delegate their powers (as opposed to the powers of that Council) under that Act or its Regulations to any person employed, or engaged, by the Council who is registered as a building surveyor or building inspector whose registration authorises the carrying out of the work required for performing the functions to be delegated by the MBS; and
- Section 228A of the *Building Act 1993* allows the MBS to authorise a person to be an authorised person for the purpose of exercising the powers of the MBS.

## **Power of the Municipal Fire Prevention Officer to delegate powers**

Under the *Fire Rescue Victoria Act 1958* the MFPO has the power to delegate any of its powers or duties to an Assistant Fire Prevention Officer.

## **2.1. Delegations**

All delegations of Council, CEO, MBS, and MFPO powers, duties and responsibilities will be made by a written Instrument of Delegation.

### *2.1.1. Instruments of Delegation*

A delegation to a position is valid only when it is made or evidenced by either a written Instrument of Delegation made by a Council resolution or a written Instrument of Delegation made by the CEO, MBS or MFPO.

Council Instruments of Delegations are evidenced by a minuted Council resolution and by the Instruments being stamped with the common seal of Council and signed by the CEO. These instruments remain in force until revoked by the Council.

CEO, MBS, and MFPO Instruments of Delegation are evidenced by the instruments being signed by the applicable officer. These instruments remain in force until revoked by the applicable officer.

All Instruments of Delegation will be reviewed by EMT prior to being endorsed by Council, the CEO, the MBS, or the MFPO.

Council's governance unit will review all of Council's Instruments of Delegation once every six months and prepare updated instruments for endorsement as required by changes to legislation or by operational need.

The governance unit will consult relevant Directors and Managers when preparing changes to Instruments of Delegations to ensure the delegations remain appropriate and reflect the responsibilities of positions.

Staff members who have been delegated new powers or had changes made to their delegated powers will be informed of the changes by the governance unit. The affected staff members will acknowledge their awareness of these changes.

Council will maintain a public register of delegations and will make this available on Council's website.

### *2.1.2. Delegations to staff*

Delegations are made to staff in relation to a position they occupy and are set out in schedules referenced by Instruments of Delegation.

Unless otherwise explicitly stated, a delegation to a specific position or positions applies to any staff member within that position and includes staff acting in or temporarily holding that position.

Directors and Managers are responsible for ensuring acting position arrangements are in place when required so that delegated authority can continue to be executed.

Acting arrangements should be documented in writing to ensure the transfer of delegated authority is verifiable.

Staff taking on acting or higher duties will be informed of their delegated powers related to their temporary position.

If a position is abolished or re-named, the delegation will be taken to be a reference to the principal successor of the functions of that position until the relevant Instrument of Delegation is amended.

When a position title is changed or a position description is changed Organisational Development will communicate the changes to the governance unit so that a review of delegations can be undertaken where the position has delegated authority.

### *2.1.3. Delegations to delegated committees*

When Council delegates a power, duty or function to a special committee it invests the committee with the authority to act as the Council.

The delegation is to the committee, it relates to the committee acting as a body, not to individual members of the committee.

Accordingly, the powers, duties and functions delegated to the committee can only be executed by the committee under delegation when the committee is sitting in a formally constituted meeting.

### *2.1.4. Exercising delegated authority*

In exercising a delegation, a delegate must comply with all conditions and limitations of a delegation, relevant legislation, resolutions of Council, and Council's policies and procedures.

#### *Decision Making*

A delegate must act impartially and with integrity at all times and adhere to the principles of natural justice when making decisions.

## *Delegate scope*

A delegate should be familiar with the delegated powers issued to them and ensure that decisions or actions taken are within their power to make. Delegates must not exercise delegated authority beyond the scope granted by relevant Instruments of Delegation. Any decisions made beyond the scope of a delegate's delegation will result in that decision being invalid and may potentially expose Council to litigation.

If a delegate is unsure of the extent of their authority to make a particular decision they must seek advice from their manager or the governance unit.

## *Delegate accountability*

The delegate is responsible and accountable for any decision made under a delegation and are required to be able to justify such a decision or action. Delegates must ensure decisions made under delegation are appropriate, fair and documented appropriately.

## *Conflicts of interest*

A person must not exercise a delegation that would create for them a material or general conflict of interest. A person is not obliged to exercise a delegation, where in their reasonable opinion, circumstances exist that would make it more transparent or ethical for the matter to be dealt with by another delegate.

## *Assistance from non-delegates*

Delegated powers, duties and functions described in the Instruments of Delegation relate to the final exercise of those powers, duties and functions. Other staff not holding a delegation can assist a delegate to prepare for the exercise of that power in any way required.

### *2.1.5. Delegations training*

All staff will receive information about delegations, authorisations and related processes as part of the induction process.

Newly appointed staff with delegated powers will receive specific delegations training to ensure a clear understanding of their responsibilities and how their powers should be exercised and recorded.

Staff holding positions with delegated powers will be reminded of their responsibilities and the limits of their powers at least once every two years.

### *2.1.6. Acting Chief Executive Officer and delegation of CEO position*

The *Local Government Act 2020* allows Council to delegate to the Chief Executive Officer the power to appoint an Acting Chief Executive Officer as well as giving the CEO powers in their own right, including the ability to appoint Council staff.

It is necessary from time to time to appoint an Acting CEO or to delegate legislative CEO powers. When this is necessary the CEO will make reasonable attempts to have the delegations made to a Director. If all Directors are unable to accept the delegation the CEO will make reasonable attempts to have the delegations made to a Manager.

No member of staff holding a position less senior than Manager will be appointed as Acting CEO or accept delegation of legislative CEO powers.



If a Director is appointed as an Acting CEO, that Director will not delegate legislative CEO powers to a Manager who would otherwise normally be under their supervision.

### 2.1.7. Referral to Council

If a delegate considers that the exercise of a delegated power, duty or function would:

- a) raise an issue of significant public interest, concern, or controversy;
- b) give rise to substantial public objection; or
- c) be inconsistent with a previous decision of Council

The delegate should refer that matter to the Council for determination.

## 2.2. Authorisations

An appointment as an Authorised Officer is made or evidenced by a written Instrument of Appointment and Authorisation to an individual by name.

An individual appointed as an Authorised Officer will possess the requisite skills, qualification or experience consistent with the position to which they are appointed.

Managers are responsible for ensuring staff under their supervision, including new staff members and staff in acting position arrangements are appointed or authorised to execute the duties of the position.

Authorised Officers will be issued and carry an identity card as set out by section 224(2) of the *Local Government Act 1989*.

A register showing the names of all people appointed by Council as Authorised Officers will be maintained as set out by section 224(1A) of the *Local Government Act 1989*.

## 3. GOVERNANCE

### 3.1. Owner

Manager Governance

### 3.2. Review

The Manager Governance will review the policy for any necessary amendments no later than three years after its formulation or after the last review.

### 3.3. Compliance Responsibility

#### 3.3.1. Management Executive Group (Chief Executive and Directors)

- Review Instruments of Delegation prior to their adoption
- CEO to seal and sign and all Instruments of Delegation and Instruments of Authorisation

#### 3.3.2. Managers and Supervisors

- Ensuring new and existing staff with any delegated or authorised authority read and understand their powers and responsibilities under the relevant instruments
- Ensuring suitable delegation or authorisation exists for officers under their supervision
- Requesting that Governance make amendments to instruments as required

- Ensure staff with delegated power or authority under their supervision exercise powers, duties, and functions in accordance with this policy

### 3.3.3. Governance

- Maintaining a register of Authorised Officers
- Maintaining a register of delegations
- Coordinating and preparing instruments for endorsement
- Regular reviews of Instruments of Delegation and Instruments of Authorisation
- Education and support across the organisation in relation to delegations and authorisations

### 3.3.4. All Employees

- Ensuring they understand the content and scope of any delegations or authorisations made to them
- Exercising delegated authority in accordance with this policy and the relevant Instruments of Delegation

## 3.4. Charter of Human Rights Compliance

It is considered that this Policy does not impact negatively on any rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

The *Gender Equality Act 2020* requires Council to undertake gender impact assessments when developing or reviewing any policy, program or service which has a direct and significant impact on the public. The Delegations and Authorisations Policy does not have a direct and significant impact on the public.