

**Management report to Council**

**Agenda item 6.2**

**Delegations review - 2017**

**Council**

**Presenter:** Keith Williamson, Manager Governance and Legal

**28 February 2017**

**Purpose and background**

1. The purpose of this report is to:
  - 1.1. review Council's current delegations (refer Attachment 2):
    - 1.1.1. to its special committees under section 86 of the *Local Government Act 1989*
    - 1.1.2. to staff members under the *Local Government Act 1989*, the *City of Melbourne Act 2001*, the *Planning and Environment Act 1987*, the *Road Management Act 2004*, the *Environment Protection Act 1970* and the *Food Act 1984*,  
  
and to revoke any delegations by Council which are now redundant
  - 1.2. review Council's Delegation Policy for Planning Applications (refer Attachment 3) and Delegations Policy (refer Attachment 4)
  - 1.3. update authorisations of staff members under the *Planning and Environment Act 1987*.
2. The *Local Government Act 1989* provides that a council must review, within the period of 12 months after a general election, all delegations which are in force and have been made by the Council to a member of Council's staff or a special committee. The opportunity is also being taken to update authorisation of Council staff under the *Planning and Environment Act 1987*.
3. It is also considered timely to review Council's Delegations Policy (last reviewed in September 2013) and Delegation Policy for Planning Applications (last reviewed in March 2014).

**Key issues**

4. The existing delegations to special committees and staff are generally considered to be appropriate save:
  - 4.1. instrument of delegation number 443 which relates to entry into environmental upgrade agreements and declaring environmental upgrade charges under the *City of Melbourne Act 2001* can be revoked as legislative changes made in 2012 mean that such agreements are now entered into under the *Local Government Act 1989*
  - 4.2. instruments of delegation numbers 449 and CCL-2015-1 which both relate to the *Food Act 1984* can be revoked once amalgamated into a single new delegation
  - 4.3. a new delegation under the *Planning and Environment Act 1987* is required to reflect changes in positions replacing instrument of delegation number 447 which can then be revoked.
5. A new and updated instrument of authorisation is also recommended in respect to Council staff under the *Planning and Environment Act 1987*.
6. Management and the Planning Portfolio Chair and Deputy Chair have suggested minor amendments to the Delegation Policy for Planning Applications in line with current practices and to provide that applications by the Council for permits for subdivision or the creation, variation or removal of easements on Council owned land can be carried out by officers under delegation. A marked up version of the proposed Delegation Policy for Planning Applications is at Attachment 3.
7. Management also recommends that, consistent with the requirement to lodge a Notice of Motion, Council considers amending both policies to require two councillors to call in a proposal for decision.

## Recommendation from management

8. That Council:
- 8.1. Determines to not make any changes to the current delegations:
    - 8.1.1. to the Inner Melbourne Action Plan Implementation Committee (number CCL-2015-3) and Future Melbourne Committee (number 47)
    - 8.1.2. to officers, numbers 360, 441, 448 and CCL-2015-2, appearing in Attachment 2.
  - 8.2. Revokes the redundant instrument of delegation (number 443) to the Chief Executive Officer under the *City of Melbourne Act 2001*, effective immediately following the passing of this resolution by Council.
  - 8.3. By instrument of delegation sealed by the Council under section 188(1) of the *Planning and Environment Act 1987*, delegate to the persons from time to time holding the positions referred to in Attachment 5, its powers, discretions and functions under the *Planning and Environment Act 1987* subject to:
    - 8.3.1. the restrictions contained in section 188(2) of the *Planning and Environment Act 1987* and section 98(1) of the *Local Government Act 1989*
    - 8.3.2. compliance with Council's Delegations Policy and the Council's Delegations Policy for Planning Applications.
  - 8.4. Revokes the instrument of delegation (number 447) by Council under the *Planning and Environment Act 1987*, such revocation to take effect immediately after the execution of the instrument of delegation referred to in paragraph 8.3 above.
  - 8.5. By instrument of delegation sealed by the Council under section 58A of the *Food Act 1984*, delegate to:
    - 8.5.1. the person from time to time holding the position of Manager Health and Wellbeing, its powers, duties and functions under Part III (other than its power under section 19(3), 19AA(4)(a) or 19AA(4)(b)), Part IIIB, Part VI and section 46(5) of the *Food Act 1984*
    - 8.5.2. the persons from time to time holding the positions referred to in Attachment 6, its powers and discretions under Part III of the *Food Act 1984* in relation to temporary food premises and mobile food premises, subject to:
      - 8.5.3. the restrictions contained in section 98(1) of the *Local Government Act 1989*
      - 8.5.4. compliance with Council's Delegations Policy.
  - 8.6. Revokes the instruments of delegation (numbers 449 and CCL-2015-1) by Council under the *Food Act 1984*, such revocations to take effect immediately after the execution of the instrument of delegation referred to in paragraph 8.5 above.
  - 8.7. By instrument of authorisation pursuant to section 188 of the *Planning and Environment Act 1987*, generally authorise the officers listed at Attachment 7, to carry out the duties and functions and exercise the powers of an 'authorised officer' within the meaning of the *Planning and Environment Act 1987*.
  - 8.8. Revokes the previous instrument of authorisation under section 188 of the *Planning and Environment Act 1987* made by resolution of Council on 25 August 2015, such revocation to take effect immediately after the execution of the instrument of authorisation referred to in paragraph 8.7 above.
  - 8.9. Adopts the revised Delegation Policy for Planning Applications contained in Attachment 3 and Council's Delegations Policy contained in Attachment 4.
  - 8.10. Considers amending the Council's Delegations Policy and Delegation Policy for Planning Applications to provide that a decision will be referred to the Future Melbourne Committee for decision where any two (rather than one) Councillors have indicated a desire to call in the proposal for decision.

**Attachments:**

1. Supporting Attachment (page 3 of 15)
2. List of current delegations by Council (page 4 of 15)
3. Delegation Policy for Planning Application (page 7 of 15)
4. Delegations Policy (page 11 of 15)
5. List of positions for delegation under the *Planning and Environment Act 1987* (page 13 of 15)
6. List of positions for delegation under the *Food Act 1984* (page 14 of 15)
7. List of officers to be authorised under the *Planning and Environment Act 1987* (page 15 of 15)

## Supporting Attachment

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### Legal

1. The report accurately details the legal issues in relation to the recommendation.
2. Section 98 of the *Local Government Act 1989*, (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:
  - (a) the power of delegation (with the exception of the CEO)
  - (b) the power to declare a rate or charge
  - (c) the power to borrow money except as provided in section 149 of the Act
  - (d) the power to approve any expenditure not contained in a budget approved by the Council
  - (e) any power, duty or function of the Council under section 223 of the Act (that is the requirement for Council to consider submissions when the Act specifies that members of the public have the right to make submissions)
  - (f) any prescribed power.
3. Council is also required to keep a register of delegations to members of Council staff under section 98(4) of the Act.
4. Section 98 of the Act does not state that Council has the power to revoke the delegations. However the effect of section 42A of the *Interpretation of Legislation Act 1984* is that Council has the power to “repeal, revoke, rescind, amend alter or vary” an instrument of delegation.
5. In the case of delegations under the *Planning and Environment Act 1987*, *Road Management Act 2004*, *Environment Protection Act 1970* and the *Food Act 1984*, those Acts expressly preclude the further sub-delegation by the CEO of powers delegated by Council, requiring direct delegations by Council to the relevant positions. The *Planning and Environment Act 1987* also prohibits the delegation by the Council of the power to appoint authorised officers under that Act.

### Finance

6. There are no financial implications to Council arising from the recommendation contained in this Management Report.

### Conflict of interest

7. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

### Stakeholder consultation

8. Consultation has occurred with the Executive Officer of the Inner Melbourne Action Plan Implementation Committee.

### Environmental sustainability

9. Environmental sustainability issues or opportunities are considered not relevant to this proposal as it does not impact on the consumption/generation of water, waste, energy and/or greenhouse gases.

**DELEGATIONS REVIEW – INSTRUMENTS**

Outlined below are details of instruments of delegation for consideration as part of current review by Council.

**COUNCIL OFFICERS**

Section 98 (6) of the *Local Government Act 1989* requires Council to review any delegations to the Chief Executive Officer or other Council officers within 12 months of election.

Ref	Delegate and date of Council resolution	Description
CCL-2015-2	<b>Manager Health and Wellbeing Team Leader – Health and Wellbeing Senior Environmental Health Officer Environmental Health Officer</b> (25 August 2015)	<b><i>Environment and Protection Act 1970</i></b> Delegate the powers of the Council under section 53M of the <i>Environment and Protection Act 1970</i> in relation to septic tank systems.
CCL-2015-1	<b>Manager Health and Wellbeing Team Leader – Health and Wellbeing Senior Environmental Health Officer Environmental Health Officer</b> (25 August 2015)	<b><i>Food Act 1984</i></b> Delegate the powers and discretions of the Council under part III of the <i>Food Act 1984</i> in relation to temporary food premises and mobile food premises.
449	<b>Manager Health and Wellbeing</b> (30 June 2015)	<b><i>Food Act 1984</i></b> Delegate the powers, duties and functions of the Council under parts III (other than its power under section 19(3), 19AA(4)(a) or 19AA(4)(b)), IIIB and VI, and section 46(5) of the <i>Food Act 1984</i> .
448	<b>Various positions</b> (30 June 2015)	<b><i>Road Management Act 2004</i></b> Delegate to various officers the powers and functions of the Council under the <i>Road Management Act 2004</i> .
447	<b>Various positions</b> (30 June 2015)	<b><i>Planning and Environment Act 1987</i></b> Delegate to various officers the powers, discretions and functions of the Council under the <i>Planning and Environment Act 1987</i> .
443	<b>Chief Executive Officer</b> (31 May 2011)	<b><i>City of Melbourne Act 2001</i></b> Delegate to the Chief Executive Officer the power to: enter into an environmental upgrade agreement and declare and levy environmental upgrade charges.

Ref	Delegate and date of Council resolution	Description
441	<b>Chief Legal Counsel</b> (28 September 2010)	<b><i>Local Government Act 1989</i></b> Delegate to the Chief Legal Counsel the powers, duties and functions of the Council to appoint or authorise persons other than Councillors as authorised officers to enforce Acts, Regulations and Local Laws which relate to the functions, powers and duties of the Council and issue or cause to be issued identity cards to such authorised officers.
360	<b>Chief Executive Officer</b> (29 March 2005)	<b><i>Local Government Act 1989</i></b> Delegate to the Chief Executive Officer the powers, duties and functions under the <i>Local Government Act 1989</i> and any other Act other than: <ol style="list-style-type: none"> <li>a. this power of delegation; and</li> <li>b. the power to declare a rate or charge; and</li> <li>c. the power to borrow money; and</li> <li>d. the power to approve any expenditure not contained in a budget approved by the Council; and</li> <li>e. any power, duty or function of the Council under section 223; and</li> <li>f. any prescribed power.</li> </ol>

**SPECIAL COMMITTEES**

Section 86 (6) of the *Local Government Act 1989* requires Council to review any delegations to a special committee within 12 months of election.

Ref.	Committee name	Description
47	<b>Future Melbourne Committee</b>	Instrument of Delegation to the Future Melbourne Committee and its Terms of Reference.
CCL-2015-3	<b>Inner Melbourne Action Plan Implementation Committee</b>	Instrument of Delegation for the Inner Melbourne Action Plan Implementation Committee and its Terms of Reference.

## City of Melbourne Policy

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### 2 Title of Policy

This policy shall be known as the **Delegation Policy for Planning Applications**. It is a Local policy.

#### 2.1 Background

Clarity around the decision making process and the ability for Officers and Councillors to refer planning applications to Future Melbourne Committee (FMC) or Council for decision making provides transparency whilst ensuring decision timeliness and quality.

#### 2.2 Purpose

The purpose of this policy is to provide clarity around the procedure to identify those planning application which may be suitable for consideration by FMC and Council. This policy will:

- 2.2.1 Enable Councillors to concentrate on strategic direction and policy development.
- 2.2.2 Ensure efficient, consistent decision making.
- 2.2.3 Provide transparency of process.
- 2.2.4 Ensure Councillors, applicants and objectors are kept regularly informed about the planning process including those applications against which objections are lodged.
- 2.2.5 Enable adequate involvement by all stakeholders in decision making.

#### 2.3 Scope

The policy applies to all planning applications within the City of Melbourne.

#### ~~2.4 Definitions~~

~~“CoM” means the City of Melbourne~~

## ~~2.5~~ Legislative Context

Nil

### ~~2.6~~2.4 Policy

It is the policy of the City of Melbourne that the criteria to select planning applications to be decided by FMC include any application ~~that~~:

#### 2.4.1 That is recommended to be approved and which:

~~1.2.4.1.1~~ Raises an issue of significant public interest, concern or controversy or is likely to do so.

~~2.2.4.1.2~~ Raises an issue of policy or process not covered by existing policy or practice.

~~3.2.4.1.3~~ Has given rise to substantial public objection (denoted either by the qualitative strength of submission/s or there being a quantity of 16 or more non-identical submissions), or appears likely to do so, ~~and is not recommended to be refused.~~

~~4.~~ ~~Would be or could reasonably appear to be inconsistent with a previous decision or decisions by the Council.~~

~~5.2.4.1.4~~ Could set an undesirable precedent in terms of height, bulk, scale etc that could create an undesirable policy direction.

~~6.2.4.1.5~~ Is innovative and raises the possibility of a new or unexpected desirable policy direction that Council wants to encourage.

~~7.2.4.1.6~~ Provides for a development which is anticipated by, or contrary to, a proposed major amendment to the Melbourne Planning Scheme which is supported by Council.

2.4.1.7 Proposes the demolition or significant redevelopment of an A- or B -graded or equivalent heritage ~~building~~ ~~and is not recommended to be refused.~~

2.4.2 That is a Ministerial application related to development proposals with gross floor area exceeding 25,000sqm.

2.4.3 Which would be or could reasonably appear to be inconsistent with a previous decision or decisions by the Council.

~~8.~~

~~9.2.4.4~~ Where ~~t~~The City of Melbourne is the applicant, with the exception of applications by the City of Melbourne for permits for subdivision or the creation, variation or removal of an easement(s) on Council owned land ~~for~~.

~~10.2.4.5~~ Where ~~a~~Any Councillor has indicated a desire to call in the proposal for decision.

Where a delegate deems that an application falls within criteria ~~1 to~~ 2.4.1–2.4.4 above, the delegate will refer it to FMC without requiring a Councillor to call the application in.

### ~~2.7~~2.5 Procedure

This process is subject to:

- 2.5.1 All Councillors being notified of the number of all-objections to any application where the Council officer is recommending approval and of all recommended refusals, on a weekly basis.
- ~~A screening process for applications identified by the selection criteria (No.7 above). These applications are to be subject to the prior agreement of the Chairperson before they are listed on the Committee Agenda for decision.~~
- 2.5.2 A structured monitoring process to check that the purpose is objectives-are-being met, to record the implications of this Policy on the decision timeframe for applications, the number of items on the Committee agenda, the duration of Committee meetings, the reason for referral and the calibre of the application etc.

## ~~2.8 Supporting Material~~

~~Nil~~

### ~~2.92.6~~ Governance

Policy Owner	Planning and Building Branch Manager
Docs Number	7792353
Last Revised Date	25 March 2014
Next Review Date	28 February 2017

**2.102.7 Document Approvals**

Name	Title	Version	Date Approved	Signature

**2.112.8 Version Control and Change History**

Version Number	Approval Date	Approved by	Amendment
2	30 April 2013	Council resolution	Section 2.6: replaced 'and' with 'or' at end of criteria 7 and added new paragraph under criteria 8.
3	25 March 2014	Council resolution	Section 2.6: additions to criterion 3, insertion of two new criteria (8 and 9) and various editorial amendments made so policy complies with style guide.

# DELEGATIONS POLICY

The objective of this delegation policy is to achieve the best possible results for the City, Council and the community through the effective harnessing of the input of, and co-operation between, Council, the administration and the community.

Council therefore re-affirms its responsibility, in consultation with the community, for setting and owning:

- the vision for the City
- its strategic direction
- the policies necessary to pursue that vision and direction
- the funding for them.

Council also accepts its responsibility to be accountable to the community for the outcomes of its policies.

Council acknowledges the responsibility of the administration:

- to implement the vision, strategies, direction and policies determined by Council
- to provide to the Council all information relevant to issues affecting it
- to advise honestly, loyally and professionally upon those issues
- to provide effective administration and staffing for these purposes, within the framework of Council's budget
- to be accountable to Council for the outcome achieved.

The Council therefore adopts the following policies and processes in relation to the exercise of delegated authority:

## 1. Referral to Council

A delegate shall refer any proposal whether for a project or program, for work, for a contract, or for a planning decision, to Council or its appropriate Committee, without prior decision by the delegate wherever and whenever:

- the proposal raises an issue of significant public interest, concern or controversy, or is likely to do so
- the proposal raises an issue of policy or process not covered by existing policy or practice
- the proposal has given rise to substantial public objection or appears likely to do so
- the delegate recommends approval of the proposal, but such approval would be, or could reasonably appear to be, inconsistent with a previous decision or decisions by or on behalf of the Council
- implementation of the proposal would require expenditure of Council funds, and such funds have not been specifically provided for in the budget

# DELEGATIONS POLICY

- the delegate is not satisfied that the proposal has been the subject of appropriate consultation with those likely to be interested in or affected by it
- the delegate is not satisfied that the proposal is one that is appropriate for the decision of the administration rather than the Council
- the delegate believes that it is more appropriate that the proposal or any issue arising in connection with it should be determined by the Council rather than the administration
- any Councillor has indicated a desire to call in the proposal for Council decision.

## 2. Limitation on Financial Delegations

Where the approval of a proposal would involve the expenditure of Council funds for which provision has been made in Council's budget, the authority of the delegate is nevertheless limited to the following amounts:

For the Chief Executive Officer	\$2 million
For Directors	\$1 million
For Branch Managers	\$500,000

On a quarterly basis Council will publish on its website, a summary of all purchase orders, for an amount of \$500,000 or more, raised during the quarter.

## 3. Difficult Issues

Whenever a major issue arises or any difficulty repeatedly arises in relation to the exercise of delegated authority, that issue or difficulty shall be referred to the appropriate Council Committee for consideration.

## 4. Compliance with Policy

When exercising delegated authority the delegate shall use his or her best judgement to ensure compliance with each and all of the requirements of this resolution.

## 5. Policy Review

All instruments of delegation shall be reviewed in the light of this policy and shall be further reviewed in the light of experience within one year after the election of each Council.

[Note: Appropriate consultation means consultation in accordance with Council's Consultation Framework.]

## Schedule

### **Positions to which Council's powers and functions will be delegated under section 188(1) of the *Planning and Environment Act 1987***

Chief Executive Officer

Chief Legal Counsel

Director City Operations

Director City Strategy and Place

Enforcement Officer

Fast Track Planner

Manager Planning and Building

Manager Urban Strategy

Urban Planner

Practice Leader Land Use and Development

Principal Urban Planner

Senior Enforcement Officer

Senior Urban Planner

Senior Strategic Planner

Strategic Planner

Strategic Planner (Heritage)

Strategic Planning Officer

Subdivision Officer

Surveyor

Team Leader Land Survey

Team Leader Planning Policy

Team Leader City Plans

Team Leader Heritage

## Schedule

### **Positions to which Council's powers and functions will be delegated under part III of the *Food Act 1984* in relation to temporary food premises and mobile food premises**

Team Leader – Health and Wellbeing

Senior Environmental Health Officer

Environmental Health Officer

## Schedule

**Officers to be appointed as authorised officers for the purposes of the administration and enforcement of the *Planning and Environment Act 1987***

Jane Birmingham  
Evan Counsel  
Jeffrey Eeles  
Michael Kumar  
Angela Meinke  
George Sinadinos  
Lia Thiagi  
Stephen Vecris  
Tim Vickers