

Delegations Policy

Policy statement

Council will establish a framework for delegating authority that facilitates efficiency, encourages delegation of decision-making to the lowest competent position within the organisation and achieves the best outcomes for Council and the municipal community.

Principles

The Policy is informed by the following Whittlesea 2040 goal :

High performing organisation

We engage effectively with the community, to deliver efficient and effective services and initiatives, and make decisions in the best interest of our community and deliver value to our community.

Objectives

The objectives of the Policy are to:

- facilitate the effective and efficient operation of Council by providing the *CEO* and members of Council staff with the appropriate powers and authorities to manage the affairs of *Council*;
- ensure that the *CEO* and members of Council staff have the required delegated authorities to achieve the strategic outcomes identified in the Community Plan;
- ensure that *Council* complies with its legislative obligations under relevant legislation and that delegations to members of Council staff are clearly defined and recorded in Council's Delegations Register; and
- ensure that the *CEO* and members of Council staff exercise these delegations appropriately and within the terms of their delegated powers and that appropriate reporting of decisions made by delegates occurs.

Definitions

This section defines the key terms used in this policy.

'Act' means the *Local Government Act 2020 (Vic)*

'Agreement or contract' means documents having the effect, when signed or approved, of committing Council to legally binding obligations.

'CEO' means the Chief Executive Officer of the Whittlesea City Council.

'Conflict of Interest' has the same meaning as that contained in the *Act*.

'Council' means the Whittlesea City Council comprised of the elected Council/Administrators.

'Delegate' means a member of Council staff with delegated authority pursuant to either a resolution of Council or written instrument signed by the *CEO*.

Delegations Policy

‘Delegation’ means the conferral of an authority to a position to exercise a power, duty or function on behalf of *Council*. The authority is exercised in the name of the delegate.

‘ELT’ means the Executive Leadership Team as constituted from time to time.

‘MBS’ means the member of Council staff appointed by Council to the statutory position of Municipal Building Surveyor.

Context/Rationale

Council’s delegation framework comprises three types of delegations – Legislative, Financial and Administrative.

Legislative Delegations

Council operates in a highly regulated environment and is responsible for administering 95 Acts and Regulations involving over 2,500 separate powers, duties and functions.

A power is an authority to act or decide a matter (e.g. power to issue permits or waive fees), a duty is a legal obligation to do something in relation to a matter (e.g. duty to register new food premises) and a function relates to the discharge of an administrative requirement (e.g. function of receiving a notice).

Most Acts and Regulations state that the Council is responsible for administering the relevant power, duty or function. As it is not practicable for Council to administer such an extensive number of provisions, it delegates most of its powers, duties and functions to the Chief Executive Officer and to other positions in the organisation. Where this occurs, it is formalised through written ‘instruments of delegation’.

Financial Delegations

The delegation from Council to the CEO provides the CEO with a financial delegation to authorise expenditure up to \$2M (GST inclusive). The CEO has subsequently sub-delegated the power to approve expenditure within specified limits set out below:

Position	Amount (GST inclusive)	Conditions & Limitations
Director Infrastructure & Environment	Up to \$1,000,000	Must complete appropriate training
Directors (all others)	Up to \$500,000	Must complete appropriate training
Manager Maintenance & Operations	Up to \$500,000	Must complete appropriate training
Manager Capital Delivery	Up to \$500,000	Must complete appropriate training.

Delegations Policy

Executive Managers	Up to \$300,000	Must complete appropriate training.
Managers (all other)	Up to \$250,000	Must complete appropriate training.
Unit Leaders/Unit Managers	Up to \$75,000	Must complete appropriate training.
Coordinators, Supervisors & Executive Assistants	Up to \$10,000	Must complete appropriate training.
Other Officers as required	Up to \$1,000	Must complete appropriate training.

Any financial delegation must be exercised in accordance with the approved Council budget or source of funds except where explicitly stated in a delegation schedule.

Delegation limits apply to transactions and a transaction may not be separated into parts in order to exceed a financial limit on a delegate's authority.

Administrative Delegations

Administrative delegations include powers best described as operational in nature, where the authority does not come from specific Acts or Regulations but rather from operational requirements of Council to manage its day to day affairs.

The schedule of administrative powers, duties and functions does not cover all administrative or operational powers. It is a reference guide on a wide range of associated policy and operational authorities considered important by the CEO.

Some examples of administrative delegations include the authority to affix the common seal on legal agreements, the authority to write off bad debts and the authority to make statements to the news media.

Scope

This Policy and Procedural Guidelines apply to members of Council staff and relate to any instruments of delegation established by Council, the CEO and the MBS under the Act and any other Acts.

Delegation instruments are not the source of all delegated authority. Actions may also be taken by members of Council staff under implied authority arising from position descriptions, policies, procedures, schedules, guidelines and practices.

Key linkages

All Council policies comply with the *Victorian Charter of Human Rights and Responsibilities*.

This policy has clear linkages to the following:

- *Local Government Act 2020 (Vic)*
- *Conflict of Interest Policy*

Delegations Policy

- *Gifts, Benefits & Hospitality Policy for Staff*
- *Procurement Policy*
- *Code of Conduct for Staff and Others*

PROCEDURAL GUIDELINES

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 Council resolution or a written Instrument of Delegation made by the CEO or a written Instrument of Delegation made by the MBS.

Council Instruments of Delegation are evidenced by a Council resolution and by the instruments being stamped with Council's seal and signed and countersigned by the Mayor/Chair of Council and CEO. These instruments remain in force until revoked by Council.

CEO Instruments of Delegation are evidenced by the instruments being signed by the CEO. These instruments remain in force until revoked by the CEO.

MBS Instruments of Delegation are evidenced by the instruments being signed by the MBS. These instruments remain in force until revoked by the MBS.

Instruments of delegation must exclude delegations that cannot legally be made. This policy also establishes exclusions and limitations related to other delegations.

Delegations excluded by law

Council is excluded from delegating the following powers under section 11 of the *Local Government Act 2020*:

- (a) the power of delegation;
- (b) the power to elect a Mayor or Deputy Mayor;
- (c) the power to grant a reasonable request for leave under section 35;
- (d) the power to appoint the Chief Executive Officer, whether on a permanent or acting basis;
- (e) the power to make any decision in relation to the employment, dismissal or removal of the Chief Executive Officer;
- (f) the power to approve or amend the Council Plan;
- (g) the power to adopt or amend any policy that Council is required to adopt under this Act;
- (h) the power to adopt or amend the Governance Rules;
- (i) the power to appoint the chair or the members to a delegated committee;
- (j) the power to make, amend or revoke a local law;
- (k) the power to approve the budget or revised budget;
- (l) the power to borrow money;

Delegations Policy

- (m) subject to section 181H(1)(b) of the *Local Government Act 1989*, the power to declare general rates, municipal charges, service rates and charges and special rates and charges;
- (n) any power, duty or function prescribed by the regulations for the purposes of this subsection.

Other delegations excluded or limited by Council

In addition, the following powers, duties and functions are not delegated to the CEO or Council staff:

- entering into agreements or contracts for amounts exceeding the limit set in the instrument of delegation to the *CEO*. The power to contract is also constrained by the provisions of the *Act* and Council's Procurement Policy;
- adoption of the Auditor's report, Annual Financial Statements, Standard Statements and Performance Statement under Part 4 of the *Act*;
- noting Declarations of Impartiality by Valuers pursuant to section 13DH(2) of the *Valuation of Land Act 1960*;
- appointment of councillor or community delegates or representatives to external organisations;
- approval of overseas travel by members of Council staff on Council business;
- matters which Council has previously designated must be the subject of a Council resolution; and
- decisions which are inconsistent with a policy or strategy adopted by Council.

DELEGATES

The *Act*, as well as other legislation, makes express provision for the appointment of delegates to act on behalf of Council. The decision of a delegate is considered a decision of Council.

Delegations made to positions

Delegations are made to members of Council 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 or above that position. The incumbent includes the acting or temporary occupant of a 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 and that staff in acting roles are informed of their delegated powers, duties and functions.

Delegates must receive induction training on their responsibilities and be informed of this Policy and any procedural guidelines including the 'Guidelines for Officers with Delegated Powers'.

Delegations Policy

Appointment to a position, whether permanent, temporary or acting must be evidenced in writing or have an audit trail.

If a position is abolished or re-named, the delegation should be taken to be a reference to the principal successor to the functions of that position.

AUTHORITY TO SUB-DELEGATE

The CEO may, by instrument of delegation, sub-delegate to a member of Council staff any power, duty or function of the CEO's office other than the power of delegation.

No other delegate is authorised to sub-delegate any of the delegate's delegated functions to any other person or group of persons.

REFERRAL TO COUNCIL

A delegate must, before exercising a delegation, refer to Council with an appropriate recommendation, any matters that:

- involve determining strategic priorities;
- are required by law to undergo community engagement;
- raise an issue of significant public interest, opportunity, concern or controversy, or are likely to do so;
- have given rise to substantial public objection or appear likely to do so;
- involve an issue of policy which affects the community in some way where there is no existing Council policy to guide the delegate;
- would lead to a delegate decision inconsistent with, or appearing to be inconsistent with, a previous decision or previous decisions made by or on behalf of Council regarding the matter or similar matters;
- would require the expenditure of Council funds not specifically provided for in the Council budget;
- or
- the delegate otherwise considers would be more appropriately decided by Council resolution.

EXERCISING DELEGATED AUTHORITY

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

Delegate accountability

The delegate is responsible and accountable for any decisions made under a delegation and is required to be able to justify such decisions or actions.

Delegations Policy

Authority is exercised by the lowest level delegate in the first instance and escalated to a higher-level delegate if the lower delegate is unavailable or has a conflict of interest in a matter.

Conflicts of interest

A person must not exercise a delegation that would create for them a conflict of interest and 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. Refer to Council's *Conflict of Interest Policy* for further information and guidance.

Any misuse of delegations is deemed a breach of the Council's Code of Conduct for Staff and may result in disciplinary action as outlined in the Code.

The Code requires staff to act lawfully and with integrity and to avoid conflicts of interest when carrying out their duties.

No retrospectivity

A delegation cannot be exercised retrospectively.

Matters 'called in'

A power, duty or function that has been delegated to a member of Council staff may, notwithstanding the delegation, be exercised by the CEO or Council as the case may be. The CEO or the Council can 'call in' a matter and, if this occurs, the delegate must not exercise their delegated powers regarding the matter. There is an exception of planning applications where Council determined on the 27 June 2022 to remove the call-in process for planning applications.

Signing documents

A delegate may sign any document to give effect to his or her function or authority, except for legally binding agreements or contracts specifically delegated to others.

If a legal agreement or other document covering a matter included in a delegate's authority also includes subject matter that falls within the responsibility of a delegate with a higher authority, then the document must be signed by the delegate with the higher authority.

A delegate must not sign an agreement unless the total cost of the transaction to Council, including both monetary and any in-kind costs, falls within their delegated financial authority.

The *CEO* may sign any agreement or other document in respect of any transaction within the *CEO's* financial delegation.

Consultation conditions

A delegation that contains a limitation or condition with the words 'in consultation with', 'on advice from', 'on advice of', or 'on the recommendation of' means that the delegation should not be exercised until the required consultation, advice or recommendation is received and considered.

Delegations Policy

CONSIDERATION OF DELEGATION ISSUES

Directors and Managers are responsible for:

- ensuring all decisions, actions, reports and other documents have properly considered the delegations of the *CEO* and other delegates where a delegation is required to make a decision or to implement a policy or resolution of *Council*;
- ensuring that a suitable delegation exists; and
- requesting such delegation be made if no suitable delegation exists.

REVIEW OF DELEGATIONS

Council's Governance Department is responsible for managing, updating and reviewing Council delegations.

The legal validity and enforceability of Council contracts and Council's ability to legally enforce and litigate breaches of Acts, Regulations and local laws is minimised by maintaining the currency of delegations to members of Council staff through a regular review cycle.

Managers are responsible for:

- reviews of delegations within their departments to ensure the delegations remain current and reflect the responsibilities of positions; and
- ensuring that officers with delegated powers are properly inducted and trained in their responsibilities as delegates.

As a minimum, Council's delegations to the CEO will be reviewed as required by the *Act*, and more frequently unless circumstances such as legislative amendments and organisation restructures require an earlier review.

MONITORING AND REPORTING

The administration and quality control of this Policy and Procedures, including instruments of delegation will be subject to regular scrutiny and the delegation's framework will be subject to risk assessment and internal audit review as appropriate.

Reporting of delegations exercised is essential to ensure that adequate information regarding those actions is available to other staff, managers and Council. The powers, duties and functions to be reported will be determined with reference to risks associated with the exercise of delegations.

Such reporting can be by:

- presentation of reports to Council within the prescribed time;
- preparation of a memorandum or report to the Executive Leadership Team;
- preparation of a memorandum to relevant Managers officers or Councillors within the prescribed time; or
- production of a register that will be available for inspection at any time.

Delegations Policy

ADVICE AND ASSISTANCE

Council staff are encouraged to raise queries and issues about the proper exercise of delegated powers, duties and functions including queries and issues relating to their own delegations or those of others.

The person holding the position of Internal Assurance and Governance Advisor is responsible for managing the provision of advice to the organisation regarding this Policy and the Procedures Guidelines. A person who is uncertain how to comply with this Policy should seek advice from this person or from their Manager.

Seeking advice does not abrogate an individual's responsibility to make the right decision in respect of exercising their delegated powers, duties and functions.

TRAINING

Delegates will receive induction and training in the operation of this Policy and the Procedures, including:

- information about the aim, principles, accountabilities, and requirements of the policy; and
- operation of the Procedural Guidelines.

Council staff holding positions with delegated powers must complete mandatory training on their responsibilities as delegates every two years as a minimum.

RECORDS

Delegates will keep appropriate records of all actions taken under delegation. The level of detail in record keeping will be in keeping with the nature of the delegation and any associated risks to Council.

For example, the routine issue of a permit would be recorded in a permits register detailing relevant issues. In the event of more complex matters, delegates would need to record the sort of information that would otherwise be presented to Council if Council was making the decision.

All Council decisions are recorded in a minute book. Members of Council staff must keep similar evidence of their decisions by recording details of the decision and how it was formed on the appropriate Council file or record to ensure that a "paper trail" exists.

Decisions made by delegates might subsequently be the subject of review by:

- Council and ELT;
- Members of the public (under Freedom of Information laws);
- The Victorian Ombudsman's Office (when investigating complaints);
- The Local Government Inspectorate;
- The Independent Broad-based Anti-Corruption Commission
- The Victorian Auditor General's Office;
- The Victorian Civil and Administrative Tribunal; or
- Law Courts.

REVIEW

This policy must be reviewed no later than 30 June 2024.