

GREATER SHEPPARTON CITY COUNCIL

EXERCISE OF DELEGATIONS POLICY

Adopted by Council: Day Month Year
Next Review: Day Month Year



EXERCISE OF DELEGATIONS POLICY

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1		20 June 2017
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3		

PURPOSE

Delegations are a critical Governance tool of the Council. Most Council decisions are not made at Council meetings and the effective functioning of the Council would not be possible if they were. Instead, most decision-making power is allocated by formal delegations.

The Council is committed to ensuring that decisions made under delegation are legal, appropriate, open and transparent. The primary responsibility of delegates is to ensure that all decisions made under delegation are within their power to make and taken in full compliance with the Council's legal obligations. Once this responsibility has been met, delegates must consider the guidance provided in this Policy when making decisions under delegation.

OBJECTIVE

There are two forms of delegations that occur in Victorian local government:

- delegations to the CEO and members of staff, and
- delegations to delegated and community asset committees.

Although delegated and community asset committees are not separate legal entities (being only a "committee" of persons), as a body they can act as a "delegate" of the Council.

- Delegated committees must comprise of at least 2 Councillors, in addition to any other person appointed by Council (including Council Officers and/or community members).
- Community asset committees are established for the purpose of managing a community asset in the municipal district. Delegations to a community asset committee is through CEO delegation in accordance with Section 47 of the Act.

The nature of a delegation is important to understand. The decision of a delegate of Council is "deemed" to be a decision by Council. It binds the Council in the same manner and to the same extent as a decision made at a Council meeting.

The delegation of powers is essential to enable day-to-day decisions to be made. Because it is a common feature of legislation, not all details about delegations are set out in the empowering Act - some general features of delegation are set out in the Interpretation of Legislation Act 1984. In particular:

- the decision, once made, is for all legal purposes a decision of the Council itself (section 42A(1)(c) of the Interpretation of Legislation Act);
- the "delegate" is in much the same position as the Council itself in terms of making the decision - for example, where the decision requires that opinion be formed, the delegate's opinion can be the basis for the decision (section 42(1) of the Interpretation of Legislation Act); and
- the fact that a delegation has been made does not affect the Council's powers in relation to the issue concerned (section 42A(1)(a) of the Interpretation of Legislation Act). This is subject, of course, to the rule that the delegate's decision (once made) is taken to be the decision of the Council itself. The Council can therefore find itself bound by a decision which it would not itself have made, and if this occurs the existence of this "residual" power may provide little solace.

It is therefore important that the Council have in place appropriate policies and procedures under which delegation should be exercised. Delegates, whether individuals or committees, are required to understand the delegations authorised to them and ensure that decisions taken are within their power to make.

SCOPE

The scope of this Policy is to ensure that decisions made under delegation achieve the best possible outcome for the community. This will be achieved by delegates seeking appropriate input from the Councillors, the wider Council administration and the community. The Council affirms its responsibility to set and own, through consultation with the community:

- the vision for Greater Shepparton,
- its strategic direction,
- the policies necessary to pursue this vision and direction, and
- the funding of them.

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

- implement the vision, strategies, direction and policies determined by Council;
- comply with all relevant legislation, strategies, plans, policies, procedures and guidelines;
- provide to the Council all information relevant to issues affecting it;
- advise honestly, transparently and professionally upon those issues;
- provide effective administration and staffing for these purposes, within the framework of Council's budget; and be accountable to Council for the outcomes achieved.

DEFINITIONS

Reference term	Definition
Delegated Committee	Means a committee appointed under section 63 of the Local Government Act 2020 that can act as a delegate of the Council
Community Asset Committee	Means a committee appointed under section 65 of the Local Government Act 2020.

POLICY

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

1. Informing the Public

When a delegate informs members of the public of a decision made under delegation, this fact is to be clearly conveyed. Members of the public must always have decisions made under delegation relating to them confirmed in writing.

Written confirmation must clearly state that the decision was made under delegation and contain:

- the Council contact in relation to the decision, and
- the avenue/s of appeal available, where applicable.

2. Referral to Council

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

- the proposal requires the letting of a contract exceeding the financial limits approved in the Instrument of Delegation to the Chief Executive Officer;
- 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 six or more public objections 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;
- 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; or 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.

3. 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 CEO is in accordance with the conditions and limitations outlined in the Council adopted S5 Instrument of Delegations.

The limitations of financial delegations to Council officers are included in the S7 – Instrument of Sub-Delegation by Chief Executive Officer.

4. Ratification of Officer Decisions

Several Acts which confer powers of delegation provide that particular decisions by delegates are of no effect unless ratified by the Council:

Decision which requires ratification	Relevant Legislation
Refusal by an officer to grant, renew or transfer registration of food premises under the Food Act 1984.	Section 58A(2) Food Act 1984
Refusal by an officer to issue a permit for a septic tank system.	Section 53M Environment Protection Act 1970
Refusal by an officer to grant, renew or transfer registration of premises under Section 77 of the Public Health and Wellbeing Act.	Section 77 of the Public Health and Wellbeing Act 2008.

A report must be submitted to a Council Meeting agenda for all decisions which require ratification by the Council. The report must detail the decision made and the reasons for it and recommend to the Council that they ratify the decision made under delegation.

5. Declaration of Conflicts of Interest

The Local Government Act 2020 prohibits a delegate from exercising any delegated power, or discharging any function or duty where they have a conflict of interest. Further, a delegate who has a conflict of interest in relation to a delegated power, function or duty must inform the Chief Executive Officer of that conflict in writing as soon as they become aware of it.

Delegates must ensure that they are fully aware of what constitutes a conflict of interest as defined in the Local Government Act 2020 and their obligations in relation to such conflicts.

Responsibility of Delegates

When exercising delegated authority the delegate shall use their best judgement to ensure compliance with each and all of the requirements of this Policy.

Should a Council Officer fail to perform their duties and functions in accordance with the limitations set in their delegated authority, Councils internal disciplinary procedures will be enacted.

6. Documentation and Transparency

It is important that decisions and actions taken under delegations be properly documented and transparent in nature. If delegations were not in place, the exercise of functions, powers and duties of the Council would be recorded in the Minutes of Council meetings.

It is possible that decisions taken under delegation will be reviewed in other spheres (eg: internal or management review, Council review, Ombudsman, Victorian Civil and Administrative Tribunal, Magistrates (or higher) Court), therefore a proper record of delegated action must be kept to ensure that the decision or action can be substantiated at a later date.

These decisions will be documented as part of Councils standard record keeping practices, within the applicable Council system being utilised.

This may include, but is not limited to:

- Content Manager
- Pathway
- Docs Assembler
- Docs On Tap
- CAMMS
- Reliansys

The detail and method of recording will depend on the nature of the power, duty or function. However, the need for proper documentation should be uppermost in the minds of all delegates.

Regular reports are provided to the Council in relation to the exercising of the delegations in relation to the awarding of contracts.

RELATED POLICIES AND DIRECTIVES

- *S5 Instrument of Delegations to the CEO*
- *S7 Instrument of Sub-Delegation by Chief Executive Officer*
- *Procurement Policy*
- *Conflict of Interest Policy*
- *Employee Code of Conduct*

RELATED LEGISLATION

- *Local Government Act 2020*

REVIEW

The Manager Corporate Governance is to review the Exercise of Delegations Policy every four years in conjunction with the Executive Leadership Team.