

DELEGATIONS AND AUTHORISATIONS POLICY

Approval Level:	Council
Policy Type:	Council
Approval Date:	19 July 2021
Review cycle:	Every 4 years
Review Date:	19 July 2025
Responsible Officer:	Manager Governance
Owner:	Governance
Responsible Director:	Corporate Performance
Relevant Legislation/Authority:	Local Government Act 1989, Local Government Act 2020
DOCSETID:	4598978

1. PURPOSE

Many Acts confer a responsibility on councils to take action, determine matters or make decisions. For councils to function effectively, decision-making must be devolved effectively from the central source of authority downwards and powers allocated to certain groups or individuals. This policy sets out how delegations and authorisations are implemented and managed at the City.

2. BACKGROUND

2.1. What is a delegation?

Councils have wide-ranging responsibilities, and are given many powers, duties and functions under different pieces of legislation. It would be impossible for a council to exercise all these powers, duties and functions itself because it would need to pass a council resolution each time it wished to act. For day to day operations, councils need others to make decisions and act on their behalf.

Delegating a council's powers, duties and functions is essential to fulfilling the responsibilities of local government. When a council delegates a power, duty or function to a member of staff or to a committee, the decision of the delegate is deemed to be a decision of the council.

2.2. How is authority delegated?

Legislation which confers an express power of delegation often requires that power of delegation to be exercised in writing, that is, by making a written instrument. An instrument of delegation generally specifies classes of position-holders to whom powers are delegated.

2.3. What is an Authorised Officer?

Appointment as an Authorised Officer involves a council appointing a person to a statutory position. Once a person is appointed as an Authorised Officer by the council, that person has the statutory powers of that position (as distinct from being delegated the powers of the council).

This is different from delegations, which involve a council giving its powers to members of staff (or to delegated committees), who then act on behalf of the council.

Persons appointed or authorised by a council are acting as holders of statutory powers – they are not acting on behalf of the council. Their powers and responsibilities are different to the powers and responsibilities of the council. However, Authorised Officers, such as Environmental Health Officers, can and are given delegated powers by Council in addition to the powers of their statutory position.

2.4. How is an individual appointed as an Authorised Officer?

Appointment as an Authorised Officer is made to an individual by name using a written instrument. The instrument demonstrates that a person is duly authorised to take action, make decisions or exercise powers of a statutory position.

3. **SCOPE**

This Policy applies to all City staff and members of any delegated committees of Council.

4. **DEFINITIONS**

Authorised Officer means 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.

City means the Greater Bendigo City Council organisation.

Council means the Greater Bendigo City Council comprised of elected Councillors.

EMT means the Executive Management Team of the City or its successor.

Instrument of Appointment and Authorisation means 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 means a document that delegates certain powers, duties and functions to a delegated officer (position or committee) who then acts as a delegate on the behalf of Council.

LGA 2020 means the *Local Government Act 2020* (Vic).

LGA 1989 means the *Local Government Act 1989* (Vic).

5. **POLICY**

Authorisations

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

- 5.2. An individual appointed as an Authorised Officer will possess the requisite skills, qualification or experience consistent with the position to which they are appointed.
- 5.3. Authorised Officers will be issued and carry an identity card as set out by section 224(2) of the LGA 1989.
- 5.4. People 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.

Delegations

5.5. Instrument of Delegation

- (a) All delegations of Council powers, duties and responsibilities will be made by a written Instrument of Delegation.
- (b) Delegation to a position extends to persons acting in or temporarily holding that position. Acting arrangements should be documented in writing (including by email correspondence) to ensure the transfer of delegated authority is verifiable.
- (c) If a position is abolished or re-named, the delegation will be taken to be a reference to the principal successor to the functions of that position until the relevant Instrument of Delegation is amended.

5.6. 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 the City's policies and procedures including any delegation or authorisation procedures.

(a) *Decision making*

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

(b) *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 of their instrument of delegation. Any decisions made beyond the scope of a delegate's delegation will result in that decision being invalid and may potentially expose the City to litigation.

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

(c) *Delegate accountability*

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

(d) *Conflicts of interest*

A person must not exercise a delegation that would create for them any material or general conflict of interest. In these circumstances, the delegate must refer the matter to a person more senior in their line of accountability. 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. The matter must be transferred to a person more senior in their line of accountability.

(e) *No retrospectivity*

A delegation cannot be exercised retrospectively.

(f) *Signing documents*

A delegate must not sign a contract or agreement under delegation unless the total cost of the transaction to the City, including both monetary and any in-kind costs, falls within their delegated financial authority.

In instances where a delegate is making a decision or action that does not have a specific monetary value or involves both monetary value and non-monetary value (in-kind costs, actions, etc) the staff involved must assess that decision or action giving consideration to the following factors:

- level of community interest
- objective importance to the City and the wider community
- stakeholders impacted by it
- complexity
- influence and ongoing implications

If the delegate assesses the above factors to be beyond the scope of their delegation, or if the delegate is in any way unsure of the assessment of the above factors, the decision or action must be referred to a higher-level delegate.

(g) *Tiered delegation*

Where an Instrument of Delegation gives the same delegation to different levels of authority (i.e. to a coordinator, manager and director in the same team/Directorate) any of those delegates have the authority to exercise that power. However, business units are free to make their own rules and procedures around the exercise of specific delegated powers (i.e. the coordinator has a specific delegation, but it is understood within the team that the coordinator would only ever exercise that power if the manager and director were unavailable).

(h) *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 and will assist a delegate to prepare for the exercise of that power in any way required (i.e. if a delegation conveys a power to purchase property, the final exercise of that delegation is the signing of a contract of sale and other documents to effect a transfer – many staff not holding that delegated power will be involved in the preliminary processes to negotiate a deal and produce that documentation).

5.7. 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 or is likely to do so;

- (b) give rise to substantial public objection or is likely to do so; or
- (c) be inconsistent with a previous decision of Council.

the delegate should refer that matter to EMT or the Council, as appropriate, for determination.

5.8. Recording

- (a) The City will maintain a register that shows the names of all persons appointed to be Authorised Officers as required by the LGA 1989.
- (b) The City will keep a public register of delegations as required by the LGA 2020.
- (c) The Governance Unit will report to EMT and Council at least quarterly on the currency of the City's Instruments of Delegation and the update pipeline for those documents.

5.9. Review of delegations

- (a) Legal and reputational risk is minimised by maintaining the currency of delegations to members of City staff through a regular review cycle.
- (b) Directors and Managers are responsible for:
 - regularly reviewing delegations to positions within their directorates and business units to ensure the delegations remain current and accurately reflect the responsibilities of positions;
 - regularly reviewing appointment of Authorised Officers within their directorates and business units to ensure officers are appropriately authorised to execute the duties of their position; and
 - advising Governance regarding organisational changes and resultant implications for delegations and authorisations when those changes are made.
- (c) The Governance Unit is responsible for coordinating regular reviews of delegations and authorisations as required by the LGA 2020 and to ensure that instruments are updated to reflect organisational changes and legislative amendments.
- (d) The Governance Unit will report to EMT and Council at least quarterly on the currency of the City's Instruments of Delegation and the update pipeline for those documents.

6. **ROLES AND RESPONSIBILITIES**

6.1 **Delegates**

Delegates are responsible for:

- (a) ensuring they understand the scope of delegations made to them; and
- (b) exercising delegated authority in accordance with this policy and the relevant Instruments of Delegation.

6.2 **Authorised officers**

Authorised Officers are responsible for:

- (a) ensuring they understand the duties, functions and powers of their authorisation; and
- (b) exercising their duties, functions or powers in accordance with this policy and the relevant Instrument of Appointment and Authorisation.

6.3 People managers

People managers are responsible for:

- (a) Ensuring that new and existing staff with any delegated or authorised authority read and understand the relevant instruments (as they relate to that staff member's position) and this policy.

In the case of new staff, this must be done as soon as possible after the staff member commences.

- (b) ensuring that a suitable delegation or authorisation exists for officers under their supervision;
- (c) requesting the Governance Unit make or amend such delegations or authorisations as required;
- (d) ensuring that delegates and Authorised Officers under their supervision exercise powers, duties and functions in accordance with this policy.

6.4 Governance

The Governance Unit is responsible for:

- (a) maintaining a register of Authorised Officers;
- (b) maintaining a public register of delegations;
- (c) coordinating and preparing instruments of appointment and authorisation on request;
- (d) regular reviews of instruments of delegation, appointment and authorisation in accordance with this policy;
- (e) reporting on the currency and update pipeline for Instruments of Delegation; and
- (f) education and support across the City, as required, in relation to delegations and authorisations.

7. RELATED DOCUMENTS

Readers are encouraged to access relevant documents and/or resources which are available as per the below.

These include:

- Instruments of Delegation available on the City's website and Legal Services Sharepoint Page
- Procurement Policy
- Resources on Conflict of Interest
- Gifts, Benefits and Hospitality Policy

Further information or advice on this policy should be directed to Governance

8. HUMAN RIGHTS COMPATIBILITY

The implications of this policy have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities.

9. ADMINISTRATIVE UPDATES

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this, such a change may be made administratively. Examples include a change to the name of a City unit, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be made through consultation with the staff Consultative Committee and with the approval of EMT or where required, resolution of Council.

10. DOCUMENT HISTORY

Date Approved	Responsible Officer	Unit	Change Type	Version	Next Review Date
July 2021	RM	Governance	Development	1	July 2025