

7.4 Instrument of Delegation from Council to Management Performance Review Delegated Committee

Abstract

Section 11(7) of the *Local Government Act 2020* (the Act) requires Council to review all delegations which have been made under section 11 of the Act within 12 months of a general election.

Council is therefore required to review the Instrument of Delegation from Council to the Management Performance Review Delegated Committee to ensure statutory compliance and to ensure the business of Council can continue to be carried out efficiently and in line with Council policies.

Council subscribes to the Maddocks Authorisation and Delegations service, which provides advice regarding legislative amendments and the provision of template instruments which are then tailored to organisational requirements.

The Act requires Council to develop, adopt and keep in force a Chief Executive Officer Employment and Remuneration Policy on or before 1 January 2022. It is proposed this policy will establish an advisory committee which will supersede the current Management Performance Review Delegated Committee.

For this reason, officers believe no changes to the structure of, or level of delegation to, the Committee is required at this time.

Officers' recommendation

That Council resolve:

1. To acknowledge a review of the Instrument of Delegation from Council to the Management Performance Review Delegated Committee has been completed.
2. To note no changes to the Instrument of Delegation from Council to the Management Performance Review Delegated Committee are required.
3. Upon the Chief Executive Officer Employment and Remuneration Policy being adopted by Council the Management Performance Review Delegated Committee is revoked.

Responsible officer: Phillip Storer, Chief Executive Officer

1. Purpose

The purpose of this report is to inform councillors the Instrument of Delegation from Council to the Management Performance Review Delegated Committee has been reviewed in accordance with the *Local Government Act 2020* (the Act).

2. Policy implications and relevance to community plan and council plan

This report is consistent with the Council Plan 2017-21, in particular strategy 7.2, which states “Ensure transparent decision making through open governance processes”.

It also supports Strategic Objective 7 of the Boroondara Community Plan 2017-27, to “Ensure that ethical, financial and socially responsible decision making reflect community needs and are based on principles of accountability, transparency, responsiveness and consultation”.

3. Background

Council is empowered by section 11 of the Act to delegate its powers, duties or functions with some strategic exemptions such as the setting of rates, borrowing funds, adopting a planning scheme amendment and adopting a budget.

Section 11(7) of the Act requires Council to review all delegations which have been made under section 11 of the Act within 12 months of a general election (i.e. on or before 24 October 2021).

In accordance with the Act all delegations which have been made under section 11 of the Act and are still in force have been reviewed with the exception of the Instrument of Delegation from Council to the Management Performance Review Delegated Committee.

It is now timely for Council to review the Instrument of Delegation from Council to the Management Performance Review Delegated Committee.

4. Outline of key issues/options

Chief Executive Officer Contract of Employment

The contract of employment between Council and the Chief Executive Officer requires the Chief Executive Officer's performance be reviewed annually in each year by a committee Council has appointed for that purpose. The committee must comprise at least the Mayor and two other councillors.

Delegated Committee

The Management Performance Review Delegated Committee exercises Council's powers and functions and performs Council's duties in relation to the management of the Chief Executive Officer's contract of employment.

The current Instrument of Delegation to the Management Performance Review Delegated Committee (**Attachment 1**) was last adopted on 24 August 2020 and provides the Delegated Committee with the powers and functions required to:

- determine arrangements for conduct of the Chief Executive Officer's performance review;
- undertake the Chief Executive Officer's annual performance review;
- undertake the Chief Executive Officer's remuneration package annual review;
- to enter contracts, and to incur expenditure to a maximum monetary limit of \$50,000; and
- act as an advisory body for the Chief Executive Officer regarding organisational performance, management and good governance.

Council officers are of the view the Instrument is sufficient for the Committee to fulfil its role, function and purpose at this time.

CEO Employment and Remuneration Policy

Section 45 of the Act requires Council to develop, adopt and keep in force a Chief Executive Officer Employment and Remuneration Policy (the Policy) by 1 January 2022.

The Policy must provide for the:

- Council to obtain independent professional advice in relation to the matters dealt with in the Policy;
- recruitment and appointment process;
- provisions to be included in the contract of employment;
- performance monitoring; and
- an annual review.

Council's People Culture and Development department have commenced work on developing the Policy which is anticipated to be formally presented to Council in early December 2021. It is proposed the Policy will establish an advisory committee which will supersede the current Management Performance Review Delegated Committee.

It is also proposed upon the Policy being adopted by Council the Management Performance Review Delegated Committee be revoked.

For the reasons set out above, it is suggested no changes are required to the Instrument of Delegation from Council to the Management Performance Review Delegated Committee.

5. Consultation/communication

Council subscribes to the Maddocks Authorisations and Delegations Service, which provides advice regarding legislative amendments and template instruments.

Consultation is ongoing with colleagues in Council's People Culture and Development department in the development of the Policy.

6. Financial and resource implications

The cost to review the Instrument of Delegation from Council to the Management Performance Review Delegated Committee are minimal and can be met within the current Governance and Legal departmental budget.

7. Governance issues

No member of Council staff involved in advising or in preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

The implications of this report have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities Act 2006 (the Charter). The proposed amendments to the Instruments of Delegation is not considered to infringe unreasonably upon any prescribed human right, freedom or responsibility contained in the Charter.

8. Social and environmental issues

Reviewing the Instrument of Delegation from Council to the Management Performance Review Delegated Committee ensures Council continues to comply with its obligations under the Act. It also ensures the business of Council can be carried out efficiently and in line with Council approved policies.

Effective and efficient delegations assist in reinforcing public confidence in the integrity of Council's decision making processes and in the Council's ability to ensure good corporate governance within the municipality.

Manager: David Thompson, Manager Governance and Legal

Report officer: Kirstin Ritchie, Coordinator Governance




Instrument of Delegation
to the
Management Performance Review
Delegated Committee


Boroondara City Council delegates to each person who is from time to time appointed as a member of the Delegated Committee established by resolution of Council passed on 24 August 2020 and known as the "**Management Performance Review Delegated Committee**" (**the Committee**), the powers and functions set out in the Schedule, and declares that:

1. this Instrument of Delegation is authorised by a resolution of Council passed on 24 August 2020;
2. a delegate can only exercise the delegations contained in this Instrument of Delegation while acting as a member of the Committee at a meeting of the Committee;
3. the delegation:
 - 3.1 comes into force immediately the common seal of Council is affixed to this Instrument of Delegation;
 - 3.2 remains in force until Council resolves to vary or revoke it; and
 - 3.3 is to be exercised in accordance with the guidelines or policies which Council from time to time adopts.
4. all members of the Delegated Committee will have voting rights on the Delegated Committee.

The Common Seal of the Boroondara City Council was hereunto affixed in the presence of:



(Mayor)



(Chief Executive Officer)

1.09.2020

(Date)



SCHEDULE

Powers and functions

The Management Performance Review Delegated Committee has the following powers and functions:

1. To exercise Council's powers and functions and to perform Council's duties in relation to the management of the Chief Executive Officer's Contract of Employment and to do all things necessary or convenient to be done for or in connection with the performance of those functions, duties and powers, including but not limited to:
 - a. determining arrangements for conduct of the Chief Executive Officer's performance review;
 - b. undertaking the annual review Chief Executive Officer's performance; and
 - c. undertaking the annual review Chief Executive Officer's total remuneration package.
2. To act as an advisory body for the Chief Executive Officer regarding organisational performance, management and good governance.
3. To enter into contracts, and to incur expenditure to a maximum monetary limit of \$50,000 (excluding GST);
4. To do all things necessary or convenient to be done for or in connection with the performance those functions, duties and powers.

Exceptions, conditions and limitations

The Committee is not authorised by this Instrument to:

1. appoint, reappoint or dismiss a Chief Executive Officer.
2. enter into contracts, or incur expenditure, for an amount which exceeds \$50,000 (excluding GST);
3. exercise the powers which, by force section 11(2) of the Local Government Act 2020, cannot be delegated.