

## 7.14 Instrument of Sub-Delegation & Instruments of Appointment and Authorisation - Environment Protection Act 2017

### Abstract

The Environment Protection Act 2017 (the Act) and Environment Protection Regulations 2021 (the Regulations) came into effect on 1 July 2021.

Under the new Act and Regulations the scope of Council's role as a regulator has not changed however, there have been changes to the laws and powers of councils, including a new delegation of powers directly from the Environment Protection Authority Victoria (EPA) to councils.

Pursuant to section 437(1) of the Act, the EPA has issued an Instrument of Delegation dated 4 June 2021 directly to Council.

Following this, Maddocks advised that Council should now sub-delegate these powers, as conferred by section 437(2) of the Act to Council officers.

The attached Instrument of Sub-Delegation from Council to Members of Council Staff reflects this advice and is presented to Council for adoption.

It is important to note that the powers contained in the Instrument of Sub-delegation can only be delegated to council staff who are authorised under section 242(2) of the Act. For this reason, two Instruments of Appointment and Authorisation are also presented to Council for adoption.

### Officers' recommendation

1. In the exercise of the power conferred by s 437(2) of the Environment Protection Act 2017 and the Instrument of Delegation of the Environment Protection Authority under the Act dated 4 June 2021, Boroondara City Council (Council) resolves that:
  - a) There be delegated to the members of Council staff holding, acting in or performing the duties of the offices or positions referred to in the attached Instrument of Delegation to members of Council staff (**Attachment 1**, as annexed to the minutes), the powers, duties and functions set out in that instrument, subject to the conditions and limitations specified in that Instrument.
  - b) The instrument comes into force immediately the common seal of Council is affixed to the instrument.
  - c) The instrument be sealed.
  - d) The duties and functions set out in the instrument must be performed, and the powers set out in the instruments must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt.

2. In the exercise of the power conferred by s 242(2) of the Environment Protection Act 2017 and the Instrument of Delegation of the Environment Protection Authority under the Act dated 4 June 2021, Boroondara City Council (Council) resolves that:
  - a) The members of Council staff referred to in the instruments (**Attachment 2 and 3**, as annexed to the minutes) be appointed and authorised as set out in the instrument.
  - b) The instrument comes into force immediately the common seal of Council is affixed to the instrument, and remains in force until Council determines to vary or revoke it.
  - c) The instrument be sealed.

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**Responsible director: Phillip Storer, Chief Executive Officer**

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## **1. Purpose**

The purpose of this report is for Council to review and adopt the Instrument of Sub-Delegation from Council to Members of Council Staff (**Attachment 1**) and the two Instruments of Appointment and Authorisation (**Attachment 2 and 3**) made under the Environment Protection Act 2017.

## **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**

The Environment Protection Act 2017 (the Act) and Environment Protection Regulations 2021 (the Regulations) came into effect on 1 July 2021.

Council received formal notification from the EPA in June to advise that they had delegated new powers to councils under the Act. The delegation applies to the regulation of:

- on-site wastewater management systems not exceeding 5000 litres on any day; and
- noise from construction, demolition and removal of residential premises.

The EPA's Governing Board approved the Instrument of Delegation and the Instrument of Direction on 4 June 2021. These Instruments enable Council to take necessary steps to assume the new powers under the Act and the Regulations.

## **4. Outline of key issues/options**

By virtue of section 437(2) of the Act, Council has the power to sub-delegate the powers contained in the EPA's Governing Board approved Instrument of Delegation to members of Council staff.

The powers, duties and functions described and summarised in the Schedule of Attachment 1, are only delegated for the purpose of regulating:

- onsite wastewater management systems with a design or actual flow rate of sewage not exceeding 5000 litres on any day; and
- noise from the construction, demolition or removal of residential premises

Where Council has sub-delegated EPA powers and functions under s437(2) of the Act, the members of Council staff must be authorised officers under s242(2) of the Act. As such, new Instruments of Appointment and Authorisation are included as **Attachment 2 and 3** to this report.

Delegations are necessary to facilitate effective functioning of councils as they enable day-to-day decisions to be made in relation to routine administrative and operational matters.

In granting delegations, Council is not granting unfettered power to Council staff or relinquishing its own powers. A delegate must comply with the conditions of delegation as well as any policies of Council and any legislative framework. Council can still exercise any delegated power, duty or functions itself by resolution in the Chamber. Further, authorised officers must exercise the powers in accordance with the EPA's approved Instrument of Direction.

The attached Instrument of Sub-Delegation (**Attachment 1**) and Instruments of Appointment and Authorisation (**Attachment 2 and 3**) are recommended for the effective and efficient operations of Council's activities, as well as to enable routine and administrative tasks to be carried out with consistency and certainty.

## **5. Consultation/communication**

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

Consultation with the Civic Services Department of the organisation has taken place in the preparation of the proposed Instruments.

## **6. Financial and resource implications**

The costs to prepare and adopt the revised Instruments are minimal and will 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**

Effective and efficient delegations will reinforce 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 officers:** Kirstin Ritchie, Coordinator Governance  
Elizabeth Manou, Senior Governance Officer

**Boroondara City Council**

**Instrument of Sub-Delegation**

**to**

**Members of Council staff**

## Instrument of Sub-Delegation

By this Instrument of Sub-Delegation, in exercise of the power conferred by s 437(2) of the *Environment Protection Act 2017* ('Act') and the Instrument of Delegation of the Environment Protection Authority under the Act dated 4 June 2021, the Council:

1. delegates each duty and/or function and/or power described in column 1 of the Schedule (and summarised in column 2 of the Schedule) to the member of Council staff holding, acting in or performing the duties of the office or position described in column 3 of the Schedule;
2. record that references in the Schedule are as follows:

<b>AMO</b>	means	Animal Management Officer
<b>APO</b>	means	Asset Protection Officer
<b>CEO</b>	means	Chief Executive Officer
<b>CFS</b>	means	Coordinator Field Services
<b>CHPP</b>	means	Coordinator Health, Projects and Prosecutions
<b>CPAPA</b>	means	Coordinator Permits Appeals and Protection of Assets
<b>DUL</b>	means	Director Urban Living
<b>EHO</b>	means	Environmental Health Officer
<b>LL</b>	means	Local Laws Officer
<b>MCS</b>	means	Manager Civic Services
<b>PO</b>	means	Parking Officer
<b>PROS</b>	means	Prosecutor
<b>PSO</b>	means	Projects and Strategy Officer
<b>SAPCO</b>	means	Senior Asset Protection and Compliance Officer
<b>TLFS</b>	means	Team Leader Field Services
<b>TLHS</b>	means	Team Leader Health Services
<b>TLPT</b>	means	Team Leader Parking and Traffic

3. this Instrument of Sub-Delegation is authorised by a **resolution of Council** passed on **25 October 2021** pursuant to a power of sub-delegation conferred by the Instrument of Delegation of the Environment Protection Authority under the Act dated 4 June 2021;
4. the delegation:
  - 4.1 comes into force immediately the common seal of Council is affixed to this Instrument of Sub-Delegation;
  - 4.2 remains in force until varied or revoked;
  - 4.3 is subject to any conditions and limitations set out in sub-paragraph 5, and the Schedule; and
  - 4.4 must be exercised in accordance with any guidelines or policies which Council from time to time adopts; and
5. this Instrument of Sub-Delegation is subject to the following limitations:
  - 5.1 the powers, duties and functions described in column and summarised in column 2 of the Schedule are only delegated for the purpose of regulating:
    - 5.1.1 onsite wastewater management systems with a design or actual flow rate of sewage not exceeding 5000 litres on any day; and

5.1.2 noise from the construction, demolition or removal of residential premises;

6. the delegate must not determine the issue, take the action or do the act or thing:

- 6.1 if the issue, action, act or thing is an issue, action or thing which Council has previously designated as an issue, action, act or thing which must be the subject of a Resolution of Council;
- 6.2 if the determining of the issue, taking of the action or doing of the act or thing would or would be likely to involve a decision which is inconsistent with a
  - (a) policy; or
  - (b) strategyadopted by Council;
- 6.3 if the determining of the issue, the taking of the action or the doing of the act or thing cannot be the subject of a lawful delegation; or
- 6.4 the determining of the issue, the taking of the action or the doing of the act or thing is already the subject of an exclusive delegation to another member of Council staff.

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

..... Chief Executive Officer

..... Mayor

..... Date



## **SCHEDULE**

<b>ENVIRONMENT PROTECTION ACT 2017</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>PROVISION</b>	<b>THING DELEGATED</b>	<b>DELEGATE</b>	<b>CONDITIONS &amp; LIMITATIONS</b>
s 271	Power to issue improvement notice	AMO, APO, CEO, CFS, CHPP, CPAPA, DUL, EHO, LL, MCS, PO, PROS, PSO, SAPCO, TLHS, TLFS, TLPT	
s 272	Power to issue prohibition notice	AMO, APO, CEO, CFS, CHPP, CPAPA, DUL, EHO, LL, MCS, PO, PROS, PSO, SAPCO, TLHS, TLFS, TLPT	
s 279	Power to amend a notice	AMO, APO, CEO, CFS, CHPP, CPAPA, DUL, EHO, LL, MCS, PO, PROS, PSO, SAPCO, TLHS, TLFS, TLPT	

s 358	Functions of the Environment Protection Authority	AMO, APO, CEO, CFS, CHPP, CPAPA, DUL, EHO, LL, MCS, PO, PROS, PSO, SAPCO, TLHS, TLFS, TLPT	
s 359(1)(b)	Power to do all things that are necessary or convenient to be done for or in connection with the performance of the Environment Protection Authority's functions and duties and to enable the Authority to achieve its objective.	AMO, APO, CEO, CFS, CHPP, CPAPA, DUL, EHO, LL, MCS, PO, PROS, PSO, SAPCO, TLHS, TLFS, TLPT	
s 359(2)	Power to give advice to persons with duties or obligations	AMO, APO, CEO, CFS, CHPP, CPAPA, DUL, EHO, LL, MCS, PO, PROS, PSO, SAPCO, TLHS, TLFS, TLPT	

**Boroondara City Council**

**Instrument of Appointment and Authorisation**

***(Environment Protection Act 2017)***

## Instrument of Appointment and Authorisation (*Environment Protection Act 2017*)

In this instrument "**officer**" means -

Andre Peters	Team Leader Parking and Traffic
Andrew Lloyd	Environmental Health Officer
Aysegul Altug	Support Services Officer
Bradley Stephen McMahon	Senior Asset Protection and Compliance Officer
Cailin Johnston	Senior Support Services Officer
Chad Henry	Acting Manager Civic Services
Christine Karabourniotis	Coordinator Field Services
Courtney Foura	Support Services Officer
David Lennox	Parking Officer
Dianne Yans	Projects and Strategy Officer
Eileen Clinch	Animal Management Officer
Ellen Hill	Environmental Health Officer
Ellie Whitechurch	Team Leader Asset Protection and Permits
Gerard Ndagijimana	Technical Officer - Asset Protection
Henry Luo	Technical Officer - Asset Protection
James Sidonie	Animal Management Officer
Jessica Longstaff	Support Services Officer
Joe (Giuseppe) Luppino	Parking Officer
John Murrihy	Environmental Health Officer
John Privitelli	Local Laws Officer
Jorge Contreras	Parking Officer
Jubaidul Jekab	Local Laws Officer
Karanvir Singh	Parking Officer
Karlee Davis	Asset Protection and Permits Officer
Kathleen Lazarus	Permits Officer
Leanne Mary Roberts	Asset Protection Officer
Leonardo (Leo) Manca	Coordinator Health, Projects and Prosecutions
Maia Judd	Support Services Officer
Marc Dickeson	Environmental Health Officer
Maryanne Dahaby	Works Support Officer
Matt Aitken	Prosecutor
Matthew Juers	Environmental Health Officer

Meihua Li	Support Services Officer
Michelle Spicer	Support Services Officer
Mirella Manfre	Coordinator Permits Appeals and Protection of Assets
Nigel Wright	Parking Officer
Penelope Anastasiadis	Environmental Health Officer
Philippa Lee-Treloar	Asset Protection Officer
Robert Weis	Team Leader Health Services
Ronald Versteegh	Animal Management Officer
Roselyn Lawton	Animal Management Officer
Sam Temov	Parking Officer
Sandra Woods	Support Services Officer
Shaun Whittle	Local Laws Officer
Simon Elliott	Local Laws Officer
Steve Burgess	Team Leader Field services
Tim O'Reilly	Parking Officer
Tom Vandenbroek	Parking Officer
Tricia Coghlan	Support Services Officer
Warren Norton	Local Laws Officer

**By this instrument of appointment and authorisation, Boroondara City Council -**

under s 242(2) of the *Environment Protection Act 2017* ('**Act**') and the Instrument of Delegation of the Environment Protection Authority under the Act dated 4 June 2021 - appoints the officers to be authorised officers for the purposes of exercising the powers and functions set out in the Instrument of Direction of the Environment Protection Authority under the Act dated 4 June 2021.

**It is declared that** this instrument -

- comes into force immediately upon its execution;
- remains in force until varied or revoked.

This instrument is authorised by a resolution of the Boroondara City Council on 25 October 2021.

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

..... Chief Executive Officer

..... Mayor

..... Date

**Boroondara City Council**

**Instrument of Appointment and Authorisation**

***(Environment Protection Act 2017)***



## Instrument of Appointment and Authorisation (*Environment Protection Act 2017*)

In this instrument "**officer**" means -

Andre Peters	Team Leader Parking and Traffic
Andrew Lloyd	Environmental Health Officer
Aysegul Altug	Support Services Officer
Bradley Stephen McMahon	Senior Asset Protection and Compliance Officer
Cailin Johnston	Senior Support Services Officer
Chad Henry	Acting Manager Civic Services
Christine Karabourniotis	Coordinator Field Services
Courtney Foura	Support Services Officer
David Lennox	Parking Officer
Dianne Yans	Projects and Strategy Officer
Eileen Clinch	Animal Management Officer
Ellen Hill	Environmental Health Officer
Ellie Whitechurch	Team Leader Asset Protection and Permits
Gerard Ndagijimana	Technical Officer - Asset Protection
Henry Luo	Technical Officer - Asset Protection
James Sidonie	Animal Management Officer
Jessica Longstaff	Support Services Officer
Joe (Giuseppe) Luppino	Parking Officer
John Murrihy	Environmental Health Officer
John Privitelli	Local Laws Officer
Jorge Contreras	Parking Officer
Jubaidul Jekab	Local Laws Officer
Karanvir Singh	Parking Officer
Karlee Davis	Asset Protection and Permits Officer
Kathleen Lazarus	Permits Officer
Leanne Mary Roberts	Asset Protection Officer
Leonardo (Leo) Manca	Coordinator Health, Projects and Prosecutions
Maia Judd	Support Services Officer
Marc Dickeson	Environmental Health Officer
Maryanne Dahaby	Works Support Officer
Matt Aitken	Prosecutor
Matthew Juers	Environmental Health Officer

Meihua Li	Support Services Officer
Michelle Spicer	Support Services Officer
Mirella Manfre	Coordinator Permits Appeals and Protection of Assets
Nigel Wright	Parking Officer
Penelope Anastasiadis	Environmental Health Officer
Philippa Lee-Treloar	Asset Protection Officer
Robert Weis	Team Leader Health Services
Ronald Versteegh	Animal Management Officer
Roselyn Lawton	Animal Management Officer
Sam Temov	Parking Officer
Sandra Woods	Support Services Officer
Shaun Whittle	Local Laws Officer
Simon Elliott	Local Laws Officer
Steve Burgess	Team Leader Field services
Tim O'Reilly	Parking Officer
Tom Vandenbroek	Parking Officer
Tricia Coghlan	Support Services Officer
Warren Norton	Local Laws Officer

**By this instrument of appointment and authorisation Boroondara City Council –**

***Litter enforcement officer***

1. under s 114(2) of the *Environment Protection Act 2017* - appoints the officers to be litter enforcement officers for the purposes of s 114(2) of the *Environment Protection Act 2017*
2. under s 347(4) of the *Environment Protection Act 2017* authorises the officers to take proceedings against the *Environment Protection Act 2017* or the regulations under this Act.

***Residential noise enforcement officer***

3. under s 171 of the *Environment Protection Act 2017* – appoints the officers to be residential noise enforcement officers for the purposes of s 171 of the *Environment Protection Act 2017*
4. under s 170 of the *Environment Protection Act 2017* authorises the officers to take proceedings against certain offences under the *Environment Protection Act 2017* or the regulations under this Act.

**It is declared that** this instrument -

- comes into force immediately upon its execution;
- remains in force until varied or revoked.

This instrument is authorised by a resolution of the Boroondara City Council on 25 October 2021.

The Common Seal of the Boroondara

City Council was hereunto affixed

in the presence of:

..... Chief Executive Officer

..... Mayor

..... Date