

7.3 Instrument of Delegation from Council to the CEO Employment and Remuneration Committee

Executive Summary

Purpose

The purpose of this report is for Council to delegate specific Council functions, duties and powers to the CEO Employment and Remuneration Committee (the Committee) by an Instrument of Delegation.

Background

Section 11(1) of the the *Local Government Act 2020* (the Act) permits the Council to delegate to the members of a delegated committee, by an instrument of delegation, any power, duty or function of a Council under this Act or any other Act subject to specific exemptions.

Council has an established tradition of the Management Performance Review Committee which dealt with all matters related to the management of the Chief Executive Officer's contract of employment.

The former Instrument of Delegation from Council to the Management Performance Review Delegated Committee was adopted by Council on 27 September 2021. Item three of the resolution stated that upon the adoption of the Chief Executive Officer Employment and Remuneration Policy (the Policy) by Council the Management Performance Review Delegated Committee is revoked.

The Policy was adopted on 13 December 2021 thus revoking the Instrument of Delegation to the Performance Management Review Committee and concluding the Management Performance Review Delegated Committee.

A key component of the Policy is the establishment of the CEO Employment and Remuneration Committee as a delegated committee. To enable the Committee to function as a delegated committee and exercise Council powers an Instrument of Delegation from Council to the CEO Employment and Remuneration Committee (**Attachement 1**) is required to be adopted by Council.

Key Issues

- Instruments of delegation represent the formal delegation of powers by Council to members of a delegated committee, the CEO and Council staff.
- A sealed instrument of delegation is required to enable the Committee to utilise Council's powers, duties, or functions under the *Local Government Act 2020*.
- A delegate can only exercise the delegations contained in the Instrument while acting as a member of the Committee at a meeting of the Committee.
- Section 11(2) of the Act prescribes powers that cannot be delegated which have been included in the Instrument.
- Section 11(5) of the Act states that the power to enter into a contract or make any expenditure must specify a maximum monetary limit that cannot be exceeded. A limit of \$50,000 has been included in the Instrument.
- The Instrument of Delegation from Council to the CEO Employment and Remuneration Delegated Committee aligns with the CEO Employment and Remuneration Policy.

- Delegated Committee's must be covered in accordance with Chapter 3 of the Governance Rules.

Next Steps

Once adopted by Council the Instrument of Delegation from Council to the CEO Employment and Remuneration Committee will be sealed and come into force immediately.

The Instrument will be reviewed as required by Council staff to ensure the business of Council continues to be carried out efficiently and to comply with Council's legislative obligations.

Officers' recommendation

That Council resolve to, in exercise of the powers conferred by section 11 and section 63 of the *Local Government Act 2020* (the Act), resolves that:

1. From the date of this resolution, there be established as a Delegated Committee the CEO Employment and Remuneration Delegated Committee.
2. The purposes of the Delegated Committee are as detailed at Section 5.3 of the CEO Employment and Remuneration Policy.
3. The members of the Delegated Committee are all eleven elected Councillors of Boroondara City Council.
4. The Chairperson of the Committee is the Mayor.
5. A quorum for the Committee is a whole number that is an absolute majority, which is the number of members that is greater than half the total number of members of the Delegated Committee.
6. All members of the Delegated Committee have voting rights on the Delegated Committee.
7. There be delegated to the members of the Delegated Committee the powers, duties and functions set out in the attached Instrument of Delegation (the Instrument).
8. The Instrument:
 - a. comes into force immediately the common seal of Council is affixed to the Instrument; and
 - b. remains in force until Council determines to vary or revoke it.
9. The powers, duties and functions conferred on the members of the Delegated Committee by the Instrument must be exercised in accordance with any guidelines or policies Council may from time to time adopt.
10. The Instrument be sealed.

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

1. Purpose

The purpose of this report is for Council to delegate specific Council functions, duties and powers to the CEO Employment and Remuneration Committee (the Committee) by an Instrument of Delegation.

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

The Instrument of Delegation from Council to the CEO Employment and Remuneration Delegated Committee (the Instrument) relates to Priority Theme 7: Leadership and Governance in the Boroondara Community Plan 2021-2031.

The Instrument is also consistent with Strategic Objective 7.1: Decision making is transparent and accountable through open governance processes with timely communication and reporting.

The Instrument aligns with, and should be read in conjunction with, the CEO Employment and Remuneration Policy.

3. Background

Council has an established tradition of having the following three delegated committees as part of the decision making processes of Council:

- Services Delegated Committee which meets to consider and discuss reports on issues such as traffic management, road closures, family and children's services and youth services.
- Urban Planning Delegated Committee which meets to consider and determine issues relating to the Planning and Environment Act and the Building Act 1990; and
- Performance Management Review Committee which deals with all matters related to the management of the Chief Executive Officer's contract of employment.

The Instrument of Delegation from Council to the Performance Management Review Committee was last reviewed and adopted by Council on 27 September 2021. The Council resolution is included below:

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 CEO Employment and Remuneration Policy being adopted by Council the Management Performance Review Delegated Committee is revoked.*

It is important to note that item three of the above resolution revokes the instrument of delegation upon the adoption of the CEO Employment and Remuneration Policy.

Section 45 of the *Local Government Act 2020* came into operation on 1 July 2021 and required Council to develop, adopt and keep in force a CEO Employment and Remuneration Policy. Said policy had to be adopted within 6 months of the commencement of the section; specifically 31 December 2021.

Council adopted the CEO Employment and Remuneration Policy (the Policy) at the Council meeting held on 13 December 2021. A key component of the Policy is the establishment of the CEO Employment and Remuneration Delegated Committee (the Committee). The Committee supersedes the previous CEO Management Performance Review Delegated Committee and will be responsible for the management of the Chief Executive Officer's employment.

To enable the committee to implement the Policy it must first be delegated the powers, duties, and functions of Council by an instrument of delegation (**Attachment 1**).

4. Outline of key issues/options

Instruments of delegation represent the formal delegation of powers by Council to members of a delegated committee, the CEO and Council staff. Section 11(1)(a) of the Act enables Council to, by Instrument of Delegation, delegate to the the members of a delegated committee any power, duty or function of a Council under this Act or any other Act except for some specific exemptions.

The Instrument of Delegation should clearly articulate the nature of the delegation and any conditions or limitations under which the delegation is to be exercised. The conditions and limitations contained in the Instrument replicate the specific exemptions specified in section 11(2) of the Act and a monetary limit as required under section 11(5) of the Act and are:

- the power to appoint the Chief Executive Officer, whether permanent or acting basis (except for a period not exceeding 28 days);
- the power to make any decision in relation to the employment, dismissal or removal of the Chief Executive Officer;
- the power to enter into contracts, or incur expenditure, for an amount which exceeds \$50,000 (excluding GST); or
- the power to exercise any powers which, by force of section 11(2) of the Act cannot be delegated.

A delegate can only exercise the delegations contained in the Instrument while acting as a member of the Committee at a meeting of the Committee.

As the Committee is a delegated committee composed solely of Councillors the meeting procedure will be as per Chapter 3 of the Governance Rules. This means that Committee's meetings must be conducted in the same manner as the Council meetings.

A copy of the Instrument and the Policy have been reviewed for consistency by Maddocks Lawyers.

5. Consultation/communication

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

6. Financial and resource implications

The costs to prepare and adopt the revised instrument of delegation are minimal and has been met within the current Governance and Legal departmental budget.

7. Governance issues

No officers involved in the preparation of this report have a general or material conflict of interest requiring disclosure under Chapter 5 of the Governance Rules.

This report and the recommendation contained within the report is compatible with the Charter of Human Rights and Responsibilities 2006 as it does not raise any human rights issues.

8. Social and environmental issues

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

Manager: Adele Thyer, Acting Manager Governance and Legal

Report officer: Kirstin Ritchie, Coordinator Governance



Boroondara City Council

Instrument of Delegation

To

CEO Employment and Remuneration Committee



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Instrument of Delegation

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 13 December 2021 and known as the "**CEO Employment and Remuneration 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 28 February 2022.
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; and
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)

(Date)

SCHEDULE

Powers and functions

The CEO Employment and Remuneration 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. undertaking the performance monitoring of the Chief Executive Officer with respect to achievement of the KPI's.
 - 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 of those functions, duties, and powers.

CONDITIONS AND LIMITATIONS

The Committee is not authorised by this Instrument to:

1. appoint the Chief Executive Officer, whether on a permanent or acting basis (except for a period not exceeding 28 days).
2. make any decision in relation to the employment, dismissal, or removal of the Chief Executive Officer.
3. enter into contracts, or incur expenditure, for an amount which exceeds \$50,000 (excluding GST); or
4. exercise any powers which, by force of section 11(2) of the *Local Government Act 2020*, cannot be delegated.