

## 7.9 Instrument of Appointment and Authorisation - Planning and Environment Act 1987 & Environment Protection Act 2017

### Executive Summary

#### Purpose

The purpose of this report is for Council to consider executing two Instruments of Appointment and Authorisation under the *Planning and Environment Act 1987* and *Environment Protection Act 2017* respectively.

The Instruments presented to Council are for the appointment and authorisation for staff from the Urban Living Directorate. This review deals with staffing arrangements and is distinct from the biannual authorisation reviews conducted in March and October of each year.

#### Background

Maddocks recommend that officers enforcing the *Planning and Environment Act 1987* be authorised by Council resolution and that the Instruments of Appointment and Authorisation be refreshed on a regular basis. The last review of this Instrument occurred in September 2023.

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

Council last adopted an Instrument of Appointment and Authorisation under the *Environment Protection Act 2017* in October 2023.

#### Key Issues

Council subscribes to the Maddocks Authorisations and Delegations Service, and relevant advice has been considered in the preparation of this report and the Instruments of Appointment and Authorisation.

To ensure that the Instruments are up to date and account for staffing changes within the organisation, officers undertake a review of the Instruments bi-annually. There were no legislative changes relevant to the current review, as such the changes merely accommodate staffing arrangements in the Urban Living Directorate.

Officers are now presenting a refreshed Instrument of Appointment and Authorisation under the *Planning and Environment Act 1987* (**Attachment 1**), and an Instrument of Appointment and Authorisation under the *Environment Protection Act 2017* (**Attachment 2**) for adoption.

#### Next Steps

The Instruments will be refreshed as needed to ensure any staffing changes within the Urban Living Directorate are captured.

## Officers' recommendation

1. That Council resolve, in the exercise of the powers conferred by section 224 of the *Local Government Act 1989* (Vic) and the other legislation referred to in the attached Instrument of Appointment and Authorisation (**Attachment 1**), that:
  - a) The members of Council staff referred to in the Instrument of Appointment and Authorisation (Attachment 1 as annexed to the minutes) be appointed and authorised as set out in the Instrument.
  - b) The Instrument of Appointment and Authorisation comes into force immediately once 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 of Appointment and Authorisation be sealed.
  - d) On the coming into force of the Instrument all previous Instruments of Appointment and Authorisation under the *Planning and Environment Act 1987* are revoked.
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 *Environment Protection Act 2017* dated 4 June 2021, Council resolves that:
  - a) The members of Council staff referred to in the Instrument (**Attachment 2** as annexed to the minutes) be appointed and authorised as set out in the Instrument.
  - b) The Instrument comes into force immediately upon the common seal of Council being affixed to the Instrument and remains in force until Council determines to vary or revoke it.
  - c) The instrument be sealed.
  - d) On the coming into force of the Instrument all previous Instruments of appointment and authorisation under the *Environment Protection Act 2017* are revoked.

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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 Appointment and Authorisation under the *Planning and Environment Act 1987* (**Attachment 1**) and the Instrument of Appointment and Authorisation under the *Environment Protection Act 2017* (**Attachment 2**).

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

The Instruments relate to Theme 7: Leadership and Governance in the Boroondara Community Plan 2021-2031.

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

## **3. Background**

Instrument of Appointment and Authorisation empower relevant staff to exercise the powers granted to authorised officers by legislation or a local law.

The Instruments of Appointment and Authorisation prepared for Council's consideration is based on advice from the Maddocks Authorisations and Delegations Service.

Maddocks recommend that officers authorised under the *Planning and Environment Act 1987* and *Environment Protection Act 2017* be authorised by Council resolution and that the Instruments of Appointment and Authorisation be refreshed on a regular basis. The Instruments are reviewed by Governance as required to ensure they are up to date. The previous reviews occurred in September and October of 2023.

The *Environment Protection Act 2017* and *Environment Protection Regulations 2021* came into effect on 1 July 2021.

Council received formal notifications from the EPA in June 2021 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 Instrument of Appointment and Authorisation at Attachment 2 enable Council to take necessary steps to assume the new powers under the Act and the Regulations.

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

The Instrument of Appointment and Authorisation under the *Planning and Environment Act 1987* authorises officers from the Planning and Placemaking Department. A copy of the Instrument is at **Attachment 1**.

Where Council has sub-delegated EPA powers and functions under s 437(2) of the Act, the members of Council staff must be authorised officers under s 242(2) of the Act. As such, an Instrument of Appointment and Authorisation authorising officers from the Civic Services Department has been prepared at **Attachment 2** to this report.

Authorised officers from the Civic Services Department must exercise these powers in accordance with the EPA's approved Instrument of Direction.

The attached Instrument of Appointment and Authorisation under the *Planning and Environment Act 1987* (**Attachment 1**) and Instrument of Appointment and Authorisation under the *Environment Protection Act 2017* (**Attachment 2**) 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.

To ensure that the Instruments are up to date and account for staffing changes in the organisation, officers undertake a review of the Instruments bi-annually. There were no legislative changes relevant to the current review, as such the changes merely capture changes in staffing arrangements in the Urban Living Directorate.

#### 5. Consultation/communication

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

Consultation with the Urban Living Directorate has taken place in 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 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 of Boroondara City Council.

The recommendation contained in this 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 and authorisations 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:** Bryan Wee, Manager Governance and Legal

**Report officer:** Liam Merrifield, Senior Governance Officer

**Boroondara City Council****Instrument of Appointment and Authorisation  
(*Planning and Environment Act 1987*)**

Joel Elbourne	Manager Urban Planning
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## Instrument of Appointment and Authorisation (*Planning and Environment Act 1987*)

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

Joel Elbourne

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

1. under section 147(4) of the *Planning and Environment Act 1987* - appoints the officers to be authorised officers for the purposes of the *Planning and Environment Act 1987* and the regulations made under that Act; and
2. under section 313 of the *Local Government Act 2020* authorises the officers generally to institute proceedings for offences against the Acts and regulations described in this instrument.

**It is declared that -**

- (a) this instrument comes into force immediately upon its execution and remains in force until varied or revoked;
- (b) this instrument must not be exercised in a manner which is inconsistent with Council's corporate position.
- (c) on the coming into force of this instrument, any previous Instruments of Appointment and Authorisation to the members of Council staff named above are revoked.

This instrument is authorised by a resolution of the **Boroondara City Council**  
On 27 November 2023.

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 -

Madeline Gierck	Animal Management Officer
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**By this instrument of appointment and authorisation** Boroondara City Council –

1. 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.
2. 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*.
3. 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.
4. 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*.
5. 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.
6. under s 242(2) of the *Environment Protection Act 2017* – appoints the officers for the purposes of the power or function delegated to Council under s 437(1) of the Act.

under –

- s 170(2), 170(4), 170(6) of the *Environment Protection Act 2017*
- s 347(4) of the *Environment Protection Act 2017*
- s 347(3) of the *Environment Protection Act 2017* and r 171 of the *Environment Protection Regulations 2021*
- s 347(7) of the *Environment Protection Act 2017*

authorises the officers generally to institute proceedings and represent Council in proceedings for offences against the Acts, Regulations and local laws described in this instrument.

**It is declared that** this instrument -

- a) comes into force immediately upon its execution
- b) remains in force until varied or revoked
- c) on the coming into force of this instrument, any previous Instruments of Appointment and Authorisation under the *Environment Protection Act 2017* or the regulations under this Act to the members of Council staff named above, are revoked.

This instrument is authorised by a resolution of the Boroondara City Council on 27 November 2023

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

..... Chief Executive Officer

..... Mayor

..... Date