

7.10 Instrument of Sub-Delegation & 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 an Instrument of Sub-Delegation under the *Environment Protection Act 2017* and two Instruments of Appointment and Authorisation under the *Environment Protection Act 2017* and the *Planning and Environment Act 1987* respectively.

The Instruments presented to Council are for the sub-delegation, appointment and authorisation of staff in 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 November 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 Sub-Delegation and an Instrument of Appointment and Authorisation under the *Environment Protection Act 2017* in October and November 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 Sub-Delegation under the *Environment Protection Act 2017* (**Attachment 1**), Instrument of Appointment and Authorisation under the *Environment Protection Act 2017* (**Attachment 2**), and an Instrument of Appointment and Authorisation under the *Planning and Environment Act 1987* (**Attachment 3**) 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. 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 resolves that:
 - a) There be delegated to 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 the Instrument, subject to the conditions and limitations specified 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 delegations to members of Council Staff under the *Environment Protection Act 2017* are revoked.
 - e) The duties and functions set out in the Instrument must be performed, and the powers set out in the Instrument 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 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.
3. 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, that:
 - a) The members of Council staff referred to in the Instrument of Appointment and Authorisation (**Attachment 3** 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 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 of Appointment and Authorisation be sealed.

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

1. Purpose

The purpose of this report is for Council to review and adopt the Instrument of Sub-Delegation under the *Environment Protection Act 2017* (**Attachment 1**), the Instrument of Appointment and Authorisation under the *Environment Protection Act 2017* (**Attachment 2**), and the Instrument of Appointment and Authorisation under the *Planning and Environment Act 1987* (**Attachment 3**).

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.

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:

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

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.

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 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 3**.

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

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 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

AMO	means	Animal Management Officer
APEO	means	Asset Protection Enforcement Officer
APO	means	Asset Protection Officer
APETL	means	Asset Protection Enforcement Team Leader
APPTL	means	Asset Protection and Permits Team Leader
CFS	means	Coordinator Field Services
CHPP	means	Coordinator Health, Projects and Prosecutions
TOAP	means	Technical Officer - Asset Protection
PEO	means	Permits Officer
CPAPA	means	Coordinator Permits Appeals and Protection of Assets
DUL	means	Director Urban Living
EHO	means	Environmental Health Officer
LL	means	Local Laws Officer
MCS	means	Manager Civic Services
PO	means	Parking Officer
PROS	means	Prosecutions Officer and Prosecutions Lead
SAPEO	means	Senior Asset Protection Enforcement Officer
SAPE	means	Supervisor Asset Protection Enforcement
TAPE	means	Team Leader Asset Protection Enforcement
TLLA	means	Team Leader Local Laws and Animal Management
TLHS	means	Team Leader Health Services
PTTL	means	Parking and Traffic Team Leader

3. this Instrument of Sub-Delegation is authorised by a resolution of Council passed on 18 December 2023 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:

Instrument of Sub-delegation to members of Council staff (*Environment Protection Act 2017*)

- 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

Instrument of Sub-delegation to members of Council staff (*Environment Protection Act 2017*)

SCHEDULE

Instrument of Sub-delegation to members of Council staff (*Environment Protection Act 2017*)

ENVIRONMENT PROTECTION ACT 2017			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s 271	Power to issue improvement notice	AMO, APO, CPLAC, CHPP, CPAPA, DUL, EHO, LL, MCS, PO, PROS, PSO, SAPEO, TLHS, TLLA, TLPT, TLPS, TOAP, PEO, APEO, APPTL, CFS, TAPE, APETL	
s 272	Power to issue prohibition notice	AMO, APO, CPLAC, CHPP, CPAPA, DUL, EHO, LL, MCS, PO, PROS, PSO, SAPEO, TLHS, TLLA, TLPT, TLPS, TOAP, PEO, APEO, APPTL, CFS, TAPE, APETL	

s 279	Power to amend a notice	AMO, APO, CPLAC, CHPP, CPAPA, DUL, EHO, LL, MCS, PO, PROS, PSO, SAPEO, TLHS, TLLA, TLPT, TLPS, TOAP, PEO, APEO, APPTL, CFS, TAPE, APETL	
s 358	Functions of the Environment Protection Authority	AMO, APO, CPLAC, CHPP, CPAPA, DUL, EHO, LL, MCS, PO, PROS, PSO, SAPEO, TLHS, TLLA, TLPT, TLPS, TOAP, PEO, APEO, APPTL, CFS, TAPE, APETL	
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, CPLAC, CHPP, CPAPA, DUL, EHO, LL, MCS, PO, PROS, PSO, SAPEO, TLHS, TLLA, TLPT, TLPS, TOAP, PEO, APEO, APPTL, CFS, TAPE, APETL	

s 359(2)	Power to give advice to persons with duties or obligations	AMO, APO, CPLAC, CHPP, CPAPA, DUL, EHO, LL, MCS, PO, PROS, PSO, SAPEO, TLHS, TLLA, TLPT, TLPS, TOAP, PEO, APEO, CFS, TAPE, APETL	
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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	Parking and Traffic Team Leader
Alex Ilievski	Parking Officer
Alice Haskett	Prosecutions Officer
Anastasia Matete	Parking Officer
Andrew Salisbury	Senior Parking Officer
Brad McMahon	Supervisor Asset Protection Enforcement
Cailin Johnston	Senior Permits and Appeals Officer
Can Doruk	Parking Officer
Chris McKee	Parking Officer Casual
Ciaran Hartnett	Permits Officer
Danielle Facey	Permits Officer
Eileen Clinch	Animal Management Officer
Ellen Hill	Environmental Health Officer
Elita Schwab	Environmental Health Officer
Florin Boiciuc	Parking Officer
Gabriel Dorning	Animal Management Officer
Heidi Beecher	Asset Protection Enforcement Team Leader
Iona Mitchell	Permits Officer
Jai Ghotra	Permits Officer
James Sidonie	Animal Management Officer
Jamie Chinga	Parking Officer
Giuseppe (Joe) Luppino	Parking Officer
Joe Peluso	Parking Officer
John Privitelli	Local Laws Officer
Jorge Contreras	Parking Officer
Joseph Climacus	Parking Officer
Joseph Elbaum	Asset Protection Enforcement Officer
Jubaidul Jakab	Local Laws Officer
Junne Matondo	Technical Officer - Asset Protection
Karanvir Singh	Parking Officer
Katerina Sioulas	Environmental Health Officer
Leanne Roberts	Asset Protection Enforcement Officer
Leonardo (Leo) Manca	Coordinator Health, Projects and Prosecutions
Lorenzo Gullone	Environmental Health Officer
Matthew (Matt) Aitken	Prosecutions Lead
Matthew Juers	Environmental Health Officer
Michael Fraser	Permits Officer
Michael O'Connor	Senior Asset Protection Enforcement Officer
Michelle Cant	Parking Officer (Night)
Mirella Manfre	Coordinator Permits Appeals and Protection of Assets

Nigel Wright	Parking Officer
Nileshkumar Jani	Parking Officer
Noppawoot Suravilas	Parking Officer
Paul Bryan Mitchelmore	Manager Civic Services
Paul Howard	Local Laws Officer
Paul Teiwes	Parking Officer
Penelope Anastasiadis	Environmental Health Officer
Rachael Oats	Parking Officer
Philippa Lee Treloar	Asset Protection Enforcement Officer
Robert Marshall	Parking Officer
Robert Weis	Team Leader Health Services
Roselyn Lawton	Animal Management Officer
Rosetta (Rose) Locke	Local Laws Officer
Rohit Markan	Parking Officer
Sam Joseph	Technical Officer - Asset Protection
Sam Temov	Parking Officer
Scott Walker	Director Urban Living
Serena Horg	Coordinator Field Services
Sean Bell	Local Laws Officer
Shariq Ali	Parking Officer
Sharon Raju	Permits Officer
Shaun Whittle	Local Laws Officer
Simon Elliott	Landscape Compliance Officer
Stefanie Daniliuk	Local Laws Officer
Susie Bozinovska	Permits Officer
Tim O'Reilly	Parking Officer
Toolefua Samuelu	Technical Officer - Asset Protection
Tom Vandenbroek	Parking Officer
Virginie Geoffroy	Parking Officer (Night)
Warren Norton	Local Laws Officer
Will Carroll	Environmental Health Officer

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 18 December 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 (*Planning and Environment Act 1987*)

Aileen Chin	Principal Urban Planner
Ali Turvey	Para Planning Officer
Alice Haskett	Prosecutions Officer
Andrew McIlveen	Planning Investigations Officer
Amaya De Silva	Senior Urban Planner
Brendan Rea	Planning Investigations Officer
Calum Schwindt	Urban Planner
Cynthia Pizzati	Para Planning Officer
Cheng Chea	Para Planning Officer
Chiara Lorini	Senior Urban Planner
Christopher Spencer	Team Leader Urban Planning Forester
Damian Bu	Senior Urban Planner
Daniel Murphy	Planning Appeals Co-ordinator
Darshankumar (Darshan) Vachhani	Development Transport Engineer
Daniela Splitgerber	Senior Urban Planner
David Barclay	Development Drainage Engineer
David Cowan	Manager City Futures
Edward Howe	Urban Planner
Elizabeth Spanjer	Senior Urban Planner
Erin McCarthy	Coordinator Urban Planning
Gregory (Greg) Pocock	Para Planning Officer
Gregory (Greg) Stewart	Senior Urban Planner
Ida LaRocca	Para Planning Officer
Jack Richardson	Senior Urban Planner
Jessica Nedelkos	Para Planning Officer
Jennifer Estrada	Para Planning Officer
Joel Torresi	Urban Planner
Joel Elbourne	Manager Urban Planning

Jock Farrow	Principal Urban Planner
Jon Harper	Coordinator Urban Planning
Joshua Lewis	Urban Planner
Jordan Schonberg	Urban Planner
Justin Richardson	Planning Investigations Officer
Karen Reid	Para Planning Officer
Kathy Fletcher	Urban Planner
Kelly Caporaso	Principal Urban Planner
Lachlan Waddell	Urban Planner
Lebon Ferri	Environmental Design Officer
Lucy Johnson	Principal Urban Planner
Matt Aitken	Prosecutions Officer
Michael Burton	Public Notice Officer
Mridula Krishna	Urban Planner
Nikhil Shah	Urban Planner
Scott Lipscombe	Senior Development Transport Engineer
Scott Walker	Director Urban Living
Simon Elliott	Landscape Compliance Officer
Simon Quinn	Para Planning Officer
Sofia Skliris	Team Leader Para Planning
Stephanie Ng	Coordinator Urban Planning
Sylvia Georges	Urban Designer
Timothy Luckin	Senior Subdivision Officer/Senior Urban Planner
Toni Johnson	Para Planning Officer
Vanessa Kwaczynski	Administration Officer
Zac Fisher	Urban Planner
Finbar Harrison	Urban Planner

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

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

Aileen Chin	Daniela Splitgerber	Joel Torresi	Nick Hulston
Alice Haskett	David Barclay	Jon Harper	Nikhil Shah
Ali Turvey	David Cowan	Jonathan Welcome	Scott Lipscombe
Andrew McIlveen	Edward Howe	Joshua Lewis	Simon Elliott
Amaya De Silva	Elizabeth Spanjer	Jordan Schonberg	Scott Walker
Brendan Rea	Erin McCarthy	Justin Richardson	Simon Quinn
Calum Schwindt	Gregory (Greg) Pocock	Karen Reid	Sofia Skliris
Cynthia Pizzati	Gregory (Greg) Stewart	Kathy Fletcher	Stephanie Ng
Cheng Chea	Ida LaRocca	Kelly Caporaso	Sylvia Georges
Chiara Lorini	Jack Richardson	Lachlan Waddell	Timothy Luckin
Christopher Spencer	Jessica Nedelkos	Lebon Ferri	Toni Johnson
Damian Bu	Jennifer Estrada	Lucy Johnson	Vanessa Kwaczynski
Daniel Murphy	Jock Farrow	Matt Aitken	Zac Fisher
Darshankumar (Darshan) Vachhani	Joel Elbourne	Michael Burton	Finbar Harrison
		Mridula Krishna	

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 18 December 2023.

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

..... Chief Executive Officer

..... Councillor

..... Date