

THE CITY OF
GREATER GEELONG

DELEGATIONS POLICY

VERSION: 00

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Introduction

PURPOSE

There are many Acts and Regulations which confer a responsibility on councils to take action or determine matters. It is not practical for Council alone to exercise the many statutory powers, duties and functions bestowed on the Council.

The purpose of this policy is to establish a framework for delegating Council authority in a manner that facilitates efficiency and achieves the best possible results for the City, Council and the community.

SCOPE

This policy applies to the Greater Geelong City Council and any instruments of delegation established by the Council, the Chief Executive Officer and the Municipal Building Surveyor under the *Local Government Act 1989* and any other Acts.

Delegation instruments are not the source of all delegated authority. Actions may also be taken by City staff under implied authority arising from position descriptions, policies, procedures, schedules, guidelines and practices.

Definitions

This section defines the key terms used in this policy.

ACT

Local Government Act (Vic) 1989

AGREEMENT OR CONTRACT

Documents having the effect, when signed or approved, of committing the City to legally binding obligations.

CEO

The Chief Executive Officer of the City of Greater Geelong.

CITY

The City of Greater Geelong organisation, led by the CEO.

CONFLICT OF INTEREST

Has the same meaning as that contained in the Act.

COUNCIL

The City of Greater Geelong Council comprised of elected councillors and led by the Mayor.

DELEGATE

An officer or a group of persons such as a committee, with delegated authority pursuant to either a resolution of Council or written instrument signed by the CEO.

DELEGATION

The conferral of an authority to a position to exercise a power, duty or function on behalf of Council. The authority is exercised in the name of the delegate.

ELT

The Executive Leadership Team of the City, as constituted from time to time.

MBS

The Municipal Building Surveyor of the City of Greater Geelong.

Policy

SOURCES OF COUNCIL POWER

Council is a statutory entity. It is able to do only those things that it is authorised by statute to do.

The sources of council power are:

- power to do things that a “natural person” can do. Section 5 of the Act gives Council the power to deal with property and, more generally, the capacity to do anything which bodies corporate may by law do “which are necessary or expedient” for performing its functions and exercising its powers
- powers conferred by provisions of acts and regulations, such as the Act and the *Planning and Environment Act 1987*
- powers conferred by other forms of statutory instrument

COUNCIL DECISIONS

Council is a legal entity composed of its members. Because it is not a "natural" person, it can act either by resolution, or through others acting on its behalf.

By Council resolution

The power of a Council to act by resolution is set out in section 3(5) of the Act -

"(5) Where a Council is empowered to do any act, matter or thing, the decision to do the act, matter or thing is to be made by a resolution of the Council."

By others

Council can act through others via formal written "instruments of delegation" wherever practicable.

INSTRUMENTS OF DELEGATION

A delegation to a position is valid only when it is made or evidenced by either a written “Instrument of Delegation” made by Council resolution or a written “Instrument of Delegation” made by the CEO or a written “Instrument of Delegation: made by the MBS.

Council “Instruments of Delegation” are evidenced by a minuted Council resolution and by the instruments being stamped with Council’s seal and signed and countersigned by the Mayor and CEO. These instruments remain in force until revoked by Council.

CEO “Instruments of Delegation” are evidenced by a minuted CEO decision and by the instruments being signed by the CEO. These instruments remain in force until revoked by the CEO.

MBS “Instruments of Delegation” are evidenced by a minuted MBS decision and by the instruments being signed by the MBS. These instruments remain in force until revoked by the MBS.

Instruments of delegation must exclude delegations that cannot legally be made. This policy also establishes exclusions and limitations related to other delegations.

Delegations excluded by law

The Act excludes the delegation of:

- the power to declare a rate or charge
- the power to borrow money
- the power to approve any expenditure not contained in a budget approved by the Council
- any power, duty or function of the Council under section 223 - Right to make submission
- decisions required by law to be done by Council resolution
- any prescribed power

Other delegations excluded or limited

In addition, the following powers, duties and functions must not be delegated to the CEO, Council staff or special committees:

- incurring expenditure beyond the limit set in the instrument of delegation
- entering into agreements or contracts for amounts exceeding the limit set in the instrument of delegation. The power to contract is also constrained by the provisions of the Act and the Procurement Policy
- making a local law under Part 5 of the Act
- approval of the Council Plan under s.125 of the Act
- adoption of the Strategic Resource Plan under s.126 of the Act;
- preparation or adoption of the Budget or a Revised Budget under Part 6 of the Act
- adoption of the Auditor's report, Annual Financial Statements, Standard Statements and Performance Statement under Part 6 of the Act
- determining pursuant to s.37 of the Act that an extraordinary vacancy on Council not be filled
- exempting a member of a special committee who is not a Councillor from submitting a return under s.81 of the Act
- appointment of councillor or community delegates or representatives to external organisations
- the return of the general valuation and any supplementary valuations
- matters which Council has previously designated must be the subject of a Council resolution
- decisions which are inconsistent with a policy or strategy adopted by Council
- matters exclusively delegated to another member of Council staff

DELEGATES

The Act, as well as other legislation, makes express provision for the appointment of delegates to act on behalf of Council. There are two basic forms of delegation under the Act -

- to a member of Council staff
- to a special committee

The decision of a delegate of Council is considered a decision of Council.

Staff

Delegations are made to staff in relation to a position they occupy and are set out in schedules referenced by instruments of delegation.

Unless otherwise explicitly stated, a delegation to a specific position or positions applies to any staff member within or above that position.

The incumbent includes the acting or temporary occupant of a position.

Directors, Executive Managers and Managers are responsible for ensuring acting position arrangements are in place when required so that delegated authority can continue to be executed.

Appointment to a position, whether permanent, temporary or acting must be evidenced in writing or have an audit trail.

If a position is abolished or re-named, the delegation should be taken to be a reference to the principal successor to the functions of that position.

Special committees

When Council delegates a power, duty or function to a special committee it invests the committee with the authority to act as the Council.

The delegation is to the committee, it relates to the committee acting as a body, not to individual members of the committee.

Accordingly, the powers, duties and functions delegated to the committee can only be executed by the committee under delegation when the committee is sitting in a formally constituted meeting.

AUTHORITY TO SUB-DELEGATE

The CEO may, by instrument of delegation, delegate to a member of the Council staff any power, duty or function of the CEO's office other than the power of delegation.

No other delegate is authorised to sub-delegate any of the delegate's delegated functions to any other person or group of persons.

A special committee cannot delegate any of its responsibilities to others. For example, a committee established to manage a Council facility cannot delegate its powers to approve expenditure to a single committee member or an employee.

REFERRAL TO COUNCIL

A delegate must, before exercising a delegation, refer to Council with an appropriate recommendation, any matters that:

- involve making plans and determining strategic priorities
- are required by law to undergo community engagement
- raise an issue of significant public interest, opportunity, concern or controversy, or are likely to do so. Such issues would normally involve an assessed high or extreme risk rating and are likely to impact on people and the places they live, work and play
- have given rise to substantial public objection or appear likely to do so
- involve an issue of policy which affects the community in some way where there is no existing Council policy to guide the delegate
- would lead to a delegate decision inconsistent with, or appearing to be inconsistent with, a previous decision or previous decisions made by or on behalf of Council regarding the matter or similar matters
- would require the expenditure of Council funds not specifically provided for in the Council budget
- the delegate assesses have not been subject to appropriate consultation with those persons likely to be affected by any related decision
- involve a planning application that any Councillor wishes to call in for a Council decision in line with the Planning Committee Terms of Reference
- the delegate otherwise considers would be more appropriately decided by Council resolution

EXERCISING DELEGATED AUTHORITY

In exercising a delegation, a delegate must comply with all conditions and limitations of a delegation, relevant legislation, resolutions of Council; industrial awards and agreements; and the City's policies and procedures.

Delegate accountability

The delegate is responsible and accountable for any decisions made under a delegation and are required to be able justify such decisions or actions.

Authority is exercised by the lowest level delegate in the first instance and escalated to a higher level delegate if the lower delegate is unavailable or has a conflict of interest in a matter.

Conflicts of interest

A person must not exercise a delegation that would create for them any direct or indirect conflict of interest. In these circumstances, the delegate must refer the matter to a person more senior in their line of accountability.

A person is not obliged to exercise a delegation, where in their reasonable opinion, circumstances exist that would make it more transparent or ethical for the matter to be dealt with by another delegate. The matter must be transferred to a person more senior in their line of accountability.

No retrospectivity

A delegation cannot be exercised retrospectively.

Matters 'called in'

A power, duty or function that has been delegated may, notwithstanding the delegation, be exercised by the CEO or Council as the case may be. In this case, a delegation must not be exercised regarding the matter 'called in'.

Signing documents

A delegate may sign any document to give effect to his or her function or authority, except for legally binding agreements or contracts specifically delegated to others.

If a legal agreement or other document covering a matter included in a delegate's authority also includes subject matter that falls within the responsibility of a delegate with a higher authority, then the document must be signed by the delegate with the higher authority.

A delegate must not sign an agreement unless the total cost of the transaction to the City, including both monetary and any in-kind costs, falls within their delegated financial authority, except in relation to agreements created under section 173 of the *Planning and Environment Act 1987*.

The CEO may sign any agreement or other document in respect of any transaction within the CEO's financial delegation.

Consultation conditions

A delegation that contains the words 'in consultation with', 'on advice from', 'on advice of', or 'on recommendation of' means that the delegation should not be exercised until the required consultation, advice or recommendation is received and considered.

Legal delegations

Legal delegations cover any legal agreements or contracts including but not limited to deeds, the exchange of letters, a heads of agreement and other documents that create a legally binding obligation inclusive of tender submissions.

Advice from Council's Legal Services unit must be taken by delegates prior to exercising a 'legal' delegation other than in the circumstances where a Legal Services unit approved standard letter, agreement or terms and conditions apply in relation to a low risk, low value and low complexity matter. For example, advice must be taken where the matter is assessed as a high or extreme risk, or the matter involves actual or potential monetary costs greater than \$10,000, or a matter where a party seeks to change contractual or agreement terms and conditions or a matter where it is obvious to the delegate that a commercial relationship is deteriorating or is likely to deteriorate.

Financial delegations

Any delegation must be exercised in accordance with the approved budget or source of funds except where explicitly stated in a delegation schedule.

Delegation limits apply to transactions and a transaction may not be separated into parts in order to exceed a limit on a delegate's authority.

The total cost of a transaction may not be offset by deductions or trade-ins.

CONSIDERATION OF DELEGATION ISSUES

Directors and Executive Managers are responsible for:

- ensuring all decisions, actions, reports and other documents have properly considered the delegations of the CEO and other delegates where a delegation is required to make a decision or to implement a policy or resolution of Council
- ensuring that a suitable delegation exists
- requesting such delegation be made if no suitable delegation exists.

REVIEWS OF DELEGATIONS

The City's Governance Unit is responsible for coordinating reviews of delegations.

Legal risk (the legal validity and enforceability of Council contracts and Council's ability to legally enforce and litigate breaches of Acts, Regulations and local laws) is minimised by maintaining the currency of delegations to members of Council staff through a regular review cycle.

Directors, Executive Managers and Managers are responsible for:

- reviews of position delegations within their departments and business units to ensure the delegations remain current and reflect the responsibilities of positions
- advising Governance regarding organisation changes and resultant implications for delegations at the time those changes are being made

A formal review of currency of the Council's delegations to the CEO and special committees will be undertaken as required by the Act, unless circumstances such as legislative amendment render an earlier review necessary.

Implementation

MONITORING AND REPORTING

The administration and quality control of the City's policy and processes, including instruments of delegation and the associated framework of policies and procedures, must be subject to regular scrutiny.

The delegations framework will be subject to risk assessment and internal audit review as appropriate.

The exercise of delegations will be tested by Victorian Auditor General's office (VAGO) external audit from time to time as determined by VAGO.

Reporting of delegations exercised is essential to ensure that adequate information regarding those actions is available to other staff, managers and Council. The powers, duties and functions to be reported will be determined with reference to risks associated with the exercise of delegations. Such reporting can be by:

1. Presentation of reports to Council within the time specified in the table; or
2. Preparation of a memorandum to relevant officers within the prescribed time; or
3. Production of a register that will be available for inspection at any time.

Specifications for reporting requirements will be set out in an associated procedure.

ADVICE AND ASSISTANCE

It is essential that the City supports committee members and employees to raise queries and issues about the proper exercise of delegated powers, duties and functions, including queries and issues relating to their own delegations or those of others.

The City must designate an employee position whose occupant manages the provision of advice to the organisation, including committee members and employees, regarding this policy and associated procedures. A person who is uncertain how to comply with this policy should seek advice from this person or from their immediate line manager or committee chairperson.

Seeking advice does not abrogate an individual's or body's responsibility to make the right decision in respect of exercising their delegated powers, duties and functions.

TRAINING

The City must ensure that all employees receive induction in the operation of this policy and associated procedures, including:

- information about the aim, principles, accountabilities, and requirements of the policy
- operation of associated procedures and where to locate them

Employees holding positions with delegated powers should be reminded of their responsibilities and limits of powers at least every two years.

RECORDS

Delegates will keep appropriate records of all actions taken under delegation. The level of detail in record keeping will be in keeping with the nature of the delegation and any associated risks to the council.

For example, the routine issue of a permit would be recorded in a permits register, detailing relevant issues.

In the event of more complex matters, delegates need to record the sort of information that would otherwise be available to the council if the delegation did not exist.

All council decisions are recorded in a minute book; members of staff must similarly evidence their decisions by recording details of the decision and how it was formed, on the appropriate council file to ensure that a "paper trail" exists.

Decisions made by delegates might subsequently be the subject of review by:

- Management;

- Council;
- The Ombudsman;
- The Local Government Investigations and Compliance Inspectorate;
- Victorian Civil and Administrative Tribunal; and
- Law Courts.

Accordingly a proper record of delegated action must be kept to ensure that the decision can be substantiated at a later date.

<i>Record</i>	<i>Retention / Disposal Authority</i>	<i>Retention Period</i>	<i>Location</i>
Instruments of delegation to staff	Governance & Legal Services	7 years after delegation is revoked or superseded Common Administrative Functions Retention & Disposal Authority: PROS 07/01	Document management System
Records of staff exercising delegated powers, duties and functions	Various departments	Various (depending on function) Local Government Functions Retention & Disposal Authority: PROS 09/05	Document management System
Instruments of delegation to special committees	Various departments	Permanent Local Government Functions Retention & Disposal Authority: PROS 09/05	Document management System
Records of special committees exercising delegated powers, duties and functions – minutes of special committee meetings	Various departments	Permanent Local Government Functions Retention & Disposal Authority: PROS 09/05	Document management System

REVIEW

This policy should be reviewed by October 2021.

References

Local Government Act 1989

CITY OF GREATER GEELONG

PO Box 104
Geelong VIC 3220
P: 03 5272 5272
E: contactus@geelongcity.vic.gov.au
www.geelongaustralia.com.au

CUSTOMER SERVICE CENTRE

Geelong
100 Brougham Street
Geelong VIC 3220
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