

## 6.2.4 Delegation of powers under Environment Protection Act 2017

**Responsible GM:** Debbie Tyson  
**Author:** Owen Hardidge

### Recommendation(s)

That Council resolves as follows:

1. To acknowledge the delegation of powers and functions under the Environment Protection Act 2018, made in accordance with section 437(4) of the Act, on 4<sup>th</sup> June 2021 on behalf of the Environment Protection Authority governing board, by Professor Kate Auty.
2. To delegate the powers and functions to Council officers, in accordance with the instrument of delegation attached to this report
3. That the Council Seal be affixed to the instrument of delegation attached to this report.

### Attachments

1. 2021.2 Board- Councils Delegation [**6.2.4.1** - 4 pages]
2. 2021.2 Board- Councils Direction [**6.2.4.2** - 3 pages]
3. P VIC S18 Instrument of Sub delegation under the EPA 2017 DELS18 1 [**6.2.4.3** - 5 pages]

### Executive Summary

As a result of the new Environment Protection Act 2018, the governing board of the EPA has formally delegated certain powers to Councils, by instrument of delegation made 4 June 2021 (attached).

The regulatory powers of Council have not substantially changed under the new Act, but it is necessary for Council to delegate those functions to Council staff.

The recommended resolutions (and attached instrument of delegation) are effective to provide for the continuation of this function.

### Background

The Victorian State government has undertaken a wholesale revision of the legislative arrangements for environmental protection in the State of Victoria. As a result of this process, the *Environment Protection Act 1970*, has been repealed and replaced by a new Act (the *Environment Protection Act 2018*) and a range of sub-ordinate regulations, and guidelines.

The full extent of the changes brought about by the new Act is beyond the scope of this report.

Council continues to have regulatory responsibilities in respect of the following subjects, all of which derive their powers from the new Environment Protection Act.

- Litter and waste related offences

- Permitting septic tank systems, and ensuring they are properly functioning, and
- Residential noise complaints.

In most cases, the delegated powers will be exercised by the Manager Regulatory Services, or other Regulatory Services staff.

The recommended resolutions are necessary in this instance, as a result of the new legislative powers conferred on Councils, and in the future these delegations will be incorporated into the standard instruments of delegation.

### **Policy Implications**

The proposed resolutions represent a continuation of the current delegation policies of Council

### **Relevance to Council Plan**

#### **5.1 We practise responsible leadership**

5.1.1 Build trust through meaningful community engagement and transparent decision-making.

### **Climate Emergency Consideration**

There are no Climate Emergency considerations that relate to this resolution.

### **Consultation/Communication**

No consultation is required in respect of these proposed resolutions.

### **Financial and Resource Implications**

There are no financial or resource implications for this resolution

### **Conclusion**

In order to continue to fulfill regulatory functions under the Environment Protection Act 2018, the recommended resolutions are necessary. The recommended resolutions will delegate the functions (currently delegated by the EPA to Council) to the Manager of Regulatory Services, and other Regulatory Services staff.

DATED: the 4<sup>th</sup> day of June 2021

---

INSTRUMENT OF DELEGATION  
OF POWERS AND FUNCTIONS OF THE  
ENVIRONMENT PROTECTION AUTHORITY  
UNDER THE  
ENVIRONMENT PROTECTION ACT 2017

---

**INSTRUMENT OF DELEGATION**

**ENABLING POWER:** Section 437(1)(b) of the *Environment Protection Act 2017* and section 42A of the *Interpretation of Legislation Act 1984*

**SUBJECT:** Delegation of certain powers, duties and functions of the Environment Protection Authority to Councils

**REFERENCE:** 2021.Council.001

**DEFINITIONS:** In this Delegation, all words and phrases have the same meaning as in the *Environment Protection Act 2017* unless the contrary intention appears. In addition:

**municipal district** has the same meaning as **municipal district** has in section 3(1) of the *Local Government Act 1989*.

**DELEGATION:** I, Professor Kate Auty, Chair of the Governing Board of Environment Protection Authority Victoria (**Governing Board**) on behalf of the Governing Board and pursuant to and in exercise of the power conferred by section 437(1) of the *Environment Protection Act 2017* **hereby delegate** the powers, duties and functions under the *Environment Protection Act 2017* (**Act**) as specified in the section of the Act detailed in column 2 of Schedule 1 and described in column 3 of Schedule 1 to the delegates described in column 4 of Schedule 1.

Any previous delegations relating to the section/s of the Act detailed in column 2 of the Schedule are hereby revoked.

This delegation is exercisable for an unlimited period on and from 1 July 2021, unless revoked.

**LIMITATIONS:** This delegation is subject to the following limitations:

- a) The powers, duties and functions of the Authority specified in column 2 of schedule 1 may be only delegated for the purpose of regulating:
  - i. onsite wastewater management systems with a design or actual flow rate of sewage not exceeding 5000 litres on any day; and
  - ii. noise from the construction, demolition or removal of residential premises.
- b) The powers, duties and functions of the Authority specified in column 2 of schedule 1 may only be exercised by the delegates described in column 4 of schedule 1 within each delegates' municipal district.

**RELATED DOCUMENTS:** This delegation is subject to a direction under section 437(4) of the Act dated 4 June 2021. This delegation should be read in conjunction with that instrument of direction.

**DATE:** 4 June 2021

**SIGNED:**

In accordance with all of the requirements of s 12, *Electronic Transactions (Victoria) Act 2000*



**PROFESSOR KATE AUTY  
CHAIR  
ENVIRONMENT PROTECTION AUTHORITY VICTORIA GOVERNING BOARD**

**WITNESSED:**



**GREG ELMS  
GENERAL COUNSEL  
ENVIRONMENT PROTECTION AUTHORITY VICTORIA**

**SCHEDULE 1****DELEGATION****Delegation of powers, duties and functions under the *Environment Protection Act 2017***

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>Ref. No</b>	<b>Relevant legislative provision under the <i>Environment Protection Act 2017</i></b>	<b>Summary of delegated powers, duties or functions</b>	<b>Delegate</b>	<b>Revoked Instrument</b>
Insert	Section 271	Issuing of an improvement notice	Councils	N/A
Insert	Section 272	Issuing of a prohibition notice	Councils	N/A
Insert	Section 279	Amendment of notices	Councils	N/A
Insert	Section 358	Functions of the Authority	Councils	N/A
Insert	Section 359(1)(b)	Power of the Authority to do all things that are necessary or convenient to be done for or in connection with the performance of the Authority's functions and duties and to enable the Authority to achieve its objectives	Councils	N/A
Insert	Section 359(2)	Power to give advice to persons with duties or obligations	Councils	N/A

DATED: the 4<sup>th</sup> day of June 2021

---

INSTRUMENT OF DIRECTION OF THE  
ENVIRONMENT PROTECTION AUTHORITY  
UNDER THE  
ENVIRONMENT PROTECTION ACT 2017

---

**INSTRUMENT OF DIRECTION****ENABLING POWER:** Section 437(4)**SUBJECT:** Direction in respect of functions delegated to councils by Delegation Reference 2021.Council.001**REFERENCE:** 2021.Council.Direction.001

**DIRECTION:** I, Professor Kate Auty, Chair of the Governing Board of Environment Protection Authority Victoria (**Governing Board**) on behalf of the Governing Board and pursuant to and in exercise of the power conferred by section 437(4) of the *Environment Protection Act 2017 (Act)*, and in respect of the delegation with reference 2021.Council.001 as made on 4 June 2021 **hereby direct:**

1. that, where the delegates listed in column 4 of schedule 1 of Delegation No Councils.2021.001 delegate, under s 437(2) of the Act, the delegated power or function listed in column 2 of schedule 1 of Delegation No 2021.Council.001 to an authorised officer appointed under s 242(2) of the Act, those authorised officers must only exercise the powers conferred by the following sections of the Act when exercising the delegated powers or functions:
  - a. Section 271;
  - b. Section 272;
  - c. Section 246;
  - d. Section 247;
  - e. Section 248;
  - f. Section 249;
  - g. Section 250;
  - h. Section 251, but not subsection (2)(h);
  - i. Section 252; but not subsection (1)(c);
  - j. Section 253;
  - k. Section 254;
  - l. Section 259
  - m. Section 279; and
  - n. Section 307.

This direction is in force for an unlimited period on and from 1 July 2021, unless revoked.



**DATE:** 4 June 2021

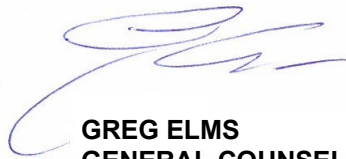
**SIGNED:**



In accordance with all of the requirements of s 12, *Electronic Transactions (Victoria) Act 2000*

**PROFESSOR KATE AUTY  
CHAIR  
ENVIRONMENT PROTECTION AUTHORITY VICTORIA GOVERNING BOARD**

**WITNESSED:**



**GREG ELMS  
GENERAL COUNSEL  
ENVIRONMENT PROTECTION AUTHORITY VICTORIA**



Maddocks

Maddocks Delegations and Authorisations

***S18 Instrument of Sub-Delegation  
under the Environment Protection Act 2017***

**Cardinia Shire Council**

**Instrument of Sub-Delegation**

**to**

**Members of Council staff**



Maddocks

## 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

**MRS means 'Manager Regulatory Services'**  
**CCS means 'Co-ordinator Compliance Services'**  
**SCSO means 'Senior Compliance Services Officer'**  
**CSO means 'Compliance Services Officer'**
3. this Instrument of Sub-Delegation is authorised by a **resolution of Council** passed on 16 August 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:
  - 6.1.1 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;
  - 6.1.2 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;



## Maddocks

- 6.1.3 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
- 6.1.4 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.



Maddocks

## SCHEDULE



Maddocks

<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	<b>MRS, CCS</b>	
s 272	Power to issue prohibition notice	<b>MRS, CCS</b>	
s 279	Power to amend a notice	<b>MRS, CCS</b>	
s 358	Functions of the Environment Protection Authority	<b>MRS, CCS, SCSO, CSO</b>	
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.	<b>MRS, CCS, SCSO, CSO</b>	
s 359(2)	Power to give advice to persons with duties or obligations	<b>MRS, CCS, SCSO, CSO</b>	