

6.4.4 Delegations to Chief Executive Officer - DCP's and ICP's

Responsible GM: Debbie Tyson
Author: Doug Evans

Recommendation(s)

That in the exercise of the power conferred by s 11(1)(b) of the Local Government Act 2020 Council resolves that:

- There be delegated to the person holding the position, or acting in or performing the duties, of Chief Executive Officer the powers, duties and functions set out in the attached Instrument of Delegation to the Chief Executive Officer, subject to the conditions and limitations specified in that Instrument.
- The Instrument comes into force immediately the common seal of Council is affixed to the Instrument.
- The duties and functions set out in the Instrument must be performed, and the powers set out in the Instruments must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt.

Attachments

1. Instrument of delegation Council to CEO April 2022 [6.4.4.1 - 4 pages]

Executive Summary

This report proposes to approve an updated Instrument of Delegation to the Chief Executive Officer with the amendment to allow the CEO to approve of land acquisitions and works in kind under adopted and indexed Development Contribution Plans (DCP's) and Infrastructure Contribution Plans (ICP's) up to 10% over the adopted and indexed \$ project cost values in the relevant DCP or ICP.

Background

Council has in place several Development Contribution Plans being:

- Pakenham
- Officer
- Cardinia Road, and
- Cardinia Road Employment.

For newer developments, these plans are referred to as Infrastructure Contribution Plans (ICP') and the Minister for Planning has approved the Pakenham East Infrastructure Contribution Plan.

Other ICP's that will be developed or are in the early stages of development are

- Pakenham South Employment, and
- Officer South Employment

These plans collect payments required to provide new or upgraded infrastructure such as roads, drains and community facilities for the future communities being developed. The plans designate all works required to be delivered in the relevant area and set aside land required for future road works or community facilities. The cost of these works (projects) are

detailed in the adopted plan and the values are indexed to ensure that the value increases along with project, property, and other cost increases. This aims to ensure that the Council is not financially disadvantaged over time.

Due to the volume of works required to be delivered under the plans it is proposed to delegate to the Chief Executive Officer the power to approve of both land acquisitions required and to approve works in kind adjustments provided by developers, where the values sit above Councils adopted financial delegations. Works in kind are where the developer agrees to provide the infrastructure required under the particular plan, such as road and drainage construction and the value of these works as detailed in the relevant plan is credited as part of the cost of the development rather than pay the Council the amount detailed in the relevant plan.

With the level of these projects increasing rapidly the Council need to be able to proceed in a timely manner in approving works in kind and the acquisition of designated properties, and it is at times not feasible to have the Council resolve on every decision to be made in regard to these works and acquisitions.

The amendment to the Instrument of Delegation as attached is to amend Clause 1.1 in the Conditions and limitations included in the Instrument so that clause 1.1 reads as follows:

1. 1.1 entering into a contract exceeding the value of \$1,000,000 ; (unless it is a contract for works or services or the acquisition of land which is being entered into pursuant to a Development Contributions Plan (“DCP”) or Infrastructure Contributions Plan (“ICP”), in which case the delegate may enter into the contract up to any amount not exceeding 10% more than the amount referred to in the DCP or ICP);

A further process review is underway to determine further delegations required within Councils Instruments of Delegation documents, to enable effective and prudent management of its increasing number of DCPs and ICPs. These may be considered at future meetings.

Policy Implications

All DCP's have been formally adopted by the Council and approved by the Minister for Planning. Future ICP's will be approved by the Minister for Planning.

Relevance to Council Plan

5.1 We practise responsible leadership

5.1.2 Manage our finances responsibly and leave a positive legacy for future generations.

Climate Emergency Consideration

There are no climate emergency consideration associated with the proposal.

Consultation/Communication

All DCP's and ICP's are developed through an extensive and detailed community consultation exercise.

Financial and Resource Implications

All financial considerations are included in the relevant DCP or ICP and these values are indexed to enable increases in line with expected inflation. Each Plan is indexed differently in line with the approved methodology.

Decisions in the DCP/ICP environment often pose a high financial risk to Council if not managed in a prudent and timely manner. The ability to be able to act nimbly and in a decisive fashion may at times be the difference between securing land in a timely manner or putting off the delivery of required infrastructure until after it is required.

The report seeks delegation authority to authorise the CEO to approve of land acquisitions and works in kind adjustments when they are at, or no more than 10% over the endorsed and indexed DCP or ICP amount.

Purchases that are more than 10% over the value within the DCP/ICP will be considered by Council through individual reports.

Conclusion

It is considered appropriate to execute a new Instrument of Delegation to the Chief Executive Officer that provides the authority to approve property acquisitions and works in kind delivered under adopted DCP's and ICP's up to 10% above the adopted value included in the relevant plan.



Cardinia Shire Council

Instrument of Delegation

to

The Chief Executive Officer

Instrument of Delegation

In exercise of the power conferred by s 11(1) of the *Local Government Act 2020 (the Act)* and all other powers enabling it, the Cardinia Shire Council (**Council**) delegates to the member of Council staff holding, acting in or performing the position of Chief Executive Officer, the powers, duties and functions set out in the Schedule to this Instrument of Delegation,

AND declares that

- 1. this Instrument of Delegation is authorised by a Resolution of Council passed on 11 April 2022;
- 2. the delegation
 - 2.1 comes into force immediately the common seal of Council is affixed to this Instrument of Delegation;
 - 2.2 is subject to any conditions and limitations set out in the Schedule;
 - 2.3 must be exercised in accordance with any guidelines or policies which Council from time to time adopts; and
 - 2.4 remains in force until Council resolves to vary or revoke it.

The common seal of Cardinia Shire Council was hereto affixed
In the presence of:

.....
Councillor

.....
Chief Executive officer

Date:

SCHEDULE

The power to

1. determine any issue;
2. take any action; or
3. do any act or thing

arising out of or connected with any duty imposed, or function or power conferred on Council by or under any Act.

Conditions and Limitations

The delegate must not determine the issue, take the action or do the act or thing

1. if the issue, action, act or thing is an issue, action, act or thing which involves
 - 1.1 entering into a contract exceeding the value of \$1,000,000 ; *(unless it is a contract for works or services or the acquisition of land which is being entered into pursuant to a Development Contributions Plan ("DCP") or Infrastructure Contributions Plan ("ICP"), in which case the delegate may enter into the contract up to any amount not exceeding 10% more than the amount referred to in the DCP or ICP);*
 - 1.2 making any expenditure that exceeds \$1,000,000 (unless it is expenditure made under a contract already entered into, or is expenditure which Council is, by or under legislation, required to make in which case it must not exceed \$1,000,000);
 - 1.3 appointing an Acting Chief Executive Officer for a period exceeding 28 days;
 - 1.4 electing a Mayor or Deputy Mayor;
 - 1.5 granting a reasonable request for leave under s 35 of the Act;
 - 1.6 making any decision in relation to the employment, dismissal or removal of the Chief Executive Officer;
 - 1.7 approving or amending the Council Plan;
 - 1.8 adopting or amending any policy that Council is required to adopt under the Act;
 - 1.9 adopting or amending the Governance Rules;
 - 1.10 appointing the chair or the members to a delegated committee;
 - 1.11 making, amending or revoking a local law;
 - 1.12 approving the Budget or Revised Budget;
 - 1.13 approving the borrowing of money;
 - 1.14 subject to section 181H(1)(b) of the *Local Government Act 1989*, declaring general rates, municipal charges, service rates and charges and specified rates and charges;
2. if the issue, action, act or thing is an issue, action, act or thing which is required by law to be done by Council resolution;

3. 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;
4. 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
 - 4.1 policy; or
 - 4.2 strategyadopted by Council;
5. 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, whether on account of s 11(2)(a)-(n) (inclusive) of the Act or otherwise; or
6. 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.