

7.3.5 S18 INSTRUMENT OF SUB-DELEGATION UNDER THE ENVIRONMENT PROTECTION ACT 2017

Responsible Manager:	Amanda Sapolu, Manager Corporate Governance & Legal
Responsible Director:	Simone Wickes, Director Corporate Services

RECOMMENDATION

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, Monash City Council (Council) resolves that:

1. There be delegated to the 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, the powers, duties and functions set out in that instrument, subject to the conditions and limitations specified in that Instrument.
2. The instrument comes into force immediately after the common seal of Council is affixed to the instrument.
3. 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.

INTRODUCTION

This report recommends that the Council gives certain powers to enforcement officers who handle noise from residential construction and Environmental Health Officers who manage septic systems. The Environment Protection Authority (EPA) allows councils to appoint these officers under the Environment Protection Act 2017. These officers can then be given specific EPA powers.

To enable Council officers to perform their duties in line with updated legislation and EPA delegation, it is necessary to have both an Instrument of Appointment and Authorisation issued by the Chief Executive Officer and an Instrument of Sub-Delegation from council to Council officers in place. Council officers previously (and until recently) would enforce these provisions under its Local Law and the powers therein.

The Instrument of Sub-Delegation under the Act (Attachment 1) is new to Monash and requires Council's approval.

COUNCIL PLAN STRATEGIC OBJECTIVES

Good Governance

Maintain the highest standards of good governance.

BACKGROUND

The Environment Protection Act 2017 helps the EPA and other authorities reduce pollution and waste. Supported by the Environment Protection Regulations 2021, councils can manage and enforce:

- Residential noise
- Noise from construction, demolition, and removal of homes
- On-site wastewater systems (septic systems)

Councils and litter authorities can also control illegal littering and waste disposal.

Due to changes in the Act, the EPA gave certain powers to councils on June 4, 2021 (see Attachment 2). While the Council's regulatory powers haven't changed much, it's necessary to delegate these functions to Council staff.

Previously, noise from residential construction was regulated under Local Law No.3 – Community Amenity. This has been replaced by the Community Safety and Amenity Local Law 2024. The new local law doesn't cover residential noise because it's already addressed by the Environment Protection Act 2017, and the local law has been amended and refined so as to not duplicate or provide for powers that are provided for in other legislation.

The Act regulates noise differently for residential construction and general residential noise. The Chief Executive Officer can authorise employees as Residential Noise Enforcement Officers (RNEOs) to handle noise from things like stereos, TVs, air conditioners, lawn mowers, and power tools. Noise from construction and demolition is regulated by powers delegated from the EPA to the Council, and then to officers.

DISCUSSION

Sub-Delegation of Powers

The EPA has delegated enforcement powers to the Council, which should then delegate these to Council officers. Under the Instrument of Sub-Delegation, Council's authorised officers have various powers, including:

- Issuing and amending improvement notices to address situations likely to harm health or the environment (section 271).
- Issuing and amending prohibition notices to stop activities likely to cause harm (section 272).
- Powers of entry and inspection.
- Issuing infringement notices for breaches of the Act.

Previously, these powers were executed through the Local Law, which regulated the timing of noise from building works. Now, under the Environment Protection Act, residential construction noise is governed by the General Environmental Duty (GED). The GED requires proactive steps to minimize environmental harm.

Delegated officers can issue Improvement Notices to address non-compliance and Prohibition Notices to stop harmful activities. These can include non-compliance with the GED or unreasonable noise from residential construction. Failure to comply can lead to prosecution or an Infringement Notice.

Additionally, the EPA has delegated powers to the Council to enforce regulations for on-site wastewater management systems (septic systems under 5000 litres). While Monash currently has no such systems, it's necessary to delegate these powers in case an application is made.

FINANCIAL IMPLICATIONS

There are no financial implications to this report.

POLICY IMPLICATIONS

There are no policy implications to this report.

CONSULTATION

Community consultation was not required.

SOCIAL IMPLICATIONS

There are no social implications to this report.

HUMAN RIGHTS CONSIDERATIONS

There are no human rights implications to this report.

GENDER IMPACT ASSESSMENT

A GIA was not completed because this agenda item is not a 'policy', 'program' or 'service'.

CONCLUSION

It is recommended that the Council approve the Instrument of Sub-Delegation. Since the Local Law on noise from building works is no longer in effect, the Council should delegate powers to enforcement officers to handle noise complaints from residential construction. Additionally, Environmental Health Officers should be given powers to enforce regulations for septic systems.

This approval will allow Council officers to perform their duties according to the Act and EPA guidelines.

ATTACHMENT LIST

1. s18 Instrument of Sub- Delegation to under the EPA 2027 (Monash) [7.3.5.1 - 5 pages]
2. 2021.2 EPA Board- Councils Direction and Delegation [7.3.5.2 - 7 pages]



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

Monash City Council

Instrument of Sub-Delegation

to

Members of Council Staff



Instrument of 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

APO	means Asset Protection Officer
CAPE	means Coordinator Asset Protection Engineering
CCL	means Coordinator Community Laws
CLO	means Community Laws Officer
CPH	means Coordinator Public Health
DCD	means Director City Development
EHO	means Environmental Health Officer
EHT	means Environmental Health Technician
MCA	means Manger Community Amenity
MCPLAN	means Manager City Planning
MENG	means Manager Engineering
SCLO	means Senior Community Laws Officer
SEHO	means Senior Environmental Health Officer
TLAP	means Team Leader Asset Protection
TLCL	means Team Leader Community Laws
TLIM	means Team Leader Immunisation
TLPH	means Team Leader Public Health
TLPI	means Team Leader Planning Investigations

3. this Instrument of Sub-Delegation is authorised by a resolution of Council passed on [insert date] 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. 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
 - 6.2.1. policy; or
 - 6.2.2. strategy
 - 6.2.3. adopted 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.



Council seal

Signed by the Chief Executive Officer of)
Council in the presence of:)

Witness:

Date:



SCHEDULE

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	APO, CAPE, CCL, CLO, CPH, DCD, EHO, EHT, MCA, MCPLAN, MENG, SCLO, SEHO, TLAP, TLCL, TLIM, TLPH, TLPI	
s 272	Power to issue prohibition notice	APO, CAPE, CCL, CLO, CPH, DCD, EHO, EHT, MCA, MCPLAN, MENG, SCLO, SEHO, TLAP, TLCL, TLIM, TLPH, TLPI	
s 279	Power to amend a notice	APO, CAPE, CCL, CLO, CPH, DCD, EHO, EHT, MCA, MCPLAN, MENG, SCLO, SEHO, TLAP, TLCL, TLIM, TLPH, TLPI	
s 358	Functions of the Environment Protection Authority	APO, CAPE, CCL, CLO, CPH, DCD, EHO, EHT, MCA, MCPLAN, MENG, SCLO, SEHO, TLAP, TLCL, TLIM, TLPH, TLPI	
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.	APO, CAPE, CCL, CLO, CPH, DCD, EHO, EHT, MCA, MCPLAN, MENG, SCLO, SEHO, TLAP, TLCL, TLIM, TLPH, TLPI	
s 359(2)	Power to give advice to persons with duties or obligations	APO, CAPE, CCL, CLO, CPH, DCD, EHO, EHT, MCA, MCPLAN, MENG, SCLO, SEHO, TLAP, TLCL, TLIM, TLPH, TLPI	

S18. Instrument of Sub-Delegation to members of Council Staff

January 2025 update

DATED: the 4th day of June 2021

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

10232078_1\c

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***

1	2	3	4	5
Ref. No	Relevant legislative provision under the <i>Environment Protection Act 2017</i>	Summary of delegated powers, duties or functions	Delegate	Revoked Instrument
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 4th day of June 2021

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

10232304_2\c

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**