

*Instrument of Delegation (Delegated Committee)*

**Nillumbik Shire Council  
Instrument of Delegation  
Planning and Consultation Committee**

Nillumbik Shire Council (**Council**) delegates to each person who is from time to time appointed as a member of the Delegated Committee established by resolution of Council passed on 23 February 2021 and known as the "Planning and Consultation Committee" (**the Committee**), the powers, duties and functions set out in the Schedule, and declares that:

1. this Instrument of Delegation is authorised by a resolution of Council passed on 23 February 2021;
2. a delegate can only exercise the delegations contained in this Instrument of Delegation while acting as a member of the Committee at a meeting of the Committee;
3. the delegation:
  - 3.1 comes into force immediately after the common seal of Council is affixed to this Instrument of Delegation;
  - 3.2 remains in force until Council resolves to vary or revoke it; and
  - 3.3 is to be exercised in accordance with the guidelines, protocols, policies or procedures which Council from time to time adopts; and
4. all members of the Delegated Committee will have voting rights on the Delegated Committee.

THE COMMON SEAL OF NILLUMBIK )  
SHIRE COUNCIL was affixed hereto on )  
the 26<sup>th</sup> day of February 2021 )  
on the authority of the Council and )  
signed by: )



  
..... Councillor

  
..... Chief Executive Officer

**SCHEDULE TO INSTRUMENT OF DELEGATION  
COUNCIL TO DELEGATED COMMITTEE,  
PLANNING AND CONSULTATION COMMITTEE**

**Purpose**

The members of a Delegated Committee have the powers, duties and functions of Council as set out in the Delegated Committees, Planning and Consultation Committee - Terms of Reference adopted by Council on 23 February 2021 and this Instrument of Delegation.

To exercise Council's powers, discretions and authorities under the *Local Government Act 1989 and 2020* and as the Planning Authority under the *Planning and Environment Act 1987*, in accordance with relevant policies and guidelines of the Council and to do all things necessary or convenient to be done for or in connection with the performance of those functions, duties and powers.

**Exceptions, conditions and limitations**

The members of the Committee are not authorised by this Instrument to:

1. exercise the powers which, under s 11(2) of the *Local Government Act 2020*, section 188 of the *Planning and Environment Act 1987* or any other Act, cannot be delegated to the Committee; or
2. exercise any function or power or perform any duty if it is something which Council has previously designated as something which must be the subject of a resolution of Council; or
3. exercise the powers which, by force of section 11, cannot be delegated.

# PLANNING AND CONSULTATION COMMITTEE

## TERMS OF REFERENCE

### Classification

The Planning and Consultation Committee is a Committee of Council established under section 63 of the *Local Government Act 2020*.

### Delegation

Council delegates powers to the Planning and Consultation Committee to determine any issue, take any action or do any act or thing as set out in the Instrument of Delegation (effective from the date of that Instrument of Delegation).

### Scope and Purpose

The members of a Delegated Committee have the powers, duties and functions of Council as set out in these Terms of Reference and the Instrument of Delegation.

These Terms of Reference set out the structure and basis on which the Committee can make decisions for and on behalf of Council.

The scope of the Planning and Consultation Committee's responsibilities include all matters within the following areas:

#### Planning Matters

The Delegated Committee can by Instrument of Delegation:

- Assess and determine planning permit applications which cannot be assessed and determined by Council officers under delegation and/or which are 'called in' by Councillors or are otherwise referred at the discretion of the Council officer;
- provide Council with advice and recommendations with respect to relevant strategic planning matters to assist its decision making for the community in Nillumbik;
- make decisions in relation to proposed Planning Scheme amendments as permitted by the *Planning and Environment Act 1987*, in particular to seek authorisation of an amendment and to refer submissions to a panel;
- hear submissions on matters relating to proposed Planning Scheme amendments;
- make recommendations to Council in respect of the *Planning and Environment Act 1987*;
- consider broader strategic planning policy directions/proposals and make recommendations to Council about such matters; and
- hear matters relating to land-use planning policy.

The Planning and Consultation Committee is not authorised to exercise the powers which, under section 188 of the *Planning and Environment Act 1987* states cannot be delegated to the Committee.

This means that the Committee cannot exercise the following powers:

- hear abandonment of amendments;
- adoption of amendments;
- purchase, hold, lease and dispose of land by public auction, private treaty or otherwise on terms and conditions satisfactory to the authority;
- exchange land for other land and make any financial adjustment required as a result;
- consolidate, subdivide, re-subdivide and develop land for any purpose consistent with the planning scheme for which it is the responsible authority;
- in the case of a responsible authority other than a municipal council, enter into arrangements with other persons with respect to the development of land within the area of the planning scheme for which it is the responsible authority;
- compulsory acquisition; and
- the power of a responsible authority to authorise any officer to carry out a duty or function or to exercise a power.

### Consultation Matters

The Delegated Committee by Instrument of Delegation can hear submissions and exercise Council's powers, discretions and authorities to perform Council's functions under the *Local Government Act 1989 and 2020* in accordance with relevant policies and guidelines of the Council and to do all things necessary or convenient to be done for or in connection with the performance of those functions, duties and powers. These areas include:

#### Community Services

- Aged and Disability Services policy and programs
- Arts and Cultural Services policy and programs
- Children, Family and Youth Services policy and programs
- Community Development and Inclusion policy and programs
- Libraries and Community Education policy and programs
- Maternal and Child Health policy and programs

#### Economic Development and Marketing

- Tourism industry development and marketing
- Agriculture
- Retail centres marketing
- Economic development policy and programs

#### Environment and Sustainability

- Recycling and waste management
- Animal management
- Food safety, public health and immunisation
- Environmental policy, education and events
- Water quality and conservation
- Biodiversity protection and land management

#### Finance and Governance

- Financial planning and policy
- Financial and performance reporting
- Budget and Annual Report (excluding declaration of rates and charges, and the power to borrow money, which must be determined by Council)
- Audit and risk management
- Local laws
- Corporate governance

#### Infrastructure

- Emergency management
- Transport infrastructure and transport advocacy
- Council property and infrastructure asset management
- Plant and fleet management
- Open space presentation and maintenance

#### Social infrastructure

- Leisure centres and facilities
- Sportsground facilities
- Recreational trails
- Open space planning
- Community centres
- Community services infrastructure

The Committee is not authorised to exercise the powers which, under section 11(2) of the *Local Government Act 2020* states cannot be delegated to the Committee. This means that the Committee cannot exercise the following powers:

- the power of delegation;
- the power to elect a Mayor or Deputy Mayor;
- the power to grant a reasonable request for leave under section 35;

- subject to subsection (3), the power to appoint the Chief Executive Officer, whether on a permanent or acting basis;
- the power to make any decision in relation to the employment, dismissal or removal of the Chief Executive Officer;
- the power to approve or amend the Council Plan;
- the power to adopt or amend any policy that the Council is required to adopt under this Act;
- the power to adopt or amend the Governance Rules;
- the power to appoint the chair or the members to a delegated committee;
- the power to make, amend or revoke a local law;
- the power to approve the budget or revised budget;
- the power to borrow money;
- subject to section 181H(1)(b) of the *Local Government Act 1989*, the power to declare general rates, municipal charges, service rates and charges and special rates and charges; and
- any power, duty or function prescribed by the regulations for the purposes of this subsection.

### **Membership and chairperson**

- All Councillors are members of the Planning and Consultation Committee.
- A meeting of a delegated committee is chaired by the Councillor appointed by Council resolution or appointed by the Mayor. .
- The order of business to be considered by the Planning and Consultation Committee is Planning Matters followed by Consultation Matters.
- The Planning Matters and Consultation Matters areas each have a chairperson elected by Council resolution at the Council Meeting (Election of Mayor) in accordance with section 63(2)(a) of the *Local Government Act 2020*.
- Preliminary matters such as the welcome, confirmation of minutes and disclosure of conflicts of interest will be chaired by the chair of Planning Matters. In the event there are no Planning Matters on the agenda, the chairperson of the Consultation Matters will chair the meeting in its entirety.
- The meeting will be closed by the chairperson of the last committee agenda item considered.
- If the Chairperson is absent from a Committee meeting, the Deputy Mayor will be the temporary Chairperson of the Committee meeting.

### **Conduct of Committee meetings**

- Planning and Consultation Committee meetings will be conducted in accordance with the Governance Rule - Meeting Procedure. A quorum will comprise four of the seven councillors.
- All members of the Planning and Consultation Committee have voting rights. Decisions are to be made by a majority vote through a show of hands.
- Matters which are required by law to be determined by Council at a Council Meeting cannot be determined by the Planning and Consultation Committee.
- The Planning and Consultation Committee's powers are limited to those provided in the Instrument of Delegation from Council, and are subject to any further limitations prescribed in the *Local Government Act 1989*, the *Local Government Act 2020*, the *Planning and Environment Act 1987*, or any other legislation.
- The Planning and Consultation Committee may consider and determine all other matters. However, the Planning and Consultation Committee may also, on occasions, consider such matters and resolve to refer them to Council for determination.

### **Officer Delegations to Determine Planning Matters**

Officers delegated under the *Planning and Environment Act 1987* 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 Council; has previously delegated as an issue, action, act or thing which must be the subject of resolution of Council; or
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;
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
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 or delegated committee; or
5. if a Councillor in whose ward the land to which the application relates, advises in writing that the Councillor wishes the matter to be reported to the Planning and Consultation Committee ('called in'); or
6. if a Councillor, other than the Councillor in whose ward the land to which the application relates advises in writing that the Councillor wishes the matter to be reported to the Planning and Consultation Committee for decision and that request is supported by a second Councillor.

## **Planning Procedure**

In consultation with Councillors, officers will implement the following initiatives to help Councillors decide if they wish the matter of a planning application to be reported to the Planning and Consultation Committee for decision.

1. The following weekly Planning reports are to be provided to Councillors each week:
  - i. New planning permit applications received;
  - ii. Applications out on public notice;
  - iii. Applications where the public notice period has concluded and that are ready for final assessment; and
  - iv. Applications ready for decision.
2. Copies of all advertised plans and any objections received are now made available to Councillors through an online platform during the course of an application. This allows Councillors to view advertised plans and any objections in real time without needing to request copies.
3. A planning permit applicant will be requested to have a Planning Application Conference (PAC) in the event that five or more objections are received for their applications. Objections must be from different households; must not be a proforma (identical) objection and the objectors must be in proximity to the subject site. In most circumstances this would equate to objectors who are in the same street, in the street behind the subject site or within 500 metres of the subject site. The nature and scale of the application will guide this and a wider radius around the subject site may be required for some application types.

## **Public submissions and presentations**

One of the major functions of this Committee is to provide an opportunity for members of the public to address the Committee in relation to matters. The opportunity to address the Committee will be provided on the following basis:

### **Statutory right to address Committee**

A delegated committee must hear any person wishing to be heard in respect of their submission to Council under section 223 of the *Local Government Act 1989* or any other Act.

Committee members may question any submitter in relation to their submission.

Each speaker is allowed three minutes to speak to their submission.

The Chairperson may use his/her discretion to allow an extension of time for up to a further one minute.

Anyone making a submission and not wishing to appear in person can be represented by another person in accordance with the *Local Government Act 1989*. Submitters will be requested to disclose any personal or professional interests in the subject matter of their submission.



### **Other rights to address Committee**

In addition to section 223 submissions under the *Local Government Act 1989*, delegated committees may also hear any person on any items listed on the delegated committee agenda where the person has made application to speak to an item in accordance with Council's procedures.

This indicates any person whose rights will be directly affected by a decision of Council, even if Council has not invited public submissions or if the person has not already lodged a written submission.

In respect of these submissions, the Chairperson may, in the case where there are several people representing a common position, encourage the submitters to nominate a single person to speak on the matter.

A person can speak on their own behalf for up to three minutes. They may also speak on behalf of one organisation/company for a further period of up to three minutes. No person may speak on behalf of more than one other person or organisation/company, unless Council or the Committee specifically resolves to allow them to do so.

No person is permitted to speak on behalf of an absent submitter or organisation/company unless he/she is authorised in writing by the absent submitter or by an authorised officer of the organisation/company to address Council on their behalf, such document to be tabled by the speaker. Any person so authorised may only read from a written statement prepared by the absent submitter.

### **Meeting frequency, time and venue**

- Meetings will be open to the public (unless confidential business is being considered in accordance with section 66 of the *Local Government Act 2020*).
- Planning and Consultation Committee Meetings will be held according to the schedule determined by Council. Meetings will generally be held once per month on the second Tuesday (however this may vary due to public and school holiday dates or other factors).
- An extraordinary delegated committee meeting may be called by Council resolution, by Committee resolution, by the Mayor, or by three or more Councillors.
- The venue for the meeting is the Council Chamber at the Civic Centre, Civic Drive in Greensborough (unless otherwise specified). Public notice of the Committee's meetings will be provided.
- Agendas and minutes will be coordinated by the Governance unit.

### **References**

- *Local Government Act 1989*
- *Local Government Act 2020*
- *Planning and Environment Act 1987*
- Governance Rule - Meeting Procedure
- Instrument of Delegation

**Council contact**

Executive Manager, Governance, Communications and Engagement

**Approval date**

23 February 2021