

## 8.7 INSTRUMENT OF APPOINTMENT AND AUTHORISATION - PLANNING AND ENVIRONMENT ACT 1987

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**File No:** GV/06/016

**Attachments:** 1. *Instrument of Appointment and Authorisation*

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### SUMMARY

The *Local Government Act 1989* provides for the appointment of Authorised Officers for the purposes of the administration and enforcement of any Act, regulations or local laws which relate to the functions and powers of the Council.

The Chief Executive Officer, by authority conferred by instrument of delegation from Council dated 16 October 2017, makes these appointments.

Under the *Planning and Environment Act 1987*, however, Authorised Officers can only be appointed by Council resolution as the Act prohibits delegation of the power to appoint Authorised Officers under the Act.

### RECOMMENDATION

**THAT** in the exercise of the powers conferred by Section 147(4) of the *Planning and Environment Act 1987* and Section 313 of the *Local Government Act 2020*, Mitchell Shire Council resolves that:

1. The member of Council staff referred to in the *Instrument of Appointment and Authorisation* at Attachment 1 be appointed and authorised as set out in the Instrument.
2. The *Instrument of Appointment and Authorisation* comes into force immediately after the common seal of Council is affixed to the Instrument and remains in force until Council determines to vary or revoke it, or until the Authorised Officer ceases to be a member of Council staff.
3. The *Instrument of Appointment and Authorisation* be signed and sealed.

### BACKGROUND

The Chief Executive Officer, by authority conferred by Instrument of Delegation from Council dated 16 October 2017, makes these appointments. Maddocks Lawyers' model Instrument of Appointment and Authorisation developed for Victorian Councils is used for this purpose.

Under the *Planning and Environment Act 1987* Authorised Officers can only be appointed by Council resolution as the Act prohibits delegation of the power to appoint Authorised Officers under the Act.

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### **ISSUES AND DISCUSSION**

Section 188(2) of the *Planning and Environment Act 1987* provides that Councils cannot delegate the power to authorise Officers for the purposes of enforcing the *Planning and Environment Act 1987*.

As the Authorised Officer involved enforce several other Acts and regulations other than the *Planning and Environment Act 1987*, Maddocks Lawyers' other general Instrument of Appointment and Authorisation covering these Acts and regulations will continue to operate in tandem with the separate Instrument of Appointment and Authorisation (*Planning and Environment Act 1987* only) where Authorised Officers are appointed by Council resolution.

### **CONSULTATION**

The Manager Development Approvals has been consulted in preparing this report.

### **FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS**

There are no significant financial or asset management implications arising from the appointment of Authorised Officers.

### **POLICY AND LEGISLATIVE IMPLICATIONS**

Section 224 of the *Local Government Act 1989* provides for the appointment of Authorised Officers for the purposes of the administration and enforcement of any Act, regulations or local laws which relate to the functions and powers of the Council.

### **SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)**

There are no significant environment and sustainability implications arising from the appointment of Authorised Officers.

### **CHARTER OF HUMAN RIGHTS IMPLICATIONS**

The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report and it's determined that the subject matter does not raise any human rights issues.

### **OFFICER DECLARATION OF CONFLICT OF INTEREST**

No Officers involved in the preparation of this report have any direct or indirect interest in this matter.

### **CONCLUSION**

The *Instrument of Appointment and Authorisation* allows Officers to fulfil their duties and it is recommended that Council endorse the appointment for the Officer listed in Attachment 1. This Authorisation will be revoked should the Officer cease to be a member of Council staff.

INSTRUMENT OF APPOINTMENT AND AUTHORISATION - PLANNING AND ENVIRONMENT ACT 1987  
(CONT.)

# **MITCHELL SHIRE COUNCIL**

## **Council Meeting Attachment**

### **GOVERNANCE AND CORPORATE PERFORMANCE**

**20 JULY 2020**

**8.7**

#### **INSTRUMENT OF APPOINTMENT AND AUTHORISATION - PLANNING AND ENVIRONMENT ACT 1987**

**Attachment No: 1**

**Instrument of Appointment and Authorisation**

***S11A. Instrument - Planning and Environment Act 1987***

In this instrument "**officer**" means -

- Ben Micallef

By this instrument of appointment and authorisation Mitchell Shire Council -

1. under s 147(4) of the Planning and Environment Act 1987 - appoints the officer to be an authorised officer for the purposes of the *Planning and Environment Act 1987* and the regulations made under that Act; and
2. under s 313 of the *Local Government Act 2020* authorises the officer either generally or in a particular case to institute proceedings for offences against the Acts and regulations described in this instrument.

It is declared that this instrument -

- (a) comes into force immediately upon its execution;
- (b) remains in force until varied or revoked.

This instrument is authorised by a resolution of **Mitchell Shire Council** on 16 October 2017.

The Common Seal of **MITCHELL SHIRE COUNCIL** was affixed this 21st day of July 2020 in the presence of:

.....Councillor

.....Councillor

.....Acting Chief Executive Officer

Date: