



REGISTER OF DELEGATIONS CEO AND OFFICERS

ADOPTED – 18 JULY 2018



ARRANGEMENT

PART A – PRIMARY DELEGATIONS – to CEO

Section 1 - Council / Governance

Section 2 - Administration / Organisation

Section 3 - Financial Management

Section 4 - Order / public safety

Section 5 - Fire Control

Section 6 - Environmental Health / Food

Section 7 - Community Services

Section 8 - Personnel

Section 9 - Occupational Safety & Health

Section 10 - Building / Development

Section 11 - Public Facilities

Section 12 - Tourism

Section 13 - Works & Services

Section 14 - Plant / Equipment

Section 15 - Natural Resource Management

Section 16 - Unclassified

PART B – PRIMARY DELEGATIONS – to other officers

Section 17 - Fire Control

Section 18 - Environmental Health / Food

HISTORY SUMMARY

APPENDIX

CONTENTS

PART A – PRIMARY DELEGATIONS – to CEO

Section 1 - Council / Governance

- 1.1 Appointment of authorised persons
- 1.2 Acting CEO – Appointment

Section 2 - Administration / Organisation

- 2.1 Common Seal – Execution of documents
- 2.2 Destruction of records
- 2.3 Confidential records – Inspection

Section 3 - Financial Management

- 3.1 Municipal Fund – Incurring expenditure
- 3.2 Municipal Fund and Trust Fund – Payments from Bank Accounts
- 3.3 Investments
- 3.4 Rates record, extensions and objections
- 3.5 Sundry and rate debtors – Recovery and agreements
- 3.6 Write off of sundry debts
- 3.7 Tenders – authority to set specifications, criteria, call, accept, vary
- 3.8 Contracts – Variations
- 3.9 Disposing of property, and impounded, confiscated or uncollected goods
- 3.10 Disposing of land – leases, rentals etc
- 3.11 Donations – Financial and In-kind Works / Services
- 3.12 Ex-Gratia Payments

Section 4 - Order / public safety

- 4.1 Disposal of sick or injured animals
- 4.2 Cat Act 2011
- 4.3 Dog Act 1976
- 4.4 Dogs Local Law 2018
- 4.5 Impounding of vehicles and goods
- 4.6 Impounding of cattle etc

Section 5 - Fire Control

- 5.1 Issue of burning permits – CEO
- 5.2 Fire fighting – Emergency plant hire
- 5.3 Restricted burning periods – Variations

Section 6 - Environmental Health / Food

- 6.1 Public Health Act 2016
- 6.2 Health Local Law 2004
- 6.3 Amenity Local Law 2018

Section 7 - Community Services

- 7.1 Cemetery Local Law 2018

Section 8 - Personnel

- 8.1 Designated senior employee – Vacancy
- 8.2 Long service leave

Section 9 - Occupational Safety & Health

Section 10 - Building / Development

- 10.1 Building permits (authorised person)

- 10.2 Illegal development
- 10.3 Control of planning matters
- 10.4 Applications for subdivision and amalgamations
- 10.5 Fencing Local Law 2018

Section 11 - Public Facilities

- 11.1 Liquor Control Act
- 11.2 Discount/waiver/subsidy of facility hire fees
- 11.3 Public Places and Local Government Property Local Law 2018

Section 12 - Tourism

Section 13 - Works & Services

- 13.1 Reserves under control of the local government
- 13.2 Things to be done on land not local government property
- 13.3 Works on land outside the district
- 13.4 Materials from land not under local government control
- 13.5 Notices requiring certain things to be done
- 13.6 Notice of local government works
- 13.7 Private works/infrastructure on, over or under public land
- 13.8 Events on roads
- 13.9 Temporary road closures

Section 14 - Plant / Equipment

Section 15 - Natural Resource Management

- 15.1 Control of Vehicles (Off-road Areas) Act 1978
- 15.2 Native flora and fauna

Section 16 - Unclassified

- 16.1 Restricted Access Vehicles on Shire Roads

PART B – PRIMARY DELEGATIONS – to other officers

Section 17 - Fire Control

- 17.1 Issue of burning permits – Fire Control Officers
- 17.2 Issue of clover burning permits – Clover Burning Permit Officers
- 17.3 Prohibited burning periods – Variations

Section 18 - Environmental Health / Food

- 18.1 Food Act 2008 – Qualified person

HISTORY SUMMARY

APPENDIX

- Definitions
- Statutory Context
- Corporate context
- Guidelines No.17 – Delegations (Department of Local Government)
- Making, amending and revoking delegations
- Use of delegations
- Record of use of delegations
- Review of delegations
- Primary delegation
- Secondary delegation by CEO

PART A – PRIMARY DELEGATIONS – to CEO

Section 1 - Council / Governance

1.1 Appointment of authorised persons

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.18 – local government to administer its local laws and perform its required functions under the Act
- s.9.10(1) – Appointment of authorised persons

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. Legislation

The CEO is delegated authority to appoint employees (including employees under contract) as authorised persons for the purposes of performing functions under the following Acts and associated Regulations –

- a) Local Government Act 1995, excluding –
 - s.5.37(1) – determination that an employee or class of employee is or is not designated; and
 - s.5.37(1) – appointment or termination of a person to a designated position without Council's consent
- b) Local Government (Miscellaneous Provisions) Act 1960
- c) Public Health Act 2016
- d) Health (Miscellaneous Provisions) Act 1911, excluding –
 - s.27(1) – appointment of a Medical Officer of Health
- e) Building Act 2011
- f) Bush Fires Act 1954
- g) Cat Act 2008
- h) Cemeteries Act 1986
- i) Dog Act 1976
- j) Animal Welfare Act?
- k) Environmental Protection Act & Regulations 1986
- l) Food Act 2008
- m) Litter Act 1979
- n) Planning and Development Act 2005
- o) Control of Vehicles (Off-road Areas) Act 1978
- p) Caravan Parks & Camping Grounds Act 1995

2. Local Laws

The CEO is delegated authority to appoint employees (including employees under contract) as authorised persons for the purposes of performing functions under the following local laws –

- a) Cemetery Local Law 2018,
- b) Dogs Local Law 2018,
- c) Extractive Industries Local Law 2018,
- d) Fencing Local Law 2018,
- e) Public Places and Local Government Property Local Law 2018;

- f) Health Local Law 2004.

3. Planning

The CEO is delegated authority to appoint employees (including employees under contract) as authorised persons for the purposes of performing functions under –

- a) Local Planning Scheme;
- b) Local Planning Policy.

APPLICATION

4. Appointments made by the CEO are limited to employees of the Shire, and are to state the appointment is for –
 - (a) the duration of employment by the Shire,
 - (b) the duration of the contract with the Shire, or
 - (c) specified time, event or purpose.
5. Appointment to a position by Council or CEO, in either a substantive or temporary capacity, includes the authority to administer and perform the functions delegated to that position, subject to –
 - (a) any limitations specified in the relevant general delegation to the person or position;
 - (b) any specific limitations imposed by the Council or CEO in making the appointment.
6. All proposals to commence prosecution are to be referred to Council for decision, unless specifically authorised under delegated authority or by specific decision.

FORMAL RECORD OF USE

- i) Authorised person's certificate of authorisation
- ii) File copy of authorisation
- iii) Personnel file
- iv) Relevant subject file

HISTORY

Former Delegation	2.6, 2.64
Adopted	18 July 2018

REFERENCES

No delegated authority for –

- legislation not listed,
- persons who are not employees.

Authorised persons exercise their authority directly from the Act, Regulation or local law that refers to “an authorised person”, and may be appointed directly by Council, or by the CEO under delegated authority.

Where the Act, Regulation or local law refers to “local government” the function must be exercised through a formal delegation.

Where the Act, Regulation or local law refers to “Council” or a specific position, it means the elected members in session or the person holding that specific position.

Appointments of persons other than employees or employees under contract, are to be referred to Council for determination.

Some appointments can be made independent of employment with the Shire, and unless revoked or otherwise limited, the appointment continues to remain valid. This is the case with Fire Control Officers, Authorised Dog Control Officers etc. Their appointment means –

- the person is an officer of Council,

- as an officer or Council, there is a duty of care to the person, as well as to the community, and must ensure that the person is adequately resourced for the task, including training, equipment etc, as necessary,
- as an officer of the Shire, there is a legal responsibility for their actions, so when making the appointment there is an obligation to be satisfied that the person is appropriate and competent to exercise the authority.

As these appointments mean that the person is an officer of Council for that specific purpose, they have the statutory authority to commit Council to particular actions, initiate various proceedings etc, as listed in the authorising Act, and as permitted or limited by Council.

When making an appointment, the CEO must be certain that the person appointed is capable of undertaking the role, is a suitable, and provide the necessary resources for the role to be carried out such as training, equipment, etc.

This delegation does not apply to allocation of statutory functions made by the CEO to fulfil legislative requirements undertaken as a component of administrative tasks.

Local Laws in development as at 23 June 2018 –

- Amenity
- Meeting Procedures
- Waste
- Health (replacement)

1.2 Acting CEO – Appointment

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.35 – Appointment of CEO requires absolute majority
- s.5.37 – Designation as senior employee to have Council consent
- s.5.42 – Council may delegate functions to CEO

CORPORATE CONTEXT

Policy Manual –

- 2.1 – Designated Senior Officers
- 2.2 – Acting/Relieving Staff Authority

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. The CEO is delegated authority to appoint as Acting CEO when the CEO is on periods of leave, up to a maximum period of 20 working days –
 - an employee designated under the Local Government Act 1995 s.5.37, or
 - a person appointed by Council as CEO or Acting CEO within the previous 5 years.

APPLICATION

2. In the case of the unavailability of the CEO due to emergency, the Manager Finance and Administration is automatically appointed as Acting CEO for up to 2 weeks from commencement, and continuation is then subject to confirmation by President/Council.

FORMAL RECORD OF USE

- i) Written record on personnel file

HISTORY

Former Delegation	2.1
Adopted	18 July 2018

REFERENCES

Council may only delegate authority to a CEO under the Local Government Act s.5.42 who is appointed in accordance with s.5.35(1)&(2) requiring an absolute majority. Accordingly, a person who is to exercise the responsibilities and delegations of CEO while acting in that position must also have specific Council approval.

Designation as a senior employee under s.5.37 complies with this requirement, as it specifies that Council must consent to the employment of a designated senior employee.

Generally, employees designated under the Act s.5.37 will only be –

- Manager Works and Services

A senior employee in the organisation is not automatically a designated employee under s.5.37.

Stipulation that no substantial redirection of activities or processes during term as Acting CEO is in Policy 2.2.

Section 2 - Administration / Organisation

2.1 Common Seal – Execution of documents

STATUTORY CONTEXT

Local Government Act 1995 –

- s. 5.43(ha) – CEO cannot authorise a person to sign documents on behalf of the local government
- s.9.49A(1) – only affixed as authorised by Council
- s.9.49A(2) – only to documents as authorised by Council
- s.9.49A(3) – affixed in presence of President and CEO or senior employee authorised by CEO
- s.9.49A(4) – Council may authorise person to sign documents
- s.9.49A(5) – Document does not have legal status as a deed unless permitted and executed as a deed

Local Government (Functions & General) Regulations 1996 –

- r.34 – Common seal, unauthorised use of

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. Council delegates authority to the CEO to determine to affix the Common Seal without prior approval by Council where the document is –
 - a) a renewal or extension of an original document, and there is no significant variation in clauses or conditions in the renewal;
 - b) an agreement to provide funding to the Shire and the project/item to be funded is disclosed in the budget or previously approved by Council.

APPLICATION

2. Subject to the conditions above on use of the Common Seal, the CEO is delegated authority to sign and make all necessary arrangements including lodgement, removal, withdrawal, surrender or modification to –
 - (a) Notifications, covenants and easements under the Transfer of Land Act 1893;
 - (b) reciprocal access and/or parking agreements;
 - (c) rights of carriageway agreements;
 - (d) caveats under the Transfer of Land Act 1893; and
 - (e) easements or deeds under the Land Administration Act 1997 or Strata Titles Act 1985.
3. The Common Seal is to be kept in the custody of the CEO.
4. The affixing of the Common Seal is to be co-signed by the President.

FORMAL RECORD OF USE

- ii) Report to Council's Monthly Briefing Session
- iii) Recording in the Common Seal Register of Use

HISTORY

Former Delegation 2.24

Adopted

18 July 2018

REFERENCES

The Local Government Act s.5.43 (ha) prohibits the CEO delegating the power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government (i.e. to make a decision whether to sign/affix the seal or not).

This is not to be confused with the power of the CEO under 9.49A(3)(b) to authorise a senior employee to sign a document to attest that the common seal was so affixed (i.e. the decision to affix the seal was made by authorised persons prior).

Most contracts for supply of services, including contracts of employment, do not legally require the Common Seal to be affixed, although its use may be usual practice.

2.2 Destruction of records

STATUTORY CONTEXT

State Records Act 2000 –

- s.16 (2) – mandatory compliance of record keeping plans with principles and standards of the State Records Commission
- s.19 – requirement for a record keeping plan
- Sch.1 cl.12 – local governments are a government organisation

Local Government General Disposal Authority

CORPORATE CONTEXT

Record Keeping Plan

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

FUNCTION DELEGATED

1. The CEO is delegated authority to destroy records subject to compliance to –
 - the Local Government General Disposal Authority as prepared by the State Records Office, and
 - Shire of Victoria Plains Record Keeping Plan.

APPLICATION

N/A

FORMAL RECORD OF USE

- i) Signed listing of records authorised for destruction

HISTORY

Adopted 18 July 2018

REFERENCES

2.3 Confidential records – Inspection

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.92 – Council or committee members may access confidential information only if, and to the extent necessary, to fulfil their function
- s.5.93 – penalties if Council or committee member, or employee misuses information
- 5.94 – public inspection of information permitted, with some restrictions
- s.5.94 (1) to (3) – information that is required to remain confidential
- s.5.95 (1) to (6) and (8) – exclusions from public inspection
- s.5.95 (7) – some previously confidential information may be made available in some circumstances

Administration Regulations 1996 –

- r.29A – limits on confidential information that may be inspected

Rules of Conduct Regulations 2007 –

- r.6 – use of information, including confidential information, by council members
- r.7 – prohibition on improper use, for personal advantage or to someone's detriment
- r.8 – misuse of local government resources

CORPORATE CONTEXT

Record Keeping Plan

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION

Permitted

PERMITTED TO

Manager Finance and Administration

FUNCTION DELEGATED

The CEO is delegated authority to make available information determined by Council or the CEO to be confidential, and not available for public inspection.

APPLICATION

Prior to making a decision, the CEO is to determine –

- (a) whether or not the information should remain confidential or public inspection permitted;
- (b) the extent of information that may be released.

The CEO is to use discretion in exercising the authority, taking note that –

- (a) there is no compulsion to release confidential information,
- (b) some information is required to remain confidential.

FORMAL RECORD OF USE

- i) File copy of written request and decision by CEO.

HISTORY

Adopted

18 July 2018

REFERENCES

Examples of information that is required to remain confidential includes –

- (a) employee details, conditions, negotiations etc
- (b) supplier's bank information;
- (c) details required by legislation to be omitted from electoral roll;
- (d) information regarding debts owed to the Shire

CEO may consider some information to remain confidential, due to –

- (a) commercial in confidence;
- (b) potential for misuse;
- (c) insufficient reasons/justification to access the information.

Note – refusal of access does not prevent application being made under the Freedom of Information Act.

Section 3 - Financial Management

3.1 Municipal Fund – Incurring expenditure

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.8 – expenditure from Municipal Fund
- s.6.8(1)(c) – Payment in an emergency

Local Government (Financial Management) Regulations 1996 –

- r.5 – CEO's duties as to financial management
- r.11 – Payments, procedures for making etc
- r.12 – Payments from municipal fund or trust fund, restrictions on making
- r.13 – Duties of CEO

Local Government (Audit) Regulations

- r.16 – CEO to review certain systems and procedures

CORPORATE CONTEXT

Delegation Register –

- 3.7 – Tenders
- 3.11 – Donations – Financial and in-kind

Council Policy –

- 3.1 – Purchasing – Framework
- 3.2 - Purchasing – Local Price Preference

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

FUNCTION DELEGATED

1. The CEO is delegated authority to incur expenditure from the Municipal Fund subject to –
 - a) being compliant with the Local Government Act and Regulations,
 - b) being in accordance with the adopted Budget,
 - c) being authorised by a resolution of Council,
 - d) and being compliant with –
 - i) Delegation 3.7 Tenders, and
 - ii) Council Policy 3.1 and 3.2,
 - e) being authorised emergency expenditure.

APPLICATION

2. The CEO is to ensure –
 - a) systems and procedures required by FM Reg. r.5 are in place;
 - b) compliance with procedures developed in accordance with FM Reg r.11;
 - c) constant review of procedures in accordance with Audit Reg. r.17
3. The CEO may authorise the issue of a second credit card to a senior executive officer.
4. The CEO is authorised to approve appropriate employee to issue purchase orders, and use of credit cards and store cards –
 - a) within limits as considered appropriate,

- b) Use of credit cards to a maximum of \$15,000 in total and store cards to a maximum account value of \$2,000.

FORMAL RECORD OF USE

- i) Issue of purchase order.
- ii) Receipt of expenditure
- iii) Reconciled credit card or store card statement signed by the authorised user

HISTORY

Former Delegation	2.58
Adopted	18 July 2018

REFERENCES

This delegation is not for authorisation of payments from Municipal Fund Bank Account or Trust Fund Bank Account, or the procedures required for the processing of creditors invoice.

3.2 Municipal Fund and Trust Fund – Payments from Bank Accounts

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.8 – expenditure from Municipal Fund
- s.6.8(1)(c) – Payment in an emergency

Local Government (Financial Management) Regulations 1996 –

- r.5 – CEO’s duties as to financial management
- r.11 – Payments, procedures for making etc
- r.12 – Payments from municipal fund or trust fund, restrictions on making
- r.13 – Duties of CEO

Local Government (Audit) Regulations 1996 –

- r.16 – CEO to review certain systems and procedures

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

FUNCTION DELEGATED

1. The CEO is delegated authority to make payments from the Municipal Bank Account and Trust Bank Account subject to –
 - a) being in accordance with the adopted Budget;
 - b) being authorised by a resolution of Council;
 - c) disbursement as authorised, of funds lodged to the Trust Account, or
 - d) being authorised emergency expenditure.

APPLICATION

2. The CEO is to ensure –
 - a) systems and procedures required by FM Reg. r.5 are in place;
 - b) compliance with procedures developed in accordance with FM Reg r.11;
 - c) constant review of procedures in accordance with Audit Reg. r.17
3. All transactions are to have the authorised signatures or secure electronic passwords by any two of the following authorised persons, jointly –

Position	Authorising Signature / Electronic Password	
	Initial	Secondary
CEO	All	All
MFA	All	All
MWS	All	All
Payroll	Payroll	None
Creditors	Creditors	None

FORMAL RECORD OF USE

- i) Copy of approval, authorisation, payment of invoice etc. with financial transaction
- ii) Monthly report to Council Meeting

HISTORY

Former Delegation	2.41
Adopted	18 July 2018

REFERENCES

This delegation is not for the issue of purchase orders, use of credit cards, store cards or fuel cards, or procedures for the processing of creditors invoice.

3.3 Investments

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.14 – Power to invest

Local Government (Financial Management) Regulations

- r.19 – Investments, control procedure for
- r.19C – Investments of money, restrictions on

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

FUNCTION DELEGATED

1. The CEO is delegated authority to invest money held in any Council fund that is not required for immediate use, provided that sufficient working funds are retained at all times.

APPLICATION

2. All transactions are to have two authorised signatures or secure electronic passwords, at least one of whom must be –
 - a) CEO; or
 - b) Manager Finance and Administration

Second signatories may be –

- c) Manager Works and Services

FORMAL RECORD OF USE

Record of lodgement of funds for investment, and instructions given

HISTORY

Former Delegation	2.31
Adopted	18 July 2018

REFERENCES

FM Reg r.19C imposes limits on institutions, duration of investment, type of investment etc.

3.4 Rates record, extensions and objections

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.39 (2) – amend rate records for up to 5 years
- s.6.40 (3) – refund of rates after overpayment
- s.6.76 (4) – extension of time to make objection to rate record
- s.6.76 (5) – determination of objection to rate record

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. The CEO is delegated authority to –
 - a) amend rate records for the past five years preceding the current year,
 - b) refund of rates overpaid following an adjustment to the rate record if requested,
 - c) extend the time for making the objection for such period as the CEO thinks fit, on application by a person proposing to make an objection to the rate record
 - d) consider any objection to the rate record and may either disallow it or allow it, wholly or in part.

APPLICATION

N/A

FORMAL RECORD OF USE

- i) File copy of rates notice, payment, agreement or determination
- ii) Property / Assessment file

HISTORY

Former Delegation	2.40, 2.47
Adopted	18 July 2018

REFERENCES

3.5 Sundry and rate debtors – Recovery and agreements

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.49 – Agreement as to payment of rates and service charges
- s.6.56 (1) – recovery of rates by complaint or action
- s.6.60 (2) – recovery of rates by requiring payment of rent to Shire

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

FUNCTION DELEGATED

1. The CEO is delegated authority to negotiate an agreement for the payment of rates, service charge and sundry debts, together with the costs of proceedings, if any, for that recovery, subject to any administrative or instalment charges, penalty interest etc being incorporated into the agreement.
2. The CEO is delegated authority to recover unpaid rates or service charges after becoming due and payable, together with the costs of proceedings, if any, for that recovery –
 - by use of a debt collection agency,
 - in a court of competent jurisdiction;
 - by serving notice on a tenant to pay rent to the Shire;
 - other such means as is provided for and appropriate.
3. The CEO is delegated authority to recover unpaid sundry debtors, together with the costs of proceedings, if any, for that recovery –
 - by use of a debt collection agency,
 - in a court of competent jurisdiction;
 - other such means as is provided for and appropriate.

APPLICATION

N/A

FORMAL RECORD OF USE

- i) File copy of instruction to court or debt collection agency etc, written agreement with debtor, notice to tenant etc.
- ii) Property file

HISTORY

Former Delegation 2.2, 2.36, 2.39, 2.46
Adopted 18 July 2018

REFERENCES

3.6 Write off of sundry debts

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.95– information that is required to remain confidential
- s.6.12(c) – Power to write off any amount of money

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. The CEO is delegated authority to write off small amounts to a maximum of \$100.00 ex GST per individual debt for –
 - (a) sundry debtors and any interest, charges and associated cost where the debtor can no longer be traced, or recovery is deemed unlikely;
 - (b) interest on rates or service charges, or rate instalment charge where there is satisfactory evidence of attempt to pay by the required date –
 - (i) where as a result of daily interest calculations, the rates were intended to be paid in full, but an error occurred, or the payment was received by mail after the calculation was made; or
 - (ii) on transfer of the property from one owner to the next.

APPLICATION

2. This delegation does not apply to an amount of rates or any service charge levied on the annual rate notice.

FORMAL RECORD OF USE

- i) Listing of debts written off to be signed by CEO
- ii) Report to Council via monthly briefing papers of the number of debts and total amount only

HISTORY

Former Delegation	2.28
Adopted	18 July 2018

REFERENCES

This delegation is not authority for the write-off of rates or service charges, but rate interest and administration charges and sundry debts. Where a write-off is intended for rate interest/charges, there must be evidence that reasonable attempts were made to pay the amount by the date of calculation.

Debt information –

- includes rate debts as well as sundry debts
- is to be kept confidential under the Local Government Act s.5.95(2), and therefore no identifying details should be in public documents such as Agendas or Minutes.

3.7 Tenders – authority to set specifications, criteria, call, accept, vary

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.57– Tenders for providing goods or services
- s.3.58 – Disposing of property
- 5.43(b) – Limits on delegation to accept tenders

Local Government (Functions and General) Regulations 1996 –

Part 4 – provision of goods and services

- Division 1 – Purchasing policies for local government
 - o r.11A – requirement for a purchasing policy
- Division 2 – Tenders for providing goods and services, specifically –
 - o r.14(2a) – criteria for deciding on tender to be determined in writing prior
 - o r.14(4) – information to be disclosed, specifications, own tender to be determined prior
 - o r.14(5) – vary information disclosed subject to all being informed
 - o r.20 – Minor variation of requirements before entry into contract
 - o r.23 – Rejecting and accepting expressions of interest
- Division 3 – Panels of pre-qualified suppliers, specifically –
 - o r.24AD(2a) – requirements to join panel of pre-qualified suppliers

Part 4A – Regional Price Preference

Part 6 - Miscellaneous

- o 30 (3) – exempt disposition of property

CORPORATE CONTEXT

Delegation Register –

- 3.1 – Municipal Fund – Incurring expenditure

Policy Manual –

- 3.1 – Purchasing – Framework
- 3.2 – Local Price Preference

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority, subject to prior budget provision having been made or to give effect to a Council decision, to –
 - a) prepare and finalise specifications for calling all tenders, expressions of interest and panels for pre-qualified suppliers in accordance with Budget provision and at the appropriate time;
 - b) determine the criteria for assessment of all tenders, expressions of interest and panels for pre-qualified suppliers;
 - c) invite all tenders, expressions of interest and applications for panels of pre-qualified suppliers; or
 - d) approve a minor variation to an accepted tender, provided the intentions and purposes of the tender are not substantially altered, and where the effect on the total contract is a –
 - i) reduction;
 - ii) increase in cost to a cumulative total of \$25,000 ex GST or 5% whichever is the greater, where the adjusted total remuneration remains within Budget provision; or
 - iii) reasonable and unforeseen increase in duration of the contract.

APPLICATION

2. All tenders and expressions of interest are to be approved by Council unless disclosed in Budget.
3. Acceptance and variation of tenders is limited to CEO only.
4. All matters dealing with purchase or disposal of land (sale or lease) are to have the specific authorisation of Council, subject to any prior directions of Council.

FORMAL RECORD OF USE

- i) Report to Council via monthly briefing papers
- ii) Tender register and documentation on file

HISTORY

Former Delegation	2.51
Adopted	18 July 2018

REFERENCES

Expression of interest is not a quote – refer Functions & General Regulations r.21(3). The mandatory requirements are equivalent to those for a tender.

As clarification –

- Panels of suppliers – (a), (b) and (c) only apply
- Expressions of interest – (a), (b), (c) and (d) only apply

This delegation applies to all tenders – whether acquisition or disposal.

3.8 Contracts – Variations

STATUTORY CONTEXT

Local Government (Functions and General) Regulations 1996 –

- r.21A – Varying a contract for the supply of goods or services
- r.24AJ – Contracts with pre-qualified suppliers

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority subject to prior budget provision having been made or to give effect to a Council decision to accept a minor variation of a contract entered into, subject to the intentions and purposes of the tender are not substantially altered, and where the effect on the total contract is a –
 - a) reduction;
 - b) increase in cost to a cumulative total of \$25,000 or 5% whichever is the greater, where the adjusted total remuneration remains within Budget provision; or
 - c) reasonable and unforeseen increase in duration of the contract.

APPLICATION

N/A

FORMAL RECORD OF USE

- i) File copy of authorised variation

HISTORY

Adopted

18 July 2018

REFERENCES

3.9 Disposing of property, and impounded, confiscated or uncollected goods

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.39 – Power to remove an impound
- s.3.40 – Vehicle may be removed if goods to be impounded are in or on it
- s.3.40A – Abandoned vehicle wreck – disposal
- s.3.41 – Impounded perishable goods
- s.3.42 – Impounded non-perishable goods
- s.3.43 – Impounded non-perishable goods, court may confiscate
- s.3.44 – Notice to collect goods if not confiscate
- s.3.47(1) – Confiscated or uncollected goods, disposal of
- s.3.47(2b) – Periods of retention before disposal
- s.3.48 – Impounding expenses, recovery of
- s.3.58 – Disposing of property

Local Government (Functions and General) Regulations 1996 –

- r.29A – Abandoned vehicle wrecks, value etc. prescribed for
- r.30 – Disposition of property excluded from Act s.3.58
- r.31 – Anti-avoidance provision for Act s.3.58

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration
Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority to dispose of a vehicle considered to be an abandoned vehicle wreck under section 3.40A(3).
2. The CEO is delegated authority to dispose of goods confiscated under section 3.43.
3. The CEO is delegated authority to take all appropriate action under section 3.48 that may be necessary to recover the costs of impounding good or vehicles.
4. The CEO is delegated authority to dispose of property under section 3.58.

APPLICATION

5. This delegated authority –
 - a) is subject to the operation of Delegation 3.1 Tenders;
 - b) applies to property other than land and buildings;
 - c) applies to property less than \$20,000 ex GST (individually or collective of associated similar items), unless prior authorisation given by Council specifically or by reference (such as trade-in vehicle or replacement vehicle);
 - d) applies to property that is surplus to requirements, unlikely to be used, damaged, or impounded;
 - e) is to be exercised ensuring disposal of assets is by offering them for public sale by any fair means, or to an appropriate not-for-profit community group;

6. Restrictions –

- a) Where the “income” from the asset being disposed of is to be used as part of consideration for the acquisition of a new asset, both disposal and acquisition must be disclosed in Budget;
- b) If required, transfer of the property is subject to the asset not being available to the purchaser until such time as the replacement asset is available for Shire use;
- c) And price offered is paid

FORMAL RECORD OF USE

- i) Acceptance of offer on disposal file

HISTORY

Adopted 18 July 2018

REFERENCES

All matters dealing with purchase or disposal of land (sale or lease) are to have the specific authorisation of Council, subject to any prior directions of Council.

3.10 Disposing of land – leases, rentals etc

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.58 – disposition of assets

Local Government (Function and General) Regulations 1996 –

- r.30 – limited exemption for disposition of assets

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. The CEO is delegated authority to determine leases, licences or rental of land or property for periods of 12 months or less, in accordance with any policy, guidelines or conditions as set by Council from time to time.

APPLICATION

2. This delegation applies where the consideration is less than \$20,000 ex GST, unless prior authorisation given by Council specifically or by reference.
3. All leasing or rental of property for more than 12 months to be referred to Council for decision, except for employee in Shire owned housing.
4. All sale of land requires authorisation by Council resolution.

FORMAL RECORD OF USE

- i) File copy of notice

HISTORY

Adopted 18 July 2018

REFERENCES

Dept of Local Government and Communities considers leasing and rentals to be disposal of land under LG Act s.3.58 as it is a grant of exclusive right for the period agreed.

Functions and General Regulations r.30 has different exemptions and different values for land and other property.

3.11 Donations – Financial and In-kind Works / Services

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.8 – expenditure from Municipal Fund

Local Government (Financial Management) Regulations 1996 –

- r.5 – CEO's duties as to financial management
- r.11 – Payments, procedures for making etc
- r.12 – Payments from municipal fund or trust fund, restrictions on making

CORPORATE CONTEXT

Delegations Register –

- 3.1 – Municipal Fund – Incurring expenditure

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

The CEO is delegated authority to –

1. Financial

Where a donation is provided for by name in the adopted Budget, the CEO may make payment at the appropriate time or on application by the recipient.

Financial donations within the non-specified amount in the adopted Budget may be made by the CEO where –

- the amount does not exceed \$500 ex GST in any financial year;
- the recipient is a community group, sporting club or non-profit organisation;
- the recipient is based locally, or the purpose has particular benefit or application to the district.

Financial and works/service in-kind donations will not be considered for –

- businesses,
- individuals;
- recipients of funding from the annual Budget allocation.

Donations for specific appeals such as a crisis appeal, will be considered individually by Council.

2. In-kind

In-kind works or services may be authorised by the CEO where –

- the amount does not exceed \$500 ex GST in any financial year;
- the recipient is a community group, sporting club or non-profit organisation;
- the recipient is based locally, or the purpose has particular benefit or application to the district.

APPLICATION

N/A

FORMAL RECORD OF USE

Office copy of approval / authorisation

HISTORY

Adopted

18 July 2018

REFERENCES

3.12 Ex-Gratia Payments

STATUTORY CONTEXT

None

CORPORATE CONTEXT

Delegations Register –

- 3.1 – Municipal Fund – Incurring expenditure

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. The CEO is delegated authority to determine an ex-gratia payment claim made on the Shire if the claim is less than the relevant insurance policy excess.

APPLICATION

2. The Shire exercises a predisposition against making ex-gratia payments.
3. Should the claim be declined by the CEO, the matter is to be referred to Council if requested by the claimant.
4. All claims are to be referred to the Shire's insurers.
5. Exceptional circumstances may be referred to Council for consideration, noting that such a referral does not constitute likelihood of Council agreement.
6. When referring to Council, the report is to advise –
 - of all attempts to claim insurance, if applicable,
 - circumstances outside of the Shire or claimant's control, that may contribute to consideration of the claim.
7. Should the CEO or Council agree to make an ex-gratia payment, the claimant is to be –
 - a) made an offer in writing,
 - b) advised –
 - the offer is without prejudice,
 - does not constitute a precedent,
 - does not imply admission of liability.
 - c) required to confirm that no further claim will be made on the Shire in relation to the matter.
8. Only once (7) above is fully completed is payment to be made.

FORMAL RECORD OF USE

Office copy of letters on subject file

HISTORY

Adopted 18 July 2018

REFERENCES

Section 4 - Order / public safety

4.1 Disposal of sick or injured animals

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.47A – Sick or injured animals, disposal of

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority to arrange for an impounded animal that is ill or injured to an extent that treatment is not practical, to be humanely destroyed.
2. The CEO is delegated authority to take all appropriate action that may be necessary to recover the costs of destroying the animal.

APPLICATION

N/A

FORMAL RECORD OF USE

File copy of written instruction or record of destruction of animal

HISTORY

Adopted

18 July 2018

REFERENCES

4.2 Cat Act 2011

STATUTORY CONTEXT

Cat Act 2011 –

- s.44 – Council may delegate to CEO
- s.45 – CEO may delegate to any employee
- s.48 – an authorised person may perform functions under the Act
- s.70 – dealing with objections – to be by Council
- s.73(1) – Prosecutions under the Act

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

Rangers

Customer Service Officers

FUNCTION DELEGATED

1. The CEO is delegated authority to exercise all discretionary matters in the Cat Act 2011, including –
 - (a) issue of all notices and infringements etc;
 - (b) granting, refusal, cancellation and setting conditions of approval to conduct activities;
 - (c) extending the time period within which infringement notices may be paid.
 - (d) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - (e) carrying out of works in default of a duly served notice;

APPLICATION

2. The delegation excludes –
 - (a) determination of any fee or charge
 - (b) dealing with an objection.
3. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - (a) is of such severity that the action is appropriate or
 - (b) an infringement notice remains unpaid after reasonable attempts to obtain payment.

FORMAL RECORD OF USE

File copy of notice, approval etc.

HISTORY

Adopted 18 July 2018

REFERENCES

The Act (e.g. s.63, s.64, s.65) restricts some matters to CEO.

4.3 Dog Act 1976

STATUTORY CONTEXT

Dog Act 1976 –

- s.11 – appointment of dog registration officer
- s.10AA – delegations must be to CEO, who may delegate functions
- s.29 – appointment of authorised person to perform functions under Act
- s.33F – dealing with objections (dangerous dogs)
- s.44(2)(b) – enforcement proceedings by an authorised person

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

Rangers

Customer Service Officers

FUNCTION DELEGATED

The CEO is delegated authority to exercise all discretionary matters in the Dog Act 1976, including –

- (a) granting, refusal, cancellation and setting conditions of approval to conduct activities;
- (b) issue of all notices and infringements etc;
- (c) extending the time period within which infringement notices may be paid.
- (d) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
- (e) carrying out of works in default of a duly served notice

APPLICATION

The delegation excludes –

- (a) determination of any fee or charge
- (b) dealing with an objection.

Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –

- (a) is of such severity that the action is appropriate or
- (b) an infringement notice remains unpaid after reasonable attempts to obtain payment.

The CEO has authority to waive the registration fee for a maximum of 12 months where a dog is rescued from impoundment by a new owner.

FORMAL RECORD OF USE

File copy of notice

HISTORY

Adopted 18 July 2018

REFERENCES

4.4 Dogs Local Law 2018

STATUTORY CONTEXT

Dogs Act 2018 –

- s.10AA – delegations must be to CEO, who may delegate functions
- s.29 – appointment of authorised person to perform functions under Act
- s.44(2)(b) – enforcement proceedings by an authorised person

Local Government Act 1995 –

- s.9.6 – Dealing with objection – to be by council

Shire of Victoria Plains Dogs Local Law 2018 –

- cl.4.15 – dealing with objections – to be by Council

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

Rangers

Customer Service Officers

FUNCTION DELEGATED

1. The CEO is delegated authority to approve all discretionary matters in the Shire of Victoria Plains Dogs Local Law 2018 including –
 - a) granting, refusal, cancellation and setting conditions of approval to conduct activities;
 - b) issue of all notices and infringements etc;
 - c) extending the time period within which infringement notices may be paid.
 - d) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - e) carrying out of works in default of a duly served notice;

APPLICATION

2. The delegation excludes –
 - a) determination of any fee or charge
 - b) dealing with an objection.
3. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) is of such severity that the action is appropriate or
 - b) an infringement notice remains unpaid after reasonable attempts to obtain payment.

FORMAL RECORD OF USE

File copy of approval of discretionary use

HISTORY

Former Delegation	2.1
Adopted	18 July 2018

REFERENCES

For the purposes of the local law and this delegation, a person under contract is considered to be an employee.

Objections and review are those matters refused under delegated authority which the applicant requests Council to reconsider.

4.5 Impounding of vehicles and goods

STATUTORY CONTEXT

Local Government Act 1995 –

Part 3, Division 3, Subdivision 4 – Impounding abandoned vehicles wreck and goods involved in certain contraventions

- s.3.37 to s.3.48

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

Rangers

FUNCTION DELEGATED

1. The CEO is delegated authority to the power to remove and impound goods from a public place if –
 - a) the goods or vehicle present a hazard to public safety;
 - b) the goods or vehicle obstruct the lawful use of any place;
 - c) the goods or vehicle have been, or appear to have been abandoned
2. The CEO is delegated authority to take all appropriate action that may be necessary to recover the costs of impounding vehicles and goods.

APPLICATION

N/A

FORMAL RECORD OF USE

File copy of notice

HISTORY

Former Delegation 2.30

Adopted 18 July 2018

REFERENCES

Disposal of impounded vehicles or goods is covered by Delegation 3.9.

4.6 Impounding of cattle etc

STATUTORY CONTEXT

Local Government (Miscellaneous Provisions) Act 1960 –

- s.458 – power to impound trespassing cattle
- s.459 – power to destroy cattle in certain circumstances
- s.460 – impounding in other than a public pound
- s.462 – fees for impounded cattle
- s.463 – damage by trespassing cattle
- s.464 – local government may vary fees of Sch.2, 3, 4 after notice in Government Gazette

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

Rangers

FUNCTION DELEGATED

1. The CEO is delegated authority to enforce the provisions of the Local Government (Miscellaneous Provisions) Act 1960, and Regulations.
2. The CEO is delegated authority to take all appropriate action that may be necessary to recover the costs of impounding the animal.

APPLICATION

3. The CEO is authorised to make appropriate arrangements for the custody and care of cattle, either within a designated pound, or by written arrangement with a land holder, including any costs or charges the landholder may incur or impose
4. The CEO is authorised to recover the costs and charges imposed by the landholder from the owner of the cattle.

FORMAL RECORD OF USE

Impounding register

HISTORY

Adopted 18 July 2018

REFERENCES

Although “cattle” is not defined, the Local Govt (Miscellaneous Provisions) Act provides for charges for various animals impounded, that include sheep–

- Schedule 2 – Ranger’s fees
- Schedule 3 – Poundage and sustenance charges
- Schedule 4 – rates for damage by trespass by cattle

Animals listed in the Schedules include in various combinations of descriptions –

- (1) Entire horses, mules, asses, camels, bulls or boars above or apparently above the age of 2 years
- (2) Entire horses, mules, asses, camels, bulls or boars under the age of 2 years
- (3) Mares, geldings, colts, fillies, foals, oxen, cows, steers, heifers, calves, rams or pigs

- (4) Pigs of any description
- (5) Rams, wethers, ewes, lambs, goats
- (6) Sheep of any description
- (7) Goats

Section 5 - Fire Control

5.1 Issue of burning permits – CEO

STATUTORY CONTEXT

Bush Fires Act 1954 –

- s.18 – Restricted burning times
 - (1) – nothing in this section permits burning in prohibited period
 - (2) – prohibited & restricted times to be published in Government Gazette
 - (5) – Local government may vary burning periods after consultation
 - (5B) – variation for maximum of 14 days
 - (5C) – burning period restrictions apply to variation period
 - (6) – permit required to set fire to bush from either FCO or CEO
 - (7) – person issuing permit may apply requirements or conditions
 - (8) – permit holder to comply with conditions
 - (9) – permit may authorise burning of bush on adjoining road reserve
 - (10A) – local government may adopt enforceable schedule for burning
 - (11) – if fire escapes etc expenses up to \$10,000 may be recouped
 - (12) – penalty on first breach \$4,500, subsequent breaches \$10,000
- s.23(2)(a)(iv) – road verge burning between constructed portion of road and established fire break only
- s.24A – clover may be burnt in prohibited burning period with permit

Bush Fire Regulations 1954 –

- r.15(1) – Permit to burn as per section 18 of the Act
- r.15(2) – If request to burn is conditional or refused, review is only by the local government or CBFCO
- r.15A – BFCO to comply with directions of local government
- r.15B – Permit holder to comply with permit conditions
- r.15C – Local Government may prohibit burning on certain days
- r.16 – CEO or specifically authorised person may permit burning of clover in prohibited period
- r.17 – permit required to burn clover
- r.18 – 7 days notice of clover burn required, under specified restrictions
- r.19A – duties of clover burning permit holder
- r.20 – local government may prohibit issue of clover burn permits
- r.21A – permit holder may be required to advertise clover burn
- r.21B – FCO may postpone clover burn

Public Places and Local Government Property Local Law 2018 –

- activities on land under Council management and control including roads

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. The CEO is delegated authority to issue, vary or prohibit burning permits in accordance with Bush Fires Act s.18 and Bush Fires Regulations r.15(1).

2. The CEO is delegated authority, in consultation with the Chief Bush Fire Control Officer and the issuing FCO is possible, to review or vary the conditions of a permit issued, or issue a permit if refused.
3. The CEO is delegated authority to issue, vary or prohibit permits to burn clover in accordance with Bush Fires Act s.18 and Bush Fires Regulations r.16.
4. The CEO is delegated authority to approve applications to burn a road verge vested in the care, control and management of the Shire, in accordance with the Bush Fires Act 1954 s.18(9), subject to the applicant obtaining the approval of the Dept of Parks and Wildlife.
5. The CEO is delegated authority, in consultation with the Chief Bush Fire Control Officer, to issue instructions, restrictions or conditions relating to burning permits to apply generally throughout the Shire.

APPLICATION

N/A

FORMAL RECORD OF USE

Duplicate copy of permit issued

HISTORY

Adopted 18 July 2018

REFERENCES

The Act s.16(6)(a) stipulates

...obtained a permit in writing to burn the bush from a bush fire control officer of the local government in whose district the land upon which the bush proposed to be burnt is situated, or from the chief executive officer ...

Refer also Delegation 17.1 and 17.2.

Issue of burning permits may be done by an authorised person – see Delegations 1.1 and 17.1.

5.2 Fire fighting – Emergency plant hire

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.8(1)(c) – authorisation of unbudgeted expenditure in an emergency

Bush Fires Act 1954 –

- s.38(3)(4)(5) – appointed BFCO's may exercise specific authorities given to them

CORPORATE CONTEXT

Policy Manual

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority to commit expenditure for the private hire of plant and equipment necessary for the efficient fighting and control of fires.

APPLICATION

N/A

FORMAL RECORD OF USE

- i) Report to Council via briefing papers
- ii) Duplicate copy of purchase order issued
- iii) File copy of notes

HISTORY

Former Delegation 2.59

Adopted 18 July 2018

REFERENCES

The approval to be sought is an administrative function for expenditure purposes only, and does not extend to giving of operational instructions.

Where possible, the CEO is to seek advice from the senior FCO at the fire, and approval from the President or Deputy President. However, since this delegation will only be used in emergency situations, it is acknowledged that this may not be possible.

Adequate resources to fight a fire, for the safety of fire fighters, and for the protection of life and property have the highest priority, and are not to be unnecessarily jeopardised by delay.

Section 6 - Environmental Health / Food

6.1 Public Health Act 2016

STATUTORY CONTEXT

Public Health Act 2016 –

- s.4(2) – authorised officer
- s.21 – authority to delegate to CEO
- s.24 – authorised person must be qualified
- s.25 – authorised person must have acceptable qualifications or be an EHO

Government Gazette 24 Jan 2017 – Designation of Health Authorised Officers

CORPORATE CONTEXT

Delegations Register –

- 18.1 – Food Act 2008

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Environmental Health Officer – required, being a qualified person

FUNCTION DELEGATED

1. The CEO is delegated authority to exercise and discharge all or any of the powers and functions of the local government with regard to the Health Act 1911 and Regulations, including but not limited to –
 - a) Part IV Sanitary Provisions,
 - b) Part V Dwellings;
 - c) Part VI Public Buildings;
 - d) Part VII Nuisances and Offensive Trades;
 - e) Part IX Infectious Diseases;
 - f) Part XV Miscellaneous Provisions;
 - g) Regulations made under the above parts of the Health Act 1911.

APPLICATION

2. Where approvals are required, compliance is also mandatory with –
 - a) the Health legislation and Regulations,
 - b) the Building Code of Australia,
 - c) the Local Planning Scheme and Planning Policies,
 - d) the Shire of Victoria Plains Health Local Law 2004
3. Any application not complying is to be refused, unless there is a discretion, in which case it is to be referred to Council for decision.
4. This delegation excludes –
 - a) determination of any fee or charge;
 - b) dealing with an objection,
5. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) is of such severity that the action is appropriate or
 - b) an infringement notice remains unpaid after reasonable attempts to obtain payment.
6. Any prosecution proposed is to be referred to Council for decision to proceed.

FORMAL RECORD OF USE

- i) Report to Council via monthly briefing papers
- ii) File copy of notice

HISTORY

Former Delegation 2.57, 2.64
Adopted 18 July 2018

REFERENCES

Refer also Delegation 18.1 – Food Act 2008.

In some instances the EHO may be required to act without reference to Council or CEO, and regardless of Council's or CEO's wishes.

Objections and review are those matters refused under delegated authority which the applicant requests Council to reconsider.

The Public Health Act 2016 –

21. Enforcement agency may delegate

- (1) A power or duty conferred or imposed on an enforcement agency may be delegated –
 - (a) if the enforcement agency is the Chief Health Officer, in accordance with section 9; or
 - (b) if the enforcement agency is a local government, to –
 - (i) the chief executive officer of the local government; or
 - (ii) an authorised officer designated by the local government;

The effect of the delegation is that the CEO is to cause various actions to be taken by an authorised person.

Authorised person must be either –

- a) an EHO in the employ of the Shire at the time of the Public Health Act 2016 coming into force, or
- b) hold an appropriate qualification as published in the Government Gazette of 24 January 2017.

6.2 Health Local Law 2004

This Delegation will not become effective until after publication of the Amenity Local Law in the Government Gazette.

Refer also Delegation 18.1 – Food Act 2008.

6.3 Amenity Local Law 2018

This Delegation will not become effective until after publication of the Amenity Local Law in the Government Gazette.

Section 7 - Community Services

7.1 Cemetery Local Law 2018

STATUTORY CONTEXT

Cemeteries Act 1976

Shire of Victoria Plains Cemeteries Local Law 2018

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

Rangers

FUNCTION DELEGATED

The CEO is delegated authority to approve all discretionary matters in the Shire of Victoria Plains Cemetery Local Law 2018 including –

- a) granting, refusal, cancellation and setting conditions of approval to conduct activities;
- b) issue of all notices and infringements etc;
- c) extending the time period within which infringement notices may be paid.
- d) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
- e) carrying out of works in default of a duly served notice;

APPLICATION

The delegation excludes –

- a) determination of any fee or charge

Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –

- a) is of such severity that the action is appropriate or
- b) an infringement notice remains unpaid after reasonable attempts to obtain payment.

FORMAL RECORD OF USE

- i) File copy of approval of grant of right of burial, pre-need certificate, notice etc
- ii) Duplicate copy of infringement etc

HISTORY

Former Delegation	2.1
Adopted	18 July 2018

REFERENCES

Section 8 - Personnel

Applying to all matters in relation to personnel and employment –

Local Government Act 1995 –

s.5.41 Functions of CEO

The CEO's functions are to –

....

(a) manage the day to day operations of the local government; and

....

(g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees); and

....

Local Government (Rules of Conduct) Regulations 2007 –

r.10 Relations with local government employees

(1) A person who is a council member must not –

(a) direct or attempt to direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee; or

(b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a person who is a local government employee in the person's capacity as a local government employee.

....

Policy 1.1 – Code of Conduct

For clarification regarding appointment, management and direction of employees –

Employee class	Council involvement	Elected member / Committee involvement	CEO involvement
CEO	<u>Required.</u> May authorise selection and interview by a Committee. Appointment must be by Council resolution.	<u>Permitted</u> – to interview and recommend to Council. <u>Prohibited</u> – to appoint, manage or direct.	As directed by Council, usually limited to process, research and reporting on an applicant.
Designated employee LG Act s.3.57	<u>Required</u> – to consent to appointment or dismissal. <u>Permitted</u> – Interview & recommendation can be done by CEO alone or with elected member input. <u>Prohibited</u> – management or direction.	<u>Permitted at CEO invitation</u> – to interview and recommend an appointment to Council. (CEO required to be present) <u>Prohibited</u> – to appoint, manage or direct.	<u>Required</u> to initiate appointment or dismissal. <u>Statutory function</u> – to manage and direct.
EHO	<u>If designated senior officer</u> – as above, otherwise as for Other Employee <u>In all cases</u> – qualification must comply with Public Health Act 2016 s.17.		
Other employee (non-designated)	<u>Prohibited</u> – Involvement in appointment, management or direction.	<u>Prohibited</u> – involvement in appointment, management or direction.	<u>Statutory function</u> – to appoint, manage, direct etc.

8.1 Designated senior employee – Vacancy

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.37 (3) – advertising of designated senior positions

CORPORATE CONTEXT

Policy Manual –

- 2.1 – Designated Senior Employees
- 2.2 – Acting/Relieving Staff Authority

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. The CEO is delegated authority to determine an appropriate employment package for designated senior employee other than CEO, with consideration to include but not limited to –
 - a) salary,
 - b) salary sacrifice options;
 - c) removal expenses,
 - d) accommodation arrangements,
 - e) private use of vehicle etc, and
 - f) any associated FBT implications.
2. The CEO is delegated authority to advertise the vacancy when, as and for an appropriate period.

APPLICATION

N/A

FORMAL RECORD OF USE

Report to Council recommending appointment

File copy of finalised Information Package

HISTORY

Adopted

18 July 2018

REFERENCES

This delegation does not extend to –

- the appointment of a person to the vacancy without Council consent.
- determining the remuneration package for a CEO.

Information Package for a vacancy to include –

- remuneration range;
- other benefits available;
- selection criteria or key position requirements
- closing date and application submission requirements
- any additional information appropriate.

8.2 Long service leave

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.48 – Long service leave benefits for employees

Local Government (Long Service Leave Regulations) –

- r.6A – long service leave on half pay
- r.6B – long service leave on double pay
- r.7 – taking of long service leave
- r.8(2) – Payment for or in lieu of leave

CORPORATE CONTEXT

N/A

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

FUNCTION DELEGATED

1. The CEO is delegated authority to approve –
 - a) applications for long service leave at half pay;
 - b) applications for long service leave at double pay;
 - c) appropriate timing, period or period for taking of long service leave;
 - d) on application of the employee, to defer taking of long service leave beyond 6 months of becoming entitled subject, subject to the employee's agreement to –
 - i) deferral being for not more than 2 years, and
 - ii) rate of pay shall not exceed that applicable to the employee at the end of 6 months of becoming entitled.

APPLICATION

2. On application, the CEO is to advise the employee that deferral of long service leave beyond six months of becoming due may be approved however when the leave is taken it will be paid at the hourly rate earned by the employee at the anniversary of the 10th year plus six months.
3. In exceptional circumstances, the CEO may approve taking of long service leave prior to 10 years continuous service –
 - a) provided that the employee has a minimum of 7 years continuous service,
 - b) a request from an employee with less than 7 years continuous service will not be considered,
 - c) leave may only be approved to the extent of the accrual at the time of taking leave.
4. Taking long service leave may be deferred –
 - a) with the written approval of the CEO, an employee may delay the taking of part or all of their long service leave entitlement beyond 10 years and six months –
 - The rate of pay during their long service leave when taken, will be the ordinary time rate which applied to the employee at the 10 year and six month mark.
 - b) with the written approval of the CEO, a request to delay for more than 2 years will only be considered in exceptional circumstances –
 - The rate of pay during their long service leave when taken, will be the ordinary time rate which applied to the employee at the 10 year and six month mark.
 - c) at the written request of the CEO –

- The rate of pay during their long service leave when taken, will be the ordinary time rate applicable to the employee at the completion of the deferment requested by the CEO.

5. Long service leave cannot be cashed out, other than as provided for in the Regulations.

FORMAL RECORD OF USE

Personnel file copy of letter to employee advising of decision

HISTORY

Former Delegation 2.37
Adopted 18 July 2018

REFERENCES

Applications that are to be referred to Council –

- a) deferment of long service leave for more than 2 years;
- b) request for payment at a rate greater than the rate applicable at 6 months after becoming entitled;
- c) payment at the higher rate, where long service leave has been deferred at the request of the CEO.

If an employee transfers their employment to an applicable organisation, as provided for under Local Government (Long Service Leave) Regulations, the employee may be eligible to transfer their service to maintain continuity of service for the purposes of long service leave accrual.

However, where an employee has an untaken long service leave entitlement and the employee's employment ends before the employee has taken the long service leave, the employee must be paid out their long service leave entitlement on termination. To be clear, a 10 year entitlement cannot transfer but any additional accrued entitlement to long service leave can transfer to a new Local Government employer.

Further, pro-rata long service leave becomes due after seven years of service. If an employee is not eligible to transfer their leave to another applicable organisation any long service leave accrued to this point will be paid out on termination.

An employee with less than 7 years continuous service does not qualify for pro-rata long service leave.

Section 9 - Occupational Safety & Health

This section is currently empty

Section 10 - Building / Development

10.1 Building permits (authorised person)

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.36 – Local government employees

Building Act 2011 –

- s.3 – authorised person to be designated under s.96
- s.96(3) – the local government may designate a person to be authorised
- s.127(3) – delegation by a local government must be to an employee
- s.127(6A) – further delegation of authority given to CEO

Building Regulations 2012 –

- r.31B – applicable standards for buildings in bush fire prone areas

Building Services (Registration) Act 2011

- s.17 – registration of building service practitioners

Building Services (Registration) Regulations 2011 –

- r.4 – prescribed levels for building surveying
- Part 3A – Building surveyors

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Environmental Health Surveyor

Registered Building Surveyor

FUNCTION DELEGATED

1. The CEO is delegated authority to determine matters under –
 - a) sections 18, 20, 22, 23, 24 – Building permits
 - b) sections 21, 22, 23, 24 – Demolition permits
 - c) sections 27 – Conditions for building permit or demolition permit
 - d) sections 32 – Duration of building permit or demolition permit
 - e) sections 58, 59, 60 – occupancy permit
 - f) sections 62 – conditions of occupancy permit
 - g) sections 65 – duration of occupancy permit
 - h) sections 110, 111, 112 – Issue of notices and building orders
 - i) sections 117 – Revocation of building orders
 - j) sections 118 – giving effect to building order if non-compliance

APPLICATION

2. The CEO is to be consulted prior to use of any sub-delegation in relation to items (b), (h), (i) and (j).
3. A building permit may be issued if –
 - a) a valid Certificate of Design Compliance is presented;
 - b) compliance with requirements for bush fire prone areas;
 - c) all buildings where permitted in accordance with the Building Act 2011 and

- d) the information required by the Regulations is provided.
4. A building permit is not to be issued unless payment has been received for –
 - a) the assessed building permit fees
 - b) Building Services Levy
 - c) Building and Construction Industry Training Fund levy, or production of evidence of payment or exemption where applicable
 5. The following matters are to be referred to Council for decision
 - a) s.192 – Dangerous Buildings
 - b) s.193 – Removal of Neglected Building
 6. Any prosecution proposed is to be referred to Council for decision to proceed.

FORMAL RECORD OF USE

- i) Report to Council via monthly briefing papers – Items (a), (b), (h), (i)
- ii) File copy of permit, notice etc issued

HISTORY

Former Delegation	2.9, 2.10
Adopted	18 July 2018

REFERENCES

Building permits are separate from the Local Planning Scheme functions, but are governed by them.

Any authorised person can issue a permit or notice etc – some inspections, notices, certifications etc. can only be issued by a Registered Building Surveyor.

For the purposes of this delegation, a Registered Building Surveyor under contract is considered to be an employee.

The Building Act 2011 requires response –

- within 10 days of lodgment, if a valid CDC is presented, as all assessment and preparation is done prior to lodgment in order to obtain the CDC, accordingly there is no reason that the CEO and other appropriate persons cannot be authorised to approve applications.
- for Class 1 and 10 buildings only, within 25 days of lodgement if a valid CDC is not presented, and the local government is required to source/provide the CDC.

With the Building Act 2011, the functions separated are –

- (a) Issue of permits, notices etc –
 - o does not require a registered person (Registered Building Surveyor), since the Certificate of Design Compliance has to be signed by a registered person
 - o the decision is on the basis of whether all the requirements of CDC have been met, and any appropriate person can do that if authorised
 - o delegation to issue permits can be made under this amended delegation
- (b) Building inspection and certification of plans still requires a registered person –
 - o who is registered as per the Act and Regulations and holding appropriate qualifications
 - o to provide a building certification service

10.2 Illegal development

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.42(1)(b) – Delegation to CEO of powers under the Planning and Development Act 2005 s.214(2), (3) and (5)

Planning and Development Act 2005 –

- s.214 – development in contravention of planning scheme or interim development order
 - (2) – power to order stop work
 - (3) – power to remove, alter etc and restore land to original condition
 - (5) – if delay interferes with scheme operation, power to order work to be undertaken

Planning and Development (Local Planning Schemes) Regulations 2015 –

- s.82 – a local government may delegate to a committee or to the CEO
- s.83 – CEO may delegate to any employee

Local Planning Scheme No.5 –

- Part 9 – Applications for Planning Approval

CORPORATE CONTEXT

Local Planning Policies

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Building Surveyor

Planner

FUNCTION DELEGATED

1. The CEO is delegated authority to issue notices in relation to illegal or delayed works in accordance with the Planning and Development Act 2005 s 214(2), (3) and (5).

APPLICATION

2. Where a notice is not complied with, the CEO is authorised to commence prosecution without reference to Council.

FORMAL RECORD OF USE

- i) Report to Council via monthly briefing papers
- ii) File copy of notice

HISTORY

Former Delegation	2.11
Adopted	18 July 2018

REFERENCES

10.3 Control of planning matters

STATUTORY CONTEXT

Planning and Development Act 2005 –

Part 5 – Local planning schemes

- s.68 – Town planning schemes continued as local planning schemes
- s.72 – Local government may prepare or adopt scheme
- s.73 – Provisions of a local planning scheme
- s.214 (2)(3)(5) – development works not in compliance may have written stop work or remedial action order issued

Planning and Development (Local Planning Schemes) Regulations 2015 –

- s.82 – a local government may delegate to a committee or to the CEO
 - s.83 – CEO may delegate to any employee
- These Regulations override any provisions of the Planning Scheme.

Local Planning Scheme No. –

Part 9 – Applications for Planning Approval

CORPORATE CONTEXT

Local Planning Policies

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Planner

FUNCTION DELEGATED

1. The CEO is delegated authority to administer all planning matters or functions for the Shire of Victoria Plains, subject to compliance with –
 - a) Planning and Development Act,
 - b) Planning Regulations,
 - c) Residential R Codes
 - d) Local Planning Scheme, and
 - e) Local Planning Policy.

APPLICATION

2. Any proposal that is not compliant, where discretionary approval by Council may be considered, is to be referred to Council for decision.
3. Any proposal requiring a decision but which has been refused is to be notified to Council for information.
4. The CEO is delegated authority to respond to –
 - a) any appeal against a discretionary decision of Council in accordance with Council's decision on the matter to which the appeal or request for reconsideration relates,
 - b) Development Assessment Panel requirements.
5. Where a planning approval is not complied with, the CEO is authorised to commence prosecution without reference to Council.

FORMAL RECORD OF USE

Approvals etc on file

HISTORY

Former Delegation 2.11, 2.12, 2.15
Adopted 18 July 2018

REFERENCES

10.4 Applications for subdivision and amalgamations

STATUTORY CONTEXT

Planning and Development Act 2005 –

- s.4 – Subdivision includes amalgamation
- s.135 – subdivision (and amalgamation) not permitted without WA Planning Commission approval
- s.138(2) – Commission to have due regard to local planning scheme
- s.142 – Commission to seek local government’s comments, objections, recommendations

Local Planning Scheme No.5

CORPORATE CONTEXT

Local Planning Policies

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Planner

FUNCTION DELEGATED

1. The CEO is delegated authority in respect to an application received from the *Western Australian Planning Commission (WAPC)* to subdivide, re-subdivide or amalgamate land contained within the local government and to recommend to the WAPC –
 - (a) No objection to the granting of approval of an application to amalgamate or subdivide involving five (5) lots or less (including lots forming part of any strata-title scheme), unless prior planning consent has been granted to a co-ordinated development over the land;
 - (b) No objection to the granting of approval of an application to rationalise or reconfigure existing allotments where there is no net increase in lots created, and the new lot sizes will conform with the relevant requirements of the local planning schemes and their policies, and policies adopted in accordance with the Planning and Development Act s.26 relating to State planning policies; and
 - (c) the imposition of relevant conditions on any approval proposed to be granted by the WAPC, considered necessary to secure the objectives of the local planning scheme, and any land use plan or strategy adopted by Council;
2. The CEO is delegated authority to certify to the WAPC compliance with conditions imposed on an approval to subdivide, re-subdivide or amalgamate land have been completed to the satisfaction of the Shire.

APPLICATION

3. Standard conditions of subdivision approval as endorsed by the WA Planning Commission are to be used where possible.

FORMAL RECORD OF USE

File copy of advice of decision to applicant, developer etc.

HISTORY

Former Delegation	2.13, 2.14
Adopted	18 July 2018

REFERENCES

Refer Planning Policy 1.1 – Subdivisions and amalgamations (in development)

10.5 Fencing Local Law 2018

STATUTORY CONTEXT

Fencing Local Law 2018 –

- cl.7.1 – dealing with objections – to be by Council

Local Planning Scheme No. 5 –

- Part 9 – Applications for Planning Approval

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Building Surveyor

Ranger

FUNCTION DELEGATED

1. The CEO is delegated authority to approve all discretionary matters in the Shire of Victoria Plains Fencing Local Law 2018 including –
 - (a) granting, refusal, cancellation and setting conditions of approval to conduct activities;
 - (b) issue of all notices and infringements etc;
 - (c) extending the time period within which infringement notices may be paid.
 - (d) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - (e) carrying out of works in default of a duly served notice;

APPLICATION

2. The delegation excludes –
 - (a) determination of any fee or charge
 - (b) dealing with an objection.
3. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - (a) is of such severity that the action is appropriate or
 - (b) an infringement notice remains unpaid after reasonable attempts to obtain payment.

FORMAL RECORD OF USE

File copy of advice of decision to applicant, developer etc.

HISTORY

Former Delegation	2.1
Adopted	18 July 2018

REFERENCES

Objections and review are those matters refused under delegated authority which the applicant requests Council to reconsider.

Section 11 - Public Facilities

11.1 Liquor Control Act

STATUTORY CONTEXT

Liquor Control Act 1988 –

- s.39 – Certificate of local government of compliance with laws
- s.40 – Certificate of planning authority of compliance with planning laws
- s.156 – Local governments, functions of

Local Planning Scheme No. 5 –

- Part 9 – Applications for Planning Approval

CORPORATE CONTEXT

Local Planning Policies

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Building Surveyor

FUNCTION DELEGATED

1. The CEO is delegated authority to –
 - a) s.39 – Issue Certificates advising compliance with Food, Health and Local Government laws.
 - b) s.40 – Issue Certificates of the Local Planning Authority
 - c) s.66 (1)(d) and (2) – Respond to applications for Extended Trading Permits;
 - d) s.69 (8) – Make submissions on health grounds regarding a license;
 - e) s.153 (2) – Request copies of reports produced by the Liquor Licensing Authority;
 - f) s.156 – Report to the Liquor Licensing Authority any offences committed by a licensee and ensure appropriate assistance is given to the Authority if requested.

APPLICATION

N/A

FORMAL RECORD OF USE

File copy of notice

HISTORY

Former Delegation	2.60
Adopted	18 July 2018

REFERENCES

11.2 Discount/waiver/subsidy of facility hire fees

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.12(1)(b) – Power to defer, grant discounts etc.

CORPORATE CONTEXT

Delegations Register –

- 3.11 – Donations – Financial and in-kind Works / Services

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

FUNCTION DELEGATED

1. The CEO is delegated authority to approve reduction in fees and charges of Council owned facilities, subject to –
 - a) the request is from a local community, charitable or not-for-profit organisation; or
 - b) the event is for the specific benefit of the local community; and
 - c) each request of the organisation does not exceed \$500 ex GST;
 - d) cleaning cost of the venue hire is not to be discounted.

APPLICATION

N/A

FORMAL RECORD OF USE

Copy of approval of written request

HISTORY

Adopted 18 July 2018

REFERENCES

11.3 Public Places and Local Government Property Local Law 2018

STATUTORY CONTEXT

Public Places and Local Government Property Local Law 2018

CORPORATE CONTEXT

Delegation Register –

- 11.2 – Discount/waiver/subsidy of facility hire fees
- 15.2 – Native Flora and Fauna

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

Environmental Health Officer

Building Surveyor

Rangers

FUNCTION DELEGATED

1. The CEO is delegated authority to approve all discretionary matters in the Shire of Victoria Plains Public Places and Local Government Property Local Law 2018 including –
 - a) hire of facilities, including issue of permit for consumption/sale of alcohol;
 - b) granting, refusal, cancellation and setting conditions of approval to conduct activities in public places or on local government property;
 - c) issue of all notices and infringements etc;
 - d) extending the time period within which infringement notices may be paid;
 - e) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - f) carrying out of works in default of a duly served notice;

APPLICATION

2. The delegation excludes –
 - a) cl.1.6 – setting of any fee or charge
 - b) cl.2.1 – Activities requiring a licence on local government property –
 - (c) erect a structure for amusement in excess of 28 days;
 - (n) erect a building or refuelling site;
 - (p) erect or install a structure for water, power, sewer, communication, television or similar service;
 - c) cl.5.13 – giving notice of crossover in unsafe location;
 - d) cl.10.1 – dealing with an objection;
3. On written application made under cl.3.3, the CEO is authorised to give permission to hirers of premises or land under the control and management of the local government to consume and sell liquor on the premises or land, under such conditions and in such areas as considered appropriate.
4. Every permit issued for consumption/sale of alcohol is to be advised to the relevant Police Station.
5. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) is of such severity that the action is appropriate or
 - b) an infringement notice remains unpaid after reasonable attempts to obtain payment.

FORMAL RECORD OF USE

- i) File copy of hire, approval, notice, etc
- ii) File copy of advice of decision to applicant, developer etc
- iii) Duplicate copy of infringement etc
- iv) Local government property file

HISTORY

Former Delegation 2.1, 2.49, 2.60, 2.61, 2.62
Adopted 18 July 2018

REFERENCES

Objections and review are those matters refused under delegated authority which the applicant requests Council to reconsider.

Section 12 - Tourism

This section is currently empty

Section 13 - Works & Services

13.1 Reserves under control of the local government

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.54(1) – Reserves under control of a Local Government

Land Administration Act 1997

CORPORATE CONTEXT

Policy Manual –

- 13.1 – Standard Crossovers
- 13.2 – Roads – Developer Conditions
- 13.3 – Roads – Access to Lots / Locations without Road Frontage
- 13.4 – Road Reserves – Stormwater Discharge

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority to do anything on land vested or under the control and management of Council –
 - a) subject to prior budget provision having been made, or
 - b) to give effect to a Council decision.

APPLICATION

N/A

FORMAL RECORD OF USE

File copy of decision on written application

HISTORY

Former Delegation	2.54, 2.61
Adopted	18 July 2018

REFERENCES

13.2 Things to be done on land not local government property

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.24 – Authorising person under this subdivision
- s.3.27 – Particular things local government can do on land that is not local government property
- s.3.33 – Entry under warrant
- s.3.34(2) – Entry in an emergency
- Sch.3.2 – Particular things local governments can do on land even though it is not local government property

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority to carry out work on land that is not local government property subject to –
 - a) prior budget provision having been made,
 - b) to give effect to a Council decision;
 - c) if the matter is considered to be an emergency;
 - d) the consent is obtained of –
 - the owner of the land;
 - if the land is occupied, the occupier of the land; and
 - if the land is under the control or management of any other person, that other person.
 - e) compensation agreed for the functions is provided for within the adopted Budget or is specifically approved.

APPLICATION

N/A

FORMAL RECORD OF USE

File copy of notice

HISTORY

Former Delegation	2.8, 2.43
Adopted	18 July 2018

REFERENCES

The delegation applies to land not under local government control that is within the district, and is in relation to things being done on the land, not taken from the land.

13.3 Works on land outside the district

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.20 – performing function outside the district
- s.3.21 – duties when performing functions
- s.3.22 - compensation

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority to undertake necessary executive functions on land outside the district that is not property of the Shire provided that –
 - a) the consent is obtained of –
 - the owner of the land;
 - if the land is occupied, the occupier of the land; and
 - if the land is under the control or management of any other person, that other person.
 - b) compensation agreed for the functions is provided for within the adopted Budget or is specifically approved.

APPLICATION

N/A

FORMAL RECORD OF USE

File copy of agreement, consent etc

HISTORY

Adopted 18 July 2018

REFERENCES

Executive functions does not include private works requested of the Shire by an individual or other local government, but does apply to sourcing of roadmaking materials and water.

The delegation applies to land not under local government control that is also outside the district, and is in relation to things being done on the land, not taken from the land.

13.4 Materials from land not under local government control

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.21 – Duties when performing functions
- s.3.22 – Compensation for materials, damage, access etc

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority to negotiate with land owners and/or occupiers for access to materials required for local government functions, principally –
 - a) extraction of gravel, sand or other materials from land;
 - b) water, etc.

APPLICATION

2. The CEO is to apply to the Department of Environmental Regulation for permits to clear vegetation as applicable.
3. The agreement reached with the land owner/occupier is to –
 - a) state a specific duration, that it is indefinite or otherwise provide for termination;
 - b) provide for mutually agreed compensation;
 - c) specify rehabilitation responsibilities if appropriate;
 - d) within the budget provision.

FORMAL RECORD OF USE

- i) Written agreement with land owner/occupier
- ii) Property file where the land is within the district

HISTORY

Adopted 18 July 2018

REFERENCES

The delegation applies to land not under local government control that that may be either within or outside the district, and is in relation to materials to be taken from the land, not things being done on the land.

Until such time as agreement is signed, or compulsory notice of acquisition is given under the Act, employees should not access the materials.

13.5 Notices requiring certain things to be done

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.24 – Authorising person under this subdivision
- s.3.25(1) – Notices requiring certain things to be done by owner or occupier of land
- s.3.26(2) – Additional powers when notice is given
- s.3.33 – Entry under warrant
- s.3.34(2) – Entry in an emergency
- s.9.60 – Regulations that operate as local laws
- Sch.3.1 – Powers under notices to owners or occupiers of land
- Sch 9.1(6) – dangerous excavations in or near public thoroughfare
- Sch.9.1(7) – Matters for which regulations under s.9.60 may be made

Local Government (Uniform Local Provisions) Regulations 1996 –

- r.11 – dangerous excavation in or near public thoroughfare
- 13 – Requirement to construct or repair crossing

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works & Services

FUNCTION DELEGATED

1. The CEO is delegated authority to issue notices requiring certain things to be done by the owner or occupier of land.
2. The CEO is delegated authority to take any necessary action to achieve the purpose for which the notice was given in the event of non-compliance of the notice recipient.
3. The CEO is delegated authority to seek a warrant for entry to carry out the works of a notice where the owner or occupier of land has not complied with the notice in the time specified.

APPLICATION

4. Any prosecution proposed resulting from non-compliance with a notice is to be referred to Council for decision to proceed.

FORMAL RECORD OF USE

- i) File copy of notice

HISTORY

Former Delegation	2.21
Adopted	18 July 2018

REFERENCES

Under LG Act s.9.6(1) an objection to a notice must be dealt with by Council and cannot be delegated.

Objections and review are those matters refused under delegated authority which the applicant requests Council to reconsider.

13.6 Notice of local government works

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.51(3) – notice to adjoining owners affected by works

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority to give the required public notice and individual notice to landowners and occupiers adjoining proposed works to –
 - a) fix or alter the levels, or the alignment of a public thoroughfare, or
 - b) drain water from a public thoroughfare or public place onto adjoining land

APPLICATION

N/A

FORMAL RECORD OF USE

- i) File copy of notice
- ii) Advertisement records
- iii) Property file

HISTORY

Former Delegation	2.17
Adopted	18 July 2018

REFERENCES

13.7 Private works/infrastructure on, over or under public land

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.37 – Contraventions that can lead to impounding
- s.9.60 – Regulations that operate as local laws
- Sch.9.1(8) – Private works/infrastructure on, over, or under public places
- Sch.9.2(5) – gates across public thoroughfares

Local Government (Uniform Local Provisions) Regulations 1996 –

- r.9 – gates across a public thoroughfare
- r.17 – Private works on, over, or under public places
 - (4) approval of local government required
 - (5) conditions may be imposed
 - (6) mandatory conditions – no permanent impairment of public use, public safety to be ensured, damaged to be fully repaired
 - (7) penalty for non-compliance is \$5,000 and \$500 daily
 - (8) person constructing is responsible for maintenance, and must insure structure, specifically indemnifying Council against any claim
 - (9) unauthorised constructions, or contravention of approval/conditions can lead to impounding

Public Places and Local Government Property Local Law 2018

- activities on land under Council management and control including roads

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority to approve private works/infrastructure on, over or under public places subject to –
 - a) written application being made;
 - b) the applicant accepts all liability for every part and aspect of the works/infrastructure;
 - c) imposing of appropriate conditions, such as –
 - building permit, structural engineering certification, environmental assessment etc, where appropriate;
 - any damage or interference to public assets to be made good to the satisfaction of CEO (roadway, fence, other structure etc)
 - traffic management plan to be approved
 - d) where deemed appropriate, an insurance certificate indemnifying the Shire while works are underway, or for any structure, is to be provided;
 - e) estimated value of works does not exceed \$25,000 ex GST.

APPLICATION

2. The CEO may enter into an agreement with the applicant to carry out the works/infrastructure as a private works.
3. Proposed works in excess of \$25,000 ext GST are to be referred to Council.

4. Any prosecution proposed for non-compliance is to be referred to Council for decision to proceed.

FORMAL RECORD OF USE

- i) Report to Council via monthly briefing papers if significant infrastructure
- ii) File copy of written approval
- iii) Property file of applicant
- iv) Copy on road/reserve/local government property file

HISTORY

Former Delegation	2.54, 2.61, 2.63
Adopted	18 July 2018

REFERENCES

If insurance indemnity is required, a certificate is to be provided to the Shire annually. It is to be a condition of approval, that a lapse of insurance means automatic withdrawal of approval, and removal of the previously insured structure is required within 14 days.

This delegation includes minor works on the road such as –

- drilling for soil testing;
- pressure or gravity pipe from a water tank or windmill to a stock trough;
- farm drainage.

13.8 Events on roads

STATUTORY CONTEXT

Road Traffic Act 1974 –

- s.81C(2) – Making order for road closure for event
- s.81D – Road closure, how effected by local government

Road Traffic (Administration) Act 2008 –

- s.139(2) – Temporary suspension of road law

Road Traffic (Events on Roads) Regulations 1991 –

- s.4 – local government approval and payment of fee required
- r.9 – Erection of barriers, signs and other equipment

Public Places and Local Government Property Local Law 2018 –

- activities on land under Council management and control including roads

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority –
 - a) in consultation with the President, to approve with or without conditions or refuse to approve, an event or function on a thoroughfare in accordance with section 81C of the *Road Traffic Act 1974*;
 - b) in consultation with the President, to approve with or without conditions, or refuse to approve, the temporary suspension of written law in accordance with section 83 of the *Road Traffic Act 1974*; and
 - c) make all necessary arrangement to comply with Road Traffic (Events on Roads) Regulations r.9.
2. The CEO is delegated authority, in consultation with the President, to respond to any request for information made under section 7(1) of the *Public Order in Streets Act 1984*.

APPLICATION

3. In considering any application, the CEO is to have regard to Police and Main Roads WA guidelines.

FORMAL RECORD OF USE

File copy of decision on written application

HISTORY

Adopted 18 July 2018

REFERENCES

See Road Traffic (Administration) Act –

135. *Protection from liability for wrongdoing*

(1) *An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under a road law.*

- (3) A local government is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1) in relation to a function of a local government under section 11, 139 or 141.

141. Closure of roads

- (2) A local government may cause a road in its district to be closed for such period that the local government considers necessary if the local government considers that the road is unsafe for traffic but the road cannot be closed by the local government for more than one month without with the Minister's written approval to do so.

See Events on Roads Regulations –

9. Erection of barriers, signs and other equipment

- (1) A road closure ordered by the Commissioner of Police under Part VA of the Act shall be effected by the erection and maintenance by the local government for the district within which the road concerned is situated of —
- (a) barriers, being free standing posts and rails, or other barriers which are substantial and uniform in construction;
 - (b) signs, being substantial and uniform in design, with the words "Road Closed" or similar, clearly printed in black letters upon a reflective background; and
 - (c) such other equipment as the local government considers is reasonably necessary to effect the road closure.
- (2) The costs of erecting, maintaining and removing barriers, signs and other equipment to effect a road closure are payable to the local government by the person or body who applied for the order for that road closure.
- (3) A local government may waive the payment of all or any of the costs referred to in subregulation (2).
- (4) Any costs payable to a local government under subregulation (2) may be recovered as a debt due to that local government in a court of competent jurisdiction.

Main Roads WA – Traffic Management for Events on Roads: "Code of Practice"

13.9 Temporary road closures

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.50 – closing to vehicles
- s.3.50A – closure for repairs or maintenance

Road Traffic Act 1974 –

- s.81D – how a road is to be closed
- s.92 – power to close unsafe roads

Public Places and Local Government Property Local Law 2018 –

- cl.5.2 – no entry to closed local government property
- cl.6.13 – no driving on closed thoroughfare

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority to –
 - a) temporarily close a thoroughfare or a portion of a street for a period not exceeding 28 days (without providing local public notice) if of the opinion –
 - a thoroughfare is likely to be damaged by the passage of traffic generally or traffic of any particular class;
 - that the thoroughfare is unsafe for use.
 - b) temporarily close a road or portion of a road for repairs and maintenance;
 - c) temporarily close a thoroughfare for a period in excess of 28 days by providing local public notice.
2. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) is of such severity that the action is appropriate or
 - b) an infringement notice remains unpaid after reasonable attempts to obtain payment.

APPLICATION

N/A

FORMAL RECORD OF USE

File copy of public notice, instruction to employee etc

HISTORY

Former Delegation	2.17
Adopted	18 July 2018

REFERENCES

Section 14 - Plant / Equipment

This Section is currently empty

Section 15 - Natural Resource Management

15.1 Control of Vehicles (Off-road Areas) Act 1978

STATUTORY CONTEXT

Control of Vehicles (Off-road Areas) Act 1978 –

- s.5(1) – Duty of local government to administer and enforce the Act
- s.5(3) – authorised officers

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Finance and Administration

Manager Works and Services

Rangers

FUNCTION DELEGATED

1. The CEO is delegated authority to exercise all discretionary matters in the Control of Vehicles (Off-road Areas) Act 1978, including –
 - a) granting, refusal, cancellation and setting conditions of approval to conduct activities;
 - b) issue of all notices and infringements etc;
 - c) extending the time period within which infringement notices may be paid.
 - d) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - e) carrying out of works in default of a duly served notice;

APPLICATION

2. The delegation excludes –
 - a) determination of any fee or charge
3. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) is of such severity that the action is appropriate or
 - b) an infringement notice remains unpaid after reasonable attempts to obtain payment.

FORMAL RECORD OF USE

File copy of notice

HISTORY

Adopted

18 July 2018

REFERENCES

15.2 Native flora and fauna

STATUTORY CONTEXT

Environmental Protection Act 1986 –

- s.51C – Unauthorised clearing of native vegetation

Wildlife Conservation Act 1950 –

- s.14 – Protection of fauna
- s.23C – Licences to take protected flora
- s.23D – Taking and sales of protected flora on private land

Wildlife Conservation Regulations 1970

Public Places and Local Government Property Local Law 2018 –

- cl.4.4(2) – Written authority of local government required to remove, damage, interfere with any flora on local government property

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority to approve a request for permission to pick wildflowers and / or collect seed on lands under Council's control, under the following conditions –
 - a) written application is to be made;
 - b) it is for their own domestic or hobby use;
 - c) permission is given for a period not exceeding one week;
 - d) the area of picking and/or collection is strictly limited;
 - e) not more than one collector is permitted in any one location;
 - f) a maximum of 10% of seed only to be taken in any one area.

APPLICATION

2. All applications for commercial picking of wildflowers or collection of seed are to be referred to Council for consideration, and required details include –
 - a) collector's credentials and purpose (collector includes the permit holder and up to 2 assistants),
 - b) duration of approval, if any,
 - c) the area of picking and/or collection
 - d) not more than one collector being permitted in any one location
 - e) a maximum of 25% of seed only to be taken in any one area
3. All applications for the collection of animals, reptiles, amphibians and birds from lands under Council's control, are to be referred to Council for consideration.
4. All applications to collect flora or fauna are to provide the following information at minimum –
 - a) collector's credentials, including any person acting on the collector's behalf
 - b) purpose of collection – domestic, hobby, display, educational, commercial
 - c) flora/fauna to be collected – rarity, locality, need for preservation etc
 - d) locality of collection – ease of access, likelihood of general public-knowledge or access
 - e) period or duration sought

Section 16 - Unclassified

16.1 Restricted Access Vehicles on Shire Roads

STATUTORY CONTEXT

Local Government Act 1995

Land Administration Act 1997 –

- s.56(2) – road reserves under the control of the local government

Public Works Act 1902 –

- s.86(2) – Governor may declare roads to be under the control of the local government

Road Traffic (Vehicle Standards) Regulations 2002

Public Places and Local Government Property Local Law 2018

CORPORATE CONTEXT

Policy Manual –

- 16.1 – Restricted Access Vehicles on Shire Roads

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FUNCTION DELEGATED

1. The CEO is delegated authority to determine any application referred from Main Roads WA to use heavy haulage vehicles (Restricted Access Vehicles) on any local road within the district, recommending approval or refusal –
 - a) in accordance with Council Policy 16.1 Restricted Access Vehicles on Shire Roads;
 - b) where the estimated volume is 50,000 tonnes per year or less,
 - c) if the road has already been assessed by Main Roads WA as being suitable for the configuration proposed by the applicant,
 - d) recommending CA07 conditions on roads where deemed necessary to manage RAV access in order to preserve the condition of the road and avoid heavy vehicle damage
 - e) written agreement of the applicant accepting liability for damage to the roads that exceeds fair use.

APPLICATION

2. All other applications are to be referred to Council.
3. Where the CEO declines an application, the applicant has the right to lodge a written appeal which will be presented to Council for consideration.

FORMAL RECORD OF USE

File copy of decision on written application

HISTORY

Adopted 18 July 2018

REFERENCES

PART B – PRIMARY DELEGATIONS – to other officers

Section 17 - Fire Control

17.1 Issue of burning permits – Fire Control Officers

STATUTORY CONTEXT

Bush Fires Act 1954 –

- s.18 – Restricted burning times
 - (1) – nothing in this section permits burning in prohibited period
 - (2) – prohibited & restricted times to be published in Government Gazette
 - (5) – Local government may vary burning periods after consultation
 - (5B) – variation for maximum of 14 days
 - (5C) – burning period restrictions apply to variation period
 - (6) – permit required to set fire to bush from either FCO or CEO
 - (7) – person issuing permit may apply requirements or conditions
 - (8) – permit holder to comply with conditions
 - (9) – permit may authorise burning of bush on adjoining road reserve
 - (10A) – local government may adopt enforceable schedule for burning
 - (11) – if fire escapes etc expenses up to \$10,000 may be recouped
 - (12) – penalty on first breach \$4,500, subsequent breaches \$10,000
- s.23(2)(a)(iv) – road verge burning between constructed portion of road and established fire break only

Bush Fire Regulations 1954 –

- r.15(1) – Permit to burn as per section 18 of the Act
- r.15(2) – If request to burn is conditional or refused, review is only by the local government or CBFCO
- r.15A – BFCO to comply with directions of local government
- r.15B – Permit holder to comply with permit conditions
- r.15C – Local Government may prohibit burning on certain days
- r.16 – only CEO or specifically authorised person may permit burning of clover in prohibited period
- r.21B – FCO may postpone clover burn

CORPORATE CONTEXT

None

PRIMARY DELEGATION

Fire Control Officers

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. Fire Control Officers are delegated authority to issue, vary or prohibit burning permits in accordance with Bush Fires Act s.18 and Bush Fires Regulations r.15(1).
2. Fire Control Officers are delegated authority, in consultation with the Chief Bush Fire Control Officer, to issue instructions, restrictions or conditions relating to individual burning permits.
3. Fire Control Officers are delegated authority to approve an applications to burn a road verge vested in the care, control and management of the Shire, subject to –
 - a) compliance with the Bush Fires Act 1954 s.18(9),
 - b) prior consultation with the CEO, and

- c) the applicant obtaining the approval of the Dept of Parks and Wildlife.

APPLICATION

N/A

FORMAL RECORD OF USE

Duplicate copy of permit issued

HISTORY

Adopted 18 July 2018

REFERENCES

This delegation does not extend to clover burning permits.

The Act s.16(6)(a) stipulates –

...obtained a permit in writing to burn the bush from a bush fire control officer of the local government in whose district the land upon which the bush proposed to be burnt is situated, or from the chief executive officer ...

Refer also Delegation 5.1 and specific matters restricted to CEO, and to Delegation 17.2.

17.2 Issue of clover burning permits – Clover Burning Permit Officers

STATUTORY CONTEXT

Bush Fires Act 1954 –

- s.24 – clover may be burnt during prohibited burning times

Bush Fire Regulations 1954 –

- r.16 – CEO or specifically authorised person may permit burning of clover in prohibited period
- r.17 – permit required to burn clover
- r.18 – 7 days notice of clover burn required, under specified restrictions
- r.19A – duties of clover burning permit holder
- r.20 – local government may prohibit issue of clover burn permits
- r.21A – permit holder may be required to advertise clover burn
- r.21B – FCO may postpone clover burn

CORPORATE CONTEXT

None

PRIMARY DELEGATION

Chief Fire Control Officer

Deputy Chief Fire Control Officer

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. The following Bush Fire Control Officers are delegated authority to issue permits to burn clover in accordance with Bush Fires Act s.18 and Regulations r.16 and to apply such conditions or requirements as is considered appropriate –
 - a) Chief Bush Fire Control Officer
 - b) Deputy Chief Bush Fire Control Officer

APPLICATION

N/A

FORMAL RECORD OF USE

Duplicate copy of permit issued

HISTORY

Adopted 18 July 2018

REFERENCES

Specified officers may be delegated authority to issue clover burning permits in accordance with Bush Fires Act s.24 and Bush Fires Regulations r.16, and to apply such conditions or requirements as is considered appropriate.

Refer also Delegation 5.1 and specific matters restricted to CEO.

17.3 Prohibited burning periods – Variations

STATUTORY CONTEXT

Bush Fires Act, 1954 –

- s.17(7) – authority to vary prohibited burning time
- s.17(7B) – time may not be varied by more than 14 days
- s.17(8) – requirements to give various notice, and Minister may rescind or modify the variation
- s.17(9) – publication requirements
- s.17(10) – local government may delegate to President and Chief BFCO jointly
- s.17(11) – Local government may rescind delegation or vary any delegated decision

CORPORATE CONTEXT

None

PRIMARY DELEGATION

Shire President and Chief Fire Control Officer, jointly

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. The Shire President and Chief Fire Control Officer are delegated authority to jointly exercise the powers of Council under the Bush Fires Act 1954 s.17 (7), (8), (10) – prohibited burning periods.

APPLICATION

2. Should the Shire President be unavailable or hold joint office as Chief BFCO, the Deputy Shire President is deemed to be Acting Shire President in relation to this matter.
3. If the Chief BFCO is unavailable, the Deputy Chief BFCO is deemed to be Acting Chief BFCO.
4. In the absence of Deputy President or a Deputy Chief BFCO, the CEO is authorised to act for that person, but not for both.
5. The CEO is to be advised in order that public notification may be arranged.

FORMAL RECORD OF USE

Written advice to CEO

HISTORY

Adopted 18 July 2018

REFERENCES

Section 18 - Environmental Health / Food

18.1 Food Act 2008 – Qualified person

STATUTORY CONTEXT

Food Act 2008 –

- s.118(2)(b) – authority to delegate functions and obligations to qualified authorised person
- s.122(1)(b) – authorised person must hold office as an environmental health officer under the *Health Act 1911*

Food Regulations 2009 –

- s.5 – a local government is an appropriate enforcement agency for the purposes of certain food businesses, animal processing premises and retail pet meat shops

Public Health Act 2016

- s.4(2) – authorised officer
- s.24 – authorised person must be qualified
- s.25 – authorised person must have acceptable qualifications or be an EHO

Government Gazette of 24 Jan 2017 – Designation of Health Authorised Officers

CORPORATE CONTEXT

Delegations Register –

- 6.1 – Public Health Act 2016
- 6.2 – Health Local Law 2004

PRIMARY DELEGATION

Environmental Health Officer – subject to consultation with the CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FUNCTION DELEGATED

1. The EHO is delegated authority to exercise and discharge the powers and functions of the local government with regard to the Food Act 2008, including but not limited to –
 - a) powers of entry to premises,
 - b) taking of food samples for analysis,
 - c) formal warnings;
 - d) improvement notices;
 - e) prohibition orders; and
 - f) infringement notices.

APPLICATION

2. The CEO may appoint a qualified person under Delegation 1.1
3. The delegation excludes –
 - a) determination of any fee or charge;
 - b) dealing with an objection,
4. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - (a) an infringement notice remains unpaid after reasonable attempts to obtain payment.
5. Any prosecution proposed is to be referred to Council for decision to proceed.

HISTORY SUMMARY

Item	Meeting	Purpose	Applies	Delegations affected
1	18 July 2018	Revocation	19 July 2018	All previous delegations
2	18 July 2018	Adoption	19 July 2018	All delegation in this Register
3				
4				
5				
6				

APPENDIX

This document records the compiled delegations made by Council under the authority of the Local Government Act 1995 and other legislative instruments as specified.

This register is the formal written record by which a delegation is made and conferred. Therefore, committees, the CEO and officers are provided with this document as their record of delegation/s made to them.

Definitions

The LG Act has not defined the term “delegation” or “delegated power”. However:

s.5.16 refers to “... the exercise of any of its powers and duties ...”

s.5.42 refers to “... the exercise of any of its powers or the discharge of any of its duties ...”

The following terms used in this document apply insofar as they are consistent with enabling legislation.

authority means the permission or requirement for Council, a Committee or a person to act in accordance with:

- the Local Government Act, Regulation or other legislation,
- a delegation made by Council,
- a policy made by Council, or
- a specific decision by Council, or
- Standard Procedural Direction given or authorised by the CEO.

delegation means the authority for a Committee, the CEO or other person to exercise a power, or discharge a duty, as conferred by absolute majority decision of council under the provisions of the relevant legislation.

Council Policy is the standing instruction resolved by Council as to how a particular matter is to be implemented:

employee means –

- a) a person employed directly by the Shire receiving a salary or wage,
- b) a person employed directly by the Shire on a fixed term contract,
- c) a person appointed for the purposes of exercising a delegation who –
 - i) is engaged under a contract for services either directly or with a firm,
 - ii) is the specific person named in the contract, and
 - iii) is authorised to issue notices on behalf of the Shire,

instruction means the requirement for an employee member to act in accordance with a direction given by the CEO.

Planning Policy is established under the Planning & Development Act 2005, and the local planning scheme, and has mandatory procedures to adopt, amend or revoke.

Statutory Context

This Delegations Register has been prepared in accordance with –

Local Government Act 1995:

s.5.16 – Delegation of some powers and duties to certain committees

- Separate document as differing provisions apply

s.5.17 – Limits on delegations of powers and duties to certain committees

s.5.18 – Register of delegations to committees

s.5.42 – Delegation of some powers and duties to CEO

s.5.43 – Limits on delegations to CEO

s.5.44 – CEO may delegate powers and duties to other employees

s.7.1B – Delegation of some powers and duties to audit committees

Local Government (Administration) Regulations 1996 –
r.19 – Record to be kept by delegates

Other legislation includes, but is not limited to –
Building Act 2011
Bushfires Act 1954
Cat Act
Dog Act 1976
Food Act 2008
Health Act 1911
Local Government (Miscellaneous Provisions) Act 1960
Planning and Development Act 2005

Shire of Victoria Plains Local Laws, currently adopted –
Amenity Local Law 2018
Bush Fire Brigades Local Law 2017,
Cemeteries Local Law 2018,
Dogs Local Law 2018,
Extractive Industries Local Law 2018,
Fencing Local Law 2018
Health Local Law 2004,
Meeting Procedures Local Law 2018,
Public Places and Local Government Property Local Law 2019,
Waste Local Law 2018.

Local Planning Scheme

Unless stated otherwise, the Local Government Act 1995 section 5.42 is the fundamental statutory context for Council to make the delegations in Parts A and B.

Local Government Act 1995 –

5.42. Delegation of some powers and duties to CEO

- (1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under –
(a) this Act other than those referred to in section 5.43; or
(b) the Planning and Development Act 2005 section 214(2), (3) or (5).

* *Absolute majority required.*

- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

It is inadequate to quote this reference as the specific authority for the function delegated.

Various other legislative instruments empower or require Council to make delegations. The legislative empowerment is stated within each delegation.

Council expects the CEO to apply the provisions of the Local Government Act s.5.44 and other legislation to delegate powers and duties to other employees, including s.5.44(3) powers and duties which have been delegated to the CEO under s5.42.

Corporate context

The Council is responsible for functions and activities under numerous Acts and other legislation, many of which permit Council to delegate responsibilities and authority to various officers, and to stipulate conditions, standards or methods of control and management.

This Delegations Register has been prepared to complement a range of obligations imposed by legislation including local laws, and various document adopted by Council.

The order of priority for compliance is –

1. Federal and State legislation and regulations,
2. the Local Planning Scheme,
3. a specific resolution of Council,
4. Delegations Register – being specific authorisations resolved by Council, and having a statutory context under the Local Government Act,
5. Local Planning Policy – as it is made under the authority of the Local Planning Scheme, by resolution of Council,
6. Council Policy – being instructions resolved by Council on how particular matters are to be dealt with,
7. Executive Instruction – standing instructions or procedures issued by the CEO,
8. administrative directions or instructions.

Although not decisions of Council, and therefore not a requirement of employee, consideration should be given to the following as being best practice –

- DLGRD Guidelines
- WALGA Councillors Manual, Practice Notes etc.

Unless specifically resolved that a delegation is to be included in the Delegations Register, it is considered that it is for a specific matter, and is not a general or on-going Delegation.

There are some Delegations that have specific legislative provision, and these are noted in the individual Delegation.

Guidelines No.17 – Delegations (Department of Local Government)

The Department of Local Government and Communities has published Guidelines for the formation of Delegations.

The Guidelines outline the concept of “delegation” and “acting through” in parts 3 and 4, particularly in paragraph 13 where it is stated –

... the key difference between a delegation and “acting through” is that a delegate exercises the delegated decision making function in his or her own right. The principal issue is that where a person has no discretion in carrying out a function, then that function may be undertaken through the “acting through” concept. Alternatively, where the decision allows for discretion on the part of the decision maker, then that function needs to be delegated for another person to have that authority.

In effect, “acting through” is an action that could reasonably be expected to be carried out as the result of a decision by Council (e.g. advertising of a tender), or as a function reasonably expected of the position that a person holds.

Not all matters which will be recorded in Policy are “acting through” matters. Similarly, not all “acting through” matters will be listed. Policy describes how that action or some other action is to be carried out.

Making, amending and revoking delegations

Delegations from Council may be made, amended or revoked at any time by an absolute majority of Council.

Where permitted by Council in the delegation, the CEO may authorise a secondary delegation at any time.

Delegations from the CEO to other employees are at the discretion of the CEO and do not require a Council resolution. The CEO can delegate a power or duty, the exercise or discharge of which has been delegated by a local government to the CEO, subject to any conditions imposed by the local government on its delegation to the CEO (s.5.44 (3)).

It is a requirement that the use of all delegated authority is recorded but it is not a requirement to report the use of delegated authority to Council.

Council may impose limitations on secondary delegation or the functions delegated as they see fit. The CEO is not obligated to delegate the whole or any delegation authorised by Council, but may choose not to or place further limitations on the delegation.

However, unless specifically resolved that the authority is to be included in the Delegations Register, the authority to act is for a specific matter, and is not a general or on-going delegation.

Use of delegations

Delegations are made to assist with the smooth operation of the organisations, and allow appropriate levels of authority to determine a wide range of matters.

There is no requirement for any authorised person to use a delegation. It is at the person's discretion whether or not to exercise a delegated authority, and they may refer the matter to a higher level at any time, should it appear in their judgement to be the best option.

Record of use of delegations

The Act requires that the use of each delegation is recorded, but does not require that the use is reported to Council, nor does it specify recording or listing the use in a particular format. Such requirements would result in an unwieldy volume of work that is unproductive.

However, in some instances, the use of the delegation is of sufficient importance that Council should be advised so as to be aware of the impact of the decision made.

In order to reduce the unnecessary paperwork burden as far as is possible, the formal record of use of a delegation is the document that is produced in the normal course of administration of the matter. This document may be a form approving or refusing an application, a letter, batch approval for payment of creditors, file note, email or similar.

All these satisfy the requirement of the State Records Office for recordkeeping.

Review of delegations

A delegation has effect for the period of time specified in the delegation or indefinitely if no period has been specified.

It is a requirement of the Local Government Act s5.18 and s.5.46 (1) that all delegations made under the authority of that Act be reviewed by the delegator at least once in each financial year.

Any decision to amend or revoke a delegation by a local government is to be by an absolute majority s.5.45 (1) (b).

Review of delegations from the Council to committees and the CEO will be carried out before the end of each financial year and preferably in conjunction with the annual review of Council policies.

The CEO will review delegations to employee as required on changeover of employee or change of employee functions and will review all delegations at least once in the financial year in accordance with the legislation.

Primary delegation

The primary delegation recipient includes the person acting in that position should the named recipient be absent from duty. This provision does not apply where the named person is on duty, but not present at the office at the time.

Secondary delegation by CEO

The CEO is expected and encouraged to further delegate to appropriate officers, subject to the limitations imposed by the Local Government Act, other enabling legislation, or the conditions of the delegation made by Council to the CEO –

- s.5.43 – limits on delegations to CEO
- s.5.44 (1) – does not permit the CEO to delegate the capacity to further delegate, and further stipulates that the delegation may only be to employees
 - o no such stipulation is made for delegations under other legislation
- s.5.46 – requires the CEO to review sub-delegations to other employees at least annually

The delegation by the CEO is to be –

- in a signed document to the person,
- the recipient to return a signed acceptance, which is to be placed on file, and
- a copy to be retained by them.

– End