

# REGISTER OF DELEGATIONS

COUNCIL TO CEO  
&  
CEO TO OFFICERS

REVIEW & ADOPTION 23 JUNE 2021

## ARRANGEMENT

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Section 3 - Financial Management

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## HISTORY SUMMARY

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## PART A – PRIMARY DELEGATIONS – to CEO

### Section 1 - Council / Governance

#### 1.1 Appointment of authorised persons

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##### 1.1.1 Local Government Act 1995

###### 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.3.24 - Authorising persons under this subdivision [Part 3, Division 3, Subdivision 2 – Certain provisions about land]
- s.9.10(1) – Appointment of authorised persons

###### *Local Government (Miscellaneous Provisions) Act 1960*

- s.449 Appointing of poundkeepers and rangers

###### *Building Regulations 2012*

- r.70(2) – Appointment of authorised officers (pre-condition of appointment). This is for the purposes of issuing Building Act 2011 Infringement Notices (Building Reg.70(2) prescribes s.9.10(1) of the Local Government Act 1995 as the enabling power.)

###### *Criminal Procedure Act 2004 –*

- s.6 – Regulations to provide for the appointment of authorised persons to issue infringement notices and specified persons permitted to withdraw or extend time to pay infringement notices

###### *Graffiti Vandalism Act 2016*

- s.15 Prescribes Part 9 of the *Local Government Act 1995* as the enabling power

###### CORPORATE CONTEXT

None

###### PRIMARY DELEGATION

CEO

###### SUB-DELEGATION

CEO has discretion in this matter

###### FUNCTION DELEGATED

###### 4. Legislation

The CEO is delegated power to appoint employees as authorised persons for the purposes of performing functions under the following Acts and associated Regulations –

- a) *Local Government Act 1995* and its regulations, 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* (this includes pound keepers and rangers)
- c) *Graffiti Vandalism Act 2016*
- d) *Building Regulations 2012* as a precondition of appointment to issue infringements (The specific powers and duties are confirmed in Part 9 of this Delegation Register)

#### 5. Local Laws

The CEO is delegated power to appoint employees as authorised persons for the purposes of performing functions under the following local laws made under the *Local Government Act 1995* –

- a) *Extractive Industries Local Law 2018*;
- b) *Fencing Local Law 2018*;
- c) *Public Places and Local Government Property Local Law 2018*.

#### 6. Infringement Notices

The CEO is delegated power to appoint employees and other persons as appropriate or necessary with the power to issue infringement notices for the purposes of the *Criminal Procedure Act 2004* s.6(b) in accordance with the *Local Government Act 1995* s.9.10(1), subject to –

- the power to withdraw any infringement notice or to extend the time to pay an infringement notice is restricted to the CEO as the person specified for this function, and may not be sub-delegated,
- where the infringement notice is issued by the CEO, a request to withdraw any infringement notice or extend the time to pay an infringement notice is to be referred to Council.

#### **APPLICATION**

7. Appointments made by the CEO are limited to employees or other suitable persons of the Shire, and are to state the appointment is to the office (position) and when issued will set out clearly:
  - (a) It will be for the duration of employment by the Shire, or
  - (b) It will be for the duration of the contract with the Shire, or
  - (c) It will be for a specified time, event or purpose.
8. Appointment to a position by Council or CEO, in either a substantive or temporary capacity, includes the responsibility 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.
9. All proposals to commence prosecution are to be referred to Council for decision, unless specifically provided for under delegated power 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
Review / adoption	23 June 2021

## REFERENCES

No delegated power for –

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

Authorised persons exercise their power 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 power; or
- By the CEO as a direct power under s.9.10(2) the *Local Government Act 1995*, including:
  - (a) this Act (*Local Government Act 1995*);
  - (b) the *Caravan Parks and Camping Grounds Act 1995*;
  - (c) the *Cat Act 2011*;
  - (d) the *Cemeteries Act 1986*;
  - (e) the *Control of Vehicles (Off-road Areas) Act 1978*;
  - (f) the *Dog Act 1976*;
  - (g) subsidiary legislation (local law) made under an Act referred to in any of paragraphs (a) to (f);
  - (h) a written law prescribed for the purposes of this section.

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.

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 the Shire,
- as an officer of the Shire, 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 power.

As these appointments mean that the person is an officer of the Shire for that specific purpose, they have the statutory power to commit the Shire 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 24 June 2020 –

- Amenity
- Waste
- Health (replacement)

**1.1.2 Building Act 2011****STATUTORY CONTEXT***Building Act 2011*

- s.127(1) & (3) Delegation: special permit authorities and local government

*Building Regulations 2012*

- r.70(2) – Appointment of authorised officers (pre-condition of appointment)

*Criminal Procedure Act 2004 –*

s.6 – Regulations to provide for the appointment of authorised persons to issue infringement notices and specified persons permitted to withdraw or extend time to pay infringement notices

**CORPORATE CONTEXT**

None

**PRIMARY DELEGATION**

CEO

**SUB-DELEGATION**

CEO has discretion in this matter: s.127(6A) Delegation: special permit authorities and local governments (powers of sub-delegation limited to CEO)

**FUNCTION DELEGATED**1. Legislation

1. Authority to appoint an approved officer for the purposes of s.6(a) of the *Criminal Procedure Act 2004*, in accordance with Building Regulation 70(1) and (1A).

*NOTE: Only employees delegated under s 5.44(1) of the Local Government Act 1995 with power under s 9.19 or 9.20 may be appointed as “approved officers”.*

2. Authority to appoint an authorised officer for the purposes of s.6(b) of the *Criminal Procedure Act 2004*, in accordance with Building Regulation 70(2).

*NOTE: Only employees appointed under s 9.10 of the Local Government Act 1995 and authorised for the purpose of performing functions under s 9.16 of that Act may be appointed as “authorised officers” for the purposes of Building Regulation 70(2).*

2. Local Laws

The CEO is delegated power to appoint employees as authorised persons for the purposes of performing functions under the following local laws made under the *Building Act 2011* –

- a) Fencing Local Law 2018,

3. Infringement Notices

The CEO is delegated power to appoint employees and other persons as appropriate or necessary with the power to issue infringement notices for the purposes of the *Criminal Procedure Act 2004* s.6(b) in accordance with the Local Government Act 1995 s.9.10(1), subject to –

- the power to withdraw any infringement notice or to extend the time to pay an infringement notice is restricted to the CEO as the person specified for this function, and may not be sub-delegated,

- where the infringement notice is issued by the CEO, a request to withdraw any infringement notice or extend the time to pay an infringement notice is to be referred to Council.

#### **APPLICATION**

4. Appointments made by the CEO are limited to employees or other suitable persons of the Shire, and are to state the appointment is to the office (position) and when issued will set out clearly:
  - a. It will be for the duration of employment by the Shire, or
  - b. It will be for the duration of the contract with the Shire, or
  - c. It will be for a specified time, event or purpose.
5. Appointment to a position by Council or CEO, in either a substantive or temporary capacity, includes the responsibility 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 provided for under delegated power 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
Review / adoption	23 June 2021

#### **REFERENCES**

- See Delegation 1.1.1

### 1.1.3 Bush Fires Act 1954

#### STATUTORY CONTEXT

*Bush Fires Act 1954 –*

- s.48 Delegation by local government
- s.38 Local Government may appoint bush fire control officer

#### CORPORATE CONTEXT

None

#### PRIMARY DELEGATION

CEO

#### SUB-DELEGATION

Sub-delegation prohibited by s.48(3)

#### FUNCTION DELEGATED

##### 1. Legislation

1. Authority to appoint persons to be Bush Fire Control Officers for the purposes of the Bush Fires Act 1954; and
  - a. Of those Officers, appoint one as the Chief Bush Fire Control Officer and one as the Deputy Chief Bush Fire Control Officer; and
  - b. Determine the respective seniority of the other Bush Fire Officers so appointed [s.38(1)].
2. Authority to issue directions to a Bush Fire Control Officer to burn on or at the margins of a road reserve under the care, control and management of the Shire of Victoria Plains [s.38(5A)]
3. Authority to appoint a Fire Weather Officer, selected from senior Bush Fire Control Officers previously appointed and where more than one Fire Weather Officer is appointed, define a part of the District in which each Fire Weather Officer shall have exclusive right to exercise the powers of s.38(17). [s.38(8) and (9)].
  - a. Authority to appoint deputy Fire Weather Officer/s as considered necessary and where two or more deputies are appointed, determine seniority [s.38(10)].

##### 2. Local Laws

- a. Nil

##### 3. Infringement Notices

- a. Nil

#### APPLICATION

4. Appointments made by the CEO are limited to employees or other suitable persons of the Shire, and are to state the appointment is to the office (position) and when issued will set out clearly:
  - a. It will be for the duration of employment by the Shire, or
  - b. It will be for the duration of the contract with the Shire, or
  - c. It will be for a specified time, event or purpose.
5. Appointment to a position by Council or CEO, in either a substantive or temporary capacity, includes the responsibility 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 provided for under delegated power or by specific decision.

#### **FORMAL RECORD OF USE**

- i) Authorised person's certificate of authorisation
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#### **HISTORY**

Former Delegation	2.6, 2.64
Adopted	18 July 2018
Review / adoption	23 June 2021

#### **1.1.4 Deleted (23 June 2021)**

#### **1.1.5 Deleted (23 June 2021)**

#### **1.1.6 Food Act 2008**

#### **STATUTORY CONTEXT**

*Food Act 2008* –

- s.118 Functions of enforcement agencies and delegation:
  - (2)(b) Enforcement agency may delegate a function conferred on it
  - (3) Delegation subject to conditions [s.119] and guidelines adopted [s.120]
  - (4) Sub-delegation permissible only if expressly provided in regulations
- s.122(1) Appointment of authorised officers
- s.126(6), (7) and (13) Infringement Officers

#### **CORPORATE CONTEXT**

None

#### **PRIMARY DELEGATION**

CEO

#### **CONDITIONS/LIMITATIONS**

In accordance with s.118(3)(b), this delegation is subject to relevant Department of Health CEO Guidelines, as amended from time to time, including but not limited to:

- Appointment of Authorised Officers as Meat Inspectors
- Appointment of Authorised Officers
- Appointment of Authorised Officers – Designated Officers only
- Appointment of Authorised Officers – Appointment of persons to assist with the discharge of duties of an Authorised Officer

**SUB-DELEGATION**

CEO has discretion in this matter subject to the Council Conditions/Limitations

**FUNCTION DELEGATED**1. Legislation

1. Authority to appoint a person to be an authorised officer for the purposes of the Food Act 2008 [s.122(2)].
2. Authority to appoint an Authorised Officer appointed under s.122(2) of this Act or the s.24(1) of the *Public Health Act 2016*, to be a Designated Officer for the purposes of issuing Infringement Notices under the *Food Act 2008* [s.126(13)].
3. Authority to appoint an Authorised Officer to be a Designated Officer (who is prohibited by s.126(13) from also being a Designated Officer for the purpose of issuing infringements), for the purpose of extending the time for payment of modified penalties [s.126(6)] and determining withdrawal of an infringement notice [s.126(7)].

2. Local Laws

- a. Health Local Law 2003
- b. Health Amendment Local Law 2005

3. Infringement Notices

- See Function Delegated

**APPLICATION**

4. Appointments made by the CEO are limited to employees or other suitable persons of the Shire, and are to state the appointment is to the office (position) and when issued will set out clearly:
  - a) It will be for the duration of employment by the Shire, or
  - b) It will be for the duration of the contract with the Shire, or
  - c) It will be for a specified time, event or purpose.
5. Appointment to a position by Council or CEO, in either a substantive or temporary capacity, includes the responsibility 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 provided for under delegated power or by specific decision.

**FORMAL RECORD OF USE**

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**HISTORY**

Former Delegation	2.6, 2.64
Adopted	18 July 2018
Review / adoption	23 June 2021

**REFERENCES**

See Delegation 1.1.1

## 1.1.7 Public Health Act 2016

### 1.1.7.1 Appoint Authorised officer or Approved Officer (Asbestos Regulations)

#### STATUTORY CONTEXT

Health (Asbestos) Regulations 1992 –  
- .15D(7) Infringement Notices

#### CORPORATE CONTEXT

None

#### PRIMARY DELEGATION

CEO

#### CONDITIONS/LIMITATIONS

Subject to each person so appointed being issued with a certificate, badge or identity card identifying the officer as a person authorised to issue infringement notices [r.15D(6)].

#### SUB-DELEGATION

Nil

#### FUNCTION DELEGATED

##### 1. Legislation

Authority to appoint a person or classes of persons as an authorised officer or approved officer for the purposes of the *Criminal Procedure Act 2004* Part 2 [r.15D(5)].

##### 2. Local Laws

- Health Local Law 2003
- Health Amendment Local Law 2005

##### 3. Infringement Notices

- Refer Legislation and Local Laws

#### APPLICATION

4. Appointments made by the CEO are limited to employees or other suitable persons of the Shire, and are to state the appointment is to the office (position) and when issued will set out clearly:
  - (a) It will be for the duration of employment by the Shire, or
  - (b) It will be for the duration of the contract with the Shire, or
  - (c) It will be for a specified time, event or purpose.
5. Appointment to a position by Council or CEO, in either a substantive or temporary capacity, includes the responsibility 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 provided for under delegated power or by specific decision.

## FORMAL RECORD OF USE

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## HISTORY

Former Delegation	2.6, 2.64
Adopted	18 July 2018
Review / adoption	23 June 2021

## REFERENCES

See Delegation 1.1.1

### 1.1.7 Public Health Act 2016

#### 1.1.7.2 Designate Authorised Officers

## STATUTORY CONTEXT

*Public Health Act 2016* –

- s.21 Enforcement agency may delegate
  
- s.24(1) and (3) Designation of authorised officers

## CORPORATE CONTEXT

None

## PRIMARY DELEGATION

CEO

*Or*

Designated Authorised Officer

## CONDITIONS/LIMITATIONS

- a. Subject to each person so appointed being;
  - Appropriately qualified and experienced [s.25(1)(a)]; and
  - Issued with a certificate, badge or identity card identifying the authorised officer [s.30 and 31].
- b. A Register (list) of authorised officers is to be maintained in accordance with s.27.

## SUB-DELEGATION

Nil

## FUNCTION DELEGATED

### 1. Legislation

1. Authority to designate a person or class of persons as authorised officers for the purposes of:
  - i. The Public Health Act 2016 or other specified Act
  - ii. Specified provisions of the *Public Health Act 2016* or
  - iii. Other than the specified provisions of that Act including:

- a. an environmental health officer or environmental health officers as a class; OR
- b. a person who is not an environmental health officer or a class of persons who are not environmental health officers, OR
- c. a mixture of the two. [s.24(1) and (3)].

## 2. Local Laws

- a. Health Local Law 2003
- b. Health Amendment Local Law 2005

## 3. Planning

The CEO is delegated power to appoint employees as authorised persons for the purposes of performing functions under –

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

## 4. Infringement Notices

- Refer Legislation, Local Laws, Planning

## **APPLICATION**

5. Appointments made by the CEO are limited to employees or other suitable persons of the Shire, and are to state the appointment is to the office (position) and when issued will set out clearly:
  - (a) It will be for the duration of employment by the Shire, or
  - (b) It will be for the duration of the contract with the Shire, or
  - (c) It will be for a specified time, event or purpose.
6. Appointment to a position by Council or CEO, in either a substantive or temporary capacity, includes the responsibility 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.
7. All proposals to commence prosecution are to be referred to Council for decision, unless specifically provided for under delegated power 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
Review / adoption	23 June 2021

## **REFERENCES**

See Delegation 1.1.1

### 1.1.8 Local Planning Scheme

#### STATUTORY CONTEXT

*Local Government Act 1995* –

- sections 5.45 and 5.46 apply to a delegation made under this Division as if the delegation were a delegation under Part 5 Division 4 of that Act.

*Land Development Act 2005* –

- Shire of Victoria Plains Deemed Provisions: Part 10 - Enforcement and administration; Division 1 - Powers of local government

#### CORPORATE CONTEXT

None

#### PRIMARY DELEGATION

CEO

#### CONDITIONS/LIMITATIONS

The CEO is delegated power to appoint employees as authorised persons for the purposes of performing functions under –

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

#### SUB-DELEGATION

Permitted as per the Conditions/Limitations

#### FUNCTION DELEGATED

1. Legislation

Part 10 - Enforcement and administration  
Division 1 - Powers of local government

79. Entry and inspection powers

- (1) The local government CEO may, by instrument in writing, designate an officer of the local government as an authorised officer for the purposes of this clause.
- (2) An authorised officer may, for the purpose of monitoring whether the local planning scheme is being complied with, at any reasonable time and with any assistance reasonably required –
  - (a) enter any building or land in the Scheme area; and
  - (b) inspect the building or land and anything in or on the building or land.

82. Delegations by local government

- (1) The local government may, by resolution, delegate to a committee or to the local government CEO the exercise of any of the local government's powers or the discharge of any of the local government's duties under this Scheme other than this power of delegation.
- (2) A resolution referred to in subclause (1) must be by absolute majority of the council of the local government.
- (3) The delegation must be in writing and may be general or as otherwise provided in the instrument of delegation.

### 83. Local Government CEO may delegate powers

- (1) The local government CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO' functions under this Scheme other than this power of delegation.
- (2) A delegation under this clause must be in writing and may be general or as otherwise provided in the instrument of delegation.
- (3) Subject to any conditions imposed by the local government on its delegation to the local government CEO under clause 82, this clause extends to a power or duty the exercise or discharge of which has been delegated by the local government to the CEO under that clause.

### 84. Other matters relevant to delegations under this Division

The Local Government Act 1995 sections 5.45 and 5.46 apply to a delegation made under this Division as if the delegation were a delegation under Part 5 Division 4 of that Act.

#### 2. Local Laws

- a. Nil

#### 3. Infringement Notices

- Subject to the powers listed in Legislation

### **APPLICATION**

4. Appointments made by the CEO are limited to employees or other suitable persons of the Shire, and are to state the appointment is to the office (position) and when issued will set out clearly:
  - (a) It will be for the duration of employment by the Shire, or
  - (b) It will be for the duration of the contract with the Shire, or
  - (c) It will be for a specified time, event or purpose.
5. Appointment to a position by Council or CEO, in either a substantive or temporary capacity, includes the responsibility 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 provided for under delegated power 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
Review / adoption	23 June 2021

### **REFERENCES**

See Delegation 1.1.1

**1.2 Deleted (23 June 2021)**

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## Section 2 - Administration / Organisation

### 2.1 Common Seal – Execution of documents

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#### 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

#### SUB-DELEGATION

N/A

#### FUNCTION DELEGATED

1. Council delegates power 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. Notwithstanding the conditions above on use of the Common Seal, the CEO is delegated power 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. Application of the Common Seal has not effect unless countersigned by the President.

## **FORMAL RECORD OF USE**

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

## **HISTORY**

Former Delegation	2.24
Adopted	18 July 2018
Review / adoption	23 June 2021

## **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 Deleted**

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**2.3 Deleted (23 June 2021)**

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## Section 3 - Financial Management

### **3.1 Deleted**

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### 3.2 Municipal Fund and Trust Fund – Payments from Bank Accounts

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#### 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

#### SUB-DELEGATION

Manager Finance (MF)

#### FUNCTION DELEGATED

1. The CEO is delegated power 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 approved signatures or secure electronic passwords by any two of the following approved persons, jointly –

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

Rates	None	All
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**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
Review / adoption	23 June 2021

**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

#### SUB-DELEGATION

Manager Finance

#### FUNCTION DELEGATED

1. The CEO is delegated power 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

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
Review / adoption	23 June 2021

#### 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

#### SUB-DELEGATION

CEO has discretion to sub-delegate:

- Manager Finance;
- Rates Officer

#### FUNCTION DELEGATED

1. The CEO is delegated power 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
Review / adoption	23 June 2021

#### 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

#### SUB-DELEGATION

Manager Finance

#### FUNCTION DELEGATED

1. The CEO is delegated power 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 power 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 power 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
Review / adoption	23 June 2021

#### REFERENCES

### 3.6 Write off of rate and 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

#### SUB-DELEGATION

CEO has discretion to sub-delegate.

#### FUNCTION DELEGATED

1. The CEO is delegated power 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) rates and services charges, 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,
    - (iii) the value of the debt makes recovery attempts uneconomical.

#### APPLICATION

None

#### 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
- iii) Value of rates and service charges written off to be included in the annual report

#### HISTORY

Former Delegation	2.28
Adopted	18 July 2018
Review / adoption	23June 2021

#### REFERENCES

Where a write-off is intended for rates or service, 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 – power 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
  - o r.11 – when tenders have to be publicly invited and exemptions from inviting
- 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

#### SUB-DELEGATION

Manager Finance

Manager Works and Services

#### FUNCTION DELEGATED

1. The CEO is delegated power, 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 a tender prior to acceptance, 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. Acceptance of tenders and expressions of interest, equal to or above the threshold, are to be by Council, unless prior delegation had been resolved.
- 3. Acceptance and variation of tenders is limited to the CEO only.
- 4. Variation of a tender after acceptance of the tender is not permitted unless provided for in the accepted tender.
- 5. 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
Review / adoption	23 June 2021

#### **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.

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

#### SUB-DELEGATION

Manager Finance

Manager Works and Services

#### FUNCTION DELEGATED

1. The CEO is delegated power 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) the cumulative value remains below the tender threshold;
  - c) 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
  - d) reasonable and unforeseen increase in duration of the contract.

#### APPLICATION

N/A

#### FORMAL RECORD OF USE

- i) File copy of approved variation

#### HISTORY

Adopted	18 July 2018
Review / adoption	23 June 2021

#### 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

#### **SUB-DELEGATION**

Manager Finance

Manager Works and Services

#### **FUNCTION DELEGATED**

1. The CEO is delegated power to dispose of a vehicle considered to be an abandoned vehicle wreck under section 3.40A(3).
2. The CEO is delegated power to dispose of goods confiscated under section 3.43.
3. The CEO is delegated power 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 power to dispose of property under section 3.58.

#### **APPLICATION**

5. This delegated power –
  - 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
Review / adoption	23 June 2021

#### **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

#### SUB-DELEGATION

CEO has discretion to sub-delegate

#### FUNCTION DELEGATED

1. The CEO is delegated power 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
Review / adoption	23 June 2021

#### 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

#### **SUB-DELEGATION**

CEO has discretion to sub-delegate

#### **FUNCTION DELEGATED**

The CEO is delegated power 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
Review / adoption	23 June 2021

**REFERENCES**

### 3.12 Ex-Gratia Payments

---

#### STATUTORY CONTEXT

None

#### CORPORATE CONTEXT

Delegations Register –

- 6.8 – Municipal Fund – Incurring expenditure

#### PRIMARY DELEGATION

CEO

#### SUB-DELEGATION

CEO has discretion to sub-delegate

#### FUNCTION DELEGATED

1. The CEO is delegated power 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
Review / adoption	23 June 2021

#### 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

#### SUB-DELEGATION

Manager Finance

Manager Works and Services

#### FUNCTION DELEGATED

1. The CEO is delegated power 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 power 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

Review / adoption 23 June 2021

#### 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

### SUB-DELEGATION

Manager Finance

Manager Works and Services

Community Safety Officer

Customer Service Officers

### FUNCTION DELEGATED

1. The CEO is delegated power 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) 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
Review / adoption	24 June 2020

### 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

#### SUB-DELEGATION

Manager Finance

Manager Works and Services

Community Safety Officer

Customer Service Officers

#### FUNCTION DELEGATED

The CEO is delegated power 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) 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 power 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

Review / adoption 23 June 2021

#### REFERENCES

## 4.4 Dogs Local Law 2018

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### 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

### SUB-DELEGATION

Manager Finance

Manager Works and Services

Community Safety Officer

Customer Service Officers

### FUNCTION DELEGATED

1. The CEO is delegated power 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) 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
Review / adoption	23 June 2021

## **REFERENCES**

Objections and review are those matters refused under delegated power 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

### SUB-DELEGATION

Manager Finance

Manager Works and Services

Community Safety Officer

### FUNCTION DELEGATED

1. The CEO is delegated power 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 ore vehicle have been, or appear to have been abandoned
  
2. The CEO is delegated power 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
Review / adoption	23 June 2021

### REFERENCES

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

## 4.6 Impounding of cattle etc

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### 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

### SUB-DELEGATION

Manager Finance

Manager Works and Services

Community Safety Officer

### FUNCTION DELEGATED

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

### APPLICATION

1. 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
2. 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

Review / adoption 23 June 2021

### 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

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#### 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

#### SUB-DELEGATION

Not permitted

**FUNCTION DELEGATED**

1. The CEO is delegated power 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 power, 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 power 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 power 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 power, 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
Review / adoption	23 June 2021

**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 Deleted

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### 5.3 Restricted burning periods – Variations

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#### STATUTORY CONTEXT

*Bush Fires Act, 1954* –

- s.18(5) – power to vary restricted burning time
- s.18(5B) – time may not be varied by more than 14 days
- s.18(5C) – compliance requirements as per s.17(8),(9),(10),(11)
- s.48(1) – power to delegate to CEO

#### CORPORATE CONTEXT

None

#### PRIMARY DELEGATION

CEO

#### SUB-DELEGATION

Not permitted

#### FUNCTION DELEGATED

1. The CEO is delegated power to exercise the powers of Council under the Bush Fires Act 1954 s.18(5) variate of restricted burning periods,

#### APPLICATION

2. Prior to advertising the variation, the CEO is to consult with –
  - the Dept of Parks and Wildlife in accordance with s.18(5), and
  - the Chief BFCO if available, or Deputy Chief BFCO if Chief BFCO is unavailable.

#### FORMAL RECORD OF USE

File copy of variations approved

#### HISTORY

Adopted	18 July 2018
Review / adoption	23 June 2021

#### REFERENCES

## Section 6 - Environmental Health / Food

### 6.1 Control of environmental health matters

---

#### STATUTORY CONTEXT

*Public Health Act 2016* –

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

*Health (Miscellaneous Provisions) Act 1911* –

- s.344(2) – regulations or local laws may be made so as to delegate or confer a discretionary authority to specified persons or class of person

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

#### CORPORATE CONTEXT

Delegations Register –

- 18.1 – Food Act 2008

#### PRIMARY DELEGATION

CEO

#### SUB-DELEGATION

Not permitted

#### FUNCTION DELEGATED

1. The CEO is delegated power to exercise and discharge all or any of the powers and functions of the local government with regard to the Public Health Act 2016 and Regulations.
2. The CEO is delegated power 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 (Miscellaneous Provisions) Act 1911.

#### APPLICATION

3. 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
4. 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.

5. This delegation excludes –
  - a) determination of any fee or charge;
  - b) dealing with an objection,
6. 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.
7. 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
Review / adoption	23 June 2021

#### **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 power 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**

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

Refer also Delegation 6.4 Control of food matters

### **6.3 Amenity Local Law 2018**

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

## 6.4 Control of food matters

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### STATUTORY CONTEXT

Food Act 2008 –

- s.118(2)(b) – power 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*
- s.122 – designated officers for infringement notices

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 – Control of environmental health matters
- 6.2 – Health Local Law 2004

### PRIMARY DELEGATION

Chief Executive Officer

### SUB-DELEGATION

Not permitted

### FUNCTION DELEGATED

1. The CEO is delegated power 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

1. Where required by the Act to be carried out by an appropriately qualified person, the CEO may direct the function to be performed, but the discharge of that function is at the discretion of the qualified person.
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) an infringement notice remains unpaid after reasonable attempts to obtain payment.
4. Any prosecution proposed is to be referred to Council for decision to proceed.

#### **FORMAL RECORD OF USE**

File copy of notice, record of inspection etc

#### **HISTORY**

Adopted	18 July 2018
Formerly	Delegation 18.1
Review / adoption	23 June 2021

#### **REFERENCES**

Council may appoint a person as an authorised person who is not an employee.

CEO may appoint an employee as an authorised person under Delegation 1.1

It should be noted that under the Act, the EHO may be required to prosecute, regardless of Council's direction or wishes.

## Section 7 - Community Services

### 7.1 Cemetery Local Law 2018

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#### **STATUTORY CONTEXT**

*Cemeteries Act 1976*

*Shire of Victoria Plains Cemeteries Local Law 2018*

#### **CORPORATE CONTEXT**

None

#### **PRIMARY DELEGATION**

CEO

#### **SUB-DELEGATION**

Manager Finance

Manager Works and Services

Community Safety Officer

#### **FUNCTION DELEGATED**

The CEO is delegated power 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) 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
Review / adoption	23 June 2021

#### **REFERENCES**

Section 8 - Deleted 20 June 2020

## Section 9 - Occupational Safety & Health

This section is currently empty

## Section 10 - Building / Development

### 10.1 Building permits

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#### 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 power 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

##### Delegations Register –

##### 1.1 Appointment of Authorised Persons

- (4) – restrictions on issue, withdrawal and extension of time to pay infringements

#### PRIMARY DELEGATION

CEO

#### SUB-DELEGATION

CEO has discretion to sub-delegate

#### FUNCTION DELEGATED

1. The CEO is delegated power 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.
7. The CEO only is permitted to withdraw or extend time to pay an infringement in accordance with Delegation 1.1 clause 4.

#### **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
Review / adoption	23 June 2021

#### **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.

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

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### 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)
- s.5.44 CEO may delegate some powers and duties to other employees

#### *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

### SUB-DELEGATION

CEO has discretion to sub-delegate

### FUNCTION DELEGATED

1. The CEO is delegated power 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
Review / adoption	23 June 2021

### REFERENCES

## 10.3 Control of planning matters

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### 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

### SUB-DELEGATION

CEO has discretion to sub-delegate

### FUNCTION DELEGATED

1. The CEO is delegated power 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 the local government 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 power to respond to –
  - a) any appeal against a discretionary decision of the local government in accordance with the local government'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
Review / adoption	23 June 2021

**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

### SUB-DELEGATION

To be further reviewed to see if CEO has discretion to sub-delegate

### FUNCTION DELEGATED

1. The CEO is delegated power 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 power 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

Review / adoption 23 June 2021

**REFERENCES**

Refer Planning Policy

## 10.5 Fencing Local Law 2018

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### 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

### SUB-DELEGATION

Community Safety Officer

### FUNCTION DELEGATED

1. The CEO is delegated power 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) 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
Review / adoption	23 June 2021

### REFERENCES

Objections and review are those matters refused under delegated power 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

#### SUB-DELEGATION

To be further reviewed to see if CEO has discretion to sub-delegate

#### FUNCTION DELEGATED

1. The CEO is delegated power 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
Review / adoption	23 June 2021

#### REFERENCES

## **11.2 Discount/waiver/subsidy of facility hire fees**

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### **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

### **SUB-DELEGATION**

Manager Finance

### **FUNCTION DELEGATED**

1. The CEO is delegated power to approve reduction in fees and charges of local government 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
Review / adoption	23 June 2021

### **REFERENCES**

## 11.3 Public Places and Local Government Property Local Law 2018

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### 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

### SUB-DELEGATION

Manager Finance

Manager Works and Services

Community Safety Officer

### FUNCTION DELEGATED

1. The CEO is delegated power 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) carrying out of works in default of a duly served notice;

### APPLICATION

2. The delegation excludes the following clauses of the *Public Places and Local Government Property Local Law 2018* –
  - 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
Review / adoption	23 June 2021

**REFERENCES**

Objections and review are those matters refused under delegated power 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

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#### STATUTORY CONTEXT

*Local Government Act 1995 –*

- s.3.54(1) – Reserves under control of a Local Government
- s.5.44 CEO may delegate some powers and duties to other employees

*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

#### SUB-DELEGATION

Manager Works and Services

#### FUNCTION DELEGATED

1. The CEO is delegated power 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
Review / adoption	23 June 2021

#### 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

### SUB-DELEGATION

Manager Works and Services

### FUNCTION DELEGATED

1. The CEO is delegated power 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
Review / adoption	23 June 2021

### 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

#### SUB-DELEGATION

Manager Works and Services

#### FUNCTION DELEGATED

1. The CEO is delegated power to undertake necessary executive functions on land outside the district that is not property of the local government 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
Review / adoption	23 June 2021

#### 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

### **SUB-DELEGATION**

Manager Works and Services

### **FUNCTION DELEGATED**

1. The CEO is delegated power 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
Review / adoption	23 June 2021

### **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

### SUB-DELEGATION

Manager Works & Services

### FUNCTION DELEGATED

1. The CEO is delegated power to issue notices requiring certain things to be done by the owner or occupier of land.
2. The CEO is delegated power 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 power 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
Review / adoption	23 June 2021

## **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 power 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

### SUB-DELEGATION

Manager Works and Services

### FUNCTION DELEGATED

1. The CEO is delegated power 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
Review / adoption	23 June 2021

### 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

### SUB-DELEGATED

Manager Works and Services

### FUNCTION DELEGATED

1. The CEO is delegated power 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 local government 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
Review / adoption	23 June 2021

### **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

### SUB-DELEGATION

Manager Works and Services

### FUNCTION DELEGATED

1. The CEO is delegated power –
  - 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 power, 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
Review / adoption	23 June 2021

**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

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### 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

### SUB-DELEGATION

Manager Finance

Manager Works and Services

### FUNCTION DELEGATED

1. The CEO is delegated power 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
Review / adoption	23 June 20201

### 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

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#### 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

#### SUB-DELEGATION

Manager Finance

Manager Works and Services

Community Services Officer

#### FUNCTION DELEGATED

1. The CEO is delegated power 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) 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
Review / adoption	24 June 2020

#### 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

### SUB-DELEGATION

Manager Works and Services

### FUNCTION DELEGATED

1. The CEO is delegated power 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
5. Where Council has previously permitted an application, the CEO may issue permission in subsequent consecutive years under identical terms and conditions, without further reference to Council.
6. The following statement is to be included in every approval by the CEO –  
*The approval of the Department of Parks and Wildlife is mandatory, and Shire permission is invalid without the Department's written consent accompanying Shire approval.*

#### **FORMAL RECORD OF USE**

Coy of letter advising decision on file

#### **HISTORY**

Adopted	18 July 2018
Review / adoption	23 June 2021

#### **REFERENCES**

Dept of Biodiversity, Conservation and Attractions –

- may issue a permit for a maximum of one year;
- is to be provided a copy of every approved application.

Section 16 - Unclassified

**16.1 Deleted 23 June 2021**

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## PART B – PRIMARY DELEGATIONS – to other persons

### Section 17 - Fire Control

#### 17.1 Deleted 23 June 2021

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#### 17.2 Deleted 23 June 2021

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#### 17.3 Prohibited burning periods – Variations

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##### STATUTORY CONTEXT

*Bush Fires Act, 1954 –*

- s.17(7) – power 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

##### SUB-DELEGATION

Not permitted

##### FUNCTION DELEGATED

1. The Shire President and Chief Fire Control Officer are delegated power 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. 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
Review / adoption	24 June 2020

##### REFERENCES

Section 18 - Deleted

**18.1 Deleted**

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## 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	24 June 2020	Review and adoption	24 June 2020	All delegations in this Register
4	23 June 2021	Review	23 June 2021	Delegations revoked: 1.1.4, 1.1.5, 1.,2, 2.3, 16.1, 17.1, 17.2  Delegations modified: 1.1.1  Delegations CEO to Officers modified: 3.2, 3.3, 3.4, 3.5, 3.7, 3.8, 3.9, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 7.1, 10.5, 11.2, 11.3, 13.9, 15.1
5				
6				

## APPENDIX One – Advisory Notes to the Delegations Register

### Introduction

This document records the compiled delegations made by Council and the CEO under the authority of the *Local Government Act 1995*. Other legislative instruments may allow for delegations to occur. The latter may be kept in a separate delegations register in future.

This register is the formal written record by which a delegation is made and conferred. Therefore, committees, the CEO, authorised persons and officers are provided with this document as their record of delegation/s made to them in the first instance in hand with an instrument of delegation. See Appendix Two for the instrument of delegation template.

### Definitions

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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 power 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

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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 power 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

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The Council is responsible for functions and activities under numerous Acts and other legislation, many of which permit Council to delegate responsibilities and power to various persons, and to stipulate conditions, standards or methods of control and management. Note: there are more than 170 Acts/Regulations that put a responsibility on local government.

This Delegations Register has been prepared to complement a range of obligations imposed by legislation including local laws, and various documents 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 or those powers on-delegated by the CEO, 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 (In particular Guideline 17)
- WALGA Delegation Templates, Councillors Manual, Practice Notes etc.

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)

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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**

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Delegations from Council under the Local Government Act, may be made, amended or revoked at any time by an absolute majority of Council.

Delegations from the CEO to other employees are at the discretion of the CEO and do not require a Council resolution.

The CEO’s power to sub-delegate the exercise of a power or duty (delegated to the CEO by council) will be subject to any conditions imposed by council on its delegation to the CEO (s. 5.44(3) Local Government Act).

The council may not otherwise interfere with a valid delegation made by the CEO.

Section 5.44 of the Local Government Act permits the CEO to delegate to other employees the exercise of any of the CEO’s powers or duties under the Act. As the Act has given the authority to the CEO, council has no authority to remove or alter delegations made by the CEO.

### **Use of delegations**

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Delegations are made to assist with the smooth operation of the organisations, and allow appropriate levels of power 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 power, 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**

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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

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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 power of that Act be reviewed by the delegator at least once in each financial year. This means:

- Those delegations made by Council to the CEO;
- Those delegations made by the CEO to an employee. Note the delegations from the CEO to an employee are in two forms:
  - The CEO may sub-delegate a delegation from the Council to another employee subject to any restrictions or limitations imposed by the Council, the CEO or other legislation;
  - The CEO may sub-delegate a specific power attributed directly to the CEO under the Local Government Act to another employee subject to any restrictions or limitations imposed by the Local Government Act (or another legislation if it stipulates this is applicable).

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.

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.

Note that the Interpretation Act allows for a delegation to be made to an office and not a named person. This allows for the smooth transition of applying delegations without the need for formal approval by the council or the CEO to revoke, amend or allocate such a delegation.

## Primary delegation

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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.

The Delegation and conditions etc, are resolved by Council. Secondary delegations by the CEO within the permissions approved by Council are at the discretion of the CEO, who may place additional conditions or limitations on the secondary delegation. All procedural or reference information may be amended or updated by the CEO.

## Sub delegation by CEO

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The CEO is expected and encouraged to further delegate to appropriate persons, 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
  - 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

*– End*

APPENDIX TWO – Instrument of Delegation

***Local Government Act 1995***

**Section XX**

**INSTRUMENT OF DELEGATION OF RESPONSIBLE AUTHORITY  
POWERS, DISCRETIONS AND FUNCTIONS**

I, [first name, surname], Chief Executive Officer of the Shire of Victoria Plains and the responsible authority for the administration and enforcement of the Act/Regulation/Local Law/Scheme/Policy as set out in section X of that Act/Regulation/Local Law/Scheme/Policy:

1. delegate to those persons specified in Column 3 of Schedule 1 (and anyone acting in those roles from time to time), the powers, discretions and functions as a responsible authority under those provisions of the Act/Regulation/Local Law/Scheme/Policy specified in Column 1 of Schedule 1 (as described in Column 2 of Schedule 1), to the extent and subject to any special conditions specified in Column 4 of Schedule 1; and
2. provide that the persons referenced in Column 3 of Schedule 1 are defined in Schedule 2.

First Name, Surname  
Chief Executive Officer

Date:

**Schedule 1****POWERS, DISCRETIONS AND FUNCTIONS**

<b>Column 1</b> <b>Section</b>	<b>Column 2</b> <b>Description of the powers, discretions and functions delegated</b>	<b>Column 3</b> <b>Delegate</b>	<b>Column 4</b> <b>Conditions and limitations</b>
50	amend an application in accordance with a request from the applicant under section 50(1), or refuse to amend an application if it is considered that the amendment is so substantial that a new application for a permit should be made		
50A(1)	with the agreement of the applicant and after giving notice to the owner, make any amendments to an application that it thinks necessary		
50A(3)	require the applicant to notify the owner of an amendment to an application made under section 50A(1), and to make a declaration that notice has been given		
51	make a copy of every application and the prescribed information supplied in respect of the application available for inspection		



## APPENDIX THREE – Suggested Template as the Basis of Future Review

## Council to CEO

## Appoint Authorised Persons

<b>Delegator:</b> <i>Power / Duty assigned in legislation to:</i>	Local Government
<b>Express Power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Local Government Act 1995:</i> s.5.42 Delegation of some powers or duties to the CEO s.5.43 Limitations on delegations to the CEO
<b>Express Power or Duty Delegated:</b>	<i>Local Government Act 1995:</i> s.3.24 Authorising persons under this subdivision [Part 3, Division 3, Subdivision 2 – Certain provisions about land] s.9.10 Appointment of authorised persons
<b>Delegate:</b>	<b>Chief Executive Officer</b>
<b>Function:</b> <i>This is a precis only. Delegates must act with full understanding of the legislation and conditions relevant to this delegation.</i>	<ol style="list-style-type: none"> <li>1. Authority to appoint persons or classes of persons as authorised persons for the purpose of fulfilling prescribed functions within the <a href="#">Local Government Act 1995</a> and its subsidiary legislation, including Local Government Act Regulations, the <i>Local Government (Miscellaneous Provisions) Act 1960</i> and Local Laws made under the Local Government Act. [s.3.24 and s.9.10].</li> <li>2. Authority to appoint authorised persons for the purposes of section 9.16 of the <i>Local Government Act 1995</i>, <u>as a precondition</u> for appointment as authorised officers in accordance with Regulation 70(2) of the <a href="#">Building Regulations 2012</a> and section 6(b) of the <i>Criminal Procedure Act 2004</i>.</li> <li>(3. Authority to appoint authorised person for the purposes of section 15 the <a href="#">Graffiti Vandalism Act 2016</a>, which prescribes Part 9 of the <i>Local Government Act 1995</i> as the enabling power.</li> </ol>
<b>Council Conditions on this Delegation:</b>	<b><i>GUIDANCE NOTE:</i></b> {Delete prior to finalising the Register for Council adoption} <i>The following Conditions are examples only – modify or delete to meet your Local Government’s requirements.</i> <ol style="list-style-type: none"> <li>a. A register of Authorised Persons is to be maintained as a Local Government Record.</li> <li>b. Only persons who are appropriately qualified and trained may be appointed as Authorised persons.</li> <li>c. &lt;&lt;Council has discretion to determine any conditions / limitations applicable to the use of delegated powers or duties&gt;&gt;</li> </ol>
<b>Express Power to Sub-Delegate:</b>	<i>Local Government Act 1995:</i> s.5.44 CEO may delegate some powers and duties to other employees

<b>Sub-Delegate/s:</b> <i>Appointed by CEO</i>	<<list position titles>>
<b>CEO Conditions on this Sub-Delegation:</b> <i>Conditions on the original delegation also apply to the sub-delegations.</i>	<<The CEO has discretion to determine any conditions applicable to use of sub-delegated powers or duties>>

<b>Compliance Links:</b>	<<insert / list other legislation, Local Laws, policies and procedures
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	which must be considered when making decisions under this delegation>>
Record Keeping:	Instruments or Certificates of Authorisation – Copies are to be retained on the Authorised Person’s personnel file. A record of each Authorisation is to be retained in the Authorised Persons Register, retained as a Local Government Record.

**Version Control:**

1	<<insert reference / detail identifying decision to adopt, amend the delegation>>
2	
3	

**CEO to Employees**

**Determine if an Emergency for Emergency Powers of Entry**

<b>Delegator:</b> <i>Power / Duty assigned in legislation to:</i>	Chief Executive Officer
<b>Express Power to Delegate:</b> <i>Power that enables a delegation to be made</i>	Local Government Act 1995: s.5.44 CEO may delegate some powers and duties to other employees
<b>Express Power or Duty Delegated:</b>	Local Government Act 1995: s.3.34(2) Entry in emergency
<b>Delegate/s:</b>	<<insert position title>>
<b>Function:</b> <i>This is a precis only. Delegates must act with full understanding of the legislation and conditions relevant to this delegation.</i>	1. Authority to determine on behalf of the CEO that an emergency exists for the purposes of performing local government functions [s.3.34(2)].
<b>CEO Conditions on this Delegation:</b>	a. <<The CEO has discretion to determine any conditions applicable to use of delegated CEO powers or duties>>
<b>Express Power to Sub-Delegate:</b>	Nil.

Compliance Links:	<<insert / list other legislation, Local Laws, policies and procedures which must be considered when making decisions under this delegation>>
Record Keeping:	<<Detail how records of decisions are to be kept by delegates>>

**Version Control:**

1	<<insert reference / detail identifying decision to adopt, amend the delegation>>
2	
3	