

16 Delegations made under the *Planning and Development Act 2005*

Section 5.42 of the Local Government Act provides that:

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) ...
 - (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.

Sections 214 (2), (3) and (5) of the *Planning and Development Act 2005* provide that:

214. Illegal development, responsible authority's powers as to

- (1) ...
- (2) If a development, or any part of a development, is undertaken in contravention of a planning scheme or an interim development order or in contravention of planning control area requirements, the responsible authority may give a written direction to the owner or any other person undertaking that development to stop, and not recommence, the development or that part of the development that is undertaken in contravention of the planning scheme, interim development order or planning control area requirements.
- (3) If a development has been undertaken in contravention of a planning scheme or interim development order or in contravention of planning control area requirements, the responsible authority may give a written direction to the owner or any other person who undertook the development —
 - (a) to remove, pull down, take up, or alter the development; and
 - (b) to restore the land as nearly as practicable to its condition immediately before the development started, to the satisfaction of the responsible authority.
- (4) The responsible authority may give directions under subsections (2) and (3)(a) and (b) in respect of the same development and in the same instrument.
- (5) If it appears to a responsible authority that delay in the execution of any work to be executed under a planning scheme or interim development order would prejudice the effective operation of the planning scheme or interim development order, the responsible authority may give a written direction to the person whose duty it is to execute the work to execute that work.
- (6) ...

Regulations 81-84 of the *Planning and Development (Local Planning Schemes) Regulations 2015* provide that:

81. Terms used

In this Division —

absolute majority has the meaning given in the *Local Government Act 1995* section 1.4;
committee means a committee established under the *Local Government Act 1995* section 5.8.

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's 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.

(*Underlining added - the effect of this is that a power can only be delegated if it exists in a local government's local planning scheme (LPS) in the first instance).

16.1 Delegations by Council to the CEO**16.1.1 Determination of Various Applications for Development Approval under the City's Local Planning Scheme***Delegation from Council to CEO*

Head of power to Delegate: <i>Power that enables a delegation to be made</i>	Regulations 81-84 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>
Express Power or Duty Delegated:	<p>Determination of an application for development approval under clause 68 of Schedule 2 of the <i>Planning and Development (Local Planning Scheme) Regulations</i>; subclause 29(2) of the <i>Metropolitan Region Scheme</i>; and subsection 31(2) of the <i>State Administrative Tribunal Act 2004</i>.</p> <p>Advertising of applications and proposals under subclauses 18(4), 23(2) and 34(4) of the City of Vincent Local Planning Scheme No. 2; Clauses 18, 34, 50 and 64 and subclauses 66(1) and 77(3) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>; and subclause 30(1) of the <i>Metropolitan Region Scheme</i>.</p> <p>Determining accompanying material requirements for applications for development approval, including refusal to accept an application, under Clauses 11, 63 and 85 of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</p> <p>Amending or cancelling development approval, including waiving or varying a requirement in Part 8 or 9 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> for minor amendments and temporary works or use, under Clause 77 and subclauses 61(1)(f) and 61(2)(d) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</p> <p>The Chief Executive Officer is delegated the power to:</p> <ul style="list-style-type: none"> • Exercise discretion, determine and apply conditions to all applications for development approval made under the City of Vincent Local Planning Scheme No. 2 and/or Metropolitan Region Scheme; • Exercise discretion and affirm, vary or set aside a decision made on an application for development approval following a request by the State Administrative Tribunal for a reconsideration to be made under section 31 of the <i>State Administrative Tribunal Act 2004</i>; • Determine the requirement for and extent of advertising of applications and proposals made under the City of Vincent Local Planning Scheme No. 2 and <i>Metropolitan Region Scheme</i>; • Determine the type and extent of accompanying material required to be lodged with applications and proposals made under the City of Vincent Local Planning Scheme No. 2 and <i>Metropolitan Region Scheme</i> and whether an application should be accepted or rejected;

	<ul style="list-style-type: none"> • Exercise discretion, determine and apply conditions to all applications to amend or cancel a development approval previously determined under delegated authority; • Exercise discretion, determine and apply conditions to all applications made to extend the period within which a development approved must be substantially commenced; • Exercise discretion, determine and apply conditions to all applications made under regulation 17A of the Planning and Development (Development Assessment Panels) Regulations 2011 to amend or cancel a development approval made by a Development Assessment Panel; and • Waive or vary a requirement in Part 8 or Part 9 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> in respect of an application where that application is considered to relate to a minor amendment to the development approval.
<p>Function: <i>This is a precis only. Delegates must act with full understanding of the legislation and conditions relevant to this delegation.</i></p>	<p>The determination of applications for development approval made under City of Vincent Local Planning Scheme No. 2 and the <i>Metropolitan Region Scheme</i>.</p> <p>Reconsidering a decision when invited to do so by the State Administrative Tribunal under section 31 of the <i>State Administrative Tribunal Act 2004</i>.</p> <p>Determining the requirement for and extent of advertising of applications and proposals made under the City of Vincent Local Planning Scheme No. 2 and <i>Metropolitan Region Scheme</i>.</p> <p>Determining the type and extent of accompanying material required to be lodged with applications and proposals made under the City of Vincent Local Planning Scheme No. 2 and <i>Metropolitan Region Scheme</i> and whether an application should be accepted or not;</p> <p>The determination of applications to amend or cancel a development approval made under delegated authority or to extend the period within which the development approved must be substantially commenced.</p> <p>Waiving or varying a requirement in Part 8 or Part 9 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> in respect of an application where that application is considered to relate to a minor amendment to the development approval.</p>
<p>Council Conditions on this Delegation:</p>	<ol style="list-style-type: none"> 1. This delegation does not extend to applications for development approval that propose to introduce one of the following land uses listed under Local Planning Scheme No. 2: <ol style="list-style-type: none"> a. Cinema/theatre; b. Club premises; c. Corrective institution; d. Exhibition centre; e. Hospital; f. Hotel; g. Motel; h. Nightclub; i. Place of worship;

	<ul style="list-style-type: none"> j. Reception centre; k. Residential building; l. Serviced apartment; m. Small bar; n. Tavern; <ol style="list-style-type: none"> 2. This delegation does not extend to applications for development approval that propose a height of three storeys or more and do not meet the applicable Building Height deemed-to-comply standard or Acceptable Outcomes set by State Planning Policy 7.3 3.4: Residential Design Codes; 3. This delegation does not extend to applications for development approval that propose a new non-conforming use that is proposed to replace and effect the discontinuance of an existing non-conforming use; 4. This delegation does not extend to applications for telecommunications infrastructure that have received one or more objections; 5. This delegation does not extend to the approval of applications for a billboard sign or directional sign; 6. This delegation does not extend to applications for development approval that propose the demolition of buildings identified in the Heritage List, within a Heritage Area, or on the State Register of Heritage Places; 7. This delegation does not extend to applications for development approval that propose a greater shortfall than five car parking bays under the minimum parking requirements of Table 1 of Local Planning Policy 7.7.1 Non-Residential Development Parking Requirements; 8. Cash-in-lieu of parking or a reciprocal parking arrangement is required for applications for development approval that propose a parking shortfall of 6 bays or more under the minimum parking requirements of Table 1 of Local Planning Policy 7.7.1 Non-Residential Development Parking Requirements; 9. This delegation does not extend to applications for development approval for land use that is not listed in Table 1 of Local Planning Policy 7.7.1 Non-Residential Development Parking Requirements; 10. This delegation does not extend to applications for development approval that have received more than five (5) objections during the City's community consultation period unless the application is for a billboard sign or directional sign; 11. Any application for development approval within a design guideline area, character retention area or heritage area adopted by Council through a local planning policy is to be advertised to all owners and occupiers within that area by the City during the community consultation period, with the exception of the William Street Design Guideline Area and Structures Above or Adjacent to the Graham Farmer Freeway Tunnel Northbridge Design Guideline Area, which shall be advertised in accordance with Policy 4.1.05 - Community Consultation;
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	<p>12. This delegation does not extend to applications to amend a development approval that was determined by Council, unless the amendments proposed;</p> <ul style="list-style-type: none"> a. meet all equivalent acceptable or deemed-to-comply standards set out in the City's Local Planning Policies; b. meet all of the deemed-to-comply standards and element objectives and acceptable outcomes set out in State Planning Policy 7.3 Residential Design Codes; and c. would not change the impact of any condition imposed relates to an application previously determined by a Development Assessment Panel and the application to amend the development approval is made under regulation 17A of the Planning and Development (Development Assessment Panels) Regulations 2014; <p>13. This delegation does not extend to requests from the State Administrative Tribunal for a reconsideration of a Council decision under section 31 of the <i>State Administrative Tribunal Act 2004</i>; and</p> <p>14. This delegation does not extend to applications for development approval that propose more than three (3) 'Dwellings (Grouped)' or 'Dwellings (Multiple)' and do not meet the deemed-to-comply standards or acceptable outcomes in relation to car parking of State Planning Policy 7.3 3.4 Residential Design Codes.</p>
Express Power to Sub-Delegate:	

Notes:
 Previously delegation 6.2 of the City's 2018/19 register.