

<b>12.1 ANNUAL REVIEW OF COUNCIL DELEGATIONS</b>
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**Attachments:** 1. Register of Council Delegations - Marked up for 2022 Review

**RECOMMENDATION:**

**That Council:**

1. **NOTES** the annual review of its delegations in accordance with Section 5.46(2) of the *Local Government Act 1995*, as outlined in this report; and
2. **DELEGATES BY ABSOLUTE MAJORITY** the local government functions listed in the City's Council Delegated Authority Register included as Attachment 1.

**PURPOSE OF REPORT:**

To consider amendments to the City's Delegated Authority Register (Register), following a review as required under the *Local Government Act 1995* (Act).

**BACKGROUND:**

All delegations made under the Act must be made by absolute majority and recorded in a register. Sections 5.18 and 5.46 of the Act require that at least once every financial year, delegations are to be reviewed by the delegator for those delegations under the Act, but also presents an opportunity to review delegations made under other legislation. Council undertook its last annual review of delegations in May 2021 and endorsed the proposed outcome of that review at its 22 June 2021 meeting.

The purpose of delegating power is to enable routine decision making to be undertaken in a cost effective and efficient manner, or rapidly where a time imperative may be involved.

Council is required to make decisions of high importance, some of which require absolute majority decisions and cannot be delegated.

Council also has discretionary functions that involve making routine decisions that are high frequency and low risk. It is appropriate for Council to delegate these functions to the Chief Executive Officer (CEO). The Register of Delegations sets out the powers and functions delegated from Council to the CEO.

**DETAILS:**

The annual review of delegations by Council is a statutory requirement and is also necessary to ensure the delegations remain consistent with legislation and applicable to the City's current operational needs.

In March 2022, Administration undertook a review of the City's delegations. A 'tracked changes' version of the Council Delegations Register is at **Attachment 1**.

As a result of this review the following changes to the Council delegations are proposed.

Delegation	Action	Comments
1.1 – The difference between a delegation, 'acting through' another person and an 'authorised person'	Update reference to legislation	Following amendments to the Local Government Act the CEO now has direct power to appoint authorised officers.

Delegation	Action	Comments
1.2 – The Interpretation Act 1984 – principles of delegation	Add reference to section 49 of the <i>Interpretation Act 1984</i>	Delegations made by the City are to the holder of an office. Section 49 of the <i>Interpretation Act 1984</i> provides clarification in regard to the powers and duties that may be exercised by an officer acting in another role.
1.4 – Exercising delegated authority	Strengthen guidance notes to include the importance of ethical and accountable decision making	Delegates are accountable for all decisions that they make and must ensure that those decisions are made with the highest of ethical and professional standards.
2.1.1 – Delegation to COVID-19 Relief and Recovery Committee	Delete delegation to the COVID-19 Relief and Recovery Committee	This delegation is no longer required.
2.1.2 – Delegation to Behaviour Complaints Committee	Renumbered to 2.1.1	2.1.1 – Delegation to COVID-19 Relief and Recovery Committee is proposed to be deleted. Delegation to the behaviour Complaints Committee requires renumbering accordingly.
2.2.1 – Appointment of an acting CEO	Amend Council's condition on this delegation to enable the CEO to appoint an acting CEO for planned and unplanned leave for a period of up to 6 weeks.	<p>At its 8 February Council meeting, Council approved the new Temporary Employment or Appointment of CEO Policy for the purpose of community consultation.</p> <p>The Policy will permit the CEO to appoint an acting CEO for planned and unplanned leave for a period of up to 6 weeks.</p> <p>Extending the permissible appointment period will enable contingency arrangements to be made in the event of unforeseen absence and will align with industry standard.</p> <p>Outcome of advertising and proposed adoption of this policy is included as an item on this agenda.</p>
2.2.17 – Disposing of property	Add the words 'other than land' to condition d	Included for clarification.
2.2.28 – Power to invest and manage investments	Amend condition d to extend the review and reporting requirements from 1 to 3 years	<p>In February 2022 Council reviewed and adopted its updated <a href="#">Investment Policy</a> (Policy). A detailed set of procedures supports the operation of the Policy.</p> <p>In accordance with condition a, delegated decision making must comply with the Policy and related procedures.</p> <p>The City's investment portfolio is relatively stable with no make major changes from year to year therefore it would be appropriate to amend condition d from 1 to 3 years to be undertaken as part of the <i>Local Government (Audit) Regulations 1996, r.17</i> review.</p>
2.2.32 – Appointment of Authorised Persons	Delete delegation from Council to CEO	Following amendments to the <i>Local Government Act</i> the CEO now has direct power to appoint authorised officers. Local Government Legislation Amendment Act 2019. Sub-delegation of section 9.10(2) will be added under clause 2.4 of the Register.

Delegation	Action	Comments
2.2.32 – Appointment of Community Directors – Leederville Gardens	New delegation proposed	<p>The <a href="#">Leederville Gardens Inc. Rules of Association</a> incorporates a strategic role for the City in respect to the Board of Management (the Board). The City is required to run a search and selection process for each community Director position and to appoint/re-appoint members to the Board.</p> <p>It is proposed that Council delegate this function to the CEO to enable the selection process to be undertaken and appointments to be made in a timely manner.</p>
4.7 – Private pool barrier – alternative and performance solutions	Update the delegation title to read <i>4.7 – Private pool barrier – performance solutions</i>	Existing wording does not contain all the criteria of regulation 51 of the <i>Building Regulations 2012</i> in relation to approval of performance solutions for private pool barriers by a permit authority (i.e., the City).
4.8 – Smoke alarms – alternative solutions	Update the delegation title to read <i>4.8 – Smoke alarms – performance solutions</i>	<p>Should be noted that the term “alternative solution” is no longer used in the Building Code of Australia.</p> <p>The <i>Building Regulations 2012</i> is to be reviewed and updated.</p>
16.1.1 – Determination of various applications for development approval under the City’s Local Planning Scheme	<p><u>Condition 1</u></p> <p>Addition to Condition 1n.</p>	<p><u>Condition 1</u></p> <p>The City is receiving an increased number of applications for changes of use for Small Bars to Tavern, to allow these businesses to sell alcohol for patrons to take off-site. To support these businesses, it is recommended that Council extend delegation to enable Administration to determine applications for Taverns which have 120 patrons or less. This is consistent with the approval process for a Small Bar, which permits a maximum of 120 patrons. Any application would still be subject to community consultation. Council determination would still be required if more than five objections were received.</p>
	<p><u>Condition 6</u></p> <p>Remove conditions regarding works to heritage-listed properties. Works provisions are proposed to be included as a separate, new Condition 7.</p> <p>Broaden demolition provisions to note that the condition does not extend to applications if the structure/building does not contribute towards the heritage significance of the heritage place.</p>	<p><u>Condition 6</u></p> <p>Separating conditions regarding the demolition and works on heritage-listed properties provides clarification.</p> <p>The heritage listing for the place, including the Statement of Significance and Physical Description would be used to determine whether the structure contributes towards the heritage significance.</p>
	<p><u>New Condition 7</u></p> <p>Broaden works provisions to heritage-listed properties to clarify the types of works that would not be subject to the condition.</p>	<p><u>New Condition 7</u></p> <p>These types of works are considered minor and would not detrimentally impact the streetscape or the heritage fabric of the property.</p>

Delegation	Action	Comments
	<u>Condition 8</u> Delete	<u>Condition 8</u> On 14 September 2021 Council adopted its Community and Stakeholder Engagement Policy (Policy). Section 2.1 of the Policy prescribes the advertising requirement for heritage development.
	<u>Condition 9c</u> Addition to Condition 9c.	<u>Condition 9c</u> Included for clarification.

**CONSULTATION/ADVERTISING:**

Nil.

**LEGAL/POLICY:**

Section 5.46(2) of the Act requires Council to review of its delegations at least once every financial year.

**RISK MANAGEMENT IMPLICATIONS**

Low: There is low risk in Council approving the new delegations due to the conditions on the delegations which define clear authorities and accountabilities for City officers.

**STRATEGIC IMPLICATIONS:**

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

Innovative and Accountable

*We are open and accountable to an engaged community.*

*Our resources and assets are planned and managed in an efficient and sustainable manner.*

**SUSTAINABILITY IMPLICATIONS:**

This does not contribute to any specific sustainability outcomes of the *City's Sustainable Environment Strategy 2019-2024*.

**PUBLIC HEALTH IMPLICATIONS:**

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025*.

**FINANCIAL/BUDGET IMPLICATIONS:**

Nil.



**CITY OF VINCENT**

**REGISTER OF DELEGATIONS, AUTHORISATIONS  
AND APPOINTMENTS**

**Delegations from Council to the CEO**  
**Delegations from the CEO to other employees**  
**Authorisations by the CEO of other employees**  
**Appointments by the CEO of other employees**

**Proposed changes are in Red**

Reviewed by Administration ~~22 April 2021~~ 24 March 2022  
Reviewed by Council ~~22 June 2021~~ 17 May 2022

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## 1 Introduction

This document is a register of the delegations, authorisations and appointments of the City of Vincent.

Some legislation confers powers on local governments to allow Council to delegate power to a committee of the local government, the local government's CEO or in limited circumstances other persons or employees.

The purpose of delegating a power is to allow matters that are routine, may have a time constraint or can change rapidly to be dealt with efficiently.

The extent of delegation, conditions that may be applied, records that must be kept and the review and amendment processes depend on the various heads of power in the Acts themselves.

Western Australian legislation may be accessed online at the State Law Publisher's website at <https://www.legislation.wa.gov.au/>.

This register includes:

- Delegations from Council to the CEO;

### 1.1 The difference between a delegation, 'acting through' another person and an 'authorised person'

#### **A Delegation**

Simply put, a delegation is the process prescribed in legislation for assigning authority to exercise an express power or duty from the delegate to another person (named by position title or office) or an entity (the delegate).

Some legislation confers a power directly on a person. A person appointed to a statutory office does not need any further delegation or authorisation in order to fulfil those assigned powers and duties. For example:

- The *Local Government Act 1995* lists statutory offices including Mayor, CEO and Returning Officer;
- The *Public Health Act 2016* assigns duties to Environmental Health Officers;
- The *Building Act 2011* assigns duties to Building Surveyors; and
- The *Local Government Act 1995*, *Cat Act 2011* and *Graffiti Vandalism Act 2016* also allow a local government CEO to delegate any powers or duties assigned to their office.

#### **Acting through another person**

Employees do not always need delegations or sub delegations to carry out their tasks and functions on behalf of the local government. Basically a function may be undertaken through the "acting through" concept where a person has no discretion in carrying out that function – the outcome will not be substantially different regardless of the circumstances or who exercised the power.

Section 5.16(4) of the *Local Government Act 1995* provides that:

*(4) Nothing in this section is to be read as preventing a local government from performing any of its functions by acting through another person.*

Similarly, s5.45(2) Act provides that:

*Nothing in this Division (Division 4 - Local Government Employees) is to be read as preventing –*

- a local government from performing any of its functions by acting through a person other than the Chief Executive Officer; or*
- a Chief Executive Officer from performing any of his or her functions by acting through another person.*

The key difference between a delegation and acting through is that a delegate exercises a decision making function in his or her own right. For example, an employee may pay an account or issue an approval if directed to do so by another employee who has the authority to make such a decision and chooses to "act through" another employee.

#### **Authorised persons**

Authorised persons (and who under some Acts do not necessarily have to be employees of the local government but often are) are given powers to do certain things under an Act, Regulation or local law; usually to issue an infringement, make inquiries, enter on to property, issue a notice or to enforce a provision.

In accordance with section 9.10(2) of the Act the CEO may appoint authorised persons for the purposes of 1 or more of the following laws:

1. Local Government Act 1995;
2. Caravan Parks and Camping Grounds Act 1995;
3. Cat Act 2011;
4. Cemeteries Act 1986;
5. Control of Vehicles (Off-road Areas) Act 1978;
6. Dog Act 1976; and
7. subsidiary legislation made under an Act referred above; and written law prescribed for the purposes of section 9.10 of the Local Government Act 1995.

The power to appoint an Authorised Officer may reside with the Council or the CEO depending on the legislation. Note that a council can delegate authority to its CEO to appoint authorised persons under ~~the Local Government Act 1995 and other~~ legislation; in some Acts an employee or other person holding an office are directly authorised under that Act itself. Provisions vary by Act.

An authorised person, once appointed, is responsible for fulfilling the powers and duties assigned under law to an authorised person, which may be specified or limited in an Act or Regulation, or the certificate of authorisation. An authorised person cannot delegate their powers and duties to another person.

Who may appoint authorised persons depends on the enabling legislation. ~~Section 9.10 of the Local Government Act 1995 provides that:~~

- ~~(1) — The local government may, in writing, appoint persons or classes of persons to be authorised for the purposes of performing particular functions.~~
- ~~(2) — The local government is to issue to each person so authorised a certificate stating that the person is so authorised, and the person is to produce the certificate whenever required to do so by a person who has been or is about to be affected by any exercise of authority by the authorised person.~~

Authorised persons may or may not have delegated authority to undertake certain actions – the delegation of authority is a separate matter, although they are included in this register for ease of reference and review.

#### **1.2 The Interpretation Act 1984 – principles of delegation**

Section 59 of the *Interpretation Act 1984* prescribes the framework for how delegated authority must be structured in Western Australian law.

In summary:

1. The written law (head of power) must include an express power to delegate, which specifically enables a person (the delegator) to make a delegation;
2. In that same written law, there must be an express power or duty conferred or imposed on the delegator and it must be capable of being delegated. This means that:
  - a. The power or duty proposed for delegation must be written in the same law as the express power to delegate; and

- b. That written law must not prohibit the power or duty from being delegated or contain limitations or conditions, which the proposed delegation exceeds.
3. The power to delegate cannot be delegated;
4. Delegations must be in writing (the instrument of delegation); and
5. Delegations must be advised to the delegate in writing.

Note that nothing prevents the delegating body or person from taking back a delegation or sub delegation, or actually making the relevant decision on a particular issue. Similarly, a delegator does not have to exercise the delegation and may refer the decision back to the delegator.

Similarly, section 59(2) provides that:

*The delegation of a power shall be deemed to include the delegation of any duty incidental thereto or connected therewith and the delegation of a duty shall be deemed to include the delegation of any power incidental thereto or connected therewith.*

#### *Delegation by office or by name*

Section 53 of the *Interpretation Act 1984* provides that a delegation can be to the holder of an office (whether acting or permanent) or by naming an individual:

*Where a written law confers a power or imposes a duty upon a person to appoint or designate a person to —*

- (a) perform any function; or
- (b) be a member of any board, tribunal, commission, committee, council, or other similar body, whether corporate or unincorporate; or
- (c) be or do any other thing,

*that person may make the appointment or designation either by appointing or designating a person by name or by appointing or designating the holder of an office by the term designating his office; and any such appointment or designation of the holder of an office shall be construed as the appointment or designation of the person from time to time holding, acting in, or lawfully performing the functions of the office.*

Delegations made by the City are to the holder of an office.

[Section 49 of the Interpretation Act 1984 provides that the officer's powers and duties may be exercised by acting officer](#)

[Where a written law confers a power or imposes a duty on the holder of a public office as such, the power may be exercised and the duty shall be performed by the person for the time being lawfully holding, acting in, or performing the functions of the office.](#)

### **1.3 How this document is structured**

Matters that apply generally to delegations and authorisations are set out in this introduction. As there can be differences in legislation, delegations that may be made under various Acts are set out by Act, rather than by employee or organisational structure.

While generally prohibited, some legislation does allow sub-delegation (mainly the Local Government Act) from Council to the CEO, and from the CEO to other employees. Delegations from the CEO to other employees and appointments of authorised persons are listed in other documents.

Each section of this document is structured as follows:

- Guidance notes, including any particular requirements of the enabling legislation of unusual features;
- Delegations from Council to a committee (if allowed by the enabling legislation and if the City has any committees established to deal with the power to be exercised);
- Delegations from the CEO to an employee (or other person if allowed by the enabling legislation); and
- A list of persons authorised to perform certain functions under the enabling legislation.

The individual delegations are set out as follows.

**Heading**  
*A snapshot of what it is that is delegated*

**Delegation from Council to CEO**  
*Most legislation refers to a 'local government'. This heading makes it clear that in this case, this is a delegation from Council to the CEO. Under most Acts, Council can only delegate to the CEO.*

<b>Delegator:</b> <i>Power / Duty assigned in legislation to:</i> <b>Express Power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>'Local Government' will be the entity in most cases.</i>  <i>This sets out the head of power in the Act or regulation that allows a power to be delegated; eg</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>The section or part of the Act that is being delegated; eg:</i>  <i>Local Government Act 1995:</i> s.5.50 Making payments to employees in addition to contract or award.
<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>	<i>A summary of what is delegated; eg:</i>  The Chief Executive Officer is delegated the power to approve of making payment to employees in addition to their contract or Award.
<b>Council Conditions on this Delegation:</b>	<i>This sets out any conditions or limitations; e.g.:</i>  Payments must be in accordance with Council policy 1234
<b>Express Power to Sub-Delegate:</b>	<i>Some legislation allows sub-delegation from the CEO to another employee and some does not.</i>  <i>Local Government Act 1995:</i> s.5.44 CEO may delegate some powers and duties to other employees

**Delegation by CEO to other employees**  
*Where subdelegation is allowed, this section sets out who it is to, and what additional conditions might apply.*

<b>Sub-Delegate/s:</b> <i>Appointed by CEO</i>	
<b>CEO Conditions on this Sub-Delegation:</b> <i>Conditions on the original delegation also apply to the sub-delegations.</i>	

**Notes**  
*This sets out any matters that might relate to the power delegated not covered above, links to policies, local laws or administrative procedures that might apply.*

#### 1.4 Exercising delegated authority

##### **Overall requirements**

Before using a delegated authority a delegate must familiarise themselves with the legislative framework, conditions and limitations relevant to the statutory power or duty that informs the decisions they will make.

The delegate must also consider and apply local laws, Council decisions, policy, procedures or standards that are relevant to the decisions they are empowered to make.

##### **Conflicts of interest**

The City requires persons to whom authority has been delegated to deal appropriately with conflicts of interest.

Section 5.71 of the *Local Government Act 1995* provides that employees must disclose interests relating to delegated functions:

##### **5.71. Employees to disclose interests relating to delegated functions**

*If, under Division 4, an employee has been delegated a power or duty relating to a matter and the employee has an interest in the matter, the employee must not exercise the power or discharge the duty and —*

- (a) *in the case of the CEO, must disclose to the mayor or president the nature of the interest as soon as practicable after becoming aware that he or she has the interest in the matter; and*
- (b) *in the case of any other employee, must disclose to the CEO the nature of the interest as soon as practicable after becoming aware that he or she has the interest in the matter.*

*Penalty: \$10 000 or imprisonment for 2 years.*

A conflict of interest arises where a personal interest is in conflict with the public interest. Delegates must disclose any conflict of interest which may require them to be removed from the decision-making process.

[A delegate must ensure that there is no actual \(or perceived\) conflict of interest between their personal interests and the impartial fulfilment of their professional duties.](#)

A delegate may also refer the decision making back to the delegator, where they consider there is a risk or sensitivity, which makes it more appropriate for the delegator to make that decision.

The City's Code of Conduct also applies.

##### **Requirement for annual return and disclosures by delegate**

An employee to whom a duty or power is delegated under the *Local Government Act 1995* is considered a 'designated employee' under section 5.74(1) of the Act and is required to complete a primary and annual return each year.

##### **Keeping a record of decisions made under delegated authority**

In accordance with Section 5.46(3) of the *Local Government Act 1995*, a person to whom a power or duty is delegated is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

Regulation 19 of the Local Government (Administration) Regulations 1996 requires a delegate to keep a written record of:

- a. how the person exercised the power or discharged the duty;
- b. when the person exercised the power or discharged the duty; and
- c. the person or classes of persons, other than council or committee members or employees of the local government, directly affected by the exercise of the power or the discharge of the duty.

The City has decided that this applies regardless of the enabling legislation.

A central record of decisions made under a delegation is unnecessary but a record must be kept by the person exercising the power.

A record made that complies with the City's record keeping policy (e.g. a letter or email sent in accordance with that policy) is sufficient.

***Ethical and accountable decision making***

***Delegates are accountable for all decisions that they make and must ensure that those decisions are made with the highest of ethical and professional standards.***

## 2 Delegations made under the *Local Government Act 1995*

The *Local Government Act 1995* (the Act) is the legislation most widely used for delegations by local governments.

The Act confers some powers directly on a CEO, and s 5.44 sets out the duties of a CEO.

This part of the register deals with delegations from Council under the Act. Under this Act, Council may delegate authority to a committee or to the CEO.

Council may place restrictions or conditions on the exercise of that power or duty such as a financial amount, to take into account a policy or direction from Council, or something particular only to the matter delegated.

### Delegation from Council to a committee

Section 5.16 of the *Local Government Act 1995* allows Council to delegate by an absolute majority vote some powers and duties to certain committees. This is to be in writing and may be general or as otherwise provided in the instrument of delegation.

Subject to sections 58 and 59 of the *Interpretation Act 1984* —

- (a) A delegation made to a committee under s5.16 has effect for the period of time specified in the delegation or if no period has been specified, indefinitely; and
- (b) Any decision to amend or revoke a delegation under this section is to be by an absolute majority.

There are limits on delegation of powers and duties to certain committees set out in s5.17:

- (1) *A local government can delegate —*
  - (a) *to a committee comprising council members only, any of the council's powers or duties under this Act except —*
    - (i) *any power or duty that requires a decision of an absolute majority or a 75% majority of the local government; and*
    - (ii) *any other power or duty that is prescribed;*
  - and*
  - (b) *to a committee comprising council members and employees, any of the local government's powers or duties that can be delegated to the CEO under Division 4; and*
  - (c) *to a committee referred to in section 5.9(2)(c), (d) or (e)\*, any of the local government's powers or duties that are necessary or convenient for the proper management of —*
    - (i) *the local government's property; or*
    - (ii) *an event in which the local government is involved.*
- (2) *A local government cannot delegate any of its powers or duties to a committee referred to in section 5.9(2)(f)\*\*.*

\* A committee comprising:

- (c) council members, employees and other persons; or
- (d) council members and other persons; or
- (e) employees and other persons.

\*\* A committee comprising of other persons only.

### Delegation from Council to the CEO

Section 5.42 allows Council to delegate to the Chief Executive Officer the exercise of any of its powers or the discharge of any of its duties under the Act.

It cannot delegate to any other person or employee unless expressly provided for in legislation.

All delegations made by Council to the CEO must be by an absolute majority decision, and must be reviewed at least annually.

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Restrictions on delegations from the Council to the CEO

Section 5.43 of the Act restricts what can be delegated by Council to the CEO:

- A power under sections 214(2), (3) or (5) of the *Planning and Development Act 2005* (which relate to a local governments powers to deal with Illegal development);
- Any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;
- Accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;
- Appointing an auditor;
- Acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;
- Any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100 (which relate to fees for elected members, an allowance for the Deputy Mayor, meeting fees and reimbursement of expenses, and payments for certain committee members) ;
- Borrowing money on behalf of the local government;
- Hearing or determining an objection of a kind referred to in section 9.5 (which relates to an objection or appeal in response to a decision to grant a person an authorisation under Part 3 or under any local law or regulation that is to operate as if it were a local law; or to renew, vary, or cancel an authorisation that a person has under any of those provisions);
- The power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government;
- Any power or duty that requires the approval of the Minister or the Governor;
- Such other powers or duties as may be prescribed under the Local Government (Administration) Regulations 1996, and which are under :
  - section 7.12A(2), (3)(a) or (4) of the Act (which relate to duties of local government with respect to audits, determine if any matters raised by the audit report, require action to be taken by the local government, prepare a report addressing any matters identified as significant by the auditor in the audit report and advise the Minister); and
  - Regulations 18C and 18D which relate to the selection and appointment process for CEOs and the local government's duties in relation to a performance review of CEO.
- Regulation 6 of the Local Government (Financial Management) Regulations 1996 prohibits the delegation of the duty to conduct an internal audit to an employee (including a CEO) who has been delegated the duty of maintaining the local government's day to day accounts or financial management operations.

Delegation from the CEO to another employee

Under s5.44 the CEO may sub-delegate any of these powers and duties functions to another employee, other than the power of delegation itself.

Those delegations are also subject to any restrictions or conditions that the Council may have placed on the delegation to the CEO. The CEO may add further conditions or restrictions, and which also must be reviewed annually.

Parameters are summarised below, as are the delegations themselves. More detail about the particular sections of the Act that apply is also made under each heading.

## 2.1 Delegations from Council to committees

### 2.1.1—Delegation to COVID-19 Relief and Recovery Committee

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Local Government Act 1995:</i> s.5-16 and 5.17-Delegation of some powers and duties to certain committees  <i>Regulations 81-84 of the Planning and Development (Local Planning Schemes) Regulations 2015</i>
<b>Express Power or Duty Delegated:</b>	<i>Local Government Act 1995:</i> s3.57- Tenders for providing goods or services s3.58-Disposing of property s6.12- Power to defer, grant discounts, waive or write off debts  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> .
<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.— Power to accept tenders over \$250,000 in accordance with section 3.57 of the Local Government Act 1995 and regulation 18 of the Local Government (Functions and General) Regulations 1996; 2.— Power to dispose of property in accordance with section 3.58 of the <i>Local Government Act 1995</i> ; 3.— Power to waive fees or grant concessions or write off debts over \$5,000 in accordance with section 6.12 of the Local Government Act 1995; 4.— Power to determine 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> , where that power is not delegated to the Chief Executive Officer; and 5.— Power to determine applications to amend a development approval previously determined under delegated authority, where that power is not delegated to the Chief Executive Officer.
<b>Council Conditions on this Delegation:</b>	Decisions are to be made in accordance with the <u><a href="#">Covid-19 Relief and Recovery Committee Terms of Reference</a></u> . Minutes of all Committee Meetings will be presented to Council as part of the InfoBulletin.
<b>Express Power to Sub-Delegate:</b>	Nil.

### 2.1.12 Delegation to Behaviour Complaints Committee

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Local Government Act 1995:</i> s.5.16 and 5.17 Delegation of some powers and duties to certain committees
<b>Express Power or Duty Delegated:</b>	<i>Local Government (Model Code of Conduct) Regulations 2021:</i> Clause 12 Dealing with a complaint Clause 13 Dismissal of complaint
<b>Delegate:</b>	Behaviour Complaints Committee
<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 make a finding as to whether an alleged breach the subject of a complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur (<i>MCC.cl.12(1) and (3)</i>). In making any finding the Committee must also determine reasons for the finding (<i>MCC.cl.12(7)</i>).</li> <li>2. Where a finding is made that a breach has occurred, authority to: <ol style="list-style-type: none"> <li>a. take no further action (<i>MCC.cl.12(4(a))</i>); or</li> <li>b. prepare and implement a plan to address the behaviour of the person to whom the complaint relates (<i>MCC.cl.12(4)(b), (5) and (6)</i>).</li> </ol> </li> <li>3. Authority to dismiss a complaint and if dismissed, the Committee must also determine reasons for the dismissal (<i>MCC.cl.13(1) and (2)</i>).</li> </ol>
<b>Council Conditions on this Delegation:</b>	<ol style="list-style-type: none"> <li>a. The Committee will make decisions in accordance with the principles and specified requirements established in the Code of Conduct Behaviour Complaints Management Policy.</li> <li>b. That part of a Committee meeting which deals with a Complaint will be held behind closed doors in accordance with s.5.23(2)(b) of the Act.</li> <li>c. The Committee is prohibited from exercising this Delegation where a Committee Member in attendance at a Committee meeting is either the Complainant or Respondent to the Complaint subject of a Committee agenda item.</li> <li>d. In the event of (c) above, the Committee may resolve to defer consideration to a future meeting at which the conflicted Committee Member is absent.</li> </ol>
<b>Express Power to Sub-Delegate:</b>	Nil.
<b>Compliance Links:</b>	Code of Conduct for Council Members, Committee Members and Candidates; Code of Conduct Behaviour Complaints Management Policy; and Behaviour Complaints Committee Terms of Reference
<b>Record Keeping:</b>	Committee Minutes shall record the details of each decision made under this delegation in accordance with the requirements of <i>Local Government (Administration) Regulation 19</i> .

**Notes:**

The purpose of Condition (c) and (d) is to require that a Committee Member who is identified as either the Complainant or Respondent is required to recuse themselves by notifying the Presiding Member of their intention to be an apology for the meeting at which the Complaint is an agenda item.

## 2.2 Delegations from Council to the CEO

### 2.2.1 Appointment of an acting CEO

#### *Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	Section 5.42 <i>Local Government Act 1995</i>
<b>Express Power or Duty Delegated:</b>	Power to appoint an Acting Chief Executive Officer under s5.36(1)(a).
<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>	Power to appoint an Acting Chief Executive Officer under s5.36(1)(a).
<b>Council Conditions on this Delegation:</b>	<ul style="list-style-type: none"> <li>• The Employee being designated a "Senior Employee", as prescribed by the Local Government Act;</li> <li>• Appointments being no longer than <del>30 days</del> <b>6 weeks</b>;</li> <li>• Council Members to be advised of acting Chief Executive Officer;</li> <li>• The acting role to be rotated between the Executive Directors of the City where practicable.</li> </ul>
<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

2.2.2 Serving of notices requiring certain things to be done by owner or occupier of land

*Delegation from Council to CEO*

<p><b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i></p>	<p><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</p>
<p><b>Express Power or Duty Delegated:</b></p>	<p><i>Local Government Act 1995:</i> Sections 3.25(1) and 3.26</p>
<p><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></p>	<p>The Chief Executive Officer is delegated the power to:</p> <ol style="list-style-type: none"> <li>1) Issue a notice in writing relating to the land requiring the person to do anything specified in Schedule 3.1, Division 1 or for the purpose of remedying or mitigating the effects of any offence prescribed in Schedule 3.1, Division 2; and</li> <li>2) do anything that he considers necessary to achieve, so far as is practicable, the purpose for which the notice was given, including recovering the cost of anything it does as a debt due from the person who failed to comply with the notice.</li> </ol>
<p><b>Council Conditions on this Delegation:</b></p>	
<p><b>Express Power to Sub-Delegate:</b></p>	<p><i>Local Government Act 1995:</i> s.5.44 CEO may delegate some powers and duties to other employees</p>

## 2.2.3 Performing particular things on land which is not local government property

*Delegation from Council to CEO*

<b>Head of 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> Section 3.27  A local government may perform its general functions of the things prescribed in Schedule 3.2 of the Act on land, even though the land is not local government property and the local government does not have consent to do it.
<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>	The Chief Executive Officer is delegated the power to carry out things prescribed in Schedule 3.2 even though the land is not local government property and the local government does not have consent to do it.
<b>Council Conditions on this Delegation:</b>	Nil.
<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

2.2.4 Powers of entry

*Delegation from Council to CEO*

<b>Head of 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.3.28 When this Subdivision applies s.3.32 Notice of entry s.3.33 Entry under warrant s.3.34 Entry in an emergency s.3.36 Opening fences
<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 exercise powers of enter to enter onto land to perform any of the local Government functions under this Act, other than entry under a Local Law [s.3.28].</li> <li>2. Authority to give notice of entry [s.3.32].</li> <li>3. Authority to seek and execute an entry under warrant [s.3.33].</li> <li>4. Authority to execute entry in an emergency, using such force as is reasonable [s.3.34(1) and (3)].</li> <li>5. Authority to give notice and effect entry by opening a fence [s.3.36].</li> </ol>
<b>Council Conditions on this Delegation:</b>	Nil.
<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

2.2.5 Declare vehicle is abandoned vehicle wreck

*Delegation from Council to CEO*

<b>Head of 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.3.40A(4) Abandoned vehicle wreck may be taken
<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>	Declare that an impounded vehicle is an abandoned vehicle wreck [s.3.40A(4)].
<b>Council Conditions on this Delegation:</b>	The declaration is to be recorded in the appropriate record to meet legislative requirements.
<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

2.2.6 Confiscated or uncollected goods

Guidance note

Section.3.47 of the Act specifies that s.3.58 applies to disposal of goods under s.3.47.

Note however, that the s.3.57 tender requirements do not apply to either the disposal of confiscated or uncollected goods OR the Disposal of Property under s.3.58. (s3.57 applies only to "contracts... under which another person is to supply goods or service") .

*Delegation from Council to CEO*

<b>Head of 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.3.46 Goods May be withheld until costs paid s.3.47 Confiscated or uncollected goods, disposal of s.3.48 Impounding expenses, recovery of
<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 refuse to allow goods impounded under s.3.39 or 3.40A to be collected until the costs of removing, impounding and keeping them have been paid to the local government. [s.3.46]</li> <li>2. Authority to sell or otherwise dispose of confiscated or uncollected goods or vehicles that have been ordered to be confiscated under s.3.43 [s.3.47].</li> <li>3. Authority to recover expenses incurred for removing, impounding, and disposing of confiscated or uncollected goods [s.3.48].</li> </ol>
<b>Council Conditions on this Delegation:</b>	Disposal of confiscated or uncollected goods, including abandoned vehicles, with a market value less than \$20,000 may, in accordance with Functions and General Regulation 30, be disposed of by any means considered to provide best value, provided the process is transparent and accountable.
<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

2.2.7 Disposal of sick or injured animals

Note that this delegation relates only to animals not covered by the *Dog Act 1976* or *Cat Act 2011*.

*Delegation from Council to CEO*

<p><b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i></p>	<p><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</p>
<p><b>Express Power or Duty Delegated:</b></p>	<p><i>Local Government Act 1995:</i> s.3.47A Sick or injured animals, disposal of s.3.48 Impounding expenses, recovery of</p>
<p><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></p>	<ol style="list-style-type: none"> <li>1. Authority to determine when an impounded animal is ill or injured, that treating it is not practicable, and to humanely destroy the animal and dispose of the carcass [s.3.47A(1)].</li> <li>2. Authority to recover expenses incurred for removing, impounding, and disposing of confiscated or uncollected goods [s.3.48].</li> </ol>
<p><b>Council Conditions on this Delegation:</b></p>	<p>Delegation only to be used where the Delegate's reasonable efforts to identify and contact an owner have failed.</p>
<p><b>Express Power to Sub-Delegate:</b></p>	<p><i>Local Government Act 1995:</i> s.5.44 CEO may delegate some powers and duties to other employees</p>

2.2.8 Closing thoroughfares to vehicles

Delegation from Council to CEO

<b>Head of 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.3.50 Closing certain thoroughfares to vehicles s.3.50A Partial closure of thoroughfare for repairs or maintenance s.3.51 Affected owners to be notified of certain proposals
<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 close a thoroughfare (wholly or partially) to vehicles or particular classes of vehicles for a period not exceeding 4-weeks [s.3.50(1)].</li> <li>2. Authority to determine to close a thoroughfare for a period exceeding 4-weeks and before doing so, to: <ul style="list-style-type: none"> <li>• give; public notice, written notice to the Commissioner of Main Roads and written notice to prescribed persons and persons that own prescribed land; and</li> <li>• consider submissions relevant to the road closure/s proposed [s.3.50(1a), (2) and (4)].</li> </ul> </li> <li>3. Authority to revoke an order to close a thoroughfare [s.3.50(6)].</li> <li>4. Authority to partially and temporarily close a thoroughfare without public notice for repairs or maintenance, where it is unlikely to have significant adverse effect on users of the thoroughfare [s.3.50A]</li> <li>5. Before doing anything to which section 3.51 applies, take action to notify affected owners and give public notice that allows reasonable time for submissions to be made and consider any submissions made before determining to fix or alter the level or alignment of a thoroughfare or draining water from a thoroughfare to private land [s3.51].</li> </ol>
<b>Council Conditions on this Delegation:</b>	<ol style="list-style-type: none"> <li>a. If, under s.3.50(1), a thoroughfare is closed without giving local public notice, local public notice is to be given as soon as practicable after the thoroughfare is closed [s.3.50(8)].</li> <li>b. Maintain access to adjoining land [s.3.52(3)]</li> <li>c. Permanent closures to be referred to Council for determination.</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

## 2.2.9 Control reserves and certain unvested facilities

*Delegation from Council to CEO*

<b>Head of 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.3.53(3) Control of certain unvested facilities s.3.54(1) Reserves under control of local government
<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 agree the method for control and management of an unvested facility which is partially within 2 or more local government districts. [s.3.53(3)].</li> <li>2. Authority to do anything for the purpose of controlling and managing land under the control and management of the City that the City could do under s.5 of the <a href="#">Parks and Reserves Act 1895</a>. [s.3.54(1)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	Limited to matters where the financial implications do not exceed a relevant and current budget allocation and which do not create a financial liability in future budgets.
<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

## 2.2.10 Obstruction of footpaths and thoroughfares

*Delegation from Council to CEO*

<b>Head of 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 (Uniform Local Provisions) Regulations 1996:</i> r.5(2) Interfering with, or taking from, local government land r.6 Obstruction of public thoroughfare by things placed and left - Sch. 9.1 cl. 3(1)(a) r.7A Obstruction of public thoroughfare by fallen things – Sch.9.1 cl.3(1)(b) r.7 Encroaching on public thoroughfare – Sch.9.1. cl.3(2)
<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 determine, by written notice served on a person who is carrying out plastering, painting or decorating operations (the work) over or near a footpath on land that is local government property, to require the person to cover the footpath during the period specified in the notice so as to: <ol style="list-style-type: none"> <li>a. prevent damage to the footpath; or</li> <li>b. prevent inconvenience to the public or danger from falling materials [ULP r.5(2)].</li> </ol> </li> <li>2. Authority to provide permission including imposing appropriate conditions or to refuse to provide permission, for a person to place on a specified part of a public thoroughfare one or more specified things that may obstruct the public thoroughfare. [ULP r.6(2) and (4)].</li> <li>3. Authority to renew permission to obstruct a thoroughfare and to vary any condition imposed on the permission effective at the time written notice is given to the person to whom permission is granted [ULP r.6(6)].</li> <li>4. Authority to require an owner or occupier of land to remove any thing that has fallen from the land or from anything on the land, which is obstructing a public thoroughfare [ULP r.7A].</li> <li>5. Authority to require an owner occupier of land to remove any part of a structure, tree or plant that is encroaching, without lawful authority on a public thoroughfare [ULP r.7].</li> </ol>
<b>Council Conditions on this Delegation:</b>	<ol style="list-style-type: none"> <li>a. Actions under this Delegation must comply with procedural requirements detailed in <a href="#">the <i>Local Government (Uniform Local Provisions) Regulations 1996</i></a>.</li> <li>b. Permission may only be granted where, the proponent has: <ol style="list-style-type: none"> <li>i. Where appropriate, obtained written permission from each owner of adjoining or adjacent property which may be impacted by the proposed obstruction.</li> <li>ii. Provided a bond, sufficient to the value of works that may be required if the proponent does not satisfactorily make good public assets damaged by the obstruction at the completion of works.</li> <li>iii. Provided evidence of sufficient Public Liability Insurance.</li> <li>iv. Provided pedestrian and traffic management plans which are sufficient for the protection of public safety and amenity.</li> </ol> </li> </ol>

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**Express Power to Sub-Delegate:**

*Local Government Act 1995:*  
s.5.44 CEO may delegate some powers and duties to other employees

## 2.2.11 Public thoroughfares – dangerous excavations

*Delegation from Council to CEO*

<b>Head of 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 (Uniform Local Provisions) Regulations 1996:</i> r.11(1), (4), (6) & (8) Dangerous excavation in or near public thoroughfare – Sch.9.1 cl.6
<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 determine if an excavation in or on land adjoining a public thoroughfare is dangerous and take action to fill it in or fence it or request the owner / occupier in writing to fill in or securely fence the excavation [ULP r.11(1)].</li> <li>2. Authority to determine to give permission or refuse to give permission to make or make and leave an excavation in a public thoroughfare or land adjoining a public thoroughfare [ULP r.11(4)].</li> <li>3. Authority to impose conditions on granting permission [ULP r.11(6)].</li> <li>4. Authority to renew a permission granted or vary at any time, any condition imposed on a permission granted [ULP r.11(8)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	<ol style="list-style-type: none"> <li>a. Actions under this Delegation must comply with procedural requirements detailed in the <a href="#">Local Government (Uniform Local Provisions) Regulations 1996</a>.</li> <li>b. Permission may only be granted where, the proponent has: <ol style="list-style-type: none"> <li>i. Where appropriate, obtained written permission from or entered into a legal agreement with, each owner of adjoining or adjacent property which may be impacted by the proposed works.</li> <li>ii. Provided a bond, sufficient to the value of works that may be required if the proponent does not satisfactorily make good the public assets at the completion of works.</li> <li>iii. Provided evidence of sufficient Public Liability Insurance.</li> <li>iv. Provided pedestrian and traffic management plans which are sufficient for the protection of public safety and amenity.</li> </ol> </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

## 2.2.12 Crossovers - construction, repair and removal

*Delegation from Council to CEO*

<b>Head of 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 (Uniform Local Provisions) Regulations 1996:</i> r.12(1) Crossing from public thoroughfare to private land or private thoroughfare – Sch.9.1 cl.7(2) r.13(1) Requirement to construct or repair crossing – Sch.9.1 cl.7(3)
<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 approve or refuse to approve, applications for the construction of a crossing giving access from a public thoroughfare to land or private thoroughfare serving land [ULP r.12(1)].</li> <li>2. Authority to determine the specifications for construction of crossings to the satisfaction of the Local Government [ULP r.12(1)(a)].</li> <li>3. Authority to give notice to an owner or occupier of land requiring the person to construct or repair a crossing [ULP r.13(1)].</li> <li>4. Authority to initiate works to construct a crossing where the person fails to comply with a notice requiring them to construct or repair the crossing and recover 50% of the cost of doing so as a debt due from the person [ULP r.13(2)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	a. Actions under this Delegation must comply with procedural requirements detailed in the <a href="#">Local Government (Uniform Local Provisions) Regulations 1996</a> .
<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

2.2.13 Private works on, over or under public places

*Delegation from Council to CEO*

<b>Head of 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> r.17 Private works on, over, or under public places – Sch.9.1 cl.8
<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 grant permission or refuse permission to construct a specified thing on, over, or under a specified public thoroughfare or public place that is local government property [ULP r.17(3)].</li> <li>2. Authority to impose conditions on permission including those prescribed in r.17(5) and (6) [ULP r.17(5)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	<ol style="list-style-type: none"> <li>a. Actions under this Delegation must comply with procedural requirements detailed in the <a href="#">Local Government (Uniform Local Provisions) Regulations 1996</a>.</li> <li>b. Permission may only be granted where, the proponent has:                     <ol style="list-style-type: none"> <li>i. Where appropriate, obtained written permission from or entered into a legal agreement with, each owner of adjoining or adjacent property which may be impacted by the proposed private works.</li> <li>ii. Provided a bond, sufficient to the value of works that may be required if the proponent does not satisfactorily make good the public place at the completion of works.</li> <li>iii. Provided evidence of sufficient Public Liability Insurance.</li> <li>iv. Provided pedestrian and traffic management plans which are sufficient for the protection of public safety and amenity.</li> </ol> </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

## 2.2.14 Expressions of interest for goods and services

*Delegation from Council to CEO*

<b>Head of 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.3.57 Tenders for providing goods or services <i>Local Government (Functions and General) Regulations 1996:</i> r.21 Limiting who can tender, procedure for r.23 Rejecting and accepting expressions of interest to be acceptable tenderer
<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 when to seek Expressions of Interest and to invite Expressions of Interest for the supply of goods or services [F&G r.21]. 2. Authority to consider Expressions of Interest which have not been rejected and determine those which are capable of satisfactorily providing the goods or services, for listing as acceptable tenderers [F&G r.23].
<b>Council Conditions on this Delegation:</b>	Nil.
<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

2.2.15 Tenders for goods and services

Guidance notes:

*Contract Variations*

The Local Government ([Functions and General \) Regulations](#) (reg 21A) enables contract variations applying only to contracts formed with a successful tenderer. A delegation of reg 21A is required for the CEO (or any sub-delegate) to vary a tender contract.

Making, varying or discharging contracts formed through mechanisms other than a tender, are not subject to reg 21A. Section.9.49B9 of the Act applies to non-tender contracts and requires that any person making decisions to make, vary or discharge a contract must do so under the authority of the Local Government. Meaning there must either be an express Council resolution enabling the CEO to administer the contract OR the contract is operational in nature and may be administered by the CEO (or officers by Acting Through).

*Contract Management*

In addition, the CEO may assign operational responsibilities for contract administration via position descriptions or documented procedures.

*Delegation from Council to CEO*

<b>Head of 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.3.57 Tenders for providing goods or services <i>Local Government (Functions and General) Regulations 1996:</i> r.11 When tenders have to be publicly invited r.13 Requirements when local government invites tenders though not required to do so r.14 Publicly inviting tenders, requirements for r.18 Rejecting and accepting tenders r.20 Variation of requirements before entry into contract r.21A Varying a contract for the supply of goods or services
<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 call tenders [F&amp;G r.11(1)].</li> <li>2. Authority to, because of the unique nature of the goods or services or for any other reason it is unlikely that there is more than one supplier, determine a sole supplier arrangement [F&amp;G r.11(f)].</li> <li>3. Authority to invite tenders although not required to do so [F&amp;G r.13].</li> <li>4. Authority to determine in writing, before tenders are called, the criteria for acceptance of tenders [F&amp;G r.14(2a)].</li> <li>5. Authority to determine the information that is to be disclosed to those interested in submitting a tender [F&amp;G r.14(4)(a)].</li> <li>6. Authority to vary tender information after public notice of invitation to tender and before the close of tenders, taking reasonable steps to ensure each person who has sought copies of the tender information is provided notice of the variation [F&amp;G r.14(5)].</li> <li>7. Authority to evaluate tenders, by written evaluation, and decide which is the most advantageous [F&amp;G r.18(4)] and either:</li> </ol>

	<ul style="list-style-type: none"> <li>i. Accept, or reject tenders under a value of \$250,000 in accordance with the requirements of the Functions and General Regulations [F&amp;G r.18(2) and (4)]; or</li> <li>ii. Recommend to council acceptance or rejection of all other tenders.</li> </ul> <p>8. Authority to determine that a variation proposed is minor in context of the total goods or services sought through the invitation to tender, and to then negotiate minor variations with the successful tenderer before entering into a contract [F&amp;G r.20(1) and (3)].</p> <p>9. Authority to seek clarification from tenderers in relation to information contained in their tender submission [F&amp;G r.18(4a)].</p> <p>10. Authority to decline any tender [F&amp;G r.18(5)].</p> <p>11. If the chosen tenderer is unable or unwilling to form a contract OR the minor variation cannot be agreed with the successful tenderer, so that the tenderer ceases to be the chosen tenderer, authority to choose the next most advantageous tender to accept [F&amp;G r.20(2)]</p> <p>12. Authority to:</p> <ul style="list-style-type: none"> <li>i. Vary a contract that has been entered into with a successful tenderer, provided the variation/s do not change the scope of the original contract or increase the contract value beyond 10%.</li> <li>ii. Exercise an extension option that was included in the original tender specification and contract in accordance with r.11(2)(j). [F&amp;G r.21A].</li> </ul> <p>13. Authority to accept another tender where within 6-months of either accepting a tender, a contract has not been entered into OR the successful tenderer agrees to terminate the contract [F&amp;G r.18(6) &amp; (7)].</p>
<p><b>Council Conditions on this Delegation:</b></p>	<p>The invitation to tender is to be entered into the Tender Register in the prescribed manner.</p> <p>Selection criteria must be recorded in the appropriate record and comply with the requirements of the Regulations.</p> <p>Details of the minor variations must be recorded in the appropriate record.</p> <p>Details of the calling of expressions of interest must be recorded in the appropriate record and in the Tender Register.</p> <p>The delegation is subject to:</p> <ol style="list-style-type: none"> <li>1. tenders called to comply with Council's Policy No. 1.2.2 – “Code of Tendering” and Policy No. 1.2.3 – “Purchasing Policy”; and</li> <li>2. tenders can only be invited for those goods and services identified in the Annual Budget, Plan for the Future or where the expenditure has been approved in advance by Council;</li> </ol>
<p><b>Express Power to Sub-Delegate:</b></p>	<p><i>Local Government Act 1995:</i> s.5.44 CEO may delegate some powers and duties to other employees</p>

2.2.16 Panels of pre-qualified suppliers for goods and services

*Delegation from Council to CEO*

<p><b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i></p>	<p><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</p>
<p><b>Express Power or Duty Delegated:</b></p>	<p><i>Local Government (Functions and General) Regulation 1996:</i> r.24AB Local government may establish panels of pre-qualified suppliers r.24AC(1)(b) Requirements before establishing panels of pre-qualified suppliers r.24AD(3) &amp; (6) Requirements when inviting persons to apply to join panel of pre-qualified suppliers r.24AH(2), (3), (4) and (5) Rejecting and accepting applications to join panel of pre-qualified suppliers</p>
<p><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></p>	<ol style="list-style-type: none"> <li>1. Authority to determine that a there is a continuing need for the goods or services proposed to be provided by a panel of pre-qualified suppliers [F&amp;G r.24AC(1)(b)].</li> <li>2. Authority to, before inviting submissions, determine the written criteria for deciding which application should be for inclusion in a panel of pre-qualified suppliers should be accepted [F&amp;G r.24AD(3)].</li> <li>3.. Authority to vary panel of pre-qualified supplier information after public notice inviting submissions has been given, taking reasonable steps to each person who has enquired or submitted an application is provided notice of the variation [F&amp;G r.24AD(6)].</li> <li>4. Authority to reject an application without considering its merits, where it was submitted at a place and within the time specified, but fails to comply with any other requirement specified in the invitation [F&amp;G r.24AH(2)].</li> <li>5. Authority to assess applications, by written evaluation of the extent to which the submission satisfies the criteria for deciding which applicants to accept, and decide which applications to accept as most advantageous [F&amp;G r.24AH(3)].</li> <li>6. Authority to request clarification of information provided in a submission by an applicant [F&amp;G r.24AH(4)].</li> <li>7. Authority to decline to accept any application [F&amp;G r.24AH(5)].</li> <li>8. Authority to enter into contract, or contracts, for the supply of goods or services with a pre-qualified supplier, as part of a panel of pre-qualified suppliers for those particular goods or services [F&amp;G r.24AJ(1)].</li> </ol>
<p><b>Council Conditions on this Delegation:</b></p>	<ol style="list-style-type: none"> <li>a. Panels of pre-qualified suppliers may only be established, where the total consideration under the resulting contract is \$250,000 or less and the expense is included in the adopted Annual Budget.</li> </ol>
<p><b>Express Power to Sub-Delegate:</b></p>	<p><i>Local Government Act 1995:</i> s.5.44 CEO may delegate some powers and duties to other employees</p>

2.2.17 Disposing of property

Note that s.3.57 tender requirements do not apply to the Disposal of Property under s.3.58 (s.3.57 applies only to “contracts ... under which another person is to supply goods or service”).

*Delegation from Council to CEO*

<b>Head of 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.3.58(2) & (3) Disposing of Property
<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 dispose of property to:                         <ol style="list-style-type: none"> <li>(a) to the highest bidder at public auction [s.3.58(2)(a)].</li> <li>(b) to the person who at public tender called by the local government makes what is considered by the delegate to be, the most acceptable tender, whether or not it is the highest tenders [s.3.58(2)(b)]</li> </ol> </li> <li>2. Authority to dispose of property by private treaty only in accordance with section 3.58(3) and prior to the disposal, to consider any submissions received following the giving of public notice [s.3.58(3)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	<ol style="list-style-type: none"> <li>a. Disposal of land or building assets is limited to matters specified in the Annual Budget and in any other case, a Council resolution is required.</li> <li>b. In accordance with s.5.43, disposal of property, for any single project or where not part of a project but part of a single transaction, is limited to a maximum value of \$250,000 or less.</li> <li>c. When determining the method of disposal:                         <ul style="list-style-type: none"> <li>• Where a public auction is determined as the method of disposal:                                 <ul style="list-style-type: none"> <li>○ Reserve price has been set by independent valuation.</li> <li>○ Where the reserve price is not achieved at auction, negotiation may be undertaken to achieve the sale at up to a -10% variation on the set reserve price.</li> </ul> </li> <li>• Where a public tender is determined as the method of disposal and the tender does not achieve a reasonable price for the disposal of the property, then the CEO is to determine if better value could be achieved through another disposal method and if so, must determine not to accept any tender and use an alternative disposal method.</li> <li>• Where a private treaty is determined [s.3.58(3)] as the method of disposal, authority to:                                 <ul style="list-style-type: none"> <li>○ Negotiate the sale of the property up to a -10% variance on the valuation; and</li> <li>○ Consider any public submissions received and determine if to proceed with the disposal, ensuring that the reasons for such a decision are recorded.</li> </ul> </li> </ul> </li> <li>d. Where the market value of the property (<u>other than land</u>) is determined as being less than \$20,000 (F&amp;G r.30(3) excluded disposal) may be undertaken:                         <ul style="list-style-type: none"> <li>• Without reference to Council for resolution; and</li> </ul> </li> </ol>

	<ul style="list-style-type: none"> <li>In any case, be undertaken to ensure that the best value return is achieved however, where the property is determined as having a nil market value, then the disposal must ensure environmentally responsible disposal.</li> </ul>
<b>Express Power to Sub-Delegate:</b>	<p><i>Local Government Act 1995:</i> s.5.44 CEO may delegate some powers and duties to other employees</p>

2.2.18 Leases and licences to Small Community Groups, Sporting Clubs and Community Groups and Organisations in accordance with the Property Management Framework

*Delegation from Council to CEO*

<b>Head of 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.3.58 Disposing of Property
<b>Delegate:</b>	Chief Executive Officer
<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>	To approve and execute any new lease, licence or management agreement or variation, extension or assignment of an approved lease, licence or management agreement, in respect to a: <ul style="list-style-type: none"> <li>• Category One (1) – Small Community Group, pursuant to the adopted <a href="#">Property Management Framework</a>, or</li> <li>• Category Two (2) Sporting Clubs and Community Groups and Organisations, pursuant to the adopted <a href="#">Property Management Framework</a></li> </ul>
<b>Council Conditions on this Delegation:</b>	<ol style="list-style-type: none"> <li>1. The terms and conditions of any lease, licence or management agreement must be in accordance with the terms and conditions approved by Council as set out in the Property Management Framework – Category One (1) and Two (2).</li> <li>2. Requests from community or sporting groups not currently occupying a City building in Category One (1) or Category Two (2), will require a specific resolution of Council.</li> <li>3. The delegation does not extend to Category Three (3) or Four (4) of the Property Management Framework. Any leases or licences in accordance with Category Three (3) or Four (4) will require a specific resolution of Council.</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

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## 2.2.19 Payments from the municipal or trust funds

### Guidance notes

#### *The difference between incurring liabilities and making payments*

The following information will assist in understanding the legislative framework that informs:

- Incurring a liability as a procedural matter subject to CEO authorisations; and
- Making payments as an express (written) statutory power which is capable of being delegated.

#### *Incurring liabilities (procedures and administrative authorities)*

Incurring liabilities is not described in the Local Government Act or Regulations as an express power or duty, rather it is only described as a requirement for the Local Government and the CEO to control by developing "systems and procedures" [see FM Regs 5 and 11].

Incurring liabilities is therefore not an express (written) power or duty which is capable of being delegated. The CEO must establish systems and written procedures which give effect to compliance with legislation and purchasing policy and provide appropriate internal controls and risk mitigation for incurring liabilities.

- Issuing a requisition – a requisition is only a proposal to purchase (FM Regs 5 & 11) describing the goods or services required to enable a decision to issue a purchase order. It does not incur a liability as the goods / services may only be provided on the basis of an appropriately issued purchase order. Administrative procedures should establish which positions are authorised to issue requisitions.

A decision to issue a requisition and therefore a purchase order is informed by other, previous Council decisions, for example – the budget adopted by Council, Council decisions to approve projects or implement policies.

The decision to incur a liability where a budget provision has been made is part of implementing a Council decision and therefore accords with the CEO's duties under s.5.41(c).

- Issuing a purchase order – a purchase order creates a contract between the supplier and the local government. It incurs a liability (FM Regs.5 & 11) provided that the goods or services are ultimately supplied in accordance with the requirements specified in the purchase order. Administrative procedures should establish which positions are authorised to issue purchase orders, with pre-requisite requirements for a purchase order to only be issued, where due diligence confirms:
  - Compliance with the local governments purchasing policy;
  - The committal value of the purchase order is within an appropriate and available budget allocation; and
  - The proposed goods / services / works are within the scope of implementing a Council decision, either specific or generally.
- Using a credit or transaction card (store card, fuel card or corporate credit card) – transaction cards are a method of incurring a liability, with the goods or services received and a statement provided to the local government for acquittal on at least a monthly basis. Procedures should prescribe the positions which are authorised to use transaction cards and the limits and obligations for use for their use when incurring liabilities and the requirements for acquittal of statements to enable payment.
- Verification of a liability
  - Goods / services received – a record that evidences that the goods or services have been received in accordance with the purchase order.
  - Verification of invoice – the charges align with the accepted quote or the contracted schedule of rates as relevant, which have been checked against the record of goods / services received.

- Verification of transaction card statements – transactions accord with the card holder limits and conditions, transactions are for a proper purpose (not personal) and the goods / services obtained are within the scope of implementing a Council decision either specific or generally.

An element of the internal control is the separation of roles from employees who incur liabilities and those who make payments. This means that a person who has responsibility for incurring a liability should not also be responsible for verifying the liability or approving the relevant payment.

In addition, Council (and also through its audit committee) may form an opinion as to its satisfaction the procedures prepared in accordance with FM 11, when it undertakes its biennial review of Internal Controls in accordance with Audit Reg. 17(1)(b).

*Making payments (delegated authority)*

Financial Management Reg.12(1)(a) prescribes the ability for the Council to delegate to the CEO its power to make payments from the Municipal or the Trust Fund. Financial Management Reg.13 prescribes the procedural matters that the CEO must comply with if the power to make payments is delegated.

A payment can only be made, where an opinion has been formed (delegated authority decision FM Reg12(1)(a)) that the goods or services specified in the purchase order have been satisfactorily received.

*Procedural reviews*

Audit Regulations [r.17(1)(b) & (2)] require the CEO to review procedures and report the outcomes of the review to the Audit Committee at least once in every 3 financial years.

*Delegation from Council to CEO*

<b>Head of 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 (Financial Management) Regulations 1996:</i> r.12(1)(a) Payments from municipal fund or trust fund, restrictions on making
<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 make payments from the municipal or trust funds [r.12(1)(a)]. 2. Authority to transfer funds held in the Trust Fund for over 10 years to the Municipal Fund.
<b>Council Conditions on this Delegation:</b>	a. Authority to make payments is subject to annual budget limitations.
<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

2.2.20 Defer payment, grant discounts, waive fees or write off debts

*Delegation from Council to CEO*

<b>Head of 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.6.12 Power to defer, grant discounts, waive or write off debts
<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. Waive a debt which is owed to the City [s.6.12(1)(b)].</li> <li>2. Grant a concession in relation to money owed to the City [s.6.12(1)(b)].</li> <li>3. Write off an amount of money owed to the City [s.6.12(1)(c)]</li> </ol>
<b>Council Conditions on this Delegation:</b>	<ol style="list-style-type: none"> <li>a. The power to waive fees or write off money is subject to the amount not exceeding \$5000.</li> <li>b. The power to waive fees or write off debts relating to infringements is subject to the debt not exceeding \$270.</li> <li>c. The power to waive or write off library fees is subject to the debt not exceeding \$50.</li> <li>d. This delegation is not applicable to writing off or waiving rates or service charges.</li> <li>e. A debt may only be written off where all necessary measures have been taken to locate / contact the debtor and where costs associated continued action to recover the debt will outweigh the net value of the debt if recovered by the City.</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

## 2.2.21 Amendment of a rate record

*Delegation from Council to CEO*

<b>Head of 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.6.39(2)(b) Rate record
<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>	Authority to determine any requirement to amend the rate record for the 5-years preceding the current financial year [s.6.39(2)(b)].
<b>Council Conditions on this Delegation:</b>	Delegates must comply with the requirements of s.6.40 of the Act.
<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

## 2.2.22 Agreement as to payment of rates and service charges

*Delegation from Council to CEO*

<b>Head of 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.6.49 Agreement as to payment of rates and service charges
<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 make an agreement with a person for the payment of rates or service charges [s.6.49].
<b>Council Conditions on this Delegation:</b>	Subject to Council Policy No. 1.2.12 – Rates and Service Charges.
<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

2.2.23 Determine due date for rates or service charges

*Delegation from Council to CEO*

<b>Head of 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.6.50 Rates or service charges due and payable
<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>	Authority to determine the date on which rates or service charges become due and payable to the City [s.6.50].
<b>Council Conditions on this Delegation:</b>	Nil.
<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

2.2.24 Recovery of rates or service charges

*Delegation from Council to CEO*

<b>Head of 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.6.56 Rates or service charges recoverable in court
<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>	Authority to recover rates or service charges, as well as costs of proceedings for the recovery, in a court of competent jurisdiction [s.6.56(1)].
<b>Council Conditions on this Delegation:</b>	Nil.
<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

## 2.2.25 Recovery of rates debts – require lessee to pay rent

*Delegation from Council to CEO*

<b>Head of 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.6.60 Local Government may require lessee to pay rent
<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 give notice to a lessee of land in respect of which there is an unpaid rate or service charge, requiring the lessee to pay its rent to the City [s.6.60(2)].</li> <li>2. Authority to recover the amount of the rate or service charge as a debt from the lessee if rent is not paid in accordance with a notice [s.6.60(4)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	Subject to Council Policy No. 1.2.13 – Collection of Rates and Service Charges.
<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

## 2.2.26 Recovery of rates debts - actions to take possession of the land

*Delegation from Council to CEO*

<b>Head of 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.6.64(1) & (3) Actions to be taken s.6.69(2) Right to pay rates, service charges and costs, and stay proceedings s.6.71 Power to transfer land to Crown or local government s.6.74 Power to have land revested in Crown if rates in arrears 3 years
<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 take possession of land and hold the land against a person having an estate or interest in the land where rates or service charges have remained unpaid for at least three years [s.6.64(1)], including: <ol style="list-style-type: none"> <li>i. lease the land, or</li> <li>ii. sell the land; or where land is offered for sale and a contract of sale has not been entered into after 12 months: <ol style="list-style-type: none"> <li>I. cause the land to be transferred to the Crown [s.6.71 and s.6.74]; or</li> <li>II. cause the land to be transferred to the City [s.6.71].</li> </ol> </li> </ol> </li> <li>2. Authority to lodge (and withdraw) a caveat to preclude dealings in respect of land where payment of rates or service charges imposed on that land is in arrears [s.6.64(3)].</li> <li>3. Authority to agree terms and conditions with a person having estate or interest in land and to accept payment of outstanding rates, service charges and costs within 7 days of and prior to the proposed sale [s.6.69(2)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	a. In accordance with s.6.68(3A), this delegation cannot be used where a decision relates to exercising a power of sale without having, within the previous 3-years attempted to recover the outstanding rates / charges through a court under s.6.56, as s.6.68(3A) requires that the reasons why court action has not been pursued must be recorded in Council Minutes.
<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

## 2.2.27 Rate record – objections

*Delegation from Council to CEO*

<b>Head of 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.6.76 Grounds of objection
<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 extend the time for a person to make an objection to a rate record [s.6.76(4)].</li> <li>2. Authority to consider an objection to a rate record and either allow it or disallow it, wholly or in part, providing the decision and reasons for the decision in a notice promptly served upon the person whom made the objection [s.6.76(5)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	Nil.
<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

## 2.2.28 Power to invest and manage investments

*Delegation from Council to CEO*

<b>Head of 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.6.14 Power to invest <i>Local Government (Financial Management) Regulations 1996:</i> r.19 Investments, control procedures for
<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 invest money held in the municipal fund or trust fund that is not, for the time being, required for any other purpose [s.6.14(1)].</li> <li>2. Authority to establish and document internal control procedures to be followed in the investment and management of investments [FM r.19].</li> </ol>
<b>Council Conditions on this Delegation:</b>	<ol style="list-style-type: none"> <li>a. All investment activity must comply with the Financial Management Regulation 19C, <del>and Council Policy 1.2.4 the City's Investment Policy and related procedures.</del></li> <li>b. A report detailing the investment portfolio's performance, exposures and changes since last reporting, is to be provided as part of the Monthly Financial Reports.</li> <li>c. Procedures are to be systematically documented and retained in accordance with the Plan and must include references that enable recognition of statutory requirements and assign responsibility for actions to position titles.</li> <li>d. Procedures are to be administratively reviewed for continuing compliance and confirmed as 'fit for purpose' and subsequently considered by the Audit and Risk Committee <del>each financial year, at least once every 3 financial years as part of the Local Government (Audit) Regulations 1996, r.17 review.</del> [Audit r.17]</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

2.2.29 Dealing with objections under Part 9 of *Local Government Act 1995**Delegation from Council to CEO*

<b>Head of 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> Section 9.5(2), Section 9.6(5) and 9.9(1)(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>	The Chief Executive Officer is delegated the power to: <ul style="list-style-type: none"> <li>• receive an objection and grant an extension of time for an objection to be lodged (Section 9.5(2)).</li> <li>• give notice in writing of how it has been decided to dispose of the objection and the reasons for disposing of it in that way.</li> <li>• determine that there are reasons why the effect of a decision should not be suspended in line with the provisions of the Local Government Act 1995 Section 9.9(1)(b).</li> </ul>
<b>Council Conditions on this Delegation:</b>	This delegation may not be exercised to dispose of an objection to a decision originally made by the CEO.
<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

## 2.2.30 Execution of documents

*Delegation from Council to CEO*

<b>Head of 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> Section 9.49A (4) and (5)
<b>Delegate:</b>	Chief Executive Officer
<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. The Chief Executive Officer is delegated authority to sign documents in relation to the administration of leases, licences, or other land agreements.</li> <li>2. The Chief Executive Officer is delegated authority to sign sponsorship or grant agreements and acquittals where the City's contribution falls within budget or is consistent with a Council resolution.</li> <li>3. The Chief Executive Officer is delegated authority to provide consent and execute documents in relation to any assignment or sublease where there is a request by a lessee operating under a lease agreement.</li> <li>4. The Chief Executive Officer is delegated authority to sign Memorandums of Understanding (MOU) if they satisfy the following conditions: <ol style="list-style-type: none"> <li>a) There is no additional financial contribution in excess of existing budgets required to give effect to the City's obligations under the MOU.</li> <li>b) Formalises an existing working relationship between the City and a government agency or department or another local government.</li> </ol> </li> <li>5. The Chief Executive Officer is delegated authority to execute, lodge, remove, withdraw, surrender or modify relating to notifications, covenants, easements and caveats under the <i>Transfer of Land Act 1893</i>.</li> <li>6. The Chief Executive Officer is delegated authority to execute easements or deeds of easement under the <i>Land Administration Act 1997</i> and/or <i>Strata Titles Act 1985</i>.</li> <li>7. Documents required to satisfy conditions of subdivision and/or development approval.</li> <li>8. The Chief Executive Officer is delegated authority to sign Finance Leases, Contracts, Service Level agreements, and any other agreement that does not require the Common Seal of the City.</li> </ol>
<b>Council Conditions on this Delegation:</b>	Execution of all documents must be in accordance with City's Execution of Documents Policy.
<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

## 2.2.31 Appointing External Complaints Officer

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Local Government Act 1995:</i> s5.42 Delegation of some powers and duties to the CEO.
<b>Express Power or Duty Delegated:</b>	<i>Local Government (Model Code of Conduct) Regulations 2021:</i> r11(3) Complaint about alleged breach "The local government must, in writing, authorise 1 or more persons to receive complaints and withdrawal of complaints."
<b>Delegate:</b>	Chief Executive Officer
<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>	For the CEO to appoint an external Complaints Officer to receive complaints and withdrawal of complaints related to the City of Vincent Code of Conduct for Council Members, Committee Members and Candidates.
<b>Council Conditions on this Delegation:</b>	Any appointment under this delegation excludes a current or former City of Vincent Council Member, Committee Member, candidate, or employee.  Any appointed external Complaints Officer must comply with the requirements contained in the: <ul style="list-style-type: none"> <li>• Code of Conduct for Council Members, Committee Members and Candidates; and</li> <li>• Code of Conduct Behaviour Complaints Management Policy</li> </ul>
<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

2.2.32 Appointment of Authorised Persons

*Delegation from Council to CEO*

<b>Head of 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>Function:</b> <i>This is a precis only. Delegates must act with full understanding of the legislation and conditions relevant to this delegation.</i>	Authority to appoint persons or classes of persons as authorised persons for the purpose of fulfilling prescribed functions within the <u>Local Government Act 1995</u> and its subsidiary legislation, including Local Government Act Regulations, the <u>Local Government (Miscellaneous Provisions) Act 1960</u> and Local Laws made under the Local Government Act. [s.3.24 and s.9.10] and any other Act under which a local law can be made.
<b>Council Conditions on this Delegation:</b>	a.— A register of authorised persons is to be maintained as a local government record. b.— Only persons who are appropriately qualified and trained may be appointed as authorised persons.
<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

*Delegation by CEO to other employees*

<b>Sub-Delegate/s:</b> <i>Appointed by CEO</i>	All Executive Directors
<b>CEO Conditions on this Sub-Delegation:</b> <i>Conditions on the original delegation also apply to the sub-delegations.</i>	

Notes:

2.2.32 Appointment of Community Directors – Leederville Gardens

Delegation from Council to CEO

<p><b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i></p>	<p><u>Local Government Act 1995:</u> s.5.42 Delegation of some powers or duties to the CEO s.5.43 Limitations on delegations to the CEO</p>
<p><b>Express Power or Duty Delegated:</b></p>	<p><u>Local Government Act 1995:</u> s3.18 Performing Executive Functions</p>
<p><b>Function:</b> <i>This is a precis only.</i>  <i>Delegates must act with full understanding of the legislation and conditions relevant to this delegation.</i></p>	<p>1. <u>To run a search and selection process for each community Director to be appointed by the City; and</u>  2. <u>To appoint and/or reappoint one (or more) of the potential appointees to the Board</u></p>
<p><b>Council Conditions on this Delegation:</b></p>	<p><u>Selection and appointment to be undertaken in accordance with clause 18, division 3 of the Leederville Gardens Inc. Rules of Association</u></p>
<p><b>Express Power to Sub-Delegate:</b></p>	<p><u>Local Government Act 1995:</u> s.5.44 CEO may delegate some powers and duties to other employees</p>

### 3 Local Laws

Guidance note

Any decision which has the effect of granting, renewing, varying or cancelling a permission or authorisation under a Local Law is a decision that is subject to Part 9, Division 1 of the Local Government Act (objection and appeal rights – see s.9.1) and can be referred to the State Administration Tribunal. Example Local Law decision include approving, refusing, applying a condition, varying an approval or condition or cancelling a permit.

Such decisions are deemed 'quasi-judicial' and imply substantial scope for decision outcomes to differ on each occasion that a decision is made. Therefore, as with other legislation, where a discretionary power or duty is assigned in a local law to the 'Local Government', the power or duty must be delegated to convey the authority to make decisions.

Note that imposition of a fee or charge where mentioned in a local law cannot be delegated and must be set by Council when adopting its budget under Part 6 of the Local Government Act 1995.

#### 3.1 Administer Local Laws

##### 3.1.1 Council to CEO – all Local Laws

<b>Head of 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>	Sections 3.18 and 5.42 of the <i>Local Government Act 1995</i> All powers under City's local laws: <ul style="list-style-type: none"> <li>• <i>Dogs Local Law</i></li> <li>• <i>Fencing Local Law</i></li> <li>• <i>Health Local Law</i></li> <li>• <i>Local Government Property Local Law</i></li> <li>• <i>Parking &amp; Parking Facilities Local Law</i></li> <li>• <i>Meeting Procedures Local Law</i></li> <li>• <i>Trading in Public Places Local Law</i></li> </ul>
<b>Delegate:</b>	Chief Executive Officer
<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>	Authority to administer the City's local laws and to do all other things that are necessary or convenient to be done for, or in connection with, performing the functions of the City under the City's local laws, including relating to: <ul style="list-style-type: none"> <li>• Permits;</li> <li>• Enforcement framework;</li> <li>• Recovery of costs; and</li> <li>• Adding or changing parking restrictions.</li> </ul>
<b>Council Conditions on this Delegation:</b>	Parking permits are to be issued in accordance with the City's policy number 3.9.3
<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

## 4 Delegations made under the *Building Act 2011*

### Guidance note

Decisions under this delegated authority should be either undertaken or informed by a person qualified in accordance with r.5 of the Building Regulations 2012.

The *Building Act 2011* refers to a 'permit authority', which is the local government in this instance.

### 4.1 Grant or refuse a Building Permit

#### *Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Building Act 2011:</i> s.127(1) & (3) Delegation: special permit authorities and local government
<b>Express Power or Duty Delegated:</b>	<i>Building Act 2011:</i> s.18 Further Information s.20 Grant of building permit s.22 Further grounds for not granting an application s.27(1) and (3) Impose Conditions on Permit  <i>Building Regulations 2012:</i> r.23 Application to extend time during which permit has effect (s.32) r.24 Extension of time during which permit has effect (s.32(3)) r.26 Approval of new responsible person (s.35(c))
<b>Delegate:</b>	Chief Executive Officer
<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 require an applicant to provide any documentation or information required to determine a building permit application [s.18(1)].</li> <li>2. Authority to grant or refuse to grant a building permit [s.20(1) &amp; (2) and s.22].</li> <li>3. Authority to impose, vary or revoke conditions on a building permit [s.27(1) and(3)].</li> <li>4. Authority to determine an application to extend time during which a building permit has effect [r.23].             <ol style="list-style-type: none"> <li>i. Subject to being satisfied that work for which the building permit was granted has not been completed OR the extension is necessary to allow rectification of defects of works for which the permit was granted [r.24(1)]</li> <li>ii. Authority to impose any condition on the building permit extension that could have been imposed under s.27 [r.24(2)].</li> </ol> </li> <li>5. Authority to approve, or refuse to approve, an application for a new responsible person for a building permit [r.26].</li> </ol>
<b>Council Conditions on this Delegation:</b>	
<b>Express Power to Sub-Delegate:</b>	<i>Building Act 2011:</i> s.127(6A) Delegation: special permit authorities and local governments (powers of sub-delegation limited to CEO)

## 4.2 Demolition permits

### Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Building Act 2011:</i> s.127(1) & (3) Delegation: special permit authorities and local government
<b>Express Power or Duty Delegated:</b>	<i>Building Act 2011:</i> s.18 Further Information s.21 Grant of demolition permit s.22 Further grounds for not granting an application s.27(1) and (3) Impose Conditions on Permit  <i>Building Regulations 2012</i> r.23 Application to extend time during which permit has effect (s.32) r.24 Extension of time during which permit has effect (s.32(3)) r.26 Approval of new responsible person (s.35(c))
<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 require an applicant to provide any documentation or information required to determine a demolition permit application [s.18(1)].</li> <li>2. Authority to grant or refuse to grant a demolition permit on the basis that all s.21(1) requirements have been satisfied [s.20(1) &amp; (2) and s.22].</li> <li>3. Authority to impose, vary or revoke conditions on a demolition permit [s.27(1) and(3)].</li> <li>4. Authority to determine an application to extend time during which a demolition permit has effect [r.23].             <ol style="list-style-type: none"> <li>i. Subject to being satisfied that work for which the demolition permit was granted has not been completed OR the extension is necessary to allow rectification of defects of works for which the permit was granted [r.24(1)]</li> <li>ii. Authority to impose any condition on the demolition permit extension that could have been imposed under s.27 [r.24(2)].</li> </ol> </li> <li>5. Authority to approve, or refuse to approve, an application for a new responsible person for a demolition permit [r.26].</li> </ol>
<b>Council Conditions on this Delegation:</b>	a. The Chief Executive Officer is delegated authority to grant or refuse a Demolition Permit other than for buildings classified by the National Trust and Council's Heritage Register, pursuant to the Building Act 2011, Sections 21, 22.
<b>Express Power to Sub-Delegate:</b>	<i>Building Act 2011:</i> s.127(6A) Delegation: special permit authorities and local governments (powers of sub-delegation limited to CEO)

**4.3 Occupancy permits or building approval certificates**

*Delegation from Council to CEO*

<p><b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i></p>	<p><i>Building Act 2011:</i> s.127(1) &amp; (3) Delegation: special permit authorities and local government</p>
<p><b>Express Power or Duty Delegated:</b></p>	<p><i>Building Act 2011:</i> s.55 Further information s.58 Grant of occupancy permit, building approval certificate s.62(1) and (3) Conditions imposed by permit authority s.65(4) Extension of period of duration</p> <p><i>Building Regulations 2012</i> r.40 Extension of period of duration of time limited occupancy permit or building approval certificate (s.65)</p>
<p><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></p>	<ol style="list-style-type: none"> <li>1. Authority to require an applicant to provide any documentation or information required in order to determine an application [s.55].</li> <li>2. Authority to grant, refuse to grant or to modify an occupancy permit or building approval certificate [s.58].</li> <li>3. Authority to impose, add, vary or revoke conditions on an occupancy permit [s.62(1) and (3)].</li> <li>4. Authority to extend, or refuse to extend, the period in which an occupancy permit or modification or building approval certificate has effect [s.65(4) and r.40].</li> </ol>
<p><b>Council Conditions on this Delegation:</b></p>	
<p><b>Express Power to Sub-Delegate:</b></p>	<p><i>Building Act 2011:</i> s.127(6A) Delegation: special permit authorities and local governments (powers of sub-delegation limited to CEO)</p>

**4.4 Building Orders**

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Building Act 2011:</i> s.127(1) & (3) Delegation: special permit authorities and local government
<b>Express Power or Duty Delegated:</b>	<i>Building Act 2011:</i> s.110(1) A permit authority may make a building order s.111(1) Notice of proposed building order other than building order (emergency) s.112(2) Content of building order s.117(1) and (2) A permit authority may revoke a building order or notify that it remains in effect s.118(2) and (3) Permit authority may give effect to building order if non-compliance s.133(1) A permit authority may commence a prosecution for an offence against this Act
<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 make Building Orders in relation to: <ol style="list-style-type: none"> <li>a. Building work</li> <li>b. Demolition work</li> <li>c. An existing building or incidental structure [s.110(1)].</li> </ol> </li> <li>2. Authority to give notice of a proposed building order and consider submissions received in response and determine actions [s.111(1)(c)].</li> <li>3. Authority to issue a building order to require a person to do one or more things within a specified time period, including stopping building or demolition work and demolishing a building or structure [s. 112(2)(a)-(h)]:</li> <li>4. Authority to revoke a building order [s.117].</li> <li>5. If there is non-compliance with a building order, authority to cause an authorised person to: <ol style="list-style-type: none"> <li>a. take any action specified in the order ; or</li> <li>b. commence or complete any work specified in the order; or</li> <li>c. if any specified action was required by the order to cease, to take such steps as are reasonable to cause the action to cease [s.118(2)].</li> </ol> </li> <li>6. Authority to take court action to recover as a debt, reasonable costs and expense incurred in doing anything in regard to non-compliance with a building order [s.118(3)].</li> <li>7. Authority to initiate a prosecution pursuant to section 133(1) for non-compliance with a building order made pursuant to section 110 of the <i>Building Act 2011</i>.</li> </ol>
<b>Council Conditions on this Delegation:</b>	a. Subject to Sub-Section 112(2)(b) being conditional as follows; <i>"The Order to demolish, dismantle or remove a building or incidental structure that has been, or is being, built or occupied in suspected contravention of a provision of the Building Act 2011, SHALL only be issued where the building is assessed to be in a state that is dangerous and which cannot be easily rectified"</i> .
<b>Express Power to Sub-Delegate:</b>	<i>Building Act 2011:</i> s.127(6A) CEO may delegate a power or duty to a local government employee subject to conditions.

**4.5 Inspection and copies of building records**

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Building Act 2011:</i> s.127(1) & (3) Delegation: special permit authorities and local government
<b>Express Power or Duty Delegated:</b>	<i>Building Act 2011:</i> s.131(2) Inspection, copies of building records
<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>	Authority to determine an application from an interested person to inspect and copy a building record [s.131(2)].
<b>Council Conditions on this Delegation:</b>	
<b>Express Power to Sub-Delegate:</b>	<i>Building Act 2011:</i> s.127(6A) Delegation: special permit authorities and local governments (powers of sub-delegation limited to CEO)

#### 4.6 Referrals and issuing certificates

##### Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Building Act 2011:</i> s.127(1) & (3) Delegation: special permit authorities and local government
<b>Express Power or Duty Delegated:</b>	<i>Building Act 2011:</i> s.145A Local Government functions
<b>Delegate:</b>	Chief Executive Officer
<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 refer uncertified applications under s.17(1) to a building surveyor who is not employed by the local government [s.145A(1)].</li> <li>2. Authority to issue a certificate for Design Compliance, Construction Compliance or Building Compliance whether or not the land subject of the application is located in the City's District [s.145A(2)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	<i>Building Act 2011:</i> s.127(6A) Delegation: special permit authorities and local governments (powers of sub-delegation limited to CEO)

#### 4.7 Private pool barrier – **alternative and** performance solutions

Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Building Act 2011:</i> s.127(1) & (3) Delegation: special permit authorities and local government
<b>Express Power or Duty Delegated:</b>	Building Regulations 2012: r.51 Approvals by permit authority
<b>Delegate:</b>	Chief Executive Officer
<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 approve requirements alternative to a fence, wall, gate or other component included in the barrier, if satisfied that the alternative requirements will restrict access by young children as effectively as if there were compliance with AS 1926.1 [r.51(2)]</li> <li>2. Authority to approve a door for the purposes of compliance with AS 1926.1, where a fence or barrier would cause significant structural or other problem which is beyond the control of the owner / occupier or the pool is totally enclosed by a building or a fence or barrier between the building and pool would create a significant access problem for a person with a disability [r.51(3)]</li> <li>3. Authority to approve a performance solution to a Building Code pool barrier requirement if satisfied that the performance solution complies with the relevant performance requirement [r.51(5)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	<i>Building Act 2011:</i> s.127(6A) Delegation: special permit authorities and local governments (powers of sub-delegation limited to CEO)

4.8 Smoke alarms – **alternative performance** solutions

Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Building Act 2011:</i> s.127(1) & (3) Delegation: special permit authorities and local government
<b>Express Power or Duty Delegated:</b>	Building Regulations 2012: r.55 Terms Used (alternative building solution approval) r.61 Local Government approval of battery powered smoke alarms
<b>Delegate:</b>	Chief Executive Officer
<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 approve alternative building solutions which meet the performance requirement of the Building Code relating to fire detection and early warning [r.55].</li> <li>2. Authority to approve or refuse to approve a battery powered smoke alarm and to determine the form of an application for such approval [r.61].</li> </ol>
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	<i>Building Act 2011:</i> s.127(6A) Delegation: special permit authorities and local governments (powers of sub-delegation limited to CEO)

#### 4.9 Designate employees as Authorised Persons

##### *Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Building Act 2011:</i> s.127(1) & (3) Delegation: special permit authorities and local government
<b>Express Power or Duty Delegated:</b>	<i>Building Act 2011:</i> s.96(3) Authorised persons s.99(3) Limitation on powers of authorised person
<b>Delegate:</b>	Chief Executive Officer
<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 designate an employee as an authorised person [s.96(3)].</li> <li>2. Authority to revoke or vary a condition of designation as an authorised person or give written notice to an authorised person limiting powers that may be exercised by that person [s.99(3)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	a. Decisions under this delegated authority should be in accordance with r.5 of the Building Regulations 2012.
<b>Express Power to Sub-Delegate:</b>	<i>Building Act 2011:</i> s.127(6A) Delegation: special permit authorities and local governments (powers of sub-delegation limited to CEO)

#### 4.10 Prosecutions

##### *Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Building Act 2011:</i> s.127(1) & (3) Delegation: special permit authorities and local government
<b>Express Power or Duty Delegated:</b>	<i>Building Act 2011:</i> s.133(1) A permit authority may commence a prosecution for an offence against this Act
<b>Delegate:</b>	Chief Executive Officer
<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 commence a prosecution for an offence against the <i>Building Act 2011</i> [s.133(1)(b)].
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	<i>Building Act 2011:</i> s.127(6A) – CEO may delegate this power subject to any conditions imposed on the delegation to the CEO.

#### 4.11 Issue of Building Infringement Notices

##### Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Building Act 2011:</i> s.127(1) & (3) Delegation: special permit authorities and local government
<b>Express Power or Duty Delegated:</b>	Regulations 70(1), 70(2) and 70(3) of the <i>Building Regulations 2012</i>
<b>Delegate:</b>	Chief Executive Officer
<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. The power to appoint an "authorised officer" who is to have by virtue of that appointment, the power under the Criminal Procedure Act 2004 Part 2, to issue infringement notices, for offences specified under Building Regulations 2012 Schedule 6.</li> <li>2. The power to appoint an "approved officer" who is to have by virtue of that appointment, the powers under the Criminal Procedure Act 2004 Part 2, to extend and withdraw infringement notices, for offences specified under Building Regulations 2012 Schedule 6.</li> <li>3. Revoke an appointment under (1) or (2) at any time.</li> <li>4. Give an identity card to an authorised person under (1).</li> </ol> <p>Note: The CEO may appoint officers pursuant to the provisions identified, who then have the powers referred to, by virtue of Building Regulations 2012, Regulations 70(2) or 70(1) as applicable.</p>
<b>Council Conditions on this Delegation:</b>	<ol style="list-style-type: none"> <li>(a) A person appointed under (1) or (2) must be an employee of the City.</li> <li>(b) A person cannot be appointed under (1) unless the person has already been authorised for the purpose of performing functions under Section 9.16 of the Local Government Act 1995.</li> <li>(c) A person cannot be appointed under (1) if the person holds an appointment under (2).</li> <li>(d) A person cannot be appointed under (2) unless the person has already been authorised for the purpose of performing functions under Section 9.19 and/or 9.20 of the Local Government Act 1995.</li> <li>(e) A person cannot be appointed under (2) if the person holds an appointment under (1).</li> <li>(f) Records of all appointments made under delegation to be kept on appropriate file or register. Statutory Power to Delegate: Building Act 2011, Section 127(6A).</li> </ol>
<b>Express Power to Sub-Delegate:</b>	<i>Building Act 2011</i> Section 172 (6A) - CEO may delegate any of the CEO's powers and duties to other employees, other than power of delegation, subject to any conditions, qualifications, limitations or exceptions imposed on the delegation.

## 5 Delegations made under the *Fines, Penalties, and Infringement Notices Enforcement Act 1984*

### 5.1 Designate employees as Authorised Persons

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>
<b>Express Power or Duty Delegated:</b>	Section 13(2) of the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>
<b>Delegate:</b>	Chief Executive Officer
<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>	Appointment of officers as Prosecuting Officers for the purposes of the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> , Section 13(2).
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	

## 6 Delegations made under the *Strata Titles Act 1985*

### 6.1 Issue of approval for built strata subdivision under section 25 – Forms 24 and 26

#### *Delegation from Council to CEO*

<b>Head of 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>Strata Titles Act 1985</i> Section 25 Certificate of Commission
<b>Delegate:</b>	Chief Executive Officer
<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>	Power to issue a Form 15A and Form 15C (certificate of approval) pursuant to section 25 of the <i>Strata Titles Act 1985</i> , for a plan of subdivision, re-subdivision or consolidation, except those applications that: <ul style="list-style-type: none"> <li>(a) propose the creation of a vacant lot;</li> <li>(b) proposed vacant air strata's in multi-tiered strata scheme developments;</li> <li>(c) in the opinion of the WAPC as notified to the relevant local government in writing, or in the opinion of the relevant local government as notified to the WAPC in writing, relating to: <ul style="list-style-type: none"> <li>(i) a type of development; and/or</li> <li>(ii) land within an area,</li> </ul> </li> </ul> which is of state or regional significance, or in respect of which the WAPC has determined is otherwise in the public interest for the WAPC to determine the application.
<b>Council Conditions on this Delegation:</b>	
<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

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## 7 Delegations made under the *Bush Fires Act 1954*

Section 48 of the *Bush Fires Act 1954* provides that:

**48. Delegation by local governments**

- (1) A local government may, in writing, delegate to its chief executive officer the performance of any of its functions under this Act.
- (2) Performance by the chief executive officer of a local government of a function delegated under subsection (1) —
  - (a) is taken to be in accordance with the terms of a delegation under this section, unless the contrary is shown; and
  - (b) is to be treated as performance by the local government.
- (3) A delegation under this section does not include the power to subdelegate.
- (4) Nothing in this section is to be read as limiting the ability of a local government to act through its council, members of staff or agents in the normal course of business.

Section 59 provides that a local government may delegate to its CEO, bush fire control officer, or other officer to prosecute for offences under the Act:

**59. Prosecution of offences**

- (1) A person authorised by the Minister, a person employed in the Department for the purposes of this Act, an authorised CALM Act officer, a member of the Police Force, or a local government, may institute and carry on proceedings against a person for an offence alleged to be committed against this Act.
- (2) The person instituting and carrying on the proceedings shall be reimbursed out of the funds of the local government within whose district the alleged offence is committed, all costs and expenses which he may incur or be put to in or about the proceedings.
- (3) A local government may, by written instrument of delegation, delegate authority generally, or in any class of case, or in any particular case, to its bush fire control officer, or other officer, to consider allegations of offences alleged to have been committed against this Act in the district of the local government and, if the delegate thinks fit, to institute and carry on proceedings in the name of the local government against any person alleged to have committed any of those offences in the district, and may pay out of its funds any costs and expenses incurred in or about the proceedings.
- (4) A local government may by written instrument cancel, or from time to time vary, any instrument of delegation conferred under subsection (3).
- (5) Notwithstanding that a local government has under subsection (3) conferred authority on a delegate, the local government is not precluded from exercising but may itself exercise the authority.

### 7.1 Bush Fires Act 1954 – powers and duties

#### Council to CEO

<b>Express Power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Bush Fires Act 1954:</i> S48 Delegation by local governments
<b>Express Power or Duty Delegated:</b>	All powers, duties and functions under the <i>Bush Fires Act 1954</i> .
<b>Delegate:</b>	Chief Executive Officer
<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>	The Chief Executive Officer is delegated the power to perform all powers, duties and functions of a Local Government under the <i>Bush Fires Act 1954</i> , including the appointment of a Bush Fire Control Officers and all authorised persons under the Act and Regulations.
<b>Council Conditions on this Delegation:</b>	Decisions under s17(7) (variation of prohibited burned times) must be undertake jointly by both the Mayor and the Chief Bush Fire Control Officer and must comply with the procedural requirements of s.17(7B) and (8).  Excludes powers and duties that are prescribed in the Act with the requirement for a resolution by the local government.
<b>Head of power to Sub-Delegate:</b>	Nil – sub delegation is prohibited under s48(3) of the <i>Bush Fires Act 1954</i> .

#### Notes:

Previously delegation 3.3 of the City's 2018/19 register.

#### Council to other officers

Note that some sections of the Bush Fires Act allow a council to directly delegate power to an employee.

<b>Delegator:</b> <i>Power / Duty assigned in legislation to:</i>	Local Government
<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Bush Fires Act 1954:</i> S59A(3) - Prosecution for offences under the Act
<b>Express Power or Duty Delegated:</b>	S59A - Prosecution for offences under the Act
<b>Delegate:</b>	Manager Ranger Services  The power to issue infringement notices, pursuant to Section 59A under the <i>Bush Fires Act 1954</i> is delegated to:  Manager Ranger Services  Coordinator Ranger Services  All Rangers
<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>	The Chief Executive Officer and Manager Ranger Services are delegated the power to undertake prosecutions for offences under the <i>Bush Fires Act 1954</i> .

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<b>Council Conditions on this Delegation:</b>	Nil. Note: s59A(3) and Bush Fires (Infringements) Regulations 1978, Reg.4(a) provide that only the Mayor or the Chief Executive Officer may withdraw an infringement notice.
<b>Express Power to Sub-Delegate:</b>	Nil.

*CEO to other employees*

Section 48(3) of the *Bush Fires Act 1954* prohibits sub-delegation.

## 8 Delegations made under the *Cat Act 2011*

Section 44 of the *Cat Act 2011* operates in a similar manner to the delegation provisions of the *Local Government Act 1995*:

### **44. Delegation by local government**

- (1) *The local government may delegate to its CEO the exercise of any of its powers or the discharge of any of its duties under another provision of this Act.*
- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*
- (3) *A decision to delegate under this section is to be made by an absolute majority.*

### **45. Delegation by CEO of local government**

- (1) *A 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 duties under another provision of this Act.*
- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*
- (3) *This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 44, but in the case of such a power or duty —*
  - (a) *the CEO's power under this section to delegate the exercise of that power or the discharge of that duty; and*
  - (b) *the exercise of that power or the discharge of that duty by the CEO's delegate, are subject to any conditions imposed by the local government on its delegation to the CEO.*
- (4) *Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.*
- (5) *In subsections (3) and (4) —*  
**conditions** *includes qualifications, limitations or exceptions.*
- (6) *A power or duty under section 63, 64 or 65 cannot be delegated to an authorised person.*

### **46. Other matters relevant to delegations under this Division**

- (1) *Without limiting the application of the Interpretation Act 1984 sections 58 and 59 —*
  - (a) *a delegation made under this Division has effect for the period of time specified in the delegation or where no period has been specified, indefinitely; and*
  - (b) *any decision to amend or revoke a delegation by a local government under this Division is to be by an absolute majority.*
- (2) *Nothing in this Division is to be read as preventing —*
  - (a) *a local government from performing any of its functions by acting through a person other than the CEO; or*
  - (b) *a CEO from performing any of his or her functions by acting through another person.*

### **47. Register of, and review of, delegations**

- (1) *The CEO of a local government is to keep a register of the delegations made under this Division to the CEO and to employees of the local government.*
- (2) *At least once every financial year, delegations made under this Division are to be reviewed by the delegator.*
- (3) *A person to whom a power or duty is delegated under this Division is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.*

## 8.1 Delegations from Council to CEO

### 8.1.1 Cat registrations

#### *Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Cat Act 2011:</i> s.44 Delegation by local government
<b>Express Power or Duty Delegated:</b>	<i>Cat Act 2011:</i> s.9 Registration s.10 Cancellation of registration s.11 Registration numbers, certificates and tags <i>Cat Regulations 2012</i> Schedule 3, cl.1(4) Fees Payable
<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 grant, or refuse to grant, a cat registration or renewal of a cat registration [s.9(1)].</li> <li>2. Authority to refuse to consider an application for registration or renewal where an applicant does not comply with a requirement to give any document or information required to determine the application [s.9(6)].</li> <li>3. Authority to cancel a cat registration [s.10].</li> <li>4. Authority to give the cat owner a new registration certificate or tag, if satisfied that the original has been stolen, lost, damaged or destroyed [s.11(2)].</li> <li>5. Authority to reduce or waive a registration or approval to breed fee, in respect of any individual cat or any class of cats within the City's District [Regs. Sch. 3 cl.1(4)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	<ol style="list-style-type: none"> <li>a. Notices of decisions must include advice as to Objection and Review rights in accordance with Part 4, Division 5 of the <i>Cat Act 2011</i>.</li> </ol>
<b>Express Power to Sub-Delegate:</b>	<i>Cat Act 2011:</i> s.45 Delegation by CEO of local government

## 8.1.2 Cat control notices

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Cat Act 2011:</i> s.44 Delegation by local government
<b>Express Power or Duty Delegated:</b>	<i>Cat Act 2011:</i> s.26 Cat control notice may be given to cat owner
<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 give a cat control notice to a person who is the owner of a cat ordinarily kept within the City's District [s.26].
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	<i>Cat Act 2011:</i> s.45 Delegation by CEO of local government

## 8.1.3 Approval to breed cats

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Cat Act 2011:</i> s.44 Delegation by local government
<b>Express Power or Duty Delegated:</b>	<i>Cat Act 2011:</i> s.37 Approval to Breed Cats s.38 Cancellation of approval to breed cats s.39 Certificate to be given to approved cat breeder
<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 grant or refuse to grant approval or renew an approval to breed cats [s.37(1) and (2)].</li> <li>2. Authority to refuse to consider an application for registration or renewal where an applicant does not comply with a requirement to give any document or information required to determine the application [s.37(4)].</li> <li>3. Authority to cancel an approval to breed cats [s.38].</li> <li>4. Authority to give an approved breeder a new certificate or tag, if satisfied that the original has been stolen, lost, damaged or destroyed [s.39(2)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	Notices of decisions must include advice as to Objection and Review rights in accordance with Part 4, Division 5 of the <i>Cat Act 2011</i> .
<b>Express Power to Sub-Delegate:</b>	<i>Cat Act 2011:</i> s.45 Delegation by CEO of local government

## 8.1.4 Recovery of costs – destruction of cats

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Cat Act 2011:</i> s.44 Delegation by local government
<b>Express Power or Duty Delegated:</b>	<i>Cat Act 2011:</i> s.49(3) Authorised person may cause cat to be destroyed
<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 recover the amount of the costs associated with the destruction and the disposal of a cat [s.49(3)].
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	<i>Cat Act 2011:</i> s.45 Delegation by CEO of local government

## 8.1.5 Applications to keep additional cats

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Cat Act 2011:</i> s.44 Delegation by local government
<b>Express Power or Duty Delegated:</b>	<i>Cat (Uniform Local Provisions) Regulations 2013:</i> r.8 Application to keep additional number of cats r.9 Grant of approval to keep additional number of cats
<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 require any document or additional information required to determine an application [r.8(3)]</li> <li>2. Authority to refuse to consider an application if the applicant does not comply with a requirement to provide any document or information required to determine an application [r.8(4)].</li> <li>2. Authority to grant or refuse approval for additional number of cats specified in an application to be kept at the prescribed premises and to determine any condition reasonably necessary to ensure premises are suitable for the additional number of cats [r.9].</li> </ol>
<b>Council Conditions on this Delegation:</b>	a. Notices of decisions must include advice as to Review rights in accordance with r.11 of the Cat (Uniform Local Provisions) Regulations 2013.
<b>Express Power to Sub-Delegate:</b>	<i>Cat Act 2011:</i> s.45 Delegation by CEO of local government

8.1.6 Reduce or waive cat registration fee

Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	Cat Act 2011: s.44 Delegation by local government
<b>Express Power or Duty Delegated:</b>	Cat Regulations 2012: Schedule 3 Fees clause 1(4)
<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 reduce or waiver a fee payable under Schedule 3 clauses (2) or (3) in respect to any individual cat.
<b>Council Conditions on this Delegation:</b>	a. This delegation does NOT provide authority to determine to reduce or waiver the fees payable in regard to any <u>class of cat</u> within the District. This matter requires a Council decision in accordance with s.6.16, 6.17 and 6.18 of the <i>Local Government Act 1995</i> .
<b>Express Power to Sub-Delegate:</b>	Cat Act 2011: s.45 Delegation by CEO of local government

## 8.1.7 Appointment of Authorised Persons

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Cat Act 2011:</i> s.44 Delegation by local government
<b>Express Power or Duty Delegated:</b>	<i>Cat Act 2011:</i> s. 48 Authorised persons
<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>	Authority to appoint authorised persons by issuing a certificate of authorisation [s.48].
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	<i>Cat Act 2011:</i> s.45 Delegation by CEO of local government

## 9 Delegations made under the *Dog Act 1976*

Section 10AA of the *Dog Act 1976* provides that:

### **10AA. Delegation of local government powers and duties**

- (1) *A local government may, by absolute majority as defined in the Local Government Act 1995 section 1.4, delegate to its chief executive officer any power or duty of the local government under another provision of this Act.*
- (2) *The delegation must be in writing.*
- (3) *The delegation may expressly authorise the delegate to further delegate the power or duty.*
- (4) *A local government's chief executive officer who is exercising or performing a power or duty that has been delegated as authorised under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.*
- (5) *Nothing in this section limits the ability of a local government's chief executive officer to perform a function through an officer or agent.*

### **10AB. Register of, and review of, delegations**

- (1) *The chief executive officer of a local government is to keep a register of —*
  - (a) *delegations made under section 10AA(1); and*
  - (b) *further delegations made under the authority of a delegation made under section 10AA(1).*
- (2) *At least once every financial year —*
  - (a) *delegations made under section 10AA(1); and*
  - (b) *further delegations made under the authority of a delegation made under section 10AA(1),*  
*are to be reviewed by the delegator.*

The only restrictions on what can be delegated are those that require an absolute majority decision by council under s1.4 of the *Local Government Act 1995*. These are:

- Under s31 in relation to areas where dogs are prohibited:
  - (2B) *A local government may, by absolute majority as defined in the Local Government Act 1995 section 1.4, specify a public place, or a class of public place, that is under the care, control or management of the local government to be a place where dogs are prohibited —*
    - (a) *at all times; or*
    - (b) *at specified times.*
- And designation of dog exercise areas under s31(3A):
  - (3A) *A local government may, by absolute majority as defined in the Local Government Act 1995 section 1.4, specify a public place, or a class of public place, that is under the care, control or management of the local government to be a dog exercise area.*

## 9.1 Refuse or cancel registration of a dog

### Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Dog Act 1976:</i> s.10AA Delegation of local government powers and duties
<b>Express Power or Duty Delegated:</b>	<i>Dog Act 1976:</i> s.15(2) and (4A) Registration periods and fees s.16(3) Registration procedure s.17A(2) If no application for registration made s.17(4) and (6) Refusal or cancellation of registration
<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 determine to refuse a dog registration and refund the fee, if any [s.16(2)].</li> <li>2. Authority to direct the registration officer to refuse to effect or renew or to cancel the registration of a dog, and to give notice of such decisions, where:             <ol style="list-style-type: none"> <li>i. the applicant, owner or registered owner has been convicted of an offence or paid a modified penalty within the past 3-years in respect of 2 or more offences against this Act, the <i>Cat Act 2011</i> or the <i>Animal Welfare Act 2002</i>; or</li> <li>ii. the dog is determined to be destructive, unduly mischievous or to be suffering from a contagious or infectious disease or</li> <li>iii. the delegate is not satisfied that the dog is or will be effectively confined in or at premises where the dog is ordinarily kept</li> <li>iv. the dog is required to be microchipped but is not microchipped; or</li> <li>v. the dog is a dangerous dog [s.16(3) and s.17A(2)].</li> </ol> </li> <li>3. Authority to discount or waive a registration fee, including a concessional fee, for any individual dog or any class of dogs within the City's District [s15(4A)].</li> <li>4. Authority to apply to a Justice of the Peace for an order to seize a dog where, following a decision to refuse or cancel a registration and the applicant / owner has not applied to the State Administration Tribunal for the decision to be reviewed. [s.17(4)].             <ol style="list-style-type: none"> <li>i. Authority, following seizure, to determine to cause the dog to be detained or destroyed or otherwise disposed of as though it had been found in contravention of section 31, 32 or 33A and had not been claimed [s.17(6)]</li> </ol> </li> </ol>
<b>Council Conditions on this Delegation:</b>	The Chief Executive Officer may further delegate (sub-delegate) to employees which the CEO has determined as being suitably capable of fulfilling the powers and duties contained in this Delegation.
<b>Express Power to Sub-Delegate:</b>	<i>Dog Act 1976:</i> s.10AA(3) Delegation of local government powers and duties (NOTE – sub-delegation only permitted where delegation to the CEO expressly authorises sub-delegation)

**9.2 Recovery of moneys due under the Dog Act 1976**

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Dog Act 1976:</i> s.10AA Delegation of local government powers and duties
<b>Express Power or Duty Delegated:</b>	<i>Dog Act 1976:</i> s.29(5) Power to seize dogs
<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>	Authority to recover moneys, in a court of competent jurisdiction, due in relation to a dog for which the owner is liable [s.29(5)].
<b>Council Conditions on this Delegation:</b>	The Chief Executive Officer may further delegate (sub-delegate) to employees which the CEO has determined as being suitably capable of fulfilling the powers and duties contained in this Delegation.
<b>Express Power to Sub-Delegate:</b>	<i>Dog Act 1976:</i> s.10AA(3) Delegation of local government powers and duties

### 9.3 Dispose of or sell dogs liable to be destroyed

#### Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Dog Act 1976:</i> s.10AA Delegation of local government powers and duties
<b>Express Power or Duty Delegated:</b>	<i>Dog Act 1976:</i> s.29(11) Power to seize dogs
<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>	Authority to dispose of or sell a dog which is liable to be destroyed [s.29(11)].
<b>Council Conditions on this Delegation:</b>	The Chief Executive Officer may further delegate (sub-delegate) to employees which the CEO has determined as being suitably capable of fulfilling the powers and duties contained in this Delegation.
<b>Express Power to Sub-Delegate:</b>	<i>Dog Act 1976:</i> s.10AA(3) Delegation of local government powers and duties (NOTE – sub-delegation only permitted where delegation to the CEO expressly authorises sub-delegation)

#### 9.4 Declare dangerous dog

##### Guidance note

Section 33E also provides that this power may be exercised by an Authorised Person. If the Local Government has appointed an Authorised Person for this purpose (specified in the Certificate of Authorisation for the purposes of s.33E), then this Delegation is not required.

##### Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Dog Act 1976:</i> s.10AA Delegation of local government powers and duties
<b>Express Power or Duty Delegated:</b>	<i>Dog Act 1976:</i> s.33E(1) Individual dog may be declared to be dangerous dog (declared)
<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>	Authority to declare an individual dog to be a dangerous dog [s.33E(1)].
<b>Council Conditions on this Delegation:</b>	The Chief Executive Officer may further delegate (sub-delegate) to employees which the CEO has determined as being suitably capable of fulfilling the powers and duties contained in this Delegation.
<b>Express Power to Sub-Delegate:</b>	<i>Dog Act 1976:</i> s.10AA(3) Delegation of local government powers and duties (NOTE – sub-delegation only permitted where delegation to the CEO expressly authorises sub-delegation)

### 9.5 Dangerous dog declared or seized – deal with objections and determine when to revoke

#### Guidance note

Delegation of the s.33F power to deal with an objection to a dangerous dog declaration should not be delegated to the same person / position who is delegated / authorised to exercise s.33E powers enabling the declaration of a dangerous dog.

#### Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Dog Act 1976:</i> s.10AA Delegation of local government powers and duties
<b>Express Power or Duty Delegated:</b>	<i>Dog Act 1976:</i> s.33F(6) Owners to be notified of making of declaration s.33G(4) Seizure and destruction s.33H(1), (2) and (5) Local government may revoke declaration or proposal to destroy
<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 consider and determine to either dismiss or uphold an objection to the declaration of a dangerous dog [s.33F(6)].</li> <li>2. Authority to consider and determine to either dismiss or uphold an objection to seizure of a dangerous dog [s.33G(4)].</li> <li>3. Authority to revoke a declaration of a dangerous dog or revoke notice proposing to cause a dog to be destroyed, only where satisfied that the dog can be kept without likelihood of any contravention of this Act [s.33H(1)]</li> <li>4. Authority to, before dealing with an application to revoke a declaration or notice, require the owner of the dog to attend with the dog a course in behaviour and training or otherwise demonstrate a change in the behaviour of the dog [s.33H(2)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	The Chief Executive Officer may further delegate (sub-delegate) to employees which the CEO has determined as being suitably capable of fulfilling the powers and duties contained in this Delegation.
<b>Express Power to Sub-Delegate:</b>	<i>Dog Act 1976:</i> s.10AA(3) Delegation of local government powers and duties

**9.6 Deal with objection to notice to revoke dangerous dog declaration or destruction notice**

Guidance note

Delegation of the s33H(5) power to deal with an objection should not be delegated to the same person/position who is delegated/authorised to exercise s.33H(1) and (2).

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Dog Act 1976:</i> s.10AA Delegation of local government powers and duties
<b>Express Power or Duty Delegated:</b>	<i>Dog Act 1976:</i> s.33H(5) Local government may revoke declaration or proposal to destroy
<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>	Authority to consider and determine to either dismiss or uphold an objection to a decision to revoke [s.33H(5)]:  (a) a notice declaring a dog to be dangerous; or  (b) a notice proposing to cause a dog to be destroyed.
<b>Council Conditions on this Delegation:</b>	The Chief Executive Officer may further delegate (sub-delegate) to employees which the CEO has determined as being suitably capable of fulfilling the powers and duties contained in this Delegation.
<b>Express Power to Sub-Delegate:</b>	<i>Dog Act 1976:</i> s.10AA(3) Delegation of local government powers and duties (NOTE – sub-delegation only permitted where delegation to the CEO expressly authorises sub-delegation)

### 9.7 Determine recoverable expenses for dangerous dog declaration

#### Guidance note

This delegation does not include s33M(1)(b) as the setting of a fixed fee must be Council resolution in accordance with s.6.16 of the Local Government Act 1995.

#### Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Dog Act 1976:</i> s.10AA Delegation of local government powers and duties
<b>Express Power or Duty Delegated:</b>	<i>Dog Act 1976:</i> s.33M(1)(a) Local Government expenses to be recoverable
<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>	Authority to determine the reasonable charge to be paid by an owner at the time of payment of the registration fee under s.15, up to any maximum amount prescribed, having regard to the expenses incurred by the Local Government in making inquiries, investigations and inspections concerning the behaviour of a dog declared to be dangerous [s.33H(5)].
<b>Council Conditions on this Delegation:</b>	The Chief Executive Officer may further delegate (sub-delegate) to employees which the CEO has determined as being suitably capable of fulfilling the powers and duties contained in this Delegation.
<b>Express Power to Sub-Delegate:</b>	<i>Dog Act 1976:</i> s.10AA(3) Delegation of local government powers and duties (NOTE – sub-delegation only permitted where delegation to the CEO expressly authorises sub-delegation)

## 9.8 Appointment of Authorised Persons

### Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Dog Act 1976:</i> s.10AA Delegation of local government powers and duties
<b>Express Power or Duty Delegated:</b>	<i>Dog Act 1976:</i> s.11(1) Staff and Services
<b>Delegate:</b>	Chief Executive Officer
<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 Registration Officers to exercise the powers and duties conferred on a Registration Officer by this Act [s.3].</li> <li>2. Authority to appoint authorised persons to exercise the powers conferred on an authorised person by this Act [s.11(1)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	The Chief Executive Officer may further delegate (sub-delegate) to employees which the CEO has determined as being suitably capable of fulfilling the powers and duties contained in this Delegation.
<b>Express Power to Sub-Delegate:</b>	<i>Dog Act 1976:</i> s.10AA(3) Delegation of local government powers and duties (NOTE – sub-delegation only permitted where delegation to the CEO expressly authorises sub-delegation)

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## 10 Delegations made under the *Tobacco Products Control Act 2006*

### 10.1 Appointment of Authorised Persons and Restricted Investigators

#### *Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Local Government Act 1995:</i> s.5.42 <i>Delegation of some powers or duties to the CEO</i> <i>s 21 Public Health Act 2016:</i>
<b>Express Power or Duty Delegated:</b>	<i>Tobacco Products Control Act 2006</i> s.77 <i>Power to appoint restricted investigators</i> <i>Public Health Act 2016</i> s.24 <i>Power to appoint Authorised Officers under the Public Health Act 2016 to act as Authorised Officers under the Tobacco Products Control Act 2006 by virtue of clause 1 of the Glossary of the Tobacco Products Control Act 2006.</i>
<b>Delegate:</b>	Chief Executive Officer
<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 as restricted investigators under s77 of the <i>Tobacco Products Control Act 2006</i></li> <li>2. Authority to appoint Authorised Officers for the purposes of the <i>Tobacco Products Control Act 2006</i> by appointing Authorised Officers under section 24 of the <i>Public Health Act 2016</i></li> </ol>
<b>Council Conditions on this Delegation:</b>	The Chief Executive Officer may further delegate (sub delegate) to employees which the CEO has determined as being suitably capable of fulfilling the powers and duties contained in this Delegation.
<b>Express Power to Sub-Delegate:</b>	s.5.44 <i>Local Government Act 1995</i> s.21(4) <i>Public Health Act 2016</i>

## 11 Delegations made under the *Food Act 2008*

### Guidance note

References to 'CEO' in the *Food Act 2008* mean the CEO of the Department of Health. There are no powers or duties assigned to the CEO of a local government in this Act.

There is also no power of sub-delegation available. As such it is important for each delegation under this Act to be made direct to delegates who are most suitable for fulfilling the power or duty.

### 11.1 Determine Compensation

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Food Act 2008:</i> 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
<b>Express Power or Duty Delegated:</b>	<i>Food Act 2008:</i> s.56(2) Compensation to be paid in certain circumstances s.70(2) and (3) Compensation
<b>Delegates:</b>	Chief Executive Officer Executive Director Strategy and Development Manager Built Environment and Wellbeing
<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 applications for compensation in relation to any item seized, if no contravention has been committed and the item cannot be returned [s.56(2)]. 2. Authority to determine an application for compensation from a person on whom a prohibition notice has been served and who has suffered loss as the result of the making of the order and who considers that there were insufficient grounds for making the order [s.70(2) and (3)].
<b>Council Conditions on this Delegation:</b>	a. In accordance with s.118(3)(b), this delegation is subject to relevant Department of Health CEO Guidelines, as amended from time to time. b. Compensation under this delegation may only be determined upon documented losses up to a maximum of \$5,000. Compensation requests above this value are to be reported to Council.
<b>Express Power to Sub-Delegate:</b>	NIL - Food Regulations 2009 do not provide for sub-delegation.
<b>Compliance Links:</b>	Note – Decisions under this delegation may be referred for review by the State Administration Tribunal under s35(5) of the Act

## 11.2 Prohibition orders

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Food Act 2008:</i> 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
<b>Express Power or Duty Delegated:</b>	<i>Food Act 2008:</i> s.65(1) Prohibition orders s.66 Certificate of clearance to be given in certain circumstances s.67(4) Request for re-inspection
<b>Delegate:</b>	Chief Executive Officer Executive Director Strategy and Development Manager Built Environment and Wellbeing
<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 serve a prohibition order on the proprietor of a food business in accordance with s.65 of the Food Act 2008 [s.65(1)].</li> <li>2. Authority to give a certificate of clearance, where inspection demonstrates compliance with a prohibition order and any relevant improvement notices [s.66].</li> <li>3. Authority to give written notice to proprietor of a food business on whom a prohibition order has been served of the decision not to give a certificate of clearance after an inspection [s.67(4)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	In accordance with s.118(3)(b), this delegation is subject to relevant Department of Health CEO Guidelines, as amended from time to time.
<b>Express Power to Sub-Delegate:</b>	NIL - Food Regulations 2009 do not provide for sub-delegation.
<b>Compliance Links:</b>	Note – Decisions under this delegation may be referred for review by the State Administration Tribunal

Notes:

**11.3 Food business registrations**

<b>Head of power or Duty Delegated:</b>	<i>Food Act 2008:</i> 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
<b>Delegate:</b>	Chief Executive Officer Executive Director Strategy and Development Manager Built Environment and Wellbeing
<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 consider applications and determine registration of a food business and grant the application with or without conditions or refuse the registration [s.110(1) and (5)]. 2. Authority to vary the conditions or cancel the registration of a food business [s.112].
<b>Council Conditions on this Delegation:</b>	In accordance with s.118(3)(b), this delegation is subject to relevant Department of Health CEO Guidelines, as amended from time to time.
<b>Express Power to Sub-Delegate:</b>	NIL – Food Regulations 2009 do not provide for sub-delegation.
<b>Compliance Links:</b>	Note – Decisions under this delegation may be referred for review by the State Administration Tribunal

Notes:

#### 11.4 Debt recovery and prosecutions

<b>Express Power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Food Act 2008:</i> 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
<b>Head of power or Duty Delegated:</b>	<i>Food Act 2008:</i> s.54 Cost of destruction or disposal of forfeited item s.125 Institution of proceedings
<b>Delegate:</b>	Chief Executive Officer Executive Director Strategy and Development Manager Built Environment and Wellbeing
<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 recover costs incurred in connection with the lawful destruction or disposal of an item (seized) including any storage costs [s.54(1)] and the costs of any subsequent proceedings in a court of competent jurisdiction [s.54(3)]. 2. Authority to institute proceedings for an offence under the Food Act 2008 [s.125].
<b>Council Conditions on this Delegation:</b>	In accordance with s.118(3)(b), this delegation is subject to relevant Department of Health CEO Guidelines, as amended from time to time.
<b>Express Power to Sub-Delegate:</b>	NIL - Food Regulations 2009 do not provide for sub-delegation.

Notes:

### 11.5 Food businesses list – public access

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Food Act 2008:</i> 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
<b>Express Power or Duty Delegated:</b>	<i>Food Regulations 2009:</i> r.51 Enforcement agency may make list of food businesses publicly available
<b>Delegate:</b>	Chief Executive Officer Executive Director Strategy and Development Manager Built Environment and Wellbeing
<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>	Authority to decide to make a list of food businesses maintained under s.115(a) or (b) publicly available [r.51].
<b>Council Conditions on this Delegation:</b>	In accordance with s.118(3)(b), this delegation is subject to relevant Department of Health CEO Guidelines, as amended from time to time.
<b>Express Power to Sub-Delegate:</b>	NIL - Food Regulations 2009 do not provide for sub-delegation.

Notes:

### 11.6 Appoint Authorised Officers and Designated Officers

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Food Act 2008:</i> 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
<b>Express Power or Duty Delegated:</b>	<i>Food Act 2008:</i> s.122(1) Appointment of authorised officers s.126(6), (7) and (13) Infringement Officers
<b>Delegate:</b>	Chief Executive Officer
<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 a person to be an authorised officer for the purposes of the <i>Food Act 2008</i> [s.122(2)].</li> <li>2. Authority to appoint an Authorised Officer appointed under s.122(2) of this Act or the s.24(1) of the <i>Public Health Act 2016</i>, to be a Designated Officer for the purposes of issuing Infringement Notices under the <i>Food Act 2008</i> [s.126(13)].</li> <li>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)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	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: <ul style="list-style-type: none"> <li>• Appointment of Authorised Officers as Meat Inspectors</li> <li>• Appointment of Authorised Officers</li> <li>• Appointment of Authorised Officers – Designated Officers only</li> <li>• Appointment of Authorised Officers – Appointment of persons to assist with the discharge of duties of an Authorised Officer</li> </ul>
<b>Express Power to Sub-Delegate:</b>	NIL - Food Regulations 2009 do not provide for sub-delegation.
<b>Compliance Links:</b>	s.122(3) requires an Enforcement Agency to maintain a list of appointed authorised officers  s.123(1) requires an Enforcement Agency to provide each Authorised Officer with a Certificate of Authority as prescribed

Notes:

12 Delegations made under the *Graffiti Vandalism Act 2016*

References to 'CEO' in the *Graffiti Vandalism Act 2016* mean the CEO of the Department of Corrective Services. There are no powers or duties assigned to the CEO of a local government within this Act.

Sections 16 and 17 allow for a local government to delegate powers and duties to its CEO however:

- 16. Delegation by local government**
  - (1) *The local government may delegate to its CEO the exercise of any of its powers or the discharge of any of its duties under another provision of this Part.*
  - (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*
  - (3) *A decision to delegate under this section is to be made by an absolute majority.*
- 17. Delegation by CEO of local government**
  - (1) *A 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 duties under another provision of this Part other than this power of delegation.*
  - (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*
  - (3) *This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 16, but in the case of such a power or duty —*
    - (a) *the CEO's power under this section to delegate the exercise of that power or the discharge of that duty; and*
    - (b) *the exercise of that power or the discharge of that duty by the CEO's delegate,**are subject to any conditions imposed by the local government on its delegation to the CEO.*
  - (4) *Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.*
  - (5) *In subsections (3) and (4) —*  
**conditions** *includes qualifications, limitations or exceptions.*

12.1 Give notice requiring obliteration of graffiti

Delegations from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Graffiti Vandalism Act 2016:</i> s.16 Delegation by local government
<b>Express Power or Duty Delegated:</b>	<i>Local Government Act 1995:</i> s.18(2) Notice requiring removal of graffiti s.19(3) & (4) Additional powers when notice is given
<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 give written notice to a person who is an owner or occupier of property on which graffiti is applied, requiring the person to ensure that the graffiti is obliterated in an acceptable manner, within the time set out in the notice [s.18(2)].</li> <li>2. Authority, where a person fails to comply with a notice, to do anything considered necessary to obliterate the graffiti in an acceptable manner [s.19(3)] and to take action to recover costs incurred as a debt due from the person who failed to comply with the notice [s.19(4)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	<i>Graffiti Vandalism Act 2016:</i> s.17 Delegation by CEO of local government

## 12.2 Notices – deal with objections and give effect to notices

### Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Graffiti Vandalism Act 2016:</i> s.16 Delegation by local government
<b>Express Power or Duty Delegated:</b>	<i>Graffiti Vandalism Act 2016:</i> s.22(3) Objection may be lodged s.24(1)(b) & (3) Suspension of effect of notice
<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 deal with an objection to a notice [s.22(3)].</li> <li>2. Authority, where an objection has been lodged, to: <ol style="list-style-type: none"> <li>i. determine and take action to give effect to the notice, where it is determined that there are urgent reasons or an endangerment to public safety or likely damage to property or serious nuisance, if action is not taken [s.24(1)(b)] and</li> <li>ii. to give notice to the affected person, before taking the necessary actions [s.24(3)].</li> </ol> </li> </ol>
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	<i>Graffiti Vandalism Act 2016:</i> s.17 Delegation by CEO of local government

### 12.3 Obliterate graffiti on private property

Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Graffiti Vandalism Act 2016:</i> s.16 Delegation by local government
<b>Express Power or Duty Delegated:</b>	<i>Graffiti Vandalism Act 2016:</i> s.25(1) Local government graffiti powers on land not local government property
<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 to obliterate graffiti applied without consent of the owner or occupier, even though the land on which it is done is not local government property and the local government does not have consent [s.25(1)].
<b>Council Conditions on this Delegation:</b>	a. Subject to exercising Powers of Entry. b. Graffiti removal is to be undertaken in accordance with Policy 2.1.3 – Graffiti Control and Removal.
<b>Express Power to Sub-Delegate:</b>	<i>Graffiti Vandalism Act 2016:</i> s.17 Delegation by CEO of local government

## 12.4 Powers of entry

### Delegation from Council to CEO

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Graffiti Vandalism Act 2016:</i> s.16 Delegation by local government
<b>Express Power or Duty Delegated:</b>	<i>Graffiti Vandalism Act 2016:</i> s.28 Notice of entry s.29 Entry under warrant
<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 give notice of an intended entry to the owner or occupier of land, premises or thing, specifying the purpose for which entry is required [s.28].</li> <li>2. Authority to obtain a warrant to enable entry onto any land, premises or thing for the purposes of this Act [s.29].</li> </ol>
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	<i>Graffiti Vandalism Act 2016:</i> s.17 Delegation by CEO of local government

## 13 Delegations made under the *Public Health Act 2016*

### Guidance note

Section 21 of the *Public Health Act 2016* provides that powers may only be delegated to the CEO or an authorised officer designated under s.24 unless a Regulation enacted under the *Public Health Act 2016* specifically authorises a delegated power or duty of an enforcement agency to be further delegated.

Under s4 of the Act, 'enforcement agency' includes a local government.

### 13.1 Enforcement agency reports to the Chief Health Officer

#### *Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Public Health Act 2016:</i> s.21 Enforcement agency may delegate
<b>Express Power or Duty Delegated:</b>	<i>Public Health Act 2016</i> s.22 Reports by and about enforcement agencies
<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 prepare and provide to the Chief Health Officer, the Local Government's report on the performance of its functions under this Act and the performance of functions by persons employed or engaged by the City [s.22(1)]</li> <li>2. Authority to prepare and provide to the Chief Health Officer, a report detailing any proceedings for an offence under this Act [s.22(2)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	Nil
<b>Express Power to Sub-Delegate:</b>	Nil – Unless a Regulation enacted under the <i>Public Health Act 2016</i> specifically authorises a delegated power or duty of an enforcement agency to be further delegated [s.21(4)].
<b>Compliance Links:</b>	<i>Public Health Act 2016</i> s.20 Conditions on performance of functions by enforcement agencies.

Notes:

### 13.2 Determine compensation for seized items

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Public Health Act 2016:</i> s.21 Enforcement agency may delegate
<b>Express Power or Duty Delegated:</b>	<i>Public Health Act 2016</i> s.264 Compensation
<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>	Authority, in response to an application for compensation, to determine compensation that is just and reasonable in relation to any item seized under Part 16 if there has been no contravention of the Act and the item cannot be returned or has in consequence of the seizure depreciated in value [s.264].
<b>Council Conditions on this Delegation:</b>	Compensation is limited to a maximum value of \$5,000 with any proposal for compensation above this value to be referred for Council's determination.
<b>Express Power to Sub-Delegate:</b>	Nil – Unless a Regulation enacted under the <i>Public Health Act 2016</i> specifically authorises a delegated power or duty of an enforcement agency to be further delegated [s.21(4)].
<b>Compliance Links:</b>	<i>Public Health Act 2016</i> s.20 Conditions on performance of functions by enforcement agencies.  Note – Decisions under this delegation may be referred for review by the State Administration Tribunal

Notes:

**13.3 Commence Proceedings**

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Public Health Act 2016:</i> s.21 Enforcement agency may delegate
<b>Express Power or Duty Delegated:</b>	<i>Public Health Act 2016</i> s.280 Commencing Proceedings
<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>	Authority to commence proceedings for an offence under the <i>Public Health Act 2016</i> [s.280]
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	Nil – Unless a Regulation enacted under the <i>Public Health Act 2016</i> specifically authorises a delegated power or duty of an enforcement agency to be further delegated [s.21(4)].
<b>Compliance Links:</b>	<i>Public Health Act 2016</i> s.20 Conditions on performance of functions by enforcement agencies.

Notes:

### 13.4 Appoint Authorised Officer or Approved Officer (Asbestos Regulations)

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Health (Asbestos) Regulations 1992:</i> r.15D(7) Infringement Notices
<b>Express Power or Duty Delegated:</b>	<i>Health (Asbestos) Regulations 1992:</i> r.15D(5) Infringement Notices
<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>	Authority to appoint a person or classes of persons as an authorised officer or approved officer for the purposes of the <i>Criminal Procedure Act 2004</i> Part 2 [r.15D(5)].
<b>Council Conditions on this Delegation:</b>	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)].
<b>Express Power to Sub-Delegate:</b>	Nil – the <i>Health (Asbestos) Regulations 1992</i> do not provide a power to sub-delegate.
<b>Compliance Links:</b>	<i>Criminal Procedure Act 2004 – Part 2</i>

Notes:

**13.5 Designate Authorised Officers**

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Public Health Act 2016:</i> s.21 Enforcement agency may delegate
<b>Express Power or Duty Delegated:</b>	<i>Public Health Act 2016</i> s.24(1) and (3) Designation of authorised officers
<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 designate a person or class of persons as authorised officers for the purposes of: <ol style="list-style-type: none"> <li>i. The <i>Public Health Act 2016</i> or other specified Act</li> <li>ii. Specified provisions of the <i>Public Health Act 2016</i> or other specified Act</li> <li>iii. Provisions of the <i>Public Health Act 2016</i> or another specified Act, other than the specified provisions of that Act.</li> </ol> Including: <ol style="list-style-type: none"> <li>a. an environmental health officer or environmental health officers as a class; OR</li> <li>b. a person who is not an environmental health officer or a class of persons who are not environmental health officers, OR</li> <li>c. a mixture of the two. [s.24(1) and (3)].</li> </ol>
<b>Council Conditions on this Delegation:</b>	a. Subject to each person so appointed being; <ul style="list-style-type: none"> <li>• Appropriately qualified and experienced [s.25(1)(a)]; and</li> <li>• Issued with a certificate, badge or identity card identifying the authorised officer [s.30 and 31].</li> </ul> b. A Register (list) of authorised officers is to be maintained in accordance with s.27.
<b>Express Power to Sub-Delegate:</b>	Nil – Unless a Regulation enacted under the <i>Public Health Act 2016</i> specifically authorises a delegated power or duty of an enforcement agency to be further delegated [s.21(4)].
<b>Compliance Links:</b>	<i>Public Health Act 2016</i> s.20 Conditions on performance of functions by enforcement agencies s.25 Certain authorised officers required to have qualifications and experience. s.26 Further provisions relating to designations s.27 Lists of authorised officers to be maintained s.28 When designation as authorised officer ceases s.29 Chief Health Officer may issue guidelines about qualifications and experience of authorised officers s.30 Certificates of authority s.31 Issuing and production of certificate of authority for purposes of other written laws s.32 Certificate of authority to be returned. s.136 Authorised officer to produce evidence of authority <i>Criminal Investigation Act 2006</i> , Parts 6 and 13 – refer s.245 of the <i>Public Health Act 2016</i> <i>The Criminal Code</i> , Chapter XXVI – refer s.252 of the <i>Public Health Act 2016</i>

Notes:

## 14 Delegations made under the *Health (Miscellaneous Provisions) Act 1911*

Guidance note

Section 26 of the *Health (Miscellaneous Provisions) Act 1911* provides that:

**26. Powers of local government**

*Every local government is hereby authorised and directed to carry out within its district the provisions of this Act and the regulations, local laws, and orders made thereunder:*

*Provided that a local government may appoint and authorise any person to be its deputy, and in that capacity to exercise and discharge all or any of the powers and functions of the local government for such time and subject to such conditions and limitations (if any) as the local government shall see fit from time to time to prescribe, but so that such appointment shall not affect the exercise or discharge by the local government itself of any power or function.*

### 14.1 Discharge of powers and duties under the Act

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Health (Miscellaneous Provisions) Act 1911: Section 26</i>
<b>Express Power or Duty Delegated:</b>	To exercise and discharge all or any of the powers and functions of the local government for such time and subject to such conditions and limitations (if any) as the local government shall see fit from time to time to prescribe, but so that such appointment shall not affect the exercise or discharge by the local government itself of any power or function
<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>	The CEO is appointed as the City's deputy under the Act to exercise and discharge all or any of the powers and functions of the local government.
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	

**14.2 Appoint Authorised Persons**

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	Health (Miscellaneous Provisions) Act 1911:
<b>Express Power or Duty Delegated:</b>	To exercise and discharge all or any of the powers and functions of the local government for such time and subject to such conditions and limitations (if any) as the local government shall see fit from time to time to prescribe, but so that such appointment shall not affect the exercise or discharge by the local government itself of any power or function
<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>	The CEO may appoint authorised persons under the Act.
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	

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## 15 Appointment of authorised persons under the *Caravan Parks and Camping Grounds Act 1995*

### Guidance note

There is no need for Council to delegate authority to the CEO to appoint persons to undertake certain matters under the *Caravan Parks and Camping Grounds Act 1995* as section 17 of the *Caravan Parks and Camping Grounds Act 1995* confers power directly on the CEO of a 'local government' authority' to appoint 'authorised persons'.

### 15.1 Appointment of Authorised Persons by the CEO

Section 17 of the *Caravan Parks and Camping Grounds Act 1995* provides that:

#### 17. **Appointment of authorised person**

- (1) *The chief executive officer of the Department or a local government —*
  - (a) *may appoint such persons to be authorised persons for the purposes of this Act as the chief executive officer or the local government considers necessary; and*
  - (b) *must issue each person appointed under paragraph (a) with an identity card, in the prescribed form, certifying that the person is an authorised person under this Act.*
- (2) *An authorised person is to produce the identity card referred to in subsection (1)(b) whenever required to do so by any person in respect of whom the authorised person has exercised, or is about to exercise, any of the powers of an authorised person under this Act.*
- (3) *Production of an identity card referred to in subsection (1)(b) is prima facie evidence that the person to whom the identity card relates is an authorised person for the purposes of this Act.*
- (4) *Every member of the Police Force is, if so requested by an authorised person, to aid and assist the authorised person enforcing compliance with this Act and has, while so aiding and assisting, all the powers and authorities of an authorised person.*

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## 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.

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(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*

<p><b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i></p>	<p>Regulations 81-84 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i></p>
<p><b>Express Power or Duty Delegated:</b></p>	<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, 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)(a) and (b) (Item 17), and 61(2)(f) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</p> <p>Determining accompanying material requirements for Local Development Plans under Clause 49 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"> <li>• 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;</li> <li>• 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>;</li> <li>• 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>;</li> <li>• 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;</li> <li>• Exercise discretion, determine and apply conditions to all applications to amend or cancel a development approval;</li> </ul>

	<ul style="list-style-type: none"> <li>• Exercise discretion, determine and apply conditions to all applications made to extend the period within which a development approved must be substantially commenced;</li> <li>• 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;</li> <li>• 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; and</li> <li>• Determine the type and extent of accompanying material requirements, and any modifications required by Council in respect to a Local Development Plan under Part 6 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</li> </ul>
<p><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></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>Determine the type and extent of accompanying material requirements, and any modifications required by Council in respect to a Local Development Plan under Part 6 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</p>
<p><b>Council Conditions on this Delegation:</b></p>	<ol style="list-style-type: none"> <li>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"> <li>a. Cinema/theatre;</li> <li>b. Club premises;</li> <li>c. Corrective institution;</li> <li>d. Exhibition centre;</li> <li>e. Hospital;</li> <li>f. Hotel;</li> <li>g. Motel;</li> <li>h. Nightclub;</li> <li>i. Place of worship;</li> <li>j. Reception centre;</li> <li>k. Residential building;</li> </ol> </li> </ol>

	<p>l. Restricted Premises</p> <p>m. Serviced apartment;</p> <p>n. Tavern, unless:</p> <p style="padding-left: 20px;"><u>i. the premises is already subject to a Tavern Licence issued under the <i>Liquor Licensing Act 1985</i>; or</u></p> <p style="padding-left: 20px;"><u>ii. the Tavern accommodates 120 patrons or less</u></p> <p>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: Residential Design Codes in respect to the number of storeys and/or the height measured in metres;</p> <p>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;</p> <p>4. This delegation does not extend to applications for telecommunications infrastructure that have received one or more objections;</p> <p>5. This delegation does not extend to the approval of applications for a billboard sign or directional sign;</p> <p>6. This delegation does not extend to applications for development approval <u>that propose demolition of any structure/building on a heritage protected place, unless the structure/building does not contribute towards the heritage significance of the heritage place;</u>  <del>for works in places identified in the Heritage List, within a Heritage Area, or on the State Register of Heritage Places that propose:</del>  <del>a. Demolition of buildings; and/or</del>  <del>b. Alterations and/or additions to buildings to places included on the State Register of Heritage Places except where these are external fixtures (as defined by the Residential Design Codes), or restoration and/or remediation works;</del></p> <p>7. <u>This delegation does not extend to applications for development approval that propose alterations and additions to a place listed on the State Register of Heritage Places, unless the works are for:</u>  <del>a. External fixtures (as defined by the Residential Design Codes);</del>  <del>b. Restoration and remediation works;</del>  <del>c. Internal building works;</del>  <del>d. Façade upgrades and roof replacements; or</del>  <del>e. Single storey additions that are located behind the front building line of the existing heritage building.</del></p> <p><del>7.8.</del> 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;</p> <p><del>8. 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;</del></p>
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	<p>9. 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"> <li>a. meet all equivalent acceptable or deemed-to-comply standards, or does not propose any further departure to previously approved variations to acceptable or deemed-to-comply standards, set out in the City's Local Planning Policies;</li> <li>b. meet all of the deemed-to-comply standards or element objectives and acceptable outcomes, or does not propose any further departure to previously approved variations to deemed-to-comply standards, or element objectives and acceptable outcomes, as set out in State Planning Policy 7.3 Residential Design Codes; and</li> <li>c. would not change the impact of any condition imposed <u>and would not change the substantial commencement period of the approved development.</u></li> </ul> <p>10. 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>;</p> <p>11. 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: Residential Design Codes; and</p> <p>12. This delegation does not extend to applications for development approval that propose permanent structures on City owned or managed land, except where:</p> <ul style="list-style-type: none"> <li>a. The structure is an awning, or</li> <li>b. The structure is for a ground anchor; or</li> <li>c. The structure is for an encroachment which:             <ul style="list-style-type: none"> <li>i. is an architectural feature and does not encroach by greater than 250 millimetres; or</li> <li>ii. is a window or shutter that encroaches on a road or public space by no more than 50 millimetres when open, and is at least 2.75 metres above the ground level;</li> </ul> </li> </ul> <p>as outlined in the Minister's for Land's authorisations.</p>
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**Express Power to Sub-Delegate:**

## 16.1.2 Deal with illegal development under s214 of the Act

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Local Government Act 1995:</i> s.5.42(b) 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>Planning and Development Act 2005:</i> Section 214(2), (3) and (5)
<b>Delegate:</b>	Chief Executive Officer
<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. Give a written direction to the owner or any other person undertaking an unauthorised 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;</li> <li>2. Give a written direction to the owner or any other person who undertook an unauthorised development: <ol style="list-style-type: none"> <li>(a) to remove, pull down, take up, or alter the development; and</li> <li>(b) to restore the land as nearly as practicable to its condition immediately before the development started, to the satisfaction of the responsible authority.</li> </ol> </li> <li>3. Give a written direction to the person whose duty it is to execute work to execute that work where it appears that delay in the execution of the 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.</li> </ol>
<b>Council Conditions on this Delegation:</b>	Any expenses incurred by the City in carrying out the works specified in a direction notice shall be recovered from the person to whom the direction was given.
<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

## 16.1.3 Enforce compliance with a direction issued under section 214 of the Act

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <i>Power that enables a delegation to be made</i>	<i>Local Government Act 1995:</i> s.5.42(b) 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>Planning and Development Act 2005:</i> Section 215(1) and (2)
<b>Delegate:</b>	Chief Executive Officer
<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>	Enforce compliance with a written direction issued under section 214 of the <i>Planning and Development Act 2005</i> to remove, pull down, take up or alter the development, restore the land as nearly as practicable to its condition immediately before the development started and to recover the costs from the person the written direction was given to.
<b>Council Conditions on this Delegation:</b>	Nil.
<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

16.1.4 Issue of heritage conservation notice under *Planning and Development (Local Planning Schemes) Regulations 2015*

*Delegation from Council to CEO*

<b>Head of power to Delegate:</b> <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> Reg 82 – the local government may, by resolution, delegate to a committee or a local government CEO any of the local government's powers or duties under this Scheme.
<b>Express Power or Duty Delegated:</b>	Clauses 13(2), (3), (4) and (5), Schedule 2 <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> – Heritage Conservation Notice
<b>Delegate:</b>	Chief Executive Officer
<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. Form the view that a heritage place is not being properly maintained and give a written notice requiring the person to carry out specified repairs to the heritage place by a specified time, being a time that is not less than 60 days after the day on which the notice is given;</li> <li>2. If a person fails to comply with a heritage conservation notice, enter the heritage place and carry out the repairs specified in the notice;</li> <li>3. Recover the expenses incurred in carrying out repairs as a debt due from the person to whom the notice was given, in a court of competent jurisdiction;</li> <li>4. Vary a heritage conservation notice to extend the time for carrying out the specified repairs; and</li> <li>5. Revoke a heritage conservation notice.</li> </ol>
<b>Council Conditions on this Delegation:</b>	Nil.
<b>Express Power to Sub-Delegate:</b>	<i>Planning and Development (Local Planning Schemes) Regulations 2015</i> Reg 83 - CEO may delegate any of the CEO's powers and duties to other employees, other than power of delegation

## Revisions

Review	Council Item	CM Ref	Details
25/06/2019	OMC - 12.5 <a href="#">Minutes</a>	D19/92612	Annual review of Council delegations
08/07/2019	Administrative	D19/95056	Review and appointment of sub-delegations and authorisations.
03/09/2019	Administrative	D19/124944	Update of authorised officers. Approval of sub-delegation clause 2.4.10 to Manager Built Environment and Wellbeing. Extended CEO delegations to Executive Directors and Managers – Clause 2.4.11.
17/09/2019	OMC - 12.5 <a href="#">Minutes</a>	D19/140608	Amendments to Council Delegations: <ul style="list-style-type: none"> <li>• Amendment to delegations 4.4 and 10.1;</li> <li>• New delegations 4.10 and 17.1.3; and</li> <li>• Removal of delegations 2.1.1, 15.1 &amp; 16.</li> </ul>
24/09/2019	Administrative	D19/143297	Updated sub-delegations, authorisations and appointments
25/11/2019	Administrative	D19/181887	Position title changes <ul style="list-style-type: none"> <li>• Executive Director Planning and Place to Executive Director Strategy and Development</li> <li>• Manager Regulatory Services to Manager Built Environment and Wellbeing</li> <li>• Manager Governance, Property and Contracts to Executive Manager Corporate Strategy and Governance;</li> <li>• Manager Asset and Design Services to Manager Asset and Engineering; and</li> <li>• Manger Parks and Property Services to Manager Parks and Urban Green</li> </ul>
30/03/2020	SCM - 6.1 <a href="#">Minutes</a>	D20/54046 & D20/59080	Amendments to Council delegation 16.1.1 & addition of clause 2.1.1 - Delegation to the COVID Relief and Response Committee.
21/04/2020	Administrative	D20/73202	Extension of sub-delegations and authorisations to Manager Development and Design.
23/04/2020	Administrative	D20/73371	Annual review undertaken by administration proposed amendments recommended to Council
16/06/2020	OMC – 12.1 <a href="#">Minutes</a>	D20/105165	Annual review undertaken by Council. Extension of CEO Delegation 2.2.29 and clarification of condition 9 of delegation 16.1.1

18/08/2020	OMC – 12.3 & 12.4 <a href="#">Minutes</a>		<p><u>Item 12.3</u></p> <p>Council revoked its delegation to grant licences under regulation 17 of the <i>Local Government (Uniform Local Provisions) Regulations 1996</i> to the COVID-19 Relief and Recovery Committee. Function removed from clause 2.1.1.</p> <p><u>Item 12.4 – New delegation – 16.1.4 - Issue of Heritage Conservation Notice</u></p> <p>Council delegated to the CEO the power to issue a heritage conservation notice under clause 13(2), (3), (4) and (5) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</p> <p>Renumbered appointment of Authorised Persons under the <i>Planning and Development Act 2005</i> &amp; LPS to 16.1.5 (previously 16.1.4)</p>
17/11/2020	OMC – 11.2 <a href="#">Minutes</a>		<p><u>New delegation - 2.2.18 - Leases and licences to Small Community Groups, Sporting Clubs and Community Groups and Organisations in accordance with the Property Management Framework</u></p> <p>Council delegated to the CEO the power to dispose of property in accordance with section 3.58 of the <i>Local Government Act 1995</i></p> <p>Existing delegations 2.2.18 to 2.2.30 renumbered 2.2.19 to 2.2.31 accordingly.</p>
22/04/2021		D21/6734 D21/1169263 and D21/116707	Annual review undertaken by administration proposed amendments from CEO reviewed proposed amendments for Council recommended.
22/06/2021	OMC – 12.5 <a href="#">Minutes</a>		<p>Annual review undertaken by Council</p> <p>16.1.1 - Extended the delegation function to determining accompanying material requirements for Local Development Plans under Clause 49 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> including the type and extent of accompanying material requirements. Updated conditions 1, 2, and 6 of this delegation and approved new conditions 9c and 12.</p> <p>Removed extension of the following delegations made under the <i>Food Act 2008</i> from Manager Development and Design. These being delegation 11.1, 11.2, 11.3 and 11.4</p>
20/08/2021	Administrative	D21/148376	Position title correction - Manager Asset and Engineering updated to Manager Engineering

12/10/2021	OMC – 9.6 <a href="#">Minutes</a>		<p><u>New delegation 4.11 - Issue of Building Infringement Notices</u></p> <p>Council delegated to the CEO the power to appoint "authorised officers" to issue infringement notices, for offences, "approved officers" to extend and withdraw infringement notices, the power to revoke an appointment, to issue an identity card to an authorised person.</p> <p>Existing clause 4.11 - List of Authorised Persons under the Building Act 2011 renumbered to 4.12 accordingly.</p>
14/12/2021	OMC – 9.15 <a href="#">Minutes</a>	D21/229940	<p><u>New delegation 2.1.2 - Behaviour Complaints Committee</u></p> <p>Council delegated to the Behaviour Complaints Committee authority to deal with complaints in accordance with clause 12 and 13 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>.</p> <p><u>New delegation 2.2.31 – Appointing External Complaints Officer</u></p> <p>Council delegated to the CEO authority to appoint an external Complaints Officer to receive complaints and withdraw complaints related to the City of Vincent Code of Conduct for Council Members, Committee Members and Candidates.</p> <p>Delegation 2.2.31 - Appointment of Authorised Persons re-numbered to delegation 2.2.32</p>