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# DELEGATION REGISTER

**December 2019**

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## Explanatory Notes

### 1. General

The *Local Government Act 1995* provides that powers and duties generally vest with the 'local government' as a corporate entity.

The elected Council exercises the powers and discharges the duties of the local government through resolutions.

There are some specific powers or duties conferred by the Act upon the Chair, and the Chief Executive Officer (CEO).

Delegations of authority to exercise the statutory powers of Council may be made to:

- Committees (as detailed in sections 5.16 and 5.17 of the Act), or
- The Chief Executive Officer (as detailed in sections 5.42 and 5.43).

The Act also allows the Chief Executive Officer to further delegate the authority to another employee. This cannot, however, be further sub-delegated.

### 2. Role of the Council

Section 2.7 of the Act sets out the role of the Council:

- 2.7 (1) The Council -
- a) Directs and controls the local government's affairs; and
  - b) Is responsible for the performance of the local government's functions.
- (2) Without limiting subsection (1), the Council is to -
- a) Oversee the allocation of the local government's finances and resources; and
  - b) Determine the local government's policies.

### 3. Role of the Chair, Deputy Chair and Councillors

Sections 2.8, 2.9 and 2.10 set out the roles of Chair, Deputy Chair and Councillors:

#### The role of the Chair

- 2.8 (1) the Chair
- a) Presides at (Council) meetings in accordance with this Act;
  - b) Provides leadership and guidance to the community in the district;
  - c) Carries out civic and ceremonial duties on behalf of the local government;
  - d) Speaks on behalf of the local government;
  - e) Performs such other functions as are given to the Chair by this Act or any other written law; and
  - f) Liaises with the CEO on the local government's affairs and the performance of its functions.

- (2) Section 2.10 applies to a councillor who is also the Chair and extends to a Chair who is not a councillor.

### **The role of the Deputy Chair**

2.9 The Deputy Chair performs the functions of the Chair when authorised to do so under section 5.34 (i.e. where the office of Chair is vacant, or when the Chair is unwilling, unavailable or unable to perform his or her functions).

### **The role of Councillors**

2.10 A Councillor -

- a) Represents the interests of electors, ratepayers and residents of the district;
- b) Provides leadership and guidance to the community in the district;
- c) Facilitates communication between the community and the council;
- d) Participates in the local government's decision-making processes at council and committee meetings; and
- e) Performs such other functions as are given to a councillor by this Act or any other written law.

## **4. Function of the CEO**

5.41 The CEO's functions are to -

- a) Advise the Council in relation to the functions of a local government under this Act and other written laws;
- b) Ensure that advice and information is available to the council so that informed decisions can be made;
- c) Cause Council decisions to be implemented;
- d) Manage the day-to-day operations of the local government;
- e) Liaise with the Chair on the local government's affairs and the performance of the local government's functions;
- f) Speak on behalf of the local government if the Chair agrees;
- g) Be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37 (2) in relation to senior employees);
- h) Ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and
- i) Perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.

## **5. Delegations of Some Powers and Duties to CEO**

Pursuant to Sections 5.42, 5.43, 5.44, 5.45, and 5.46 of the *Local Government Act 1995*, a Council may delegate authority to the Chief Executive Officer some of its functions. These sections are set out below:

### **Delegation of some powers and duties to CEO**

5.42. (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 this Act other than those referred to in section 5.43.

*\*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.

### **Limits on delegations to CEO's**

5.43. A local government cannot delegate to a CEO any of the following powers or duties -

- a) Any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;
- b) Accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;
- c) Appointing an auditor;
- d) Acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;
- e) Any of the local government's powers under section 5.98, 5.99 or 5.100; (these relate to: fees, expenses and allowances for Councillors)
- f) Borrowing money on behalf of the local government;
- g) Hearing or determining an objection of a kind referred to in section 9.5;
- h) Any power or duty that requires the approval of the Minister or the Governor; or
- i) Such other powers or duties as may be prescribed.

### **CEO may delegate powers and duties to other employees**

5.44. (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 this Act 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 5.42, 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 subsection (3) and (4):  
'Conditions' includes qualifications, limitations or exceptions.'

**Other matters relevant to delegations under this Division**

- 5.45. (1) Without limiting the application of sections 58 and 59 of the Interpretation Act 1984-
- 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.

**Register of, and records relevant to, delegations to CEO's and employees**

- 5.46. (1) The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.
- (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 Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty."

With reference to section 5.46 (3), Regulation 19 from the Local Government (Admin.), Regulations 1996 states the following

'Records to be kept by delegates –s.5.46(3)

19. Where a power or duty has been delegated under the Act to the CEO or to any other local government employee, the person to whom the power or duty has been delegated is 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 persons 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 practical workings needs to be developed over time and for the time being the pragmatic approach that the CEO will need to employ is to take advice from a Committee where previously authority to make decisions was taken by a Committee of staff members.

Also, in respect of the supervision and audit activity, it will probably be the case, to ensure effectively distributed administration, that the CEO, at the time of making a delegation of a power also make a further delegation to the Divisional Supervisor to supervise the exercise and performance measures associated with the delegated power.

Section 9.38 of the *Local Government Act*:

*“Evidence that a document has been given or written by or on behalf of the local government may be given by tendering what purports to be the document and purports to be signed by the Chair or president, the CEO, or any other person authorised to sign it, without proof of the signature or proof that the person signing was a person who could sign then document.”*

**6. Numerical Listing of Delegations**

NUMBER	DELEGATION	CONDITION	CEO DELEGATION
<b>CHIEF EXECUTIVE OFFICER</b>			
1	Press Statements and media comments: Authority to issue statements to the News Media and make comments on behalf of Council.	Subject to the prior approval of the Chair.	
2	Press Statements on Policy: Authority to issue statements of Policy to the News Media on behalf of the Council.	Subject to the prior approval of the Chair.	
3	Contract Signing: Authority to sign formal contracts with the co-signature of the Chair – upon affixation of the Common Seal to the contract documents.	Subject to budget provision or after authority for sealing by the Council.	
4	Emergency Service: Authority to engage and deploy contractors and equipment in an emergency.		
5	Leave: Authority to grant the following leave: 1. Leave without pay 2. Study Leave	Subject to policy provisions or if no policy with Chair's approval.	
6	1. Authority to appoint all staff with the exception of designated officers; 2. Authority to advertise vacancies	Subject budget provision.	
7	Authority to appoint consultants.	a) Subject to the value being less than \$150,000. b) Subject to there being a budget allocation and necessary to implement Annual Plan.	
8	Authority to place and/or approve purchase orders <ul style="list-style-type: none"> <li>• With formally contracted suppliers in accordance with the Procurement Policy and <i>Local Government Act 1995</i>.</li> <li>• Non-contracted and non-accredited suppliers in accordance with the Purchasing Policy and <i>Local Government Act 1995</i>.</li> </ul>	Subject to budget provision or budget allowance policy.	Executive Assistant and Manager Project Coordination.

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<b>9</b>	Statutory Nominations: Chief Executive Officer and Chair authorised to complete Ballot Paper.		
<b>10</b>	Authorising the submission of subdivision and development applications to the Western Australian Planning Commission on land owned by or under the care and control of the TPRC or where TPRC acts in pursuit of the objectives set out in the Establishment Agreement.		
<b>11</b>	Contracts – <ul style="list-style-type: none"> <li>• Authority to sign contracts for maintenance support of computer and telecommunication hardware and software and general office equipment;</li> <li>• Signify acceptance of contracts works as 'completed to TPRC satisfaction'.</li> </ul>		
<b>12</b>	Authority to make minor amendments to the Policy Manual due to changes in names or titles.		Executive Assistant
<b>13</b>	Authority to advertise Invitations to Tender.		
<b>14</b>	Authority to invite period supply tenders and tenders for the disposal of surplus Council property.		
<b>15</b>	Procurement of goods and services & disposal of Council property and associated advertisements in accordance with the TPRC Procurement Policy and Local Government Act.		
<b>16</b>	Authority to sign grant applications, acquittals and audited statements related to grants.		Following Council CEO approval.
<b>17</b>	Authority to approve applications to place advertising signs from any organisation – temporary signage.	Subject to being consistent with TPRC objectives and policies.	
<b>18</b>	Attendance at Conference: Authority to approve where budget allocation has been made, subject to the conference being within Australia.	CEO to provide report to Council within 45 days of conference.	
<b>19</b>	Certifying documents (section 9.31 of the <i>Local Government Act 1995</i> ).		
<b>20</b>	Authority to write off unrepresented stale cheques to the value of \$20,000.		



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21	Authority to approve an extension to a contract.	Subject to: a) The tender specifying the provisions of the option term; b) The contract providing for the extension; and c) The extension being on the same terms and conditions as the last year of the original term but does allow for price increases in line with the contract provisions (if any) for the price.	
22	Authority to make payments to elected members subject to Council policies, the <i>Local Government Act 1995</i> and its Regulations.	Funds being available in the Council's annual budget and Council policies.	
23	Authority to make payments and transfers from the municipal fund or the trust fund, subject to Regulation 12(1) of the <i>Local Government (Financial Management) Regulations 1996</i> .	Subject to the requirements of Regulation 13 of the <i>Local Government (Financial Management) Regulations 1996</i> .	
24	Authority to invest money and establish investment internal control procedures, subject to Section 6.14 of the <i>Local Government Act 1995</i> and Regulation 19 of the <i>Local Government (Financial Management) Regulation 1996</i> .	Subject to Council's 'Investment Policy'.	
25	Authority to publicly invite tenders before the Council enters into a contract for the supply of goods or services if the consideration under the contract is, or is expected to be, worth more than \$150,000, subject to Regulation 11(1) of the <i>Local Government (Functions and General) Regulations 1996</i> and Section 3.57(1) of the <i>Local Government Act 1995</i> .	Tenders can only be invited for those goods and services identified in the annual budget, or approved by Council.	

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26	Authority to accept or decline any tender, subject to Regulation 18(4) and (5) of the <i>Local Government (Functions and General) Regulations 1996</i> .	Delegation subject to a provision in the annual budget and limited to an amount of \$150,000.	
27	Authority, with the approval of the tenderer, to make a minor variation in a contract for goods or services before the Council enters the contract with the successful tenderer, subject to Regulation 20(1) of the <i>Local Government (Functions and General) Regulations 1996</i> .	That the variation is minor having regard to the total goods or services that tenderers were invited to supply.	
28	Authority to approve sponsorship requests to a maximum of \$2,000 in accordance with the TPRC Sponsorship Policy.		
29	Authority to allocate decommissioned computers to community groups and organisations, subject to Section 3.58 of the <i>Local Government Act 1995</i> .	Subject to conditions contained in Council policies.	
30	Authority to attend interstate meetings associated with Council business.	Subject to being required for Council business and consistent with TPRC objectives.	
31	Authority to approve and submit construction, civil, development, landscaping and servicing plans for the Tamala Park Project.	Subject to being required for Council business and consistent with TPRC objectives and, as appropriate, approved TPRC policies and strategies.	
32	Authority to approve and negotiate conditions of approval and servicing and infrastructure agreements relating to subdivision, development, landscaping applications and servicing plans for the Tamala Park Project and requirements and scheme costs under the City of Wanneroo Town Planning Scheme.	Subject to Budget provision and consistent with TPRC objectives and, as appropriate, approved TPRC policies and strategies.	

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33	Authority to approve signage, marketing and advertising brochures and sales information.	Subject to being consistent with the approved Annual Marketing Plan and budget provision.	
34	Authority to approve minor changes to the Local Structure Plan.	Subject to being required for Council business and consistent with TPRC objectives and, as appropriate, approved TPRC policies and strategies.	
35	Authority to make a minor variation in a contract for goods or services, subject to Regulation 21.A of the <i>Local Government (Functions and General) Regulations 1996</i> .	Subject to being required for Council business and consistent with TPRC objectives. Subject to there being a budget allocation.	
36	Authority to enter into a contract for the supply of goods or services if the consideration under the contract is, or is expected to be worth less than \$150,000, subject to Regulation 11(1) of the <i>Local Government (Functions and General) Regulations 1996</i> and Section 3.57(1) of the <i>Local Government Act 1995</i> .	Subject to there being a budget allocation and TPRC policies.	
37	<p>Authority to advertise, manage and dispose of the single residential lots by private treaty under Section 3.58(3) of the <i>Local Government Act 1995</i>.</p> <p>For the purpose of Delegation 38, the disposal is to be considered by Council if the property value exceeds one million (\$1,000,000) dollars.</p>		
38	Authority to consider submissions under Section 3.58(3)(b) of the <i>Local Government Act 1995</i> .		

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<p><b>39</b></p>	<p>Authority to determine the sale price for each of the single residential lots subject to the average of lot pricing for a stage being higher the approved Project Cashflow. Where there is a difference between the average of lot pricing supplied by the Development Manager and the independent valuer then the higher of the lot pricing will be determined as the sale price.</p> <p>In the event that the determined average of lot pricing is less than the lot pricing for a stage in the Project Cashflow the CEO shall refer the matter back to Council before exercising this delegation.</p>		
<p><b>40</b></p>	<p>Authority to administer the provisions of the sales contract and proceed to dispose of the lot by private treaty subject to the requirements of Section 3.58 of the <i>Local Government Act 1995</i>.</p>		
<p><b>41</b></p>	<p>Authority to determine finance and settlement extensions and contract cancellations for single residential lots and dwellings.</p>		
<p><b>42</b></p>	<p>Authority to grant approval to proceed with the Display Village Lots Tender and Allocation Procedure in accordance with the Display Village Lot ranking as recommended by the Development Manager.</p>		
<p><b>43</b></p>	<p>Authority to establish the time/date for the sales releases.</p>	<p>Subject to all necessary documentation being completed and consistent with Project Program.</p>	
<p><b>44</b></p>	<p>Authority to grant approval to bulk earthworks, civil, infrastructure and landscape works.</p>	<p>Subject to rates being in accordance with Council approved rates for the relevant works and there being a budget allocation.</p>	
<p><b>45</b></p>	<p>Authority to allocate lots to the display home builders in accordance with the procedure outlined in the approved Catalina Beach Builders Display Villages Strategy (March 2016).</p>		
<p><b>46</b></p>	<p>Authority to administer the provisions of the sales contract and proceed to dispose of the Catalina Beach Builders Display Village lots by private treaty.</p>	<p>Subject to the requirements of the <i>Local Government Act 1995</i>.</p>	

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<b>47</b>	Authority to negotiate a price for the sale of the Catalina Central Sales Office between \$510,000 - \$530,000.		
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