



SHIRE OF YORK

Register of Delegated Authority

Adopted 21 December 2021

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Introduction

Purpose of Delegating Authority

The key purpose of delegating authority is to assist with improving the time taken to make decisions within the constraints allowed by the relevant legislation. This is consistent with and supports our commitment to a strong customer service ethos. The register details the related document(s) from which the power to delegate is derived, including legislation and policies of the Council. This supports ease of cross-referencing. This delegated authority register will be reviewed in accordance with the *Local Government Act 1995* on an annual basis. The co-ordination of the review will be performed through the Office of the CEO.

Legislation

The *Local Government Act 1995* (the Act) allows for a local government to delegate to the Chief Executive Officer (CEO) the exercise of any of its powers or the discharge of any of its duties under the Act except those listed in Section 5.43. The Council must make all delegations by absolute majority decision. {s5.42 (1)}.

Associated Legislation

Legislation other than the Local Government Act 1995, its regulations and the local government's local laws created under the Act where delegations or authorisations may occur are as follows:

- *Planning and Development Act 2005* including regulations, and adopted policies.
- *Dog Act 1976* and regulations.
- *Cat Act 2011* and regulations.
- *Bush Fires Act 1954*, regulations and local laws created under that Act.
- *Health Act 1911 (as amended)*, regulations and local law created under that Act.
- *Freedom of Information Act 1992*.
- *Land Administration Act 1997*, as amended and regulations.
- *Litter Act 1979* and regulations.
- *Local Government (Miscellaneous Provisions) Act 1960 as amended*.
- *Caravan Parks and Camping Grounds Act 1995*.
- *Control of Vehicles (Off-Road Areas) Act 1978* and regulations.
- *Strata Titles Act 1985*.
- *Food Act 2008*.
- *Environmental Protection Act 2005*.
- *Building Act 2011* and Building Regulations 2012.
- *Graffiti Vandalism Act 2016*.

Some legislation provides for authorisation of Local Government officers to have powers as are necessary in order for them to perform their required duties as a specific function of the local government. These duties are carried out as "acting through" functions under s.5.45(2) of the Local Government Act 1995.

The Planning and Development Act 2005 provides the WA Planning Commission with the powers to delegate under section 16(1) and (3)(e) "*any function of the Commission under this Act or any other*

written law, except this power of delegation, a local government, a committee established under the Local Government Act 1995, or an employee of a local government."

Section 14(a)(iii) "Functions" of the *Planning and Development Act 2005* recognises the functions of the Commission to advise the Minister on legislation and delegations associated with local planning schemes. This includes Council's Town Planning Scheme No 2.

Delegation by the Chief Executive Officer

The Act provides for the Chief Executive Officer to delegate any of the powers to another Employee {s5.44 (1)}. This must be done in writing. {s5.44 (2)}. The Act allows for the Chief Executive Officer to place conditions on any delegations that he or she delegates. {s5.44 (4)}

A register of delegations relevant to the Chief Executive Officer and other employees is to be kept and reviewed at least once every financial year. {s.5.46(1) and (2)}. If a person is exercising a power or duty that they have been delegated, the Act requires that records be kept whenever the delegated authority is used. {s5.46 (3)}

The record is to contain the following information:

- how the person exercised the power or discharged the duty.
- when the person exercised the power or discharged the duty; and
- 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. {Local Government (Administration) Regulations 1996 Regulation 19.}

Officers and/or sections of the organisation responsible for a work process are to ensure that data is captured and records managed in accordance with all legislation, as well as preparing reports to Council where required under a specific delegation. This includes recording of delegated authority of the Chief Executive Officer where applicable, once approved through a signed authority by the Chief Executive Officer.

A person to whom a power is delegated under the Act is considered to be a 'designated employee' under s5.74(b) of the Act and is required to complete a primary and annual return each year.

There is no power for a person other than the Chief Executive Officer to delegate a power. {s5.44 (1)}.

Acting through another person

Local Government Act 1995 – Section 5.45 (2)

Nothing in this Division (Division 4 - Local Government Employees) 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.

The key difference between a delegation and "acting through" is that a delegate exercises the delegated decision-making function in his or her own right.

The principal issue is that where a person has no discretion in carrying out a function, then that function may be undertaken through the principle of "acting through". Alternatively, where the decision allows for discretion on the part of the decision maker, then that function needs to be delegated for another person to have that authority.

The difference between a delegated authority to exercise a discretion on behalf of the Shire and acting through another person to undertake a function on behalf of the Shire where no discretion exists is reinforced by Section 56 of the Interpretation Act 1984 which states –

56. *“May” imports a discretion, “shall” is imperative*

- (1) *Where in a written law the word “may” is used in conferring a power, such word shall be interpreted to imply that the power so conferred may be exercised or not, at discretion.*
- (2) *Where in a written law the word “shall” is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.*

Note:

All decisions that are made under delegation are required to be recorded in the records & information management system to meet legislative requirements.

In some cases a condition of the delegation is that decisions are reported to the Council.

Part 1 Functions of Local Governments

Local Government Act 1995 - Part 3

DE1-1 Blank – Do not use. Removed 21 December 2021

DE1-2 Blank – Do not use. Removed 21 December 2021

DE1-3 Blank – Do not use. Removed 21 December 2021

DE1-4 Blank – Do not use. Removed 21 December 2021

DE1-5 Notices pursuant to Leases, Licences and Land Contracts

Function to be performed:

The exercise and enforcement of rights under, and to issue notices pursuant to, the following documents:

1. Lease or licence of:

- (a) Freehold land owned by the local government; or
- (b) Crown land managed by the local government; and

2. Contract for the sale or purchase of land by the local government.

Legislative Power or Duty delegated:

Section 3.18 of the *Local Government Act 1995*

Policy:

N/A

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the power to the exercise and enforcement of rights, and to the issue of notices, under the provisions of leases or licences of Shire of York freehold land or Crown Land managed by the Shire and of any contract for the sale or purchase of land by the Shire.

Conditions and Exceptions:

Nil

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: NEW - 24 October 2016
Reviewed – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE1-6 Public Thoroughfares – Fixing or Altering Levels or Alignments or Drainage onto Adjoining Land

Function to be performed:

To give notice before fixing or altering the level of, or the alignment of a public thoroughfare and before draining water from a public thoroughfare or other public place onto adjoining land, and to receive and consider submissions regarding a proposal.

Legislative Power or Duty delegated:

Section 3.51(3) and (4) of the *Local Government Act 1995*

Policy:

N/A

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to give notice before fixing or altering the level of, or the alignment of a public thoroughfare and before draining water from a public thoroughfare or other public place onto adjoining land, and to receive and consider submissions regarding a proposal. The CEO is authorised to approve a proposal if no objection is received.

Conditions and Exceptions:

Nil

Chief Executive Officer Delegates to:

Executive Manager, Infrastructure and Development Services

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officer. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Reviewed - 24 October 2016 – Replaces DE27
Reviewed – 27 November 2017
Amended – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE1-7 Development Application and Building Application on Land Owned by, or Crown Land Managed by, the Shire of York

Function to be performed:

To sign as 'Landowner' for the submission of Development and/or Building Applications for consideration by planning and building staff. This function to be performed with respect to Shire of York owned land and Crown land under the control of the Shire on land where the Minister of Land's delegation (DETAILS) applies.

Legislative Power or Duty delegated:

Section 3.18 of the *Local Government Act 1995*

Policy:

N/A

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to sign as 'Landowner' Development Applications and Building Applications with respect to land owned by the Shire of York, or Crown land under the control of the Shire of York pursuant to Section 3.18 of the *Local Government Act 1995*.

Conditions and Exceptions:

1. Applications are consistent with the terms of any relevant lease, management plan and current uses.
2. With respect to Crown Land, the application is consistent with the Minister of Land's delegation to Chief Executive Officers.

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

The CEO will inform the Council when this delegation is exercised preferably before an application is signed, or if this is not practicable then as soon as possible after the application is signed.

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016
Reviewed – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE1-8 Notices Pursuant to the Land Administration Act 1997

Function to be performed:

The issue of notices and infringements pursuant to the provisions of the *Land Administration Act 1997*.

Legislative Power or Duty delegated:

Section 3.18 of the *Local Government Act 1995*

Policy:

N/A

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to issue notices and infringements pursuant to the provisions of the *Land Administration Act 1997*

Conditions and Exceptions:

Nil

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE1-9 Power to Remove and Impound Goods

Function to be performed:

Power to remove and impound.

Legislative Power or Duty delegated:

Section 3.39, 3.42, 3.44, 3.46 and 3.48 of the *Local Government Act 1995*

Policy:

N/A

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated to:

- Authorise an employee in accordance with Section 3.39 to remove and impound any goods that are involved in a contravention that can lead to impounding.
- Take appropriate action in respect to impounded non-perishable goods in accordance with Section 3.42.
- Give notice in accordance with Section 3.44 to collect goods.
- Refuse to allow goods to be collected until all costs have been paid in accordance with Section 3.46.
- Take action to recover expenses in accordance with Section 3.48.

Conditions and Exceptions:

Nil

Chief Executive Officer Delegates to:

Shire Ranger

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officer. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Reviewed – 24 October 2016 – Replaces DE19 in part
 Amended – 27 November 2017
 Reviewed – 17 December 2018
 Reviewed – 25 November 2019
 Reviewed – 22 December 2020
 Reviewed – 21 December 2021

DE1-10 Declaring a Vehicle to be an Abandoned Vehicle Wreck

Function to be performed:

Declaration that a vehicle is an abandoned wreck so that it can be removed and disposed of.

Legislative Power or Duty delegated:

Section 3.40A(4) of the *Local Government Act 1995*

Policy:

N/A

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to remove an abandoned vehicle and subject to the process set out in the Act declare it an “abandoned vehicle wreck”.

Conditions and Exceptions:

Section 3.40A(4) (a) & (b) of the *Local Government Act 1995* provides the process steps to be followed in order to declare an “abandoned vehicle wreck”.

Chief Executive Officer Delegates to:

Shire Ranger

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officer. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: NEW – 24 October 2016 – Replaces DE20 in part
 Amended – 27 November 2017
 Reviewed – 17 December 2018
 Reviewed – 25 November 2019
 Reviewed – 22 December 2020
 Reviewed – 21 December 2021

DE1-11 Disposing of Confiscated Goods

Function to be performed:

The local government may sell or otherwise dispose of any goods that have been ordered to be confiscated under section 3.43 of the *Local Government Act 1995*.

Legislative Power or Duty delegated:

Section 3.47(1) of the *Local Government Act 1995*

Policy:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The CEO is authorised to sell or otherwise dispose of, pursuant to Section 3.47(1) of the *Local Government Act 1995*, any goods that have been ordered to be confiscated under section 3.43 of the Act.

Conditions and Exceptions:

Nil

Chief Executive Officer Delegates to:

Executive Manager: Infrastructure and Development Services

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officer. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016 – Replaces DE20 in part
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE1-12 Disposing of Uncollected Vehicle

Function to be performed:

The local government may sell or otherwise dispose of any vehicle that has not been collected within 2 months of a notice having been given under section 3.40(3) of the *Local Government Act 1995* or 7 days of a declaration being made that a vehicle is an abandoned vehicle wreck.

Legislative Power or Duty delegated:

Section 3.42(2) of the *Local Government Act 1995*

Policy:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to sell or otherwise dispose of, in accordance with Section 3.47(2) of the *Local Government Act 1995*, any vehicle that has not been collected within 2 months of a notice having been given under section 3.40(3) or 7 days of a declaration being made that a vehicle is an abandoned vehicle wreck.

Conditions and Exceptions:

The CEO is to undertake a public process inviting tenders for the disposal of uncollected vehicles.

Chief Executive Officer Delegates to:

Executive Manager, Infrastructure and Development Services.

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officer. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016 – Replaces DE20 in part
Amended – 27 November 2017
Amended – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE1-13 Disposing of Uncollected Impounded Goods

Function to be performed:

The local government may sell or otherwise dispose of impounded goods that have not been collected within the period specified in section 3.47(2b) of the date a notice is given under sections 3.42(1)(b) or 3.44 of the *Local Government Act 1995*.

Legislative Power or Duty delegated:

Section 3.47(2a) *Local Government Act 1995*.

Policy:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The Chief Executive Officer is delegated the authority to sell or otherwise dispose of, pursuant to Section 3.47(2a) of the *Local Government Act 1995*, impounded goods that have not been collected within the period specified in section 3.47(2b) of the date a notice is given under sections 3.42(1)(b) or 3.44 of the *Local Government Act 1995*.

Conditions and Exceptions:

Nil

Chief Executive Officer Delegates to:

Executive Manager, Infrastructure and Development Services.

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officer. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New 24 October 2016 – Replaces DE20 in part
Amended – 27 November 2017
Amended – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE1-14 Disposing of Sick or Injured Impounded Animals

Function to be performed:

If an impounded animal is ill or injured to such an extent that treating it is not practicable, the local government may humanely destroy the animal and dispose of the carcass.

Legislative Power or Duty delegated:

Section 3.47A(1) of the *Local Government Act 1995*

Policy:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The Chief Executive Officer is delegated the authority to, pursuant to Section 3.47A(1) of the *Local Government Act 1995*, humanely destroy an impounded animal that is ill or injured to such an extent that treating it is not practicable, and to dispose of the carcass.

Conditions and Exceptions:

Nil

Chief Executive Officer Delegates to:

Shire Ranger
Executive Manager: Infrastructure and Development Services

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officer. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE1-15 Disposing of Property (Public Auction or Public Tender)

Function to be performed:

Dispose of property to the highest bidder at public auction or the most acceptable public tender.

Legislative Power or Duty delegated:

Section 3.58(2) *Local Government Act 1995*

Policy:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The Chief Executive Officer is delegated the authority to dispose of property in accordance with Section 3.58(2) of the *Local Government Act 1995* to the highest bidder at public auction or the most acceptable public tender.

Conditions and Exceptions:

Subject to the disposal being identified in the Shire's Annual Budget and the value of the property is less than \$50,000.

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016
 Amended - 27 November 2017
 Reviewed – 17 December 2018
 Reviewed – 25 November 2019
 Reviewed – 22 December 2020
 Reviewed – 21 December 2021

DE1-16 Disposing of Property (Private Treaty)

Function to be performed:

Dispose of property by private treaty where this is considered the most advantageous method.

Legislative Power or Duty delegated:

Section 3.58(3) *Local Government Act 1995*

Policy:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The Chief Executive Officer is delegated the authority to dispose of property in accordance with Section 3.58(3) of *the Local Government Act 1995*.

Conditions and Exceptions:

Subject to the disposal being identified in the Shire's Annual Budget.

Delegation applies to:

- a) All transactions to a maximum value of \$50,000 where no public submissions are received in response to public advertising as required by Section 3.58(3)(a).
- b) Any other transactions to a maximum value of \$50,000

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE1-17 Recovery of Impounding Expenses

Function to be performed:

If goods are removed and impounded under section 3.39 of the *Local Government Act 1995* and the offender is convicted, the local government may, if the goods are not sold, recover any expenses incurred in removing and impounding the goods and disposing of them.

Legislative Power or Duty delegated:

Section 3.48 of the *Local Government Act 1995*

Policy:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to recover, under Section 3.48 of the Local Government Act 1995 any expenses incurred in removing and impounding goods and disposing of them where they have been impounded under Section 3.39 of the Local Government Act 1995 and the offender has been convicted.

Conditions and Exceptions:

Compliance with Section 3.47 of the Local Government Act 1995 as to the process to be followed.

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE1-18 Powers of Entry

Function to be performed:

Powers of entry are conferred by the *Local Government Act 1995* to be used to perform any function that a local government has under the Act if entry is required for the performance of the function or in any other case in which entry is authorised by the Act.

Legislative Power or Duty delegated:

Local Government Act 1995

1. Enter on to land to perform any function of the local government under the Act. [refers S.3.28]
2. Give notice of entry. [S.3.32].
3. Seek and execute an entry under warrant. [S.3.33].
4. Execute an entry in an emergency, [S.3.34].
5. Give notice and effect entry by opening a fence [S.3.36]

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to exercise the powers of entry conferred by Sections 3.28, 3.32, 3.33, 3.34, and 3.36 of the *Local Government Act 1995*.

Conditions and Exceptions:

Where sub-delegated to any Officer the sub-delegation will be recorded in the Register of Delegations.

Chief Executive Officer May Delegate to:

Executive Manager: Corporate and Community Services
Executive Manager: Infrastructure and Development Services

Shire Ranger

Such other Officers as determined by the CEO.

Power or Duty delegated by Chief Executive Officer:

Where the CEO delegates the exercise of this delegated power to any Officer the exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New 24 October 2016
Amended – 27 November 2017
Amended – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE1-19 Closure of Thoroughfares

Delegator:	Local Government
Express Power to Delegate:	<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
Express Power or Duty Delegated:	<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
Delegate:	Chief Executive Officer
Function:	<ol style="list-style-type: none"> 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)]. 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"> • give local public notice, written notice to the Commissioner of Main Roads and written notice to prescribed persons and persons that own prescribed land; and • consider submissions relevant to the road closure/s proposed [s.3.50(1a), (2) and (4)]. 3. Authority to revoke an order to close a thoroughfare [s.3.50(6)]. 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] 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 [s.3.51]. <p>Reasons by where the Chief Executive Officer (CEO) would determine an application for the temporary closure of a thoroughfare, include but are not limited to the following:</p> <ul style="list-style-type: none"> • In cases of emergency. • Where in the opinion of the CEO that due to heavy rain a thoroughfare is likely to be damaged by the passage of traffic of a particular class, or by the passage of traffic generally. • For the conduct of an Event in accordance with the Road Traffic (Events on Roads) Regulations 1991.

	<ul style="list-style-type: none"> Where the Council is undertaking repair and maintenance works to a thoroughfare.
Council Conditions on this Delegation:	<p>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)].</p> <p>b. Where the closure is required for the conduct of an event, the requirements of the <i>Road Traffic (Events on Roads) Regulations 1991</i> will be applied.</p>
Express Power to Sub-Delegate:	<p><i>Local Government Act 1995:</i> s.5.44 CEO may delegate some powers and duties to other employees</p>
Sub-Delegate/s: <i>Appointed by CEO</i>	Executive Manager: Infrastructure and Development & Services
CEO Conditions on this Sub-Delegation:	Conditions on the original delegation also apply to the sub-delegation.

Compliance Links:	<p>Delegates are designated employees under s.5.74 and are required to provide Primary and Annual Returns.</p> <p>Local Government Functions and General Regulations 1996, Regulations 4, 5 and 6.</p> <p>Road Traffic (Events on Roads) Regulations 1991.</p> <p>Local Government (Uniform Local provisions) Regulations 1996.</p> <p>Activities on thoroughfares Local Law.</p>
Record Keeping:	Each instance of this delegation being exercised is to be recorded in the Delegations Register, which is maintained by the Administration & Governance Officer. The Delegation's Register is reported to Council in conjunction with the Concept Forum.

Version Control:

1	NEW. 21 December 2021. Replaces DE1.1, DE1.2, DE1.3 & DE1.4.
2	
3	

Part 2 Administration

Local Government Act 1995 - Part 5

DE2-2 Delegation of Powers and Duties of the Local Government Act 1995 to the Chief Executive Officer

Function to be performed:

The CEO's functions to be performed shall encompass all parliamentary legislation. As such, it is necessary for the Chief Executive Officer to hold those powers necessary for him/her to perform the functions required of him/her in an expeditious and competent manner.

Legislative Power or Duty delegated:

Section 5.42 of the *Local Government Act 1995*

Legislative Power to delegate:

5.41(i) of the *Local Government Act 1995*

Delegation to:

Chief Executive Officer

Delegation:

Council delegates to the Chief Executive Officer all of the delegable functions of the local government under all parliamentary legislation for the effective management of the Shire of York. This delegation is supplementary to the prescribed delegations in this Register of Delegated Authority.

Conditions and Exceptions:

The delegation takes into account Section 5.43 of the *Local Government Act 1995*. The delegation shall only be used when; an urgent operational function needs to be implemented and is not already prescribed as a delegated function; or it is problematic for Council to convene to otherwise make the decision. Elected members will where possible, be given at least 24 hours' notice via email of the CEO's intent to use this delegated authority.

Specification:

This delegation is limited only to the extent that a constraint is outlined by the statute within which the Chief Executive Officer is operating, to any Council resolutions in effect, and the following limitations and clarifications:

LIMITATIONS –

The CEO's delegated authority is subject to the following limitations:

1. State Administrative Tribunals (SAT) negotiations and mediations up to a value of \$20,000 where there is a budget provision approved.
2. For the purposes of the administration of leases, acquire or dispose of any property lease valued at an amount not exceeding \$20,000 per annum.
3. Dispose of minor plant and equipment with a depreciated value of not more than \$50,000 without the requirement of Council approval.
4. Authorise a waiver, grant a concession, or write off an amount of money, not including a rate or service charge, owed to Council that does not exceed \$1,000.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Adopted – 18 April 2016
 Amended – 24 October 2016
 Amended – 27 November 2017
 Amended – 18 December 2018
 Reviewed – 25 November 2019
 Reviewed – 22 December 2020

DE2-3 Councillors: Recognition of Service

Function to be performed:

Council delegates the function of authorising gifts for all retired Councillors as prescribed in 34AC of the *Local Government Act 1995*.

Legislative Power or Duty delegated:

Section 5.100A of the *Local Government Act 1995*

Legislative Power to delegate:

Section 5.100A of the *Local Government Act 1995*

Policy Provision:

To give effect to Policy E7 – Councillors -Recognition of Service

Delegation to:

Chief Executive Officer

Delegation:

Council delegates to the Chief Executive Officer the delegable function of authorising gifts for all retired Councillors

Conditions and Exceptions:

1. The retirement of a council member who has served at least one full 4-year term of office is prescribed under s5.100A(a) as circumstances in which a gift can be given to the Council member.
2. The amount as prescribed under section 5.100A(b) in respect of a gift given to a council member in the circumstances set out in sub-regulation (1).

Chief Executive Officer delegates to:

Nil

Delegation delegated by the CEO:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Adopted – 18 April 2016
 Amended – 24 October 2016
 Reviewed – 27 November 2017
 Reviewed – 17 December 2018
 Reviewed – 25 November 2019
 Reviewed – 22 December 2020
 Reviewed – 21 December 2021

DE2-4 Training Travel and Accommodation – Elected Members

Function to be performed:

To provide for the participation of councillors in professional development by the attendance at training courses and conferences and to approve the associated travel and accommodation costs.

Legislative Power or Duty delegated:

Section 5.98 (2)(b) and (3) of the *Local Government Act 1995* and Regulation 32 of the Local Government (Administration) Regulations 1995.

Policy:

E2 – Councillors – Training and Continuing Professional Development
E3 - Councillors - Travel and Accommodation

Delegation to:

Chief Executive Officer

Delegation:

The Chief Executive Officer is delegated the authority to arrange appropriate travel and accommodation for councillors to participate in professional development by the attendance at training courses and conferences.

Conditions and Exceptions:

Policy E2 – Councillors – Training and Continuing Professional Development provides Council guidance on professional development.

Policy E3 – Councillors – Travel and Accommodation provides detailed guidance on travel and accommodation.

The policies and this delegation are to be exercised within the budget allocation for Councillors' Professional Development and Training.

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

In accordance with the provisions of Policy E2 – Councillors – Training and Continuing Professional Development, payments will be reported in the monthly financials.

Financial Interest Return Required: No

Details of Review: New - 24 October 2016
Reviewed – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019

Reviewed – 22 December 2020

Reviewed – 21 December 2021

DE2-5 Use of the Crest and Logo

Function to be performed:

The Chief Executive Officer to approve the use of the Shire of York Crest and Logo.

Legislative Power or Duty delegated:

Section 3.1 of the *Local Government Act 1995*

Policy:

G22 -Use of Shire of York Crest and Logo

Delegation to:

Chief Executive Officer

Delegation:

The Chief Executive Officer is delegated the authority to approve the use of the Shire of York Crest and Logo.

Conditions and Exceptions:

The exercise of this delegation is limited by the provisions of Policy G22 – Use of the Shire Crest and Logo..

Chief Executive Officer Delegates to:

Executive Manager: Corporate and Community Services

Executive Manager: Infrastructure and Development

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this power to the above Officers. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: New - 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE2-6 Appointment of Authorised Persons to Execute Documents on Behalf of Council

Function to be performed:

Signing of various classes of documents on behalf of the Council.

Legislative Power or Duty delegated:

Section 9.49A(4) of the *Local Government Act 1995*

Policy:

G21 -Execution of Documents and use of the Common Seal

Delegation to:

Chief Executive Officer

Delegation:

The Chief Executive Officer is delegated the responsibility to arrange for the execution of documents and the use of the common seal in accordance with the provisions of Policy CP1.1 Execution of Documents and Use of the Common Seal

Conditions and Exceptions:

The provisions of G21 - Execution of Documents and use of the Common Seal

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Reviewed – 24 October 2016 – Replaced DE18
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE2-8 Commissioning of Legal Advice

Function to be performed:

To commission legal advice as required

Legislative Power or Duty delegated:

Administrative function

Policy:

G23 -- Commissioning Legal Advice

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated authority to procure all legal advice in accordance with Policy G23 - Commissioning Legal Advice..

Conditions and Exceptions:

This delegation does not apply to legal advice required by the Council for matters related to the performance of the CEO and/or the relationship between the Council and the CEO.

Commissioning of legal advice must be obtained according to the requirements set out in Policy F2 - Procurement.

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

All legal advice that may impact on a Council decision on a matter must be reported to Council. Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Reviewed – 24 October 2016 – Replaces DE30
Reviewed – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE2-9 Insurance – Public Liability Claims

Function to be performed:

Consideration of public liability claims against the Council where the value of the claim does not exceed the excess on the relevant insurance policy.

Legislative Power or Duty delegated:

Administrative function

Policy:

N/A

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated authority to consider claims against the Council for property damage that do not exceed the insurance policy excess levels, and to accept or deny liability on behalf of the Council.

Conditions and Exceptions:

In cases where liability is accepted, payment may only be made up to the value of Council's relevant insurance excess amount and then only upon receipt of an appropriate release form prepared by Council's solicitors.

Chief Executive Officer Delegates to:

The CEO may delegate this function to the following officers:

Executive Manager: Corporate and Community Services

Executive Manager: Infrastructure and Development Services

Power or Duty delegated by Chief Executive Officer:

If the CEO delegates to the above Officers the relevant legislative reference is Section 5.44 of the *Local Government Act 1995*, and any such delegation must be recorded in the Shire Register of Delegated Authority.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Reviewed – 24 October 2016 – Replaces DE29
Reviewed – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE2-10 Issuing of Licences, Approvals & Permits – Local Laws

Function to be performed:

Determine applications for the issue and/or renewal of licenses and permits that are provided for in Council local laws.

Legislative Power or Duty delegated:

Administrative function

Policy:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated authority to determine applications for the issue and/or renewal of licenses and permits that are provided for in Council local laws.

Conditions and Exceptions:

Nil

Chief Executive Officer Delegates to:

The CEO may delegate this function to the following officers:
Executive Manager: Corporate and Community Services
Executive Manager: Infrastructure and Development Services

Power or Duty delegated by Chief Executive Officer:

If the CEO delegates to the above Officers the relevant legislative reference is Section 5.44 of *the Local Government Act 1995*, and any such delegation must be recorded in the Shire Register of Delegated Authority.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Reviewed – 24 October 2016 – Replaces DE35
Reviewed – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE2-11 Road Trains and Extra Mass Permits

Function to be performed:

Determine applications to use road trains and for extra mass permits on any road within the Shire.

Legislative Power or Duty delegated:

Administrative function

Policy:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated authority to determine any application to use road trains and for extra mass permits on any road within the Shire, recommending approval or refusal, with or without conditions, for referral to Main Roads WA.

Conditions and Exceptions:

The CEO will have regard to any Council policy on the issue that may be established from time to time.

Chief Executive Officer Delegates to:

Executive Manager: Infrastructure and Development Services

Power or Duty delegated by Chief Executive Officer:

If the CEO delegates to the above officer the relevant legislative reference is Section 5.44 of the *Local Government Act 1995*, any such delegation must be recorded the Shire Register of Delegated Authority.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Reviewed – 24 October 2016 – Replaces DE36
Reviewed – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE2-12 Appoint Authorised Persons

Function to be performed:

1. Authority to appoint persons or classes of persons as authorised persons [s.3.24 and s.9.10] for the purpose of fulfilling functions of an authorised person prescribed in the following legislation inclusive of subsidiary legislation made under each Act i.e. Regulations:
 - (a) *Local Government Act 1995* and its subsidiary legislation, including *Local Government Act Regulations*, the *Local Government (Miscellaneous Provisions) Act 1960* and Local Laws made under the *Local Government Act*..
 - (b) *Caravan Parks and Camping Grounds Act 1995*;
 - (c) *Cat Act 2011*;
 - (d) *Cemeteries Act 1986*;
 - (e) *Control of Vehicles (Off-road Areas) Act 1978*;
 - (f) *Dog Act 1976*;
 - (g) *Graffiti Vandalism Act 2016* – refer s.15;_and
 - (e) any other legislation prescribed for the purposes of s.9.10 of the *Local Government Act 1995*.
2. Authority to appoint authorised persons for the purposes of section 9.16 of the *Local Government Act 1995*, as a precondition for appointment as authorised officers in accordance with Regulation 70(2) of the *Building Regulations 2012* and section 6(b) of the *Criminal Procedure Act 2004*.

Legislative Power or Duty delegated:

Local Government Act 1995

Section 5.44 CEO may delegate to some power and duties to other employees

Policy:

Nil

Delegation to:

Chief Executive Officer

Delegation:

Local Government Act 1995:

Section 3.24 Authorising persons under this subdivision (Part 3, Division 3, Subdivision 2 – Certain provisions about land)

Section 9.10 Appointment of authorised persons

The CEO is delegated the authority to appoint persons or classes of persons for the purpose of fulfilling prescribed functions within the *Local Government Act 1995*.

Conditions and Exceptions:

- 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.
- c. The CEO has discretion to determine any conditions / limitations applicable to the use of delegated powers or duties.

Chief Executive Officer Delegates to:

Nil.

Power or Duty delegated by Chief Executive Officer:

If the CEO delegates to the above officer the relevant legislative reference is Section 5.44 of the *Local Government Act 1995*, any such delegation must be recorded the Shire Register of Delegated Authority.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: NEW – 22 December 2020
 Reviewed – 21 December 2021

Part 3 – FINANCIAL MANAGEMENT

Local Government Act 1995 - Part 6

DE3-1 Authority to make Payments from Trust and Municipal Funds

Function to be performed:

Making payments from Trust and Municipal Funds.

Legislative Power or Duty delegated:

Local Government (Financial Management) Regulations 1996, Regulation 12(1)(a).
Payments from municipal fund or trust fund, restrictions on making.

Policy:

F2 - Procurement

F5 - Authority to Make Payments from Trust and Municipal Funds

Delegation to:

Chief Executive Officer
Executive Manager Corporate and Community Services
Executive Manager Infrastructure and Development Services

Delegation:

The Chief Executive Officer, the Executive Manager Corporate and Community Services and Executive Manager Infrastructure and Development Services are delegated so that either one must sign all cheques and authorise all electronic transfers. The CEO or Executive Manager must sign jointly with one other designated officer.

Conditions and Exceptions:

The delegation must be exercised in accordance with Policy F5 Authority to Make Payments from the Trust and Municipal Funds.

Access to electronic funds transfer software, passwords and encryption information is to be restricted to:

Chief Executive Officer
Executive Manager Corporate and Community Services
Executive Manager Infrastructure and Development Services
Finance Manager

This delegation is subject to the requirements of Regulation 13 of the *Local Government (Financial Management) Regulations 1996*.

Chief Executive Officer Delegates to:

- a) In the case of cheques, the Finance Manager must sign with either the CEO or Executive Manager.
- b) In the case of authorising electronic transfers, the Finance Manager must provide the authorisation with either the CEO or Executive Manager.

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officers. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Each payment from the municipal fund or the trust fund is to be noted on a list compiled for each month which is to be presented at the next ordinary meeting of Council.

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Adopted - 18 April 2016 to replace DE1
 Amended - 24 October 2016
 Amended - 27 November 2017
 Reviewed – 17 December 2018
 Reviewed – 25 November 2019
 Reviewed – 26 May 2020
 Reviewed – 22 December 2020
 Reviewed – 21 December 2021

DE3-2 Invest Money Held in Municipal and Trust Funds

Function to be performed:

Invest funds that are not required for the time being.

Legislative Power or Duty delegated:

Section 5.42 *Local Government Act 1995*
Trustees Act 1962 – Part III

Policy:

F4 - Investment

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to invest money held in the Municipal or Trust Funds that is not required for the time being for any purpose.

Conditions and Exceptions:

Funds are to be transferred to an appropriate secured investment account or term deposit. All investments are to be fully compliant with Council policy F4 - Investment.

Transfers must follow documented internal control procedures to ensure control over investments.

Chief Executive Officer Delegates to:

Executive Manager: Corporate and Community Services.

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officer. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

A monthly investment report must be provided to the Council in accordance with Policy F4 -Investment.

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Reviewed - 24 October 2016 – Replaces DE 16
Reviewed – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE3-3 Agreement as to Payment of Rates and Service Charges

Function to be performed:

Make an agreement to accept payment of a rate or service charge due and payable by a person.

Legislative Power or Duty delegated:

Section 6.49 *Local Government Act 1995*

Policy:

F1 - Revenue Collection

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to enter into agreements with individuals who are having difficulty in meeting their rates payments.

Conditions and Exceptions:

Subject to the arrangements agreed to being on the basis that the total debt outstanding will be extinguished by 30 June next following.

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE3-5 Consider Objection to the Rate Record

Function to be performed:

The local government is to promptly consider any objection to the rate record and may either disallow it or allow it, wholly or in part.

Legislative Power or Duty delegated:

Section 6.76(5) *Local Government Act 1995*

Legislative Power to delegate:

Section 5.42 and Section 5.44 *Local Government Act 1995*

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The Chief Executive Officer is delegated the power to consider any objection to the rate record and may either disallow it or allow it, wholly or in part, subject to section 6.76(5) of the *Local Government Act 1995*.

Conditions and Exceptions:

Nil

Chief Executive Officer delegates to:

Nil

Delegation delegated by the CEO:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Adopted – 18 April 2016
Reviewed - 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE3-6 Extension of Time for Objection to the Rate Record

Function to be performed:

The local government may, on application by a person proposing to make an objection to the rate record, extend the time for making the objection for such period as it thinks fit.

Legislative Power or Duty delegated:

Section 6.76(4) *Local Government Act 1995*

Policy:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated authority to extend time for making the objection to the rate record.

Conditions and Exceptions:

An extension is not to be granted for a period exceeding six weeks

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: New - 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021
Reviewed – 21 December 2021

DE3-8 Rates or Service Charges Recoverable in Court

Function to be performed:

To determine that court action will be taken if a rate or service charge remains unpaid after it becomes due and payable.

Legislative Power or Duty delegated:

Section 6.56(1) *Local Government Act 1995*

Policy:

F1 - Revenue Collection

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to determine that court action will be taken if a rate or service charge remains unpaid after it becomes due and payable

Conditions and Exceptions:

As set out in Policy F1 - Revenue Collection

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE3-9 Require Lessee to Pay Rent in Satisfaction of Rates and Service Charge

Function to be performed:

If payment of a rate or service charge imposed in respect of any land is due and payable, notice may be given to the lessee of the land requiring the lessee to pay to the local government any rent as it falls due in satisfaction of the rate or service charge.

Legislative Power or Duty delegated:

Section 6.60(2) *Local Government Act 1995*

Policy:

F1 - Revenue Collection

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to give notice to the lessee of the land requiring the lessee to pay to the local government any rent as it falls due in satisfaction of the rate or service charge.

Conditions and Exceptions:

Subject to Section 6.60(3) of the *Local Government Act 1995*

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016
 Amended – 27 November 2017
 Reviewed – 17 December 2018
 Reviewed – 25 November 2019
 Reviewed – 22 December 2020
 Reviewed – 21 December 2021

DE3-10 Recover Amount of Rates or Service Charge from the Lessee

Function to be performed:

The local government may 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 issued in accordance with DE3-9.

Legislative Power or Duty delegated:

Section 6.60(4) *Local Government Act 1995*

Policy:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the 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 issued in accordance with DE3-9.

Conditions and Exceptions:

Nil

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE3-11 Donations

Function to be performed:

The local government may make a donation of cash or services.

Legislative Power or Duty delegated:

Local Government (Financial Management) Regulations 1996 Regulation 12(1)(a)
Payments from municipal fund or trust fund, restrictions on making.

Policy:

F5 - Authority to Make Payments from Trust and Municipal Funds

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to make a donation of cash or services to a maximum value of \$1,000.

Conditions and Exceptions:

The Chief Executive Officer must consult with Councillors prior to exercising the power delegated under this authority.

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 27 November 2017
Amended – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE3-12 Blank – Do not use. Removed 21 December 2021

DE3-13 Defer, Grant Discounts, Waive or Write Off Debts

Delegator:	Local Government
Express Power to Delegate:	<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
Express Power or Duty Delegated:	<i>Local Government Act 1995:</i> s.6.12 Power to defer, grant discounts, waive or write off debts
Delegate:	Chief Executive Officer
Function:	<ol style="list-style-type: none"> 1. Waive a debt which is owed to the Shire of York [s.6.12(1)(b)]. 2. Grant a concession in relation to money which is owed to the Shire of York [s.6.12(1)(b)]. 3. Write off an amount of money which is owed to the Shire of York [s.6.12(1)(c)]
Council Conditions on this Delegation:	<ol style="list-style-type: none"> a. A debt, other than a debt relating to a rate or service charge, may only be waived where the dollar amount does not exceed \$1000 per debtor. b. A debt relating to interest accrued on a rate or service charge may only be written off where the dollar value does not exceed \$400 (suspension and/or write off) per property per annum. c. A debt may only be written off where all necessary measures have been taken to locate / contact the debtor and where costs associated with continued action to recover the debt will outweigh the net value of the debt if recovered by the Shire of York, or where the value of the debt makes recovery attempts uneconomical. d. Write off of debts greater than these values must be referred to Council for a decision. e. An application for fee waiver or concession may only be granted where the applicant completes a Request for Fee Waiver Application Form, and the amount is less than \$1000. This includes, but is not limited to such things as: venue hire, bus hire, chair hire etc. Applications of \$1000 or more must go to Council for approval.
Express Power to Sub-Delegate:	<i>Local Government Act 1995:</i> s.5.44 CEO may delegate some powers and duties to other employees
Sub-Delegate/s: <i>Appointed by CEO</i>	Nil
CEO Conditions on this Sub-Delegation:	Not applicable

Compliance Links:	<p>Delegates are designated employees under s.5.74 and are required to provide Primary and Annual Returns.</p> <p>Collection of Rates Debts – refer Delegations: DE3-3 Agreement as to Payment of Rates and Service Charges DE3-8 Rates or Service Charges Recoverable in Court</p>
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	<p>DE3-9 Require Lessee to Pay Rent in Satisfaction of Rates and Service Charge</p> <p>DE3-10 Recover Amount of Rates or Service Charge from the Lessee</p> <p>Policy F10 – Financial Hardship – Rates & Charges</p>
Record Keeping:	<p>Each instance of this delegation being exercised is to be recorded in the Delegations Register, which is maintained by the Administration & Governance Officer. The Delegation’s Register is reported to Council in conjunction with the Concept Forum.</p> <p>Where the write off relates to rates, relevant notes are to be kept on the property file within Synergysoft and the hard copy file in the Compactus.</p> <p>In accordance with Regulation 42 of the <i>Local Government (Financial Management) Regulations 1996</i>, the total amount of money written off is to be reported in the Annual Report.</p>

Version Control:

1	<p>NEW. 21 December 2021.</p> <p>Replaces DE3.4, DE3.7 & DE3.12.</p>
2	

Part 4 – LOCAL GOVERNMENT (UNIFORM
LOCAL PROVISION REGULATIONS) 1996

DE4-1 Private Works On, Over or Under Public Land

Function to be performed:

A local government may grant permission to a person to construct anything on, over or under a public thoroughfare or other public place that is local government property.

Legislative Power or Duty delegated:

Regulation 17(2) of the *Local Government (Uniform Local Provisions) Regulations 1996*.

Legislative Power to delegate:

Section 5.42 and Section 5.44, *Local Government Act 1995*

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The Chief Executive Officer is delegated the power to grant permission to a person to construct anything on, over or under a public thoroughfare or other public place that is local government property, subject to Regulation 17 of the *Local Government (Uniform Local Provisions) Regulations 1996* and Schedule 3.1, Division 2, item 3 and section 3.25(1)(b) of the *Local Government Act 1995*.

Conditions and Exceptions:

That due process for the issuing of a notice under section 3.25 of the Act is followed.

Chief Executive Officer

delegates to:

Executive Manager: Infrastructure and Development Services

Delegation delegated by the CEO:

The CEO delegates the exercise of this delegated power to the above Officer. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Adopted – 18 April 2016
 Reviewed – 24 October 2016
 Amended – 27 November 2017
 Amended – 17 December 2018
 Reviewed – 25 November 2019
 Reviewed – 22 December 2020
 Reviewed – 21 December 2021

DE4-2 Crossovers

Function to be performed:

Construction of Crossovers from Public Thoroughfare to Private Land or Private Thoroughfare

Legislative Power or Duty delegated:

Regulation 17(2) of the *Local Government (Uniform Local Provisions) Regulations 1996*.

Legislative Power to delegate:

Section 5.42 and Section 5.44, *Local Government Act 1995*

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The Chief Executive Officer is delegated the authority to determine applications for the construction of a crossing giving access from a public thoroughfare to private land or a private thoroughfare serving the land and may agree to construct the crossing for the applicant subject to Council's operating procedures.

The Chief Executive Officer is delegated authority to give notice to an owner or occupier of private land requiring the person to construct or repair a crossing from a public thoroughfare to the land or a private thoroughfare serving the land in accordance with provisions of Sch 9.1 (7) of the Act.

Conditions and Exceptions:

This delegation relates to all of the provisions of the *Local Government (Uniform Local Provisions) Regulations 1996*.

Chief Executive Officer delegates to:

Executive Manager: Infrastructure and Development Services

Delegation delegated by the CEO:

The CEO delegates the exercise of this delegated power to the above Officer. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Reviewed 24 October 2016 – Replaces DE26
Amended - 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019

Reviewed – 22 December 2020

Reviewed – 21 December 2021

Part 5 – LOCAL GOVERNMENT (FUNCTIONS AND GENERAL) REGULATIONS 1996

DE5.1 Blank – Do not use. Revoked 27/11/17

DE5-2 Tender Evaluation Criteria

Function to be performed:

The local government must, before tenders are publicly invited, determine in writing the criteria for deciding which tender should be accepted.

Legislative Power or Duty delegated:

Regulation 14(1), (2), (3), (4) or (5) of the *Local Government (Function and General) Regulations 1996*.

Legislative Power to delegate:

Section 5.42 and Section 5.44, *Local Government Act 1995*

Policy Provision:

F2 - Procurement

Delegation to:

Chief Executive Officer

Delegation:

The Chief Executive Officer is delegated the power to determine in writing the tender evaluation criteria prior to tenders being advertised.

Conditions and Exceptions:

After a notice has been given under the *Local Government (Function and General) Regulations 1996* 14(1) or (2), a local government may vary the information referred to in (3) by taking reasonable steps to give each person who has sought copies of the tender documents or each acceptable tenderer, as the case may be, notice of the variation.

Chief Executive Officer delegates to:

Executive Manager: Infrastructure and Development Services

Executive Manager: Corporate and Community Services

Power of Duty Delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officers. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Adopted - 18 April 2016
 Reviewed – 24 October 2016
 Amended – 27 November 2017

Reviewed – 17 December 2018
Reviewed – 25 November 2019
Amended – 22 December 2020
Reviewed – 21 December 2021

DE5-3 Minor Variation for Goods and Services

Function to be performed:

A local government may, with the approval of the tenderer, make a minor variation in a contract for goods or services before it enters the contract with the successful tenderer.

Legislative Power or Duty delegated:

Regulation 20(1) of the *Local Government (Function and General) Regulations 1996*

Legislative Power to delegate:

Section 5.42 and Section 5.44, *Local Government Act 1995*

Policy Provision:

F2 - Procurement

Delegation to:

Chief Executive Officer

Delegation:

The Chief Executive Officer is delegated the power, with the approval of the tenderer, to make a minor variation in a contract for goods or services before the Shire enters the contract with the successful tenderer, subject to Regulation 20(1) of the *Local Government (Functions and General) Regulations 1996*.

Conditions and Exceptions:

Minor variations before entering a contract are limited to a maximum value of aggregated variations which remain under 10% of the total contract value and remain within the relevant adopted Budget allocation.

Chief Executive Officer delegates to:

Nil

Delegation delegated by the CEO:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Adopted – 18 April 2016
Reviewed – 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE5-4 Expressions of Interest

Function to be performed:

To determine the appropriate circumstances for application of the Expression of Interest process and to call for Expressions of Interest [Reg.21 of the *Local Government (Functions and General) Regulations 1996*] and to accept or reject any Expression of Interest.

Legislative Power or Duty delegated:

S3.57 of the *Local Government Act 1995*
Local Government (Function and General) Regulations 1996

- Reg 11 Tenders to be invited for certain contracts
- Reg 14 (2a), (4)(a) and (5) Requirements for publicly inviting tenders
- Reg 21 Limitation may be placed on who can tender
- Reg 23 Rejecting and accepting expressions of interest to be notified of outcome

Legislative Power to delegate:

Section 5.42 and Section 5.44, *Local Government Act 1995*

Policy Provision:

F2 - Procurement

Delegation to:

Chief Executive Officer

Delegation:

Authorisation is given to call for Expressions of Interest for the supply of goods or services where appropriate and to accept or reject any Expression of Interest received.

Conditions and Exceptions:

The delegate has the authority to deal with such matters as are relevant to this declaration.

Details of the expression of interest sought must be recorded in the appropriate record and in the Tender Register as required by the *Local Government (Functions and General) Regulations 1996*, Regulation 17. A determination to call a tender must only occur where the procurement or disposal is identified in Annual Budget allocations.

Chief Executive Officer delegates to:

Nil

Delegation delegated by the CEO:

N/A

Reporting Requirements:

Tender Closing Checklist to be completed.

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Adopted – 18 April 2016
 Reviewed – 24 October 2016
 Amended – 27 November 2017
 Reviewed – 17 December 2018
 Reviewed – 25 November 2019
 Reviewed – 22 December 2020
 Reviewed – 21 December 2021

DE5-5 Tenders to be invited for Certain Contracts

Function to be performed:

- a) Determining, in writing, the criteria for deciding which tender should be accepted prior to tenders being publicly invited; and
- b) Publicly inviting tenders before entering 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.

Legislative Power or Duty delegated:

- a) Regulation 14(2a) of the *Local Government (Function and General) Regulations 1996*; and
- b) Section 3.57(1) of the *Local Government Act 1995*; and
- c) Regulation 11(1) of the *Local Government (Function and General) Regulations 1996*.

Policy:

F2 - Procurement

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to:

- a) Determining, in writing, the criteria for deciding which tender should be accepted prior to tenders being publicly invited; and
- b) Publicly inviting tenders before entering 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.

Conditions and Exceptions:

Tenders will be awarded by the Council on receipt of a report on the evaluation against predetermined criteria and officers' recommendation.

Chief Executive Officer Delegates to:

Nil

Delegation delegated by the CEO:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New – 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

Part 6 – OTHER LEGISLATION

The Local Government may delegate, appoint and authorise Shire staff directly under the following Acts:

Building Act 2011

Bush Fires Act 1985

Cat Act 2011

Dog Act 1976

Food Act 2008

Liquor Control Act 1988

Residential Tenancy Act 1997

Strata Titles Act 1985

Function to be performed:

The powers and functions of a permit authority under the Building Act 2011

Legislative power to delegate:

S127 of the *Building Act 2011*

1. Legislative Power or Duty delegated:

Section 96	Authority to appoint authorised persons
Section 110	Authority to issue Building Orders in relation to: Stop work, alter a building or evacuate a building where there is a contravention of a provision of the Act Take specific action to prevent contravention of the Act Finish an outward facing side of a wall
Section 117	Authority to revoke Building Orders
Section 139	Authority to commence prosecution

Delegation to:

Chief Executive Officer

2. Legislative Power or Duty delegated:

Section 19	Certificate of design compliance
Section 20	Authority to grant or refuse to grant building permits
Section 21	Authority to grant or refuse demolition permits
Section 22	Authority to refuse to grant Building Permits or Demolition Permits if: There appears to be an error in the documents or information provided in the application; or If an application is inconsistent with: a) a function that the Permit Authority has under any written law; or b) an agreement between the Permit Authority and the applicant
Section 27 (1) & (3)	Conditions imposed by permit authority
Section 55	Further information
Section 56	Certificate of construction compliance
Section 57	Certificate of building compliance
Section 58	Authority to grant, modify or refuse to grant Occupancy Permits or Building Approval certificates
Section 62(1) & (3)	Conditions imposed by permit authority
Section 65	Authority to extend the period to which the occupancy permit or modification or the building approval certificate has effect
Section 88(3)	Finishes of walls close to boundaries
Section 100	Entry powers
Section 101	Powers of entry for compliance purposes
Section 102	Obtaining information and documents
Section 103	Use of force and assistance
Section 104	Directions generally
Section 110	Building Orders
Section 111(1)	Notice of proposed building order other than a building order (emergency)

Section 131 (2) Inspection, copies of building records

Delegation to:

Executive Manager: Infrastructure and Development Services, and persons appointed to the office of Development Services Coordinator.

Conditions and Exceptions:

Delegated with the exception of sections 96, 97, 98 and 127 of the Building Act and regulation 70 of the Building Regulations.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Reviewed & Adopted – 18 April 2016 - Replaces DE3
Reviewed – 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE6-2 Bush Fires Act 1954 – Powers and Duties

Function to be performed:

All powers, duties and functions under the *Bush Fires Act 1954*

Legislative Power or Duty delegated:

All of the local authority's powers and duties

Legislative Power to delegate:

Section 48 of the *Bush Fires Act 1954*

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegation:

All powers and duties under the Act.

Conditions and Exceptions:

Excludes powers and duties that:

- are prescribed in the Act with the requirement for a resolution by the local government
 - are prescribed in the Act for performance by prescribed offices; or
- are subject to separate delegate authority within this register.

S48(3) of the Act provides that this delegation may not be sub-delegated

Chief Executive Officer delegates to:

Nil

Delegation delegated by the CEO:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Reviewed & Adopted – 18 April 2016 – Replaces DE 32 – 33
Reviewed – 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE6-3 Bush Fires Act 1954 – Prohibited Burning Times

Function to be performed:

Determine to vary Prohibited Burning Times, in accordance with S17(7) and (8) of the *Bush Fires Act 1954*, regarding:

- shortening, extending, suspending or reimposing a period of prohibited burning times; or
- imposing a further period of prohibited burning times

Legislative Power or Duty delegated:

Declaration of Prohibited Burning Times

Legislative Power to delegate:

Section 17 (10) of the *Bush Fires Act 1954*

Policy Provision:

Nil

Delegation to:

President and Chief Bush Fire Officer jointly

Delegation:

Powers under Sections 17.7 and 17.8 to declare and vary prohibited burning times

Conditions and Exceptions:

N/A

Chief Executive Officer delegates to:

N/A

Delegation delegated by the CEO:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Reviewed & Adopted – 18 April 2016 - Replaces DE 34
Reviewed – 24 October 2016
Reviewed – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE6-4 Bush Fires Act 1954 – Infringements

Function to be performed:

Issue infringement notices under the Bush Fires Act 1954

Legislative Power or Duty delegated:

Bush Fires Act 1954

s59A(2) Alternative Procedure – Infringement Notices

Legislative Power to delegate:

Section 59(3) – Delegation by local governments *Bush Fires Act 1954*

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Chief Bush Fire Control Officer

Fire Control Officers

Delegation:

Section 59(3) – Delegation by local governments *Bush Fires Act 1954*

Conditions and Exceptions:

S59A(3) and *Bush Fires (Infringements) Regulations 1958*, Reg.4(a) provide that only the President or the Chief Executive Officer may withdraw an infringement notice.

Chief Executive Officer delegates to:

Nil

Delegation delegated by the CEO:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review:

Reviewed & Adopted – 18 April 2016 – Replaces DE34

Reviewed – 24 October 2016

Reviewed – 27 November 2017

Reviewed – 17 December 2018

Reviewed – 25 November 2019

Reviewed – 22 December 2020

Reviewed – 21 December 2021

DE6-5 Bush Fires Act 1954 - Prosecutions

Function to be performed:

Consider allegations of offences alleged to have been committed against the *Bush Fires Act 1954* 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.

Legislative Power or Duty delegated:

Bush Fires Act 1954
Section 59(3) Prosecution of Offences
Section 59A(2) Alternative Procedure – Infringement Notices

Legislative Power to delegate:

Section 59(3) – Delegation by local governments *Bush Fires Act 1954*

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegation:

Section 59(3) – Delegation by local governments *Bush Fires Act 1954*

Conditions and Exceptions:

S59A(3) and *Bush Fires (Infringements) Regulations 1958*, Reg.4(a) provide that only the President or the Chief Executive Officer may withdraw an infringement notice.

Chief Executive Officer delegates to:

Nil

Delegation delegated by the CEO:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Adopted – 18 April 2016
Reviewed – 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE6-6 Food Act 2008 – Appointment of Authorised Officers

Function to be performed:

Appointment of authorised officers under the provisions of the *Food Act 2008* and *Food Regulations 2009*

Legislative Power or Duty delegated:

Food Act 2008

Section 122 Appointment of Authorised Officers

Legislative Power to delegate:

Section 118(2) of the *Food Act 2008*

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegation:

Appointment of Authorised Officers

Conditions and Exceptions:

Prospective appointees must be suitably qualified for appointment.

Chief Executive Officer delegates to:

Nil

Delegation delegated by the CEO:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Reviewed & Adopted – 18 April 2016 Replaces DE 17
Reviewed – 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE6-7 Food Act 2008 – Powers of an Enforcement Agency

Function to be performed:

Authority to exercise the functions conferred or imposed on the Shire as an enforcement agency under the provisions of the *Food Act 2008* and *Food Regulations 2009*

Legislative Power or Duty delegated:

All powers of the local government as an enforcement agency

Legislative Power to delegate:

Section 118 of the *Food Act 2008*

Policy Provision:

Nil

Delegation to:

Chief Executive Officer
Executive Manager: Infrastructure and Development Services
Environmental Health Officers

Delegation:

1. The Executive Manager: Infrastructure and Development Services and all Environmental Health Officers employed by the Shire of York as staff members or contractors are appointed as “Authorised Officers” pursuant to Section 122(1)(b) of the *Food Act 2008*
2. Under the provisions of Section 126(2) of the *Food Act 2008* the “Authorised Officers” are to be “designated officers” for the purposes of issuing infringement notices.
3. The Executive Manager: Infrastructure and Development Services (Authorised Officer) is delegated to:
 - Issue “prohibition notices” under S65 of the *Food Act 2008*
 - Clear and remove “prohibition notices” under S66 of the *Food Act 2008*
 - Provide written notification not to issue a certificate of clearance in accordance with S67 of the *Food Act 2008*
 - Grant, apply conditions, refuse, vary or cancel registration of a food business in accordance with S110 and S112 of the *Food Act 2008*
4. The Executive Manager: Infrastructure and Development Services is a “designated officer” under the provisions of S126(6) and 126(7) of the *Food Act 2008* to extend and revoke ‘infringement notices’.
5. The Chief Executive Officer is the “designated officer under S126(3) of the *Food Act 2008* to receive payment for infringement notices.
6. The Chief Executive Officer is authorised to:
 - appoint authorised officers in accordance with section 122(1) of the *Food Act 2008*
 - issue certificates of authority to authorised officers in accordance with Section 123(1) and 123(2) of the *Food Act 2008*

Conditions and Exceptions:

See detail of the delegation above

Chief Executive Officer delegates to: N/A

Delegation delegated by the CEO:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Adopted – 18 April 2016
Reviewed – 24 October 2016
Amended - 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE6-10 Blank – Do not use. Revoked 27/11/17

DE6-11 Liquor Control Act 1988 – Authority to Issue Certificates

Function to be performed:

An application made to the licensing authority for the grant or removal of a licence, or for a change in the use or condition of any premises shall be accompanied by a certificate from the local government for the district in which the premises to which the application relates are situated, or are to be situated, unless the licensing authority otherwise determines.

Legislative Power or Duty delegated:

Section 39 & 40 of the *Liquor Control Act 1988*

Legislative Power to delegate:

Section 39 & 40 of the *Liquor Control Act 1988*

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegation:

To issue a certificate on behalf of the Shire, subject to Section 39 and 40 of the *Liquor Control Act 1988*

Conditions and Exceptions:

Nil

Chief Executive Officer delegates to:

Nil

Delegation delegated by the CEO:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: Reviewed & Adopted – 18 April 2016 – replaces DE31
Reviewed – 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Amended – 22 December 2020
Reviewed – 21 December 2021

DE6-13 Dog Act 1976 – Approval to Keep More Than Two Dogs

Function to be performed:

The grant of an exemption to particular premises for the keeping of more dogs than is allowed under the Shire's local laws pursuant to section 26(3) of the *Dog Act 1976*.

Legislative Power or Duty delegated:

Dog Act 1976 Section 26 (3) Limitation as to numbers.

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to grant exemptions as to the number of dogs kept on premises.

Conditions and Exceptions:

Ranger must inspect the premises to ensure means exist to effectively confine the dogs within the premises.

Provisions of the *Shire of York Dogs Local Law*.

Chief Executive Officer Delegates to:

Shire of York Ranger
Executive Manager: Infrastructure and Development Services

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officers. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review: New - 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Amended – 22 December 2020
Reviewed – 21 December 2021

DE6-14 Health Act 1911 - Appointment and Authorisation of Deputy

Function to be performed:

The Shire's deputy for the purpose of discharging its powers and functions as a local government under the *Health Act 1911*.

The signing of such documents and initiation of appropriate legal action on behalf of the Shire in relation to the *Health Act 1911*, subsidiary legislation and the Shire's *Health Local Law*.

To administer the provisions of the *Health Act 1911* and regulations made thereunder and the Shire's *Health Local Law 2000*, including signing approvals and licenses relating to the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974*.

Legislative Power or Duty delegated:

Section 26 of the *Health Act 1911*

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to undertake the responsibility of the Shire of York under the *Health Act 1911*.

Conditions and Exceptions:

Nil

Chief Executive Officer Delegates to:

Nil

Power or Duty delegated by Chief Executive Officer:

N/A

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New - 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE6-15 Authorisation of Senior Environmental Health Officers

Function to be performed:

Administer the provisions of the *Health Act 1911* and regulations made there under and the Shire's *Health Local Law*, including signing approvals and licenses relating to the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974* and the signing of notices and approvals under Part VI (Public Buildings) of the *Health Act 1911*.

Legislative Power or Duty delegated:

Section 26 of the *Health Act 1911*

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to undertake the responsibility of the Shire of York under the *Health Act 1911*.

Conditions and Exceptions:

Nil

Chief Executive Officer Delegates to:

Environmental Health Officer

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officers. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: New – 24 October 2016
Amended – 27 November 2017
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE6-17 Strata Titles Act 1985 - Approval of Strata Applications / Certificates

Function to be performed:

Approval of strata title applications subject to the building/s being in compliance with all relevant building and planning controls.

Legislative Power or Duty delegated:

Sections 23.4 and 23.5 Certificate of Local Government of *the Strata Titles Act 1985*.

Policy:

To be exercised in accordance with relevant provisions of the Town Planning Scheme.

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to approve strata title applications subject to the building/s being in compliance with all relevant building and planning controls.

Conditions and Exceptions:

Does not include modifications to existing buildings

Chief Executive Officer Delegates to:

Executive Manager: Infrastructure and Development Services.

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officer. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Reviewed - 24 October 2016 (replaces DE8)
Amended – 27 November 2017
Amended – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE6-18 Health Local Law – Keeping of Animals

Function to be performed:

To approve or refuse applications to keep certain animals within the Townsite of York.

Legislative Power or Duty delegated:

Division 2 and 3 of the Shire of York *Health Local Law*.

Policy:

To be exercised in accordance with any relevant policies or provisions of the Shire of York Town Planning Scheme.

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to approve or refuse applications to keep certain animals within the Townsite of York made in accordance with Division 2 and 3 of the Shire of York *Health Local Law*.

Conditions and Exceptions:

Nil

Chief Executive Officer Delegates to:

Executive Manager: Infrastructure and Development Services.

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officer. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Reviewed - 24 October 2016 (replaces DE14)
Amended – 27 November
Reviewed – 17 December 2018
Reviewed – 25 November 2019
Reviewed – 22 December 2020
Reviewed – 21 December 2021

DE6-19 Section 79 (3) (h) of the Cat Act 2011 – Approval to Keep More Than Two Cats

Function to be performed:

The grant of an exemption to particular premises for the keeping of more cats than is allowed under the Shire's local laws pursuant to section 79 (3) (h) of the *Cat Act 2011*.

Legislative Power or Duty delegated:

Section 79 (3) (h) of the *Cat Act 2011*– Approval to Keep More Than Two Cats

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegation:

The CEO is delegated the authority to grant a permit as to the number of cats kept on premises.

Conditions and Exceptions:

The limit of the delegated authority is up to four (4) cats.

Ranger must inspect the premises to ensure compliance with the factors relevant to a determination as contained in the Shire of York Cat Local Law 2017 clause 2.5 and Schedule 1 clause 2.6.

Chief Executive Officer Delegates to:

Shire of York Ranger
Executive Manager: Infrastructure and Development Services

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officers. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review:

NEW – 25 November 2019
Amended – 22 December 2020
Reviewed – 21 December 2021

DE6-20 Bushfires Act 1954 – Appoint Bush Fire Control Officer/s and Fire Weather Officer

Function to be performed:

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

Legislative Power or Duty delegated:

Bush Fires Act 1954: Section 48 Delegation by local government.

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegation:

Bush fires Act 1954: Section 38 Local Government may appoint bush fire control officer.

Conditions and Exceptions:

N/A

Chief Executive Officer Delegates to:

Nil

Reporting Requirements:

Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: No

Details of Review:

NEW – 22 December 2020

Reviewed – 21 December 2021

Part 7 – Statutory Planning

Function to be performed:

The functions of the Council with respect to: Development Applications; Subdivision Applications; Enforcement, Appeals and Legal Proceedings; Structure Plans; Local Development Plans; and Miscellaneous Matters.

Legislative Power or Duty delegated:

To specify delegation of authority to the Chief Executive Officer in accordance with Schedule 2, Clauses 82, 83 and 84 of the *Planning and Development (Local Planning Schemes) Regulations 2015* in respect of the Town Planning functions of the Council

Policy Provision:

Nil

Delegation to:

Chief Executive Officer

Delegated Powers (including Limits):

The Chief Executive Officer is delegated authority to perform the functions of Council in respect of the following matters:

1.1.1 Development Application Delegations

- (a) Determination of applications for development approval, including applications involving:
 - (i) The variation of Local Planning Scheme provisions or provisions of the Residential Design Codes; or
 - (ii) The exercise of discretion under the Local Planning Scheme, a Local Planning Policy or the Residential Design Codes;
- (b) Refusal of all development applications where the proposed use is not permitted by the Local Planning Scheme or where the development does not comply with a mandatory requirement of the Local Planning Scheme, or with the non-discretionary provisions of the Residential Design Codes;
- (c) Determine requests to amend or cancel a development approval or to extend development approval for up to two (2) years;
- (d) Deletion or modification of conditions of approval, whether imposed under delegated authority or not subject to compliance of Council's Planning objectives;
- (e) Determination of applications for the relocation of building envelopes.

Limits to Development Application Delegations

With the exception of delegated power 2.1.1(b), all applications will be submitted to a meeting of Council for determination in the following circumstances:

- (a) Where the delegated decision would be contrary to the intent of a previous decision made at a Council meeting, or any law or regulation;

- (b) Where written objection is received to the proposal from any statutory agency;
- (c) Where the proposal is inconsistent with the general objectives and/or intent of a Local Planning Policy, approved Structure Plan or the discretionary provisions of the Local Planning Scheme;
- (d) Where notification has been given to adjoining and nearby owners or the general public for comment in accordance with the Local Planning Scheme or any Local Planning Policy and written objections have been received within the time specified, unless in the opinion of the Chief Executive Officer:
 - (i) the proposal is for exercise of discretion under the R-Codes and is consistent with the objectives and/or intent of the Local Planning Scheme, Residential Design Codes and any relevant Local Planning Policy; and
 - (ii) the objections can be overcome by imposing a condition(s) on the development approval, or modifying the design of the development; or
 - (iii) the objection does not relate to valid planning and development issues associated with the proposal.
- (e) Where, in the opinion of the Chief Executive Officer:
 - (i) any of the requirements of this delegation are not satisfied; or
 - (ii) there is insufficient certainty as to whether the application complies with the intent of the Local Planning Scheme, Residential Design Codes or any relevant Local Planning Policy; or
 - (iii) it would be in the public interest or consistent with the principles of administrative accountability for Council to determine the application; or
 - (iv) the decision involves a matter of principle which, in the opinion of the Chief Executive Officer, should be made by the Council; or
 - (v) a condition recommended by a statutory agency is unnecessary or impractical, or unreasonable to be enforced by the Shire of York.

1.1.2 Subdivision Application Delegations

Making recommendations to the Western Australian Planning Commission on:

- (a) applications for subdivision or amalgamation of land;
- (b) minor variations to approved subdivisions;
- (c) clearance of conditions of subdivision approval.

Limits to Subdivision Application Delegations

Applications are required to be submitted to Council for consideration where the proposed subdivision will result in the creation of 20 lots or more and/or the application is inconsistent with an approved Structure Plan.

1.1.3 Enforcement, Appeals and Legal Proceedings Delegations

- (a) Provision of written and verbal responses to planning appeals, mediated settlements resulting from appeals and Western Australian Planning Commission requests for reconsideration;
- (b) Taking action against owners or occupiers of properties to cease illegal uses or comply with conditions of Development Approval, including the issuance of a written direction pursuant to Section 214 of the *Planning and Development Act 2005*;
- (c) Obtaining legal advice where necessary to assist in the performance of these delegations.

Limits to Enforcement, Appeals and Legal Proceeding Delegations

The following matters are required to be referred to Council for determination:

- (a) Whether to commence prosecution action through the Council's solicitors;
- (b) Whether to apply for an injunction to the Supreme Court under Section 216 of the *Planning and Development Act 2005*;
- (c) The obtainment of urgent legal advice where that advice would exceed \$5,000 and there are no specific funds allocated within the budget or funds allocated by a resolution of Council;
- (d) The determination of a position with respect to any mediation process resulting from an appeal against a decision on a proposal that was previously referred to Council.

1.1.4 Structure Plan Delegations

- (a) Formation of the opinion that a Structure Plan or amendment to a Structure Plan contains sufficient information for the purposes of advertising;
- (b) Making recommendations to the Western Australian Planning Commission on amendments to Structure Plans after being advertised for public comment.

Limits to Structure Plan Delegations

The exercise of this delegation is conditional on the following:

- (a) Prior to the commencement of the advertising of any new Structure Plan, or amendment thereto, elected members must be notified of the proposal in writing advising the dates when the public comment period will start and finish, the means by which the proposal will be advertised and each elected member provided with copies of relevant plans and information relating to the proposal;
- (b) All new Structure Plans are to be referred to Council after being advertised for public comment;
- (c) Any recommendation of a Structure Plan Amendment pursuant to Clause 20(2) of the deemed provisions may be determined by the Chief Executive Officer, after being advertised for public comment provided that:
 - i) Any objection received does not, in the opinion of the Chief Executive Officer, raise

relevant planning considerations;

- ii) Elected members are notified in writing of the Chief Executive Officer's intention to do so and provided a copy of submissions and Administration's recommendations in respect of those submissions;
- iii) Elected members are provided with five working days in which to request that the proposal be referred to Council for determination; and
- iv) The recommendation does not include any modifications to the advertised Structure Plan Amendment.

1.1.5 Local Development Plan Delegations

- (a) Determine that a Local Development Plan is required and to seek the approval of the Western Australian Planning Commission for the preparation of a Local Development Plan.
- (b) Formulate the opinion that a Local Development Plan or amendment to a Local Development Plan is suitable for the purposes of advertising.
- (c) Determine that a Local Development Plan or amendment to a Local Development Plan is not required to be advertised for public comment where they are of:
 - i) Of a minor nature;
 - ii) Consistent with the intent of the zone and the objectives of the Local Planning Scheme; and
 - iii) Unlikely to have a material detrimental effect on the amenity of the locality or any owner or occupier or land in the locality.
- (d) Determine a Local Development Plan or an amendment to a Local Development Plan after advertising.
- (e) Endorse and arrange for the publication of Local Development Plans, pursuant to the deemed provisions.

Limits to Local Development Plan Delegations

The exercise of this delegation is conditional on the following:

- (a) Prior to the commencement of the advertising of any new Local Development Plan, or amendment thereto, elected members must be notified of the proposal in writing advising the dates when the public comment period will start and finish, the means by which the proposal will be advertised and each elected member provided with copies of relevant plans and information relating to the proposal;
- (b) A Local Development Plan or amendment thereto may be determined by the Chief Executive Officer, after being advertised for public comment provided that:

- i) Any objection received does not, in the opinion of the Chief Executive Officer, raise relevant planning considerations;
- ii) Elected members are notified in writing of the Chief Executive Officer's intention to do so and provided a copy of submissions and Administration's recommendations in respect of those submissions;
- iii) Elected members are provided with five working days in which to request that the proposal be referred to Council for determination.
- iv) The determination will not result in a refusal of or require modifications to a Local Development Plan or amendment to a Local Development Plan after advertising.

1.1.6 Miscellaneous

- (a) Formation of any opinion and consideration of any matter in the exercise of these delegated powers that would be required of Council under the Local Planning Scheme, including, but not limited to, sufficient information required for the processing of proposals (including development applications, structure plans, local development plans), referral and advertising of such proposals, and interpretation of Local Planning Scheme provisions, relevant Planning Policies and provisions of the Residential Design Codes.
- (b) The execution of any documents or instruments required to fulfill a condition(s) of subdivision or development approval.

Limits to Miscellaneous Delegations

This exercise of delegated authority is conditional upon:

- a) Prior to the commencement of advertising of any proposal, elected members must be notified of the proposal in writing advising the dates when the public comment period will start and finish, the means by which the proposal will be advertised and each Elected Member provided with copies of relevant plans and information relating to the proposal.
- b) Any application is to be referred to Council for determination if one or more elected members requests such referral by written request to the Chief Executive Officer within ten working days of the commencement of advertising.
- c) A report being forwarded to Council every month detailing the number of proposals determined under delegated authority within that period, the type of proposal and the decision made on each proposal.

Chief Executive Officer Delegates to:

Executive Manager: Infrastructure and Development Services.

Senior Planner: Sections 1.1.4, 1.1.5 and 1.1.6 only.

Power or Duty delegated by Chief Executive Officer:

The CEO delegates the exercise of this delegated power to the above Officers. The exercise of the delegated power does not include the power of further delegation.

Reporting Requirements:

Reporting requirements are detailed in the body of the delegation.
Details for the use of this delegation will be recorded in the records & information management system to meet legislative requirements.

Financial Interest Return Required: Yes

Details of Review: Date of Meeting 22 April 2003
 Endorsed Reviewed May 2004
 Endorsed 19 July 2004
 Reviewed & Amended July 2005
 Endorsed 18 July 2005
 Amended & Endorsed 23 January 2006
 Endorsed 18 June 2007
 Reviewed - 24 October 2016 (replaces DE5)
 Amended – 27 November 2017
 Reviewed – 17 December 2018
 Reviewed – 25 November 2019
 Reviewed – 22 December 2020
 Reviewed – 21 December 2021