

**APPENDIX 1
EXISTING DELEGATIONS**

DE5 Approval of Statutory Planning

***Pursuant to the provisions of the Local Government Act 1995 Section 5.42
Delegation of some powers and functions to the Chief Executive Officer
and the Shire of York Town Planning Scheme No. 2 Clause 8.2;***

Legislation

5.42. Delegation of Some Powers and Duties to CEO

- (1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.

* Absolute majority required.

- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*

8.2 Delegation of Functions

8.2.1 *The local government may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to a committee or the CEO, within the meaning of those expressions under the Local Government Act 1995, the exercise of any of its powers or the discharge of any of its duties under the Scheme, other than this power of delegation.*

8.2.2 *The CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under clause 8.2.1.*

8.2.3 *The exercise of the power of delegation under clause 8.2.1 requires a decision of an absolute majority as if the power had been exercised under the Local Government Act 1995.*

8.2.4 *Sections 5.45 and 5.46 of the Local Government Act 1995 and the regulations referred to in section 5.46 apply to a delegation made under this clause as if the delegation were a delegation under Division 4 of Part 5 of that Act.*

The Council resolved that the following delegations be approved:

TO: Chief Executive Officer

That pursuant to the provisions of section 8.2 of the Shire of York Town Planning Scheme No. 2 the Council delegates to the Chief Executive Officer by an absolute majority the following powers.

The Chief Executive Officer may sub delegate this approval to the appropriate officer eg: Planning Officer.

Delegation of Authority - Statutory Planning

1.0 Purpose

To specify delegation of authority to the Chief Executive Officer in accordance with the Shire of York Town Planning Scheme No. 2 in respect of the Town Planning functions of the Council.

2.0 Policy

2.1 Delegated Powers

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

- (a) Determination of applications for development approval, including applications involving:
 - (i) The variation of Scheme provisions, Planning Policy or provisions of the Residential Design Codes; or
 - (ii) The exercise of discretion under the Scheme, Planning Policy or the Residential Design Codes;
- (b) Refusal of all development applications where the proposed use is not permitted by the Scheme or where the development does not comply with the non-discretionary provisions of the Residential Design Codes or any mandatory statutory requirement or adopted Council policy;

- (c) Grant an extension of development approval for up to two (2) years;
- (d) Granting variations to relevant Planning Policies and provisions of the Residential Design Codes on Building License applications in accordance with the provisions of Clause 4.6 of the Town Planning Scheme No.2;
- (e) Deletion or modification of conditions of approval, whether imposed under delegated authority or not subject to compliance of Councils Planning objectives;
- (f) Making recommendations to the WA Planning Commission on:
 - applications for subdivision or amalgamation of land;
 - minor variations to approved subdivisions;
 - clearance of conditions of subdivision approval;
- (g) Determination of Applications for the relocation of Building Envelopes;
- (h) Adoption of Outline Development Plans and amendments to Outline Development Plans for the purposes of advertising;
- (i) Final adoption of amendments to Outline Development Plans provided that the modification is:
 - (i) of a minor nature;
 - (ii) consistent with the intent of the zone and the Scheme; and
 - (iii) unlikely to have a detrimental effect on the amenity of the locality or any owner or occupier of land in the locality;
- (j) Provision of written and verbal responses to planning appeals, mediated settlements resulting from appeals and WA Planning Commission requests for reconsideration;
- (k) Taking all necessary action against owners or occupiers of properties to cease illegal uses or comply with conditions of Development Approval, including pursuing prosecution through Council's Solicitors; and
- (l) Formation of any opinion and consideration of any matter in the exercise of these delegated powers that would be required of Council under the Scheme, including, but not limited to, sufficient information required for the processing of applications, referral and advertising of applications, and interpretation of Scheme provisions, relevant Planning Policies and provisions of the Residential Design Codes.

- (m) Delegations to include:
 - (i) Bed & Breakfast Facilities
 - (ii) Farmstays
 - (iii) Small outbuildings in a Heritage Area eg: Patios, Carports, Fences, Swimming Pools and Signs etc.
 - (iv) Ancillary Tourist Use
 - (v) Short term accommodation

2.2 Limits to Delegated Powers

With the exception of delegated power 2.1(b) above, 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 intent of the Town Planning Scheme, relevant Policies, Residential Design Codes, or any Outline Development Plan adopted by Council;
- (d) Where notification has been given to adjoining and nearby owners or the general public for comment in accordance with the Town Planning Scheme or any Policy and written objections have been received within the time specified, unless in the opinion of the Principal Planner:
 - (i) the proposal is for exercise of discretion under the R-Codes and is consistent with the intent of the Town Planning Scheme, Residential Design Codes and any relevant 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 policy are not satisfied; or

- (ii) There is insufficient certainty as to whether the application complies with the intent of the Scheme, Residential Design Codes or any relevant Council 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.

History:

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

**APPENDIX 2
PROPOSED DELEGATIONS**

DE5 Approval of Statutory Planning

Pursuant to the provisions of the *Local Government Act 1995* Section 5.42 Delegation of some powers and functions to the Chief Executive Officer and Schedule 2, Clauses 82, 83 and 84 of the *Planning and Development (Local Planning Schemes) Regulations 2015*;

Legislation

5.42. Delegation of Some Powers and Duties to CEO

- (1) *A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.*

** Absolute majority required.*

- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*

82. Delegations by Local Government

- (1) *The local government may, by resolution, delegate to a committee or to the local government CEO the exercise of any of the local government's power or the discharge of any of the local government's duties under this Scheme other than this power of delegation.*

- (2) *A resolution referred to in subclause (1) must be by absolute majority of the council of the local government.*

- (3) *The delegation must be in writing and may be general or as otherwise provided in the notice of delegation.*

83. Local Government CEO may delegate powers

- (1) *The local government CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or discharge of any of the CEO's functions under this Scheme other than this power of delegation.*

- (2) *A delegation under this clause must be in writing and may be general or as otherwise provided in the instrument of delegation.*

- (3) *Subject to any conditions imposed by the local government on its delegation to the CEO under Clause 82, this clause extends to a power or duty the exercise or discharge of which has been delegated by the local government to the CEO under that clause.*

84. Other matters relevant to delegations under this Division

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

The Council resolved that the following delegations be approved:

TO: Chief Executive Officer

That pursuant to the provisions of Schedule 2, Clauses 82, 83 and 84 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the Council delegates to the Chief Executive Officer by an absolute majority the following powers.

The Chief Executive Officer may sub-delegate this approval to the appropriate officer e.g. Planning Officer.

Delegation of Authority - Statutory Planning

2.0 Purpose

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.

2.0 Policy

2.1 Delegated Powers

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

2.1.1 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 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.

2.1.2 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.

2.1.3 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 \$5000 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.

2.1.4 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.

2.1.5 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.

2.1.6 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.

History:

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

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