



REGISTER OF DELEGATIONS

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1. INTRODUCTION

1.1. Legislation

The Local Government Act 1995 (“the Act”), was introduced on 1 July 1996 and made significant changes to the way local government conducts its business. Its general aim was to enable local governments to provide good, open and accountable government to the community.

One of the changes was the degree of delegated authority available to be passed onto the Chief Executive Officer or a Committee in order to manage the day to day operations of the City.

The Act allows for a local government to delegate to the Chief Executive Officer the exercise of any of its powers or the discharge of any of its duties under the Act. All delegations made by the Council must be by absolute majority decision (s5.42(1) of the Act).

1.2. Associated Legislation

Legislation other than the Local Government Act 1995 (“the Act”), 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;
- Bush Fires Act 1954, regulations and local laws created under that Act;
- Health Act 1911 (as amended), regulations and local laws 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.
- Building Act 2011 and regulations

[NB: This is not an exhaustive list.]

1.3. Delegation by the Chief Executive Officer

The Local Government Act 1995 (“the Act”), allows for the Chief Executive Officer to delegate any of the powers to another employee (s5.44(1) of the Act). This must be done in writing (s5.44(2) of the Act). The Act allows for the Chief Executive Officer to place conditions on any delegations if desired (s5.44(4) of the Act).

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 (s5.46(1), (2) of the Act). 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) of the Act).

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 governments, directly affected by the exercise of the power or the discharge of the duty (reg 19 Local Government (Administration) Regulations 1996).

A person to whom a power is delegated under the Act is considered to be a ‘designated employee’ under s5.74(b) 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) of the Act).

1.4. Matters which cannot be delegated

There are a number of matters that cannot be delegated and which remain the right of Council.

Refer to s5.43 of the Local Government Act 1995:

“A local government cannot delegate to a CEO any of the following powers or duties

- (a) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;
- (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;
- (c) appointing an auditor;

- (d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;
- (e) any of the local government's powers under sections 5.98, 5.98A, 5.99, 5.99A or 5.100;
- (f) borrowing money on behalf of the local government;
- (g) hearing or determining an objection of a kind referred to in section 9.5;
- (h) any power or duty that requires the approval of the Minister or the Governor; or
- (i) such other power or duties as may be prescribed."

2. A BACKGROUND TO DELEGATIONS AND AUTHORISATIONS

Delegations and authorisations are the means by which decision-making bodies can access the power to undertake certain statutory functions.

A delegation is the conferral of the ability to exercise a power or duty to a person or body from a person or body that is vested with the responsibility to exercise that power or duty.

An authorisation is the designation of an officer or a body as a person or body that is capable of exercising a specific statutory power or duty.

When a person or body exercises delegated authority they do so "on behalf" of the delegator and in doing so the person or body exercising delegated authority forms the relevant state of mind to make the decision "on behalf" of the delegator. An authorised person or body exercises a statutory function in their own right.

The Western Australian local government statutory regime also provides for the Council and CEO to "act through" other officers, agents and bodies to achieve statutory functions. "Acting through" in this manner is not the exercise of delegated authority or an authorised power and must be handled differently.

2.1. The Governance Structure

The Western Australian local government governance regime provides that the Council appoints a CEO and the CEO appoints employees. Similarly, all local government employees are responsible to the CEO who in turn is responsible to the Council.

Wherever possible, the City of Cockburn will endeavour to ensure authorisations and delegations conform with this governance structure. Delegations will be established from the Council to the CEO and this will enable the CEO to either delegate power to officers or authorise officers as the CEO sees fit.

Delegations and authorisations from the Council directly to officers other than the CEO will be avoided unless legislation specifically provides that this is the only manner in which the power can be provided to an officer other than the CEO.

2.2. Delegations

This section provides guidance on the statutory framework for delegated authority. It addresses the two statutory requirements for delegated authority – the power to delegate and the power being delegated. This section also addresses some common conditions on delegation that apply in the local government setting.

2.3. The Power to Delegate

The ability to delegate a statutory function, power or duty must be described in a piece of legislation and is known as the power of delegation. This is the first statutory requirement for an effective delegation; the ability to delegate powers. The following powers of delegation are contained in legislation relevant to local government.

| Legislation | Section | Delegation From | Delegation To | Function | Restrictions |
|---------------------------|----------|-----------------|--------------------------------------|---|---|
| Local Government Act 1995 | s5.16 | Council | Committees | Powers and duties of Council under the Local Government Act | s5.17 |
| Local Government Act 1995 | s5.42 | Council | CEO | Powers and duties of Council under the Local Government Act | s5.43 |
| Local Government Act 1995 | s5.44 | CEO | Any employee of the local government | Powers and duties of CEO under the Local Government Act | the Local Government Act Powers and duties of CEO under s5.44 |
| Cat Act 2011 | S44 | Council | CEO | Power and duties of the Council under the Cat Act 2011 | s.45(6) |
| Bush Fires Act 1954 | s48 | Council | CEO | Powers and duties of Council under the Bush Fires Act | s48 |
| Local Government | s374(1b) | Council | Manager Building | Power to approve or | s374 |

| Legislation | Section | Delegation From | Delegation To | Function | Restrictions |
|-------------------------------------|-----------|-----------------|---|---|--|
| (Miscellaneous Provisions) Act 1960 | | | Services | refuse to approve plans and specifications | |
| Strata Titles Act 1985 | S23 (4) | Council | Any employee of the local government | Functions of the local government under the Strata Titles Act | s23. Note: the exercise of the power of delegations must be under common seal. |
| Planning and Development Act 2005 | S16(3) | Commission | A local government, a committee established under the <i>Local Government Act 1995</i> or an employee of a local government | Functions of the Commission under the Planning and Development Act 2005 | |
| Town Planning Scheme 3 | CI 11.3.1 | Council | CEO | Powers under the Town Planning Scheme 3 | CI 11.3.3 |
| Building Act 2011 | S 127 | Council | CEO | Powers and Duties of the Building Act 2011 | |

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NB. Delegations under the Local Government are made under the following pathways. Pathway 1 expressly mentioned in the LGA act and regs (code LGA), pathway 2 created from administrative policies made by Council under the powers of LG Act (code A), and pathway 3 created from strategic policies made by Council under the provision of the LG Act (code S).

[There are no Delegations made from Other Acts for Executive Services.]

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NB. Delegations under the Local Government are made under the following pathways. Pathway 1 expressly mentioned in the LGA act and regs (code LGA), pathway 2 created from administrative policies made by Council under the powers of LG Act (code A), and pathway 3 created from strategic policies made by Council under the provision of the LG Act (code S).

2.2 Delegations made under Other Acts

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NB. Delegations under the Local Government are made under the following pathways. Pathway 1 expressly mentioned in the LGA act and regs (code LGA), pathway 2 created from administrative policies made by Council under the powers of LG Act (code A), and pathway 3 created from strategic policies made by Council under the provision of the LG Act (code S).

[There are no Delegations made from Other Acts for Engineering and Works.]

4. PART 4 – FINANCE & CORPORATE SERVICES

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NB. Delegations under the Local Government are made under the following pathways. Pathway 1 expressly mentioned in the LGA act and regs (code LGA), pathway 2 created from administrative policies made by Council under the powers of LG Act (code A), and pathway 3 created from strategic policies made by Council under the provision of the LG Act (code S).

[There are no Delegations made from Other Acts for Finance and Corporate Services.]

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