



REGISTER OF DELEGATIONS

CEO AND OFFICERS

NOVEMBER 2023

ARRANGEMENT

PART A – PRIMARY DELEGATIONS – to CEO

1. Council / Governance
1. Administration / Organisation
3. Financial Management
4. Order / public safety
5. Fire Control
6. Environmental Health / Food
7. Community Services
8. Personnel
9. Occupational Safety & Health
- 10 Building / Development
11. Public Facilities
12. Tourism
13. Works & Services
14. Plant / Equipment
15. Natural Resource Management
16. Unclassified

PART B – PRIMARY DELEGATIONS – To Other Officers

Environmental Health / Food

Fire Control

HISTORY SUMMARY

APPENDIX

CONTENTS

PART A – PRIMARY DELEGATIONS – to CEO

1. Council / Governance
 - 1.1 Appointment of authorised persons
1. Administration / Organisation
 - 2.1 Destruction of records
 - 2.2 Confidential records – Inspection
 - 2.3 Executing and Affixing of Common Seal to Documents
3. Financial Management
 - 3.1 Municipal Fund – Incurring expenditure
 - 3.2 Municipal Fund and Trust Fund – Payments from Bank Accounts
 - 3.3 Investments
 - 3.4 Rates record, extensions and objections
 - 3.5 Sundry and rate debtors – Recovery and agreements
 - 3.6 Write off of Sundry Debts
 - 3.7 Tenders – authority to set specifications, criteria, call, accept, vary
 - 3.8 Contracts – Variations
 - 3.9 Disposing of property, and impounded, confiscated or uncollected goods – sale
 - 3.10 Disposing of land and buildings – leases, rentals etc.
 - 3.11 Donations – Financial and In-kind Works / Services
4. Order / public safety
 - 4.1 Cat Act 2011
 - 4.2 Dog Act 1976
 - 4.3 Dogs Local Law 2015
 - 4.4 Animals, Environment and Nuisance Local Law 2016
 - 4.5 Impounding of vehicles and goods
 - 4.6 Impounding of cattle etc.
 - 4.7 Disposal of sick or injured animals
5. Fire Control
 - 5.1 Issue of burning permits – CEO
 - 5.2 Fire fighting – Emergency plant hire
 - 5.3 Restricted burning periods – Variations
6. Environmental Health / Food
 - 6.1 Public Health Act 2016
7. Community Services
 - 7.1 Cemetery Local Law 2016

8. Personnel
 - 8.1 Preamble
 - 8.2 Designated senior employee – Vacancies
 - 8.3 Long service leave
 9. Occupational Safety & Health
 10. Building / Development
 - 10.1 Planning Control
 - 10.2 Applications for subdivision and amalgamations
 - 10.3 Response to State Administrative Tribunal review of planning decisions
 - 10.4 Building Act 2011 – Authorised Officer
 - 10.5 Illegal development
 - 10.6 Extractive Industries Local Law 2011
 11. Public Facilities
 - 11.1 Liquor Control Act 1988
 - 11.2 Local Government Property Local Law 2015
 - 11.3 Thoroughfares and Public Places Local Law 2015
 - 11.4 Discount/waiver/subsidy of facility hire fees
 - 11.5 Sandalwood Village
 - Schedule 11.5(a) – Sandalwood Village – Waitlist Management**
 - Schedule 11.5(b) – Sandalwood Village – Tenant Obligations**
 12. Tourism
 13. Works & Services
 - 13.1 Reserves under control of the local government
 - 13.2 Things to be done on land not local government property
 - 13.3 Works on land outside the district
 - 13.4 Materials from land not under local government control
 - 13.5 Notices requiring certain things to be done
 - 13.6 Notice of local government works
 - 13.7 Private works/infrastructure on, over or under public land
 - 13.8 Events on roads
 - 13.9 Temporary road closures
 14. Plant / Equipment
 15. Natural Resource Management
 - 15.1 Control of Vehicles (Off-road Areas) Act 1978
 - 15.2 Native flora and fauna
 - 15.3 Pest Plants Local Law 2015
 16. Unclassified
- PART B – PRIMARY DELEGATIONS – To Other Officers
- Environmental Health / Food
- 17.1 Food Act 2008 – Qualified person

Fire Control

18.1 Issue of burning permits – Fire Control Officers

18.2 Prohibited burning periods – Variations

HISTORY SUMMARY

APPENDIX

Definitions

Statutory Context

Corporate context

IMPORTANT – Consequences of breaching Delegations

Guidelines No.17 – Delegations (Department of Local Government)

Primary delegation

Secondary delegation by CEO

Use of delegations

Record of use of delegations

Making, amending and revoking delegations

Review of delegations

PART A – PRIMARY DELEGATIONS – to CEO

1. Council / Governance

1.1 Appointment of authorised persons

FUNCTION DELEGATED

1. Legislation

The CEO is delegated authority to appoint employees (including employees under contract) as authorised persons for the purposes of performing functions under the following Acts and associated Regulations –

- a) Building Act 2011 –
 - s.127 – power to delegate
- b) Bush Fires Act 1954 –
 - s.38 – appointment of fire control and other officers (employees)
 - s.48 – a local government may delegate any function, other (than prohibited period variation)
- c) Caravan Parks & Camping Grounds Act 1995 –
 - s.17(1) – a local government may appoint authorised persons
- d) Cat Act 2008 –
 - s.44 – a local government may delegate to CEO
 - s.48 – power to appoint authorised persons
- e) Cemeteries Act 1986 –
 - s.10 – a Board may appoint of persons
- f) Control of Vehicles (Off-road Areas) Act 1978 –
 - s.38(c) – a local government may appoint authorised persons
- g) Dog Act 1976 –
 - s.10AA – a local government may delegate to CEO
 - s.11 – appointment of authorised persons
- h) Environmental Protection Act 1986 –
 - s.65(1) – if power to issue notices etc. delegated to the local government
- i) Food Act 2008 –
 - s.122 – an enforcement agency may appoint authorised person (if qualified)
- j) Litter Act 1979 –
 - s.26 – appointment of authorised officers
- k) Local Government Act 1995 –
 - s.5.42 – a local government may delegate to CEO
 - s.5.43 – delegations not permitted to be made
 - s.9.10(1) – appointment of authorised persons

- l) Local Government (Miscellaneous Provisions) Act 1960 –
 - s.449 – appointing pound keepers and rangers
- m) Planning and Development Act 2005 –
Note also Local Government Act s.5.42
 - s.4 – a local government is a responsible authority
 - s.234 – the CEO may appoint persons for purposes of s.228 to s.241
- n) Public Health Act 2016 –
 - s.21(1)(b) – a local government may delegate to CEO
 - s.17 – Appointment of environmental health officers
- o) Health (Miscellaneous Provisions) Act 1911 –
 - s.26 – power to appoint a person who is an employee under LG Act s.5.36

2. Local Laws

The CEO is delegated authority to appoint employees (including employees under contract) as authorised persons for the purposes of performing functions under the following local laws –

- a) Thoroughfares and Public Places Amendment Local Law 2016;
- b) Local Government Property Amendment Local Law 2016;
- c) Dogs Local Law 2015,
- d) Cemetery Local Law 2015,
- e) Animals, Environment and Nuisance Local Law 2017,
- f) Extractive Industries Local Law 2011,
- g) Pest Plants Local Law 2015,
- h) Health Local Law 2016.

3. Planning

The CEO is delegated authority to appoint employees (including employees under contract) as authorised persons for the purposes of performing functions under –

- a) Local Planning Scheme No.4 of 2022,
- b) Local Planning Policy.

APPLICATION

- The following exclusions apply to this delegation –
 - a) Local Government Act 1995–
 - s.5.37(1) – determination that an employee or class of employee is or is not designated; and
 - s.5.37(2) – appointment or termination of a person to a designated position without Council’s consent
 - b) Health (Miscellaneous Provisions) Act 1911–
 - s.27(1) – appointment of a Medical Officer of Health

- Appointments made by the CEO are limited to employees of the Shire, and are to state the appointment is for –
 - a) the duration of employment by the Shire,
 - b) the duration of the contract with the Shire, or
 - c) specified time, event or purpose.

- Appointment to a position by Council or CEO, in either a substantive or temporary capacity, includes the authority to administer and perform the functions delegated to that position, subject to –
 - a) any limitations specified in the relevant general delegation to the person or position;
 - b) any specific limitations imposed by the Council or CEO in making the appointment.

- All proposals to commence prosecution are to be referred to Council for decision, unless specifically authorised under delegated authority or by specific decision.

OBJECTIVE

To allow timely appointment of employees as authorised officers.

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.18(1) – local government to administer its local laws and perform its required functions under the Act.

Legislation and local laws as noted in clauses 1 and 2 above.

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted.

FORMAL RECORD OF USE

- i) Authorised person's certificate of authorisation
- ii) File copy of authorisation
- iii) Personnel file
- iv) Relevant subject file

HISTORY

Former Delegation	14, 19, 32, 33, 39, 40, 41, 43, 44
Adopted	18 June 2020

REFERENCES

No delegated authority for –

- legislation not listed,
- persons who are not employees.
- Meeting Procedure Local Law – not required
- Health Local Law 1999 cl.1.3 – stipulates that appointment of an EHO is to be by the Council, and therefore cannot be delegated to CEO
- Local Planning Scheme No.1 cl.8.7.1 – stipulates Council must resolve the delegation. This may be by position or by name.

Authorised persons exercise their authority directly from the Act, Regulation or local law that refers to “an authorised person”, and may be appointed directly by Council, or by the CEO under delegated authority.

Where the Act, Regulation or local law refers to “local government” the function must be exercised through a formal delegation.

Where the Act, Regulation or local law refers to “Council”, it means the elected members in session.

Appointments of persons other than employees are to be referred to Council for determination.

Some appointments can be made independent of employment with the Shire, and unless revoked or otherwise limited, the appointment continues to remain valid. This is the case with Fire Control Officers, Authorised Dog Control Officers etc. Their appointment means –

- the community member is an officer of Council,
- as an officer of Council, there is a duty of care to the person, as well as to the community, and must ensure that the person is adequately resourced for the task, including training, equipment etc., as necessary,
- as an officer of the Shire, there is a legal responsibility for their actions, and in making the appointment there is an obligation to be satisfied that the person is appropriate and competent to exercise the authority.

As these appointments mean that the person is an officer of Council for that specific purpose, they have the statutory authority to commit Council to particular actions, initiate various proceedings etc, as listed in the authorising Act, and as permitted or limited by Council.

When making an appointment, the CEO must be certain that the person appointed is capable of undertaking the role, is a suitable, and provide the necessary resources for the role to be carried out such as training, equipment, etc.

This delegation does not apply to allocation of statutory functions made by the CEO to fulfil legislative requirements undertaken as a component of administrative tasks.

2. Administration / Organisation

2.1 Destruction of records

FUNCTION DELEGATED

1. The CEO is delegated authority to destroy records subject to compliance to –
 - a) the Local Government General Disposal Authority as prepared by the State Records Office, and
 - b) Shire of Cunderdin Record Keeping Plan.

APPLICATION

N/A

OBJECTIVE

To streamline destruction of records no longer required.

STATUTORY CONTEXT

State Records Act 2000 –

- s.16 (2) – mandatory compliance of record keeping plans with principles and standards of the State Records Commission
- s.19 – requirement for a record keeping plan
- Sch.1 cl.12 – local governments are a government organisation

Local Government General Disposal Authority

CORPORATE CONTEXT

Record Keeping Plan

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

FORMAL RECORD OF USE

- i) Signed listing of records authorised for destruction

HISTORY

Adopted 18 June 2020

REFERENCES

Nil

2.2 Confidential records – Inspection

FUNCTION DELEGATED

1. The CEO is delegated authority to make available information determined by Council or the CEO to be confidential, and not available for public inspection.

APPLICATION

1. Prior to making a decision, the CEO is to determine –
 - a) whether or not the information should remain confidential or public inspection permitted;
 - b) the extent of information that may be released.
2. The CEO is to use discretion in exercising the authority, taking note that –
 - a) there is no compulsion to release confidential information,
 - b) some information is required to remain confidential.

OBJECTIVE

To manage access to confidential records.

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.92 – Council or committee members may access confidential information only if, and to the extent necessary, to fulfil their function
- s.5.93 – penalties if Council or committee member, or employee misuses information
- s.5.94 – public inspection of information permitted, with some restrictions
- s.5.94 (1) to (3) – information that is required to remain confidential
- s.5.95 (1) to (6) and (8) – exclusions from public inspection
- s.5.95 (7) – some confidential information may be made available in some circumstances

Administration Regulations 1996 –

- r.29A – limits on confidential information that may be inspected

Rules of Conduct Regulations 2007 –

- r.6 – use of information, including confidential information, by council members
- r.7 – prohibition on improper use, for personal advantage or to someone's detriment
- r.8 – misuse of local government resources

CORPORATE CONTEXT

Record Keeping Plan

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION

Permitted

PERMITTED TO

Deputy Chief Executive Officer

FORMAL RECORD OF USE

- i) File copy of written request and decision by CEO.

HISTORY

Former Delegation	8
Adopted	18 June 2020

REFERENCES

Confidential information does not mean that the meeting is required or is permitted to be closed to the public. While matters in a closed meeting are always confidential, a meeting can only be closed for specific reasons, and on occasion, there will be matters that need to be dealt with confidentially that do not fit the statutory criteria.

Examples of information that is required to remain confidential includes –

- a) employee details, conditions, negotiations etc.
- b) supplier's bank information;
- c) details required by legislation to be omitted from electoral roll;
- d) information regarding debts owed to the Shire

CEO may consider some information to remain confidential, due to –

- a) commercial in confidence;
- b) potential for misuse;
- c) insufficient reasons/justification to access the information.

Note – refusal of access does not prevent application being made under the Freedom of Information Act.

2.3 Executing and Affixing of Common Seal to Documents

FUNCTION DELEGATED

- 1.0 Council delegates its authority and power to the President and the Chief Executive Officer to execute documents and affix the Common Seal thereto, where such documents result from the following transactions:
 - 1.1 Where land is disposed of pursuant to Section 3.58 of the *Local Government Act 1995* (As Amended).
 - 1.2 Where land is acquired pursuant to Section 3.55 and 3.59 of the *Local Government Act 1995* (As Amended).
 - 1.3 In respect of leases of land and licence to occupy municipal property where approved by the Council.
 - 1.4 In respect of leases for the purchase of plant and equipment approved by the Council.
 - 1.5 In respect of borrowings approved by the Council.
 - 1.6 In respect of easements and legal agreements over land for the purpose of drainage or conditions arising from subdivision of land and planning approvals.
 - 1.7 In respect of withdrawal of caveats and surrender of easements where the Chief Executive Officer considers that the Council's interests have been satisfied.
 - 1.8 In respect of contracts of employment approved by the Council.
 - 1.9 In respect of agreements required for funding of Council works and services considered with the resolution of the Council or requiring renewal of the agreement for funding currently provided.
 - 1.10 In respect of the final adoption of local laws by the Council, subject to:
 - (a) Meeting the requirements detailed in Councils Policy on Use of the Shire Common Seal; and
 - (b) Council being notified via a report to be submitted to each Council Meeting in relation to the execution of documents and affixing of the Common Seal.

APPLICATION

In accordance with Local Government Act and Council Policy

OBJECTIVE

To manage access to confidential records.

STATUTORY CONTEXT

9.49A. Execution of documents

(1) A document is duly executed by a local government if

(a) the common seal of the local government is affixed to it in accordance with subsection

(2) and (3); or

(b) it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so.

(2) The common seal of a local government is not to be affixed to any document except as authorised by the local government.

- (3) *The common seal of the local government is to be affixed to a document in the presence of —*
- (a) the mayor or president; and*
 - (b) the chief executive officer or a senior employee authorised by the chief executive officer, each of whom is to sign the document to attest that the common seal was so affixed.*
- (4) *A local government may, by resolution, authorise the chief executive officer, another employee or an agent of the local government to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.*
- (5) *A document executed by a person under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.*
- (6) *A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.*
- (7) *When a document is produced bearing a seal purporting to be the common seal of the local government, it is to be presumed Local Government Act 1995 Miscellaneous provisions Part 9 Documents Division 3 s. 9.49B As at 28 Oct 2017 Version 07-k0-00 page 339 Extract from www.slp.wa.gov.au, see that website for further information that the seal is the common seal of the local government unless the contrary is shown.*

CORPORATE CONTEXT

Record Keeping Plan

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION

Permitted

PERMITTED TO

Deputy Chief Executive Officer

FORMAL RECORD OF USE

- i) File copy of written request and decision by CEO.

HISTORY

Former Delegation	8
Adopted	18 June 2020

REFERENCES

3. Financial Management

3.1 Municipal Fund – Incurring expenditure

FUNCTION DELEGATED

1. The CEO is delegated authority to incur expenditure from the Municipal Fund subject to being –
 - a) compliant with the Local Government Act and Regulations,
 - b) in accordance with the adopted Budget,
 - c) authorised by a resolution of Council,
 - d) compliant with –
 - i) Delegation 3.7 Tenders, and
 - ii) Council Policies 3.1, 3.2, 3.3 and 3.4,
 - e) authorised emergency expenditure.

APPLICATION

1. The CEO is to ensure –
 - a) systems and procedures required by Financial Management Reg. r.5 are in place;
 - b) compliance with procedures developed in accordance with Financial Management Reg. r.11;
 - c) constant review of procedures in accordance with Audit Reg. r.17
2. The CEO may authorise the issue of a credit card to a senior officer.
3. The CEO is authorised to approve appropriate staff use of credit cards, fuel cards and store cards –
 - a) fuel cards and store cards within limits as considered appropriate,
 - b) use of credit cards to an all staff cumulative maximum of \$15,000 in total
4. The CEO is authorised to approve appropriate staff to issue purchase orders-

All purchase orders are to have the authorised signature of any of the following authorised persons –

Delegation by Council to:	Chief Executive Officer- Unlimited
Delegation by Chief Executive Officer to:	Deputy Chief Executive Officer - \$150,000 Manager of Works and Services - \$70,000 Depot Assets and Technical Services Officer - \$5,000 Community Development Officer- \$5,000 Museum Manager- \$1,000
Last Reviewed:	15 th June 2023

OBJECTIVE

To allow for the timely purchase of materials, payment of wages and accounts etc.

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.8 – expenditure from Municipal Fund
- s.6.8(1)(c) – Payment in an emergency

Local Government (Financial Management) Regulations 1996 –

- r.5 – CEO's duties as to financial management
- r.11 – Payments, procedures for making etc.
- r.12 – Payments from municipal fund or trust fund, restrictions on making
- r.13 – Duties of CEO

Local Government (Audit) Regulations

- r.16 – CEO to review certain systems and procedures

CORPORATE CONTEXT

Delegation Register –

- 3.7 – Tenders - Authority to set etc.

Council Policy –

- – Purchasing – Framework
- – Purchasing – Regional Price Preference
- – Credit Cards etc.
- – Requests for Financial and Other Assistance
- 3.7 – Creditors – Timeliness of payments

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

FORMAL RECORD OF USE

- i) Issue of purchase order.
- ii) Receipt of expenditure
- iii) Reconciled credit card or store card statement signed by the authorised user

HISTORY

Former Delegation	6
Adopted	18 June 2020
Amended	22 November 2023

REFERENCES

This delegation is not for authorisation of payments from Municipal Fund Bank Account or Trust Fund Bank Account, or the procedures required for the processing of creditors invoice.

3.2 Municipal Fund and Trust Fund – Payments from Bank Accounts

FUNCTION DELEGATED

1. The CEO is delegated authority to make payments from the Municipal Bank Account and Trust Bank Account subject to –
 - a) being in accordance with the adopted Budget;
 - b) being authorised by a resolution of Council;
 - c) disbursement as authorised, of funds lodged to the Trust Account, or
 - d) being authorised emergency expenditure.

APPLICATION

1. The CEO is to ensure –
 - a) systems and procedures required by Financial Management Reg. r.5 are in place;
 - b) compliance with procedures developed in accordance with Financial Management Reg. r.11;
 - c) constant review of procedures in accordance with Audit Reg. r.17
2. All transactions are to have the authorised signatures or secure electronic passwords by any two of the following authorised persons, jointly –

	Initial	Secondary
CEO	All	All
DCEO	All	All
MWS	All	All
Payroll	Payroll	None
Creditors	Creditors	None

OBJECTIVE

To ensure timely payment of creditors, salaries and wages etc.

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.8 – expenditure from Municipal Fund
- s.6.8(1)(c) – Payment in an emergency

Local Government (Financial Management) Regulations 1996 –

- r.5 – CEO’s duties as to financial management
- r.11 – Payments, procedures for making etc.
- r.12 – Payments from municipal fund or trust fund, restrictions on making
- r.13 – Duties of CEO

Local Government (Audit) Regulations 1996 –

- r.16 – CEO to review certain systems and procedures

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

FORMAL RECORD OF USE

- i) Copy of approval, authorisation, payment of invoice etc. with financial transaction
- ii) Monthly report to Council Meeting

HISTORY

Former Delegation	6
Adopted	18 June 2020

REFERENCES

This delegation is not for the issue of purchase orders, use of credit cards, store cards or fuel cards, or procedures for the processing of creditors invoice.

3.3 Investments

FUNCTION DELEGATED

1. The CEO is delegated authority to invest money held in any Council fund that is not required for immediate use, provided that sufficient working funds are retained at all times.

APPLICATION

1. All transactions are to have two authorised signatures or secure electronic passwords, at least one of whom must be –
 - a) CEO; or
 - b) DCEO
2. Second signatories may be –
 - a) Manager Works and Services

OBJECTIVE

To ensure appropriate control of transfer of funds to and from investments.

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.14 – Power to invest

Local Government (Financial Management) Regulations

- r.19 – Investments, control procedure for
- r.19C – Investments of money, restrictions on

Trustees Act 1962 –

Part III

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

FORMAL RECORD OF USE

Record of lodgement of funds for investment, and instructions given

HISTORY

Former Delegation	27
Adopted	18 June 2020

REFERENCES

Financial Management Reg. r.19C imposes limits on institutions, duration of investment, type of investment etc.

3.4 Rates record, extensions and objections

FUNCTION DELEGATED

1. The CEO is delegated authority to –
 - a) amend rate records for the past five years preceding the current year,
 - b) refund of rates overpaid following an adjustment to the rate record if requested,
 - c) extend the time for making the objection for such period as the CEO thinks fit, on application by a person proposing to make an objection to the rate record
 - d) consider any objection to the rate record and may either disallow it or allow it, wholly or in part.

APPLICATION

N/A

OBJECTIVE

To ensure the rate records are current and reconciled with information provided from Landgate.

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.39 (2) – amend rate records for up to 5 years
- s.6.40 (3) – refund of rates after overpayment
- s.6.76 (4) – extension of time to make objection to rate record
- s.6.76 (5) – determination of objection to rate record

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FORMAL RECORD OF USE

- i) File copy of rates notice, payment, agreement or determination
- ii) Property / Assessment file

HISTORY

Former Delegation	48
Adopted	18 June 2020

REFERENCES

Nil

3.5 Sundry and rate debtors – Recovery and agreements

FUNCTION DELEGATED

1. The CEO is delegated authority to negotiate an agreement for the payment of rates, service charge and sundry debts, together with the costs of proceedings, if any, for that recovery, subject to any administrative or instalment charges, penalty interest etc. being incorporated into the agreement.
2. The CEO is delegated authority to recover unpaid rates or service charges after becoming due and payable, together with the costs of proceedings, if any, for that recovery –
 - a) by use of a debt collection agency,
 - b) in a court of competent jurisdiction;
 - c) by serving notice on a tenant to pay rent to the Shire;
 - d) other such means as is provided for and appropriate.
3. The CEO is delegated authority to recover unpaid sundry debtors, together with the costs of proceedings, if any, for that recovery –
 - a) by use of a debt collection agency,
 - b) in a court of competent jurisdiction;
 - c) other such means as is provided for and appropriate.

APPLICATION

1. The arrangements agreed are to be on the basis that the total debt outstanding will be extinguished by 30 June following.

OBJECTIVE

To ensure timely recovery of sundry and rates debtors.

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.49 – Agreement as to payment of rates and service charges
- s.6.56(1) – recovery of rates by complaint or action
- s.6.60(2) – recovery of rates by requiring payment of rent to Shire

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

FORMAL RECORD OF USE

- i) File copy of instruction to court or debt collection agency etc., written agreement with debtor, notice to tenant etc.
- ii) Property file

HISTORY

Former Delegation	47, 51, 52
Adopted	18 June 2020

REFERENCES

Nil

3.6 Write off of Sundry Debts

FUNCTION DELEGATED

1. The CEO is delegated authority to write off small amounts to a maximum of \$300.00 ex GST per individual debt for –
 - a) sundry debtors and any interest, charges and associated cost where –
 - i) the debtor can no longer be traced,
 - ii) recovery is deemed unlikely, or
 - iii) cost of recovery is considered to be uneconomic;
 - b) interest on rates or service charges, or rate instalment charge where there is satisfactory evidence of attempt to pay by the required date –
 - i) where as a result of daily interest calculations, the rates were intended to be paid in full, but an error occurred, or the payment was received by mail after the calculation was made; or
 - ii) on transfer of the property from one owner to the next.

APPLICATION

1. This delegation does not apply to an amount of rates or any service charge levied on the annual rate notice.

OBJECTIVE

To authorise the write-off of minor debtor amounts.

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.95– information that is required to remain confidential
- s.6.12(c) – Power to write off any amount of money

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FORMAL RECORD OF USE

- i) Listing of debts written off to be signed by CEO
- ii) Report to Council via monthly briefing papers of the number of debts and total amount only

HISTORY

Former Delegation 30
Adopted 18 June 2020

REFERENCES

This delegation is not authority for the write-off of rates or service charges, but rate interest and administration charges and sundry debts. Where a write-off is intended for rate interest/charges, there must be evidence that reasonable attempts were made to pay the amount by the date of calculation.

Debt information –

- includes rate debts as well as sundry debts
- is to be kept confidential under the Local Government Act s.5.95(2), and therefore no identifying details should be in public documents such as Agendas or Minutes.

3.7 Tenders – authority to set specifications, criteria, call, accept, vary

FUNCTION DELEGATED

1. The CEO is delegated authority, subject to prior budget provision having been made or to give effect to a Council decision, to –
 - a) prepare and finalise specifications for calling all tenders, expressions of interest and panels for pre-qualified suppliers in accordance with Budget provision and at the appropriate time;
 - b) determine the criteria for assessment of all tenders, expressions of interest and panels for pre-qualified suppliers;
 - c) invite all tenders, expressions of interest and applications for panels of pre-qualified suppliers; or
 - d) approve a minor variation to an accepted tender, provided the intentions and purposes of the tender are not substantially altered, and where the effect on the total contract is a –
 - i) reduction;
 - ii) increase in cost to a cumulative total of \$25,000 ex GST or 5% whichever is the greater, where the adjusted total remuneration remains within Budget provision; or
 - iii) reasonable and unforeseen increase in duration of the contract.
2. The CEO is delegated authority to accept tenders called where the value of the proposed purchase is less than the tender threshold stipulated by Regulations, without further reference to Council.

APPLICATION

1. All tenders and expressions of interest called under the Regulations are to be approved by Council.
2. Variation of tenders is limited to CEO only, as limited by 1(d)(ii) above.
3. All matters dealing with purchase or disposal of land (sale or lease) are to have the specific authorisation of Council, subject to any prior directions of Council.

OBJECTIVE

To allow for all administrative matters relating to tenders and expressions of interest to be managed.

STATUTORY CONTEXT*Local Government Act 1995 –*

- s.3.57– Tenders for providing goods or services
- s.3.58 – Disposing of property
- 5.43(b) – Limits on delegation to accept tenders

Local Government (Functions and General) Regulations 1996 –

Part 4 – provision of goods and services

- Division 1 – Purchasing policies for local government
 - r.11A – requirement for a purchasing policy
- Division 2 – Tenders for providing goods and services, specifically –
 - r.14(2a) – criteria for deciding on tender to be determined in writing prior
 - r.14(4) – information to be disclosed, specifications, own tender to be determined prior
 - r.14(5) – vary information disclosed subject to all being informed
 - r.20 – Minor variation of requirements before entry into contract
 - r.23 – Rejecting and accepting expressions of interest
- Division 3 – Panels of pre-qualified suppliers, specifically –
 - r.24AD(2a) – requirements to join panel of pre-qualified suppliers

Part 4A – Regional Price Preference

Part 6 - Miscellaneous

- 30 (3) – exempt disposition of property

CORPORATE CONTEXT

Delegation Register –

- 3.1 – Municipal Fund – Incurring expenditure

Policy Manual –

- 3.1 – Purchasing – Framework
- 3.2 – Purchasing – Regional Price Preference

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

Manager Works and Services

FORMAL RECORD OF USE

- i) Report to Council via monthly briefing papers
- ii) Tender register and documentation on file

HISTORY

Former Delegation 5, 25, 26
Adopted 18 June 2020

REFERENCES

Expression of interest is not a quote – refer Functions & General Regulations r.21(3). The mandatory requirements are equivalent to those for a tender.

As clarification –

- Panels of suppliers – (a), (b) and (c) only apply
- Expressions of interest – (a), (b), (c) and (d) only apply

This delegation applies to all tenders – whether acquisition or disposal.

3.8 Contracts – Variations

FUNCTION DELEGATED

1. The CEO is delegated authority subject to prior budget provision having been made or to give effect to a Council decision to accept a minor variation of a contract entered into, subject to the intentions and purposes of the tender are not substantially altered, and where the effect on the total contract is a –
 - a) reduction;
 - b) increase in cost to a cumulative total of \$25,000 or 5% whichever is the greater, where the adjusted total remuneration remains within Budget provision; or
 - c) reasonable and unforeseen increase in duration of the contract.

APPLICATION

N/A

OBJECTIVE

To allow for approval of unavoidable minor variations of contracts

STATUTORY CONTEXT

Local Government (Functions and General) Regulations 1996 –

- r.21A – Varying a contract for the supply of goods or services
- r.24AJ – Contracts with pre-qualified suppliers

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

Manager Works and Services

FORMAL RECORD OF USE

- i) File copy of authorised variation

HISTORY

Former Delegation N/A

Adopted 18 June 2020

REFERENCES

3.9 Disposing of property, and impounded, confiscated or uncollected goods – sale

FUNCTION DELEGATED

1. The CEO is delegated authority to dispose of a vehicle considered to be an abandoned vehicle wreck under section 3.40A(3).
2. The CEO is delegated authority to dispose of goods confiscated under section 3.43.
3. The CEO is delegated authority to take all appropriate action under section 3.48 that may be necessary to recover the costs of impounding good or vehicles.
4. The CEO is delegated authority to dispose of property under section 3.58.

APPLICATION

- This delegated authority –
 - a) is subject to the operation of Delegation 3.7 Tenders;
 - b) applies to property other than land and buildings;
 - c) applies to property less than \$20,000 ex GST (individually or collective of associated similar items), unless prior authorisation given by Council specifically or by reference (such as trade-in vehicle or replacement vehicle);
 - d) applies to property that is surplus to requirements, unlikely to be used, damaged, or impounded;
 - e) is to be exercised ensuring disposal of assets is by offering them for public sale by any fair means, or to an appropriate not-for-profit community group;
- Restrictions –
 - a) where the “income” from the asset being disposed of is to be used as part of consideration for the acquisition of a new asset, both disposal and acquisition must be disclosed in Budget;
 - b) if required, transfer of the property is subject to the asset not being available to the purchaser until such time as the replacement asset is available for Shire use; and
 - c) price offered is paid

OBJECTIVE

To permit timely disposal of relevant property other than land and buildings.

STATUTORY CONTEXT*Local Government Act 1995 –*

- s.3.39 – Power to remove an impound
- s.3.40 – Vehicle may be removed if goods to be impounded are in or on it
- s.3.40A – Abandoned vehicle wreck – disposal
- s.3.41 – Impounded perishable goods
- s.3.42 – Impounded non-perishable goods
- s.3.43 – Impounded non-perishable goods, court may confiscate
- s.3.44 – Notice to collect goods if not confiscate
- s.3.47(1) – Confiscated or uncollected goods, disposal of
- s.3.47(2b) – Periods of retention before disposal
- s.3.48 – Impounding expenses, recovery of
- s.3.58 – Disposing of property

Local Government (Functions and General) Regulations 1996 –

- r.29A – Abandoned vehicle wrecks, value etc. prescribed for
- r.30 – Disposition of property excluded from Act s.3.58
- r.31 – Anti-avoidance provision for Act s.3.58

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

Manager Works and Services

FORMAL RECORD OF USE

- i) Acceptance of offer on disposal file

HISTORY

Former Delegation 45

Adopted 18 June 2020

REFERENCES

All matters dealing with purchase or disposal of land (sale or lease) are to have the specific authorisation of Council, subject to any prior directions of Council.

3.10 Disposing of land and buildings – leases, rentals etc.

FUNCTION DELEGATED

1. The CEO is delegated authority to determine leases, licences or rental of land or property for periods of 12 months or less, in accordance with any policy, guidelines or conditions as set by Council from time to time.

APPLICATION

1. This delegation applies where the consideration is less than \$20,000 ex GST, unless prior authorisation given by Council specifically or by reference.
2. All leasing or rental of property for more than 12 months to be referred to Council for decision, except for staff in Shire owned housing.
3. All sale of land requires authorisation by Council resolution.

OBJECTIVE

To permit quick approval of short term usage of Council land and buildings.

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.58 – disposition of assets

Local Government (Function and General) Regulations 1996 –

- r.30 – limited exemption for disposition of assets

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FORMAL RECORD OF USE

- i) File copy of notice
- ii) Lease agreement/letter.

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

Dept. of Local Government and Communities considers leasing and rentals to be disposal of land under LG Act s.3.58 as it is a grant of exclusive right for the period agreed.

Functions and General Regulations r.30 has different exemptions and different values for land and other property.

3.11 Donations – Financial and In-kind Works / Services

FUNCTION DELEGATED

The CEO is delegated authority to –

1. Financial

- a) Where a donation is provided for by name in the adopted Budget, the CEO may make payment at the appropriate time or on application by the recipient.
- b) Financial donations within the non-specified amount in the adopted Budget may be made by the CEO where –
 - i) the amount does not exceed \$300 ex GST in any financial year;
 - ii) the recipient is a community group, sporting club or non-profit organisation;
 - iii) the recipient is based locally, or the purpose has particular benefit or application to the district.
- c) Financial and works/service in-kind donations will not be considered for –
 - i) businesses,
 - ii) individuals;
 - iii) recipients of funding from the annual Budget allocation.

Donations for specific appeals such as a crisis appeal will be considered individually by Council.

2. In-kind

In-kind works or services may be authorised by the CEO where –

- a) the amount does not exceed \$500 ex GST in any financial year;
- b) the recipient is a community group, sporting club or non-profit organisation;
- c) the recipient is based locally, or the purpose has particular benefit or application to the district.

APPLICATION

N/A

OBJECTIVE

To permit decision regarding small donations and works in kind to be made.

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.8 – expenditure from Municipal Fund

Local Government (Financial Management) Regulations 1996 –

- r.5 – CEO's duties as to financial management
- r.11 – Payments, procedures for making etc.
- r.12 – Payments from municipal fund or trust fund, restrictions on making

CORPORATE CONTEXT

Delegations Register –

- – Municipal Fund – Incurring expenditure

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FORMAL RECORD OF USE

Office copy of approval / authorisation

HISTORY

Former Delegation	30
Adopted	18 June 2020

REFERENCES

Nil

4. Order / public safety

4.1 Cat Act 2011

FUNCTION DELEGATED

1. The CEO is delegated authority to exercise all discretionary matters in the Cat Act 2011, including –
 - a) issue of all notices and infringements etc.;
 - b) granting, refusal, cancellation and setting conditions of approval to conduct activities;
 - c) extending the time period within which infringement notices may be paid.
 - d) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - e) carrying out of works in default of a duly served notice;

APPLICATION

1. The delegation excludes –
 - a) determination of any fee or charge
 - b) dealing with an objection.
2. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) an infringement notice remains unpaid after reasonable attempts to obtain payment.

OBJECTIVE

To ensure appropriate administration of the Cat Act.

STATUTORY CONTEXT

Cat Act 2011 –

- s.44 – Council may delegate to CEO
- s.45 – CEO may delegate to any employee
- s.48 – an authorised person may perform functions under the Act
- s.70 – dealing with objections – to be by Council
- s.73(1) – Prosecutions under the Act

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer
Manager Works and Services
Rangers

FORMAL RECORD OF USE

- i) File copy of notice, approval etc.

HISTORY

Former Delegation	41
Adopted	18 June 2020

REFERENCES

The Act (e.g. s.63, s.64, s.65) restricts some matters to CEO.

4.2 Dog Act 1976

FUNCTION DELEGATED

1. The CEO is delegated authority to exercise all discretionary matters in the Dog Act 1976, including –
 - a) granting, refusal, cancellation and setting conditions of approval to conduct activities;
 - b) issue of all notices and infringements etc.;
 - c) extending the time period within which infringement notices may be paid.
 - d) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - e) carrying out of works in default of a duly served notice.

APPLICATION

1. The delegation excludes –
 - a) determination of any fee or charge
 - b) dealing with an objection.
2. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) an infringement notice remains unpaid after reasonable attempts to obtain payment.
3. The CEO has authority to waive the registration fee for a maximum of 12 months where a dog is rescued from impoundment by a new owner.

OBJECTIVE

To ensure appropriate administration of the Dog Act.

STATUTORY CONTEXT

Dog Act 1976 –

- s.11 – appointment of dog registration officer
- s.10AA – delegations must be to CEO, who may delegate functions
- s.29 – appointment of authorised person to perform functions under Act
- s.33F – dealing with objections (dangerous dogs)
- s.44(2)(b) – enforcement proceedings by an authorised person

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer
Manager Works and Services
Rangers

FORMAL RECORD OF USE

- i) File copy of notice

HISTORY

Former Delegation	40
Adopted	18 June 2020

REFERENCES

4.3 Dogs Local Law 2015

FUNCTION DELEGATED

1. The CEO is delegated authority to approve all discretionary matters in the Shire of Cunderdin Dogs Local Law 2015 including –
 - a) granting, refusal, cancellation and setting conditions of approval to conduct activities;
 - b) issue of all notices and infringements etc.;
 - c) extending the time period within which infringement notices may be paid.
 - d) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - e) carrying out of works in default of a duly served notice;

APPLICATION

2. The delegation excludes –
 - a) determination of any fee or charge
 - b) dealing with an objection.
3. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) an infringement notice remains unpaid after reasonable attempts to obtain payment.

OBJECTIVE

To ensure appropriate administration of the Local Law

STATUTORY CONTEXT

Dogs Act 1976 –

- s.10AA – delegations must be to CEO, who may delegate functions
- s.29 – appointment of authorised person to perform functions under Act
- s.44(2)(b) – enforcement proceedings by an authorised person

Local Government Act 1995 –

- s.3.18 – A local government is to administer its local laws
- s.9.6 – Dealing with objection – to be by council

Shire of Cunderdin Dogs Local Law 2015

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer
Manager Works and Services
Rangers

FORMAL RECORD OF USE

- i) File copy of approval of discretionary use

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

Nil

4.4 Animals, Environment and Nuisance Local Law 2016

FUNCTION DELEGATED

1. The CEO is delegated authority to approve all discretionary matters in the Shire of Cunderdin Animals, Environment and Nuisance Local Law 2016 including –
 - a) granting, refusal, cancellation and setting conditions of approval to conduct activities;
 - b) issue of all notices and infringements etc.;
 - c) extending the time period within which infringement notices may be paid.
 - d) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - e) carrying out of works in default of a duly served notice;

APPLICATION

1. The delegation excludes –
 - a) determination of any fee or charge
2. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) an infringement notice remains unpaid after reasonable attempts to obtain payment.

OBJECTIVE

To ensure appropriate administration of the Local Law

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.18 – A local government is to administer its local laws

Animals, Environment and Nuisance Local Law 2016

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

Environmental Health Officer

Rangers

FORMAL RECORD OF USE

- i) Duplicate of any infringement issued
- ii) File copy of any notice, warning etc. issued

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

Nil

4.5 Impounding of vehicles and goods

FUNCTION DELEGATED

1. The CEO is delegated authority to the power to remove and impound goods from a public place if –
 - a) the goods or vehicle present a hazard to public safety;
 - b) the goods or vehicle obstruct the lawful use of any place;
 - c) the goods ore vehicle have been, or appear to have been abandoned
2. The CEO is delegated authority to take all appropriate action that may be necessary to recover the costs of impounding vehicles and goods.

APPLICATION

N/A

OBJECTIVE

To ensure appropriate administration of the provisions of the Act

STATUTORY CONTEXT

Local Government Act 1995 –

Part 3, Division 3, Subdivision 4 – Impounding abandoned vehicles wreck and goods involved in certain contraventions

CORPORATE CONTEXT

Delegations Register –

- 3.5 – Sundry and rates debtors – Recovery and agreements
- 3.9 – Disposing of property – sale

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

Manager Works and Services

FORMAL RECORD OF USE

- i) File copy of notice

HISTORY

Former Delegation 45

Adopted 18 June 2020

REFERENCES

Disposal of impounded vehicles or goods is covered by Delegation 3.9.

4.6 Impounding of cattle etc.

FUNCTION DELEGATED

1. The CEO is delegated authority to enforce the provisions of the Local Government (Miscellaneous Provisions) Act 1960, and Regulations.
2. The CEO is delegated authority to take all appropriate action that may be necessary to recover the costs of impounding the animal.

APPLICATION

1. The CEO is authorised to make appropriate arrangements for the custody and care of cattle, either within a designated pound, or by written arrangement with a land holder, including any costs or charges the landholder may incur or impose
2. The CEO is authorised to recover the costs and charges imposed by the landholder from the owner of the cattle.

OBJECTIVE

To ensure authority for impounding of wandering or escaped animals

STATUTORY CONTEXT

Local Government (Miscellaneous Provisions) Act 1960 –

- s.458 – power to impound trespassing cattle
- s.459 – power to destroy cattle in certain circumstances
- s.460 – impounding in other than a public pound
- s.462 – fees for impounded cattle
- s.463 – damage by trespassing cattle
- s.464 – local government may vary fees of Sch.2, 3, 4 after notice in Government Gazette

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

Manager Works and Services

Rangers

FORMAL RECORD OF USE

- i) Impounding register

HISTORY

Former Delegation 45
Adopted 18 June 2020

REFERENCES

Although “cattle” is not defined, the Local Government (Miscellaneous Provisions) Act provides for charges for various animals impounded, that include sheep–

- Schedule 2 – Ranger’s fees
- Schedule 3 – Poundage and sustenance charges
- Schedule 4 – rates for damage by trespass by cattle

Animals listed in the Schedules include in various combinations of descriptions –

- (1) Entire horses, mules, asses, camels, bulls or boars above or apparently above the age of 2 years
- (2) Entire horses, mules, asses, camels, bulls or boars under the age of 2 years
- (3) Mares, geldings, colts, fillies, foals, oxen, cows, steers, heifers, calves, rams or pigs
- (4) Pigs of any description
- (5) Rams, wethers, ewes, lambs, goats
- (6) Sheep of any description
- (7) Goats

4.7 Disposal of sick or injured animals

FUNCTION DELEGATED

1. The CEO is delegated authority to arrange for an impounded animal that is ill or injured to an extent that treatment is not practical, to be humanely destroyed.
2. The CEO is delegated authority to take all appropriate action that may be necessary to recover the costs of destroying the animal.

APPLICATION

N/A

OBJECTIVE

To prevent or reduce the suffering if sick or injured animals

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.47A – Sick or injured animals, disposal of

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

Manager Works and Services

Rangers

FORMAL RECORD OF USE

- i) File copy of written instruction or record of destruction of animal

HISTORY

Former Delegation 45

Adopted 18 June 2020

REFERENCES

Nil

5. Fire Control

5.1 Issue of burning permits – CEO

FUNCTION DELEGATED

1. The CEO is delegated authority to issue, vary or prohibit burning permits in accordance with Bush Fires Act s.18 and Bush Fires Regulations r.15(1).
2. The CEO is delegated authority to approve applications to burn a road verge vested in the care, control and management of the Shire, in accordance with the Bush Fires Act 1954 s.18(9), subject to the applicant obtaining the approval of the Dept. of Parks and Wildlife.
3. The CEO is delegated authority, in consultation with the Chief Bush Fire Control Officer and the issuing FCO if possible, to review or vary the conditions of a permit issued, or issue a permit if refused.
4. The CEO is delegated authority to issue, vary or prohibit permits to burn clover in accordance with Bush Fires Act s.18 and Bush Fires Regulations r.16.
5. The CEO is delegated authority, in consultation with the Chief Bush Fire Control Officer, to issue instructions, restrictions or conditions relating to burning permits to apply generally throughout the Shire.

APPLICATION

1. Points 3 to 5 above are restricted to the CEO.

OBJECTIVE

To allow for the issue of burning permits as appropriate

STATUTORY CONTEXT

Bush Fires Act 1954 –

- s.18 – Restricted burning times
 - (1) – nothing in this section permits burning in prohibited period
 - (2) – prohibited & restricted times to be published in Government Gazette
 - (5) – Local government may vary burning periods after consultation
 - (5B) – variation for maximum of 14 days
 - (5C) – burning period restrictions apply to variation period
 - (6) – permit required to set fire to bush from either FCO or CEO
 - (7) – person issuing permit may apply requirements or conditions
 - (8) – permit holder to comply with conditions
 - (9) – permit may authorise burning of bush on adjoining road reserve
 - (10A) – local government may adopt enforceable schedule for burning

- (11) – if fire escapes etc. expenses up to \$10,000 may be recouped
- (12) – penalty on first breach \$4,500, subsequent breaches \$10,000
- s.23(2)(a)(iv) – road verge burning between constructed portion of road and established fire break only
- s.24A – clover may be burnt in prohibited burning period with permit

Bush Fire Regulations 1954 –

- r.15(1) – Permit to burn as per section 18 of the Act
- r.15(2) – If request to burn is conditional or refused, review is only by the local government or CBFCO
- r.15A – BFCO to comply with directions of local government
- r.15B – Permit holder to comply with permit conditions
- r.15C – Local Government may prohibit burning on certain days
- r.16 – CEO or specifically authorised person may permit burning of clover in prohibited period
- r.17 – permit required to burn clover
- r.18 – 7 days notice of clover burn required, under specified restrictions
- r.19A – duties of clover burning permit holder
- r.20 – local government may prohibit issue of clover burn permits
- r.21A – permit holder may be required to advertise clover burn
- r.21B – FCO may postpone clover burn

Activities on Thoroughfares and Public Places and Trading Local Law 2006 –

- cl.2.2 – Shall not light a fire on a thoroughfare except with a permit under cl.3.13
- cl.5.13 – Permit to burn thoroughfare

Local Government Property Local Law 2006 –

- cl.3.13(1) – a person shall not light a fire on a thoroughfare without a permit

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer – Points 1 & 2 only

FORMAL RECORD OF USE

- i) Duplicate copy of permit issued

HISTORY

Former Delegation 19, 20
Adopted 18 June 2020

REFERENCES

The Act s.16(6)(a) stipulates

...obtained a permit in writing to burn the bush from a bush fire control officer of the local government in whose district the land upon which the bush proposed to be burnt is situated, or from the chief executive officer ...

Issue of burning permits may be done by an authorised person – see Delegations 1.1 and 18.1.

5.2 Fire fighting – Emergency plant hire

FUNCTION DELEGATED

1. The CEO is delegated authority to commit expenditure for the private hire of plant and equipment necessary for the efficient fighting and control of fires.

APPLICATION

N/A

OBJECTIVE

To ensure adequate resources in an emergency

STATUTORY CONTEXTP

Local Government Act 1995 –

- s.6.8(1)(c) – authorisation of unbudgeted expenditure in an emergency

Bush Fires Act 1954 –

- s.38(3)(4)(5) – appointed BFCO's may exercise specific authorities given to them

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

Manager Works and Services

FORMAL RECORD OF USE

- i) Report to Council via briefing papers
- ii) Duplicate copy of purchase order issued
- iii) File copy of notes

HISTORY

Former Delegation 19, 20

Adopted 18 June 2020

REFERENCES

The approval to be sought is an administrative function for expenditure purposes only, and does not extend to giving of operational instructions.

Where possible, the CEO is to seek advice from the senior FCO at the fire, and approval from the President or Deputy President. However, since this delegation will only be used in emergency situations, it is acknowledged that this may not be possible.

Adequate resources to fight a fire, for the safety of fire fighters, and for the protection of life and property have the highest priority, and are not to be unnecessarily jeopardised by delay.

5.3 Restricted burning periods – Variations

FUNCTION DELEGATED

1. The CEO is delegated authority to exercise the powers of Council under the Bush Fires Act 1954 s.18(5) to vary the restricted burning times,

APPLICATION

1. Prior to advertising the variation, the CEO is to consult with –
 - a) the Dept. of Parks and Wildlife in accordance with s.18(5), and
 - b) the Chief BFCO is unavailable, or Deputy Chief BFCO if Chief BFCO is unavailable.

OBJECTIVE

To permit variation of restricted burning times according to seasonal conditions

STATUTORY CONTEXT

Bush Fires Act, 1954 –

- s.18(5) – authority to vary restricted burning time
- s.18(5B) – time may not be varied by more than 14 days
- s.18(5C) – compliance requirements as per s.17(8),(9),(10),(11)
- s.48(1) – authority to delegate to CEO

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FORMAL RECORD OF USE

File copy of variations approved

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

Nil

6. Environmental Health / Food

6.1 Public Health Act 2016

FUNCTION DELEGATED

1. The CEO is delegated authority to exercise and discharge all or any of the powers and functions of the local government with regard to –
 - a) the *Public Health Act 2016* and
 - b) the *Health (Miscellaneous Provisions) Act 1911* and Regulations, including but not limited to –
 - Part IV Sanitary Provisions,
 - Part V Dwellings;
 - Part VI Public Buildings;
 - Part VII Nuisances and Offensive Trades;
 - Part IX Infectious Diseases;
 - Part XV Miscellaneous Provisions;

APPLICATION

1. Where approvals are required, compliance is also mandatory with –
 - a) the Health legislation and Regulations,
 - b) the Building Code of Australia,
 - c) the Local Planning Scheme and Planning Policies
 - d) the Shire of Cunderdin Health Local Law 2016.
2. Any application not complying is to be refused, unless there is a discretion, in which case it is to be referred to Council for decision.
3. The delegation excludes –
 - a) determination of any fee or charge;
 - b) dealing with an objection,
4. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) an infringement notice remains unpaid after reasonable attempts to obtain payment.
5. Any prosecution proposed is to be referred to Council for decision to proceed.

OBJECTIVE

To ensure appropriate administration of the Act and Regulations

STATUTORY CONTEXT*Public Health Act 2016 –*

- s.4(2) – authorised officer
- s.21 – authority to delegate to CEO
- s.24 – authorised person must be qualified
- s.25 – authorised person must have acceptable qualifications or be an EHO

*Health (Miscellaneous Provisions) Act 1911**Shire of Cunderdin Health Local Law 2016**Government Gazette of 24 Jan 2017 – Designation of Health Authorised Officers***CORPORATE CONTEXT**

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Environmental Health Officer – required, being a qualified person

FORMAL RECORD OF USE

- i) Report to Council via monthly briefing papers
- ii) File copy of notice

HISTORY

Former Delegation	33
Adopted	18 June 2020

REFERENCES

In some instances the EHO may be required to act without reference to Council or CEO, and regardless of Council's or CEO's wishes.

The Public Health Act 2016 –

21. Enforcement agency may delegate

- (1) A power or duty conferred or imposed on an enforcement agency may be delegated —*
- (a) if the enforcement agency is the Chief Health Officer, in accordance with section 9;*
 - or*
 - (b) if the enforcement agency is a local government, to —*
 - (i) the chief executive officer of the local government; or*
 - (ii) an authorised officer designated by the local government;*

The effect of the delegation is that the CEO is to cause various actions to be taken by an authorised person.

Authorised person must be either –

- a) an EHO in the employ of the Shire at the time of the Public Health Act 2016 coming into force, or
- b) hold an appropriate qualification as published in the *Government Gazette* of 24 January 2017.

7. Community Services

7.1 Cemetery Local Law 2016

FUNCTION DELEGATED

1. The CEO is delegated authority to approve all discretionary matters in the *Shire of Cunderdin Cemetery Local Law 2015* including –
 - a) granting, refusal, cancellation and setting conditions of approval to conduct activities;
 - b) issue of all notices and infringements etc.;
 - c) extending the time period within which infringement notices may be paid.
 - d) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - e) carrying out of works in default of a duly served notice;

APPLICATION

1. The delegation excludes –
 - a) determination of any fee or charge
2. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) an infringement notice remains unpaid after reasonable attempts to obtain payment.

OBJECTIVE

To ensure appropriate administration of the Local Law

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.18 – A local government is to administer its local laws

Cemeteries Act 1976

Shire of Cunderdin Cemetery Local Law 2015

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

FORMAL RECORD OF USE

- i) File copy of approval of grant of right of burial, pre-need certificate, notice etc.
- ii) Duplicate copy of infringement etc.

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

Nil

8. Personnel

8.1 Preamble

Applying to all matters in relation to personnel and employment –

a) *Local Government Act 1995* –

s.5.41 Functions of CEO

The CEO's functions are to –

....

(a) manage the day to day operations of the local government; and

....

(g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees); and

....

b) *Local Government (Rules of Conduct) Regulations 2007* –

r.10 Relations with local government employees

(1) A person who is a council member must not –

(a) direct or attempt to direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee; or

(b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a person who is a local government employee in the person's capacity as a local government employee.

....

c) *Policy 1.1 – Code of Conduct*

For clarification regarding appointment, management and direction of employees –

Employee class	Council involvement	Elected member / Committee involvement	CEO involvement
CEO	Required. May delegate selection and interview to a Committee. Appointment must be by Council resolution.	Permitted – To interview and recommend to Council. Prohibited – To appoint, manage or direct.	As directed by Council, usually limited to process, research and reporting on an applicant.
Designated staff LG Act s.3.57	Required – To consent to appointment or dismissal. Permitted – Interview & recommendation can be done by CEO alone or with elected member input. Prohibited – Management or direction.	Permitted – To interview and recommend to Council. Prohibited – To appoint, manage or direct.	Required To initiate / consent to appointment or dismissal. Statutory function – To manage and direct.
EHO	If designated senior officer – as above, otherwise – In all cases – qualification must comply with Public Health Act 2016 s.17. • refer also <i>Government Gazette</i> of 24 Jan 2017 – Designation of Health Authorised Officers		
Other staff (non-designated)	Prohibited – Involvement in appointment, management or direction.	Prohibited – Involvement in appointment, management or direction.	Statutory function – To appoint, manage, direct etc.

8.2 Designated senior employee – Vacancies

FUNCTION DELEGATED

1. The CEO is delegated authority to determine an appropriate employment package for designated senior staff other than CEO, with consideration to include but not limited to –
 - a) salary,
 - b) salary sacrifice options;
 - c) removal expenses,
 - d) accommodation arrangements,
 - e) private use of vehicle etc., and
 - f) any associated FBT implications.

2. The CEO is delegated authority to advertise the vacancy when appropriate and for an appropriate period.

APPLICATION

N/A

OBJECTIVE

To provide for timely advertising of senior vacancies

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.37 (3) – advertising of designated senior positions

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FORMAL RECORD OF USE

- i) Report to Council recommending appointment
- ii) File copy of finalised Information Package

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

This delegation does not extend to –

- the appointment of a person to the vacancy without Council consent.
- determining the remuneration package for a CEO.

Information Package for a vacancy to include –

- remuneration range;
- other benefits available;
- selection criteria or key position requirements
- closing date and application submission requirements
- any additional information appropriate.

8.3 Long service leave

FUNCTION DELEGATED

1. The CEO is delegated authority to approve –
 - a) applications for long service leave at half pay;
 - b) applications for long service leave at double pay;
 - c) appropriate period or periods for taking of long service leave;
 - d) on application of the employee, to defer taking of long service leave beyond 6 months of becoming entitled subject, subject to the employee's agreement to –
 - i) deferral being for not more than 2 years, and
 - ii) rate of pay shall not exceed that applicable to the employee at the end of 6 months of becoming entitled.

APPLICATION

1. On application, the CEO is to advise the employee that deferral of long service leave beyond six months of becoming due may be approved however when the leave is taken it will be paid at the hourly rate earned by the employee at the anniversary of the 10th year plus six months.

OBJECTIVE

To allow for timely decisions for employees

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.48 – Long service leave benefits for employees

Local Government (Long Service Leave Regulations)

- r.6A – long service leave on half pay
- r.6B – long service leave on double pay
- r.7 – taking of long service leave
- r.8(2) – Payment for or in lieu of leave

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATIONS PERMITTED TO

Nil

FORMAL RECORD OF USE

Personnel file copy of letter to employee advising of decision

HISTORY

Former Delegation 3
Adopted 18 June 2020

REFERENCES

Applications that are to be referred to Council –

- a) deferment of long service leave for more than 2 years;
- b) request for payment at a rate greater than the rate applicable at 6 months after becoming entitled;
- c) payment at the higher rate, where long service leave has been deferred at the request of the CEO.

9. Occupational Safety & Health

This section is currently empty

10 Building / Development

10.1 Planning Control

FUNCTION DELEGATED

The CEO is delegated authority in accordance with Clauses 82 and 83 of the *Planning and Development (Local Planning Schemes) Regulations 2015* as follows –

1. Advertising and Determining Applications for Development Approval

Notification and Advertising of Applications for Development Approval in accordance with Clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* determine that a particular application will be advertised and carry out the means and extent of such advertising.

2. Consideration of Applications for Planning Approval

- 2.1 Determine applications with a use permissibility classification of 'P', 'D' and 'A' in Table 1 for Development Approval in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*, Shire of Cunderdin Local Planning Scheme No. 3 and/or Western Australian Planning Commission State Planning Policy No. 3.1 – Residential Design Codes where no objections have been received (if advertised) and impose conditions as required.
- 2.2 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.
- 2.3 Grant an extension of development approval for up to two (2) years.

3. Use Not Listed

3. To determine if a use that is not specifically listed in the Zoning Table (Table 1) of the Cunderdin Local Planning Scheme No. 4 is consistent, maybe consistent or is not consistent with the objectives of the zone.

Subject to –

- a) An officer to whom delegated authority is granted is not to exercise that authority in circumstances where the Chief Executive Officer has received a request from a Councillor that the matter be referred to Council for consideration or determination.
- b) With the exception of delegated power 2.0 above, all applications will be submitted to a meeting of Council for determination in the following circumstances:

- c) Where the delegated decision would be contrary to the intent of a previous decision made at a Council meeting, or any law or regulation;
- d) Where written objection is received to the proposal from any statutory agency;
- e) Where the proposal is inconsistent with the intent of the Local Planning Scheme, relevant Policies, Residential Design Codes, or any Outline Development Plan adopted by Council;
- f) 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 Policy and written objections have been received within the time specified.

4. Advertising Extension for Town Planning Scheme Amendments

- 3.1 To extend the advertising period for planning scheme amendments where it is considered necessary to provide for adequate consultation and/or accommodate specific community consultation exercises (e.g. special electors meetings, workshops etc).

Subject to –

- a) An officer to whom delegated authority is granted is not to exercise that authority in circumstances where the Chief Executive Officer has received a request from a Councillor that the matter be referred to Council for consideration or determination.

5. Directions regarding unauthorised development

- 5.1 To give directions in relation to unauthorised development and to authorise any action available to the responsible authority under the *Planning and Development Act 2005* incidental to such written direction, including but not limited to issuing a notice to correct or amend the development or to commence legal action in accordance with the Council's endorsed procedure for compliance and enforcement.

Subject to –

- a) An officer to whom delegated authority is granted is not to exercise that authority in circumstances where the Chief Executive Officer has received a request from a Councillor that the matter be referred to Council for consideration or determination.

6. Structure Plans, Activity Centre Plans and Local Development Plans

- a. Acceptance of Structure Plans and amendments to Structure Plans, Activity Centre Plans and Local Development Plans for the purposes of advertising in accordance with the provisions of Regulation 18 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

7. Responsible Authority Reports to the Development Assessment Panel

- 7.1 To submit Responsible Authority Reports to the Development Assessment Panel pursuant to Regulation 12 of the Planning and Development (Development Assessment Panels) Regulations 2011 in relation to applications for planning approval under Shire of Cunderdin Local Planning Scheme No. 3.

Subject to:

- a) The Chief Executive Officer is to advise Council of the lodgement and subsequent decision of a Development Assessment Panel (DAP) application at the next available Council meeting.

APPLICATION

N/A

OBJECTIVE

To ensure timely management of straightforward planning matters.

STATUTORY CONTEXT

Planning and Development Act 2005 –

Part 5 – Local planning schemes

- s.68 – Town planning schemes continued as local planning schemes
- s.72 – Local government may prepare or adopt scheme
- s.73 – Provisions of a local planning scheme
- s.214 (2)(3)(5) – development works not in compliance may have written stop work or remedial action order issued

Planning and Development (Local Planning Schemes) Regulations 2015 –

- s.82 – a local government may delegate to a committee or to the CEO
- s.83 – CEO may delegate to any employee

These Regulations override the provisions of the Planning Scheme.

Shire of Cunderdin Local Planning Scheme No.4

CORPORATE CONTEXT

Local Planning Policies

Policy Manual –

- 10.1 – Relocated Buildings

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Nil

FORMAL RECORD OF USE

Approvals etc. on file

HISTORY

Former Delegation	34
Adopted	18 June 2020
Amended	22 November 2023

REFERENCES

- a) These Delegations do not preclude the Delegate or Sub-Delegate referring the categories of development or legal proceedings outlined above, to Council for determination, after having regard to the circumstances of a particular case.
- b) All matters determined under Delegated Authority are to be listed at the first available Ordinary Meeting of Council.

10.2 Applications for subdivision and amalgamations

FUNCTION DELEGATED

The CEO is delegated authority in respect to –

1. WA Planning Commission applications

Exercise discretion and make recommendations to the Western Australian Planning Commission on applications to subdivide, re-subdivide or amalgamate land as follows –

- 1.1 No objection to the granting of approval of an application to amalgamate two (2) or more lots (including lots forming part of any strata-title scheme) into a single allotment.
- 1.2 No objection to the granting of approval of an application to rationalise or reconfigure existing allotments where there is no nett increase in lots created, and the new lot sizes will conform with the relevant requirements of prevailing town planning schemes and their policies, and policies adopted pursuant to section 5AA of the Planning and Development Act 2005.

Subject to –

- a) the imposition of relevant conditions on any approval proposed to be granted by the WAPC, that are considered necessary to secure the objectives of any prevailing regional or Shire town planning scheme/s, and any land use plan or strategy adopted by Council.
- 1.3 No objection to the granting of approval of an application of to up to five (5) lots where the application accords with an endorsed local area plan, structure plan and/or the *Residential Design Codes of WA*.

Subject to –

- a) the imposition of relevant conditions on any approval proposed to be granted by the WAPC, that are considered necessary to secure the objectives of any prevailing regional or Shire town planning scheme/s, and any land use plan or strategy adopted by Council.

2. Certifications

Certify to the WAPC that conditions imposed on an approval granted to subdivide, re-subdivide or amalgamate land contained within the municipality, that pertain to the Shire's jurisdiction, role and function, have been completed and fulfilled to the satisfaction of the Shire.

APPLICATION

N/A

OBJECTIVE

To permit administrative approvals for small scale merger and rationalisation of land

STATUTORY CONTEXT*Planning and Development Act 2005 –*

- s.4 – Subdivision includes amalgamation
- s.135 – subdivision (and amalgamation) not permitted without WA Planning Commission approval
- s.138(2) – Commission to have due regard to local planning scheme
- s.142 – Commission to seek local government's comments, objections, recommendations

Planning and Development (Local Planning Schemes) Regulations 2015 –

- s.82 – a local government may delegate to a committee or to the CEO
- s.83 – CEO may delegate to any employee

*These Regulations override the provisions of the Planning Scheme.**Shire of Cunderdin Local Planning Scheme No.3***CORPORATE CONTEXT**

Local Planning Policies

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Nil

FORMAL RECORD OF USE

File copy of advice of decision to applicant, developer etc.

HISTORY

Former Delegation	35
Adopted	18 June 2020

REFERENCES

Nil

10.3 Response to State Administrative Tribunal review of planning decisions

FUNCTION DELEGATED

The CEO is delegated authority in respect to –

1. Response

Respond to applications for review lodged with the State Administrative Tribunal, including preparation of statements by respondent, liaison with the State Administrative Tribunal and representation of the Council at review hearings, where a decision made by the Council, or a condition or conditions associated with that decision, is substantively in accordance with the Responsible Officer's recommendation

Subject to –

- a) The outcome of the SAT determination to be reported to Council.
- b) The exercise of these powers on the discharge of these duties, is subject to the Officers and/or Employees exercising the Delegation: keeping a written record of, and recording within an appropriate Database, details of how the Delegation was exercised, when the delegation was exercised, the persons or classes of persons directly affected by the exercise of the power on the discharge of the duty

2. Professional advice

In the event of a decision of Council is appealed to SAT, Council delegates its authority and power to the Chief Executive Officer to engage independent professional advice, including legal advice, where a decision made by the Council, or a condition or conditions associated with that decision, is substantially different from the Shire reporting officer's recommendation.

APPLICATION

N/A

OBJECTIVE

To permit administrative approvals for small scale merger and subdivision of land

STATUTORY CONTEXT*Planning and Development Act 2005 –*

- s.4 – Subdivision includes amalgamation
- s.135 – subdivision (and amalgamation) not permitted without WA Planning Commission approval
- s.138(2) – Commission to have due regard to local planning scheme
- s.142 – Commission to seek local government's comments, objections, recommendations

Planning and Development (Local Planning Schemes) Regulations 2015 –

- s.82 – a local government may delegate to a committee or to the CEO
- s.83 – CEO may delegate to any employee

These Regulations override the provisions of the Planning Scheme.

*Shire of Cunderdin Local Planning Scheme No.4***CORPORATE CONTEXT**

Local Planning Policies

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Planning consultant

FORMAL RECORD OF USE

File copy of advice of decision to applicant, developer etc.

HISTORY

Former Delegation	36
Adopted	18 June 2020

REFERENCES

Nil

10.4 Building Act 2011 – Authorised Officer

FUNCTION DELEGATED

1. The CEO is delegated authority to determine matters under the Building Act 2011 –
 - a) sections 18, 20, 22, 23, 24 – Building permits
 - b) sections 21, 22, 23, 24 – Demolition permits
 - c) section 27 – Conditions for building permit or demolition permit
 - d) section 32 – Duration of building permit or demolition permit
 - e) sections 58, 59, 60 – occupancy permit
 - f) section 62 – conditions of occupancy permit
 - g) section 65 – duration of occupancy permit
 - h) sections 110, 111, 112 – Issue of notices and building orders
 - i) section 117 – Revocation of building orders
 - j) section 118 – giving effect to building order if non-compliance
2. The CEO is delegated authority to determine matters under the Regulations –
 - a) r.61 – use of battery powered smoke alarms in buildings
3. The CEO only is permitted to withdraw or extend time to pay an infringement in accordance with Delegation 1.1 clause 4.

APPLICATION

4. The delegation to CEO excludes –
 - a) determination of any matter requiring a registered building surveyor
5. The delegation excludes –
 - a) determination of any fee or charge;
 - b) dealing with an objection.
6. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) is an infringement notice remains unpaid after reasonable attempts to obtain payment.
7. The CEO is to be consulted prior to use of any sub-delegation in relation to 1(b), (h), (i) and (j).
8. A building permit may be issued if –
 - a) a valid Certificate of Design Compliance is presented;
 - b) compliance with requirements for bush fire prone areas;
 - c) all buildings where permitted in accordance with the Building Act 2011 and
 - d) the information required by the Regulations is provided.

9. A building permit is not to be issued unless payment has been received for –
 - a) the assessed building permit fees
 - b) Building Services Levy
 - c) Building and Construction Industry Training Fund levy, or production of evidence of payment or exemption where applicable

10. The following matters are to be referred to Council for decision
 - a) s.192 – Dangerous Buildings
 - b) s.193 – Removal of Neglected Building

11. Any prosecution proposed is to be referred to Council for decision to proceed.

OBJECTIVE

To ensure appropriate administration of the legislation

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.36 – Local government employees

Building Act 2011 –

- s.3 – authorised person to be designated under s.96
- s.96(3) – the local government may designate a person to be authorised
- s.127(3) – delegation by a local government must be to an employee
- s.127(6A) – further delegation of authority given to CEO

Building Regulations 2012 –

- r.31B – applicable standards for buildings in bush fire prone areas
- r.61 – use of battery powered smoke alarms in dwellings

Building Services (Registration) Act 2011

- s.17 – registration of building service practitioners

Building Services (Registration) Regulations 2011 –

- r.4 – prescribed levels for building surveying
- Part 3A – Building surveyors

CORPORATE CONTEXT

Delegations Register –

- Delegation 1.1 Appointment of Authorised Person
(4) – restrictions on issue, withdrawal and extension of time to pay infringements

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Environmental Health Surveyor – matters requiring a qualified person for health matters

Building Surveyor – matters requiring a qualified person for building matters

FORMAL RECORD OF USE

- i) Report to Council via monthly briefing papers – Items (a), (b), (h), (i)
- ii) File copy of permit, notice etc. issued

HISTORY

Former Delegation	10, 11, 12, 13, 15, 16, 18
Adopted	28 June 2018
Amended	23 August 2018 (from 10.3)

REFERENCES

Building permits are separate from the Local Planning Scheme functions, but are governed by them.

Any authorised person can issue a permit or notice etc. – certifications can only be issued by a Registered Building Surveyor

The Building Act 2011 requires response –

- within 10 days of lodgment, if a valid CDC is presented, as all assessment and preparation is done prior to lodgment in order to obtain the CDC, accordingly there is no reason that the CEO and other appropriate persons cannot be authorised to approve applications.
- for Class 1 and 10 buildings only, within 25 days of lodgment if a valid CDC is not presented, and the local government is required to source/provide the CDC.

With the Building Act 2011, the functions separated are –

- (a) Issue of permits, notices etc. –
 - does not require a registered person (Registered Building Surveyor), since the Certificate of Design Compliance has to be signed by a registered person
 - the decision is on the basis of whether all the requirements of CDC have been met, and any appropriate person can do that if authorised
 - delegation to issue permits can be made under this amended delegation
- (b) Building inspection and certification of plans still requires a registered person –
 - who is registered as per the Act and Regulations and holding appropriate qualifications
 - to provide a building certification service

10.5 *Illegal development*

FUNCTION DELEGATED

1. The CEO is delegated authority to issue notices in relation to illegal or delayed works in accordance with the Planning and Development Act 2005 s 214(2), (3) and (5).
2. The CEO is delegated authority to issue an infringement for illegal building works.

APPLICATION

1. Where a notice is not complied with, the CEO is authorised to commence prosecution without reference to Council.

OBJECTIVE

To ensure prompt action is able to be taken against illegal development

STATUTORY CONTEXT

Local Government Act 1995 –

- s.5.42(1)(b) – Delegation to CEO of powers under the Planning and Development Act 2005 s.214(2), (3) and (5)

Planning and Development Act 2005 –

- s.214 – development in contravention of planning scheme or interim development order
 - (2) – power to order stop work
 - (3) – power to remove, alter etc. and restore land to original condition
 - (5) – if delay interferes with scheme operation, power to order work to be undertaken

CORPORATE CONTEXT

Local Planning Policies

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Building Surveyor

FORMAL RECORD OF USE

- i) Report to Council via monthly briefing papers
- ii) File copy of notice

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

Nil

10.6 Extractive Industries Local Law 2011

FUNCTION DELEGATED

1. The CEO is delegated authority to approve all discretionary matters in the Shire of Cunderdin Extractive Industries Local Law 2011 including –
 - a) issue of all notices and infringements etc.;
 - b) extending the time period within which infringement notices may be paid;
 - c) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - d) carrying out of works in default of a duly served notice.

APPLICATION

1. The delegation excludes –
 - a) setting of any fee or charge
 - b) cl.3.1 – determination of an application;
 - c) cl.4.1 – transfer of a licence;
 - d) cl.4.2 – cancellation of a licence;
 - e) cl.8.1 – dealing with an objection or appeal.
2. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) where an infringement notice remains unpaid after reasonable attempts to obtain payment.

OBJECTIVE

To ensure appropriate administration of the Local Law

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.18 – A local government is to administer its local laws

CORPORATE CONTEXT

Delegation Register –

- 13.5 – Notices requiring certain things to be done

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FORMAL RECORD OF USE

- i) File copy of hire, approval, notice, etc.
- ii) File copy of advice of decision to applicant, developer etc.
- iii) Duplicate copy of infringement etc.
- iv) Local government property file

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

Nil

11. Public Facilities

11.1 Liquor Control Act 1988

FUNCTION DELEGATED

1. The CEO is delegated authority to determine matters under the Liquor Control Act 1988, including –
 - a) s.39 – Issue Certificates advising compliance with Food, Health and local government laws.
 - b) s.40 – Issue Certificates of the local planning authority
 - c) s.66 (1)(d) and (2) – Respond to applications for extended trading permits;
 - d) s.69 (8) – Make submissions on health grounds regarding a license;
 - e) s.153 (2) – Request copies of reports produced by the Liquor Licensing Authority;
 - f) s.156 – Report to the Liquor Licensing Authority any offences committed by a licensee and ensure appropriate assistance is given to the Authority if requested.

APPLICATION

1. Matters determined are to comply with all Shire planning, health and building requirements.
2. The delegation excludes –
 - a) determination of any fee or charge,
 - b) dealing with an objection.
3. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) an infringement notice remains unpaid after reasonable attempts to obtain payment.

OBJECTIVE

To ensure appropriate administration of the legislation

STATUTORY CONTEXT

Liquor Control Act 1988 –

- s.39 – Certificate of local government of compliance with laws
- s.40 – Certificate of planning authority of compliance with planning laws
- s.156 – Local governments, functions of

Local Planning Scheme No. 1 –

CORPORATE CONTEXT

Local Planning Policies

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

Environmental Health Officer

Building Surveyor

FORMAL RECORD OF USE

File copy of approval, notice etc.

HISTORY

Former Delegation N/A

Adopted 18 June 2020

REFERENCES

Nil

11.2 Local Government Property Local Law 2015

FUNCTION DELEGATED

1. The CEO is delegated authority to approve all discretionary matters in the Shire of Cunderdin Local Government Property Local Law 2015 including –
 - a) hire of facilities, including issue of permit for consumption/sale of alcohol;
 - b) granting, refusal, cancellation and setting conditions of approval to conduct activities in public places or on local government property;
 - c) issue of all notices and infringements etc.;
 - d) extending the time period within which infringement notices may be paid;
 - e) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - f) carrying out of works in default of a duly served notice;

APPLICATION

1. The delegation excludes –
 - a) setting of any fee or charge
 - b) cl.2.1 – making of a Determination;
 - c) cl.2.6 – amending or revoking a Determination;
 - d) cl.3.5 – making of a policy;
 - e) cl.7.1 – dealing with an objection or appeal.
2. On written application made under cl.3.3, the CEO is authorised to give permission to hirers of premises or land under the control and management of the local government to consume and sell liquor on the premises or land, under such conditions and in such areas as considered appropriate.
3. Every permit issued for consumption/sale of alcohol is to be advised to the relevant Police Station.
4. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) an infringement notice remains unpaid after reasonable attempts to obtain payment.

OBJECTIVE

To ensure appropriate administration of the Local Law.

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.18 – A local government is to administer its local laws

Food Act 2008

Local Government Property Local Law 2015

Health Local Law 2016

CORPORATE CONTEXT

Delegation Register –

- 11.4 – Discount/waiver/subsidy of facility hire fees
- 15.2 – Native Flora and Fauna

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

Manager Works and Services

Environmental Health Officer

Building Surveyor

Rangers (items c, d, e & f only)

FORMAL RECORD OF USE

- i) File copy of hire, approval, notice, etc.
- ii) File copy of advice of decision to applicant, developer etc.
- iii) Duplicate copy of infringement etc.
- iv) Local government property file

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

Nil

11.3 Thoroughfares and Public Places Local Law 2015

FUNCTION DELEGATED

1. The CEO is delegated authority to approve all discretionary matters in the Shire of Cunderdin Thoroughfares and Public Places Local Law 2015 including –
 - a) hire of facilities, including issue of permit for consumption/sale of alcohol;
 - b) granting, refusal, cancellation and setting conditions of approval to conduct activities in public places or on local government property;
 - c) issue of all notices and infringements etc;
 - d) extending the time period within which infringement notices may be paid;
 - e) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - f) carrying out of works in default of a duly served notice;

APPLICATION

1. The delegation excludes –
 - a) setting of any fee or charge
 - b) cl.2.2 – Activities allowed with a permit –
 - (j) provided, erect or install a building or structure in or over a thoroughfare, subject to Delegation 13.7 ;
 - c) cl.8.1 – dealing with an objection or appeal.
2. On written application made under cl.2.3, the CEO is authorised to give permission to hirers of premises or land under the control and management of the local government to consume and sell liquor on the premises or land, under such conditions and in such areas as considered appropriate.
3. Every permit issued for consumption/sale of alcohol is to be advised to the relevant Police Station.
4. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) an infringement notice remains unpaid after reasonable attempts to obtain payment.

OBJECTIVE

To ensure appropriate administration of the Local Law

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.18 – A local government is to administer its local laws

Food Act 2008

Thoroughfares and Public Places Local Law 2015

Health Local Law 1999

CORPORATE CONTEXT

Delegation Register –

- 11.4 – Discount/waiver/subsidy of facility hire fees
- 13.7 – Private works/infrastructure on, over or under public land
- 15.2 – Native Flora and Fauna

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

Manager Works and Services

Environmental Health Officer

Building Surveyor

Rangers (items c, d, e & f only)

FORMAL RECORD OF USE

- i) File copy of hire, approval, notice, etc.
- ii) File copy of advice of decision to applicant, developer etc.
- iii) Duplicate copy of infringement etc.
- iv) Local government property file

HISTORY

Former Delegation 17, 18, 42

Adopted 18 June 2020

REFERENCES

Nil

11.4 Discount/waiver/subsidy of facility hire fees

FUNCTION DELEGATED

1. The CEO is delegated authority to approve reduction in fees and charges of Council owned facilities, subject to –
 - a) the request is from a local community, charitable or not-for-profit organisation; or
 - b) the event is for the specific benefit of the local community; and
 - c) each request of the organisation does not exceed \$500 ex GST;
 - d) cleaning cost of the venue hire is not to be discounted.

APPLICATION

N/A

OBJECTIVE

To permit decisions regarding small requests to be made

STATUTORY CONTEXT

Local Government Act 1995 –

- s.6.12(1)(b) – Power to defer, grant discounts etc.

CORPORATE CONTEXT

Delegations Register –

- 3.11 – Donations Financial and In-kind Works / Services

Policy Manual –

- 3.4 – Requests for Financial and Other Assistance

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

FORMAL RECORD OF USE

Copy of approval of written request

HISTORY

Former Delegation	30
Adopted	18 June 2020

REFERENCES

Nil

11.5 Sandalwood Village

FUNCTION DELEGATED

1. The CEO is delegated authority to –
 - a) determine applications for tenancy, and to accept, negotiate or decline the application as considered appropriate;
 - b) make all necessary or appropriate financial arrangements,
 - c) enter into a tenancy agreement.
2. The following Delegation Schedules are adopted, and form part of this Delegation –
 - 11.5(a) – Sandalwood Village – Waitlist Management
 - 11.5(b) – Sandalwood Village – Tenant Obligations

APPLICATION

3. The Shire of Cunderdin owns all infrastructure and has overall responsibility for the control and management of Sandalwood Village.
4. On receipt of a recommendation from Cunderdin-Meckering Cottage Homes Inc. the CEO is to –
 - a) make a determination concerning each application,
 - b) apply the provisions of Schedules 11.5(a) and (b);
 - c) notify the Cunderdin-Meckering Cottage Homes Inc. of the determination made.
5. Tenancy of Sandalwood village is subject to the *Residential Tenancies Act 1987*.

OBJECTIVE

To ensure appropriate administration of Sandalwood Village

STATUTORY CONTEXT

Residential Tenancies Act 1987

Local Government Act 1995 –

- s.3.18 – Disposition of assets

Local Government (Functions and General) Regulations 1996 –

- r.30(1)(g) - Exclusions from s.3.58 of the Act – leasing of residential property to a person

Local Government Property Local Law 2015

CORPORATE CONTEXT

Policy

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

FORMAL RECORD OF USE

- v) File copy of letter of approval or of declining.
- vi) Signed tenancy agreement.

HISTORY

Adopted 18 June 2020

Schedule 11.5(a) – Sandalwood Village – Waitlist Management

1. People wishing to become a resident of Sandalwood Village should complete an application form available from –
 - a) the Shire of Cunderdin, or
 - b) the Cunderdin-Meckering Cottage Homes Inc.
2. To be eligible for residency, applicants should –
 - a) be of retirement age, and retired from the workforce; or
 - b) have a disability or medical condition that is compatible with the design, function and facilities of the Village.
3. The waitlist is ordered from the date of application, i.e. those who have been on the waitlist the longest will be given priority when a unit becomes available.
4. The CEO, may from time to time, at their discretion and following consultation with the Cunderdin-Meckering Cottage Homes Inc., give priority to another applicant, whose need is considered more urgent.
5. If an applicant is offered a unit and they are not ready to take up residence, the next applicant on the waitlist will be made an offer.
6. If an applicant passes up an offer, then they will maintain their place on the waitlist for when another unit becomes available.

7. The waitlist is to be reviewed annually, and each applicant given an opportunity to—
 - a) confirm their desire to remain on the waitlist, and
 - b) indicate an approximately date when they will be looking to take up residency

8. To be eligible to accept residency, applicants may have to satisfy income and assets requirements.

Schedule 11.5(b) – Sandalwood Village – Tenant Obligations

1. Bond
 - a) The tenant is required to pay 4 weeks bond prior to signing the tenancy agreement, or at the time of signing the tenancy agreement.
2. Tenancy agreement
 - a) A tenancy agreement is to be signed between the Shire and the tenant prior to taking possession of the property.
 - b) The tenant is to be provided with a copy of the tenancy agreement as signed by both parties, without delay.
 - c) All tenancy agreements are to be periodic agreements
3. Rent
 - a) Rental is on a weekly/fortnightly/monthly basis, as adopted by the Council from time to time in accordance with the *Local Government Act 1995*.
 - b) Rent is to be paid in advance to the Shire of Cunderdin by direct debit authority held by the Shire of Cunderdin.
4. Insurance
 - a) the Shire will insure the buildings and public liability for its own risks, only.
 - b) the tenant is to insure their contents and personal public liability risks.
5. Utilities
 - a) Tenants are to–
 - pay water consumption charges as stipulated in their tenancy agreement
 - transfer electricity accounts into their name and are responsible for all usage, service and connection charges
 - establish any telephone and internet accounts required and are responsible for all associated costs
 - b) The Shire is responsible for –
 - sewerage and water rates (not consumption);
 - local government and rubbish rates.
6. Visitors to the units
 - a) Additional persons, as stipulated in the tenancy agreement may stay for a maximum of four weeks in any 12 month period
 - b) Additional persons or longer stays are to be approved by the CEO

7. Prolonged absence

- a) The tenant is to advise the CEO of each intended absence in excess of 4 weeks.
- b) The tenant is to ensure satisfactory arrangements for the security and their obligations for the unit during their absence.

8. Pets

- a) The only pets permitted in the units are fish in a medium size tank
- b) Prior to installation, a written request is to be made to the CEO and approval given
- c) Should the CEO become aware of unauthorised pets, written notice may be given to the tenant to remove them within a specified time.

9. Assets

- a) When offered tenancy in the Village, prospective tenants are required to make arrangements for the sale of their current home or any investment property owned.
- b) It is noted that –
 - rental of the home being vacated or any investment property should not be used to supplement the tenants income,
 - sales of a residence may take some time, or may not be practicable,
 - the practicality of the sale of any residence or investment property will be assessed.

10. Tenants obligations

- a) to maintain the courtyard and garden area in a tidy, clutter free condition
- b) be responsible for maintaining the premises in a reasonable state of cleanliness
- c) shall not intentionally or negligently cause or permit damage to the premises.
- d) shall notify the lessor as soon as practicable of any damage to the premises.
- e) not smoke inside the premises at any time.
- f) not permit caravans, trailers, mobile homes and/or unregistered vehicles.
- g) passage ways are to be kept clear of any furniture or artefacts to ensure easy access to bedrooms for residents and support services.

11. Shire obligations

- a) the payment of rates, water rates, taxes, building repairs and regular up-keep of the common garden areas and landscaping
- b) provide possession of a property which is clean and in good repair
- c) provide a tenant with quiet enjoyment of a property and only seek entry according to the provisions of the *Residential Tenancies Act 1987*
- d) provide a secure premises
- e) provide and maintain the property in a reasonable state of repair and to be responsible for all maintenance and repairs that are not due to neglect, misuse, wilful damage and rubbish

- f) comply with relevant building, health and safety laws
- g) keep accommodation pest free.
- h) to undertake 6 monthly inspections of the property for asset management purposes.
- i) to investigate any complaints in relation to unruly behaviour or other nuisance.

12. Vacating the premises

- a) Tenants are required to give 21 days' written notice prior to vacating the premises. The 21 days required written notice to vacate is negotiable under unforeseen circumstances such as the tenant's placement in an alternative care facility.
- b) The Shire of Cunderdin can give the tenant 60 days' notice to vacate the premises.
- c) The tenant understands that tenancy of a unit is on the condition that the resident is able to tend to his/her requirements. If at any time a tenant is unable to do so, following an ACAT assessment, arrangements must be accepted for alternative accommodation, but the Shire of Cunderdin is under no obligation to provide this.

13. Sandalwood Village:

- a) The tenant is asked to be considerate of neighbours and attempt to develop and preserve a harmonious neighbourhood.

– End of Schedule

12. Tourism

This section is currently empty

13. Works & Services

13.1 Reserves under control of the local government

FUNCTION DELEGATED

1. The CEO is delegated authority to do anything on land vested or under the control and management of Council –
 - a) subject to prior budget provision having been made, or
 - b) to give effect to a Council decision.

APPLICATION

N/A

OBJECTIVE

To facilitate works that are to be undertaken and for public amenity and safety

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.54(1) – Reserves under control of a Local Government

Land Administration Act 1997

Activities on Thoroughfares and Public Places Amendment Local Law 2016

- cl.2.2 - activities allowed with a permit on land under Shire management and control including roads

CORPORATE CONTEXT

Policy Manual –

- 13.1 – Road Reserves – Crossovers
- 13.2 – Road Reserves – Stormwater discharge in townsites
- 13.3 – Road Reserves – Drainage and interceptor banks

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FORMAL RECORD OF USE

File copy of decision on written application

HISTORY

Former Delegation 54, 56
Adopted 18 June 2020

REFERENCES

13.2 Things to be done on land not local government property

FUNCTION DELEGATED

1. The CEO is delegated authority to carry out work on land that is not local government property subject to –
 - a) prior budget provision having been made,
 - b) to give effect to a Council decision;
 - c) if the matter is considered to be an emergency;
 - d) the consent is obtained of –
 - the owner of the land;
 - if the land is occupied, the occupier of the land; and
 - if the land is under the control or management of any other person, that other person.
 - e) compensation agreed for the functions is provided for within the adopted Budget or is specifically approved.

APPLICATION

N/A

OBJECTIVE

To facilitate works that are to be undertaken and for public amenity and safety

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.24 – Authorising person under this subdivision
- s.3.27 – Particular things local government can do on land that is not local government property
- s.3.33 – Entry under warrant
- s.3.34(1) – Entry in an emergency
- Sch.3.2 – Particular things local governments can do on land even though it is not local government property

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FORMAL RECORD OF USE

File copy of notice

HISTORY

Former Delegation	17, 55
Adopted	18 June 2020

REFERENCES

The delegation applies to land not under local government control that is within the district, and is in relation to things being done on the land, not taken from the land.

13.3 Works on land outside the district

FUNCTION DELEGATED

1. The CEO is delegated authority to undertake necessary executive functions on land outside the district that is not property of the Shire provided that –
 - a) the consent is obtained of –
 - the owner of the land;
 - if the land is occupied, the occupier of the land; and
 - if the land is under the control or management of any other person, that other person.
 - b) compensation agreed for the functions is provided for within the adopted Budget or is specifically approved.

APPLICATION

N/A

OBJECTIVE

To facilitate works that are to be undertaken and for public amenity and safety

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.20 – performing function outside the district
- s.3.21 – duties when performing functions
- s.3.22 - compensation

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FORMAL RECORD OF USE

File copy of agreement, consent etc.

HISTORY

Former Delegation	7
Adopted	18 June 2020

REFERENCES

Executive functions do not include private works requested of the Shire by an individual or other local government, but does apply to sourcing of roadmaking materials and water.

The delegation applies to land not under local government control that is also outside the district, and is in relation to things being done on the land, not taken from the land.

13.4 Materials from land not under local government control

FUNCTION DELEGATED

1. The CEO is delegated authority to negotiate with land owners and/or occupiers for access to materials required for local government functions, principally –
 - a) extraction of gravel, sand or other materials from land;
 - b) water, etc.

APPLICATION

1. The CEO is to apply to the Department of Water and Environmental Regulation for permits to clear vegetation as applicable.
2. The agreement reached with the land owner/occupier is to –
 - a) state a specific duration, that it is indefinite or otherwise provide for termination;
 - b) provide for mutually agreed compensation;
 - c) specify rehabilitation responsibilities if appropriate;
 - d) within the budget provision.

OBJECTIVE

To facilitate works that are to be undertaken and for public amenity and safety

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.21 – Duties when performing functions
- s.3.22 – Compensation for materials, damage, access etc.

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FORMAL RECORD OF USE

Written agreement with land owner/occupier

Property file where the land is within the district

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

The delegation applies to land not under local government control that that may be either within or outside the district, and is in relation to materials to be taken from the land, not things being done on the land.

Until such time as agreement is signed, or compulsory notice of acquisition is given under the Act, employees should not access the materials.

13.5 Notices requiring certain things to be done

FUNCTION DELEGATED

1. The CEO is delegated authority to issue notices requiring certain things to be done by the owner or occupier of land.
2. The CEO is delegated authority to take any necessary action to achieve the purpose for which the notice was given in the event of non-compliance of the notice recipient.
3. The CEO is delegated authority to seek a warrant for entry to carry out the works of a notice where the owner or occupier of land has not complied with the notice in the time specified.
4. The CEO is delegated authority to –
 - a) issue a notice under Section 3.25(1)(b) to a person who has not complied with a condition imposed on a permission given under (1) above.
 - b) undertake action considered necessary to achieve, so far as is practicable, the purpose for which the notice was given under (a) above.
 - c) recover the cost of anything done under (b) above as a sundry debt in accordance with Council Policy.

APPLICATION

1. Any prosecution proposed resulting from non-compliance with a notice is to be referred to Council for decision to proceed.

OBJECTIVE

To facilitate works that are to be undertaken and for public amenity and safety

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.24 – Authorising person under this subdivision
- s.3.25(1) – Notices requiring certain things to be done by owner or occupier of land
- s.3.26(2) – Additional powers when notice is given
- s.3.33 – Entry under warrant
- s.3.34(5) – Entry in an emergency, notice not require if not practical
- s.9.60 – Regulations that operate as local laws
- Sch.3.1 – Powers under notices to owners or occupiers of land
- Sch.9.1(6) – dangerous excavations in or near public thoroughfare
- Sch.9.1(7) – Matters for which regulations under s.9.60 may be made

Local Government (Uniform Local Provisions) Regulations 1996 –

- r.11 – dangerous excavation in or near public thoroughfare
- 13 – Requirement to construct or repair crossing

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works & Services

FORMAL RECORD OF USE

File copy of notice

HISTORY

Former Delegation 17, 46, 56

Adopted 18 June 2020

REFERENCES

Under LG Act s.9.6(1) an objection to a notice must be dealt with by Council and cannot be delegated.

Objections and review are those matters refused under delegated authority which the applicant requests Council to reconsider.

13.6 Notice of local government works

FUNCTION DELEGATED

1. The CEO is delegated authority to give the required public notice and individual notice to landowners and occupiers adjoining proposed works to –
 - a) fix or alter the levels, or the alignment of a public thoroughfare, or
 - b) drain water from a public thoroughfare or public place onto adjoining land

APPLICATION

N/A

OBJECTIVE

To facilitate works that are to be undertaken and for public amenity and safety

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.51(3)(4) – notice to adjoining owners affected by works

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FORMAL RECORD OF USE

File copy of notice

Advertisement records

Property file

HISTORY

Former Delegation 53

Adopted 18 June 2020

REFERENCES

Nil

13.7 Private works/infrastructure on, over or under public land

FUNCTION DELEGATED

1. The CEO is delegated authority to approve private works/infrastructure on, over or under public places subject to –
 - a) written application being made;
 - b) the applicant accepts all liability for every part and aspect of the works/infrastructure;
 - c) imposing of appropriate conditions, such as –
 - building permit, structural engineering certification, environmental assessment etc., where appropriate;
 - any damage or interference to public assets to be made good to the satisfaction of CEO (roadway, fence, other structure etc.)
 - traffic management plan to be approved
 - d) where deemed appropriate, an insurance certificate indemnifying the Shire while works are underway, or for any structure, is to be provided;
 - e) estimated value of works does not exceed \$25,000 ex GST.

2. The CEO is delegated authority to –
 - a) issue a notice under Section 3.25(1)(b) to a person who has not complied with a condition imposed on a permission given under (1) above.
 - b) undertake action considered necessary to achieve, so far as is practicable, the purpose for which the notice was given under (a) above.
 - c) recover the cost of anything done under (b) above as a sundry debt in accordance with Council Policy.

APPLICATION

1. The CEO may enter into an agreement with the applicant to carry out the works/infrastructure as a private works, which is to include –
 - a) a legally enforceable indemnity is required of the land owner for any damage to the road reserve, trafficable surface or endangered flora
 - b) an approved plan for any infrastructure to be constructed that may be required, including but not limited to –
 - structures,
 - pipes,
 - signage,
 - road drainage
 - rehabilitation etc.
 - c) agreement by the landowner to cover the full cost of any construction works
 - d) a deed providing for the future maintenance and replacement of any construction works to be at the landowners cost
 - e) details of the indemnity and deed are to be registered on the Certificate of Title of the property as a caveat in favour of the Shire

2. Proposed works in excess of (1(e) above are to be referred to Council.
3. Any prosecution proposed for non-compliance is to be referred to Council for decision to proceed.

OBJECTIVE

To permit decision to be for minor works on lands under Shire control that will be owned by persons other than the Shire.

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.37 – Contraventions that can lead to impounding
- s.9.60 – Regulations that operate as local laws
- Sch.9.1(8) – Private works/infrastructure on, over, or under public places
- Sch.9.2(5) – gates across public thoroughfares

Local Government (Uniform Local Provisions) Regulations 1996 –

- r.9 – gates across a public thoroughfare
- r.17 – Private works on, over, or under public places
 - (4) approval of local government required
 - (5) conditions may be imposed
 - (6) mandatory conditions – no permanent impairment of public use, public safety to be ensured, damaged to be fully repaired
 - (7) penalty for non-compliance is \$5,000 and \$500 daily
 - (8) person constructing is responsible for maintenance, and must insure structure, specifically indemnifying Council against any claim
 - (9) unauthorised constructions, or contravention of approval/conditions can lead to impounding

Activities on Thoroughfares and Public Places and Trading Local Law 2006 –

- cl.2.2 - activities allowed with a permit on land under Council management and control including roads

CORPORATE CONTEXT

Council Policy –

- 13.3 – Road Reserve – Drainage and interceptor banks

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FORMAL RECORD OF USE

Report to Council via monthly briefing papers if significant infrastructure

File copy of written approval

Property file of applicant

Copy on road/reserve/local government property file

HISTORY

Former Delegation 54, 56, 57, 59

Adopted 18 June 2020

REFERENCES

If insurance indemnity is required, a certificate is to be provided to the Shire annually. It is to be a condition of approval that a lapse of insurance means automatic withdrawal of approval, and removal of the previously insured structure is required within 14 days.

This delegation includes minor works on the road such as –

- drilling for soil testing,
- pressure or gravity pipe from a water tank or windmill to a stock trough,
- bus shelter for school children,
- farm drainage etc.

13.8 Events on roads

FUNCTION DELEGATED

1. The CEO is delegated authority –
 - a) in consultation with the President, to approve with or without conditions or refuse to approve, an event or function on a thoroughfare in accordance with section 81C of the *Road Traffic Act 1974*;
 - b) in consultation with the President, to approve with or without conditions, or refuse to approve, the temporary suspension of written law in accordance with section 83 of the *Road Traffic Act 1974*; and
 - c) make all necessary arrangement to comply with Road Traffic (Events on Roads) Regulations r.9.

2. The CEO is delegated authority, in consultation with the President, to respond to any request for information made under section 7(1) of the *Public Order in Streets Act 1984*.

APPLICATION

1. In considering any application, the CEO is to have regard to Police and Main Roads WA guidelines.

OBJECTIVE

To facilitate community events requiring closure of roads

STATUTORY CONTEXT

Road Traffic Act 1974 –

- s.81C(2) – Making order for road closure for event
- s.81D – Road closure, how effected by local government

Road Traffic (Administration) Act 2008 –

- s.139(2) – Temporary suspension of road law

Road Traffic (Events on Roads) Regulations 1991 –

- s.4 – local government approval and payment of fee required
- r.9 – Erection of barriers, signs and other equipment

Activities on Thoroughfares and Public Places and Trading Local Law 2006 –

- cl.2.2 - activities allowed with a permit on land under Council management and control including roads

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Manager Works and Services

FORMAL RECORD OF USE

File copy of decision on written application

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

See Road Traffic (Administration) Act –

135. Protection from liability for wrongdoing

(1) *An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under a road law.*

(3) *A local government is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1) in relation to a function of a local government under section 11, 139 or 141.*

141. Closure of roads

(2) *A local government may cause a road in its district to be closed for such period that the local government considers necessary if the local government considers that the road is unsafe for traffic but the road cannot be closed by the local government for more than one month without with the Minister's written approval to do so.*

See Events on Roads Regulations –

9. Erection of barriers, signs and other equipment

(1) *A road closure ordered by the Commissioner of Police under Part VA of the Act shall be effected by the erection and maintenance by the local government for the district within which the road concerned is situated of –*

(a) *barriers, being free standing posts and rails, or other barriers which are substantial and uniform in construction;*

(b) *signs, being substantial and uniform in design, with the words "Road Closed" or similar, clearly printed in black letters upon a reflective background; and*

(c) *such other equipment as the local government considers is reasonably necessary to effect the road closure.*

(2) *The costs of erecting, maintaining and removing barriers, signs and other equipment to effect a road closure are payable to the local government by the person or body who applied for the order for that road closure.*

(3) A local government may waive the payment of all or any of the costs referred to in subregulation (2).

(4) Any costs payable to a local government under subregulation (2) may be recovered as a debt due to that local government in a court of competent jurisdiction.

Main Roads WA – Traffic Management for Events on Roads: “Code of Practice”

13.9 Temporary road closures

FUNCTION DELEGATED

1. The CEO is delegated authority to –
 - a) temporarily close a thoroughfare or a portion of a street for a period not exceeding 28 days (without providing local public notice) if of the opinion –
 - a thoroughfare is likely to be damaged by the passage of traffic generally or traffic of any particular class;
 - that the thoroughfare is unsafe for use.
 - b) temporarily close a road or portion of a road for repairs and maintenance;
 - c) temporarily close a thoroughfare for a period in excess of 28 days by providing local public notice.

APPLICATION

1. Where a person uses a road that has been temporarily closed, commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) an infringement notice remains unpaid after reasonable attempts to obtain payment.

OBJECTIVE

To facilitate works that are to be undertaken and for public amenity and safety

STATUTORY CONTEXT

Local Government Act 1995 –

- s.3.50 – closing to vehicles
- s.3.50A – closure for repairs or maintenance

Road Traffic Act 1974 –

- s.81D – how a road is to be closed
- s.92 – power to close unsafe roads

Activities on Thoroughfares and Public Places and Trading Local Law 2006 –

- cl.2.9 – no driving on closed thoroughfare

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer
Manager Works and Services

FORMAL RECORD OF USE

File copy of public notice, instruction to staff etc.

HISTORY

Former Delegation	62, 63
Adopted	18 June 2020

REFERENCES

Nil

14. Plant / Equipment

This Section is currently empty

15. Natural Resource Management

15.1 Control of Vehicles (Off-road Areas) Act 1978

FUNCTION DELEGATED

1. The CEO is delegated authority to exercise all discretionary matters in the Control of Vehicles (Off-road Areas) Act 1978, including –
 - a) granting, refusal, cancellation and setting conditions of approval to conduct activities;
 - b) issue of all notices and infringements etc.;
 - c) extending the time period within which infringement notices may be paid.
 - d) withdrawal of an infringement notice issued by an authorised officer, following consideration of any submissions of special circumstances relating to it received from the authorised officer, the notice recipient or other persons;
 - e) carrying out of works in default of a duly served notice;

APPLICATION

1. The delegation excludes –
 - a) determination of any fee or charge
2. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) an infringement notice remains unpaid after reasonable attempts to obtain payment.

OBJECTIVE

To ensure appropriate administration of the legislation for the amenity of residents and protection of the environment

STATUTORY CONTEXT

Control of Vehicles (Off-road Areas) Act 1978 –

- s.5(1) – Duty of local government to administer and enforce the Act
- s.5(3) – authorised officers

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer
Manager Works and Services
Rangers

FORMAL RECORD OF USE

File copy of notice

HISTORY

Former Delegation	39
Adopted	18 June 2020

REFERENCES

Nil

15.2 Native flora and fauna

FUNCTION DELEGATED

1. The CEO is delegated authority to approve a request for permission to pick wildflowers and / or collect seed on lands under Council's control, under the following conditions –
 - a) written application is to be made;
 - b) it is for their own domestic or hobby use;
 - c) permission is given for a period not exceeding one week;
 - d) the area of picking and/or collection is strictly limited;
 - e) not more than one collector is permitted in any one location;
 - f) a maximum of 10% of seed only to be taken in any one area.

2. The CEO is delegated authority to approve an application for commercial picking of wildflowers or collection of seed where –
 - a) Council has previously approved an application,
 - b) the application is in consecutive years,
 - c) under identical terms and conditions, including ownership and purpose.

APPLICATION

1. All applications for commercial picking of wildflowers or collection of seed are to be referred to Council for consideration, and required details include –
 - a) collector's credentials and purpose (collector includes the permit holder and up to 2 assistants),
 - b) duration of approval, if any,
 - c) the area of picking and/or collection
 - d) not more than one collector being permitted in any one location
 - e) a maximum of 25% of seed only to be taken in any one area

2. All applications for the collection of animals, reptiles, amphibians and birds from lands under Council's control, are to be referred to Council for consideration.

3. All applications to collect flora or fauna are to provide the following information at minimum –
 - a) collector's credentials, including any person acting on the collector's behalf
 - b) purpose of collection – domestic, hobby, display, educational, commercial
 - c) flora/fauna to be collected – rarity, locality, need for preservation etc.
 - d) locality of collection – ease of access, likelihood of general public-knowledge or access
 - e) period or duration sought

4. The following statement is to be included in every approval by the CEO –

The approval of the Department of Parks and Wildlife is mandatory, and Shire permission is invalid without the Department's written consent accompanying Shire approval.

OBJECTIVE

To manage picking of seed and collection of flora and fauna for the protection of the environment

STATUTORY CONTEXT

Environmental Protection Act 1986 –

- s.51C – Unauthorised clearing of native vegetation

Wildlife Conservation Act 1950 –

- s.14 – Protection of fauna
- s.23C – Licenses to take protected flora
- s.23D – Taking and sales of protected flora on private land

Wildlife Conservation Regulations 1970

Activities on Thoroughfares and Public Places and Trading Local Law 2006

- Part 5 – Roadside conservation

Local Government Property Local Law 2006 –

- cl.4.3 – taking or injuring any fauna

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

Manager Works and Services

FORMAL RECORD OF USE

Coy of letter advising decision on file

HISTORY

Former Delegation N/A

Adopted 18 June 2020

REFERENCES

Dept. of Parks and Wildlife –

- may issue a permit for a maximum of one year;
- is to be provided a copy of every approved application.

15.3 Pest Plants Local Law 2015

FUNCTION DELEGATED

1. The CEO is delegated authority to approve all discretionary matters in the Shire of Cunderdin Pest Plants Local Law 2015 including –
 - a) issue of all notices;
 - b) extending the time period within which compliance is required;
 - c) carrying out of works in default of a duly served notice.

APPLICATION

1. The delegation excludes –
 - a) dealing with an objection.

2. Commencement of prosecution is restricted to the CEO.

OBJECTIVE

To ensure appropriate administration of the Local Law

STATUTORY CONTEXT

Biosecurity and Agriculture Management Act 2007

Local Government Act 1995 –

- s.3.18 – A local government is to administer its local laws

Shire of Cunderdin Pest Plants Local Law 2015

CORPORATE CONTEXT

None

PRIMARY DELEGATION

CEO

SECONDARY DELEGATION PERMITTED TO

Deputy Chief Executive Officer

Manager Works and Services

Rangers

FORMAL RECORD OF USE

- ii) File copy of approval of discretionary use

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

The local law does not have provision for infringements.

16. Unclassified

This Section is currently empty

PART B – PRIMARY DELEGATIONS – To Other Officers

Environmental Health / Food

17.1 Food Act 2008 – Qualified person

FUNCTION DELEGATED

1. The EHO is delegated authority to exercise and discharge the powers and functions of the local government with regard to the Food Act 2008, including but not limited to –
 - a) powers of entry to premises,
 - b) taking of food samples for analysis,
 - c) formal warnings;
 - d) improvement notices;
 - e) prohibition orders; and
 - f) infringement notices.

APPLICATION

1. The CEO may appoint a qualified person under Delegation 1.1
2. The delegation excludes –
 - a) determination of any fee or charge;
 - b) dealing with an objection,
3. Commencement of prosecution is restricted to the CEO, who may instigate action where the offence –
 - a) an infringement notice remains unpaid after reasonable attempts to obtain payment.
4. Any prosecution proposed is to be referred to Council for decision to proceed.

OBJECTIVE

To ensure appropriate administration of the legislation

STATUTORY CONTEXT

Food Act 2008 –

- s.118(2)(b) – authority to delegate functions and obligations to qualified authorised person
- s.122(1)(b) – authorised person must hold office as an environmental health officer under the *Health Act 1911*

Food Regulations 2009 –

- s.5 – a local government is an appropriate enforcement agency for the purposes of certain food businesses, animal processing premises and retail pet meat shops

Public Health Act 2016

- s.4(2) – authorised officer
- s.24 – authorised person must be qualified
- s.25 – authorised person must have acceptable qualifications or be an EHO

Government Gazette of 24 Jan 2017 – Designation of Health Authorised Officers

CORPORATE CONTEXT

None

PRIMARY DELEGATION

Environmental Health Officer – subject to consultation with the CEO

SECONDARY DELEGATION PERMITTED TO

Not permitted

FORMAL RECORD OF USE

File copy of notice, record of inspection etc.

HISTORY

Former Delegation	32, 42
Adopted	18 June 2020

REFERENCES

Council may appoint a person as an authorised person who is not an employee.

CEO may appoint an employee as an authorised person under Delegation 1.1

It should be noted that under the Act, the EHO may be required to prosecute, regardless of Council's direction or wishes.

Fire Control

18.1 Issue of burning permits – Fire Control Officers

FUNCTION DELEGATED

1. Fire Control Officers are delegated authority to issue, vary or prohibit burning permits in accordance with Bush Fires Act s.18 and Bush Fires Regulations r.15(1).
2. Fire Control Officers are delegated authority, in consultation with the Chief Bush Fire Control Officer, to issue instructions, restrictions or conditions relating to individual burning permits.
3. Fire Control Officers are delegated authority to approve an applications to burn a road verge vested in the care, control and management of the Shire, subject to –
 - a) compliance with the Bush Fires Act 1954 s.18(9),
 - b) prior consultation with the CEO, and
 - c) the applicant obtaining the approval of the Dept. of Parks and Wildlife.

APPLICATION

N/A

OBJECTIVE

To allow for the issue of burning permits as appropriate

STATUTORY CONTEXT

Bush Fires Act 1954 –

- s.18 – Restricted burning times
 - (1) – nothing in this section permits burning in prohibited period
 - (2) – prohibited & restricted times to be published in Government Gazette
 - (5) – Local government may vary burning periods after consultation
 - (5B) – variation for maximum of 14 days
 - (5C) – burning period restrictions apply to variation period
 - (6) – permit required to set fire to bush from either FCO or CEO
 - (7) – person issuing permit may apply requirements or conditions
 - (8) – permit holder to comply with conditions
 - (9) – permit may authorise burning of bush on adjoining road reserve
 - (10A) – local government may adopt enforceable schedule for burning
 - (11) – if fire escapes etc. expenses up to \$10,000 may be recouped
 - (12) – penalty on first breach \$4,500, subsequent breaches \$10,000
- s.23(2)(a)(iv) – road verge burning between constructed portion of road and established fire break only

Bush Fire Regulations 1954 –

- r.15(1) – Permit to burn as per section 18 of the Act
- r.15(2) – If request to burn is conditional or refused, review is only by the local government or CBFCO
- r.15A – BFCO to comply with directions of local government
- r.15B – Permit holder to comply with permit conditions
- r.15C – Local Government may prohibit burning on certain days
- r.16 – only CEO or specifically authorised person may permit burning of clover in prohibited period
- r.21B – FCO may postpone clover burn

CORPORATE CONTEXT

None

PRIMARY DELEGATION

Fire Control Officers

SECONDARY DELEGATION PERMITTED TO

Not permitted

FORMAL RECORD OF USE

Duplicate copy of permit issued

HISTORY

Former Delegation	N/A
Adopted	18 June 2020

REFERENCES

This delegation does not extend to clover burning permits.

The Act s.16(6)(a) stipulates –

...obtained a permit in writing to burn the bush from a bush fire control officer of the local government in whose district the land upon which the bush proposed to be burnt is situated, or from the chief executive officer ...

Refer also Delegation 5.1 and specific matters restricted to CEO.

18.2 Prohibited burning periods – Variations

FUNCTION DELEGATED

1. The Shire President and Chief Fire Control Officer are delegated authority to jointly exercise the powers of Council under the Bush Fires Act 1954 s.17 (7), (8), (10) – prohibited burning periods.

APPLICATION

1. Should the Shire President be unavailable or hold joint office as Chief BFCO, the Deputy Shire President is deemed to be Acting Shire President in relation to this matter.
2. If the Chief BFCO is unavailable, the Deputy Chief BFCO is deemed to be Acting Chief BFCO.
3. In the absence of Deputy President or a Deputy Chief BFCO, the CEO is authorised to act for that person, but not for both.
4. The CEO is to be advised in order that public notification may be arranged.

OBJECTIVE

To facilitate variation of the prohibited burning period

STATUTORY CONTEXT

Bush Fires Act, 1954 –

- s.17(7) – authority to vary prohibited burning time
- s.17(7B) – time may not be varied by more than 14 days
- s.17(8) – requirements to give various notice, and Minister may rescind or modify the variation
- s.17(9) – publication requirements
- s.17(10) – local government may delegate to President and Chief BFCO jointly
- s.17(11) – Local government may rescind delegation or vary any delegated decision

CORPORATE CONTEXT

None

PRIMARY DELEGATION

Shire President and Chief Fire Control Officer, jointly

SECONDARY DELEGATION PERMITTED TO

Not permitted

FORMAL RECORD OF USE

Written advice to CEO

HISTORY

Former Delegation	21
Adopted	18 June 2020

REFERENCES

Variation of the prohibited burning period automatically reinstates the underlying restricted burning conditions.

HISTORY SUMMARY

Item	Meeting	Purpose	Applies	Delegations affected
1		Revocation		All previous Delegations
2		Adoption		All delegation in this Register
3	20 June 2019	Review		10.4 Amended
4	18 June 2020	Adoption		All delegation in this Register
5	22 November	Review		All delegations.
6				

APPENDIX

This document records the compiled delegations made by Council under the authority of the Local Government Act 1995 and other legislative instruments as specified.

This register is the formal written record by which a delegation is made and conferred. Therefore, committees, the CEO and officers are provided with this document as their record of delegation/s made to them.

Definitions

The LG Act has not defined the term “delegation” or “delegated power”. However:

s.5.16 refers to “... the exercise of any of its powers and duties ...”

s.5.42 refers to “... the exercise of any of its powers or the discharge of any of its duties ...”

The following terms used in this document apply insofar as they are consistent with enabling legislation.

authority means the permission or requirement for Council, a Committee or a person to act in accordance with:

- the Local Government Act, Regulation or other legislation,
- a delegation made by Council,
- a policy made by Council, or
- a specific decision by Council, or
- Standard Procedural Direction given or authorised by the CEO.

Council means the elected members in session,

Council Policy is the standing instruction resolved by Council as to how a particular matter is to be implemented:

delegation means the authority for a Committee, the CEO or other person to exercise a power, or discharge a duty, as conferred by absolute majority decision of council under the provisions of the relevant legislation.

employee means –

- a) a person employed directly by the Shire receiving a salary or wage,
- b) a person employed directly by the Shire on a fixed term contract,
- c) a person appointed for the purposes of exercising a delegation who –
 - i) is engaged under a contract for services either directly or with a firm,
 - ii) is the specific person named in the contract, and
 - iii) is authorised to issue notices on behalf of the Shire,

Standard Procedure means the requirement for a staff member to act in accordance with a direction given by the CEO.

Planning Policy is established under the Planning & Development Act 2005, and the local planning scheme, and has mandatory procedures to adopt, amend or revoke.
Shire means the organisation or the district as the context requires,

Statutory Context

This Delegations Register has been prepared in accordance with –

Local Government Act 1995:

s.5.16 – Delegation of some powers and duties to certain committees

- Separate document as differing provisions apply

s.5.17 – Limits on delegations of powers and duties to certain committees

s.5.18 – Register of delegations to committees

s.5.42 – Delegation of some powers and duties to CEO

s.5.43 – Limits on delegations to CEO

s.5.44 – CEO may delegate powers and duties to other employees

s.7.1B – Delegation of some powers and duties to audit committees

Local Government (Administration) Regulations 1996 –

r.19 – Record to be kept by delegates

Other legislation includes, but is not limited to –

Building Act 2011

Bushfires Act 1954

Cat Act

Dog Act 1976

Food Act 2008

Health Act 1911

Local Government (Miscellaneous Provisions) Act 1960

Planning and Development Act 2005

Shire of Cunderdin Local Laws, currently adopted –

Thoroughfares and Public Places Local Law 2015

Local Government Property Local Law 2015

Dogs Local Law 2015

Cemetery Local Law 2015

Pest Plants Local Law 2015

Extractive Industries Local Law 2015

Animals, Environment and Nuisance Local Law 2016

Health Local Law 2016

Local Planning Scheme

Shire of Cunderdin Local Planning Scheme No.4

Unless stated otherwise, the Local Government Act 1995 section 5.42 is the fundamental statutory context for Council to make the delegations in Parts A and B.

Local Government Act 1995 –

5.42. Delegation of some powers and duties to CEO

(1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under –

- (a) this Act other than those referred to in section 5.43; or
- (b) the Planning and Development Act 2005 section 214(2), (3) or (5).

* *Absolute majority required.*

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

It is inadequate to quote this reference as the specific authority for the function delegated.

Various other legislative instruments empower or require Council to make delegations. The legislative empowerment is stated within each delegation.

Council expects the CEO to apply the provisions of the Local Government Act s.5.44 and other legislation to delegate powers and duties to other employees, including s.5.44(3) powers and duties which have been delegated to the CEO under s5.42.

Corporate context

The Council is responsible for functions and activities under numerous Acts and other legislation, many of which permit Council to delegate responsibilities and authority to various officers, and to stipulate conditions, standards or methods of control and management.

This Delegations Register has been prepared to complement a range of obligations imposed by legislation including local laws, and various document adopted by Council.

The order of priority for compliance is –

1. Federal and State legislation and regulations,
2. the Local Planning Scheme,
3. a specific resolution of Council,
4. Delegations Register – being specific authorisations resolved by Council, and having a statutory context under the Local Government Act,
5. Local Planning Policy – as it is made under the authority of the Local Planning Scheme, by resolution of Council,

6. Council Policy – being instructions resolved by Council on how particular matters are to be dealt with,
7. Standard Procedure – standing instructions or procedures issued by the CEO,
8. administrative directions or instructions.

Although not decisions of Council, and therefore not a requirement of staff, consideration should be given to the following as being best practice –

- DLGRD Guidelines
- WALGA Councillors Manual, Practice Notes etc.

Unless specifically resolved that a delegation is to be included in the Delegations Register, it is considered that it is for a specific matter, and is not a general or on-going Delegation.

There are some Delegations that have specific legislative provision, and these are noted in the individual Delegation.

IMPORTANT – Consequences of breaching Delegations

Where there is a breach of Delegations –

- a) it may result in disciplinary action up to and including termination of employment,
- b) the Shire may also be obligated to refer a breach to an external agency where an employee may be held personally liable for their actions;
- c) the employee in breach may also be personally liable for their actions, such costs charged to the Shire or to repair as a result of the private/personal or unauthorised use.

Guidelines No.17 – Delegations (Department of Local Government)

The Department of Local Government and Communities has published Guidelines for the formation of Delegations.

The Guidelines outline the concept of “delegation” and “acting through” in parts 3 and 4, particularly in paragraph 13 where it is stated –

... 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 “acting through” concept. 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.

In effect, “acting through” is an action that could reasonably be expected to be carried out as the result of a decision by Council (e.g. advertising of a tender), or as a function reasonably expected of the position that a person holds.

Not all matters which will be recorded in Policy are “acting through” matters. Similarly, not all “acting through” matters will be listed. Policy describes how that action or some other action is to be carried out.

Primary delegation

The primary delegation recipient includes the person acting in that position should the named recipient be absent from duty. This provision does not apply where the named person is on duty, but not present at the office at the time.

Secondary delegation by CEO

The CEO is expected and encouraged to further delegate to appropriate officers, subject to the limitations imposed by the Local Government Act, other enabling legislation, or the conditions of the delegation made by Council to the CEO –

- s.5.43 – limits on delegations to CEO
- s.5.44 (1) – does not permit the CEO to delegate the capacity to further delegate, and further stipulates that the delegation may only be to employees
 - a. no such stipulation is made for delegations under other legislation
- s.5.46 – requires the CEO to review sub-delegations to other employees at least annually

The delegation by the CEO is to be –

- in a signed document to the person,
- the recipient to return a signed acceptance, which is to be placed on file, and
- a copy to be retained by them.

Use of delegations

Delegations are made to assist with the smooth operation of the organisations, and allow appropriate levels of authority to determine a wide range of matters.

There is no requirement for any authorised person to use a delegation. It is at the person’s discretion whether or not to exercise a delegated authority, and they may refer the matter to a higher level at any time, should it appear in their judgement to be the best option.

Record of use of delegations

The Act requires that the use of each delegation is recorded, but does not require that the use is reported to Council, nor does it specify recording or listing the use in a particular format. Such requirements would result in an unwieldy volume of work that is unproductive.

However, in some instances, the use of the delegation is of sufficient importance that Council should be advised so as to be aware of the impact of the decision made.

In order to reduce the unnecessary paperwork burden as far as is possible, the formal record of use of a delegation is the document that is produced in the normal course of administration of the matter. This document may be a form approving or refusing an application, a letter, batch approval for payment of creditors, file note, email or similar.

All these satisfy the requirement of the State Records Office for recordkeeping.

Making, amending and revoking delegations

Delegations from Council may be made, amended or revoked at any time by an absolute majority of Council.

Where permitted by Council in the delegation, the CEO may authorise a secondary delegation at any time.

Delegations from the CEO to other employees are at the discretion of the CEO and do not require a Council resolution. The CEO can delegate a power or duty, the exercise or discharge of which has been delegated by a local government to the CEO, subject to any conditions imposed by the local government on its delegation to the CEO (s.5.44 (3)).

It is a requirement that the use of all delegated authority is recorded but it is not a requirement to report the use of delegated authority to Council.

Council may impose limitations on secondary delegation or the functions delegated as they see fit. The CEO is not obligated to delegate the whole or any delegation authorised by Council, but may choose not to or place further limitations on the delegation.

However, unless specifically resolved that the authority is to be included in the Delegations Register, the authority to act is for a specific matter, and is not a general or on-going delegation.

Review of delegations

A delegation has effect for the period of time specified in the delegation or indefinitely if no period has been specified.

It is a requirement of the Local Government Act s5.18 and s.5.46 (1) that all delegations made under the authority of that Act be reviewed by the delegator at least once in each financial year.

Any decision to amend or revoke a delegation by a local government is to be by an absolute majority s.5.45 (1) (b).

Review of delegations from the Council to committees and the CEO will be carried out before the end of each financial year and preferably in conjunction with the annual review of Council policies.

The CEO will review delegations to staff as required on changeover of staff or change of staff functions and will review all delegations at least once in the financial year in accordance with the legislation.

– End -