

# Delegations Review 2019–2020

Pursuant to Section 5.46 of the  
*Local Government Act 1995*





## Review of Delegations 2019-20

### Contents

Introduction .....	5
Delegations .....	5
Authorisations .....	5
Review .....	6
Method .....	6
Findings .....	7
Council delegations - <i>Local Government Act 1995</i> .....	8
1.1.1 Appoint Authorised Persons .....	8
1.1.2 Powers of entry .....	8
1.1.3 Impounding abandoned vehicle wrecks and goods involved in certain contraventions .....	10
1.1.4 Disposing of Confiscated or Uncollected Goods and Sick or Injured Animals .....	10
1.1.11 Crossing – Construction, Repair and Removal .....	10
1.1.14 Expression of Interest for Goods and Services .....	10
1.1.16 Disposing of property .....	11
1.1.17 Payments from the Municipal or Trust Funds .....	11
1.1.18 Defer, Waive or Write off Debts and Fees .....	11
1.1.19 Power to invest and manage investments .....	12
1.1.20 Rate Record Amendment .....	12
1.1.24 Recovery of Rates Debts – Require Lessee to Pay Rent .....	12
1.1.29 – Authority to Determine Applications and Apply Conditions to Matters Connected with Road Reserve Delegations .....	13
1.1.30 Initiate Prosecutions under the <i>Local Government Act 1995</i> and Local Laws of the Shire made under the <i>Local Government Act 1995</i> .....	14
1.1.31 Notices requiring things to be done by owner or occupier of land and additional powers when notice is given, undertake works on land that is not local government property and powers of entry .....	14
1.1.32 Delegation of certain functions associated with administering local laws .....	14
Council delegations – <i>Building Act 2011</i> .....	14
2.1.1 Grant a Building Permit .....	14
2.1.2 Grant a Demolition Permit .....	15
2.1.3 Occupancy Permits or Building Approval Certificates .....	15
2.1.8 Private Pool Barrier – Alternative and Performance Solutions .....	15
Council delegations – <i>Bush Fires Act 1954</i> .....	15
3.1.1 Make request to FES Commissioner – Control of Fire .....	15
3.1.2 Prohibited Burning Times – Vary .....	16
3.1.4 Restricted Burning Times – Vary and Control Activities .....	18
3.1.7 Firebreaks .....	18



## Review of Delegations 2019-20

3.1.12 Prosecution of Offences and Infringement Notices.....	19
3.1.13 Withdrawal of infringement notices.....	20
3.1.14 Notify the FES Commissioner of losses caused by bush fires.....	20
Council Delegations - <i>Dog Act 1976</i> .....	20
5.1.1 Dog registrations .....	20
5.1.2 Refuse or Cancel Registration .....	21
5.1.3 Appoint Authorised Persons.....	21
5.1.7 Dangerous Dog Declared or Seized – Deal with Objections and Determine when to Revoke .	21
Council Delegations – <i>Food Act 2008</i> .....	22
6.1.2 Food Business Registrations.....	22
6.1.3 Appoint Authorised Officers and Designated Officers.....	22
Council Delegations – <i>Liquor Control Act 1988</i> .....	22
8.1.1 Certificate of Local Government .....	22
Council Delegations – <i>Public Health Act 2016</i> .....	23
9.1.2 Commence Proceedings .....	23
Council Delegations – <i>Planning and Development Act 2005</i> .....	23
10.1.2 Management of Reserves .....	23
Council Delegations – <i>Town Planning Scheme No. 2</i> .....	24
11.1.1 Determination of Development Applications .....	24
11.1.2 Administer Development Contribution Plans.....	24
Council Delegations – <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> .....	25
12.1.4 Subdivision clearance .....	25
12.1.5 Proceedings before the State Administrative Tribunal .....	26
12.1.6 Recommendations on applications for public works .....	26
Council Delegations – <i>Local Government (Miscellaneous Provisions) Act 1960</i> .....	26
14.1.2 Impounding trespassing cattle.....	26
Council Delegations with minor revisions .....	26
CEO Delegations to Employees – <i>Local Government Act 1995</i> .....	29
1.2.4 Election of Shire President and Deputy Shire President .....	29
CEO Delegations to Employees – <i>Planning and Development Act 2005</i> .....	29
10.2.1 Issuing Infringement Notices .....	29
10.2.2 Extension of time to pay and withdrawal of infringements.....	29
CEO Delegations to Employees with minor revisions.....	29
Appointment of Authorised Persons - Council.....	31
1.1 – <i>Caravan Parks and Camping Grounds Act 1995</i> .....	31
1.2 – <i>Control of Vehicles (Off-Road Areas) Act 1978</i> .....	31
1.4 - <i>Health (Miscellaneous Provisions) Act 1911</i> .....	31



## Review of Delegations 2019-20

<b>1.5 - Health (Miscellaneous Provisions) Act 1911 - Powers of Local Government, Public Buildings, Events and Gatherings .....</b>	<b>31</b>
<b>1.6 – Gaming and Wagering Commission Act 1987.....</b>	<b>31</b>
<b>1.7 – Litter Act 1979 .....</b>	<b>31</b>
<b>1.8 - Animal Welfare Act 2002 – General inspectors.....</b>	<b>31</b>
<b>1.9 - Animal Welfare Act 2002 – Authorised persons .....</b>	<b>31</b>
<b>1.10 – Planning and Development Act 2005 – Commencing a prosecution for contravening a provision of the planning scheme (s218) and commencing a prosecution for failure to comply with directions (s214) .....</b>	<b>31</b>
<b>1.12 – Local Government Act 1995 - Power to remove and impound.....</b>	<b>32</b>
<b>Appointment of Authorised Persons – Chief Executive Officer .....</b>	<b>33</b>
<b>CEO 2.1 – Local Government Act 1995 – Appoint Authorised Persons .....</b>	<b>33</b>
<b>CEO 2.2 – Local Government (Miscellaneous Provisions) Act 1960 – Appoint Pound keepers and Rangers .....</b>	<b>33</b>
<b>CEO 2.3 – Building Act 2011 – Designate Employees as Authorised Persons.....</b>	<b>33</b>
<b>CEO 2.4 – Bush Fires Act 1954 – Appoint Bush Fire Control Officers .....</b>	<b>33</b>
<b>CEO 2.5 – Dog Act 1976 – Appoint Authorised Persons and Registration Officers .....</b>	<b>33</b>
<b>CEO 2.6 – Food Act 2008 – Appoint Authorised Officers and Designated Officers .....</b>	<b>33</b>
<b>CEO 2.7 – Planning and Development (Local Planning Schemes) Regulations 2015 – Entry and Inspection Powers .....</b>	<b>33</b>
<b>CEO 2.8 – Freedom of Information Act 1992 – Principal Decision Maker .....</b>	<b>33</b>
<b>CEO 2.9 – Freedom of Information Act 1992 – Internal Review Officer.....</b>	<b>34</b>
<b>CEO 2.10 – Freedom of Information Act 1992 – Appointment of Principal Decision Maker and Freedom of Information Coordinator.....</b>	<b>34</b>
<b>CEO 2.11 – Public Health Act 2016 – Designation of Authorised Officers .....</b>	<b>34</b>
<b>CEO 2.12 - Public Interest Disclosure Act 2003 – Public Interest Disclosure Officer .....</b>	<b>34</b>
<b>CEO 2.13 - Fines, Penalties &amp; Infringement Notices Enforcement Act 1994 - Designation of Authorised Officers .....</b>	<b>34</b>
<b>CEO 2.14 - Litter Act 1979 – Appointment of Authorised Officers to withdraw infringement notices .....</b>	<b>34</b>
<b>CEO 2.15 - Environmental Protection Act 1986 – Referral of Proposals to Environmental Protection Authority .....</b>	<b>34</b>
<b>CEO 2.16 - Environmental Protection Act 1986 – Authorised Persons .....</b>	<b>34</b>
<b>CEO 2.17 - Environmental Protection Act 1986 – Initiating prosecutions.....</b>	<b>34</b>
<b>CEO 2.18 - Fines, Penalties and Infringement Notices Enforcement Act 1994 – Appointment of Prosecution Officers and Approved Users .....</b>	<b>34</b>
<b>CEO 2.19 – Planning and Development Act 2005 – Issue and vary infringement notices .....</b>	<b>34</b>





## Review of Delegations 2019-20

### Introduction

This report deals with two related, but separate concepts:

- delegations; and
- the appointment of authorised persons.

### Delegations

Legislation often creates statutory powers which are vested in an individual or a body. This means that, unless that power is delegated, only that individual or body can exercise the power. Typically, a delegation involves permitting another to exercise a discretionary power provided for by legislation.

Section 5.42 of the *Local Government Act 1995* (the Act) permits a local government to delegate its powers or duties under the Act and section 214 (2), (3) and (5) of the *Planning and Development Act 2005* to the Chief Executive Officer. Likewise, under section 5.44 of the Act, the CEO may delegate powers and duties to other employees. Other legislation that empowers local government to perform certain functions also contains provisions for delegation. This legislation includes:

- *Planning and Development Act 2005*;
- *Building Act 2011*;
- *Local Government (Miscellaneous Provisions) Act 1960*;
- *Bush Fires Act 1954*;
- *Health Act 1911*;
- *Food Act 2008*;
- *Cat Act 2011*;
- *Control of Vehicles (Off Road Areas) Act 1978*; and
- *Dog Act 1976*.

Delegation can only occur when there is a power in a given piece of legislation. The power to delegate in the Act cannot be used to delegate powers in other legislation, unless it is explicitly permitted. Delegations need to be made in writing and are recorded in an instrument of delegation.

While certain powers and duties are not permitted to be delegated, the appropriate delegation of powers and duties is a normal and important process that enables efficient and effective service delivery.

### Authorisations

Authorisations are a different type of instrument of power. The authorisation of a person involves their appointment to a class of persons that are 'authorised' to perform certain functions. In doing so, they are not delegated power but rather have the power by virtue of being a member of a cohort or class.

Legislation uses a combination of delegation and authorisation and its varying application in statute can create confusion. From a governance perspective, delegation is typically used for situations where discretion is involved. For delegated powers under the Act, exercised use of delegation must be recorded, whereas exercising the powers of an authorised person are not required to be recorded.



## Review of Delegations 2019-20

The appointment of authorised persons needs to be in writing. At the Shire, appointments of authorised persons made by Council and CEO are recorded in a register that records both authorisations and delegations.

### Review

Delegations made under the Act are required by section 5.46 to be reviewed every financial year by the delegator (Council and the CEO respectively).

While only delegations made under section 5.42 of the Act are required to be reviewed every financial year, this review has comprehensively reviewed all delegations *and* authorisations. This report describes the findings of the review and catalogues the proposed amendments.

### Method

The review has been conducted through:

- a desktop review of the current register of delegations;
- examination of delegation registers of other local governments; and
- discussions with staff across the Shire.

The review has also been informed by:

- the Department of Local Government, Sport and Cultural Industries Operational Guidelines 17 – Delegations;
- the Western Australian Local Government Association's Decision Making In Practice – Part 2 Delegations; and
- an internal audit conducted into delegations.

The review has systematically considered each of the delegations and authorisations and asked:

- is the head of power used to delegate or authorise the activity correct?
- are the specific sections, regulations or clauses of each instrument correct?
- are the appropriate officers delegated or appointed?
- are the conditions placed on delegation or authorisation correct?
- are the reporting requirements commensurate to good governance, risk and efficient practice?

The contents of each delegation was also compared with the delegations registers of the Cities of Joondalup, Wanneroo, and Vincent. These local governments were selected because of their reputation in respect to good documentation practice and governance. On a case by case basis, the registers of many other Western Australian local governments were also consulted including, but not limited to, the Cities of Cockburn; Bunbury, Stirling; Armadale; Victoria Park; Fremantle; Melville and the Towns of York; Wandering; Yilgarn; and Quairading. These comparisons has found that local governments both employ and manage the recording of delegations and authorisations in very different ways.

Delegations and authorisations are a complex area that is complicated by the nuances of occasionally contradictory drafting techniques used in State legislation over decades. Both the Department of Local Government, Sport and Cultural Industries and Western Australian Local Government Association publish advice related to delegations but there are limitations on the comprehensiveness, currency and accuracy of the advice. This complexity is reflected in the different and occasionally technically incorrect approaches used by even leading local governments.



## Review of Delegations 2019-20

### Findings

The Shire's approach to recording and publishing delegations and authorisations exceeds the legislative requirements in Act and the presentation of the delegations and authorisations is more comprehensive and detailed than most local governments across the state.

Unlike many local governments, the Shire's published register:

- includes both Council and CEO initiated delegations and authorisations;
- states the head of power used for each delegation and authorisation;
- where practicable states the specific section, regulations or clauses of legislation delegated;
- includes information on how the exercised use of delegations should be recorded and reported; and
- contains supplementary information to guide the use of delegations and authorisations.

The review has identified opportunities to improve the consistency, clarity and technical accuracy of the instruments of delegation and authorisation contained in the register. If approved, the recommended changes will result in a register that is both comprehensive and highly technically accurate.

The review also proposes simplifications to the register to strengthen usability and readability. Since at least 2014, the register has grown and become progressively more complex. A consolidation and paring down of the text accompanying each delegation is recommended to increase accessibility. While the comprehensiveness of the document is a strength, the document should not be overly complex that only governance staff can interpret it.

In conjunction with internal audit's separate but related review, this work has identified improvements to the administration of delegations and authorisations. Both reviews have identified misconceptions about delegations and authorisations. On occasion, these were because a task could equally be performed under instrument of delegation, as an authorised officer or as normal business in through the course of 'acting through' an approved instruction. One example was the entering a property to inspect a pool fence which officers were correctly and properly authorised to do so under the *Building Act 2011* but mistakenly believed that they were exercising a delegation under the *Local Government Act 1995*. In this case, the error is semantic and did not impact the legal execution of the task but resulted in unnecessary reporting because a delegation was not exercised.

As highlighted in the internal audit's findings, the Shire's approach to delegations and authorised persons emphasises recording and reporting delegations above the standard provided in legislation. While a rationale exists for this approach, its application to all delegations is impractical because it:

- is not commensurate to risk or business need;
- often duplicates recording; and
- is administratively inefficient.

The systematic approach employed in reviewing each delegation has also identified opportunities to combine and simplify delegations and in several cases remove delegations that are not required or have no appropriate power to delegate or a head of power. In these cases, the Shire has performed tasks appropriately but the register should be updated.

Engagement with business areas as part of the review has also enhanced understanding of the delegations and authorisations, which can be a nuanced area. This is especially the case in the employment of 'acting through' arrangements. Section 5.45 of the Act states that provisions concerning delegations do not prevent a local government from performing any of its functions by acting through a person or a CEO from performing any of his or her functions by acting through



## Review of Delegations 2019-20

another person. While what constitutes an 'acting through' arrangement is not defined in legislation, the Department's published guidance on the matter states that acting through arrangements can be employed where an Officer performs tasks at the direction of the authority holder. The review has highlighted cases where 'acting through' arrangements are more appropriate than a formal delegation because of the lack of an appropriate head of power in State legislation and/or the action is not discretionary.

Further work is required with business units to embed processes associated with the new register. This is proposed to be achieved through inductions for new staff and the roll-out of information sessions overtime with business units. This approach supports the recent work of the Governance area, which has focused on higher risk delegations associated with finance, executing documents and matters related to land.

The remainder of this report provides an explanation and rationale for the proposed amendments to the instruments of delegation and authorisation. Most of the changes are juristic, semantic or even pedantic, but if adopted will provide an excellent platform for the Shire to execute its functions under delegated authority or as authorised officers with confidence.

### Council delegations - *Local Government Act 1995*

#### 1.1.1 Appoint Authorised Persons

What is being delegated?	What is proposed to change?	Rationale for the change
<p>This power permits Council to appoint authorised persons under the Act, the <i>Local Government (Miscellaneous Provisions) Act 1960</i>, the <i>Building Regulations 2012</i> and the <i>Graffiti Vandalism Act 2016</i>.</p> <p>The power also permits Council to appoint authorised persons under the Shire's local laws created under the Act.</p> <p>The Department's Operational Guideline states that this power may be delegated and is suitable for acting through arrangements to carry out the administrative function associated with the power.</p>	<p>A new function under the delegation is proposed to permit the CEO to appoint an authorised person under Regulation 70 of the <i>Building Regulations 2012</i>.</p>	<p>Amendments to the <i>Building Regulations 2012</i> in April 2019 created new offences that authorised officers may issue infringement notices for.</p> <p>Building Regulation 70 was also amended, correcting its reference to and alignment with sections 9.19 and 9.20 of the Act (which were amended in 2016 and created the misalignment with the previous Building Regulation 70).</p> <p>This update clarifies the delegation to appoint officers under regulation 70 using the head of power in the Act.</p>

#### 1.1.2 Powers of entry

What is being delegated?	What is proposed to change?	Rationale for the change
<p>This power specifies circumstances where a local government may enter property to perform its functions.</p> <p>The Department's Operational Guideline states that this power may be delegated and is suitable</p>	<p>Council has previously set a condition that the delegation may only be used where there is imminent or substantial risk to public safety or property.</p> <p>It is proposed to remove this condition.</p>	<p>This delegation applies to various powers including s3.33 to enter under a warrant. In most instances where a warrant to enter is required, it is due to an owner or occupier being obstructive and not allowing access to the</p>



**Review of Delegations 2019-20**

<p>for acting through arrangements to carry out the administrative function associated with the power.</p>	<p>Section 3.28 provides a statement of when the power can be used but it is not a delegated power and it is recommended that the power be deleted.</p>	<p>property. Therefore, because the Council delegation is written to apply to all the functions of the delegation (including s3.33), this circumstance would not satisfy the Council condition to only enter under a warrant where "there is imminent or substantial risk to public safety or property"</p> <p>The Act already provides for entry in an emergency and has the following condition listed in s3.34(2):</p> <p>3.34. Entry in emergency</p> <p>(1) In an emergency a local government may lawfully enter any land, premises or thing immediately and without notice and perform any of its functions as it considers appropriate to deal with the emergency</p> <p>(2) For the purposes of this section, an emergency exists where the local government or its CEO is of the opinion that the circumstances are such that compliance with the requirements for obtaining entry other than under this section would be impractical or unreasonable because of, or because of the imminent risk of —</p> <p>(a) injury or illness to any person; or</p> <p>(b) a natural or other disaster or emergency; or</p> <p>(c) such other occurrence as is prescribed for the purposes of this section.</p> <p>Other local governments reviewed did not place a similar condition on the delegation.</p> <p>Removal of the delegation under s3.28 is consistent with the Department's guideline</p>
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## Review of Delegations 2019-20

		because the section 3.28 confers no power that can be delegated.
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### 1.1.3 Impounding abandoned vehicle wrecks and goods involved in certain contraventions

What is being delegated?	What is proposed to change?	Rationale for the change
This power enables Council to appoint a person or class of person to have the power to remove or impound goods under s3.39 of the Act.	It proposed to replace the delegation of s3.39 with an authorisation.	Other local governments exercise this arrangement through an authorisation. For consistency the head of power in the Act provides that Council may 'authorise' a person to conduct the function.
Section 3.40A provides for an abandoned vehicle may be taken	Inclusion of a note in the function that section 3.40(A)(2) can be performed through an 'acting through' arrangement.	This is consistent with the Department's operational guideline and has been added for greater clarity.

### 1.1.4 Disposing of Confiscated or Uncollected Goods and Sick or Injured Animals

What is being delegated?	What is proposed to change?	Rationale for the change
Sections 3.47, 3.47A and 3.48 provide powers to Council to dispose of confiscated or uncollected goods, sick or injured animals and recover the costs of impoundment.	Inclusion of a note in the function that the sections can be performed through an 'acting through' arrangement.	As identified in the Department's operational guideline these powers are suitable for acting through.

### 1.1.11 Crossing – Construction, Repair and Removal

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation relates to approvals for crossing and related road works.	It is proposed to move the delegated powers and duties provided by Regulations 14 and 15 of the <i>Local Government (Uniform Local Provisions) Regulations 1996</i> from delegation 1.1.29 to this delegation.	The power under r14 r15 are related and already been delegated to the same officers. This permits the removal of 1.1.29, which is a duplication.

### 1.1.14 Expression of Interest for Goods and Services

What is being delegated?	What is proposed to change?	Rationale for the change
Regulations 21 and 23 of the <i>Local Government (Functions and General Regulations) 1996</i> permit a Council to issue an expression of interest prior to a tender process.	The current delegation includes the requirement in Regulation 24 to notify the person who responded to the expression of interest of the outcome by the CEO. It is proposed to remove this clause from the	Regulation 24 is a duty of the CEO and cannot be delegated by Council.



## Review of Delegations 2019-20

delegation.

### 1.1.16 Disposing of property

What is being delegated?	What is proposed to change?	Rationale for the change
Section 3.58 of the Act permits a Council to dispose of property valued at greater than \$20,000 via public tender or auction.	The current delegations contains Council conditions associated with disposal of property valued at under \$20,000. It is proposed to remove this condition of delegation.	The delegation relates to disposal of property greater than \$20,000. Property under \$20,000 is exempt from section 3.58.

### 1.1.17 Payments from the Municipal or Trust Funds

What is being delegated?	What is proposed to change?	Rationale for the change
Regulation 12 of the <i>Local Government (Financial Management) Regulations 1996</i> contains provisions related to the making of payments by the local government. These payments are actual transfer of funds from the municipal fund and are distinct from agreeing to purchase.	It is proposed to revise the Council condition on the delegation to state that the procedures associated with this activity are reviewed in accordance with Regulation 17 of the <i>Local Government (Audit) Regulations 1996</i> .	This change brings the Council condition on this delegation in line with the legislative requirements of the Audit Regulations.

### 1.1.18 Defer, Waive or Write off Debts and Fees

What is being delegated?	What is proposed to change?	Rationale for the change
Section 6.12 of the Act provides the power for Council to waive or defer debts, grant concessions on money owed. This section does not apply to rates or service charges.	<p>The current conditions on delegation limit its use to \$500 per rateable property, per financial year.</p> <p>It is proposed to remove the phrase per rateable property, per financial year and include a maximum value of \$2,000 for actions associated with use a community facility and \$1,000 for all other instances.</p>	<p>The circumstances where a local government may wish to grant a concession or waive a debt are broad. The current conditions in the delegation are inconsistent with Council Policy, particularly as it pertains to the waiving of fees associated with community facility hire.</p> <p>An increase of \$1,000 for all other purposes would be consistent with other local governments such as York and Vincent.</p> <p>Any use of delegation would continue to be exercised in accordance with Council Policy, which limits the circumstances where concessions and waivers can be issued.</p>



## Review of Delegations 2019-20

### 1.1.19 Power to invest and manage investments

What is being delegated?	What is proposed to change?	Rationale for the change
Section 6.14 of the Act provides power for Council to invest may be invested as trust funds.	It is proposed to revise the Council condition on the delegation to state that the procedures associated with this activity are reviewed in accordance with Regulation 17 of the <i>Local Government (Audit) Regulations 1996</i> .	This change brings the Council condition on this delegation in line with the legislative requirements of the Audit Regulations.
	It is proposed to remove all sub-delegates other than the Director Corporate Services.	The Department's Operational Guideline states that this power is suitable for acting through. This means that officers can perform the administrative tasks associated with the investment without requiring the explicit powers provided for by the delegation.  The rationale for the initial sub-delegation of this power is unclear.

### 1.1.20 Rate Record Amendment

What is being delegated?	What is proposed to change?	Rationale for the change
Section 6.39 provides powers and duties to the local government in respect to maintaining an accurate rate record.	It is proposed to extend the delegation to cover all of section 6.39(2).	While the Department's Operational Guideline states that 6.39(2) is suitable for acting through arrangements, the delegation of all of 6.39(2) leaves no doubt that the administration has the authority to administer the rates record.

### 1.1.24 Recovery of Rates Debts – Require Lessee to Pay Rent

What is being delegated?	What is proposed to change?	Rationale for the change
Section 6.60 provides powers and duties to the local government in respect to requiring lessees to pay rent.	It is proposed to limit the delegation to the specific parts of section 6.60.	The change is consistent with practice at other local governments.





## Review of Delegations 2019-20

### 1.1.27 Execution of Documents

What is being delegated?	What is proposed to change?	Rationale for the change
Section 9.49A provides powers for the Council in respect to the execution of documents, including use of the seal.	It is proposed to remove the delegation and replace with an authorisation.	<p>A Council Delegation for affixing the Seal is not required. s9.49A(3) requires the seal to be affixed by the Shire President and CEO OR another senior officer authorised by the CEO.</p> <p>The type of documents that require the seal is already authorised by Council through Council Policy 1.1.4 – Use of Shire of Serpentine Jarrahdale Common Seal.</p>

### 1.1.28 Execution of Contracts

What is being delegated?	What is proposed to change?	Rationale for the change
Section 9.49B provides powers for the Council in respect to the execution of documents	It is proposed to remove the delegation and replace with an authorisation.	<p>Council authorisation (not delegation) is required for the execution of documents - as per s9.49A(4) of the Act. A Council to CEO/Officer Authorisation has been proposed (see new Authorisation 1.11).</p> <p>This is consistent with practices at other local governments.</p>

### 1.1.29 – Authority to Determine Applications and Apply Conditions to Matters Connected with Road Reserve Delegations

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation relates to functions performed for applications associated with roads and public thoroughfares	It is proposed to remove this delegation.	<p>The powers provided by the delegation duplicates other delegations in the register.</p> <p>The powers in r12 and r13 are covered by delegation 1.1.11; r14 and r15 has been added to the amended 1.1.11; and r17 is addressed by 1.1.12</p>



## Review of Delegations 2019-20

### 1.1.30 Initiate Prosecutions under the *Local Government Act 1995* and Local Laws of the Shire made under the *Local Government Act 1995*

What is being delegated?	What is proposed to change?	Rationale for the change
Section 9.24 provides who may initiate prosecutions under the <i>Local Government Act 1995</i> and local laws made under the <i>Local Government Act 1995</i> .	It is proposed to remove the delegation.	Section 9.24 does not specify a power that can be delegated. The section provides specific permissions for classes of person authorised to commence prosecutions. The local government may authorise officers the power but cannot restrict a person who is acting in the course of their duties as an employee.  Other local governments reviewed do not employ this delegation and the delegation is not featured in the Department's Operational Guideline.

### 1.1.31 Notices requiring things to be done by owner or occupier of land and additional powers when notice is given, undertake works on land that is not local government property and powers of entry

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation relates to authority to direct owners and occupiers of land.	It is proposed to remove delegations under sections 3.32, 3.33, 3.34, 3.35 and 3.36.	These clauses either are duplication of other delegations in the register or are clauses that are not powers that can be delegated.

### 1.1.32 Delegation of certain functions associated with administering local laws

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation relates to the administration and enforcement of several of the Shire's local laws.	This is a new delegation that replicates the powers previously provided by part of Authorisation 2.1 CEO to Officers.	The new delegation better reflects the language used in the respective local laws but does not change the powers or functions of staff.

## Council delegations – *Building Act 2011*

### 2.1.1 Grant a Building Permit

What is being delegated?	What is proposed to change?	Rationale for the change
The <i>Building Act 2011</i> permits local governments to grant or refuse	The Shire has separate delegations for assessing building and	Merging the delegations associated with building and



## Review of Delegations 2019-20

building permits and seek information from applicants	demolition permits. These two delegations can be merged into a single delegation for building and demolition.	demolition permits creates greater simplicity and clarity.
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### 2.1.2 Grant a Demolition Permit

What is being delegated?	What is proposed to change?	Rationale for the change
The <i>Building Act 2011</i> permits local governments to grant or refuse demolition permits and seek information from applicants	It is proposed to delete this delegation and transfer the power into a single building and demolition permit delegation.	Merging the delegations associated with building and demolition permits creates greater simplicity and clarity.

### 2.1.3 Occupancy Permits or Building Approval Certificates

What is being delegated?	What is proposed to change?	Rationale for the change
The <i>Building Act 2011</i> permits local governments to grant occupancy permits.	It is proposed to remove the delegations s5B and s25 from the <i>Strata Titles Act 1985</i> .	The section s5B does not require delegation as it simply specifies the requirements when lodging documents. Section 25 was delegated to all local government officers via a Western Australian Planning Commission instrument published in the Government Gazette on 9 June 2009.

### 2.1.8 Private Pool Barrier – Alternative and Performance Solutions

What is being delegated?	What is proposed to change?	Rationale for the change
Regulation 51 of the <i>Building Regulations 2012</i> permits the permit authority to approve specific alternatives to pool fencing and barriers.	It is proposed to remove regulation 50 from the register.	Regulation 50 does not refer to a power to be delegated. This is consistent with the City of Vincent's delegation.

## Council delegations – *Bush Fires Act 1954*

### 3.1.1 Make request to FES Commissioner – Control of Fire

What is being delegated?	What is proposed to change?	Rationale for the change
Section 13 of the <i>Bush Fires Act 1954</i> provides for the role of Bush Fire Liaison Officers, which includes to take control of all operations in relation to that fire through the Authorisation of the FES Commissioner at the request of the local government.	It is proposed to remove the Chief Bush Fire Control Officer and Deputy Chief Bush Fire Control Officer from the delegation.	<p>The power to delegate is provided by s48 of the <i>Bush Fires Act 1954</i>, which only allows delegation to CEO.</p> <p>The general delegation power under section 48 of the <i>Bush Fires Act</i> enables the Council</p>

**Review of Delegations 2019-20**

		to delegate the request function (under section 13(4)) to the CEO. There is no further delegation power (either under s13 or elsewhere in the Act) that would enable the Council to delegate the request function under s13(4) to any other employee (or to anyone else).
	Remove the function to authorise through a Business Operating Procedure for the Chief Bush Fire Control Officer or the Deputy Chief Bush Fire Control Officers to request the FES Commissioner to authorise the Bush Fire Liaison Officer or another person to take control of fire operations, to be undertaken as their duties in the course of normal business, in accordance with [s.48(4)]	The power is provided under s13(4) to a local government – s48 only allows delegation of this power to CEO. It is not possible to authorise through a Business Operating Procedure as this would involve a sub delegation which is prohibited by s.48(3).
	Remove the Council condition that states that any request on behalf of the Shire that the FES Commissioner authorise the Bush Fire Liaison Officer or another person to take control of fire operations, should be in accordance with the relevant BOP	There is no relevant BOP.

**3.1.2 Prohibited Burning Times – Vary**

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation relates to declaration of times where burning is not permitted or restricted.	It is proposed to merge the delegations associated with the declaration of times where burning is prohibited and restricted.	The functions related to varying restricted burning times within delegation 3.1.4 have been incorporated into this delegation because the Shire's powers and duties under sections 17(7) and (8) (relating to prohibiting burning times) and under section 18 (5) (relating to restricted burning times) operate the same (as per section 17(10) and section 18(5C) respectively).
	Amend the express power to delegate from s48 of the <i>Bush Fires Act 1954</i> to s17 and s18	The power to delegate the duties under section is s17 (7) and (8) is provided for under



**Review of Delegations 2019-20**

	respectively.	<p>s17 (10) which relevantly states "A local government may by resolution delegate to its mayor, or president, and its Chief Bush Fire Control Officer, jointly its powers and duties under subsections (7) and (8). As the Shire chooses to delegate the function to its President and Chief Bush Fire Control Officer, this is the correct section that enables the delegation to be made.</p> <p>Section 18 (5C) relevantly states:</p> <p>"The provisions of section 17(8), (9), (10) and (11), with the necessary adaptations and modifications, apply to and in relation to the variation of restricted burning times or prescribed conditions by a local government, as if those provisions were expressly incorporated in this section"</p> <p>Under delegation 3.1.4 the function under s18(5) was previously delegated to the CEO citing s48. This amendment then has the effect of delegating the function under s18(5) to the Shire President and Chief Bush Fire Control Officer (jointly).</p>
	Amend the Council conditions on delegations to include reference to restricted burning periods.	The additional Council condition is required as part of the migration of the delegation of restricted burning periods.

**3.1.3 Prohibited Burning Times – Control Activities**

<b>What is being delegated?</b>	<b>What is proposed to change?</b>	<b>Rationale for the change</b>
This delegation relates to the power to prohibit certain activities or require certain things to be done during prohibited burning times	It is proposed to merge the delegations associated with the declaration of times where burning is prohibited and restricted	The inclusion of the 'control delegations' associated with prohibited and restricted burning is more appropriate in a single delegation.



## Review of Delegations 2019-20

### 3.1.4 Restricted Burning Times – Vary and Control Activities

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation refers to the power to restrict burning times and prohibit and require certain things to be done.	It is proposed to delete this delegation and incorporate the delegated powers in other delegations.	Simplify the delegations register for greater clarity.

### 3.1.7 Firebreaks

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation provides the power to require firebreaks and enter property and undertake works to install firebreaks at the owner's expense.	<p>It is proposed to include a Council condition when seeking to recover costs that a Certificate is provided under s33 (5) to recover costs and expenses is to be signed by the Shire President so that it is prima facie evidence of the amount.</p> <p>It is further proposed to remove the notion of 'varying' a firebreak notice.</p>	<p>Ensuring this occurs protects the Shire by placing the onus on the defendant to prove that the amount is not correct (should the costs be recovered in court) as s33(5) of the <i>Bush Fires Act 1954</i> states:</p> <p>"(5) The amount of any costs and expenses incurred by the bush fire control officer or other officer in doing the acts, matters, or things provided for in subsection (4) —</p> <p>(a) shall be ascertained and fixed by the local government and a certificate signed by the mayor or president of the local government shall be prima facie evidence of the amount; and</p> <p>(b) may be recovered by the local government in any court of competent jurisdiction as a debt due from the owner or occupier of land to the local government."</p> <p>In relation to varying a firebreak notice, this is proposed to be removed because there is no power in s33 that provides specifically for this.</p> <p>As the process used when a notice needs to be varied is for a new notice to be issued. This new notice can apply to</p>



## Review of Delegations 2019-20

		the whole Shire or a specific owner or occupier of land. Therefore, 'varying' a firebreak notice can be achieved already by the delegation itself.
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### 3.1.12 Prosecution of Offences and Infringement Notices

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation provides authority to prosecute offences under the <i>Bush Fires Act 1954</i>	<p>It is proposed to add the following positions to the delegation:</p> <ul style="list-style-type: none"><li>• Coordinator Emergency Services</li><li>• Coordinator Community Safety</li><li>• Rangers.</li></ul> <p>It further proposed to remove Bush Fire Control Officer and the Council condition limiting the ability of Bush Fire Control Officers to only issue infringement notices.</p>	<p>Bush Fire Control Officers are volunteer positions and it is not appropriate for volunteers to commence prosecutions on behalf of the Shire.</p> <p>The Council condition to limit the ability of Bush Fire Control Officer to only issue infringement notices is not appropriate, as it would in effect negate the delegation.</p> <p>Section 59A(1) and (2) of the Bush Fires Act states that, in the case of a Bush Fire Control Officer, the power to serve an infringement notice can be exercised only by a person who has been delegated power (under section 59(3)) 'to institute and carry on proceedings against a person for an offence alleged to be committed against this Act.'</p> <p>It follows, that in relation to the delegations that you have referred to, a condition cannot be imposed that would, in effect, have the result that the Bush Fire Control Officer could not exercise, in any circumstances, the very function that had been delegated – i.e. the function 'to institute and carry on proceedings against the person for an offence alleged to be committed against this Act.'</p> <p>The inclusion of the three additional positions provides greater efficiency and reflects</p>



## Review of Delegations 2019-20

		operational needs.
	That the express power to delegate be amended from section 48 to section 59.	The Council has no power to delegate to any person the function of issuing an infringement notice – because that function is given directly by section 59A(2) of the Act to any person who has been delegated (under s59(3) the function ‘to institute and carry on proceedings against a person for an offence alleged to be committed against this Act).’

### 3.1.13 Withdrawal of infringement notices

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation provides authority to withdraw infringement notices issued under the <i>Bush Fires Act 1954</i>	It is proposed to remove the delegation.	Under Regulation 4 of the <i>Bush Fires (Infringement) Regulations 1978</i> a withdraw notice must be signed by the CEO or Shire President.

### 3.1.14 Notify the FES Commissioner of losses caused by bush fires

What is being delegated?	What is proposed to change?	Rationale for the change
Regulation 43 of the <i>Bush Fires Act 1954</i> requires the local government to send to the FES Commissioner in the month of June in each year particulars of losses caused by bush fires in the district during the preceding 12 months.	It is proposed to introduce a new delegation that would give the authority to the CEO.	The function is an administrative task that does not involve discretion.

## Council Delegations - *Dog Act 1976*

### 5.1.1 Dog registrations

What is being delegated?	What is proposed to change?	Rationale for the change
Section 16 provides for the provisions related to the registration of dogs.	It is proposed to clarify and split the functions related to registration of dogs from delegations under 5.1.1 and the tasks of an authorised person under CEO 2.5.	<p>The <i>Dog Act 1976</i> provides a combination of functions related to the registration of dogs that are performed under delegation and authorisation.</p> <p>The proposed changes more appropriately assign the act of registering a dog as the action of a registration officer as a specific type of authorised</p>





## Review of Delegations 2019-20

		officer, while keeping the discretionary task of refusing a dog registration as a function of delegation.
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### 5.1.2 Refuse or Cancel Registration

What is being delegated?	What is proposed to change?	Rationale for the change
This clause relates to the procedure for refusing or canceling a registration in certain circumstances.	It is proposed to add a specific reference within the express power or duty delegated stating that in accordance with s10AA(3) of the Dog Act 1976 the CEO may further delegate the power.	The addition of this note in the express power or duty delegated affirms that the power can be sub-delegated by the CEO.

### 5.1.3 Appoint Authorised Persons

What is being delegated?	What is proposed to change?	Rationale for the change
Section 29 provides the power to appoint authorised persons to perform specific tasks.	It is proposed to restrict the delegation to appoint authorised persons to the CEO.	The delegated power of appointing authorised persons is most appropriately a function of the CEO.
Section 3 provides that the local government can authorise persons to be registration officers. This power can be delegated to the CEO.	It is proposed to introduce the power for the CEO to appoint people as registration officers.	The appointment of registration officers is a cleaner method of giving effect to the act of registering a dog and would mean that the act of registering a dog would not be the exercise of a delegation and instead reflect the procedural nature of the action.

### 5.1.7 Dangerous Dog Declared or Seized – Deal with Objections and Determine when to Revoke

What is being delegated?	What is proposed to change?	Rationale for the change
Section 33 provides for various powers and duties associated with how objections to a dangerous dog declaration are to be dealt with.	It is proposed to add an additional delegation related to requiring the owner of the dog to attend a course in behaviour and training.	The addition of this delegation is consistent with the other powers delegated and the functions specified in the delegation instrument. The non-inclusion appears to be an inadvertent omission.



## Review of Delegations 2019-20

### Council Delegations – *Food Act 2008*

#### 6.1.2 Food Business Registrations

What is being delegated?	What is proposed to change?	Rationale for the change
Section 110 of the <i>Food Act 2008</i> deals with the registration of food businesses.	It is proposed to expressly delegate all of the powers and duties in section 110 to register food businesses and provide notice of the decision in accordance with legislation and not just the powers.	This change would provide clarity concerning the administrative powers and duties to register and provide notice.

#### 6.1.3 Appoint Authorised Officers and Designated Officers

What is being delegated?	What is proposed to change?	Rationale for the change
Section 122 of the <i>Food Act 2008</i> deals with the appointment of authorised officers.	It is proposed to expressly delegate all of the powers and duties related to the appointment of authorised persons under section 122 and not just the powers.	This change would provide clarity concerning the administrative powers and duties to register and provide notice.
Section 126 (13) of the Food Act 2008 deals with the appointment of designated officers who are authorised officers who may perform specific functions related to the withdrawing infringement notices or extending time for payment.	It is proposed to remove subsection 6 and 7 from section 126.	These functions are not delegated powers and can be performed by the designated officers without delegation.

### Council Delegations – *Liquor Control Act 1988*

#### 8.1.1 Certificate of Local Government

What is being delegated?	What is proposed to change?	Rationale for the change
The <i>Liquor Control Act 1988</i> requires that applicants for a liquor license include a certificate from the local government stating that the application complies with planning and health laws.	It is proposed to remove this delegation and for the requests to be processed administratively by Shire Officers.	<p>There are no powers under Liquor Control Act for local government to delegate. Further, sections 39 and 40 do not provide an explicit power to the local government that is could delegate if such an instrument existed.</p> <p>The certification issued is not a discretionary matter or decision point, it is provision of evidence to the licensing authority who makes the decision. It would inefficient for Council to consider these</p>



## Review of Delegations 2019-20

		<p>matters and result in delay for applicants.</p> <p>Advice from the Department of Local Government, Sport and Cultural Industries confirms that from their perspective there is no requirement for Council to approve the issuing of the certificate.</p> <p>This is an administrative task consistent with the functions of the CEO under 5.41(d).</p>
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### Council Delegations – *Public Health Act 2016*

#### 9.1.2 Commence Proceedings

What is being delegated?	What is proposed to change?	Rationale for the change
Section 280 of the <i>Public Health Act 2016</i> provides authority for the Chief Executive Officer or officers authorised by the local government to commence proceedings	This delegation is not required.	Section 280 already provides the power for the CEO without delegation and authorised officers can be appointed separately by Council through authorisation. This has already occurred with the appointment of four positions as authorised officers.

### Council Delegations – *Planning and Development Act 2005*

#### 10.1.2 Management of Reserves

What is being delegated?	What is proposed to change?	Rationale for the change
Section 152 of the <i>Planning and Development Act 2005</i> provides powers for the Crown in respect to the vesting of land following a subdivision.	It is proposed that this delegation is deleted	<p>A delegation related to section 152 was intended to provide a power to accept responsibility for the management of reserves. Section 152 does not have a power to do so. Section 152 cannot be delegated by the provisions in the <i>Local Government Act 1995</i>.</p> <p>Under section 14 of the <i>Land Administration Act 1997</i>, before transferring land to a local government, the Minister must consult with the local government. This legislation does not provide a power or duty for the local government</p>



## Review of Delegations 2019-20

		to consider, accept, reject or place conditions. In the absence of power to be delegated the consultant with the local government is by in large an administrative task consistent with the functions of the CEO under 5.41(d).
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### Council Delegations – *Town Planning Scheme No. 2*

#### 11.1.1 Determination of Development Applications

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation provides powers to assess and approve various matters under the Town Planning Scheme.	Revisions are proposed to explicitly state the parts and clauses delegated in the Town Planning Scheme.	With revisions to the Town Planning Scheme, the numbering of clauses have also changed. Some clauses in the Town Planning Scheme have been removed, replaced or added. The revisions proposed reflect the new numbering.

#### 11.1.2 Administer Development Contribution Plans

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation empowers the Chief Executive Officer to adopt a development contribution plan report and cost apportionment schedule under the Shire's Town Planning scheme	This is a new delegation	<p>This new delegation is proposed to enable effective administration of development contribution schemes under the Shire's Town Planning Scheme. The current lack of a formal delegation related to development contribution plans results in a lack of clarity regarding which functions Council should perform and which are administrative.</p> <p>The new delegation resolves this clarity by formally establishing that Council has the discretionary power to adopt a Development Contribution Plan and set the cost contribution to be paid. The delegation further provides power to Officers to administer that Development Contribution Plan through the accepting of payments,</p>



**Review of Delegations 2019-20**

		appointing an independent person to review cost estimates and the valuation of land, certifying that the obligations under the Plan have been met, and lodging a caveat on land is the development contributions are not made.
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**Council Delegations – Planning and Development (Local Planning Schemes) Regulations 2015****12.1.3 Structure Plans**

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation relates to powers to make, amend and administer Structure Plans under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> .	<p>It is proposed to name additional powers related to Structure Plans and Activity Centre Plans that are minor in nature and meet the following criteria:</p> <ul style="list-style-type: none"><li>a. Does not materially alter the purpose and intent of the structure plan;</li><li>b. Does not change the intended lot / dwelling yield by more than 10 per cent;</li><li>c. Does not adversely impact upon the amenity of adjoining landowners and occupiers;</li><li>d. Does not restrict the use and development of adjoining land;</li><li>e. Does not significantly impact on infrastructure provision;</li><li>f. Does not impact upon the environment;</li><li>g. Is consistent with Council adopted policies; and</li><li>h. Is deemed to be consistent with orderly and proper planning</li></ul>	The introduction of additional powers under the delegation is consistent with the approach of other local governments, including the City of Cockburn

**12.1.4 Subdivision clearance**

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation relates to the certification to the Western Australian Planning Commission	It is proposed to remove this delegation	There is no head of power in the Planning and Development Act 2005 to enable delegation.



## Review of Delegations 2019-20

that all Local Government conditions of subdivision approval have been met and to approve engineering drawings and plans.		The certification is not a discretionary task and can be performed as a matter of ordinary business of the administration.
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### 12.1.5 Proceedings before the State Administrative Tribunal

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation relates to the power of the State Administrative Tribunal to invite the 'decision-maker' to review their decision.	It is proposed to remove this delegation.	No delegation is required. Section 31 of the <i>State Administrative Tribunal Act 2004</i> provides a power for the State Administrative Tribunal to ask the decision-maker to review their decision. If the original decision is made by Council, they are the decision-maker. Alternatively, if the decision is made by an Officer, the decision can be reviewed under the original delegated authority. Either way a delegation is not required.

### 12.1.6 Recommendations on applications for public works

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation seeks to provide authority to provide recommendations to the Western Australian Planning Commission on applications for development approval that are to be determined under the Metropolitan Region Scheme.	It is proposed to remove this delegation.	There is no relevant section in the <i>Planning and Development Act 2005</i> or <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> that can be delegated.

## Council Delegations – Local Government (Miscellaneous Provisions) Act 1960

### 14.1.2 Impounding trespassing cattle

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation relates to the appoint of persons to impound stray cattle.	It is proposed to delete this delegation.	This can be achieved through the appointment of authorised persons.

## Council Delegations with minor revisions

The review has identified that the following delegations should be revised to update the ancillary information such as compliance links, records keeping information, staff member position titles or



## Review of Delegations 2019-20

typographical errors. The substantive content of each delegation is consistent with the Department's guidelines, other local governments and is regarded as fit for purpose.

### *Local Government Act 1995*

- 1.1.5 Close thoroughfares to vehicles
- 1.1.6 Reserves under control of local government
- 1.1.7 Appointment of Acting CEO
- 1.1.8 Obstruction of footpaths and thoroughfares
- 1.1.9 Gates across Public Thoroughfares
- 1.1.10 Public Thoroughfare – Dangerous Excavations
- 1.1.12 Private works on, over or under public places
- 1.1.13 Give Notice to Prevent Damage to Local Government Property and other Land from Wind Erosion and Sand Drift
- 1.1.15 Tenders for Goods and Services
- 1.1.21 Agreement as to Payment of Rates and Service Charges
- 1.1.22 Determine Due Date for Rates of Services Charges
- 1.1.23 Recovery of Rates or Service Charges
- 1.1.25 Recovery of Rates Debts – Actions to Take Possession of the Land
- 1.1.26 Rates Record – Objections

### *Building Act 2011*

- 2.1.3 Occupancy Permits or Building Approval Certificates
- 2.1.4 Designate Employees as Authorised Persons
- 2.1.5 Building Orders
- 2.1.6 Inspection and Copies of Building Records
- 2.1.7 Referrals and Issuing Certificates
- 2.1.9 Smoke Alarms – Alternative Solutions

### *Bush Fires Act 1954*

- 3.1.5 Control of Operations likely to Create Bush Fire Danger
- 3.1.6 Burning Garden Refuse / Open Air Fires
- 3.1.8 Appoint Bush Fire Control Officers
- 3.1.9 Control and Extinguishment of Bush Fires
- 3.1.10 Apply for Declaration as an Approved Area
- 3.1.11 Recovery of Expenses Incurred through Contraventions of this Act

### *Cat Act 2011*

- 4.1.1 Cat Registrations
- 4.1.2 Cat Control Notices
- 4.1.3 Approval to Breed Cats
- 4.1.4 Appoint Authorised Persons
- 4.1.5 Applications to Keep Additional Cats

### *Dog Act 1976*

- 5.1.4 Recovery of Moneys due under this Act
- 5.1.5 Dispose of or Sell Dogs Liable to be Destroyed
- 5.1.6 Declare Dangerous Dogs



## **Review of Delegations 2019-20**

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### *Food Act 2008*

#### 6.1.1 Prohibition Orders

### *Graffiti Vandalism Act 2016*

#### 7.1.1 Give Notice Requiring Obliteration of Graffiti

#### 7.1.2 Notice – Deal with Objections and Give Effect to Notices

#### 7.1.3 Obliterate Graffiti on Private Property

#### 7.1.4 Powers of entry

### *Public Health Act 2016*

#### 9.1.1 Designation of Authorised Officers

### *Planning and Development Act 2005*

#### 10.1.1 Directions regarding unauthorised/illegal development

### *Planning and Development (Local Planning Schemes) Regulations 2015*

#### 12.1.1 Determination of development applications

#### 12.1.2 Local Development Plans

### *Local Government (Miscellaneous Provisions) Act 1960*

#### 14.1.1 Street Alignments



## Review of Delegations 2019-20

### CEO Delegations to Employees – *Local Government Act 1995*

#### 1.2.4 Election of Shire President and Deputy Shire President

What is being delegated?	What is proposed to change?	Rationale for the change
This delegation relates to the tasks associated with the election of the Shire President and Deputy Shire President	It is proposed to delete delegation	The tasks associated with the delegation can be achieved through an 'acting through' and this delegation is not required.

### CEO Delegations to Employees – *Planning and Development Act 2005*

#### 10.2.1 Issuing Infringement Notices

What is being delegated?	What is proposed to change?	Rationale for the change
Section 234 of the <i>Planning and Development Act 2005</i> empowers the Chief Executive Officer to appoint persons to issue infringement notices.	It is proposed to remove this delegation and instead appoint the persons as authorised officers	The designated officers are not exercising a delegated power when performing their role. It is more appropriate to reflect their appointment as an authorisation.

#### 10.2.2 Extension of time to pay and withdrawal of infringements

What is being delegated?	What is proposed to change?	Rationale for the change
Section 234 of the <i>Planning and Development Act 2005</i> empowers the Chief Executive Officer to appoint persons to vary infringement notices.	It is proposed to remove this delegation and instead appoint the persons as authorised officers	The designated officers are not exercising a delegated power when performing their role. It is more appropriate to reflect their appointment as an authorisation.

### CEO Delegations to Employees with minor revisions

The review has identified that the following delegations should be revised to update compliance links and staff member position titles or typographical errors. The substantive content of each delegation is consistent with the Department's guidelines, other local governments and is regarded as fit for purpose.

#### *Local Government Act 1995*

##### 1.2.1 Electoral Enrolment Eligibility Claims and Electoral Roll

##### 1.2.2 Infringement notices.

##### 1.2.3 Provide written acknowledgement of the receipt of Primary and Annual Returns

#### *Cat Act 2011*

##### 4.2.1 Infringement notices – extensions and withdrawals



Continued

6.2.2 - attachment 1

## **Review of Delegations 2019-20**

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## Review of Delegations 2019-20

### Appointment of Authorised Persons - Council

#### 1.1 – *Caravan Parks and Camping Grounds Act 1995*

No changes

#### 1.2 – *Control of Vehicles (Off-Road Areas) Act 1978*

Position titles amended to reflect organisational structure.

#### 1.3 - *Library Board of Western Australia Act 1951*

It is proposed to remove this authorisation because the functions can be conducted without an explicit act of authorisation.

#### 1.4 - *Health (Miscellaneous Provisions) Act 1911*

No changes

#### 1.5 - *Health (Miscellaneous Provisions) Act 1911 - Powers of Local Government, Public Buildings, Events and Gatherings*

No changes

#### 1.6 – *Gaming and Wagering Commission Act 1987*

No changes

#### 1.7 – *Litter Act 1979*

It is proposed to delete reference to the appointment of honorary inspectors as none have been appointed and instead replace with the appointment of Authorised Officers that may withdraw an infringement notice. This authorisation replaces the previously CEO-issued authorisation.

#### 1.8 - *Animal Welfare Act 2002 – General inspectors*

It is proposed to delete this authorisation because the authorisation is issued by the Chief Executive Officer of the Department of Primary Industries and Regional Development. Neither Council nor the Chief Executive Officer of the Shire issues the authorisation. Any officers approved with this power would not be impacted by the deletion of this authorisation.

#### 1.9 - *Animal Welfare Act 2002 – Authorised persons*

It is proposed to delete this authorisation because the power in s64(1) of the *Animal Welfare Act 2002* empowers the CEO of the local government rather than the Council to appoint authorised persons. This authorisation has not been used.

#### 1.10 – *Planning and Development Act 2005 – Commencing a prosecution for contravening a provision of the planning scheme (s218) and commencing a prosecution for failure to comply with directions (s214)*

This new authorisation is proposed to give the Chief Executive Officer explicit power to commence a prosecution for a breach of the Local Planning Scheme under section 218 of the *Planning and Development Act 2005* and/or commence a prosecution for a failure to complete with directions under section 214 of the same legislation.

The *Planning and Development Act 2005* is silent on who may bring a prosecution under sections 214 and 218, but states that a person who contravenes these sections commits an offence. Section 20(1)(a) of the *Criminal Procedure Act 2004* provides that an authorised person in relation to an offence is a person under another written law authorised to commence a prosecution.



## Review of Delegations 2019-20

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Section 1.2 of the Serpentine-Jarrahdale Town Planning Scheme No. 2 states that the Shire of Serpentine-Jarrahdale is the responsible authority for implementing the Scheme

Section 20(1)(b)(ii) of the *Criminal Procedure Act 2004* provides that an authorised person in relation to an offence is a person who is authorised to commence a persecution, in writing, by a public authority.

Local governments adopt different approaches to dealing with this matter. Some apply the *Local Government Act 1995*'s power of delegation which is counter to the Department's advice. The proposed approach is consistent with the approach used by the City of Vincent.

### **1.11 – Local Government Act 1995 - Execution of documents**

This authorisation is proposed to replace delegation 1.1.27. The relevant clauses within the *Local Government Act 1995* specifically state that the approval to execute documents on behalf of the Shire is via 'authorisation'.

### **1.12 – Local Government Act 1995 - Power to remove and impound**

This power under section 3.39 of Act to appoint a person to have the power to remove or impound goods was previously exercised as delegation 1.1.3. Other local governments exercise this arrangement through an authorisation. For consistency, the head of power in the Act provides that Council may 'authorise' a person to conduct the function. The related powers are proposed to continue to be delivered through a delegation as the relevant causes are framed as a 'local government may'.



## Review of Delegations 2019-20

### Appointment of Authorised Persons – Chief Executive Officer

#### CEO 2.1 – *Local Government Act 1995* – Appoint Authorised Persons

Regulation 70 of the *Building Regulations 2012* provides a mechanism to authorise officers under section 9.10(1) of the *Local Government Act 1995* to issue infringement notices under the building regulations. The addition of the appointments under this instrument would give effect to the appointment of the officers.

The instrument of authorisation also deals with the appointment of authorised persons for several Shire local laws that when drafted used varying terminology. These authorisations have been amended, removed or replaced to reflect the terminology used in each local law.

This revised instrument of appointment also enables the removal of the delegation related to the impoundment of cattle and CEO authorisation 2.2. Instead, the power to impound cattle and perform related duties can be achieved through the appointment of authorised persons. As the appointment is of authorised persons as not 'rangers' per se, the appointment does not trigger the antiquated requirements of s450 of the *Local Government (Miscellaneous Provisions) Act 1960*.

#### CEO 2.2 – *Local Government (Miscellaneous Provisions) Act 1960* – Appoint Pound keepers and Rangers

This authorisation has been merged with CEO 2.1 can be deleted.

#### CEO 2.3 – *Building Act 2011* – Designate Employees as Authorised Persons

Nil

#### CEO 2.4 – *Bush Fires Act 1954* – Appoint Bush Fire Control Officers

The appointment of Bush Fire Control Officers is complicated by the nuances of the authorising legislation which contains provisions that must be read in conjunction with other sections, caveats and conditions. The review has identified opportunities to ensure greater clarity. First, the new instrument is proposed to refer to Shire job titles to easily determine which positions are authorised to conduct the functions. Second, when appointing a Bush Fire Control Officer they will be assigned a category. The assigned category will provide clarity regarding their permitted functions. This will ensure that certain functions, such as the issuing of infringement notices, can only be performed by designated positions and not all Bush Fire Control Officers.

#### CEO 2.5 – *Dog Act 1976* – Appoint Authorised Persons and Registration Officers

The appointment of Registration Officers to perform most of the functions contained in the *Dog Act 1976* would mean that the administrative and procedural tasks of registering dogs would be conducted through an authorised officer function rather than a delegation.

#### CEO 2.6 – *Food Act 2008* – Appoint Authorised Officers and Designated Officers

Revisions have been made to the officers who may issue and vary infringement notices in accordance with section 126(13) of the *Food Act 2008*.

#### CEO 2.7 – *Planning and Development (Local Planning Schemes) Regulations 2015* – Entry and Inspection Powers

Nil

#### CEO 2.8 – *Freedom of Information Act 1992* – Principal Decision Maker

Section 100(1)(b) of the *Freedom of Information Act 1992* provides that an officer can be directed either generally or in a particular case to be the decision maker for the purposes of the Act. To leave



## Review of Delegations 2019-20

no doubt on responsibilities under the Act, the Shire has taken the approach of codifying this arrangement as an authorisation. It is proposed to combine the three authorisations into a single authorisation.

### **CEO 2.9 – *Freedom of Information Act 1992* – Internal Review Officer**

The authorisation has been merged with CEO 2.8 and can be deleted.

### **CEO 2.10 – *Freedom of Information Act 1992* – Appointment of Principal Decision Maker and Freedom of Information Coordinator**

This authorisation is superfluous as it covers matters dealt within job descriptions and can be deleted.

### **CEO 2.11 – *Public Health Act 2016* – Designation of Authorised Officers**

No changes are required following amendments to the Authorisation in March 2020.

### **CEO 2.12 - *Public Interest Disclosure Act 2003* – Public Interest Disclosure Officer**

An additional requirement has been included that the Officers must complete annual training. The special requirement to comply with relevant Council Policies is proposed to be deleted as this may impact the capacity of the Officer to meet their primary legislative responsibilities.

### **CEO 2.13 - *Fines, Penalties & Infringement Notices Enforcement Act 1994* - Designation of Authorised Officers**

Amendments to reflect the specific sections under the legislation where officers have been authorised to perform the functions associated with administering infringement notices.

### **CEO 2.14 - *Litter Act 1979* – Appointment of Authorised Officers to withdraw infringement notices**

It is proposed that Council appointment 1.7 replaces this authorisation with this authorisation deleted.

### **CEO 2.15 - *Environmental Protection Act 1986* – Referral of Proposals to Environmental Protection Authority**

Section 38 of the *Environmental Protection Act 1986* does not provide or require an authorisation to be used and can be removed.

### **CEO 2.16 - *Environmental Protection Act 1986* – Authorised Persons**

This power is provided by the CEO of the Department who administers the *Environmental Protection Act 1986* and is not required to be listed in the Shire's delegation register.

### **CEO 2.17 - *Environmental Protection Act 1986* – Initiating prosecutions**

This authorisation is provided by the CEO of the Department who administers the *Environmental Protection Act 1986* to the CEO of the local government and is not required to be listed in the Shire's delegation register.

### **CEO 2.18 - *Fines, Penalties and Infringement Notices Enforcement Act 1994* – Appointment of Prosecution Officers and Approved Users**

This is a duplication of CEO 2.13 and can be removed.

### **CEO 2.19 – *Planning and Development Act 2005* – Issue and vary infringement notices**

This authorisation is required to enable the deletion of delegation 10.2.1.