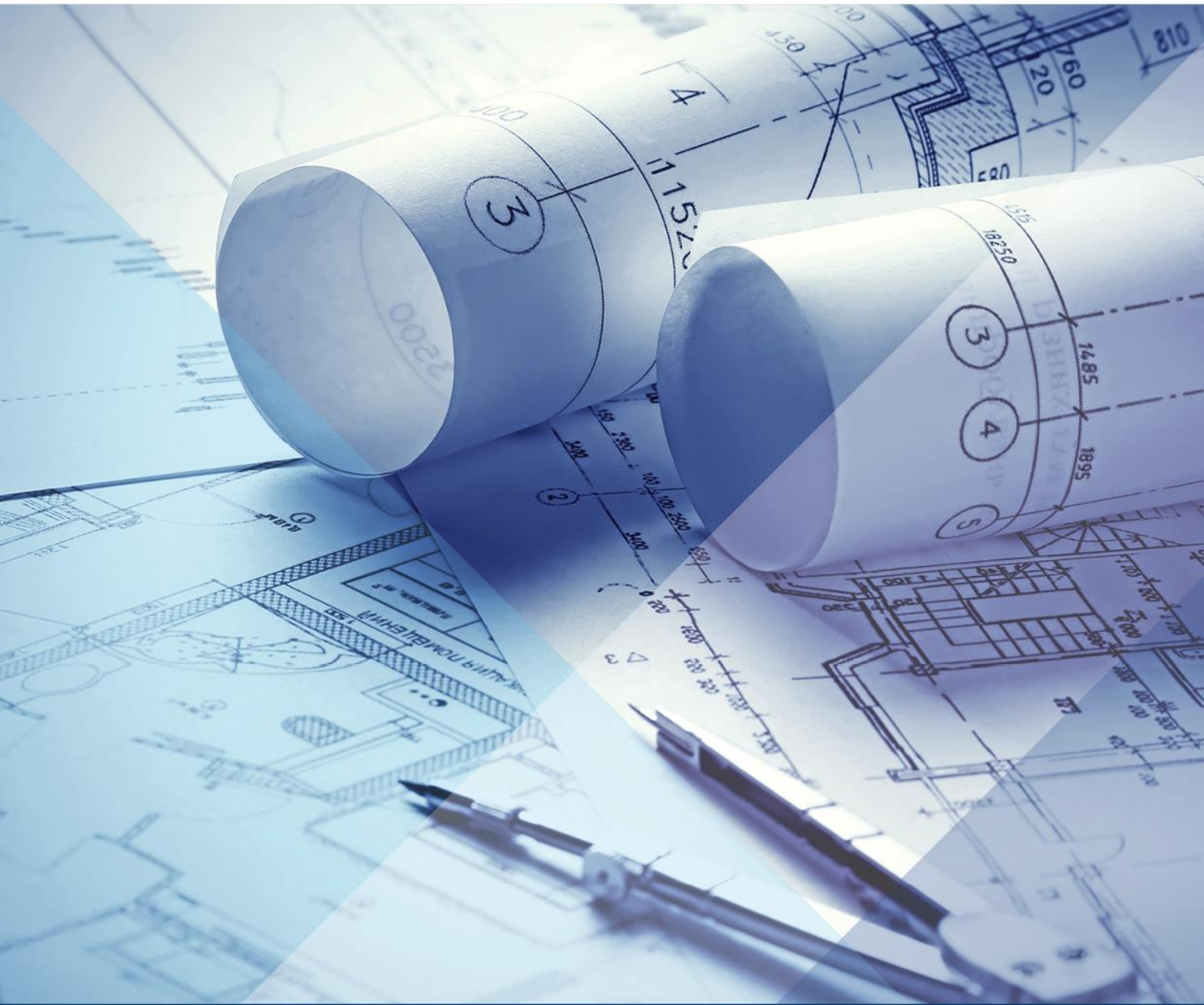




# Guide for **Planning Delegations** Development Applications



Part 1  
Guide

# Part 1

## Guide for Planning Delegations

### Acknowledgements:

This guideline has been development by the WA Local Government Association (WALGA) with the assistance of the planning consultancy, Planning Context.

---

### Suggested Citation:

WA Local Government Association. 2015. *Guide for Local Government Planning Delegation*, Perth: Western Australia.

### Disclaimer:

This guideline does not replace legal advice, and Local Governments developing any delegation arrangements, planning mechanisms, or policies as suggested in this guideline are encouraged to seek legal advice specific to their local circumstances.

Part 2: *Background and Supporting Information* can be accessed here <http://goo.gl/oxV4jr>

# Table of Contents

<b>Introduction</b>	<b>4</b>
<b>Purpose of delegations</b>	<b>4</b>
<b>Importance of strategic policy frameworks</b>	<b>5</b>
<b>Legal framework</b>	<b>6</b>
<b>Model process for delegated authority</b>	<b>6</b>
Step One: Audit	7
Step Two: Council delegation policy	10
Step Three: Statement of delegation	11
Step Four: Using the delegation	17
Step Five: Record, notify and monitor	21
Step Six: Review and firm up the framework	21
<b>Attachment 1 – A model delegation policy example</b>	<b>22</b>
<b>Figure 1 - A process model for delegated authority</b>	<b>7</b>
<b>Figure 2 - Using the suggested model policy In the planning approvals process</b>	<b>18</b>
<b>Figure 3 – Decision making matrix</b>	<b>20</b>

## Introduction



*The use of delegated authority for staff to determine certain classes of planning approvals is seen to be a critical component of an efficient and effective regulatory approvals system*

Regulatory approvals systems are at the forefront of Local Government operations. Elected Members, applicants and broader community experiences with regulatory approvals processes, in particular planning and building approvals, can often be the defining factor in the perceived performance of a Local Government.

The use of delegated authority for staff to determine certain classes of planning approvals (while Council considers more strategically important applications) is seen to be a critical component of an efficient and effective regulatory approvals system. Getting the right balance between local representation in decision making and the use of professional advice in this process is often a matter of some debate. In working towards achieving this balance, consideration must include the existing and desired future local planning context.

This guide has been developed in response to widespread support from the planning sector for a delegation model or tool kit to help ensure the effective use of Local Government resources, including officer and Elected Member time.

This guide is Part One of a two-part series and includes a suggested model delegation policy together with a process for developing a delegation system for determining development applications within the Local Government planning framework.

For further details and background supporting this guide, refer to Part Two of this series. Part Two explains what delegation involves and how the power to delegate determination of development applications comes about. It also discusses best practice planning principles and the leading practices for development assessment and approvals, drawing on work by the Australian Local Government and Planning Ministers' Council in 2009 and the Development Approval Forum.

There is not a "one size fits all" approach. These guides should be used to assist individual Local Governments to develop delegation systems and processes suitable to their own specific needs, based on best practice principles contained within this report.

Part Two also identifies the most common features of current development approval delegation practice within Western Australia (WA). Existing delegation arrangements of a majority of the Local Governments within WA were collected by WALGA for this study. The diverse nature of communities within WA has led to Local Governments adopting different approaches to the use of delegations, making comparisons and finding a common approach to delegation arrangements difficult.

## Purpose of delegations

Delegation is generally defined as the assignment of responsibility or authority to another party in order that they can carry out specific duties and activities. Delegation empowers a subordinate to make decisions, that is, it is a shift of decision-making authority from one organisational level to a lower one.

### **Delegation of Local Government development application approval functions has a multi-purpose in:**

1. Enabling Council to focus on strategic planning matters and development of planning policies by reducing the number of non-complex development applications required to be considered and determined at its meetings.
2. Enabling the development approval process to operate in a more consistent and efficient manner by reducing the number of reports that need to be prepared and presented to Council.
3. Enabling the development approval process to operate in a timely manner by reducing the actual time taken to determine applications as they do not need to await presentation at a Council meeting.
4. Retaining Council's ability to consider more complex or community sensitive development applications where appropriate.
5. Recognising the professionalism of Local Government planning staff by providing them with more responsibility for making decisions.

## **Importance of strategic policy frameworks**

The importance of the strategic planning process to inform the development and interpretation of regulatory planning policies cannot be overstated. In the absence of adequate levels of strategic planning, regulatory policies would be developed without an understanding of the bigger picture and the desired strategic direction of the organisation. In these circumstances, regulatory policy development would be *ad hoc* and reactionary, rather than proactive and targeted at relevant issues.

Planning policies provide guidance on planning, land use and development matters and are a fundamental aspect of town planning. They are more flexible than statutory provisions, yet they play an important role in assisting how a development is to be assessed especially where discretion is to be exercised. Without the development of a strong strategic and policy direction, it is difficult to undertake development control with certainty and consistency.

The key to a good system of development delegations is that it is based on a clear set of Local Government planning policies operating within a strategic land use planning framework. Whilst policies may be sound in themselves, they should also reflect the direction given through the local planning strategy to provide for a more fully integrated approach.

Once a robust framework for decision making is in place, it becomes easier for Elected Members to pass on the responsibilities of decision making to others as they can be more certain of the way applications will be determined. It must be stressed, however, that the existence of planning policies does not remove the need to consider development applications on their merits.

## Legal framework

The general position at law is that an authority entrusted with a function or power is generally required to perform that function or power itself. It is not permitted to delegate its performance to another. This is known as ‘the rule against delegation’ (or *delegatus non potest delegare*).

This is especially so in relation to decisions requiring the exercise of discretion, which is the hallmark of the assessment of applications for development approval. It is only where there is an express power to delegate found in legislation, that the common law rule gives way.

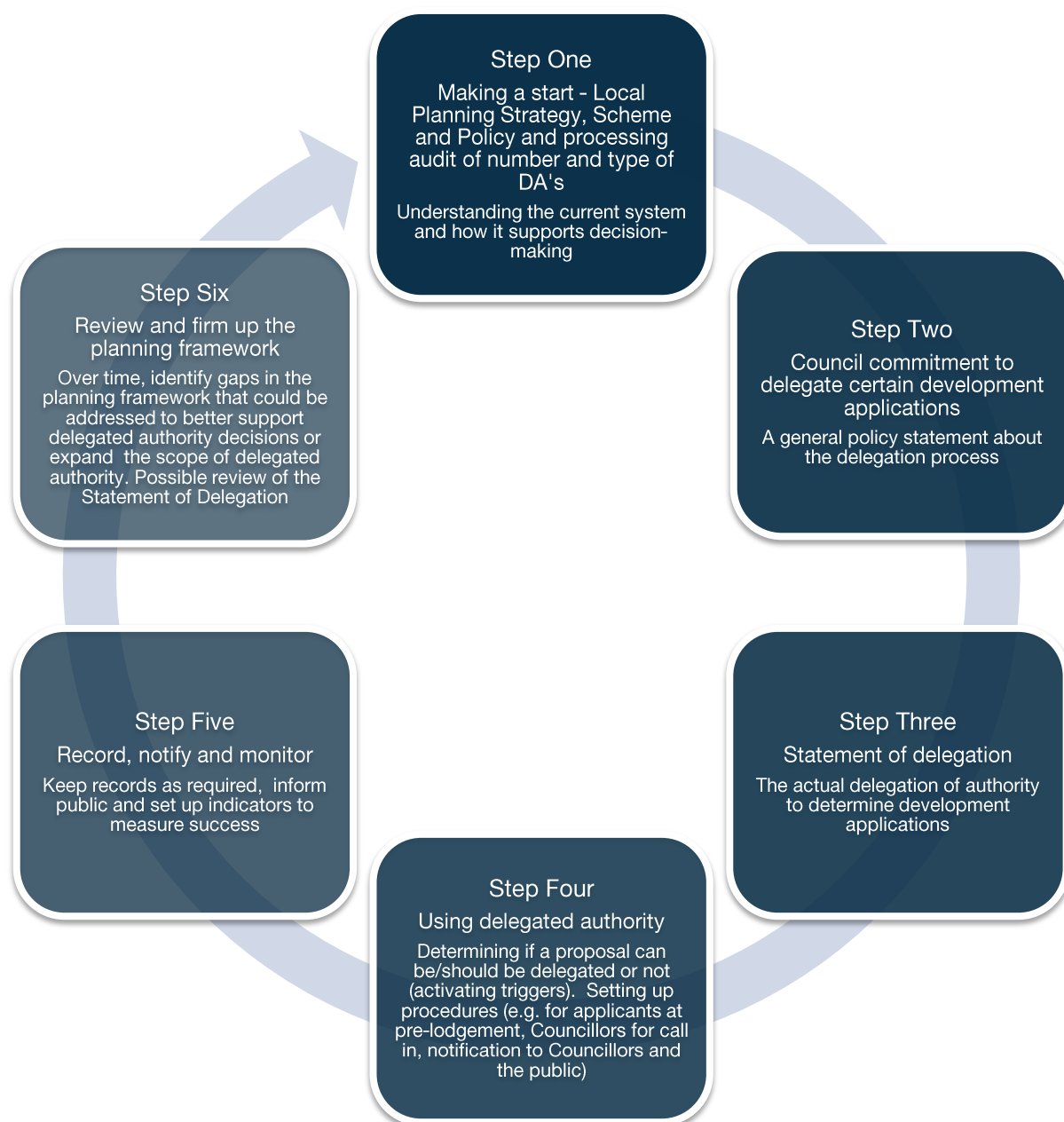
Therefore, in relation to Local Government, Councils who wish to delegate their development control functions must consider the following questions:

1. Pursuant to what legal instrument does the Council have power to control development?
2. Is there an express power to delegate that function?
3. Has the power been correctly delegated in accordance with that express power?

## Model process for delegated authority

Figure 1 offers a process model for Local Governments to guide development of delegated authority policy and procedure. It summarises a step by step approach which is further detailed in the following chapters. It is acknowledged that not all Local Planning Schemes (LPSs) have the same delegation powers and that not all aspects of this guide will suit everyone.

FIGURE 1 - A PROCESS MODEL FOR DELEGATED AUTHORITY



### Step One: Audit

It is opportune to commence with an audit or identification of the Local Governments' existing planning framework (local planning and other Council strategies, local planning scheme, local planning and other Council policies), procedures, development approvals data and current delegation rules together with an understanding of the local community and its values. As a guide, it may be appropriate to answer the following sorts of questions:

#### What planning approval powers does Council have?

Planning approval powers can only be delegated if they exist in the LPS in the first instance. For example, some LPSs may not include provisions for retrospective approval (this may be why some of the sample delegation notices referred to in Part Two of this study did not

specify certain functions). Therefore, it is necessary to understand what planning approval powers are available to the Local Government.

### What powers does Council have to delegate its planning approval powers and duties?

Delegation of those planning powers and duties can only come about if Council is empowered to delegate these powers and duties. Local Governments have the power to delegate the determination of certain development applications to Development Assessment Panels (DAPs) under the *Planning and (Development Assessment Panels) Regulations 2011* (DAP Regulations). For delegation to officers of the Local Government, however, this would need to be specified within the LPS (Refer to Part Two of this study for further detail of the legal framework for delegations).

Function – Description	Function – Power	Source of Delegation Power	Delegated to whom?
Application for prospective development approval	LPS	LPS	Depends on LPS provision
Application for retrospective development approval	s 164 PD Act	No power to delegate	n/a
	LPS	LPS	Depends on LPS provisions
Application for development approval with values set out in r.19 of the PD (DAP) Regulations	LPS	s 171B PD Act; r.19(2) PD (DAP) Regulations	Relevant DAP
Issuing written directions for illegal development	s 214 PD Act	s 5.42(b) LG Act – delegation to	To CEO, who has a power to sub-delegate to employees – s 5.44 LG Act

### What records are required in relation to delegated authority?

The LPS should require some form of recording and reporting for delegations. Clause 11.3 of the Model Scheme Text (MST) refers to the requirements of the *Local Government Act 1995* (Local Government Act) in relation to delegations which involves the keeping of a register of the delegations made to the CEO and other employees, which is to be reviewed at least once every financial year. In addition, the Local Government Administration Regulations require records to be kept of how and when the delegation was made and who was affected by it (Refer to Part Two of this study for further details on records required under the Local Government Act).

Not all LPSs are the same and requirements for recording and reporting may differ. In addition, individual Local Governments may have other operational procedures for recording and reporting delegations which may not necessarily be a statutory requirement and these also need to be identified and understood. Some suggestions are made under Step Five: Record, notify and monitor.

### What planning applications can currently be determined under delegated authority and does this work well?

Comparing the actual numbers, work flow and process times for those development applications dealt with under delegated authority to those that were not, will give an indication of advantages in efficiency. Ideally, there should be substantial time benefits in the favour of applications dealt with under delegated authority.



In addition, a check of the number and type of applications that were presented to, and determined by Council, where the officer recommendation was unchanged may indicate further delegation opportunities.

It may also be beneficial to identify those development applications that could have been determined under delegated authority, but were not, and were considered by Council instead. Importantly, the reasons for this action need to be understood so that this can be addressed in future delegations.

An analysis of development applications that were determined by Council, and could not be dealt with under delegated authority, is also worthwhile to identify common patterns of decision making situations that may be translated into future matters of delegated authority.

A survey of the staff to which approval powers are delegated will also assist in identifying any deficiencies that may exist in delegation and/or the process involved. This could also be extended to include the views of Elected Members.

### **Which land uses, standards and provisions require the application of discretion under the LPS?**

There are occasions where compliance is not clear-cut and some discretion is required to reach a decision. In such instances, it is important to know how to determine acceptability (for staff assessing the proposal and for Elected Members and/or staff as decision makers). Likewise, it is important to know which LPS requirements are mandatory and cannot be relaxed or varied.

This assessment of discretion exercise will assist in categorising applications in a track-based assessment path, identifying whether it may or may not be considered under delegated authority.

### **Are there any LPS or local planning policy provisions to guide decision makers when discretion is required?**

LPSs generally list a number of matters that the Local Government is to have due regard to in considering an application for planning approval (as per s10.2 of the *Model Scheme Text*). They may also have provisions to assist in making a decision where discretion is involved. In addition, it is common practice for Local Government to adopt planning policy in such situations. Planning policy may be in a general form or for specific situations. Scheme provisions and planning policy ideally should be based upon the strategic direction provided by Council's Local Planning Strategy and other Council strategies.

### **Are there any particular land uses, sites or issues within the Local Government that are likely to incite community interest if they were affected by a development application?**

It may assist to be aware of situations that are likely to spark a high level of community interest or where potential conflicts may arise. Understanding the community and its values is important in determining when it is appropriate to allow for delegation approval powers or whether to exercise those delegation powers when they exist for some instances.

For instance, where these situations are identified and a clear policy direction is developed to assist in decision making, determination should be under delegated authority. However, some Local Governments and their communities may have an expectation that certain applications, that are sensitive in some way or another, should be considered by Council.

### Are adequate management systems in place?

**It is important that processes are in place to ensure such matters as:**

- No staff conflicts of interest being involved in assessment and recommendations;
- Keeping informed with changes to statutory instruments and policy outside of the organisation which could have an impact or influence on decisions;
- Consistency in decision-making; and
- Managers are satisfied that staff are well versed in relation to delegation policy, statements and processes.

### Where are there gaps?

By addressing such queries and suggestions as outlined above, a number of gaps and deficiencies will become apparent enabling the Local Government to work towards a stronger approvals and refusals delegation system.

**Having completed Step One, a Local Government is likely to be in a better position to understand:**

- What development determination powers are available and if they can be delegated;
- Have an idea of the types of planning applications that should be considered under delegated authority (that is where the decision could not be made differently by Council in any event);
- Have an idea of the types of planning applications that could be satisfactorily dealt with under delegated authority in relation to staff, Elected members' and community expectations; and
- Whether those decisions would be strongly supported by the Local Government planning system framework and other Council strategic and policy direction.

### Step Two: Council delegation policy

Prior to developing a delegation statement for determining development applications, it is recommended that Council articulates a policy statement regarding its commitment to delegating its powers of planning approval and provide guidelines for how delegation will be decided and how it will work.

Although this is not a legislative requirement for delegation to occur, it gives a clear indication of the sorts of circumstances that are likely to involve Council determination of a development application, those that may not and those that will not.

It may be appropriate to attach the statement/s of delegation (discussed in the following Step Three) as an appendix to such a policy once they have been developed.

Based on the National planning principles presented to the Australian Local Governments and Planning Ministers' Council in 2009 and the Development Assessment Forum (DAF) leading practice model, a model policy has been developed for consideration and is attached as an example of what a policy could address.

**This is shown as Attachment 1 – A Model Delegation Policy Example and includes the following:**

- What delegated authority of planning applications involves and how it comes about;
- The purpose of delegation;
- The importance of a robust planning and policy framework in delegated decision making;
- Guidance for making delegations;
- The importance of trust, respect and understanding of roles; and
- Reporting and monitoring delegated decisions.

This is only one example of what a Local Government may consider. It is expected that delegation policies would vary between Local Government according to their different circumstances.

### Step Three: Statement of delegation

#### Form of delegation

There may be a single delegation statement relating to development applications or several developed at various times.

**The 2007 *Local Government Operational Guidelines* relating to delegation<sup>1</sup> advise that delegation statements need to include:**

1. Identification of the power or duty to be delegated;
2. Identification of the person or office to whom or which the power or duty is to be delegated;
3. Definition of the circumstances (if any) in which the power or duty can be exercised or discharged; and
4. Conditions on the exercise of the power or discharge of the duty.

In identifying the power or duty to be delegated, this will involve reference to the relevant part or parts of the LPS.

Depending on the powers to delegate, identifying the person or office may be specified in the LPS and must be the same. If possible to delegate to more than one person, or if sub delegation is possible, it may be necessary to separate particular delegates and the instances they can use the delegation.

In keeping with leading practice principles, delegations should be clear, decisive and non-ambiguous.

---

<sup>1</sup> *Delegations*, Local Government Operational Guidelines - Number 17 January 2007, Department of Local Government and Regional Development, Government of Western Australia

### Determining what to delegate

With regard to all Council delegations, the *Local Government Operational Guidelines*<sup>1</sup> for delegation state that:

“ A decision to delegate a power or duty should be made by Local Governments only after thorough consideration of whether the delegation will facilitate the effective operation of the Local Government. This will therefore depend on the particular circumstances of each Local Government

The principal consideration for a Local Government when deciding if it should delegate a power or duty, is whether the delegation will improve the efficiency of the Local Government’s operations whilst ensuring that its policies are consistently implemented.

”



Aside from each Local Government having its unique set of circumstances, a key message in these statements is the need for a robust policy framework being in place prior to passing on certain decision making responsibilities. If looking at delegation, there is a need for sufficient guidance to make sure that the decision will be made in accordance with Council’s wishes. For example, is there regulation and/or policy to guide when discretion is involved? If the policy guidance is not clear or does not exist, then it is better that decisions be dealt with by Elected Members and not under delegated authority, pending further policy development.

#### **Based on national planning principles and the DAF leading practice model a best practice system of delegation results from the following foundations:**

- A land use strategic planning direction which addresses the context of a particular place and informs the statutory planning framework giving legitimacy to the selection of planning tools.
- A statutory planning framework including a regularly reviewed and updated local planning scheme with a cohesive set of adopted local policies which provide for the implementation of the chosen strategic direction.

On the basis of these foundations an appropriate delegation system can be developed to suit the local context in which the planning framework has been developed. It is not considered appropriate that a standard system of delegations should be applied to all Local Governments because of the diversity of local circumstances that they govern. It is possible, however, to suggest a minimum benchmark noting that some Local Governments may easily exceed it.

**Stream 1 - Code assessed: Delegated**

Decisions involving applications that are purely code assessed against local planning scheme provisions and the R Codes 'Deemed to Comply' provisions where use of discretion is not available or not required:

- Relates to all 'X' uses (Refusal only);
- Relates to all permitted uses that fully comply (Approval only).

**Stream 2 - Permitted use with scheme based variations: Delegated**

- Decisions involving applications that require some minor local planning scheme and/or R Code variations. For example, this may involve reduction in R Code setbacks, minor increases to plot ratio and building heights or a small reduction in car parking standards;
- Decisions involving applications that require some minor deviation from policy;
- Delegated officer/s able to determine extent of positive/negative impacts where neighbours have been consulted;
- Approval only when variations are justified based on performance elements, with no adverse amenity impact or approval with conditions to ameliorate impacts to meet performance elements;
- Council adopts a set of triggers for the level of variation being sought (for example >10% variation of height requirement). If these are exceeded then the application will fall within Stream 4 or Stream 5.

**Note: Streams 1 and 2 would be expected to cover the vast majority of applications lodged.**

**Stream 3 - Discretionary uses: Delegated**

- Decisions involving applications which are for 'discretionary' uses in the scheme, including those requiring advertising;
- They may also involve some minor variations to standards (as per Stream 2);
- Council adopts a set of additional triggers that would lead to the application being considered by Council rather than under delegated authority. Triggers could include, for example, specific uses or specific areas of land/zoning and allowing for an applicant to request that the application be determined by Council rather than under delegated authority;
- Approval only when fully complies with standards and policies; or variations are justified based on performance elements, with no adverse amenity impact; or conditions are applied to ameliorate adverse impacts to meet performance elements.

**Stream 4 - Applications with planning merit but require use of substantial scheme and or policy variations: Determined by Council (not delegated)**

- Decisions involving applications that have planning merit but propose significant variations from adopted Council policies and/or scheme provisions. For example, plot ratio, building height and car parking standards;
- Decisions involving applications that have planning merit but contain sensitive land uses, with potential adverse or unknown amenity impacts, or involve heightened community interest;
- Decisions involving applications that have planning merit but by their nature challenge the existing policy settings of Council, and may require an adjustment to policy.

**Stream 5 - Applications that require use of scheme or policy variations with little or no planning merit with negative amenity impacts: Delegated**

- Decisions involving applications that appear to have no or little planning merit falling outside the use of objective rules and which fail performance tests;
- Decisions involving applications that appear to have no or little planning merit to justify significant concessions in terms of variations to scheme provisions or adopted policies;
- Refusal only.

**Note: Delegates at all times should reserve the right not to exercise delegation powers**

### Choosing the delegate most appropriate to the task

**In most instances within WA, Local Government options for delegates for determining planning applications include:**

- A committee of the Council (MST with reference to the Local Government Act);
- The CEO (MST with reference to the Local Government Act); and/or
- An officer of the Council sub-delegated by the CEO (MST with reference to the Local Government Act).
- A DAP, meeting certain criteria (DAP Regulations);

The DAF leading practice promotes decisions being clearly made at the most effective level against specific assessment criteria, with most decisions being made by professionals. However, which officer level is the most appropriate and when should delegation be given to a committee or DAP?

#### Committee of Council (as agreed by Council)

Many Local Governments employ a system of committees established to consider certain aspects of its operation to reduce the workload at Council meetings. In relation to development applications, the efficiency benefits of delegating determination powers to a Council committee are not necessarily any greater than the matter being considered by full Council.

Delegation of planning powers to a Council committee is not a common practice within WA and it is unclear whether it leads to significant improvements in planning approval practice. In some cases, planning committees can only make recommendations to Council. There may, however, be special circumstances for which a Local Government may prefer to delegate planning determination powers to a committee instead of to an officer, without the need for the proposal to be considered by full Council.

#### CEO (as agreed by Council) and other officers (as sub-delegated by CEO)

The *Local Government Operational Guidelines*<sup>2</sup> for delegation state that:

“ A Local Government Council is unable to deal with all of the numerous issues and duties concerning its Local Government. As far as is possible and reasonable, Councils should be predominantly concerned with dealing with higher level policy matters for their Local Governments. Duties and powers which are operational in nature, but exercise discretion should be delegated to the CEO ”



It is common practice within WA to delegate planning determination powers to the CEO of a Local Government and is considered to be the most appropriate course of action for most development applications.

<sup>2</sup> *Delegations*, Local Government Operational Guidelines - Number 17 January 2007, Department of Local Government and Regional Development, Government of Western Australia

When considering delegation for determining planning applications to the CEO, or by the CEO to other officers, it is important to ensure that the proposed delegate is adequately equipped to make the decision at hand. This may be inclusive of a number of factors including:

- The qualification, experience and knowledge of the individual as they apply to making the planning application determination as specified; and
- The current workload of the person.

For all delegations, whether the Council to CEO and/or CEO to officers, it is not only essential to have faith in the delegate's competency and reliability but to also provide the necessary training and possible additional/reshuffling of staff resourcing to support the delegate. Supervision and oversight of delegates is also an important factor to provide assistance when required and identify any issues that need to be addressed.

In relation to sub-delegation, it is more appropriate that the officer responsible for assessing the application should differ from the person who makes the decision on that application. Many Local Governments operate a technical advisory group comprised of key staff from planning, engineering, building and health sections to review and coordinate the processing of development applications. Advisory groups such as these can be used to assess development applications and make recommendations to the delegated officer.

#### DAP (as proposed by Council)

Under the DAP Regulations, Local Governments may delegate to a DAP if certain criteria is met. Opportunities for referring to other delegates in other circumstances will depend on what provision is made available by the instrument that gives the Local Government power to delegate (under the LPS).

#### **The current DAP Regulations only allow Local Governments to delegate power to determine development applications to a DAP whereby the proposals:**

- Fall within the optional DAP application thresholds (that is not an excluded development application and is more than \$3 million but less than \$7 million or more than \$10 million and less than \$15 million in the City of Perth);
- Where the applicant has decided not to opt-in to have the application determined by a DAP; and
- Where the responsible authority nevertheless decides that the application is of a class of development that should be delegated to a DAP for determination.

***Note: Planning Reform Phase 2 propose regulation changes to these criteria***

Delegation to a DAP does not preclude a Local Government from making a determination on a delegated development application. Delegation to a DAP can be complex as it involves consent from the Director General of the Department of Planning together with a written instrument of delegation being published in the Government Gazette.

It is not currently a common practice within WA to delegate development applications in these circumstances to a DAP for determination. It is up to each Local Government to decide on the class of development that should be delegated to DAP.

### Determining conditions and exemptions

Powers and duties can be delegated subject to the fulfilment of comprehensive conditions. Conditions limit the exercise of powers or discharge of duties to circumstances prescribed by the Council such that, if an application does not satisfy the conditions attached to a delegation, it must be referred to Council for determination. In the same way, exemptions can also be made when there are exceptions to a delegation rule.

**Conditions and exemptions can act as triggers for automatic referral to Council for determination. For example, triggers for referral to Council for applications could include:**

- A proposed variation to a standard, provision or policy in excess of a stated limit;
- Substantial variation to policy with uncertain or adverse amenity impact;
- Applications involving a specifically identified land use, activity or land parcel.
- Receipt of a call in from at least two Elected Members where discretionary uses are involved; and
- Receipt of a request from the applicant for Council consideration where discretionary uses are involved;

It is noted that a delegate may, at any time, choose not to use the delegation powers available to them. It is recommended that delegation powers be used to their full extent. However, there may be occasions where it is more appropriate for a delegate not to exercise delegation powers. Such circumstances may involve:

- » Perceived or real conflicts of interest;
- » Lack of confidence in making the decision (could be due to inexperience, lack of policy direction, ambiguity in relation to requirements or delegation provisions and the like); and
- » High community interest where there appears to be an expectation that Elected Members should be directly involved in debate and decision making.

### Procedure for making the delegation under Local Government Act

All proposed delegation powers need to be presented to Council for approval. When a Local Government's administration identifies a Local Government planning approval power or duty of which can be delegated and if believed that delegation will provide better efficiency, a recommendation for a delegation is put to the Council by the CEO.

As mentioned in a previous section of this report, it is important to remember that all delegations by Council require an absolute majority decision and once a delegation has been made by Council, it must be recorded in the delegation register.

Sub-delegations by CEOs (where applicable) follow a similar course in that employee proposals for delegations (for themselves or for other employees) should be provided to the CEO with recommendations being in a format similar to the recommendations for delegations by Councils. Written records of delegations by the CEO must also be kept in the delegations register.

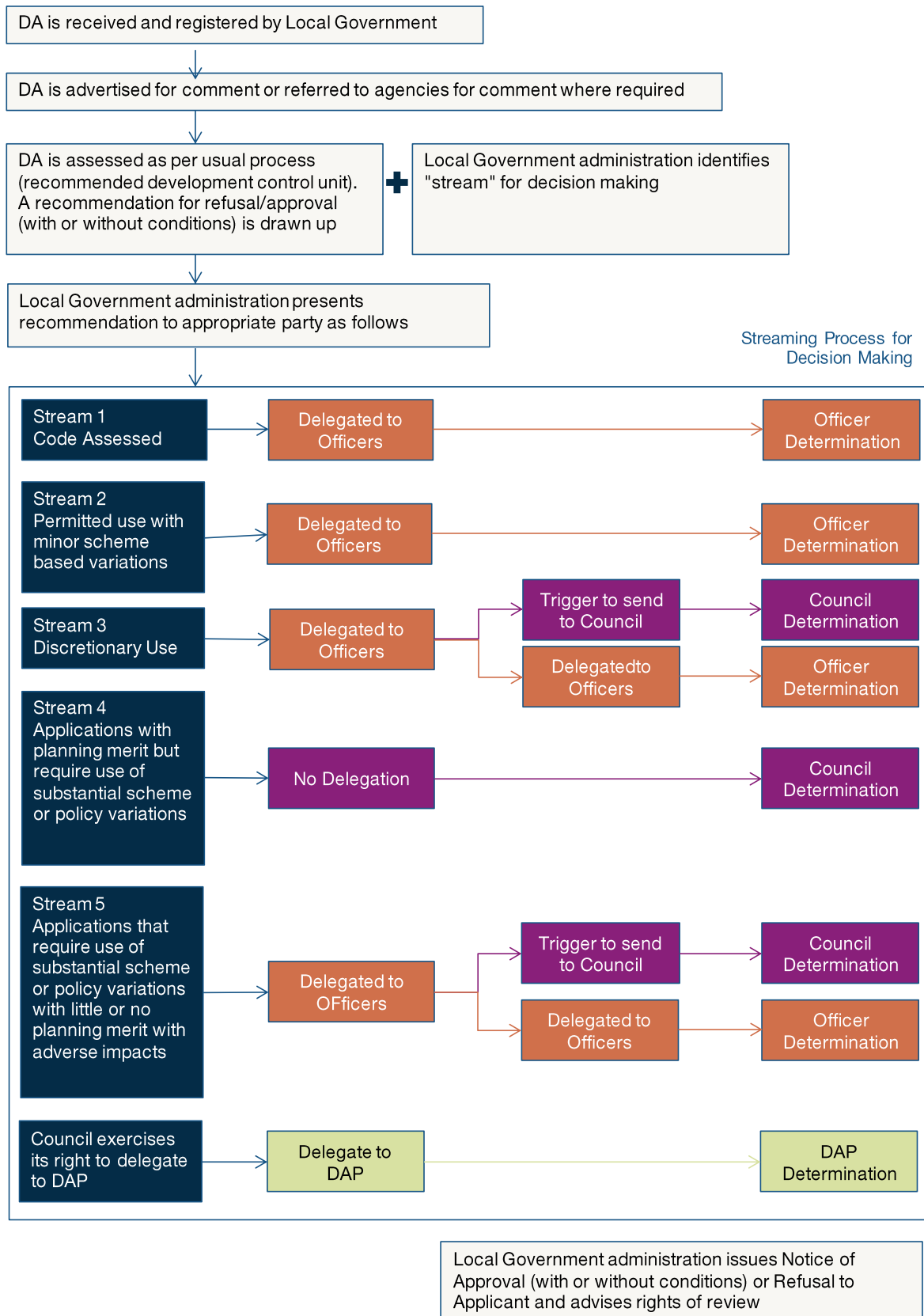




#### Step Four: Using the delegation

The following Figure 2 shows how the suggested delegation model fits within the development approvals (DA) process.

FIGURE 2 - USING THE SUGGESTED MODEL POLICY IN THE PLANNING APPROVALS PROCESS



The DA assessment, notification of the decision and right of review within the development approvals process do not change whether a proposal is determined by Council or under delegated authority.

Between assessment and determination, however, it is the role of administration to identify whether the proposal falls within the delegated authority “stream” (based on the Local Government’s delegation register and policy) or not. If not, a recommendation is formed and a report is prepared for Council in the usual manner for a decision to be made at a Council meeting. If delegated authority is possible, then a decision can be made for the delegated officer to determine the application.

If an application falls within a “stream” that is eligible to be dealt with under delegated authority, an applicant has requested Council consideration, then a recommendation is formed and a report is prepared for a decision to be made at a Council meeting.

It is noted that where an opportunity exists for applicants to request Council consideration of their application, this should be well publicised and advised during pre-lodgement consultation.

Once a decision has been made, notification is issued to the applicant in accordance with the usual planning requirements and a right of review to the State Administrative Tribunal may exist regardless of whether the determination was made under delegated authority or not.



Procedures need to be developed to assist with these actions. FIGURE 3 is provided to assist in determining which decision making stream applies to an application:

FIGURE 3 – DECISION MAKING MATRIX

Use Class	Compliance	Stream	Decision	
			Delegated	Council
Discretionary Use Permitted Use X Use	Fully complies with standards Fully complies with policy Variations to standards - no adverse impacts Variations to policy - no adverse impacts Minor variations to standards - adverse impacts Minor variation to policy - adverse impacts Substantial scheme or policy variations - with planning merit Substantial scheme or policy variations - without planning merit	1 1 1 2 2 2 2 4 5 3 3 3 3 3 4 5	Delegated	Council
			R	A or R
			A	A or R
			A	A or R
			A	A or R
			A	A or R
			A*	A or R
			A* or R	A or R
			R	A or R
			A or R #	A or R
			A or R #	A or R
			A or R #	A or R
			A or R #	A or R
			A* or R #	A or R
			A* or R #	A or R
R	A or R			

**A = Approval**      **A\* = Where conditions are applied to ameliorate adverse impacts**      **R = Refusal**  
**# = Where a LG may wish to trigger for a call in or Applicant request for Council determination**

## Step Five: Record, notify and monitor

Delegated assessment and decisions need to take place under conditions of transparency and accountability. Under regulation 19 of the *Local Government (Administration) Regulations 1996*, the delegate must keep written records of when and how they exercise the delegated power or discharge the delegated duty, and the persons or classes of persons affected by the exercise of the power or discharge of the duty. As with delegations by Council, delegates must keep records of their exercise of delegated powers or discharge of delegated duties.

Part 5 Division 6 of the Local Government Act (disclosure of financial interests) also applies to delegates of powers and duties. Section 5.71 states that if (under Division 4) an employee has been delegated a power or duty relating to a matter in which the employee has an interest, the employee must not exercise the power or discharge the duty and must disclose the nature of the interest.

A person to whom a power is delegated under the Local Government Act is considered to be a 'designated employee' under Section 5.74(b) and is required to complete a primary and annual return each year.

Under Section 5.75 (Primary Returns) a person who is exercising a delegation must lodge a primary return in the prescribed form within 3 months of their start day. In addition, each year by the 31 August a person exercising a delegation must lodge an annual return. Section 5.78 prescribes the information which must be included in the primary and annual returns.

Beyond the mandatory recording of decisions, disclosure of interest and lodging annual returns, procedures should be developed to adequately inform Elected Members and the community of these matters. How a Local Government proposes to do this can be stated within its delegated authority policy. This may include such actions as notification to Councillors through their Council agendas and updated lists on the Local Government website.

It is important to be able to measure the success of delegation which will require the collection of information and data.

This could include such things as development application processing times (e.g. under delegated authority versus referral to Council) and identifying when delegated authority as not used when it could have been and the reason why.

## Step Six: Review and firm up the framework

The Local Government Act requires Council to review its register of delegations at least once every financial year. Similar to the Step One audit process, it is also important to regularly (at least annually) investigate existing delegations, including their limitations and safeguard systems. Analysis of records of processing times and use of the delegations will identify areas that may be improved. In addition, it is necessary to identify the policies and assessment criteria that need to be developed prior to extending delegations.

## Attachment 1 – A model delegation policy example

### Delegation of authority to Chief Executive Officer to determine applications for development approval

#### Statement of intent

##### » The purpose of this policy is to outline:

- What delegated authority of planning applications involves and how it comes about.
- The purpose of delegation.
- The importance of a robust planning and policy framework in delegated decision making.
- Guidance for making delegations.
- The importance of trust, respect and understanding of roles.
- Reporting and monitoring delegated decisions.

#### What is delegation?

Delegation in the context of this Policy refers to the Council assigning some of its powers to determine applications for development applications under ..... (*insert name of local planning scheme*) to the Chief Executive Officer (CEO) in the circumstances detailed in the Delegated Authority Register (*name and number if applicable*) (*may be attached and referred to if this is the case*). The CEO may also sub-delegate to other officers of Council as detailed in the Delegated Authority Register.

#### Why delegate?

##### **Council acknowledges that the delegation of decision making powers relating to certain classes of development applications has the following benefits in:**

1. Enabling Council to focus on strategic planning matters and development of planning policies by reducing the number of non-complex development applications required to be considered and determined at its meetings,
2. Enabling the development approval process to operate in a more efficient manner by reducing the number of reports that need to be prepared and presented to Council.
3. Enabling the development approval process to operate in a timely manner by reducing the actual time taken to determine applications as they do not need to await presentation at a Council meeting.
4. Retaining Council's ability to consider more complex or community sensitive development applications where appropriate.
5. Recognising the professionalism of local government planning staff by providing them with more responsibility for making decisions.

### Power to delegate

Clause ..... (insert clause number) of ..... (insert name of local planning scheme) provides for Council to delegate to the Chief Executive Officer (CEO) and/or a Council committee to exercise of any of its powers or the discharge of any of its duties under the Scheme. Clause ..... (insert clause number) of ..... (insert name of local planning scheme) further provides for the CEO to delegate to any employees of the Council the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under Clause ..... (insert clause number) of ..... (insert name of local planning scheme).

**Note: Powers relating to delegation may vary between local planning schemes. Each Local Government will need to make adjustments to the model to reflect the powers provided for in their respective schemes.**

### Councils planning and policy framework

Council acknowledges that the key to an effective system of delegations is that it is based on a clear set of Council policies operating within a strategic land use planning framework. Policies developed by Council reflect its intention to guide the future growth of the Local Government in the context of the objectives contained in the local planning strategy and the Local Planning Scheme.

Planning policies provide guidance on planning, land use and development matters and are a fundamental aspect of town planning. They play an important role in assisting how a development is to be assessed especially where discretion is to be exercised.

Development of a robust framework for decision making allows Council to delegate the responsibilities of decision making to staff and gives more certainty about the way applications will be determined. In addition, the framework provides Council staff with the confidence to effectively arrive at a decision on the behalf of Council.

### Principles

As a guide to making delegations for the determination of planning applications, Council delegation will be structured around different streams of track-based principles decisions considering potential amenity impact and planning merit as follows:

#### Stream 1 - Code Assessed: Delegated

Decisions involving applications that are purely code assessed against local planning scheme provisions and the R Codes 'Deemed to Comply' provisions where use of discretion is not available or not required.

- Relates to all 'X' uses (Refusal only).
- Relates to all permitted uses that fully comply (Approval only)

### Stream 2 - Permitted use with scheme based variations: Delegated

- Decisions involving applications that require some minor local planning scheme and/or R Code variations. For example, this may involve reduction in R Code setbacks, minor increases to plot ratio and building heights or a small reduction in car parking standards.
- Decisions involving applications that require some minor deviation from policy.
- Delegated officer/s able to determine extent of positive/negative impacts where neighbours have been consulted.
- Approval only when variations are justified based on performance elements, with no adverse amenity impact or Approval with conditions to ameliorate impacts to meet performance elements.
- Council adopts a set of triggers for the level of variation being sought (for example >10% variation of height requirement). If these are exceeded then the application will fall within Stream 4 or Stream 5.

**Note: Streams 1 and 2 would be expected to cover the vast majority of applications lodged.**





### **Stream 3 - Discretionary uses: Delegated**

- Decisions involving applications which are for 'discretionary' uses in the scheme, including those requiring advertising.
- They may also involve some minor variations to standards (as per Stream 2).
- Council adopts a set of additional triggers that would lead to the application being considered by Council rather than under delegated authority. Triggers could include, for example, specific uses or specific areas of land/zoning; allowing for an applicant to request that the application be determined by Council rather than under delegated authority;
- Approval only when fully complies with standards and policies; or variations are justified based on performance elements, with no adverse amenity impact; or conditions are applied to ameliorate adverse impacts to meet performance elements.

### **Stream 4 - Applications with planning merit but require use of substantial scheme and or policy variations: Determined by Council (not delegated)**

- Decisions involving applications that have planning merit but propose significant variations from adopted Council policies and/or scheme provisions. For example, plot ratio, building height and car parking standards.
- Decisions involving applications that have planning merit but contain sensitive land uses, with potential adverse or unknown amenity impacts, or involve heightened community interest.
- Decisions involving applications that have planning merit but by their nature challenge the existing policy settings of Council, and may require an adjustment to policy.

### **Stream 5 - Applications that require use of scheme or policy variations with little or no planning merit with negative amenity impacts: Delegated**

- Decisions involving applications that appear to have no or little planning merit falling outside the use of objective rules and which fail performance tests.
- Decisions involving applications that appear to have no or little planning merit to justify significant concessions in terms of variations to scheme provisions or adopted policies.
- Refusal only.

***Note: Delegates at all times reserve the right not to exercise delegation powers***

#### **Integrity of the delegation process**

Delegation of authority to the CEO and allowance for sub-delegation of some classes of applications for development approval is an expression of Council's trust and respect for its administration.

In making its delegations for the determination of some classes of applications for development applications to the CEO, Council (or the case of CEO in relation to sub-delegation) is satisfied that the person being given the delegation:

- » Is suitably qualified, experienced in land use planning and have sufficient knowledge to make the application determination as specified; and
- » Is sufficiently resourced to carry out the delegation.

With regard to sub-delegation, the officer responsible for assessing an application is to differ from the officer making a decision on the application where practically possible.

**Note: The following points are applicable only for those Local Governments whose local planning schemes refer to the Local Government Act. Other Local Government's local planning schemes may specify other procedures.**

**The Council in use of delegated decision making requires a high level of transparency, accountability in the process. In accordance with the requirements of the *Local Government Act 1995*:**

- A register will be kept of all delegations made by Local Government and sub-delegations made by the CEO with regard to development applications and reviewed each year;
- Records will be kept whenever the delegated authority is used;
- A Local Government officer who has been delegated a power or duty relating to a matter in which he/she has an interest must not exercise the power of delegation and must disclose the nature of the interest; and
- A Local Government officer who has been delegated a power or duty must complete a primary and annual return each year.

In addition, a list of all development applications received and an indication of whether they are likely to be dealt with under delegated authority is to be updated and advertised on a regular basis to Elected Members. Furthermore, a list of all development application decisions is to be updated and made available to the public.

### Review

The delegation of powers to determine development applications is to be reviewed each year as part of Council's obligation under the *Local Government Act 1995* to annually review all delegations made by Council.

The review take into consideration a number of key performance indicators as determined by administration which may include such matters as time taken to process development applications and community expectations.