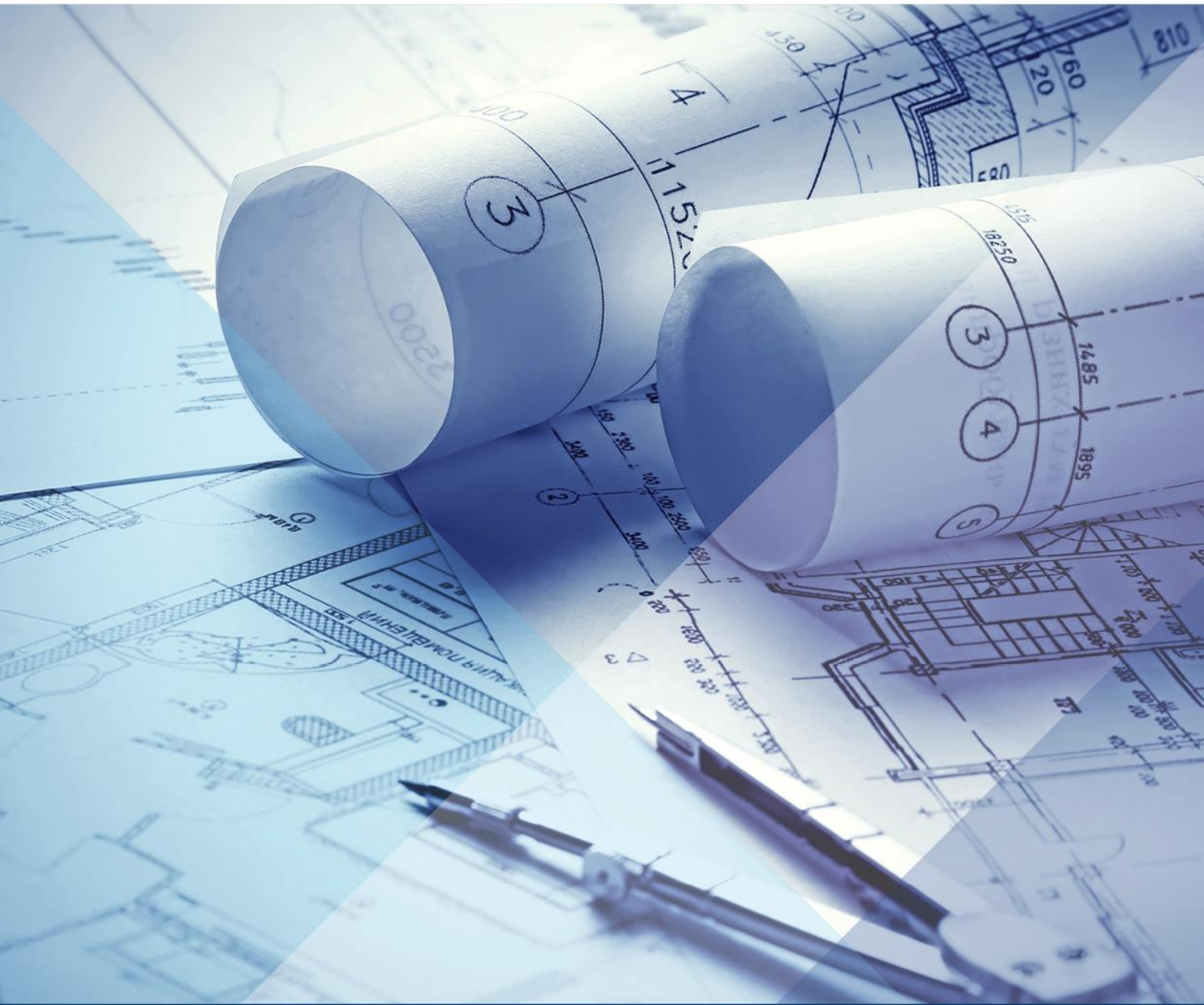




# Guide for **Planning Delegations** Development Applications



Part 2  
Background &  
supporting information

# Part 2

## Background and supporting information 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.

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### 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 1:** Guide for Planning Delegations can be accessed here <http://goo.gl/oxV4jr>

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## 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 coalface of Local Government operations. Elected Members, applicant and broader community experiences with regulatory approvals processes, in particular planning and building approvals, can often be the defining factor in the perception of the 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 part 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 this balance, consideration must include the existing and desired future local planning context.

Planning Context was commissioned by the Western Australian Local Government Association (WALGA) to develop a best practice model or tool kit for the delegation of planning approval functions from a Council to its planning staff.

There has been widespread support from the planning sector for a delegation model or at least a tool kit as a way of helping to ensure the effective use of Local Government resources, including officer and Elected Member time. At a Local Government Reform workshop dealing with strategic and statutory planning functions held on 24 February 2014, WALGA's assistance was welcomed in the development of model of delegations that could be made available for any newly created Local Governments.

In addition, all Local Governments would benefit from a toolkit model of delegations to use to bench mark of current practices and guiding the development of delegation orders and practice.

## Project objectives

This study aims to promote improved efficiencies in the Local Government planning system through the encouragement of appropriate levels of delegations of planning approval functions, without affecting the quality of the decision making process.

The overall intent is to seek an appropriate balance of responsibilities whereby staff deal with routine planning approvals and Elected Members concentrate on strategic planning matters including the review or development of planning schemes and policies. Elected members would most importantly develop the policy settings under which planning staff apply delegated planning approval powers.

### The primary objectives are to develop a best practice model or tool kit to:

- Help Elected Members and staff understand what their roles in the planning approval system should be in order to improve the efficiency of planning approval processes;
- Ensure that Elected Members are involved appropriately in the strategic planning approval decision making process; and
- Demonstrate to the broader community the effectiveness of the Local Government planning approval process.

## Limitations and exclusions

This study has a focus on determination of development applications by Local Governments. Due to the focused scope of the brief, other delegation functions have not been considered. Functions associated with the more general planning approval process are worthy of consideration. This includes such matters as minor amendments to local structure plans, detailed area plans, or providing advice to the Western Australian Planning Commission (WAPC) on subdivision applications, however, they are beyond the scope of this study.

It is also important to note that research in determining current practice only involved the identification of delegation notices and what they contained, not how or how often they were used, or if they were considered successful. This could be the subject of a separate investigation.

## Project methodology

### Step One: Report

The study report has been developed in two separate parts:

- Part 1: Guide - Guide for planning delegations: development applications; and
- Part 2: Background and supporting information – guide for planning delegations: development applications.

### Part 1: Guide - Guide for planning delegations: development applications

National examples of best practice approaches were investigated to inform how a delegation model could be drafted to improve current delegation of development approval functions. Part one provide a culmination of that research and presents a model process for developing a delegation system for Local Government development application determination, including a suggested Local Government delegations policy.

In undertaking this task it is acknowledged that there is not just one single best practice model, but rather a series of individual components which can be applied differently to

meet individual Local Government circumstances and still maintain a balance between strategic and statutory functions.

Part 1 highlights the principles involved with best practice and provides guidance on how they can be used to inform development of delegated authority policy for individual Local Governments.

## **Part 2: Background and supporting information – Guide for planning delegations: development applications.**

This part 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.

Part 2 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.

To deal with this problem a comparative review was undertaken of delegation arrangements based on an initial analysis of five medium sized metropolitan Local Governments (Fremantle, Cockburn, Gosnells, Melville and Belmont) as the base scenario.

### **The results of the analysis were then compared to:**

- Large outer metropolitan Councils (Wanneroo, Rockingham, Armadale and Swan);
- Smaller inner metropolitan Councils (Subiaco, Claremont, South Perth and Vincent);
- Regional city Councils (Bunbury, Kalgoorlie and Greater Geraldton); and
- Small rural Councils (Northam, Plantagenet and Nannup).

### **Step two: Consultation (next stage)**

The initial draft Guidelines were workshopped with Officers (planners and governance officers) and Elected Members of selected Local Governments and was also presented to the Department of Planning (DoP) and Department of Local Government and Communities (DLGC) representatives.

### **Step three: Final best practice guide**

The final Guide for Planning delegations: development applications was presented to WALGA's State Council, meeting March 2015 for consideration and adoption. The guide was endorsed by WALGA's State Council.



## 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 timelier 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.

## Legal framework

### Local Government development approval powers and functions

Local Government powers to determine development applications generally come from local planning schemes (LPS), or from Western Australian Planning Commission (WAPC) Delegation Authority Notices.

In situations where a LPS is revoked by another statutory instrument (e.g. a redevelopment act) the power of Local Government to determine development applications is also revoked. Depending on the details of the wording, a Local Government may or may not be required to make comment or recommendation to the decision maker.

There are also circumstances where the powers of a Local Government (and the WAPC) to determine a development application are replaced by a Development Assessment Panel (DAP). The P&D Act provides the heads of power for the introduction of DAPs in WA through the making of regulations by the Governor.

Whilst the DAP Regulations mandate the replacement of determination powers of Local Government (and WAPC) in these certain situations, they also allow for Local Governments and the WAPC to voluntarily delegate power to determine development applications (discussed further in this report).

## Sources of Local Government development approval delegation powers

Some Local Governments have mistakenly attempted to use the legislative powers of delegation contained in one Act to delegate a power or duty contained in another Act. Unless expressly stated to the contrary, a legislative power to delegate only relates to the powers or duties under the Act in which the delegation power is located.

The *Local Government Act 1995* (LG Act) provides in s.5.16 and Subsection 5.42 for Council delegations to committees and to Chief Executive Officers (CEOs), respectively. Under s.5.44, the CEO may delegate powers to another employee (in writing) and may place conditions on any delegations if desired. Attachment 1 - Delegation under the Local Government Act 1995 and Model Scheme Text gives a brief description of these provisions.

It is important to note that s.5.16 only provides for delegations to committees of powers and duties under the LG Act, and s.5.42 only provides for delegation to the CEO of powers and duties under the LG Act and s.214 of the *Planning and Development Act 2005 (WA)* (P&D Act)<sup>1</sup>.

Other than the power to delegate for the purpose of s.214 of the P&D Act, no planning powers and duties are conferred or imposed under the LG Act. Consequently, it is necessary to look elsewhere to the sources of Local Government planning powers and duties, in order to understand the principles for delegation of those powers and duties.

The following table identifies a number of instruments relevant to powers of delegation for development applications. It also identifies and comments on a number of instruments that, although relate to development applications in some way, provide no delegation powers of planning approval for Local Governments.

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<sup>1</sup> Section 214 relates to giving directions as a result of development undertaken in contravention of a LPS or IDO (Interim Development Order).

Sources of Local Government Development Approval Delegation Powers			
Instrument for Delegation	Section	Delegations	Comments
Local Planning Schemes (and Model Scheme Text)	Varies for individual Schemes. Generally based on Clause 11.3 of the Model Scheme Text (refer to Town Planning Regulations 1967 comment as follows)	<p>Under a Local Planning Scheme (LPS) that adopts Clause 11.3 of the Model Scheme Text<sup>2</sup> (MST), the Council may delegate to a committee or the Chief Executive Officer (CEO) the exercise of any powers or the discharge of any duties under the LPS (other than the power of delegation) and the CEO may sub-delegate to another employee.</p> <p>The delegation by the Council may be the subject of conditions and the delegation by the CEO must be subject to the same conditions, together with such others as the CEO sees fit to impose.</p> <p>Part of a function may be delegated, but where the delegated function involves determination of a development application, the delegate must perform the whole function of determination.</p>	<p>A LPS in the form of the MST adopts the LG Act delegation powers by reference, so that LG Act delegation provisions may be relevant to that extent.</p> <p>A LPS which is not in the form of the MST may have different delegation powers so that the LG Act delegation provisions may not be relevant. In this respect it is important that each Local Government determine the precise nature of the delegation powers under its LPS before seeking to apply a model delegations policy.</p>
Town Planning Regulations 1967		The <i>Town Planning Regulations 1967</i> (TP Regulations) give powers and duties to Local Government in regard to aspects of local planning schemes and local planning strategies; however, there is no reference to development applications within the TP Regulations.	Appendix B of the TP Regulations, however, provides the Model Scheme Text (MST). As mentioned above, where a LPS adopts Clause 11.3 of the MST the Council may delegate, to a committee or the CEO, the exercise of any powers or the discharge of any duties under the LPS (other than the power of delegation) and the CEO may delegate to another employee.
Local Government Act 1995	Section 5.16 Subsection 5.42 Section 5.44	The <i>Local Government Act 1995</i> (LG Act) provides in Section 5.16 and Subsection 5.42 for Council delegations to committees and to CEOs, respectively. Under Section 5.44, the CEO may delegate powers to another employee (in writing) and may place conditions on any delegations if desired.	<p>It is important to note that Section 5.16 only provides for delegations to committees of powers and duties under the LG Act, and Section 5.42 only provides for delegation to the CEO of powers and duties under the LG Act and Section 214 of the <i>Planning and Development Act 2005 (WA)</i> (P&amp;D Act)<sup>3</sup>.</p> <p>Other than the power to delegate for the purpose of Section 214 of the P&amp;D Act, no planning powers and duties are conferred or</p>

<sup>2</sup> *Planning Regulations 1967*, Appendix B - Model Scheme Text.

<sup>3</sup> S.214 relates to giving directions as a result of development undertaken in contravention of a LPS or IDO.

Sources of Local Government Development Approval Delegation Powers			
Instrument for Delegation	Section	Delegations	Comments
			imposed under the LG Act.
	Section 5.43	<p>Matters that cannot be delegated to the CEO:</p> <ul style="list-style-type: none"> <li>» any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;</li> <li>» accepting a tender which exceeds an amount determined by the Local Government for the purpose of this paragraph;</li> <li>» appointing an auditor;</li> <li>» acquiring or disposing of any property valued at an amount exceeding an amount determined by the Local Government for the purpose of this paragraph;</li> <li>» any of the local government's powers under sections 5.98, 5.98A, 5.99, 5.99A or 5.100;</li> <li>» borrowing money on behalf of the local government;</li> <li>» hearing or determining an objection of a kind referred to in section 9.5;</li> <li>» any power or duty that requires the approval of the Minister or the Governor; or</li> <li>» such other power or duties as may be prescribed.</li> </ul>	
Planning and Development (Development Assessment Panels) Regulations 2011	Section 171B and Regulation 19	<p>The <i>Planning and Development (Development Assessment Panels) Regulations 2011</i> (DAP Regulations) allow local governments to delegate power to determine development applications that:</p> <ul style="list-style-type: none"> <li>» 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);</li> <li>» Where the applicant has decided not to opt-in to have the application determined by a DAP; and</li> <li>» Where the responsible authority nevertheless decides that the application</li> </ul>	<p>A written instrument outlining the terms and the extent to which the local government's authority is transferred to the DAP, must be prepared and supported by an absolute majority of the Local Government's Council together with obtaining consent of the CEO of the Department of Planning to such a delegation.</p> <p>The written instrument of delegation will take effect once published in the Government Gazette. A DAP which is authorised by either the Local Government or the WAPC to decide delegated applications cannot then hand over that authority to another organisation. The DAP will be responsible for deciding such applications and must treat them in the same way as any other DAP application.</p> <p>Delegation of certain matters to a DAP does not preclude a Local Government from making a determination on a delegated development application (reg.21 (1)). If a</p>

Sources of Local Government Development Approval Delegation Powers			
Instrument for Delegation	Section	Delegations	Comments
		is of a class of development that should be delegated to a DAP for determination.	Local Government chooses to delegate any matter to a DAP, the Local Government must pay the DAP fee (r.22), to ensure that applicants are not imposed with an additional fee for an application they did not choose to be determined by a DAP.
Planning and Development Act (2005)		There is no general power of delegation under the P&D Act. Consequently, with the exception of Section 214 Directions, none of the planning powers conferred and planning duties imposed under the P&D Act can be delegated.	The P&D Act gives planning powers and duties to Local Governments in regard to aspects of scheme making, amendment and repeal; subdivision; compensation and enforcement. In terms of development approval, however, the P&D Act only empowers Local Government the ability to give retrospective approval to development under Section 164 where the relevant LPS does not give power of retrospective approval to the Local Government (Section 164).
Planning and Development Regulations 2009			The <i>Planning and Development Regulations 2009</i> (P&D Regulations) include imposing fees for planning services (including development applications) pursuant to Part 7 of the P&D Regulations (regs.47 and 48) and allow for waiving or refunding a planning service fee (reg.52). There is no power of delegation in the P&D Regulations or in the P&D Act under which the P&D Regulations are made.
Region Planning Schemes (RPS)	Section 16(1) Section 16(3)	<p>Section 16(1) of the P&amp;D Act empowers the WAPC, by resolution, to delegate to a person or body referred to in Subsection (3) any function of the WAPC under the P&amp;D Act or any other written law, except the power of delegation. Section 16(3) empowers delegation under Section 16(1) to, amongst others, a local government, a committee of a local government, or an employee of a local government.</p> <p>Notices of delegation to local governments of powers and functions of the WAPC under region schemes are published from time to time in the Government Gazette. The general form of the delegation is a delegation of powers and functions to Local Governments, and to members and officers of Local Governments, under Region Schemes.</p> <p>Since the delegations are to</p>	<p>Current WAPC notices of delegation specific to local governments and development applications include:</p> <ul style="list-style-type: none"> <li>» DEL2008/12 Powers of local governments (PRS)</li> <li>» DEL 2008/14 Power of local governments (Ningaloo Coast RIDO 2007)</li> <li>» DEL 2011/01 Powers of Local Governments (Hope Valley-Wattleup Redevelopment Act 2000 and Master Plan)</li> <li>» DEL 2011/02 Powers of local governments (MRS)</li> <li>» DEL 2012/01 Powers of local governments (GBRS)</li> </ul> <p>Exercising the power of delegation in Section 16(1) of the P&amp;D Act, the WAPC by resolution, published in the Gazette, delegates to Local Governments, and to members and officers of those Local Governments, its powers and functions in respect of the determination of applications for approval to commence and carry out development specified in the instrument of delegation.</p> <p>As the delegation is made to Local Governments, and also directly to members</p>

Sources of Local Government Development Approval Delegation Powers			
Instrument for Delegation	Section	Delegations	Comments
		Local Governments, and to members and employees of Local Governments, and since there is no power of sub delegation, the WAPC delegations have direct effect, and are not primarily the subject of a model planning delegation policy.	and officers of the Local Governments, no further delegation is necessary or possible.  An employee of a Local Government receiving a delegation to determine applications for the purpose of the LPS will also have delegated authority under a relevant RPS to determine applications for the purpose of that RPS.

In essence, the instruments giving powers of planning approval to Local Governments, also contain the delegation powers. These include:

- » Individual LPSs; and
- » DAP regulations.

### Local Planning Schemes

A LPS in the form of the Model Scheme Text (MST)<sup>4</sup> adopts the LG Act delegation powers by reference, so that LG Act delegation provisions may be relevant to that extent.

**Clause 11.3 of the MST in Appendix B of the Town Planning Regulations provides:**

#### **11.3 Delegation of functions**

- » *11.3.1 The Local Governments may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to a committee or the CEO, within the meaning of those expressions under the Local Government Act 1995, the exercise of any of its powers or the discharge of any of its duties under the Scheme, other than this power of delegation.*
- » *11.3.2 The CEO may delegate to any employee of the Local Government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under clause 11.3.1.*
- » *11.3.3 The exercise of the power of delegation to clause 11.3.1 requires a decision of an absolute majority as if the power had been exercised under the Local Government Act 1995.*
- » *11.3.4 Sections 5.45 and 5.46 of the Local Government Act 1995 and the regulations referred to in section 5.46 apply to a delegation made under this clause as if the delegation were a delegation under Division 4 of Part 5 of that Act.*

<sup>4</sup> *Town Planning Regulations 1967, Appendix B - Model Scheme Text.*

A LPS which is not in the form of the MST may have different delegation powers so that the LG Act delegation provisions may not be relevant. In this respect it is important that each Local Government determine the precise nature of the delegation powers under its LPS before seeking to apply a model delegations policy.

## DAP Regulations

**The DAP Regulations (Section.171B and Regulation.19) allow local governments to delegate power to determine development applications that:**

- 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 proposes regulation changed to these criteria***

A written instrument outlining the terms and the extent to which the Local Government's authority is transferred to the DAP, must be prepared and supported by an absolute majority of the Local Government's Council together with obtaining consent of the CEO of the Department of Planning to such a delegation. The written instrument of delegation will take effect once published in the Government Gazette.

Delegation of certain matters to a DAP does not preclude a local government from making a determination on a delegated development application (Regulation 21(1)).

## Interpretation Act 1984

Subsection 58 and 59 of the *Interpretation Act 1984* set out general principles and rules which govern delegations and the construction of delegation provisions in other written laws and by reason of their significance. These are set out as follows:

### **58 Delegates performance of functions by**

*Where under a written law the performance of a function by a person is dependent upon the opinion, belief, or state of mind of that person in relation to a matter and that function has been delegated under a written law, the function may be performed by the delegate upon the opinion, belief, or state of mind of the delegate in relation to that matter.*

### **59 Power to delegate, effect of**

*Where a written law confers power upon a person to delegate the exercise of any power or the performance of any duty conferred or imposed upon him under a written law –*

- a) such a delegation shall not preclude a person so delegating from exercising or performing at any time a power or duty so delegated;*
- b) such a delegation may be made subject to such conditions, qualifications, limitations or exceptions as the person so delegating may specify;*
- c) if the delegation may be made only with the approval of some person, such delegation, and any amendment of the delegation, may be made subject to such conditions, qualifications, limitations or exceptions as the person whose approval is required may specify;*
- d) such a delegation may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of office;*
- e) such a delegation may be amended or revoked by instrument in writing signed by the person so delegating;*
- f) in the case of a power conferred upon a person by reference to the term designating an office, such a delegation shall not cease to have effect by reason only of a change in the person lawfully acting in or performing the functions of that office.*

*The delegation of a power shall be deemed to include the delegation of any duty incidental thereto or connected therewith and the delegation of a duty shall be deemed to include the delegation of any power incidental thereto or connected therewith.*

*Where under a written law an act or thing may or is required to be done to, by reference to or in relation to, a person and that person has under a written law delegated a relevant function conferred or imposed on him with respect to or in consequence of the doing of that act or thing, the act or thing shall be regarded as effectually done if done to, by reference to or in relation to the person to whom the function has been delegated.*



## Records to be kept under provisions of the Local Government Act

The major requirements to keep records of delegations to committees, CEOs and other employees are contained in Section 5.18 and Section 5.46 of the LG Act.

Section 5.18 of the LG Act states that where Council delegations are made to committees (under Section 5.16), a register of delegations to committees is to be kept and reviewed at least once every financial year. Section 5.46 of the LG Act provides that where Council delegations are made to the CEO (under Subsection 5.42) and then further delegated to another employee (under Section 5.44), a similar register is also required to be kept and reviewed.

The registers of delegations to committees and CEOs should include a copy of the minutes which record the delegation (and any conditions) and can be kept in an electronic or paper format. In the case of a delegation from the CEO to an officer the register should also contain a copy of the memorandum of delegation.

**In addition, records are also to be kept whenever the delegated authority is used. The record is to explain:**

- How the person exercised the power or discharged the duty;
- When the person exercised the power or discharged the duty; and
- The persons or classes of persons, other than Council or Committee members or employees of the local governments, directly affected by the exercise of the power or the discharge of the duty (Regulation 19 *Local Government (Administration) Regulations 1996*).

## Delegates to disclose interests and lodge returns

Part 5 Division 6 of the LG 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 LG 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.

## Understanding the roles and functions of Elected Members and administration

The LG Act defines the roles of various key people within the Local Government structure. A Council's role is to direct and control the Local Government's affairs; be responsible for the performance of the Local Government's functions; oversee the allocation of its finances and resources; and determine policies.

Elected members do not have any authority to act or make decisions as individuals. They are members of an elected body that makes decisions on behalf of the Local Government through a formal meeting process.

### The role of each Councillor is to:

- a) Represent the interests of electors, ratepayers and residents;
- b) Provide leadership and guidance to the community;
- c) Facilitate communication between the community and the council; and
- d) Participate in decision-making processes at meetings.

Elected Members have a responsibility to represent the broad needs and wishes of the whole community in making decisions about the provision of services and the allocation of resources. They cannot merely act in the interest of special groups who may help to get them elected, no matter how valid the issues of such groups may be.

Council's main responsibilities are to set the overall directions and goals for the municipality and then monitor their implementation and success. The tools for setting these directions and goals are the major strategic plans.

Elected Members need to provide leadership and guidance to the community. This is especially important when communities face challenges, such as climate change, drought, high unemployment or skill shortages.

An important feature of the relationships between Elected Members and the CEO is distinguishing between the Council's governance role and the CEO's management role. Sometimes, the two roles are not easily separated, and it is up to the Council and the CEO to develop an understanding of their separate responsibilities.

Delegating specific functions to staff members enables Council decisions to be made more speedily and ensures that Council meetings are not tied down by procedural and every day administrative decisions. It also enables Councils to utilise the technical knowledge, training and experience of staff members to provide the best possible service.

Delegations are made at a formal Council meeting and specify what the delegate is empowered to do. Delegates must observe the strategies, policies and guidelines adopted by the Council. Through the CEO and senior managers, the Council can monitor the actions of staff to ensure that they exercise their delegated authority within the general framework it has already determined. In this way, the Council retains a measure of control over decision making.

Delegated authority for determining planning applications is generally given to the CEO and is often sub-delegated to planning staff. Council staff are required to act impartially, with integrity and to avoid real or apparent conflicts of interest.

The Council must keep a register of all delegations and this is among the documents that must be available for public inspection. All delegations to staff must be reviewed by a Council within 12 months of it being elected.

It is important that Elected Members and Council staff undertake ongoing education and training in relation to their roles and responsibilities within the delegation system in general as well as the specifics of their delegation statements, which are likely to change over time.

## **Importance of building trust and respect**

No system of delegated authority can work without a high degree of trust, loyalty and mutual respect between a Council and its administration. In situations where these elements are lacking then Council will not be prepared to delegate even the most common-sense planning decisions to administration.

A good working relationship between Elected Members and the CEO is fundamental to an effective Council. On the one hand, a Council cannot be expected to keep employed a CEO it neither respects nor trusts, yet on the other a CEO can only manage effectively when given the managerial freedom to give effect to Council decisions and implement Council policies.

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<sup>5</sup> *Report of The Panel of Inquiry into the City of Canning, An Inquiry Under Division 2, Part 8 Local Government Act 1995, May 2014*

**Dr Christopher N. Kendall, in his May 2014 Report of the Panel of Inquiry into the City of Canning<sup>5</sup>, concluded that:**

- a) *“14.16 I find there was an inadequate use of delegations at the City to allow Officers to avoid the need to burden the Council with matters best dealt with by City Officers.*
- b) *14.17 I further find that the degree of Council interference with regulatory matters is partly explained by a deteriorating level of trust between the Council and the Report of the Panel of Inquiry into the City of Canning Administration and a lack of confidence on the part of the Council in relation to some Administrative staff.*
- c) *14.18 Overall, I find that the Council picked up matters otherwise within the purview of the Administration because they felt better equipped to resolve them promptly. In so doing, the Council impermissibly interfered in the administration of the City. Said interference could, however, have been avoided had the Council and the Administration worked together to better understand the role of and need for delegated authority and the need for open communication and cooperation. By failing to do so, good government was not provided to the residents of the City of Canning. The result was inefficient planning approvals and otherwise avoidable delays.”*

It is noted that under a Government Commissioner significant improvements have since been made to the administration of planning and development systems at the City of Canning.

In summary terms, elected officials need to show respect for the expertise of staff and avoid undercutting their efforts by ignoring the evidence-based solutions they propose. Conversely, staff need to respect the political give-and-take inherent in democratic government and the negotiation that is bound to be part of any Council decision. Maintaining a constructive relationship between Elected Members and the CEO requires each to have a clear understanding of the other’s role, in particular, the difference between governance and management.

## **Common features of current delegation practice**

There is no standard way of articulating delegation of Local Government planning approval powers and duties in WA. The delegations, as expressed in each Local Government delegations register, vary within each jurisdiction. Some Councils provide for a great deal of delegation whilst others are much more limited in this regard.

To get an understanding of current delegation practice, delegation notices for planning applications for five medium sized central metropolitan Local Governments were compared with four large outer metropolitan Councils, four small inner metropolitan Councils, three regional city Councils and three small rural Councils.

Some delegations are ‘*en globo*’ and general under a single delegation notice (for example: Melville, Wanneroo and Claremont). Some Local Governments are very detailed in what

may and may not be considered under delegated authority and the conditions and provisos under which they are to be considered. They can have varying degrees of specifics with separate delegations for certain functions or applications, and others have separate and specific delegations to specific officers in certain circumstances (for example: Belmont and Vincent).

The findings from the study of the nineteen sample Local Governments have been pooled to provide a snapshot of current development application delegation practice. A summary of current practice is described in the following table. Attachment 2 gives a summary of the data collected for the nineteen sample Councils in table form, and an overview for each of these groupings detailed in Attachments 3 to 6.

Range and extent of delegations	Delegations of Functions in LPS	Decision Types	
		What is delegated and when?	What is not delegated and when?
<p>It is usual practice for a Local Government to delegate a significant amount of its planning approval functions, however, not all Local Governments are prepared to delegate to officers on a lower staff level than the CEO and not all CEOs are prepared to sub-delegate (refer to Attachment 2, Table 1 – Extent of delegation). It was observed that:</p> <p>It is not usual practice for Council to delegate to a DAP (in fact, no Local Government in WA has yet delegated development approval powers to a DAP where it is able to under the DAP Regulations).</p> <p>It is not usual practice for Council to delegate to a committee, however, one example of this is Fremantle and the Committee has greater delegation powers than those delegated to the officers.</p> <p>It is current practice to delegate from Council to the CEO.</p> <p>It is not usual practice for Council to delegate directly to officers other than the CEO, however, this has occurred at Fremantle, Wanneroo and Subiaco. In the case of Wanneroo and Subiaco, Council delegated directly to the other officers completely bypassing the CEO. This is not common and only possible under the LPS, not the LG Act.</p> <p>In most cases, the CEO is given the responsibility to sub-delegate to other officers. A little more than half of the sample Local Government CEOs sub-delegate planning approval functions.</p> <p>The extent of delegation to other staff ranges quite significantly. Where sub-delegation exists, it ranges from only to the highest planning level position equivalent to the director or manager of planning (for example at Kalgoorlie-Boulder) or to at least four different levels of planning positions (Wanneroo, South Perth, Bunbury, Gosnells). In addition, a very small sample also delegates to building staff positions (for example Gosnells and Melville).</p> <p>It is important to note that the extent of delegation may depend on what requires planning approval. For example, single dwellings, two grouped dwelling and outbuildings may not need planning approval under some schemes, so there is no need to delegate to building officers.</p>	<p>All of the Local Governments allowed for the delegation of planning approval functions within their LPS. Most used the wording from the MST, however, five did not. These included Melville, Subiaco, Claremont, Vincent and Wanneroo</p>	<p>It is general practice to delegate refusals for applications where uses are not permitted 'X' and where non-compliance of a statutory standard or provision is involved for which there is no discretion for relaxation. However, it is fairly evenly split with regard to broader powers of refusal. This is not always possible where exercising discretion is involved in the decision.</p> <p>There is some ambiguity with wording such that it is not clear if some Local Governments have delegated powers of refusal or not. It is not always specified, however, it may be alluded to in the wording. For example neither Nannup or Plantagenet specify whether refusals are delegated, however, as Plantagenet's use of the word "approval" indicates that only approvals are applicable, whereas Nannup's use of the word "determine" indicates that a decision may involve approval or refusal.</p> <p>It is common to delegate applications where only one decision option would exist for Council. That is where an application either fully complies or decidedly does not comply and no exercise of discretion is involved in the decision making.</p>	<p>High on the list is when substantiated planning objections/submissions are received regarding an application that cannot be resolved by modification or conditions. Vincent even goes so far as exempting delegation for applications where objections are received on planning grounds (for 'P', 'IP', 'AA' and 'SA' uses) without reference to being able to reach a solution through conditions.</p> <p>Approximately one third of the Local Governments are not prepared to allow for delegation of applications that involve some degree of heritage significance.</p> <p>Approximately one third of Local Governments prefer Council consideration for particular uses. These generally relate to those that are more sensitive or potentially likely to have a social or physical impact.</p> <p>Approximately one third of Local Governments rely on some form of opinion or subjectivity for the CEO and/or delegated officer in relation to whether an application can be dealt with under delegated authority or not. To name a few, these may include judgements made regarding the significance of impact the proposal may have, whether the proposal is considered to be "contentious" or the degree of variations to standards involved.</p> <p>In just over a quarter of the Local Governments, approval powers were not delegated for an application is of a specific value or scale.</p> <p>Just less than a quarter of Local Governments were preferred that Council consider an application if it had been considered by a committee or Council previously.</p> <p>Wanneroo provides for "call in" powers in relation to delegations. Where one or more Elected Members requests the Manger of Planning Implementation in writing, an application that could otherwise be considered under delegated authority must be referred to Council.</p> <p>Another unusual circumstance allowed by Wanneroo and Gosnells is if an applicant requests in writing, the proposal is to be considered by Council.</p> <p>Nannup and South Perth allow for a most unusual situation where should an applicant be aggrieved or dispute a decision made under delegated authority, the applicant may request the matter be reconsidered or reviewed by Council.</p>

# Consideration of best practice delegation approaches

## Introduction

Regulatory approvals systems differ across the spectrum of Local Governments based on the nature of the localities, the form of ongoing development and in response to Council and community expectations. Notwithstanding the variety of systems that exist, best practice features that include the exercise of delegated authority can be suggested.

There is no national model dealing specifically with delegation of Local Government planning approvals, however, there are a number of national planning principles and leading planning practice recommendations that can assist Local Governments in developing delegation policy and process.

Best practice planning approvals systems utilise both professional expertise in making delegated decisions as well as the value added to decision making by Elected Members' local knowledge for more complex applications. There will always be some proposals where the planning merits of an application are finely balanced or the application of planning scheme or policy provisions are ambiguous or allow for significant discretion to be exercised. In these situations it is appropriate that community views and expectations, represented through Elected Members, carry weight in the decision making process.

An effective delegation model provides staff with the guidance to exercise authority on behalf of the Council. This requires a robust local planning policy framework in which to direct assessment and decision making. Improving the efficiencies of the system should, in turn, free up Council to address higher order priorities including further development and monitoring of its policy base. The bedrock of any effective system is the existence of a high degree of respect and trust between a Council and its administration.

## National planning system Principles

In December 2009, the Australian Local Government and Planning Ministers' Council published a set of ten National planning system principles to help improve planning performance and better enable the achievement of desired social, economic and environmental outcomes through planning (refer to Attachment 7 for further details):

- » Integration
- » Co-ordination
- » Certainty
- » Responsiveness
- » Equity
- » Efficiency
- » Transparency and accessibility
- » Accountability
- » Effectiveness and authority
- » Engagement

Best practice planning uses the system principles necessary to ensure that the best outcome is achieved, both for the community and Council. It is important that the structure of the planning system, including the use of delegation systems, is adequate to provide for efficient processes that are appropriate in scope and content.

## Development Assessment Forum Leading Practice Model

In the context of the work being undertaken to define best practice planning systems, the National Development Assessment Forum (DAF) has prepared a leading practice model as a means of promoting efficient, effective and nationally harmonised development assessment systems across Australia.

To maximise efficiency and deliver certainty, DAF believes that a leading practice development assessment process should:

- » Focus on achieving high quality sustainable outcomes
- » Encourage innovation and variety in development
- » Integrate all legislation, policies and assessments applying to a given site
- » Encourage an appropriate performance based approach to regulation
- » Promote transparency and accountability in administration
- » Be cost effective
- » Be streamlined, simple and accessible
- » Use standard definitions and terminology
- » Incorporate performance measurement and evaluation
- » Promote continuous improvement
- » Promote sharing of leading practice information
- » Provide clear information about system operation.

The DAF leading practice model proposes ten leading practices that a development assessment system should exhibit. These practices articulate ways in which a system can demonstrate that it is efficient and fit for purpose.



Those relevant to the Western Australian context include the following<sup>6</sup> (further detailed in Attachment 8):

- **Stage 1: Policy making**
  - a) Effective Policy Development
  - b) Objective rules and tests
  - c) Built-in improvement mechanisms
- **Stage 2: Assessment**
  - d) Track-based assessment
  - e) A single point of assessment
  - f) Notification
- **Stage 3: Determination**
  - g) Professional determination for most applications
- **Stage 4: Appeal**
  - h) Applicant appeals

One of the major points for discussion in the development of a best practice development assessment model is the extent to which Elected Members are involved in the determination of Development Assessments (DAs). The DAF model argues that decisions should be clearly made at the most effective level against specific assessment criteria with the majority of development applications being assessed and determined by professional staff or private sector experts. In the consultation phase of the preparation of the DAF model it was concluded that 95% of DAs were already being approved by planners.

Use of Local Government delegation of approval powers in WA is widespread, however, the extent to which development applications are determined under delegated authority has not been determined in this study. In addition to the use of delegated authority, the introduction of DAPs in WA has also followed (to some extent) the DAF leading practice model which promotes development applications being assessed and determined by professionals.

It is essential that the two stages (Stage 1: Policy making and Stage 2: Assessment) in the development assessment system are well developed prior to Stage 3: Determination as these provide the basis for decision making. These system stages are important regardless of who determines a development application at Stage 3, however, become more critical when determination powers are delegated to others. Robust policy and assessment systems provide strong guidance to those making the decisions and provide assurance to those delegating that the right decisions will be made.

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<sup>6</sup> Source: *A Leading Practice Model for Development Assessment in Australia*, Development Assessment Forum (March, 2005)

## Importance of strategic policy frameworks

Regulatory approvals processing relies on an integrated suite of strategic and planning policies that address relevant issues for the local authority and interrelate consistently with established structures and processes to produce coherent and cohesive outcomes.

The importance of the strategic planning process to inform the development and interpretation of regulatory planning policies cannot be understated. In the absence of adequate levels of strategic planning, regulatory policies are developed without an understanding of the bigger picture and the desired strategic direction of the organisation. Regulatory policy development then tends to 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 delegations is that it is based on a clear set of Council 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.

The DAF leading practice model for development assessment refers to development assessment requirements and criteria written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.

Policy can be linked to the statutory planning process to set out a framework for the most appropriate level of decision making. Where proposals pose no or low risk (that is, they comply with mandatory and policy provisions, or include some deviation from policy but likely to have minimal impact) it is appropriate that these move through the approvals process without delay, including the possible use of delegated authority. On the other hand, for all other proposals a more complex approach is required for assessment and there is an expectation that some proposals may be more appropriately determined by Council or others, whereby a more lengthy process would be involved.

## Track-based development assessment and decisions

The DAF leading practice model suggests the streaming of development applications into an assessment “track” that corresponds with the level of assessment required to make appropriately informed decisions. Six tracks are proposed including: Exempt, Prohibited, Self-assess, Code assess, Merit assess and Impact assess (further detailed in Attachment 9 – DAF leading practice model development assessment tracks).

The track in which an application is to be assessed and who is responsible for the decision must be clear before the application is submitted, with the track being set by the statutory instrument (LPS). The idea is that the track will ensure both the community and the applicant fully understand the requirements of the development assessment and approval process. The tracks are designed to provide opportunity for decisions in the self-assess and code assess tracks to be made by an expert professional assessor.

This system has not yet been fully developed within Australia, however, the potential for development assessment based on the DAF track-based assessment model is being considered for the WA planning system. The WAPC states in its *Planning Makes It Happen: Phase Two* (2013) planning reform discussion paper that the DAF model could be modified to suit WA’s needs. Local Governments could be given the opportunity to vary which types of development are allocated to each track in their local planning system, to suit the specific needs of the area and the expectations of the local community.

In terms of delegation, a track-based framework, or decision making “streams” could be developed using similar principles to the DAF model. For example, it is reasonable that prohibited, self-assess and code assess applications be delegated; whilst merit assess applications may also be delegated with an opportunity for Council to “call in”; and impact assess applications being determined by Council.

## Suggested delegation model

The DAF model promotes the majority of development applications being assessed and determined by professional staff or private sector experts. For WA, where decisions are not mandatorily referred to a DAP, it is still relevant to consider that all non-discretionary decisions, or those where existing policy frameworks exist to guide the use of discretion, be made under delegated authority by qualified planning staff.

It is recognised that there will be instances where applications involve a departure to policy, which require a decision that balances competing objectives or raises issues of public interest. It is these decisions that may require Elected Member involvement and where planning staff could be required to refer these matters to Council for a decision.

**Based on the DAF leading practice model, it is suggested that a system of delegation could involve the following (noting that delegates retain the ability to refer any application to Council for determination):**

1. For the vast majority of applications, staff assessment and decision making using known policies and objective rules and tests providing efficient and transparent assessment.
2. Those applications that slightly fall outside the use of objective rules and contain a performance element be delegated (set up triggers for certain applications to be automatically presented to Council).
3. Those more sensitive applications that reasonably fall outside the use of objective rules and contain a performance element may still be delegated while providing a set of triggers that may include a call-in power to allow the policy maker (i.e. Council) to take control of applications that will either have a significant impact on the achievement of policy, or due to their nature, are likely to establish policy. It is also recommended that the applicant and Council administration also be given opportunity to request Council consideration of the application in these instances.
4. Where planning applications are considered to have merit, however, and propose significant variations from adopted Council policies, the proposal should be referred to Council for a decision.

Most instruments of delegation in WA contain triggers that determine whether or not an application is to be decided by Council or under delegation. Triggers can include a measurement of degree of variation (for example >10% variation to height requirement), the receipt of objections, application type, absence of local policy framework to guide decision-making, or the monetary value of proposal. These triggers can often be somewhat arbitrary measures. In particular, objection triggers relying solely on weight of numbers have raised concern regarding substance and validity. Council consideration of the appropriate triggers is needed.

## **Track-based principles**

As a guide to making a delegations framework for the determination of planning applications, five different streams of track-based assessment should be considered 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 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 reserve the right not to exercise delegation powers**

## Council call in provision and applicant's request as triggers for Council consideration

**For applications that involve a discretionary use and would otherwise be dealt with under delegated authority, opportunity could be made available for:**

- Elected members to “call in” the application to be considered by Council instead of under delegated authority; and
- The applicant to request the application to be considered by Council instead of under delegated authority.

**Based on the DAF leading practice model, it is suggested that a system of delegation could involve the following (noting that delegates retain the ability to refer any application to Council for determination):**

- Request to be made to the CEO within a specified number days of notification of receipt of the application;
- Request to be made in writing;
- To be signed by at least two Elected Members;
- Reasons to be stated for the call in.

**Suggested procedure for an applicant request for Council consideration includes:**

- Request to be made to the CEO at the time the application is lodged;
- Request to be made in writing;
- Reasons to be stated for Council consideration.

## 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 approval to the CEO, Council (or the case of CEO in relation to sub-delegation) must be 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
- » Sufficiently resourced to carry out the delegation.

With regard to sub-delegation, it is preferred that the officer responsible for assessing an application wherever possible should differ from the officer making a decision on that application.

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

1. A register is to be kept of all delegations made by Council and sub-delegations made by the CEO with regard to development applications and reviewed each year;
2. Records are to be kept whenever the delegated authority is used;
3. A Council 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
4. A Council officer who has been delegated a power or duty must complete a primary and annual return each year.

In addition to the above requirements, it is recommended that 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 a Local Government's obligation under the *Local Government Act 1995* to annually review all delegations made by Council.

The review should 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.

## Attachment 1 - Delegation under the Local Government Act 1995 and Model Scheme Text

### Planning Delegations under the *Local Government Act 1995*

The provisions of the LG Act which provide for delegations by a Council or the CEO are briefly as follows:

S.5.16(1) provides -

- a) *'Under and subject to section 5.17, a Local Government may delegate to a committee any of its powers and duties other than this power of delegation.'*

S.5.42(1) provides -

- a. *'A Local Government may delegate to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in s.5.43.'*

S.5.44(1) provides -

- b. *'The CEO may delegate to any employee of the Local Government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation.'*

S.5.16(2) in relation to a delegation by the Council to a committee, and s.5.45(1) in relation to delegations by the Council to the CEO or by the CEO to another employee provide that -

- c. *'Without limiting the application of sections 58 and 59 of the Interpretation Act 1984 -*
  - i. *A delegation made under this section has effect for the period of time specified in the delegation or if no period has been specified, indefinitely; and*
  - ii. *Any decision to amend or revoke a delegation by a Local Government under this [section/Division] is to be by an absolute majority.'*

S.5.16(2) in the case of a delegation by the Council to a committee; s.5.42(2) in the case of a delegation by the Council to the CEO; and s.5.44(2) in the case of a delegation by the CEO to other employees, provide that the delegation is to be in writing and may be general or as otherwise provided in the instrument of delegation.

S.5.44(3) in the case of a delegation by the CEO to another employee provides that delegations by the CEO are subject to any conditions imposed by the Council on its delegation to the CEO, and s.5.44(4) recognises the possibility of the CEO imposing conditions or further conditions on a delegation to other employees.

S.5.16(3)(a) in relation to delegations by Council to a committee and s.5.45(1)(a) in relation to delegations to the CEO and by the CEO to other employees provide that a delegation under the LG Act *'has effect for the period of time specified in the delegation or where no period has been specified, indefinitely.'*



## Planning delegations under the Model Scheme Text

Local Governments are required by reg.11 of the TP Regulations to prepare their LPSs 'in accordance with the Model Scheme Text set out in Appendix B'.

### **Clause 11.3 of the MST in Appendix B of the TP Regulations provides -**

#### *'11.3 Delegation of functions*

- 11.3.1 The Local Governments may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to a committee or the CEO, within the meaning of those expressions under the Local Government Act 1995, the exercise of any of its powers or the discharge of any of its duties under the Scheme, other than this power of delegation.*
- 11.3.2 The CEO may delegate to any employee of the Local Government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under clause 11.3.1.*
- 11.3.3 The exercise of the power of delegation to clause 11.3.1 requires a decision of an absolute majority as if the power had been exercised under the Local Government Act 1995.*
- 11.3.4 Sections 5.45 and 5.46 of the Local Government Act 1995 and the regulations referred to in section 5.46 apply to a delegation made under this clause as if the delegation were a delegation under Division 4 of Part 5 of that Act.'*

## Attachment 2 – Summary of sample Councils’ data

Table 1 - Extent of delegation

Delegation from Council to:	Baseline (5 LGs)	Small inner (4 LGs)	Large outer (4 LGs)	Regional cities (3 LGs)	Small rural (3 LGs)	Total (19 LGs)
Committee	1					1
CEO	5	3	3	3	3	18
Other officer/s of Council	1 (in addition to CEO)	1 (instead of CEO)	1 (instead of CEO)	0	0	3
Sub-delegation from CEO to:						
Director Planning	4	2	1	2	1	10
Manager Planning	4	2	1	1	1	9
Coordinator Planning	5		1	1		7
Coordinator Planning Mediation	1					1
Senior Planning Officer	3	1		1		5
Planning Officer	1	1				2
Manager Building Services	2			1		3
Senior Building Surveyor	2				1	3
Total LGs that sub-delegate to other officers						
Other Officers	5 yes	2 yes 1 no 1 not possible	1 yes 2 no 1 not possible	2 yes 1 no	2 yes 1 no	12 yes 5 no 2 not possible

Table 2 - Delegation in Local Planning Scheme

Delegation of Functions mentioned in LPS	Baseline (5 LGs)	Small inner (4 LGs)	Large outer (4 LGs)	Regional cities (3 LGs)	Small rural (3 LGs)	Total (19 LGs)
Yes	5	4	4	3	3	19
As per MST	4 yes 1 no	1 yes 3 no	3 yes 1 no	3 yes	3 yes	14 yes 5 no

Table 3 - Decision types

Decision Types	Baseline (5 LGs)	Small inner (4 LGs)	Large outer (4 LGs)	Regional cities (3 LGs)	Small rural (3 LGs)	Total (19 LGs)
Refusal	5 yes* (1 restricted)	4 yes (2 restricted)	4 yes (2 restricted)	3 yes (2 restricted)	2 yes (1 restricted)  1 no	18 yes (8 restricted, 10 broad)  1 no
Renewal	5 yes	2 yes**  2 not specified	2 yes**  2 not specified	1 yes  2 not specified	0 yes  3 not specified	10 yes  9 not specified
Temporary	5 yes	2 yes  2 not specified	0 yes  4 not specified	0 yes  3 not specified	0 yes  3 not specified	7 yes  12 not specified
Retrospective	5 yes*	1 yes  2 not specified 1 no	1 yes  3 not specified -	0 yes  3 not specified -	0 yes  3 not specified -	7 yes  11 not specified 1 no

\* Includes Fremantle which has delegated to the Planning Services Committee and not the CEO or other officers.

\*\* Relates to extension of approval.

Table 4 - Conditions, exemptions and triggers

Key Triggers for Council consideration	Baseline (5 LGs)	Small inner (4 LGs)	Large outer (4 LGs)	Regional cities (3 LGs)	Small rural (3 LGs)	Total (19 LGs)
Unresolved objections	3	2	2	2	1	10
Heritage significance	2	3	1 (soft)	0	0	6
Particular/ specified uses	4	1	1	0	0	6
Significance in size/scale, value. Note: Mandatory DAPs when >\$7m and Optional when >\$3m - \$7m.	3	1	0	1	0	5
Previously considered by Council or committee	2	1	0	0	0	3
Other (less common)						
Councillor call in			1			1
Request by applicant	1		1			2
Request by applicant after delegated decision		1			1	2
Involves opinion/ subjectivity	1	2	1	1	1	6

## Attachment 3 - Benchmark five Councils

### Extent of delegation of authority

- » Fremantle gives wide delegation powers to the Planning Services Committee for all planning applications. None of the other Local Governments delegate to a committee. The committee has more powers delegated to it than the CEO or other officers.
- » All Local Governments delegate planning approval functions to at least the CEO. Fremantle Council also delegates some planning approval functions directly to the Manager of Planning.
- » All CEOs delegate at least some planning functions to other planning staff ranging from higher level positions such as Director of Planning to Planning Officer. Gosnells and Melville also delegate some minor residential proposals to the Manager of Building Services and the Senior Building Surveyor. The lower the staff level, the less delegation given. Belmont only sub-delegates in very specific development application circumstances.

Delegation from Council to:	Fremantle	Cockburn	Gosnells	Melville	Belmont
Committee	√ (Planning Services Committee)	NA	NA	NA	NA
CEO	√	√	√	√	√
Director Planning					
Manager Planning	√	X	X	X	X
Coordinator Planning	X	X	X	X	X

Sub Delegation (from CEO) to:	Fremantle	Cockburn	Gosnells Where valued <\$3m, is <3 storeys, or < 20 dwellings.	Melville	Belmont
Director Planning		√	√	√	√ Restricted to very specific circumstances
Manager Planning		√	√	√	√ Restricted to very specific circumstances
Coordinator Planning	√	√	√	√	√ Restricted to specific circumstances
Coordinator Planning Mediation	√				
Senior Planning Officer		√ With exceptions	√ Aspects of R Codes only	√ With exceptions	
Planning Officer		√ With exceptions)			

Sub Delegation (from CEO) to:	Fremantle	Cockburn	Gosnells Where valued <\$3m, is <3 storeys, or < 20 dwellings.	Melville	Belmont
Manager Building Services			√ Single houses and patios in grouped dwelling developments only	√ Minor complying development, minor variations to patios and outbuildings, refusals	
Senior Building Surveyor			√ Single houses and patios in grouped dwelling developments only	√ Minor complying development, minor variations to patios and outbuildings, refusals only	

### Delegation of functions mentioned in LPS

- » All of the Local Governments reference delegation of planning functions in their respective local planning schemes.
- » All of the Local Governments incorporate the MST wording, with the exception of Melville which uses different text.

	Fremantle	Cockburn	Gosnells	Melville	Belmont
Reference to Delegation of Functions in LPS	TPS No. 4 CI 11.3 (as per MST)	TPS No. 3 CI 11.3 (as per MST)	TPS No. 6 CI 12.3 (as per MST)	TPS NO. 5 CI 9.7 (not as per MST)	LPS No. 15 CI 11.3 (as per MST)

### Decision Types

- » All Local Governments delegate powers to refuse a planning application, however, some Local Governments are more restrictive than others (for example only for 'X' uses). Fremantle only delegates refusals to the Planning Services Committee and not to the CEO or other officers.
- » All Local Governments delegate powers for renewal of approvals, temporary approvals and retrospective approvals. Some Local Governments are more restrictive than others. For example Fremantle only delegates retrospective approvals to the Planning Services Committee and not to the CEO or other officers and Belmont only delegates its temporary approval function for a certain use in a specified precinct.

#### Notes:

X – Exempted from delegation (requires Council determination)

√ - Included in delegation

On the provision that at least five members of the committee vote in favour of the committee recommendation and the delegation does not override any provision under the City of Fremantle Standing Orders Policy.

Decision Type	Fremantle	Cockburn	Gosnells	Melville	Belmont
Refusal	X CEO/other officers √ Planning Services Committee*	√	√ Restricted only to where no discretion is required and it is a deemed refusal.	√	√
Renewal	√	√	√	√	√
Temporary	√	√	√	√	√ Restricted to only certain uses in certain precincts
Retrospective	X CEO/other officers √ (committee only)	√	√	√	√

### Conditions, exclusions and triggers

- » All of the Local Governments have broad delegated planning approval functions, however, some Local Governments go into greater detail than others in stating conditions for delegation and when applications are deemed excluded from delegated authority determination.
- » Conditions such as compliance with LPS provisions, Residential Design Codes and LP policy are common.
- » Of greater significance is when an application or circumstance is specifically excluded, or when a condition cannot be complied with, which then triggers the need for Council determination.

#### The most common triggers for Council determination for these Local Governments include:

- Unresolved submissions/objections – for example where submissions/objections have been received during advertising and cannot be resolved by conditions of approval or negotiation.
- Significance in size, scale and/or value - for example development >\$1m in value and/or net increase of dwellings and/or net increase of floor area >5000m<sup>2</sup>).
- Proposals subject to heritage significance – for example demolition of a building listed on the Municipal Heritage Inventory.
- Particular/specified uses – for example specific ‘D’ and ‘A’ uses such as night clubs and liquor stores, or non-conforming uses and use not listed.
- Other less common triggers for Council determination for these Local Governments include:

Key Themes	Fremantle	Cockburn	Gosnells	Melville	Belmont
Significance in size/scale, value. Note: Mandatory DAPs when >\$7m and Optional when >\$3m - \$7m.	X Development >\$1m and/or net increase of dwellings and/or net increase >5000m2 √ Planning Services Committee*		X Delegation to CEO, however, no sub delegation where value >\$3m or proposal is 3 or more storeys or >20 dwellings.		X Development >\$5m.
Heritage significance	X Demolition of building on MHI Demolition of primary structure, unless received positive heritage advice. √ Planning Services Committee*	X Category "A" Heritage places/buildings. Demolition of heritage place. Involving Cl 7.5 of LPS.	√	√	√
Unresolved objections	X Relevant submissions received, which cannot be addressed by conditions of approval and is not a minor variation (determined by CEO) and clearly does not address relevant performance criteria of R Codes or intent of relevant LP policy or LPS. √ Planning Services Committee*	X Where objections received during public advertising and cannot be resolved via conditions or negotiation.	X Where objections relate to valid planning and development considerations and cannot be overcome by imposing conditions or modifying the design	√	√
Particular/specified uses	X Change of use where it is an 'A' use Non-conforming use	X Industries general (licensed) located closer to residential properties than recommended in OEPA policy	X Specific 'D' and 'A' uses (e.g. Industry-noxious, Liquor Store, Night Club)	√	X Use not listed (some exceptions)
Previously considered by Council or committee	X Unless variations are only minor	√	X Subsequent applications involving key elements of the original proposal	√	√
Other (less common)	X Retrospective approval (existing development)				
			X If applicant requests Council consideration in writing		
				X Use of discretion and variation	

Key Themes	Fremantle	Cockburn	Gosnells	Melville	Belmont
				under the LPS not permitted where Special or Major Majority decision required.	
					X Land reserved/ owned/ controlled by Council
					X If discretion required under LPS for 'uses not listed'; Approval subject to later details; and temporary approvals.
					X Has strategic impact resulting in direct interest to Council.
					X Significant variations to the LPS



## Attachment 4 - Comparison to large outer metropolitan Councils

### Extent of delegation of authority

- » None of the Local Governments delegate to a committee.
- » All Local Governments delegate planning approval functions to at least the CEO, with the exception of Wanneroo.
- » Wanneroo Council delegates some planning functions directly to the Coordinator of Planning, Manager of Regulatory Services, Special Projects Officer and Senior Project Planners bypassing the CEO. The delegation is specific in terms of excluding applications for Industry Extractive, General, Hazardous or Concrete Batching Plants.
- » Rockingham is the only Local Government that sub-delegates from the CEO to other officers (Director of Planning, Manager of Planning and Coordinator of Planning).
- » Wanneroo – direct delegation to other officers, bypassing CEO

Delegation from Council to:	Wanneroo	Rockingham	Armadale	Swan
Committee				
CEO		√	√	√
Director Planning				
Manager Planning				
Coordinator Planning (Strategic and/or Statutory)	√ not for applications for Industry – Extractive, General, Hazardous, or Concrete Batching Plants)			
Manager Regulatory Services	√ » not for applications for Industry – Extractive, General, Hazardous, or Concrete Batching Plants » only if consistent with and made in the form of subclause 6.1.3(b) of District Planning Scheme No. 2			
Special Projects Officer	√ not for applications for Industry – Extractive, General, Hazardous, or Concrete Batching Plants			
Senior Project Planners	√ not for applications for Industry – Extractive, General, Hazardous, or Concrete Batching Plants			

Sub Delegation to:	Wanneroo	Rockingham	Armadale	Swan
Director Planning		√		
Manager Planning (Strategic and/or Statutory)		√		
Coordinator Planning (Strategic and/or Statutory)		√		
Manager Regulatory Services				
Special Projects Officer				
Senior Project Planners				
Coordinator Planning Mediation				
Senior Planning Officer				
Planning Officer				
Manager Building Services				
Senior Building Surveyor				

### Delegation of functions mentioned in LPS

- » All of the Local Governments reference delegation of planning functions in their respective local planning schemes.
- » All of the Local Governments incorporate the MST wording, with the exception of Wanneroo which uses different text.

	Wanneroo	Rockingham	Armadale	Swan
Reference to Delegation of Functions in LPS	TPS No. 2 Cl 8.6 (not as per MST)	TPS No. 2 Cl 8.10 (As per MST)	TPS No. 4 Cl 11.3 (As per MST)	LPS No. 17 Cl 11.3 (As per MST)

## Decision types

- » Delegation powers to refuse planning applications are not immediately obvious and inconsistent for all of these Local Governments. Armadale clearly provides for refusals under delegated authority, however, Wanneroo is less clear. The wording in Wanneroo's delegation register is ambiguous, however, it is understood that refusals are part of delegated authority in this instance. Rockingham only allows for refusals where a proposal involves an 'X' use or exceeds the minimum site requirements under the Residential Design Codes. Swan is similar only allowing refusals for 'X' uses and proposals not requiring exercise of discretionary powers.
- » The Local Governments do not generally differentiate renewal of approvals, temporary approvals or retrospective approvals. The exception to this is Armadale which specifies extension of approvals and retrospective approvals under delegated authority and Swan which also includes extension of approvals.

### Notes:

X – Exempted from delegation (requires Council determination)

√ - Included in delegation

Decision Type	Wanneroo	Rockingham	Armadale	Swan
Refusal	√	√ 'X' use only	√	√ 'X' use and non-discretionary only
Renewal	Not specified	Not specified	√ Extension	√ Extension
Temporary	Not specified	Not specified	Not specified	Not specified
Retrospective	Not specified	Not specified	√	Not specified

### Conditions, Exclusions and Triggers

All of the Local Governments have broad delegated planning approval functions, however, some Local Governments go into greater detail than others in stating conditions for delegation and when applications are deemed excluded from delegated authority determination.

Conditions such as compliance with LPS provisions, Residential Design Codes and LP policy are common.

Of greater significance is when an application or circumstance is specifically excluded, or when a condition cannot be complied with, which then triggers the need for Council determination.

1. There were no particularly outstanding triggers in common for these Local Governments, however, to compare with the baseline five Councils, the following exclusions are noted:
  - Two out of the four Local Governments excluded applications where unresolved submissions/objections are received during advertising and cannot be resolved by conditions of approval or negotiation.
  - None of the Local Governments excluded applications due to significance in size, scale and/or value.
  - One of the four Local Governments excluded proposals subject to an aspect involving heritage significance.
  - One of the four Local Governments excluded 'A' uses.
  - One of the four Local governments require Council consideration when an applicant requests that the application be considered by Council.
  - None of the Local Governments excluded proposals previously considered by Council.
2. Other 'one off' exclusions which were not applicable to the five baseline Councils of significance include:
  - Where one or more Elected Member requests the Manager of Planning in writing for referral to Council (call in).
  - Where inconsistent with LPS, LP policy, Residential Design Codes, Structure Plan or Strategy.

In the opinion of the Principal Planner, it would be in the public interest or consistent with the principles of administration accountability for Council to determine the application.

Key Themes	Wanneroo	Rockingham	Armadale	Swan
Significance in size/scale, value.				
Heritage significance			√ (With restrictions)	
Unresolved objections	X Where objections received during advertising in opinion of Manager of Planning Implementation are relevant and cannot be resolved by modification or conditions.			X Where objection is received from any statutory agency Where objections received during advertising in opinion of Principle Planner are relevant and cannot be resolved by modification or conditions.
Particular/ specified uses		X No delegation for 'A' or 'X' uses,		
Previously considered by Council or committee				
Other (less common)	X Where one or more Elected Member requests the Manager Planning Implementation in writing for referral to Council			
	X If applicant requests Council consideration in writing.			

## Attachment 5 - Comparison to smaller inner metro Councils

### Extent of delegation of authority

- » None of the Local Governments delegate to a committee.
- » All Local Governments delegate planning approval functions to at least the CEO, with the exception of Subiaco.
- » Subiaco Council delegates planning functions directly to the Director of Planning and the Manager of Planning bypassing the CEO.
- » Vincent sub-delegates from the CEO to other officers (Director of Planning and Manager of Planning) as does South Perth (Director of Planning and Manager of Planning, with limited sub-delegation to the Senior Planning Officer and Planning Officer for some residential proposals).

Delegation from Council to:	Subiaco	Claremont	South Perth	Vincent
Committee				
CEO	X	√	√	√
Director Planning	√			
Manager Planning	√			

Sub Delegation to:	Subiaco	Claremont	South Perth	Vincent
Director Planning			√	√
Manager Planning (Strategic and/or Statutory)			√	√
Coordinator Planning (Strategic and/or Statutory)				
Manager Regulatory Services				
Special Projects Officer				
Senior Project Planners				
Coordinator Planning Mediation				
Senior Planning Officer			√ Residential up to 6 dwellings Residential up to	

Sub Delegation to:	Subiaco	Claremont	South Perth	Vincent
			9m high	
Planning Officer			√ Up to 3 storey dwellings Single storey residential additions, outbuildings and home occupations.	
Manager Building Services				
Senior Building Surveyor				

### Delegation of functions mentioned in LPS

- » All of the Local Governments reference delegation of planning functions in their respective local planning schemes.
- » South Perth incorporates the MST wording.

Subiaco, Claremont and Vincent use different wording to the MST (Subiaco and Vincent use the same wording)

### Reference in LPS

	Subiaco	Claremont	South Perth	Vincent
Reference to Delegation of Functions in LPS	TPS No. 4 CI 80 (not per MST)	TPS No. 3 CI 98 (not per MST)	TPs No. 6 CI 9.7 (As per MST)	TPS No. 1 CI 49 (not per MST)

### Decision types

- » All Local Governments delegate powers to refuse a planning application, however, some Local Governments are more restrictive than others (for example only for 'X' uses or where no discretionary powers are available).
- » The Local Governments do not generally differentiate renewal of approvals, temporary approvals or retrospective approvals. The exception to this is Subiaco which allows for Temporary approvals, but not retrospective approvals, and Vincent which allows for extension of approvals to be dealt with under delegated authority. South Perth refers to all powers within its LPS, therefore if provisions for renewal of approvals, temporary approvals and retrospective approvals exist, then these may be determined using delegated authority.

#### Notes:

X – Exempted from delegation (requires Council determination)

√ - Included in delegation

Decision Type	Subiaco	Claremont	South Perth	Vincent
Refusal	√ Not specified, however, language indicates refusals delegated (delegates 'determination')	√ (restricted to non-discretionary)	√	√ (provided it is an 'X' use or certain Category 3 and 4 residential planning applications and not a non-conforming use)
Renewal	Not specified	Not specified	√	√ Extension
Temporary	√	Not specified	√	Not specified
Retrospective	X	Not specified	√	Not specified

### Conditions, exclusions and triggers

All of the Local Governments have broad delegated planning approval functions, however, some Local Governments go into greater detail than others in stating conditions for delegation and when applications are deemed excluded from delegated authority determination.

Conditions such as compliance with LPS provisions, Residential Design Codes and LP policy are common.

Of greater significance is when an application or circumstance is specifically excluded, or when a condition cannot be complied with, which then triggers the need for Council determination.



**There were some triggers in common for these Local Governments, however, to compare with the baseline five Councils, the following exclusions are noted:**

- Two out of the four Local Governments excluded applications where unresolved submissions/objections are received during advertising and cannot be resolved by conditions of approval or negotiation.
- One of the Local Governments excluded applications due to significance in size, scale and/or value. South Perth excluded residential development of 9m or higher or comprising 10 or more dwellings.
- Three of the four Local Governments excluded proposals subject to an aspect involving heritage significance.
- Two of the four Local Governments are very specific in which uses can be considered under delegated authority.
- None of the Local Governments require Council consideration when an applicant requests that the application be considered by Council (at the time of submitting the application).
- One of the Local Governments excluded proposals previously considered by Council. South Perth requires Council consideration where a proposal has been significantly modified from what was previously considered by Council at an earlier stage of the development process.

**Other ‘one off’ exclusions which were not applicable to the five baseline Councils of significance include:**

- Where a proposal involves partial or complete demolition of a primary structure.
- Where commercial or light industrial development involving a variation to a development standard under the LPS, LP Policy or local law.
- Where discretionary power is to be exercised for specified uses and circumstances.
- For certain signage applications.
- Where objections are received for ‘P’, ‘IP’, ‘AA’ and ‘SA’ uses.

South Perth’s delegation requires a footnote to be added to all delegated approvals and discretionary refusals stating that if an applicant is aggrieved by the decision, the matter may be reviewed at a Council meeting.

Key Themes	Subiaco	Claremont	South Perth	Vincent
Significance in size/scale, value.			X No delegation where residential development = or > 9m high, = or > 10 dwellings.	
Heritage significance	X No delegation for demolition of a secondary structure subject to CI 55 that is significant or		X No delegation for demolition of a place listed on MHI, interim Heritage Data Base, State Register of Heritage	X No delegation for place listed on MHI. Interim Heritage Data Base, State

Key Themes	Subiaco	Claremont	South Perth	Vincent
	worthy of preservation or demolition of a structure subject to any heritage agreement under CI 56.		Places, register of National Estate, National Trust listing.	Register of Heritage Places, Register of National Estate and National Trust Listing.
Unresolved objections	X If objections are received on planning rounds which cannot be addressed by way of condition of approval.	X For Residential development where relevant objections on planning grounds have been received and has not been resolved by modifications to the plan. For commercial or light industrial development where relevant objections on planning grounds have been received and not been resolved by modifications to the plan.		
Particular/ specified uses			X Excludes a range of specified uses.	
Previously considered by Council or committee			X Where proposal has been significantly modified from what was previously considered by Council at an earlier stage of the development process.	
Other (less common)	X Not for applications for retrospective approval			
	X Not for partial or complete demolition of a primary structure.			
		X For commercial or light industrial development where a variation is required to a development standard under the LPS or any Council policy or		

Key Themes	Subiaco	Claremont	South Perth	Vincent
		local law.		
			X Where in the opinion of the delegated officer the proposal is likely to have a significant impact on the City.	
			X Major development comprising mix of residential and non-residential components	
			X Where in the opinion of the delegated officer the proposal is contentious and subject of community interest.	
			X Where discretionary powers are to be exercised for specified uses and circumstances.	
			X The delegation requires a footnote for all conditional approvals and discretionary refusals advising that if aggrieved with the decision, the applicant may request the decision be reviewed at a Council meeting.	
				X Objections received on planning grounds for P, IP, AA and SA uses
				X Certain signage

## Attachment 6 - Comparison to Regional City Councils

### Extent of delegation of authority

- » None of the Local Governments delegate to a committee.
- » All Local Governments delegate planning approval functions to at least the CEO and none of the Local Governments delegate directly to other officers.
- » Geraldton has no sub-delegation.
- » Kalgoorlie-Boulder sub-delegates planning functions to the Director of Planning, however, this is restricted to development <\$2.5m and/or a net increase <10 dwellings and/or net increase of <1000m<sup>2</sup> floor area.
- » Bunbury sub-delegates planning application functions to a number of officers including the Director of Planning, Manager of Development Assessment and Building Certification, Manager Sustainability and Integrated Land Use Planning and Team Leader Development Assessment. Functions dealing only with single houses, grouped dwellings, multiple dwellings and ancillary dwellings are also delegated to the Senior Planning Officer and the Team Leader Building.

Delegation from Council to:	Kalgoorlie-Boulder	Greater Geraldton	Bunbury
Committee			
CEO	√	√	√
Director Planning			
Manager Planning			

Sub Delegation to:	Kalgoorlie-Boulder	Greater Geraldton	Bunbury
Director Planning	√ Restricted. No sub delegation for development >\$2.5m and/or a net increase in excess of 10 dwellings and/or > net increase of >1000m <sup>2</sup> floor area.	Nil	√
Manager Planning (Strategic and/or Statutory)			√ Manager of Development Assessment and Building Certification √ Manager Sustainability and Integrated Land Use Planning
Coordinator Planning (Strategic and/or Statutory)			√ Team Leader Development Assessment
Manager Regulatory Services			

Sub Delegation to:	Kalgoorlie-Boulder	Greater Geraldton	Bunbury
Special Projects Officer			
Senior Project Planners			
Coordinator Planning Mediation			
Senior Planning Officer			√ (non-conforming use, single houses and grouped dwellings only)
Planning Officer			
Manager Building Services			√ Team Leader Building (single houses and grouped dwellings, residential setback variations)
Senior Building Surveyor			

### Delegation of functions mentioned in LPS

- » All of the Local Governments reference delegation of planning functions in their respective local planning schemes.
- » All of the Local Governments incorporate the MST wording.

	Kalgoorlie-Boulder	Greater Geraldton	Bunbury
Delegation of Functions in LPS	TPS No. 1 (as per MST)	TPS No.2 & TPS No.3 (as per MST)	TPS No. 7 (as per MST)

### Decision Types

- » All Local Governments delegate powers to refuse a planning application, however, some Local Governments are more restrictive than others.
- » Bunbury only specifies refusals under delegated authority for bed and breakfast establishments. Although it is not clear, the language used in the Bunbury delegation indicates that refusal may also be allowed for single houses, grouped dwellings, home occupations and non-conforming uses (“deal with” and “in respect to”). Not able to refuse development applications listed as ‘P’, ‘A’ and ‘AA’ under the Scheme.
- » Greater Geraldton and Kalgoorlie-Boulder have broad delegated refusal powers. Greater Geraldton allows for refusal powers to extend beyond ‘X’ uses to proposals considered to deviate from planning standards, policies and the Residential Design Codes. Kalgoorlie-Boulder specifies that all applications may be refused under delegated authority having due regard to the relevant planning scheme requirements and policy. Kalgoorlie-Boulder goes a step further in specifying for some uses in certain

circumstances, that delegated authority may only relate to refusal (not approval) of a development application.

- » The Local Governments do not generally differentiate renewal of approvals, temporary approvals or retrospective approvals. The exception to this is Kalgoorlie-Boulder which specifies that renewal of approvals may be considered under delegated authority.

#### Notes:

X – Exempted from delegation (requires Council determination)

√ - Included in delegation

Decision Type	Kalgoorlie-Boulder	Greater Geraldton	Bunbury
Refusals	√ (Delegation also refers only to being able to refuse applications in certain circumstances)	√ (Restrictions)	√ (Restrictions – only bed and breakfast establishments)
Renewals	√	Not specified	Not specified
Temporary	Not specified	Not specified	Not specified
Retrospective	Not specified	Not specified	Not specified

### Conditions, exclusions and triggers

All of the Local Governments have broad delegated planning approval functions, however, some Local Governments go into greater detail than others in stating conditions for delegation and when applications are deemed excluded from delegated authority determination.

Conditions such as compliance with LPS provisions, Residential Design Codes and LP policy are common.

Of greater significance is when an application or circumstance is specifically excluded, or when a condition cannot be complied with, which then triggers the need for Council determination.

**There were some triggers in common for these Local Governments, however, to compare with the baseline five Councils, the following exclusions are noted:**

- Two out of the three Local Governments excluded applications where unresolved submissions/objections are received during advertising and cannot be resolved by conditions of approval or negotiation.
- None of the Local Governments excluded applications due to significance in size, scale and/or value.
- None of the Local Governments excluded proposals subject to an aspect involving heritage significance.
- None of the Local Governments specified the exclusion of particular uses from

None of the Local Governments require Council consideration when an applicant requests that the application be considered by Council.

None of the Local Governments excluded proposals previously considered by Council.

Other 'one off' exclusions which were not applicable to the five baseline Councils of significance include:

Where the application is "contentious".

Key Themes	Kalgoorlie-Boulder	Greater Geraldton	Bunbury
Significance in size/scale, value.	X >\$5m in value and/or net increase in excess of 20 dwellings and/or net increase of > 2000m <sup>2</sup> in floor area		
Heritage significance			
Unresolved objections	X	X	
Particular/specified uses	√		√ Non-conforming uses allowed
Previously considered by Council or committee			
Other (less common)	√ Some instances only refusals (not approvals) can be delegated.		
			√ Power to approve a range of uses, provided "they are not contentious".

## Attachment 6 - Comparison to small rural councils (Northam, Plantagenet, Nannup)

### Extent of delegation authority

- » None of the Local Governments delegate to a committee.
- » All Local Governments delegate planning approval functions to the CEO.
- » Northam sub-delegates all of the planning delegations to the Executive Manager of Planning; Plantagenet sub-delegates to the Manager of Planning; whilst Nannup sub-delegates to the Building Surveyor applications dealing with Residential Code matters.

Delegation from Council to:	Northam	Plantagenet	Nannup
Committee	X	X	X
CEO	√	√	√
Director Planning			
Manager Planning			

Sub Delegation to:	Northam	Plantagenet	Nannup
Director Planning			
Manager Planning (Strategic and/or Statutory)	√ (Executive Manager)	√	
Coordinator Planning (Strategic and/or Statutory)			
Manager Regulatory Services			
Special Projects Officer			
Senior Project Planners			
Coordinator Planning Mediation			
Senior Planning Officer			
Planning Officer			
Manager Building Services			
Senior Building Surveyor			√ Residential Code matters



## Delegation of functions mentioned in LPS

- » All of the Local Governments reference to delegation of planning functions in their respective local planning schemes.
- » All of the Local Governments incorporate the MST wording.

	Northam	Plantagenet	Nannup
Reference to Delegation of Functions in LPS	TPS No. 6 (as per MST)	TPA No. 3 (as per MST)	TPS No. 3 (as per MST)

## Decision types

- » Delegation powers to refuse planning applications are not immediately obvious for Plantagenet and Nannup, however, the language used indicates that refusals are not delegated for Plantagenet (by omission and reference to “approval”) and are delegated for Nannup (by reference to “determine”).
- » Northam allows refusals of planning applications, however, these are restricted to proposals that do not involve use of discretionary powers in the LPS or Residential Design Codes (that is ‘X’ uses and non-compliance).
- » The Local Governments do not differentiate renewal of approvals, temporary approvals or retrospective approvals.

### Notes:

X – Exempted from delegation (requires Council determination)

√ - Included in delegation

Decision type	Northam	Plantagenet	Nannup
Refusal	√ (restricted to non-discretionary non-compliance)	X Not specified, however, language indicates refusals are not delegated	√ Not specified, however, language indicates refusals may be delegated
Renewal	Not specified	Not specified	Not specified
Temporary	Not specified	Not specified	Not specified
Retrospective	Not specified	Not specified	Not specified

## Conditions, exclusions and triggers

All of the Local Governments have broad delegated planning approval functions, however, some Local Governments go into greater detail than others in stating conditions for delegation and when applications are deemed excluded from delegated authority determination.

Conditions such as compliance with LPS provisions, Residential Design Codes and LP policy are common.

Of greater significance is when an application or circumstance is specifically excluded, or when a condition cannot be complied with, which then triggers the need for Council determination.

**There were no particularly outstanding triggers in common for these Local Governments, however, to compare with the baseline five Councils, the following exclusions are noted:**

- One of the three Local Governments excluded applications where unresolved submissions/objections are received during advertising and cannot be resolved by conditions of approval or negotiation.
- None of the Local Governments excluded applications due to significance in size, scale and/or value.
- None of the Local Governments excluded proposals subject to an aspect involving heritage significance.
- None of the Local Governments excluded any particular uses from delegation of approval providing they complied with the LPS and LP policy.
- None of the Local Governments require Council consideration when an applicant requests that the application be considered by Council (at the time of submitting the application).
- None of the Local Governments excluded proposals previously considered by Council.

**Other ‘one off’ exclusions which were not applicable to the five baseline Councils of significance include:**

- Where a proposal may have significant impact on Council infrastructure.
- Where an applicant disputes or has an issue with a planning determination, the applicant may request that matter be reconsidered by Council.

Key Themes	Northam	Plantagenet	Nannup
Significance in size/scale, value.			
Heritage significance			
Unresolved objections			X Where subject to objection or if the matter has become contentious in any way that cannot be addressed via conditions of approval.
Particular/ specified uses	√ P, D, fully complying A no objections and fully complying Also specific circumstances in specific zones	√ P AA	√ P D A
Previously considered by Council or committee			
Other (less common)			X Where applicant disputes or has an issue with a planning determination, the applicant may request the matter be reconsidered by Council.
			X Where it may have significant impact on Council infrastructure.

## Attachment 7 - Ten key elements of best practice planning

The ten key elements that define best practice planning as outlined in National Planning System Principles include:

- » **Integration** - Integration involves combining structure, policy and processes to produce coherent and cohesive outcomes. That is, the organisational structure should facilitate the generation and operations of planning processes and these processes need to be informed by policies that integrate land use, development, infrastructure co-ordination and environmental assessment and follow the direction set by the strategic plan.
- » **Co-ordination** - It is imperative that there are clear linkages between the structure, policies and processes to ensure that they operate in co-ordination with each other. These should also be linked to the Corporate Plan to ensure that an organisation wide approach occurs.
- » **Certainty** - Having certainty and consistency in the planning process is very important. There should be consistency in the way planning instruments are applied to ensure that the outcomes of similar situations do not vary. Procedures should be established with clear timeframes to guide the process stages. Additionally, key performance indicators should be established. These provide not only a target for performance, but also a measure to determine the extent to which these are achieved.
- » **Responsiveness** - Responding to changing or unforeseen circumstances in an efficient and effective manner is essential to a best practice planning system. If a system is not responsive to adverse events, its integrity may be compromised as mitigation of problem takes priority. Responsive systems involve flexible planning instruments that can accommodate change, yet still provide an element of consistency. The outcomes of these instruments should be measurable, to enable monitoring and continuous improvement that is responsive to internal and external factors.
- » **Equity** - It is important to maintain equity and fairness in a planning system. This includes the protection of personal rights, equitable access to review and having procedures that do not discriminate against individuals and groups. There should be equal access to information for all groups, which can be achieved by having an easy to navigate website with up to date information, in addition to having hard copies available and an appropriate telephone information service.
- » **Efficiency** - Best practice planning is characterised by systems that have streamlined processes to ensure the optimal use of resources. The governance structures promote the free flow of information and ensure that there is no duplication or omissions in the outputs. There should be time limits on each stage in the process to ensure that deadlines are met and key performance indicators are achieved.
- » **Transparency and accessibility** - A well-functioning planning system should be transparent and accessible. It should be able to be easily understood by all stakeholders to ensure that it is used in its intended manner. Information should be readily available in a form that is easily transferable to all groups in society. All

planning instruments, processes and supporting documentation should be accessible electronically. The strategic intent of the system should also be clear and evident through its operations.

- » **Accountability** - A clear chain of responsibility should be established to ensure that people are accountable for their actions throughout the planning process. A set of comprehensive, yet simplistic policies and documents are required to provide consistency in process and outcomes, which assists in maintaining a culture of accountability. Delegation and responsibilities should be clearly documented without ambiguity to ensure that all parties are privy to their obligations under the planning system.
- » **Effectiveness and authority** - One of the most common downfalls in planning is the ineffectiveness of the implementation of planning policies, strategies and supporting documentation. It is imperative that these planning instruments are able to generate the desired outcomes in the given time frame. Additionally, the governance structure must be appropriate to implement these instruments in an effective way, with authority distributed in a manner that effectively governs the process.
- » **Engagement** - It is common for a planning system to involve community consultation, however it is often the case that this becomes a very passive process, lacking acceptance, support or understanding of the subject matter or the desired outcomes. Community engagement extends beyond the traditional consultation model to ensure that the community is not only involved, but has an understanding of the planning process and the outcomes it is trying to achieve, increasing the level of project acceptance.

## Attachment 8 – DAF leading practices in development assessment relevant to WA

The DAF leading practice model proposes ten leading practices that a development assessment system should exhibit. Those relevant to the Western Australian context include<sup>7</sup>:

### Stage 1: Policy making

- Effective policy development - Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.
- Objective rules and tests - Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.
- Built-in improvement mechanisms - Each jurisdiction should systematically and actively review its policies and objective rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.

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<sup>7</sup> Source: *A Leading Practice Model for Development Assessment in Australia*, Development Assessment Forum (March, 2005)

### Stage 2: Assessment

- Track-based assessment - Development applications should be streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track is standard. A track-based assessment approach provides greater certainty for all stakeholders. The rationale for the different tracks should remain consistent with the model if used.
- A single point of assessment - Only one body should assess an application, using consistent policy and objective rules and tests. Referrals should be limited only to those agencies with a statutory role relevant to the application. A referral authority should only be able to give direction where this avoids the need for a separate approval process. Referral agencies should specify their requirements in advance and comply with clear response times.
- Notification - Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.
- Private sector involvement - Private sector experts should have a role in development assessment, particularly in:
  - a) Undertaking pre-lodgement certification of applications to improve the quality of applications.
  - b) Providing expert advice to applicants and decision makers.
  - c) Certifying compliance where the objective rules and tests are clear and essentially technical.
  - d) Making decisions under delegation.

### Stage 3: Determination

- Professional determination for most applications - Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either:
  - a) Option A – Local government may delegate determination power whilst retaining the ability to call-in any application for determination by council.
  - b) Option B – An expert panel determines the application.
  - c) Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.

### Stage 4: Appeal

- Applicant appeals - An applicant should be able to seek a review of a discretionary decision. A review of a decision should only be against the same policies and objective rules and tests as the first assessment.

## Attachment 9 – DAF leading practice model development assessment tracks

The DAF leading practice model suggests the streaming of development applications into an assessment “track” that corresponds with the level of assessment required to make an appropriately informed decisions.

### The six tracks are proposed include:

1. Exempt – for development that have a low impact and do not require development approval.
2. Prohibited – for developments that are inappropriate so that both proponents and consent authorities do not waste time or effort assessing proposals that will not be approved.
3. Self assess – for developments that will be approved if clearly specified criteria are met, enabling self-assessment (or assessment by a certified person) to occur, and with no opportunity for review of a decision.
4. Code assess – for developments that are more complex but are still able to be assessed against objective criteria by a certified person, with the opportunity for review of a decision.
5. Merit assess – for complex developments that need assessment against complex criteria or where the application raises a policy matter (or where competing policy objectives apply) and where consent may be conditional on meeting certain conditions.
6. Impact assess – for larger developments that may have a significant and uncertain impact on amenity or the environment.

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.
- » Reporting and monitoring delegated decisions.

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.

*“ 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*

*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*

*”*

