

<b>DELEGATION OF AUTHORITY</b>	
<b>TITLE:</b>	<b>ENVIRONMENTAL PROTECTION</b>
<b>Delegation by Council to:</b> Chief Executive Officer	<b>Council Resolution date:</b>
<b>Source of Authority:</b> <i>Local Government Act 2009</i> – Sections 257, 259 and 260 <i>Environmental Protection Act 1994</i> – Chapter 4; Chapter 7 Parts 2, 3, 4, 5, 6 and 8; Chapter 9; Chapter 11 Part 4; Chapter 12 Part 2; and sections 445(2), 514, 517, 518 and 521 <i>Environmental Protection Regulation 2008</i> – Chapter 7 Part 1 Division 1 and section 156 <i>Environmental Protection (Waste Management) Regulation 2000</i> – Parts 2 and 3 and Part 7 Division 2	

**Delegated Power:**

1. To exercise the powers that have been devolved to the Council pursuant to the *Environmental Protection Act 1994* (**Act**), the *Environmental Protection Regulation 2008* (**Regulation**) and the *Environmental Protection (Waste Management) Regulation 2000* (**Waste Regulation**) including to:
  - (a) in respect of a chapter 4 activity which has been devolved to the Council pursuant to section 101 of the Regulation:
    - (i) exercise the Council's powers as administering authority:
      - (A) under chapter 4 of the Act;
      - (B) with respect to environmental evaluations, transitional environmental programs and financial assurances pursuant to chapter 7 parts 2, 3, 4 and 6 of the Act; and
      - (C) with respect to transitional environmental program submissions and suitability investigations pursuant to chapter 12 part 2 of the Act;
    - (ii) issue an environmental protection order pursuant to chapter 7 part 5 of the Act to a person:
      - (A) if the person does not comply with a requirement to conduct or commission an environmental evaluation or to prepare a transitional environmental program and submit the evaluation or program to the Council;
      - (B) if, because of an environmental evaluation, the Council is satisfied unlawful environmental harm is being, or is likely to be, caused by an activity carried out, or proposed to be carried out; or
      - (C) to secure compliance with:

- (1) a development condition of a development approval;
  - (2) a standard environmental condition of a code of environmental compliance for a chapter 4 activity;
  - (3) a condition of a site management plan; or
  - (4) a regulation; and
- (iii) exercise the Council's powers to appoint a person as an authorised person pursuant to section 445(2) of the Act to exercise the powers of an authorised person pursuant to chapter 9 of the Act;
- (b) in respect of an original decision, review the original decision, consider any properly made submissions and make a review decision pursuant to section 521 of the Act;
- (c) keep registers and give an annual report required of the Council as administering authority pursuant to chapter 11 part 4 of the Act;
- (d) exercise the powers of the Council with respect to:
- (i) waste management for the local government area as devolved by section 68A of the Waste Regulation; and
  - (ii) waste receipt and disposal to the extent it relates to a waste facility owned, operated or otherwise controlled by the Council pursuant to part 3 of the Waste Regulation as devolved by section 68AA of the Waste Regulation; and
- (e) take, conduct and resolve legal proceedings where the proceeding is about a matter that has been devolved or delegated to the Council pursuant to the Act, the Regulation or the Waste Regulation.

### **Delegation Criteria**

2. The Delegated Officer may exercise the powers of the Council as the administering authority pursuant to the Act, in relation to the powers delegated in paragraph 1(a)(i)(A) of this delegation to assess development applications if:
- (a) any relevant regulatory requirements have been complied with;
  - (b) the standard criteria<sup>1</sup> have been considered;
  - (c) any additional information given in relation to the application has been considered; and
  - (d) where the application is for an increase in the scale or intensity of a chapter 4 activity, regard is had to:
    - (i) the proposed activity; and
    - (ii) the existing activity; and

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<sup>1</sup> See Schedule 4 (Dictionary) of the Act.

- (iii) the total likely or potential environmental harm the proposed activity and the existing activity may cause.
- 3. The Delegated Officer may exercise the powers of the Council as the administering authority pursuant to the Act, in relation to the powers delegated in paragraph 1(a)(i)(A) of this delegation with respect to registration to carry out 1 or more chapter 4 activities to:
  - (a) refuse an application for a registration certificate if:
    - (i) the applicant is not a suitable person having regard to the applicant's environmental record;
    - (ii) a disqualifying event has happened in relation to the applicant or another person of whom the applicant is a partner; or
    - (iii) a disqualifying event has happened in relation to any of a corporation's executive officers, or another corporation of which any of the corporation's executive officers are, or have been, an executive officer;
  - (b) amend a registration to correct a clerical or formal error if the proposed amendment does not adversely affect the interests of the registered operator or anyone else, and give written notice of the amendment to the registered operator;
  - (c) cancel or suspend a registration certificate if:
    - (i) the certificate was issued because of materially false or misleading representation or declaration, made either orally or in writing;
    - (ii) the registered operator is convicted of an environmental offence; or
    - (iii) the registered operator has been given an annual notice and the notice has not been complied with;
  - (d) approve or refuse the surrender of a registration certificate if the delegated officer has considered:
    - (i) the standard criteria;
    - (ii) any audit statement required to be provided under chapter 7 part 5 of the Act;
    - (iii) whether conditions on the activity or approval have been complied with;
    - (iv) any transitional environmental program for the land;
    - (v) whether the land has been removed from the environmental management register or has a site management plan approved for it;
    - (vi) any financial assurance given for the activity;
    - (vii) any other matter prescribed under an environmental protection policy or regulation.

4. The Delegated Officer may exercise the powers of the Council as the administering authority pursuant to the Act, in relation to the powers delegated in paragraph 1(a)(i)(B) of this delegation to require a:
  - (a) person to conduct or commission an audit of the matter and submit a report on the audit to the Delegated Officer if satisfied on reasonable grounds that:
    - (i) a person is, or has been, contravening a development condition of a development approval; or
    - (ii) a person is, or has been, contravening a regulation, an environmental protection policy or a transitional environmental program; and
  - (b) person who has carried out, is carrying out or is proposing to carry out an activity to conduct or commission an investigation and submit a report on the investigation to the Delegated Officer if satisfied on reasonable grounds that:
    - (i) an event has happened causing environmental harm while the activity was being carried out; or
    - (ii) an activity or proposed activity is causing, or is likely to cause environmental harm.
  
5. The Delegated Officer may exercise the powers of the Council as the administering authority pursuant to the Act, in relation to the powers delegated in paragraph 1(a)(i)(B) to:
  - (a) require a person or public authority to prepare and submit for approval a draft transitional environmental program if satisfied that:
    - (i) an activity carried out, or proposed to be carried out, by the person or authority is causing, or may cause, unlawful environmental harm; or
    - (ii) it is not practicable for the person or public authority to comply with an environmental protection policy or regulation on its commencement; or
    - (iii) that a condition of an environmental authority held by the person or public authority is, or has been, contravened; or
    - (iv) that a standard environmental condition of a code of environmental compliance for a chapter 4 activity is, or has been, contravened by the person or public authority; or
    - (v) a development condition of a development approval is, or has been, contravened and the person or public authority is an owner of the land for which the approval is granted or another person in whom the benefit of the approval vests; and
  - (b) In deciding whether to approve or refuse to approve the draft program or the conditions (if any) of the approval of a draft program, the administering authority:
    - (i) must comply with any relevant regulatory requirement; and
    - (ii) subject to paragraph (i), must also consider the following:

- (A) the standard criteria;
  - (B) additional information given in relation to the draft program; and
  - (C) the views expressed at any conference held in relation to the draft program.
6. The Delegated Officer may exercise the powers of the Council as the administering authority pursuant to the Act, in relation to the powers delegated in paragraph 1(a)(i)(B) to require a person to give a financial assurance only if it is satisfied the requirement is justified having regard to:
- (a) the degree of risk of environmental harm being caused, or that might reasonably be expected to be caused, by the activity carried out, or to be carried out; and
  - (b) the likelihood of action being required to rehabilitate or restore and protect the environment because of environmental harm being caused by the activity; and
  - (c) the environmental record of the holder or registered operator.
7. The Delegated Officer may exercise the powers of the Council as the administering authority pursuant to the Act, in relation to the powers delegated in paragraph 1(a)(ii) to issue an environmental protection order if the standard criteria have been considered.
8. The Delegated Officer may exercise the powers of the Council as the administering authority pursuant to the Act, in relation to the powers delegated in paragraph 1(a)(i)(B) of this delegation to decide to extend the time in which it is required to decide whether or not to accept an environmental report or a site investigation report if:
- (a) it has required additional relevant information about the report; or
  - (b) it is satisfied there are special circumstances for extending the time.
9. The Delegated Officer may exercise the powers of the Council as the administering authority pursuant to the Act, in relation to the powers delegated in paragraph 1(a)(i)(B) of this delegation, to consider and decide an application for a transitional environmental program notwithstanding that public notice requirements have not been complied with, where the Delegated Officer:
- (a) has authority to consider and decide the application; and
  - (b) is of the opinion that:
    - (i) no person will be adversely affected by the non-compliance; and
    - (ii) there has been substantial compliance with the Act.
10. The Delegated Officer may exercise the powers of the Council to pursuant to the Act, in relation to the powers delegated in paragraph 1(a)(iii) of this delegation to appoint a person as an authorised person, including to:
- (a) approve the expertise and experience that is necessary for the appointment of an authorised person; and

- (b) appoint a person as an authorised person where:
  - (i) the person is an employee of the local government; and
  - (ii) the person has the necessary expertise, experience or training for the appointment as an authorised person as approved by the Delegated Officer.

**Delegation Administrative Procedure:**

11. This delegation is to be exercised in accordance with the Act.
12. The extent of authority is in accordance with the delegated criteria where stated.
13. The Delegated Officer shall cause a register to be kept of all instances of where this delegation has been exercised.
14. The Delegated Officer may, in relation to an application regarding a development approval or certificate of registration, decide the application if:
  - (a) the decision would not be contrary to the Council's:
    - (i) planning scheme or planning scheme policies;
    - (ii) local laws or subordinate local laws;
    - (iii) standards or guidelines; or
    - (iv) a local government Act<sup>2</sup>; and
  - (b) the Delegated Officer:
    - (i) has consulted with those Council Divisions that the Delegated Officer and the Executive Director of Community Services considers necessary;
    - (ii) has been notified of the requirements of any Division of the Council with which consultation was undertaken; and
    - (iii) is of the opinion that:
      - (A) the applicant is not precluded by a local government Act;
      - (B) there has been compliance with any relevant conditions;
      - (C) the activity will not have a significant adverse effect on an environmental value.
15. When exercising the power delegated in paragraph 1(f) of this delegation, the following procedure is to be undertaken:
  - (a) The Delegated Officer shall instruct:

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<sup>2</sup> See Schedule 2 (Dictionary) of the *Local Government Act 1993*.

- (i) the Council's solicitor to initiate legal proceedings on the Council's behalf;  
or
  - (ii) officers of the Council to initiate enforcement procedures.
- (b) The Delegated Officer shall issue instructions to the Council's solicitors and Council officers in relation to the on-going conduct of the legal proceedings and other enforcement procedures.
- (c) The Delegated Officer shall cause a report to be prepared for the Council's information about the on-going conduct of the legal proceedings and other enforcement procedures, where requested to do so by resolution of the Council.