

Reference: AF11/861

5th April, 2017

MEMBERS

NOTICE is given that the Corporate and Community Services Committee will meet in the following Meeting Room on the day, date and time as follows:

Corporate and Community Services Committee
(Committee Room - Level 4):

Monday 10th April, 2017 at 5.30 p.m.

An agenda for the meeting is attached.



Mark McSHANE
CHIEF EXECUTIVE OFFICER

CONFLICT OF INTEREST DISCLOSURE FORM

I _____,
(insert name)

have received a copy of the agenda for the ☐ **ordinary** ☐ **special** meeting of the

(insert full name of Committee/Sub-Committee/Board) ☐ Council ☐ Committee ☐ Board

to be held on: _____
(insert date of meeting)

CONFLICT OF INTEREST DISCLOSURE

I consider that I have a:

☐ **material** conflict of interest pursuant to section 73 (complete and sign below)

☐ **actual** or ☐ **perceived** conflict of interest pursuant to section 74 (complete and sign overleaf)

of the *Local Government Act 1999* ("the LG Act") in relation to the following agenda item:

(insert details - include Agenda Item No, Report Number, Item/Report Subject Title)

which is to be discussed at that meeting.

MATERIAL

The nature of my **material** conflict of interest is as follows *[ensure sufficient detail is recorded, including the reasons why you (or a person prescribed in section 73(1) of the LG Act) stands to obtain a benefit or suffer a loss depending on the outcome of the consideration of the matter at the meeting of the Council in relation to the agenda item described above]*:

In accordance with section 74(1)(b) I will be leaving the meeting room while the matter is being discussed and voted on.

Signature

Date

In accordance with section 75A(2)(b) I propose ☐ to ☐ not to participate in the meeting in relation to the matter.

ACTUAL

The nature of my **actual** conflict of interest is as follows *[ensure sufficient detail is recorded, including the reasons why the conflict between your interests and the public interests might lead to a decision that is contrary to the public interest in relation to the agenda item described above]:*

Where I have proposed to participate in the meeting I intend to deal with my **actual** conflict of interest in the following transparent and accountable way *[ensure sufficient detail is recorded as to the manner in which you intend to deal with the actual conflict of interest in a transparent and accountable way].*

OR

PERCEIVED

The nature of the **perceived** conflict of interest is as follows *[ensure sufficient detail is recorded, including the reasons why you consider that an impartial fair-minded person could reasonably consider that you have a perceived conflict of interest in the matter].*

Where I have proposed to participate I intend to deal with the **perceived** conflict of interest in the following transparent and accountable way *[ensure sufficient detail is recorded as to the manner in which you intend to deal with the perceived conflict of interest in a transparent and accountable way].*

Signature

Date

CORPORATE AND COMMUNITY SERVICES COMMITTEE

Meeting to be held on Monday, 10th April, 2017 at 5.30 p.m.

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1. FINANCIAL STATEMENT – as at 31st March, 2017
2. CORPORATE AND COMMUNITY SERVICES REPORT NO. 24/2017 - Deductible Gift Recipient Status
3. CORPORATE AND COMMUNITY SERVICES REPORT NO. 25/2017 - Governance – Review of Confidentiality Orders
4. CORPORATE AND COMMUNITY SERVICES REPORT NO. 26/2017 - Civic Centre/Theatre ‘Creative Canopy Project’
5. CORPORATE AND COMMUNITY SERVICES REPORT NO. 27/2017 - Delegation of Powers of Council
6. CORPORATE AND COMMUNITY SERVICES REPORT NO. 28/2017 - Local Government Association of SA – Proposed Change to Voting Method in Local Government Elections

MOTION WITH NOTICE - Nil

MOTIONS WITHOUT NOTICE

7. CONSIDERATION FOR EXCLUSION OF THE PUBLIC
8. SALE OF LAND FOR NON PAYMENT OF RATES - Notice of Intention to Sell Land for Non-Payment of Council Rates
9. CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL
10. CONSIDERATION FOR EXCLUSION OF THE PUBLIC
11. SALE OF LAND FOR NON PAYMENT OF RATES - Notice of Intention to Sell Land for Non-Payment of Council Rates
12. CONSIDERATION FOR KEEPING MATTERS CONFIDENTIAL

CORPORATE AND COMMUNITY SERVICES COMMITTEE

Meeting to be held in the Committee Room, Level 4, Civic Centre, 10 Watson Terrace,
Mount Gambier on Monday 10th April, 2017 at 5.30 p.m.

AGENDA

PRESENT: Cr J Lynagh (Presiding Member)
Cr M Lovett, Cr S Mezinac, Cr S Perryman and Cr H Persello

APOLOGY: moved that the apology from be
received.
seconded

COUNCIL OFFICERS: Chief Executive Officer, Mark McShane
General Manager Council Business Services, Pamela Lee
General Manager Community Wellbeing, Barbara Cernovskis
Finance Manager, Gary Button
Manager Governance and Property, Michael McCarthy
Manager Business and Strategic Planning - Tracy Tzioutziouklaris
Administration Officer – Executive Support, Ashlee Lavia

COUNCIL OFFICERS

APOLOGIES: General Manager City Growth, Judy Nagy

COUNCIL MEMBERS

AS OBSERVERS:

WE ACKNOWLEDGE THE BOANDIK PEOPLES AS THE TRADITIONAL CUSTODIANS OF THE LAND WHERE WE MEET TODAY. WE RESPECT THEIR SPIRITUAL RELATIONSHIP WITH THE LAND AND RECOGNISE THE DEEP FEELINGS OF ATTACHMENT OUR INDIGENOUS PEOPLES HAVE WITH THIS LAND.

PRESENTATION:

5.30 p.m. Presentation from the South East NRM Board on “Proposed Changes to the Regional NRM Plan.

MINUTES: moved that the minutes of the previous meeting held 14th March, 2017 be taken as read and confirmed.
seconded

QUESTIONS:

- (a) With Notice - Nil received
- (b) Without Notice -

1. FINANCIAL STATEMENT – as at 31st March, 2017

moved it be recommended the financial statement as at 31st March, 2017 be received.
seconded

2. CORPORATE AND COMMUNITY SERVICES REPORT NO. 24/2017 - Deductible Gift Recipient Status - Ref. AF16/182

moved it be recommended:

- (a) Corporate and Community Services Report No. 24/2017 be received and contents noted;
- (b) a draft Trust Deed be prepared for the purpose of meeting Australian Charities & Not-for-Profit Commission and Australian Taxation Office requirements for application to be made for Deductible Gift Recipient status for the Riddoch Art Gallery;
- (c) a further report be presented for Council to consider a draft Trust Deed prepared in accordance with resolution (b) and the subsequent founding of such Trust.

seconded

3. CORPORATE AND COMMUNITY SERVICES REPORT NO. 25/2017 - Governance – Review of Confidentiality Orders - Ref. AF13/64

moved it be recommended:

- (a) Corporate and Community Services Report No. 25/2017 be received;
- (b) The following Confidential Orders, having been reviewed by Council, continue in operation on the grounds provided within Attachment 1 to Report 25/2017:
 - i. Council 15/3/2016 – Operational Services Committee 8/3/2016 – Item 6 - DEVELOPMENT CONTROL - Regulating – District Centre Zone Development Plan Amendment - City of Mount Gambier Development Plan - Ref. AF16/69
 - ii. Council 16/2/2016 – Corporate & Community Services Committee 8/2/2016 – Item 11 - CORPORATE AND COMMUNITY SERVICES REPORT NO. 14/2016 – Frew Park Ambulance Station Development - Ref. AF16/11
 - iii. Council 18/8/2015 – Railway Lands Development and Management Committee 7/8/2015 - Item 7 PROPERTY MANAGEMENT - Railway Lands - Expression of Interest - Management of Community Markets
 - iv. Council 18/8/2015 – Railway Lands Development and Management Committee 7/8/2015 - Item 8 - PROPERTY MANAGEMENT - Railway Lands - Expression of Interest - Occupation and Use of Old Railway Station Building
 - v. Council 15/4/2014 - City of Mount Gambier Junior Sports Fund Assistance Committee 2/4/2013 – Item 11 - ROTARY CLUB OF MOUNT GAMBIER LAKES - DONATIONS TO FINANCIALLY DISADVANTAGED JUNIOR SPORTS PERSONS
 - vi. Council 17/12/2013 - City of Mount Gambier Junior Sports Fund Assistance Committee 20/11/2013 – Item 12 - ROTARY CLUB OF MOUNT GAMBIER LAKES - Donations to Financially Disadvantaged Junior Sportspeople

- vii. Council 17/12/2013 - City of Mount Gambier Junior Sports Fund Assistance Committee 20/11/2013 – Item 13 - COMMERCIAL CLUB INC. - Donation to exceptional junior sportsperson
- viii. Council 16/6/2013 - City of Mount Gambier Junior Sports Fund Assistance Committee 22/5/2013 – Item 13 - SOCIAL, CULTURAL AND COMMUNITY SERVICES - Committees - City of Mount Gambier Junior Sports Assistance Fund (Section 41) Committee - Minutes of Meeting held 22nd May, 2013 – Ref. AF11/725

seconded

4. CORPORATE AND COMMUNITY SERVICES REPORT NO. 26/2017 - Civic Centre/Theatre 'Creative Canopy Project' - Ref. AF11/1510

moved it be recommended:

- (a) the Corporate and Community Services Report No. 26/2017 be received and contents noted;
- (b) a further report be presented for consideration to be given to the final artistic selection for the purpose of granting landowner consent.

seconded

5. CORPORATE AND COMMUNITY SERVICES REPORT NO. 27/2017 - Delegation of Powers of Council - Ref. AF15/495

moved it be recommended:

- (a) Corporate and Community Services Report No. 27/2017 be received;
- (b) that having conducted its annual review of Council's Delegations Register in accordance with Section 44(6) of the Local Government Act, 1999, the Council;

1. Revocations

- 1.1. Hereby revokes all previous delegations to the Chief Executive Officer of those powers and functions under the following:
 - 1.1.1. Development Act 1993 and Development Act Regulations 2008
 - 1.1.2. Freedom of Information Act 1991
- 1.2. Hereby revokes its previous delegations to its Development Assessment Panel under the Development Act 1993 and Development Regulations 2008.

2. Delegations made under Local Government Act 1999

- 2.1. In exercise of the power contained in Section 44 of the Local Government Act 1999 the powers and functions under the Freedom of Information Act 1991 and specified in the proposed Instrument of Delegation contained in Appendix 8 (attached) are hereby delegated this Tuesday, 18th April, 2017 to the person occupying the office of Chief Executive Officer subject to the conditions and or limitations specified herein or in the Schedule of Conditions in each such proposed Instrument of Delegation.

- 2.2. Such powers and functions may be further delegated by the Chief Executive Officer in accordance with Sections 44 and 101 of the Local Government Act 1999 as the Chief Executive Officer sees fit, unless otherwise indicated herein or in the Schedule of Conditions contained in each such proposed Instrument of Delegation.
- 2.3. For the purposes of these delegations all delegations to the Chief Executive Officer extend to any person appointed to act in the position of Chief Executive Officer.
- 2.4. For the purposes of these delegations all further delegations made by the Chief Executive Officer extend to any person who is appointed to act in the position of the delegate.

3. Delegations made under Development Act 1993

- 3.1. In exercise of the power contained in Section 20 and 34 (23) of the Development Act 1993, the powers and functions under the Development Act 1993 and the Development Regulations 2008 contained in the Instrument of Delegation contained in Appendix 21 (attached) are hereby delegated this 18th April, 2017 to the person occupying the office of Chief Executive Officer, subject to the conditions or limitations indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the Development Act 1993.
- 3.2. Such powers and functions may be further delegated by the Chief Executive Officer as the Chief Executive Officer sees fit and in accordance with the relevant legislation unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the Development Act 1993.
- 3.3. In exercise of the power contained in Section 20 and 34(23) of the Development Act 1993 the powers and functions under the Development Act 1993 and the Development Regulations 2008 contained in the Instrument of Delegation (Appendix 21) and which are specified in Schedule I) are hereby delegated this 18th April, 2017 to the Council's Development Assessment Panel, subject to the conditions or limitations indicated in the Schedule of Conditions contained in the proposed Instrument of Delegation under the Development Act 1993:
- 3.4. For the purposes of these delegations, all delegations to the Chief Executive Officer extend to any person appointed to act in the position of Chief Executive Officer.
- 3.5. For the purposes of these delegations all further delegations made by the Chief Executive Officer extend to any person who is appointed to act in the position of the delegate.

seconded

Corporate and Community Services Committee Agenda, Monday, 10th April, 2017 cont'd...

6. CORPORATE AND COMMUNITY SERVICES REPORT NO. 28/2017 - Local Government Association of SA – Proposed Change To Voting Method In Local Government Elections - Ref. AF11/950

moved it be recommended:

- (a) Corporate and Community Services Report No. 28/2017 be received;
- (b) the Adelaide Hills Council proposal to change the voting method for Local Government elections to accept as formal ballots containing an insufficient indication of 2nd and subsequent preferences, and the Mayor be supported to vote in favour of any Local Government Association Board Motion to progress such a proposal.

seconded

MOTIONS WITH NOTICE - Nil

MOTIONS WITHOUT NOTICE

7. CONSIDERATION FOR EXCLUSION OF THE PUBLIC

moved that the following Agenda Item be received, discussed and considered in confidence by excluding the public pursuant to Section 90(2) of the Local Government Act 1999, and an order be made that the public (with the exception of Mayor Andrew Lee, Cr Josh Lynagh, Cr Mark Lovett, Cr Sonya Meziniec, Cr Hanna Persello, Cr Steven Perryman, Mark McShane, Barbara Cernovskis, Pamela Lee, Michael McCarthy, Gary Button and Ashlee Lavia) be excluded from the meeting in order for the Agenda Item Sale of Land for non Payment of Rates to be considered in confidence.

The Corporate and Community Services Committee is satisfied that, pursuant to section 90(3)(a) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would involve the unreasonable disclosure of:

- Information concerning the personal affairs of any person (living or dead), being a ratepayer for whom Council is currently undertaking a process for the sale of land according to Section 184 of the LGA for non payment of rates.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances by the need to keep the personal financial information and discussion confidential because the matter relates to information pertaining to the non-payment of rates.

ITEM NO.	SUBJECT MATTER	S90 (3) GROUNDS
8.	<u>SALE OF LAND FOR NON PAYMENT OF RATES</u> – Notice of Intention to sell land for non-payment of rates – Subject AF17/69	(a)

seconded

10. CONSIDERATION FOR EXCLUSION OF THE PUBLIC

moved that the following Agenda Item be received, discussed and considered in confidence by excluding the public pursuant to Section 90(2) of the Local Government Act 1999, and an order be made that the public (with the exception of Mayor Andrew Lee, Cr Josh Lynagh, Cr Mark Lovett, Cr Sonya Mezinac, Cr Hanna Persello, Cr Steven Perryman, Mark McShane, Barbara Cernovskis, Pamela Lee, Michael McCarthy, Gary Button and Ashlee Lavia) be excluded from the meeting in order for the Agenda Item Sale of Land for non Payment of Rates to be considered in confidence.

The Corporate and Community Services Committee is satisfied that, pursuant to section 90(3)(a) of the Act the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would involve the unreasonable disclosure of:

- Information concerning the personal affairs of any person (living or dead), being a ratepayer for whom Council is currently undertaking a process for the sale of land according to Section 184 of the LGA for non payment of rates.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances by the need to keep the personal financial information and discussion confidential because the matter relates to information pertaining to the non-payment of rates.

ITEM NO.	SUBJECT MATTER	S90 (3) GROUNDS
11.	<u>SALE OF LAND FOR NON PAYMENT OF RATES</u> – Notice of Intention to sell land for non-payment of rates – Subject AF17/71	(a)

seconded

CORPORATE AND COMMUNITY SERVICES COMMITTEE

Minutes of meeting held in the Committee Room, Level 4, Civic Centre, 10 Watson Terrace,
Mount Gambier on Tuesday 14th March, 2017 at 5.30 p.m.

PRESENT: Cr S Meziniec (Acting Presiding Member)
Mayor Lee, Cr M Lovett and Cr H Persello

APOLOGY: Cr Lovett moved that the apology from Cr J Lynagh and Cr S Perryman be received.

Mayor Lee seconded Carried

APPOINTMENT OF ACTING
PRESIDING MEMBER: Mayor Lee moved that Cr Meziniec be appointed Acting Presiding Member.

Cr Lovett seconded Carried

COUNCIL OFFICERS: Chief Executive Officer, Mark McShane
General Manager City Growth, Judy Nagy
General Manager Community Wellbeing, Barbara Cernovskis
Manager Governance and Property, Michael McCarthy
Manager Business and Strategic Planning - Tracy Tzioutziouklaris
Administration Officer – Executive Support, Ashlee Lavia
Administration Officer – Executive Support, Melissa Telford

COUNCIL OFFICERS
APOLOGIES: Nil

COUNCIL MEMBERS
AS OBSERVERS: Cr Morello

WE ACKNOWLEDGE THE BOANDIK PEOPLES AS THE TRADITIONAL CUSTODIANS OF THE LAND WHERE WE MEET TODAY. WE RESPECT THEIR SPIRITUAL RELATIONSHIP WITH THE LAND AND RECOGNISE THE DEEP FEELINGS OF ATTACHMENT OUR INDIGENOUS PEOPLES HAVE WITH THIS LAND.

MINUTES: Cr Persello moved that the minutes of the previous meeting held 13th February, 2017 be taken as read and confirmed.

Cr Lovett seconded Carried

QUESTIONS:

- (a) With Notice - Nil received
- (b) Without Notice - Nil submitted

1. FINANCIAL STATEMENT – as at 28th February, 2017

Cr Meziniec moved it be recommended the financial statement as at 28th February, 2017 be received.

Cr Persello seconded Carried

2. GOVERNANCE – Committees – City of Mount Gambier Junior Sports Assistance Fund (Section 41) – Minutes of Meeting held 8th March, 2017 – Ref. AF11/725

Cr Persello moved it be recommended:

- (a) the minutes of the City of Mount Gambier Junior Sports Assistance Fund Meeting held on 8th March, 2017 be received;**
- (b) the recommendations of the Junior Sports Assistance Fund be adopted by Council;**

1. FINANCIAL STATEMENT AS AT 28TH FEBRUARY, 2017

- (a) The financial statement as at 28th February, 2017 be received noting a cash balance of \$84,067**

2. APPLICATIONS FOR FINANCIAL ASSISTANCE FOR JUNIORS FROM 1ST SEPTEMBER, 2016 TO 28TH FEBRUARY, 2017

- (a) The actions in making the above payments from the Fund be confirmed and ratified.**

3. APPRECIATIONS - letters received/forwarded

The report be received.

4. GENERAL INFORMATION - Since 1st July 2015

The reports be received.

5. OTHER APPLICATIONS

The report be received.

6. MEMBER CONTRIBUTIONS - Unpaid Membership 2016/2017

- (a) the report be received;**
- (b) letters be sent to Member Organisations requesting advice as to whether they wish to continue their Membership of the Fund, and if so payment is to be made by the end of March, 2017 or the Member Organisation will be suspended from the fund.**

7. RESIGNATION OF MEMBER ORGANISATION

The report be received.

8. COMMERCIAL CLUB INC. - Annual Donation - Exceptional Junior Program 2016

- (a) the report be received;**
- (b) for the 2016 year the following junior receive the Commercial Club Inc. donation to assist that junior to advance in their chosen sport and to achieve their potential:**

Awardee: Isabella Stratford

- (c) the presentation of the Commercial Club Inc. donation take place at the Basketball Stadium
- (d) details of the donation program and the awardee for 2016 be released to the media immediately.

Cr Lovett seconded

Carried

3. **GOVERNANCE – Committees – Audit Committee – Minutes of Meeting held 7th March, 2017 – Ref. AF11/863**

Cr Meziniec moved it be recommended:

- (a) the minutes of the City of Mount Gambier Audit Committee meeting held on Tuesday 7th March, 2017 be received;
- (b) the following recommendations of the Audit Committee meeting held on Tuesday, 7th March, 2017 be adopted by Council:

1. **REPORTS FOR INFORMATION**

The reports be received.

2. **AUDIT WORK PROGRAM 2014 - 2018 - Ref. AF11/863, AR16/36225**

The report be received.

3. **FINANCIAL SUSTAINABILITY - Key Financial Indicators - Ref. AF11/704**

The report be received.

4. **FINANCIAL INTERNAL CONTROLS - Internal Audit Program - Ref. AF16/164**

- (a) the report be received;
- (b) the Financial Internal Controls Report (Control 9 and 31) be endorsed by Council;
- (c) the Minor Plant Register Action Plan be endorsed by Council;
- (d) the update on Financial Internal Controls be received and the contents noted.

5. **STRATEGIC MANAGEMENT - Long Term Financial Plan - Ref. AF11/1787, AR17/2810**

The draft Long Term Financial Plan 2017/2018 be received.

Cr Persello seconded

Carried

4. **CORPORATE AND COMMUNITY SERVICES REPORT NO. 15/2017 - Rate Rebate Application - Royal Society for the Blind SA Inc. - Ref. AF11/824**

Cr Meziniec moved it be recommended:

- (a) Corporate and Community Services Report No. 15/2017 be received.
- (b) The rate rebate application from the Royal Society for the Blind of SA be approved on the following basis:
 - (i) Royal Society for the Blind (RSB) meets the criteria for a Mandatory Rebate of 75% and Council provide a Discretionary Rebate of 25% from the 1st July, 2017. Therefore the RSB will receive a 100% rate rebate on their property at 36 Commercial Street West, Mount Gambier.

Cr Lovett seconded

Carried

5. CORPORATE AND COMMUNITY SERVICES REPORT NO. 16/2017 - Policy Review – Complaints, Internal Review & Whistleblowers - Ref. AF11/1950

Cr Meziniec moved it be recommended:

- (a) Corporate and Community Services Report No. 16/2017 be received;
- (b) Council hereby revokes existing and adopts updated Council Policies:
 - C200 – Complaints
 - C290 – Internal Review of Council's Decisions
 - W150 – Whistleblowers Protection
- (c) Council makes the necessary amendments to Council's Policy Manual Index.
- (d) Council advise the SA Ombudsman that it has adopted the LGA Model Internal Review of Decisions Policy compliant with the provisions of s270 of the Local Government Act 1999.

Cr Persello seconded

Carried

6. CORPORATE AND COMMUNITY SERVICES REPORT NO. 17/2017 Development of Strategic Plans - Ref. AF15/366

Cr Meziniec moved it be recommended:

- (a) Corporate and Community Services Report No. 17/2017 be received;
- (b) The Strategic Planning Sub-Committee oversee and provide guidance to Council on the development of the Strategic Plans and the strategic planning processes including community engagement and consultation processes.

Cr Persello seconded

Carried

7. CORPORATE AND COMMUNITY SERVICES REPORT NO. 18/2017 - Cultural Development Plan and Youth Strategy - Ref. AF15/366

Cr Persello moved it be recommended:

- (a) Corporate and Community Services Report No. 18/2017 be received and the contents noted.

Cr Lovett seconded

Carried

8. **CORPORATE AND COMMUNITY SERVICES REPORT NO. 19/2017 - Lease - Dimjalla Skate Park - Ref. AF11/2200**

Cr Persello moved it be recommended:

- (a) Corporate and Community Services Report No. 19/2017 be received;
- (b) the expiry date of the 2nd (and final) Dimjalla Skate Park lease renewal of 30th June, 2018 be noted.

Cr Lovett seconded

Carried

9. **CORPORATE AND COMMUNITY SERVICES REPORT NO. 20/2017 - Property Matters - 17 Elizabeth Street - Ref. AF11/1480**

Cr Lovett moved it be recommended:

- (a) Corporate and Community Services Report No. 20/2017 be received;
- (b) valuation and real estate agency services be engaged to inform Council on the market value and anticipated market interest associated with a potential sale of 17 Elizabeth Street;
- (c) a further report be presented to Council to consider any active marketing or purchase offer for the property of 17 Elizabeth Street.

Cr Persello seconded

Carried

10. **CORPORATE AND COMMUNITY SERVICES REPORT NO. 21/2017 - Officer Interests - Ref. AF11/1134**

Cr Meziniec moved it be recommended:

- (a) Corporate and Community Services Report No. 21/2017 be received and contents noted;
- (b) Pursuant to s111 of the Local Government Act 1999, that Division 2 - Register of Interest provisions shall apply to the General Manager Officers of Council, as follows:
 - General Manager – Community Wellbeing
 - General Manager – City Growth
 - General Manager – City Infrastructure
 - General Manager – Council Business Services

Cr Persello seconded

Carried

11. **CORPORATE AND COMMUNITY SERVICES REPORT NO. 22/2017 - Operation Flinders Sponsorship Request - Ref. AF15/474**

Cr Meziniec moved it be recommended:

- (a) Corporate and Community Services Report No. 22/2017 be received;
- (b) Council support the proposal from Operation Flinders on the condition that:

Corporate and Community Services Committee Minutes, Tuesday, 14th March, 2017 cont'd...

- funding from all stakeholders is secured for the 3 year term
 - participant selection from Mount Gambier to include representation from each secondary school including those accessing education via a FLO program
- (c) an amount of \$6,600 p.a. be referred to the 17/18 budget for Councillors consideration, noting the request for a 3 year program commitment;
- (d) Council be provided with a copy of the final evaluation should the program proceed.

Cr Persello seconded

Carried

MOTIONS WITH NOTICE - Nil

MOTIONS WITHOUT NOTICE - Nil

Meeting closed at 5.48 p.m.

MJT

CONFIRMED THIS DAY OF 2017.

.....
PRESIDING MEMBER

FINANCIAL STATEMENT - Monthly Bank Reconciliation

as at 28/02/2017 \$		as at 31/03/2017 \$
	<u>GENERAL ACCOUNT (Westpac)</u>	
565,773.90 CR	OPENING BALANCE	828,148.95 CR
1,212,864.14	<u>PLUS</u> Receipts -	
1,024,638.10	Rates & Arrears	2,562,251.50
-	General	1,419,723.40
450,000.00	<u>Receipt of Cash Advance Funds</u>	
-	Transfer from CAD Loan 104	-
895,014.00	Transfer from CAD Loan 105	-
-	Transfer from Investment Funds	900,000.00
\$ 3,582,516.24	Transfer from Reserve Funds	-
		\$ 4,881,974.90
4,148,290.14 CR		5,710,123.85 CR
	<u>LESS</u> Direct Debits to Bank Account -	
878,087.11	Payroll - 3 Pays processed in March (3/3, 17/3 & 31/3)	1,061,957.19
-	Sundry	-
700,000.00	Transfer to Investment Funds	1,000,000.00
-	Transfer to CAD Loan 104	-
1,578,087.11		
2,061,957.19		
2,570,203.03 CR		3,648,166.66 CR
1,742,054.08	<u>LESS</u> Expenditure Statement - \$	3,322,336.09
\$ 828,148.95 CR	<u>CASH BALANCE</u>	\$ 325,830.57 CR
	<u>BANK RECONCILIATION</u>	
765,189.84 CR	Balance as per Bank Statement	342,469.67 CR
41,171.79	<u>PLUS</u> Deposits not yet credited	4,796.96
26,587.72	<u>LESS</u> Deposits not yet reconciled	- 19,031.25
-	<u>LESS</u> Deposits not yet updated	-
-	<u>PLUS</u> Payments not yet reconciled	
832,949.35 CR		328,235.38 CR
4,800.40	<u>LESS</u> Unpresented Cheques & EFT's	1,933.90
0.00	Unpresented Direct Debits	470.91
\$ 828,148.95 CR	<u>CASH BALANCE</u>	\$ 325,830.57 CR

Current Interest Rate on Bank Account Balance is 0.10%

FINANCIAL STATEMENT - Monthly Bank Reconciliation continued.....

as at 28/02/2017 \$		LGFA CAD LOAN 104	as at 31/03/2017 \$	
-	DR	OPENING BALANCE	-	DR
450,000.00		<u>PLUS</u> Deposits	-	
450,000.00		<u>LESS</u> Withdrawals (Transfer to General Account)	-	
-		Sundry	-	
<u>\$ -</u>	DR	<u>CASH BALANCE</u>	<u>\$ -</u>	DR

		LGFA CAD LOAN 105		
-	DR	OPENING BALANCE	-	DR
-		<u>PLUS</u> Deposits	-	
-		<u>LESS</u> Withdrawals (Transfer to General Account)	-	
-		Sundry	-	
<u>\$ -</u>	DR	<u>CASH BALANCE</u>	<u>\$ -</u>	DR

Current Interest Rate on CAD Loan Balances is 3.75%

LOAN FUNDS OWING (Local Government Finance Authority)

Opening Bal	Loan Purpose	Interest Rate	Maturity Date	Closing Bal
84,178.62	101 RSL Bowls - Artificial Rink	5.05%	16/03/2019	68,171.89
3,011,064.85	102 Library	5.97%	15/06/2024	3,011,064.85
-	104 CAD - Variable Int Only	3.75%	17/06/2028	-
-	105 CAD - Variable Int Only	3.75%	17/08/2030	-
<u>\$ 3,095,243.47</u>				<u>\$ 3,079,236.74</u>

FINANCIAL STATEMENT - Monthly Bank Reconciliation continued.....

as at 28/02/2017 \$		INVESTMENT FUNDS (Local Government Finance Authority)	as at 31/03/2017 \$
- CR	Opening Balance		- CR
1,345,014.00	PLUS Deposits		1,000,000.00
	PLUS Interest		-
- 895,014.00	LESS Withdrawals (Transfer to Westpac)		- 900,000.00
- 450,000.00	Withdrawals (Transfer to CAD Loan 104)		-
<u>\$ - CR</u>	CLOSING BALANCE		<u>\$ 100,000.00 CR</u>

		DOWNSTREAM DRAINAGE FUNDS (Local Government Finance Authority)	
264,845.58 CR	OPENING BALANCE		266,180.04 CR
1,334.46	PLUS Deposits		-
-	LESS Withdrawals		-
<u>\$ 266,180.04 CR</u>	CLOSING BALANCE		<u>\$ 266,180.04 CR</u>

INVESTMENT OF FUNDS

Investment Funds - all invested - 'At Call' at	1.50%
Reserve Funds - all invested - '90 Days' at	2.00%

Prepared by:



.....
Finance Manager

Reviewed by:



.....
Chief Executive Officer

CORPORATE AND COMMUNITY SERVICES REPORT NO. 24/2017

SUBJECT: DEDUCTIBLE GIFT RECIPIENT STATUS

REF: AF16/182

Members have been provided with an Options Paper on Deductible Gift Recipient Status in the Friday Edition on 17th February 2017 and 31st March 2017 whilst a briefing has also been provided to the Riddoch Working Party on Friday 17th March 2017.

The Options Paper considered the reasoning and several options for pursuing Deductible Gift Recipient ('DGR') status should Council seek to do so for the benefit of the Riddoch Art Gallery.

DGR status can present opportunities for cultural/art gifts from like organisations who seek to dispose of their assets within the deductible gift environment and would expose the Riddoch Art Gallery to potential grant and other funding opportunities from philanthropic and other art/cultural entities, opportunities that are not accessible to Council as a local government body.

In short, eligible gifts made to deductible gift recipient are tax deductible for the donor, providing a valuable incentive for such activities. Also within this deductible gift 'realm' are a range of cultural programs that provide funding and grants that are otherwise inaccessible to Council.

Council's ability to meet Australian Charities and Not-for-Profits Commission ('ACNC') and Australian Taxation Office ('ATO') eligibility requirements for Deductible Gift Recipient status is complicated by its governing legislation (the Local Government Act 1999) and the tightening of eligibility rules and assessment of DGR applications by the ACNC/ATO in recent years.

Legal advice indicates that from a range of potential solutions the only option available for Council to create an entity that meets ACNC/ATO requirements would be the establishment of a separate 'Trust' specific to the art gallery purpose.

This report seeks Council endorsement to proceed with preparing a draft Trust Deed for the purpose of the Riddoch Art Gallery. In order to meet ACNC/ATO requirements this Trust, whilst founded by Council, would necessarily operate independently and with certain (limited) 'management' and 'control' of the Riddoch Art Gallery and the Collection.

The mechanics of this arrangement would be set out in the Trust Deed. At this preliminary stage it is intended that all Trust activities would be reliant upon Council management/administrative resources (as allocated to the Riddoch Art Gallery and associated art/cultural services/programs). An arrangement to address this might be in the form of a service agreement (or similar) and appropriately referenced within the Trust Deed.

Whilst operating independent from Council, as the founder responsible for drafting the Trust Deed under which it will be bound to operate and service provider, Council has the opportunity to set the rules for the Trust (what it is empowered and prohibited to do), how it must operate, and to determination the initial Trustees and prerequisites for future Trustees.

To ensure that the Trust is operated in strict compliance with ACNC/ATO reporting requirements and also in alignment with the Riddoch Art Gallery objectives and annual business plan and budget it would be proposed that at least 2 Trustees comprising of Council Officer positions from each of the Community Wellbeing and Council Business Service portfolios.

In order for the Trust to benefit the Riddoch Art Gallery and the Council/community generally it is envisaged that the Trust objectives would include the pursuance of art and cultural opportunities including grants, donations and gifts on behalf of and in conjunction with Council. The Trust would necessarily work closely with the Riddoch Art Gallery Director to ensure that any prospective opportunities were consistent with the Riddoch Art Gallery plans and could be accommodated within the available resources. The Trust would also need to be able to ensure that its DGR obligations and any grant, donation or gift conditions were met.

Corporate and Community Services Report No. 24/2017 cont'd...

Notwithstanding the above, it is not intended to grant the Trust any more control of the day-to-day operations of the Riddoch Art Gallery than is absolutely necessary to meet ACNC/ATO eligibility requirements for an art gallery. Riddoch Art Gallery operations would remain with Council and the Riddoch Art Gallery Director. Accordingly, it would be proposed that the Riddoch Art Gallery Director be ineligible for appointment as a Trustee to ensure appropriate separation of duties and decision making, whilst providing administrative and management support to the Trust and Trustees.

It cannot be overemphasised that this Trust Model is a conceptual framework and will remain so until a draft Trust Deed is prepared. The primary objective of this is to meet ACNC/ATO requirements in a legally permissible manner for Council (in accordance with the Local Government Act 1999) to benefit the Riddoch Art Gallery as a Deductible Gift Recipient.

Council should also note that this avenue of obtaining DGR for an entity associated with local government appears to be without precedent in the South Australian jurisdiction since the ACNC/ATO tightened its rules and application assessment regime. Accordingly, Council (or the Trust founded for this purpose) may not be successful in its application for DGR status.

As an alternative, Council may wish to pursue an arrangement to use the existing DGR status held by the Riddoch Foundation. This option has not yet been explored in detail however all the matters raised in the Options Paper for the 'Trust' option (for instance: managing and controlling a gallery/collection, holding future assets, etc.) would also require consideration in any arrangement made with the Riddoch Foundation. Further, it would be expected that the Riddoch Foundation would need to alter its own rules/deed/constitution to continue operating and Council does not (and may never) have any control with regard to progressing this as an option.

This report recommends that Council pursue the option of obtaining its own Deductible Gift Recipient status for the Riddoch Art Gallery in the first instance.

RECOMMENDATION

- (a) Corporate and Community Services Report No. 24/2017 be received and contents noted;
- (b) A draft Trust Deed be prepared for the purpose of meeting Australian Charities & Not-for-Profit Commission and Australian Taxation Office requirements for application to be made for Deductible Gift Recipient status for the Riddoch Art Gallery.
- (c) A further report be presented for Council to consider a draft Trust Deed prepared in accordance with resolution (b) and the subsequent founding of such Trust.



Michael McCARTHY
MANAGER GOVERNANCE & PROPERTY



Mark McSHANE
CHIEF EXECUTIVE OFFICER

CORPORATE AND COMMUNITY SERVICES REPORT NO. 25/2017

SUBJECT: GOVERNANCE – REVIEW OF CONFIDENTIALITY ORDERS

REF: AF13/64

Section 90(9) of the Local Government Act requires that any order to retain a matter in-confidence that operates for a period exceeding 12 months must be reviewed at least once in every year.

Further, Section 91(9)(ab) provides that:

- (i) the duration of an order cannot be extended after the order has ceased to apply; and,*
- (ii) an order extending the duration of such an order cannot be delegated by the relevant Council or Council Committee.*

The matters in Attachment 1 are subject to previous Council Orders to be retained in-confidence and are presented for review in accordance with Section 90(9). The matters comprise 4 Junior Sports Assistance Fund items, 3 commercial proposals and a Development Plan Amendment.

Upon review, Council may consider that the confidentiality orders relating to each of these matters should continue in operation and be reviewed in accordance with the Local Government Act. No further action or Order is required to continue the operation of these existing Orders.

RECOMMENDATION

- (a) Corporate and Community Services Report No. 25/2017 be received;
- (b) The following Confidential Orders, having been reviewed by Council, continue in operation on the grounds provided within Attachment 1 to Report 25/2017:
 - i. Council 15/3/2016 – Operational Services Committee 8/3/2016 – Item 6 - DEVELOPMENT CONTROL - Regulating – District Centre Zone Development Plan Amendment - City of Mount Gambier Development Plan - Ref. AF16/69
 - ii. Council 16/2/2016 – Corporate & Community Services Committee 8/2/2016 – Item 11 - CORPORATE AND COMMUNITY SERVICES REPORT NO. 14/2016 – Frew Park Ambulance Station Development - Ref. AF16/11
 - iii. Council 18/8/2015 – Railway Lands Development and Management Committee 7/8/2015 - Item 7 PROPERTY MANAGEMENT - Railway Lands - Expression of Interest - Management of Community Markets
 - iv. Council 18/8/2015 – Railway Lands Development and Management Committee 7/8/2015 - Item 8 - PROPERTY MANAGEMENT - Railway Lands - Expression of Interest - Occupation and Use of Old Railway Station Building
 - v. Council 15/4/2014 - City of Mount Gambier Junior Sports Fund Assistance Committee 2/4/2013 – Item 11 - ROTARY CLUB OF MOUNT GAMBIER LAKES - DONATIONS TO FINANCIALLY DISADVANTAGED JUNIOR SPORTS PERSONS
 - vi. Council 17/12/2013 - City of Mount Gambier Junior Sports Fund Assistance Committee 20/11/2013 – Item 12 - ROTARY CLUB OF MOUNT GAMBIER LAKES - Donations to Financially Disadvantaged Junior Sportspeople
 - vii. Council 17/12/2013 - City of Mount Gambier Junior Sports Fund Assistance Committee 20/11/2013 – Item 13 - COMMERCIAL CLUB INC. - Donation to exceptional junior sportsperson

Corporate and Community Services Report No. 25/2017 cont'd...

- viii. Council 16/6/2013 - City of Mount Gambier Junior Sports Fund Assistance Committee 22/5/2013 – Item 13 - SOCIAL, CULTURAL AND COMMUNITY SERVICES - Committees - City of Mount Gambier Junior Sports Assistance Fund (Section 41) Committee - Minutes of Meeting held 22nd May, 2013 – Ref. AF11/725



Michael McCARTHY
MANAGER GOVERNANCE & PROPERTY

Sighted:



Mark McSHANE
CHIEF EXECUTIVE OFFICER

3rd April, 2017
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REVIEW OF CONFIDENTIALITY ORDERS – APRIL 2017

CCS Report. 25/2017 - ATTACHMENT 1

	Council Meeting Date	Source Meeting	Subject	S90(3) Grounds	Confidential Element	Duration
(i)	15-Mar-16	Operational Services Committee	DEVELOPMENT CONTROL - Regulating – District Centre Zone Development Plan Amendment - City of Mount Gambier Development Plan - Ref. AF16/69	(m)	All details	Until Public Consultation Commences
(ii)	16-Feb-16	Corporate and Community Services	CORPORATE AND COMMUNITY SERVICES REPORT NO. 14/2016 – Frew Park Ambulance Station Development - Ref. AF16/11	(d)	CCS Report 14/2016 (attachments 1 & 2)	Until the details contained in Attachments 1 & 2 to CCS Report 14/2016 have been made publicly available by the respective proponents.
(iii)	18-Aug-15	Operational Services Committee	PROPERTY MANAGEMENT - Railway Lands - Expression of Interest - Management of Community Markets	(b)	All details	Until a contractual arrangement has been entered into with a respondent(s), to be reviewed in 12 months in accordance with S91(9)
(iv)	18-Aug-15	Operational Services Committee	PROPERTY MANAGEMENT - Railway Lands - Expression of Interest - Occupation and Use of Old Railway Station Building	(b)	All details	Until a contractual arrangement has been entered into with a respondent(s), to be reviewed in 12 months in accordance with S91(9)
(v)	15-Apr-14	City of Mount Gambier Junior Sports Fund Assistance Committee	ROTARY CLUB OF MOUNT GAMBIER LAKES - DONATIONS TO FINANCIALLY DISADVANTAGED JUNIOR SPORTS PERSONS	(a)	All information, details concerning the personal, financial circumstances and identity of each nominee	On-going, to be reviewed annually in accordance with the provisions of the Local Government Act
(vii)	17-Dec-13	City of Mount Gambier Junior Sports Fund Assistance Committee	ROTARY CLUB OF MOUNT GAMBIER LAKES - Donations to Financially Disadvantaged Junior Sportspersons	(a)	All information, details concerning the personal, financial circumstances and identity of each nominee	On-going, to be reviewed annually in accordance with the provisions of the Local Government Act

Corporate and Community Services Report No. 25/2017 cont'd...

(vi)	17-Dec-13	City of Mount Gambier Junior Sports Fund Assistance Committee	COMMERCIAL CLUB INC. - Donation to exceptional junior sportsperson	(a)	All information, details concerning the personal circumstances and identity of each nominee	On-going, to be reviewed annually in accordance with the provisions of the Local Government Act
(viii)	16-Jun-13	Corporate and Community Services	SOCIAL, CULTURAL AND COMMUNITY SERVICES - Committees - City of Mount Gambier Junior Sports Assistance Fund (Section 41) Committee - Minutes of Meeting held 22nd May, 2013 – Ref. AF11/725	(a)	Retain all information concerning the personal and financial affairs and identify of donation recipients. All other information to be released.	On-going

Section 90(3) Grounds relevant to the review of these confidentiality orders are as follows:

(a) 'personal affairs'

... any matter that would involve the *unreasonable disclosure* of information concerning the *personal affairs* of any person.

(b) 'commercial advantage'

... any matter the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or which may prejudice the commercial position of the council. Additionally, Section (3)(b) imposes a public interest test for this ground of exclusion to apply.

(d) 'commercial information of a confidential nature'

... any matter the disclosure of which would involve commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party. Additionally, Section (3)(d) imposes a public interest test for this ground of exclusion to apply.

(m) 'information relating to a proposed amendment to a Development Plan before consultation'

... any information relating to a proposed amendment to a Development Plan under the Development Act 1993 (SA) ("Development Act") before a Development Plan Amendment proposal relating to the amendment is released for public consultation under the Development Act.

CORPORATE AND COMMUNITY SERVICES REPORT NO. 26/2017

SUBJECT: CIVIC CENTRE/THEATRE 'CREATIVE CANOPY PROJECT'

REF: AF11/1510

Council has been approached by Country Arts SA as co-owner/co-occupier of the Civic Centre/Theatre seeking support for an artistic 'Creative Canopy Project' to revitalise the entrance to the Sir Robert Helpmann Theatre and Civic Centre through artistic treatment of the external pillars and ceiling (canopy) of the balcony area outside the front entrance.

The 'Creative Canopy Project' is to be funded and managed by Country Arts SA, whilst the continuing maintenance of the resulting treatments will be shared equally between Council and Country Arts SA as part of the building ownership arrangements.

Country Arts SA has sought representation from the Council Administration to assist with the assessment and subsequent coordination of the Project (from a landowner perspective) which activities are to be performed by the Manager Governance & Property. Arrangements will ensure that appropriate measures are in place to mitigate risks (safety or future management) associated with the Project.

An Artist Brief was released in late March 2017 and it is expected that a commissioning agreement will be issued by Country Arts SA for artistic works to commence on site by mid year.

The final artistic selection will be presented to Council for final landowner consent prior to commencement onsite.

RECOMMENDATION

- (a) Corporate and Community Services Report No. 26/2017 be received and contents noted;
- (b) a further report be presented for consideration to be given to the final artistic selection for the purpose of granting landowner consent.



Michael McCARTHY
MANAGER GOVERNANCE & PROPERTY

Sighted:



Mark McSHANE
CHIEF EXECUTIVE OFFICER

3rd April, 2017
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CORPORATE AND COMMUNITY SERVICES REPORT NO. 27/2017

SUBJECT: DELEGATION OF POWERS OF COUNCIL

REF: AF15/495

At its meeting on 21st February 2017 Council reviewed delegations to the Chief Executive Officer as required each financial year in accordance with Section 44(6) of the Local Government Act 1999.

On 17th March 2017 the Local Government Association released updated delegation templates and schedules for the Development Act 1993 and the FOI Act 1991.

Relevant provisions of these Acts and Regulations warrant delegation to the Chief Executive Officer, and in some instances sub-delegation to other Officers.

Delegations under those Acts are now recommended for adoption by Council and Council's Delegations and Authorisations Register will be amended accordingly.

RECOMMENDATION

- (a) Corporate and Community Services Report No. 27/2017 be received;
- (b) that having conducted its annual review of Council's Delegations Register in accordance with Section 44(6) of the Local Government Act, 1999, the Council;

1. Revocations

- 1.1. Hereby revokes all previous delegations to the Chief Executive Officer of those powers and functions under the following:
 - 1.1.1. Development Act 1993 and Development Act Regulations 2008
 - 1.1.2. Freedom of Information Act 1991
- 1.2. Hereby revokes its previous delegations to its Development Assessment Panel under the Development Act 1993 and Development Regulations 2008.

2. Delegations made under Local Government Act 1999

- 2.1. In exercise of the power contained in Section 44 of the Local Government Act 1999 the powers and functions under the Freedom of Information Act 1991 and specified in the proposed Instrument of Delegation contained in Appendix 8 (attached) are hereby delegated this Tuesday, 18th April, 2017 to the person occupying the office of Chief Executive Officer subject to the conditions and or limitations specified herein or in the Schedule of Conditions in each such proposed Instrument of Delegation.
- 2.2. Such powers and functions may be further delegated by the Chief Executive Officer in accordance with Sections 44 and 101 of the Local Government Act 1999 as the Chief Executive Officer sees fit, unless otherwise indicated herein or in the Schedule of Conditions contained in each such proposed Instrument of Delegation.
- 2.3. For the purposes of these delegations all delegations to the Chief Executive Officer extend to any person appointed to act in the position of Chief Executive Officer.
- 2.4. For the purposes of these delegations all further delegations made by the Chief Executive Officer extend to any person who is appointed to act in the position of the delegate.

3. Delegations made under Development Act 1993

- 3.1. In exercise of the power contained in Section 20 and 34 (23) of the Development Act 1993, the powers and functions under the Development Act 1993 and the Development Regulations 2008 contained in the Instrument of Delegation contained in Appendix 21 (attached) are hereby delegated this 18th April, 2017 to the person occupying the office of Chief Executive Officer, subject to the conditions or limitations indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the Development Act 1993.
- 3.2. Such powers and functions may be further delegated by the Chief Executive Officer as the Chief Executive Officer sees fit and in accordance with the relevant legislation unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the Development Act 1993.
- 3.3. In exercise of the power contained in Section 20 and 34(23) of the Development Act 1993 the powers and functions under the Development Act 1993 and the Development Regulations 2008 contained in the Instrument of Delegation (Appendix 21) and which are specified in Schedule I) are hereby delegated this 18th April, 2017 to the Council's Development Assessment Panel, subject to the conditions or limitations indicated in the Schedule of Conditions contained in the proposed Instrument of Delegation under the Development Act 1993:
- 3.4. For the purposes of these delegations, all delegations to the Chief Executive Officer extend to any person appointed to act in the position of Chief Executive Officer.
- 3.5. For the purposes of these delegations all further delegations made by the Chief Executive Officer extend to any person who is appointed to act in the position of the delegate.



Michael McCARTHY
MANAGER GOVERNANCE & PROPERTY

Sighted:



Mark McSHANE
CHIEF EXECUTIVE OFFICER



APPENDIX [8]

INSTRUMENT OF DELEGATION UNDER THE FREEDOM OF INFORMATION ACT 1991 AND THE FREEDOM OF INFORMATION (FEES AND CHARGES) REGULATIONS 2003

NOTES

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.
2. Refer to the relevant Council resolution(s) to identify when these delegations were made, reviewed and or amended.

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

1.	Publication of Information Concerning Councils
1.1	The duty pursuant to Section 9(1a) of the Freedom of Information Act 1991 ("the Act") and in accordance with Section 9(2), (3) and (4) to cause, at intervals of not more than 12 months, an up to date information statement to be published in the manner prescribed by regulation.
2.	Availability of Certain Documents
2.1	The duty pursuant to Section 10(1) of the Act to cause copies of the Council's most recent information statement and each of its policy documents to be made available for inspection and purchase by members of the public.
2.2	The power pursuant to Section 10(2) of the Act to delete information from the copies of a policy document if its inclusion would result in the document being an exempt document otherwise then by virtue of Clause 9 or 10 of Schedule 1 to the Act.
2.3	The duty pursuant to Section 10(3) of the Act not to enforce a particular policy to the detriment of a person:
2.3.1	if the relevant policy document should have been, but was not, made available for inspection and purchase in accordance with Section 10 at the time the person became liable to the detriment; and



2.3.2 the person could, by knowledge of the policy, have avoided liability to the detriment.	
3.	Persons by Whom Applications to be Dealt With and Time Within Which Applications Must be Dealt With
3.1	The duty, pursuant to Section 14(1) of the Act to ensure that an accredited FOI officer deals with an application for access to Council's documents.
3.2	The duty pursuant to Section 14(2) of the Act to deal with an application for access to the Council's documents as soon as practicable (and, in any case, within 30 days) after it is received.
4.	Incomplete and Wrongly Directed Applications
4.1	The duty pursuant to Section 15 of the Act not to refuse to accept an application merely because it does not contain sufficient information to enable the document to which it relates to be identified without first taking such steps as are reasonably practicable to assist the applicant to provide such information.
5.	Transfer of Application
5.1	The power pursuant to Section 16(1) of the Act to transfer an application for access to Council's documents to another agency if the document to which it relates:
5.1.1	is not held by the Council but is, to the knowledge of the Council, held by the other agency; or
5.1.2	is held by the Council but is more closely related to the functions of the other agency.
5.2	The duty pursuant to Section 16(2) of the Act, where an application is transferred to another agency and the Council holds a copy of the document to which the application relates, to forward a copy of the document to the other agency together with the application.
5.3	The duty pursuant to Section 16(3) of the Act to cause notice of the transfer to be given to the applicant where the application has been transferred to another agency.
5.4	The duty pursuant to Section 16(4) of the Act to specify in a notice under Section 16(3), the day on which, and the agency to which, the application was transferred.



5.5	The power pursuant to Section 16(5) of the Act not to include in a notice under Section 16(3) any matter which by its inclusion would result in the notice being an exempt document.
6.	Council May Require Advance Deposits
6.1	The power pursuant to Section 17(1) of the Act to form the opinion that the cost of dealing with an application is likely to exceed the application fee, and to request the applicant to pay such reasonable amount, by way of advance deposit, as the Delegate may determine.
6.2	The power pursuant to Section 17(2) of the Act to form the opinion that the cost of dealing with an application is likely to exceed the sum of the application fee and of any advance deposits paid in respect of the application and, to request the applicant to pay such reasonable amount, by way of further advance deposit as the Delegate may determine.
6.3	The duty pursuant to Section 17(3) of the Act to ensure that the aggregate of the application fee and the advance deposit(s) do not exceed the Delegate's estimate of the cost of dealing with the application.
6.4	The duty pursuant to Section 17(4) of the Act, where a request for an advance deposit is made, to ensure that the request is accompanied by a notice that sets out the basis upon which the amount of the deposit has been calculated.
7.	Council May Refuse to Deal with Certain Applications
7.1	The power pursuant to Section 18(1) of the Act to refuse to deal with an application if it appears to the Delegate that the nature of the application is such that the work involved in dealing with it (within the period allowed under Section 14 of the Act or, within any reasonable extension of that period under Section 14A of the Act) would, if carried out, substantially and unreasonably divert the Council's resources from their use by the Council in the exercise of its functions.
7.2	The duty pursuant to Section 18(2) of the Act not to refuse to deal with such an application without first endeavouring to assist the applicant to amend the application so that the work involved in dealing with it would, if carried out, no longer substantially and unreasonably divert the Council's resources from their use by the Council in the exercise of its functions.



**INSTRUMENT OF DELEGATION UNDER THE FREEDOM OF INFORMATION ACT 1991
AND THE FREEDOM OF INFORMATION (FEES AND CHARGES) REGULATIONS 2003**

7.3	The power pursuant to Section 18(2a) of the Act to refuse to deal with an application if, the Delegate forms the opinion, that the application is part of a pattern of conduct that amounts to an abuse of the right of access or is made for a purpose other than to obtain access to information.
7.4	The power pursuant to Section 18(3) of the Act to refuse to continue dealing with an application if:
7.4.1	the delegate has requested payment of an advance deposit in relation to the application; and
7.4.2	payment of the deposit has not been made within the period specified in the request.
7.5	The duty pursuant to Section 18(4) of the Act where the Delegate refuses in accordance with Section 18(3) of the Act to continue to deal with an application to refund to the applicant such part of the advance deposits paid in respect of the application as exceeds the costs incurred by the Council in dealing with the application and the power to retain the remainder of those deposits.
7.6	The duty pursuant to Section 18(5) of the Act to cause written notice of a refusal to deal with an application in accordance with Section 18(3) of the Act to be given to the applicant.
7.7	The duty pursuant to Section 18(6) of the Act to include in a notice under Section 18(5) of the Act the reasons for the refusal and the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based.
7.8	The power pursuant to Section 18(7) of the Act not to include in a notice under Section 18(5) of the Act any matter which by its inclusion would result in the notice being an exempt document.
8.	Determination of Applications
8.1	The duty pursuant to Section 19(1) of the Act, after considering an application for access to the Council's documents, to determine:
8.1.1	whether access to the document is to be given (either immediately or subject to deferral) or refused; and
8.1.2	if access to the document is to be given, any charge payable in respect of the giving of access; and



**INSTRUMENT OF DELEGATION UNDER THE FREEDOM OF INFORMATION ACT 1991
AND THE FREEDOM OF INFORMATION (FEES AND CHARGES) REGULATIONS 2003**

8.1.3 any charge payable for dealing with the application.	
8.2	The power pursuant to Section 19(2a) of the Act to make a determination to give access to a document on an application after the period within which the Delegate was required to deal with the application.
9. Refusal of Access	
9.1	The power pursuant to Section 20(1) of the Act to refuse access to a document:
9.1.1	if it is an exempt document;
9.1.2	if it is a document that is available for inspection at the Council or some other agency (whether as a part of a public register or otherwise) in accordance with Part 2 of the Act, or in accordance with a legislative instrument other than the Act, whether or not inspection of the document is subject to a fee or charge;
9.1.3	if it is a document that is usually and currently available for purchase;
9.1.4	if it is a document that:
9.1.4.1	was not created or collated by the Council itself; and
9.1.4.2	genuinely forms part of library material held by the Council; or
9.1.5	subject to the exceptions listed at Section 20(2) of the Act if it is a document that came into existence before 1 January 1987.
9.2	The duty pursuant to Section 20(4) not to refuse access to a document if:
9.2.1	it is practicable to give access to a copy of a document from which the exempt matter has been deleted; and
9.2.2	it appears to the Delegate (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to such a copy
to that limited extent.	
10. Deferral of Access	
10.1	The power pursuant to Section 21(1) of the Act to defer access to a document:



**INSTRUMENT OF DELEGATION UNDER THE FREEDOM OF INFORMATION ACT 1991
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10.1.1	if it is a document that is required by law to be published but is yet to be published;
10.1.2	if it is a document that has been prepared for presentation to Parliament, but is yet to be presented; or
10.1.3	if it is a document that has been prepared for submission to a particular person or body, but is yet to be submitted.
10.2	The duty pursuant to Section 21(2) of the Act not to defer access to a document to which Section 21(1)(a) of the Act applies beyond the time the document is required by law to be published.
10.3	The duty pursuant to Section 21(3) of the Act not to defer access to a document to which Section 21(1)(b) or (c) of the Act applies for more than a reasonable time after the date of its preparation.
11.	Forms of Access
11.1	The power pursuant to Section 22(1) of the Act to give a person access to a document by –
(a)	giving the person a reasonable opportunity to inspect the document; or
(b)	giving the person a copy of the document; or
(c)	in the case of a document from which sounds or visual images are capable of being reproduced, whether or not with the aid of some other device by making arrangements for the person to hear or view those sounds or visual images; or
(d)	in the case of a document in which words are recorded in a manner in which they are capable of being reproduced in the form of sound by giving the person a written transcript of the words recorded in the document; or
(e)	in the case of a document in which words are contained in the form of shorthand writing or in encoded form-by giving the person a written transcript of the words contained in the document; or
(f)	in the case of a document in which words are recorded in a manner in which they are capable of being reproduced in the form of a written document-by giving the person a written document so reproduced.



**INSTRUMENT OF DELEGATION UNDER THE FREEDOM OF INFORMATION ACT 1991
AND THE FREEDOM OF INFORMATION (FEES AND CHARGES) REGULATIONS 2003**

11.2	The duty pursuant to Section 22(2) of the Act to give an applicant access to a document in a particular way requested by the applicant unless giving access as requested:
11.2.1	would unreasonably divert the resources of the Council (or, if the document is in the custody of State Records, the resources of State Records) from their use for other official purposes; or
11.2.2	would be detrimental to the preservation of the document or (having regard to the physical nature of the document) would otherwise not be appropriate; or
11.2.3	would involve an infringement of copyright in matter contained in a document,
	in which case access may be given in some other way.
11.3	The duty pursuant to Section 22(2a) of the Act where a document is in the custody of State Records, to determine that the way in which access is given to the document will be made by or jointly with the Manager of State Records.
11.4	The duty pursuant to Section 22(3) of the Act where an applicant has requested that access to a document be given in a particular way and access is given in some other way, not to require the applicant to pay a charge in respect of the giving of access that is greater than the charge that the applicant would have been required to pay had access been given as requested.
11.5	The power pursuant to Section 22(4) of the Act but subject to Section 22(2a) of the Act to agree with the applicant the particular way access to a document is to be given.
11.6	The power pursuant to Section 22(5) of the Act to refuse to give access to a document if a charge payable in respect of the application, or giving access to the document, has not been paid.
12.	Notices of Determination
12.1	The duty pursuant to Section 23(1) of the Act to give written notice to an applicant of the determination of his/her application or, if the application relates to a document that is not held by the Council, of the fact that the Council does not hold such a document.
12.2	The duty pursuant to Section 23(2) of the Act to specify in a notice given under Section 23(1) of the Act those matters set out at Section



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23(2)(a) – (g) of the Act.	
12.3	The power pursuant to Section 23(3) of the Act where an applicant applies for access to a document that is an exempt document for reasons related to criminal investigation or law enforcement, to give notice to the applicant in the form that neither admits or denies the existence of the document and, if disclosure of the existence of the document could prejudice the safety of a person, the duty to ensure that notice is given in that form.
12.4	The power pursuant to Section 23(4) of the Act not to include in a notice under this Section any matter which by its inclusion would result in the notice being an exempt document.
13.	Documents Affecting Inter-Governmental or Local Governmental Relations
13.1	The duty pursuant to Section 25(2) of the Act not to give access under the Act to a document which contains matter concerning the affairs of the Government of the Commonwealth or of another State or a council (including a council constituted under a law of another State) unless the Council has taken such steps as are reasonably practicable to obtain the views of the Government or council concerned as to whether or not the document is an exempt document by virtue of Clause 5 of Schedule 1 to the Act.
13.2	The duty pursuant to Section 25(3) of the Act, if:
13.2.1	the Delegate determines, after having sought the views of the Government or council concerned, that access to a document to which Section 25(2) of the Act applies is to be given; and
13.2.2	the views of the Government or council concerned are that the document is an exempt document by virtue of Clause 5 of Schedule 1 to the Act,
	to forthwith give written notice to the Government or council concerned:
13.2.3	that the Council has determined that access to the document is to be given; and
13.2.4	of the rights of review conferred by the Act in relation to the determination; and
13.2.5	of the procedures to be followed for the purpose of exercising those rights; and



defer giving access to the document until after the expiration of the period within which an application for a review under the Act may be made or, if such an application is made, until after the application has been finally disposed of.	
14.	Documents Affecting Personal Affairs
14.1	The duty pursuant to Section 26(2) of the Act not to give access under the Act to a document which contains information concerning the personal affairs of any person (whether living or dead) except to the person concerned, unless the Council has taken such steps as are reasonably practicable to obtain the views of the person concerned as to whether or not the document is an exempt document by virtue of Clause 6 of Schedule 1 to the Act.
14.2	The duty pursuant to Section 26(3) of the Act, if:
14.2.1	the Delegate determines, after having sought the views of the person concerned, that access to a document to which Section 26(2) of the Act applies is to be given; and
14.2.2	the views of the person concerned are that the document is an exempt document by virtue of Clause 6 of Schedule 1 to the Act; or
14.2.3	after having taking reasonable steps to obtain the views of the person concerned, the Delegate is unable to obtain the views of the person and determines that access to the documents should be given,
to forthwith give written notice to the person concerned:	
14.2.4	that the Delegate has determined that access to the document is to be given; and
14.2.5	of the rights of review conferred by the Act in relation to the determination; and
14.2.6	of the procedures to be followed for the purpose of exercising those rights; and
defer giving access to the document until after the expiration of the period within which an application for review under the Act may be made or, if such an application is made, until after the application has been finally disposed of.	
14.3	The power pursuant to Section 26(4) of the Act where:-



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14.3.1 an application is made to the Council for access to a document to which Section 26 of the Act applies; and
14.3.2 the document contains information of a medical or psychiatric nature concerning the applicant; and
14.3.3 the Delegate is of the opinion that disclosure of the information to the applicant may have an adverse effect on the physical or mental health or emotional state, of the applicant; and
14.3.4 the Delegate decides that access to the document is to be given,
to give access to the document to a registered medical practitioner nominated by the applicant.
15. Documents Affecting Business Affairs
15.1 The duty pursuant to Section 27(2) of the Act not to give access under the Act to a document which contains:
15.1.1 information concerning the trade secrets of any person; or
15.1.2 information (other than trade secrets) that has a commercial value to any person; or
15.1.3 any other information concerning the business, professional, commercial or financial affairs of any person;
except to the person concerned, unless the Council has taken such steps as are reasonably practicable to obtain the views of the person concerned as to whether or not the document is an exempt document by virtue of Clause 7 of Schedule 1 to the Act.
15.2 The duty pursuant to Section 27(3) of the Act, if:
15.2.1 the Delegate determines, after seeking the views of the person concerned, that access to a document to which Section 27(2) of the Act applies is to be given; and
15.2.2 the views of the person concerned are that the document is an exempt document by virtue of Clause 7 of Schedule 1 to the Act,
to forthwith give written notice to the person concerned:
15.2.3 that the Council has determined that access to the document is to be given; and



15.2.4 of the rights of review conferred by the Act in relation to the determination; and
15.2.5 of the procedures to be followed for the purpose of exercising those rights; and
defer giving access to the document until after the expiration of the period within which an application for a review under the Act may be made or, if such an application is made, until after the application has been finally disposed of.
16. Documents Affecting the Conduct of Research
16.1 The duty pursuant to Section 28(2) of the Act not to give access under the Act to a document which contains information concerning research that is being, or is intended to be, carried out by or on behalf of any person except to the person concerned, unless such steps have been taken as are reasonably practicable to obtain the views of the person concerned as to whether or not the document is an exempt document by virtue of Clause 8 of Schedule 1 to the Act.
16.2 The duty pursuant to Section 28(3) of the Act, if:
16.2.1 the Delegate determines, after seeking the views of the person concerned, that access to a document to which Section 28(2) of the Act applies is to be given; and
16.2.2 the views of the person concerned are that the document is an exempt document by virtue of Clause 8 of Schedule 1 to the Act,
to forthwith give written notice to the person concerned:
16.2.3 that the Council has determined that access to the document is to be given; and
16.2.4 of the rights of review conferred by the Act in relation to the determination; and
16.2.5 of the procedures to be followed for the purpose of exercising those rights; and
defer giving access to the document until after the expiration of the period within which an application for a review under the Act may be made or, if such an application is made, until after the application has been finally disposed of.



17. Internal Review
17.1 The power pursuant to Section 29(3) of the Act, where an application for review of a determination is made under Part 3 of the Act and in accordance with Section 29(2) of the Act, to confirm, vary or reverse the determination under review.
17.2 The duty pursuant to Section 29(4) of the Act to refund any application fee paid in respect of the review where the delegate varies or reverses a determination so that access to a document is to be given either immediately or subject to deferral.
18. Persons by Whom Applications for Amendment of Records May be Dealt With and Time Within Which Applications Must be Dealt With
18.1 The duty pursuant to Section 32(1) of the Act to ensure that an accredited FOI officer deals with an application for amendment of the Council's records.
18.2 The duty pursuant to Section 32(2) of the Act to deal with an application for amendment of the Council's records as soon as practicable (and, in any case, within 30 days) after it is received.
19. Incomplete Applications for Amendment of Records
19.1 The duty pursuant to Section 33 of the Act not to refuse to accept an application merely because the application does not contain sufficient information to enable the Council's document to which the applicant has been given access to be identified without first taking such steps as are reasonably practicable to assist the applicant to provide such information.
20. Determination of Applications
20.1 The duty pursuant to Section 34 of the Act to determine within thirty (30) days of its receipt an application for amendment of the Council's records by amending the Council's records in accordance with the application or, by refusing to amend the Council's records.



21. Refusal to Amend Records
21.1 The power pursuant to Section 35 of the Act to refuse to amend the Council's records in accordance with an application:
(a) if the Delegate is satisfied that the Council's records are not incomplete, incorrect, out of date or misleading in a material respect; or
(b) if the Delegate is satisfied that the application contains a matter that is incorrect or misleading in a material respect; or
(c) if the procedures for amending the Council's records are prescribed by or under the provisions of a legislative instrument other than the Act, whether or not amendment of those records is subject to a fee or charge.
22. Notices of Determination
22.1 The duty pursuant to Section 36(1) of the Act to give written notice to an applicant of the Council's determination of his/her application or, if the application relates to records that are not held by the Council, of the fact that the Council does not hold such records.
22.2 The duty pursuant to Section 36(2) of the Act when giving a written notice in accordance with Section 36(1) to specify –
22.2.1 the day on which the determination was made; and
22.2.2 if the determination is to the effect that amendment of the Council's records is refused –
(i) the name and designation of the officer by whom the determination was made; and
(ii) the reasons for that refusal; and
(iii) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based; and
(iv) the rights of review conferred by the Act in relation to the determination; and
(v) the procedures to be followed for the purpose of exercising those rights.



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22.3	The power pursuant to Section 36(3) of the Act not to include in a notice given under Section 36(1) of the Act any matter which by its inclusion would result in the notice being an exempted document.
23.	Notations to be Added to Records
23.1	The duty pursuant to Section 37(2) of the Act where the Delegate has refused to amend the Council's records and the applicant has, by notice in writing lodged at the Council offices, requiring the Council to add to those records a notation –
23.1.1	specifying the respects in which the applicants claims the records to be incomplete, incorrect, out of date or misleading; and
23.1.2	if the applicant claims the records to be incomplete or out of date, setting out such information as the applicant claims is necessary to complete the records or to bring them up to date,
	to cause written notice of the nature of the notation to be given to the applicant.
23.2	The duty pursuant to Section 37(3) of the Act, if the Council discloses to any person (including any other agency) any information contained in the part of its records to which a notice under Section 37 relates, to:
23.2.1	ensure that, when the information is disclosed, a statement is given to that person:
23.2.1.1	stating that the person to whom the information relates claims that the information is incomplete, incorrect, out of date or misleading; and
23.2.1.2	setting out particulars of the notation added to its records under Section 37; and
	the power pursuant to Section 37(3)(b) of the Act to include in the statement the reason for the Council's refusal to amend its records in accordance with the notation.
24.	Internal Review
24.1	The power pursuant to Section 38(3) of the Act, where an application for review of a determination is made under Part 4 of the Act and in accordance with Section 38(2) of the Act to, confirm, vary or reverse the determination under review.



25. Review by Ombudsman or Police Ombudsman
25.1 The duty and power pursuant to Section 39(5)(b)(i) of the Act to sort or compile documents relevant to a review under Section 39 of the Act or to undertake consultation.
25.2 The duty and power pursuant to Section 39(5)(b)(ii) of the Act to attend at a time and place specified by the relevant review authority (as defined by the Act) for the purposes of sorting or compiling documents relevant to a review under Section 39 of the Act or to undertake consultation.
25.3 The power:
25.3.1 to participate in and effect a settlement conducted under Section 39(5)(c)(i) of the Act; and
25.3.2 to request a suspension of proceedings under Section 39 at any time to allow an opportunity for a settlement to be negotiated.
25.4 The duty and power pursuant to Section 39(7) to cooperate in a process proposed by the relevant review authority (as defined by the Act) for the purposes of the conduct of a review under Section 39 of the Act (including any attempt of the relevant review authority to effect a settlement between the participants) and to do all such things as are reasonably required to expedite the process.
26. Reviews by SACAT
26.1 The power pursuant to Section 40(1) of the Act and with the permission of SACAT, to apply for a review under Section 34 of the South Australian Civil and Administrative Tribunal Act 2013 of the determination by SACAT on a question of law.
27. Consideration of Restricted Documents
27.1 The power pursuant to Section 41(1) of the Act to make application to SACAT to have SACAT receive evidence and hear argument in the absence of the public, the other party to the review and, the other party's representative.
28. <i>Deliberately left blank</i>
28.1 <i>Deliberately left blank</i>



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29. Fees & Charges
29.1 The power pursuant to Section 53(2a) of the Act, as the Delegate thinks fit, to waive, reduce or remit a fee or charge in circumstances other than those in which such action is provided for under the regulations.
29.2 The duty pursuant to Section 53(3) of the Act, where the Delegate determines a fee or charge, to review the fee or charge on request of the person required to pay the same, and if the Delegate thinks fit, reduce it.
29.3 The power pursuant to Section 53(5) of the Act to recover a fee or charge as a debt due and owing to the Council.
30. Provision of Information to Minister
30.1 The duty pursuant to Section 54AA of the Act—
30.1.1 to furnish to the Minister administering the Act, such information as the Minister requires by notice in the Gazette –
30.1.1.1 for the purpose of monitoring compliance with the Act; and
30.1.1.2 for the purpose of preparing a report under Section 54 of the Act; and
30.1.2 to comply with any requirements notified by the Minister in the Gazette concerning the furnishing of that information and the keeping of records for the purposes of Section 54AA of the Act.
31. Documents Containing Confidential Material
31.1 The power pursuant to clause 13(2)(b)(iii) of Schedule 1 of the Act to approve a term for inclusion in a contract that the disclosure of the matter in the contract would constitute a breach of the contract or found an action for breach of confidence.
31.2 The duty pursuant to clause 13(6) of Schedule 1 of the Act to notify the Minister administering the Act, in writing, and as soon as practicable, if the Delegate approves a term of a contract in accordance with clause 13(2)(b)(iii) of Schedule 1 of the Act.



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<p style="text-align: center;"><u>DELEGATIONS UNDER THE FREEDOM OF INFORMATION</u> <u>(FEES AND CHARGES) REGULATIONS 2003</u></p>

<p>32. Fees & Charges</p>

<p>32.1 The duty pursuant to Regulation 5 of the Freedom of Information (Fees and Charges) Regulations 2003 to waive or remit the fee or charge where a person, liable to pay a fee or charge to the Council under the Act, satisfies the delegate that:</p>
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- | |
|---|
| <ul style="list-style-type: none">(a) he or she is a concession cardholder; or(b) payment of the fee would cause financial hardship to the person. |
|---|

<p>32.2 The duty pursuant to Regulation 6 of the Freedom of Information (Fees and Charges) Regulations 2003 to provide a Member of Parliament, who applies for access to Council documents under the Act, access to the documents without charge unless the work generated by the application involves fees and charges (calculated in accordance with Schedule 1 of the Act) totalling more than \$1,000.</p>
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SCHEDULE OF CONDITIONS

**CONDITIONS OR LIMITATIONS
APPLICABLE TO DELEGATIONS
CONTAINED IN THIS INSTRUMENT**

Paragraph(s) in instrument to which conditions/limitations apply	Conditions / Limitations
Nil	



APPENDIX [21]

INSTRUMENT OF DELEGATION UNDER THE DEVELOPMENT ACT 1993, DEVELOPMENT (DEVELOPMENT PLANS) AMENDMENT ACT 2006 AND DEVELOPMENT REGULATIONS 2008

NOTES

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.
2. Refer to the relevant Council resolution(s) to identify when these delegations were made, reviewed and or amended.

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

Concept of Change in the Use of Land
The power pursuant to Section 6(3) of the Development Act 1993 ('the Act') and in circumstances where a particular use of land has been discontinued for a period of six months or more:
to form the opinion that the revival of that use would be inconsistent with the Development Plan and have an adverse effect on the locality in which the land is situated; and
to serve written notice on the owner and occupier of the land declaring that a revival of the use will be treated for the purposes of the Act as a change in the use of land.
Appointment of Authorised Officers
The power pursuant to Section 18(1) of the Act to appoint a person to be an authorised officer for the purposes of the Development Act 1993.
The power pursuant to Section 18(2) of the Act to impose conditions on the appointment of an authorised officer.
The duty, pursuant to Section 18(3) of the Act to issue an authorised officer with an identity card.
The power pursuant to Section 18(5) of the Act to at any time, revoke an appointment which the Delegate or the Council has made, or vary or revoke



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a condition of such an appointment or impose a further such condition.
Delegations
The duty pursuant to Section 20(8) of the Act to ensure that notice of a delegation under Section 20 of the Act is, in prescribed circumstances, given in the Gazette.
Council or Minister May Amend a Development Plan
Where an amendment relates to the area, or part of the area, of a council, the power pursuant to Section 24(1)(a)(i) of the Act to prepare an amendment to a Development Plan.
Where an amendment to a Development Plan relates to the areas, or parts of the areas, of two or more councils, the power pursuant to Section 24(1)(b)(i) to consult with the Minister.
Where an amendment to a Development Plan relates to the areas, or parts of the areas, of two or more councils, the power pursuant to Section 24(1)(b)(ii) of the Act to prepare an amendment to a Development Plan at the request or with the approval of the Minister.
The power pursuant to Section 24(1a) of the Act and in accordance with subdivision 2 of Division 2 Part 3 of the Act to act jointly with one or more councils in preparing amendments to 1 or more Development Plans under sub Section (1)(a)(i) or (1)(b)(ii) of the Act.
The power pursuant to section 24(1)(a)(iva) of the Act, where the Council or the Delegate has, after commencing the processes associated with making an amendment as set out in Section 25 of the Act, to subsequently decide not to proceed with the amendment after all.
The power pursuant to Section 24(1b) of the Act to make submissions in relation to the matter within the period specified by the Minister.
The power pursuant to Section 24(2a) of the Act to make submissions (within a period specified in the notice) in relation to a matter.
1. Amendments by a Council
The power pursuant to Section 25(1) of the Act to prepare a 'Statement of Intent' in accordance with the Regulations.
The power pursuant to Section 25(1) of the Act to reach agreement with the



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Minister on a 'Statement of Intent' prepared by the Council.
Subject to Sections 25(4) and 25(5) of the Act the power pursuant to Section 25(3) of the Act to prepare a proposal, to be called a 'Development Plan Amendment' (or DPA) that complies with the following requirements:
the DPA must be based on the outcome of investigations initiated by the Council or the Delegate in accordance with the terms of the Statement of Intent and such other investigations (if any) as the Council or the Delegate thinks fit;
the DPA must include an assessment of the extent to which the proposed amendment:
accords with the Planning Strategy; and
accords with the Statement of Intent; and
accords with other parts of the Development Plan; and
complements the policies in the Development Plans for adjoining areas; and
satisfies the matters prescribed in the Regulations;
the DPA must include:
an explanation of the intent of the proposed amendments, the relationship between that intent and the policy of the Statement of Intent, and a summary of the major policy changes (if any) that are proposed; and
a summary of the conclusions drawn from the investigations and assessments referred to above; and
a draft of the amendment, or a draft of the relevant section of the Development Plan as amended (with the amendments shown in a distinctive manner);
the DPA must include an assessment of the extent to which the proposed amendment accords with relevant infrastructure planning (with respect to both physical and social infrastructure) identified by the Council through strategic planning or other processes undertaken by the Council under the Act or the Local Government Act 1999 or identified by a Minister, or any other relevant government agency, in accordance with any scheme set out in the



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Regulations, in connection with the preparation of the DPA under the Act;
the DPA must include any other matter prescribed by the Regulations.
The power pursuant to Section 25(3)(a) of the Act to initiate investigations in accordance with the terms of the Statement of Intent and such other investigations as the Delegate thinks fit.
The duty, pursuant to Section 25(4) of the Act to prepare a DPA only after the Delegate has considered the advice of a person with prescribed qualifications.
The power pursuant to Section 25(5) of the Act to not, except as authorised by the Minister, propose an amendment to a part of a Development Plan that has been declared by the Minister by notice in the Gazette as being part of a set of standard policy modules for the purposes of the Act.
The duty pursuant to Section 25(6) of the Act to deal with a DPA in accordance with process A, B or C as described by the Act, depending on an agreement reached between the Council or the Delegate and the Minister as part of the Statement of Intent or at some later time if so determined or agreed by the Minister.
The power pursuant to Section 25(6) of the Act to reach an agreement with the Minister as part of the Statement of Intent or at some later time if so determined or agreed by the Minister.
<u>Process A</u>
The duty pursuant to Section 25(7)(a) of the Act to refer the DPA to any government Department or agency that has a direct interest in the matter, and any other body specified in the Statement of Intent, for comment within the period prescribed by the Regulations.
The power pursuant to Section 25(7)(b) of the Act, if a response is not received within the period that applies under Section 25(7)(a) of the Act, to assume that the particular Department, agency or other body does not desire to provide any comment.
The power pursuant to Section 25(7)(c) of the Act to consult with the Minister.
The duty pursuant to Section 25(7)(c)(i) of the Act to comply with the requirement of the Minister to make an alteration to the DPA.



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Subject to Sections 25(10), 25(11), 25(12) and 25(12a) of the Act, the duty pursuant to Section 25(7)(d) of the Act to release the DPA for public consultation in accordance with the Regulations), over a period of at least 8 weeks.
<u>Process B</u>
The duty pursuant to Section 25(8)(a) of the Act, if required by the Minister, to first refer the DPA to the Minister for consideration.
The power, pursuant to Section 25(8)(a) of the Act, to consult with the Minister.
The duty pursuant to Section 25(8)(a)(i) of the Act to comply with a requirement of the Minister to make an alteration to the DPA.
Subject to complying with Section 25(8)(a) of the Act, (if relevant) the duty and power pursuant to Section 25(8)(b)(i) of the Act to refer the DPA to any government Department or agency that has a direct interest in the matter, and any other body specified in the Statement of Intent for comment within a period of 8 weeks, and, if a response is not received within this period, to assume that the particular Department, agency or body does not desire to provide any comment.
Subject to Sections 25(10), 25(11), 25(12) and 25(12a) of the Act the duty pursuant to Section 25(8)(b)(ii) of the Act to release the DPA for public consultation in accordance with the Regulations over a period that is at least concurrent with the period that applies under Section 25(8)(b)(i) of the Act.
<u>Process C</u>
The duty and power pursuant to Section 25(9)(a) of the Act to refer the DPA to any government Department or agency that has a direct interest in the matter, and any other body specified in the Statement of Intent for comment within a period of 4 weeks, and, if a response is not received within this period, to assume that the particular Department, agency or body does not desire to provide any comment.
Subject to Sections 25(10), 25(11), 25(12) and 25(12a) of the Act, the duty pursuant to Section 25(9)(b) of the Act to release the DPA for public consultation in accordance with the Regulations, over a period that is at least concurrent with the period that applies under



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Section 25(9)(a) of the Act.
The duty pursuant to Section 25(9)(c) of the Act, at the time that the DPA is released for public consultation, to give:
an owner or occupier of any land that is directly subject to the operation of the proposed amendment; and
an owner or occupier of each piece of adjacent land to land that is directly subject to the operation of the proposed amendment,
A. a written notice in accordance with the Regulations.
The duty pursuant to Section 25(10) of the Act to not release a DPA for public consultation unless or until the Chief Executive Officer of the Council has, on behalf of the Council, issued a certificate in the prescribed form relating to the extent to which the proposed amendment:
accords with the Planning Strategy; and
accords with the Statement of Intent; and
accords with other parts of the Development Plan; and
complements the policies in the Development Plans for adjoining areas; and
satisfies the matters prescribed in the Regulations.
In addition to any requirement prescribed by the Regulations, the duty pursuant to Section 25(11) of the Act for the purposes of undertaking the public consultation, to:
allow interested persons to make representations in writing in relation to the matter over the period that applies for the purposes of the public consultation; and
subject to Section 25(11)(b) of the Act and in accordance with the Regulations, hold within the area of the Council at least 1 meeting where members of the public may attend and make representations in relation to the matter,
appoint a committee (which may, but need not, include members of the Council) to consider any representations made under Sections 25(11)(a) or 25(11)(b) of the Act and to provide advice in relation



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to those representations.
If a proposed amendment designates a place as a place of local heritage value, the duty pursuant to Section 25(12) of the Act, at or before the time when the DPA is released for public consultation, to give each owner of land constituting a place proposed as a place of local heritage value a written notice:
informing the owner of the proposed amendment, and
inviting the owner to make submissions on the amendment within the period provided for public consultation under the Regulations.
If a proposed amendment declares a tree to be a significant tree or a stand of trees to be significant trees, the duty pursuant to Section 25(12a) of the Act, at or before the time when the DPA is released for public consultation, to give each owner of land where the tree or trees are located a written notice:
informing the owner of the proposed amendment; and
inviting the owner to make submissions on the amendment within the period provided for public consultation under the Regulations.
The duty pursuant to Section 25(13)(a) of the Act, after complying with the requirements of Sections 25(1)-(12a) of the Act, to, in accordance with the Regulations prepare a report on the matters raised during the consultation period, on the reasons for any failure to comply with any time set for any step under Sections 25(1)-(12a) of the Act, and on any recommended alterations to the proposed amendment.
The power pursuant to Section 25(13)(b) of the Act, if the Delegate thinks fit, by notice in writing to the Minister, to decline to proceed any further with an amendment.
The duty to send to the Minister:
a copy of a report under Section 25(13)(a); and
a certificate from the Chief Executive Officer;
B. pursuant to and in accordance with Section 25(14) of the Act and the Regulations.
The power pursuant to Sections 25(15)(d) and 25(15)(f) of the Act to consult with the Minister.



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The power pursuant to and in accordance with Section 25(21) of the Act to consult with, and make submissions to the Minister.
The power pursuant to Section 25(23) of the Act to consult with the Minister.
2. Amendments by the Minister
The power pursuant to Section 26(5)(d)(i) of the Act, in relation to a DPA referred to the Council by the Minister, to make comment on the DPA to the Minister within a period of 8 weeks.
The power pursuant to Section 26(5a)(a) of the Act in relation to a DPA referred to the Council by the Minister, to make comment on the DPA to the Minister within a period of 8 weeks.
The power pursuant to Section 26(5b)(a) of the Act in relation to a DPA referred to the Council by the Minister, to make comment on the DPA to the Minister within a period of 4 weeks.
The power pursuant to Section 26(12) of the Act, to make comment to the Minister within a period determined by the Minister in relation to a proposal to act under Section 26(11) of the Act.
The power pursuant to, Section 26(12) of the Act to, by notice in writing, object to the Minister's proposed action.
3. Parliamentary Scrutiny
The power pursuant to Section 27(6) of the Act to consult with the Minister.
Strategic Directions Reports
The duty pursuant to Section 30(1) of the Act, to, from time to time, in accordance with the requirements of Section 30 of the Act, prepare a report under Section 30 of the Act (a Strategic Directions Report) that:
addresses the strategic planning issues within the area of the Council, with particular reference to:
the Planning Strategy; and
any other policy or document prescribed by the regulations; and
addresses appropriate amendments to any Development Plan that applies within the area of the Council; and



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sets out the Council's priorities for:
achieving orderly and efficient development through the implementation of planning policies; and
the integration of transport and land-use planning within its area; and
implementing any relevant targets set out in the Planning Strategy; and
implementing affordable housing policies set out in the Planning Strategy within its area; and
infrastructure planning (with respect to both physical and social infrastructure), taking into account any advice provided by a Minister, or any other relevant government agency, in accordance with a scheme set out in the regulations, and any of the Council's proposals with respect to infrastructure; and
other projects or initiatives considered to be relevant by the Council; and
contains such other material as may be:
prescribed by the regulations; or
required by the Minister.
The duty pursuant to Section 30(2) of the Act to prepare and complete a report under Section 30 of the Act:
within 12 months after an alteration is made to the Planning Strategy, or within such longer period as the Minister may allow, if:
the Minister declares, by notice in the Gazette, that the alteration is considered to be a significant alteration that should trigger a review of Development Plans, or specified Development Plans, under Section 30 of the Act in relation to issues specified by the Minister; and
the Development Plan that applies in relation to the Council's area (or a part of its area) falls within the ambit of the declaration; and



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in any event, within 5 years after the completion of the last report under Section 30 of the Act.
The duty, pursuant to Section 30(3) of the Act, in connection with the preparation of a report under Section 30 of the Act, to:
by public advertisement, invite interested persons to make written submissions to the Council within 2 months of the date of the advertisement or such longer period as may be allowed by the advertisement; and
consult with any prescribed authority or body in the manner specified by the regulations.
The duty, pursuant to Section 30(4) of the Act, in connection with the operation of Section 30(3) of the Act, to prepare and make available the documentation prescribed by the regulations.
The duty pursuant to Section 30(5) of the Act to give a person who makes a written response to an invitation under Section 30(3)(a) of the Act an opportunity to appear personally or by representative before the Council or a Council Committee and to be heard on those submissions.
The duty pursuant to Section 30(6) of the Act, in preparing a report under Section 30 of the Act, to:
reach agreement with the Minister on a Statement of Intent with respect to any proposed amendments to a Development Plan that applies within the area of the Council; and
if relevant, prepare a DPA that is suitable for consideration under Section 25(3) of the Act.
The duty pursuant to Section 30(7) of the Act to furnish a report under Section 30 of the Act to the Minister.
The duty pursuant to Section 30(8) of the Act to, then, in accordance with any reasonable request of the Minister, enter into an agreement with the Minister on the steps that the Council will take as a result of the matters contained in the report (and the report will not be taken to have been completed unless or until such an agreement is reached with the Minister).
The power pursuant to Section 30(9) of the Act to request the Minister to exempt the Council:
from a requirement to prepare a particular report under Section 30 of the



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Act; or
from a particular requirement with respect to a report under Section 30 of the Act.
The duty pursuant to Section 30(12) of the Act to make copies of a report prepared under Section 30 of the Act available for inspection (without charge) by the public at the principal office of the Council.
The duty pursuant to Section 30(13) of the Act, if a report proposes amendments to a Development Plan that applies within the area of the Council, to ensure that it releases a DPA for public consultation under Section 25 within the period prescribed by the regulations.
The power pursuant to Section 30(14) of the Act, to request in accordance with the regulations a Minister identified by the regulations for the purposes of this provision to furnish to the Council within the prescribed period a statement of the nature and extent of any infrastructure that, according to the Minister's assessment, should be taken into account in connection with the preparation of a report under Section 30 of the Act.
The power pursuant to Section 30(15) of the Act to act jointly with two or more councils under Section 30 of the Act and to act on behalf of, and with the agreement of, the other council or councils in undertaking any process or procedure under Section 30 of the Act.
Copies of Plans to be Made Available to the Public
The duty pursuant to Section 31(3) of the Act to make copies of a Development Plan published under Section 31(1) of the Act that applies in relation to the area of the Council available for inspection (without charge) and purchase by the public at an office of the Council.
Matters Against Which Development Must be Assessed
The power, as the relevant authority and pursuant to Section 33 of the Act, to assess a development against and grant or refuse consent in respect of each of the following matters (insofar as they are relevant to that development):
the provisions of the appropriate Development Plan;
the provisions of the Building Rules;
in relation to a proposed division of land (otherwise than under the Community Titles Act 1996 or the Strata Titles Act 1988) on the



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satisfaction of the conditions specified in Section 33(1)(c) of the Act;
in relation to a division of land under the Community Titles Act 1996 or the Strata Titles Act 1988 on the satisfaction of the conditions specified in Section 33(1)(d) of the Act;
the requirement that any encroachment of a building over, under, across or on a public place has been dealt with in a satisfactory manner; and
such other matters as may be prescribed.
The power pursuant to Section 33(3) of the Act, when granting a development plan consent, to reserve a decision on a specified matter until further assessment of the development under the Act.
If:
a development only requires an assessment under paragraph (b) of Section 33(1) of the Act; and
the Council:
is the relevant authority; and
is to make the assessment under that paragraph; and
the Council determines to grant consent under that paragraph,
the duty, pursuant to Section 33(4b) of the Act as the relevant authority, to issue the relevant development approval with the consent.
Determination of Relevant Authority
The power pursuant to Section 34(1)(b)(iii) of the Act to request the Minister to declare the Development Assessment Commission to be the relevant authority for a proposed development.
The power pursuant to Section 34(1a) of the Act, where the Minister has made a declaration under Section 34(1)(b)(vi) of the Act, to provide the Development Assessment Commission with a report, relating to the application for development authorisation, within the time prescribed by the Regulations.
The power pursuant to Section 34(8a) of the Act to, in conjunction with the



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Councils for the areas in relation to which a regional development assessment panel has been constituted, remove a member from the panel for a failure to comply with the requirements of Section 34(6a) or (7) of the Act or a breach of, or failure to comply with, a code of conduct under Section 21A of the Act.
The power in accordance with Section 34(21) of the Act to withdraw from a regional development assessment panel
The duty pursuant to Section 34(27)(a) of the Act to establish a policy relating to the basis upon which the Council will make the various delegations required by Section 34(23) of the Act.
The duty pursuant to Section 34(27)(b) of the Act to ensure that a copy of the policy established by the Council under Section 34(27)(a) of the Act is available for inspection at the principal office of the council during ordinary office hours and for inspection on the internet.
Special Provisions Relating to Assessment Against Development Plans
The duty pursuant to Section 35(1) of the Act to grant a development plan consent if the Regulations or the relevant Development Plan describes any proposed development as a complying development (subject to such conditions or exceptions as may be prescribed by the Regulations or the relevant Development Plan and subject to any other provision made by the Act or applying under the Regulations).
The power pursuant to Section 35(1b) of the Act to determine a development that is assessed by a relevant authority as being a minor variation from complying development to be complying development.
Subject to Sections 35 (1d) and (1e) of the Act, if a proposed development meets all but 1 criteria necessary for the development to be complying development, the duty, pursuant to Section 35(1c) of the Act to regard the aspect or aspects of the development that are consistent with the development being complying development accordingly and to assess the balance of the development as merit development.
The power pursuant to Section 35(2) of the Act to assess whether or not a development is seriously at variance with the relevant Development Plan.
The power pursuant to Section 35(3)(a) of the Act in appropriate cases, to concur in the granting of consent to a development described as a non-complying development.
Subject to the Act, the power and duty pursuant to Section 35(6) of the Act, to



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accept that a proposed development complies with the provisions of the appropriate development plan to the extent that such compliance is certified by a private certifier.
Special Provisions Relating to Assessment Against the Building Rules
The duty pursuant to Section 36(1) of the Act to grant a building rules consent if the Regulations provide that any proposed building work complies with the Building Rules.
The power pursuant to and in accordance with Section 36(2) of the Act:
to assess whether a development is at variance with the Building Rules;
to determine whether to grant building rules consent where the variance is with the performance requirements of the Building Code and the Building Rules Assessment Commission concurs in the granting of consent;
to determine whether to grant building rules consent where the variance is with a part of the Building Rules other than the Building Code and to determine that it is appropriate to grant the consent despite the variance on the basis that the Delegate is satisfied that:
the provisions of the Building Rules are inappropriate to the particular building or building work, or the proposed building fails to conform with the Building Rules only in minor respects and the variance is justifiable having regard to the objects of the Development Plan or the performance requirements of the Building Code and would achieve the objects of the Act as effectively, or more effectively, than if the variance were not to be allowed; or
in circumstances where the development has already occurred the variance is justifiable in the circumstances of the particular case.
The duty pursuant to Section 36(3) of the Act to modify the application of the Building Rules to avoid an inconsistency between the Building Rules and the Development Plan in relation to a State heritage place or a local heritage place.
The duty pursuant to Section 36(3a) of the Act to seek and consider the advice of the Building Rules Assessment Commission before imposing or agreeing to a requirement under Section 36(3) of the Act that would be at variance with



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the performance requirements of the Building Code.
The duty pursuant to Section 36(4)(a) and (b) of the Act to accept that proposed building work complies with the Building Rules to the extent that:
such compliance is certified by the provision of technical details, particulars, plans, drawings or specifications prepared and certified in accordance with the Regulations; or
such compliance is certified by a private certifier.
The power pursuant to Section 36(6) of the Act to refuse to grant a consent in relation to any development if, as a result of that development, the type or standard of construction of a building of a particular classification would cease to conform with the requirements of the Building Rules for a building of that classification.
Consultation With Other Authorities or Agencies
Subject to Section 37AA of the Act, the duty pursuant to Section 37(1)(a) and (b) of the Act where an assessment is required of an application for the consent or approval of a proposed development of a prescribed class to:
refer the application, together with a copy of any relevant information provided by the applicant to a body prescribed by the Regulations and including the Development Assessment Commission, and
not make a decision until a response has been received from the prescribed body in relation to the matter or matters for which the referral was made or the presumption is made that the body does not desire to make a response or concur (as the case requires).
The duty pursuant to Section 37(5)(a) of the Act where an application has been refused or conditions imposed in respect of a development authorisation by direction of a prescribed body, to notify the applicant that the application was refused, or the conditions imposed, by direction under Section 37 of the Act.
If a relevant authority is directed by a prescribed body to refuse an application and the refusal is the subject of an appeal under the Act, the power, pursuant to Section 37(6) of the Act to make application for the relevant authority to be joined as a party to the proceedings.
Preliminary Advice and Agreement
The power pursuant to and in accordance with Section 37AA(2)(e) of the Act to be



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satisfied that an application accords with an agreement indicated by a prescribed body in accordance with Section 37AA(2)(c) of the Act.
The power pursuant to and in accordance with Section 37AA(4) of the Act to determine that an agreement under Section 37AA of the Act is no longer appropriate due to the operation of Section 53 of the Act.
Proposed Development Involving Creation of Fortifications
The duty pursuant to Section 37A(1) of the Act where the Delegate has reason to believe that a proposed development may involve the creation of fortifications, to refer the application for consent to, or approval of, the proposed development to the Commissioner of Police ('the Commissioner').
The power pursuant to Section 37A(2)(b) of the Act to receive the Commissioner's written determination under Section 37A(2)(a) of the Act.
The duty pursuant to Section 37A(5) of the Act if the Commissioner determines that the proposed development involves the creation of fortifications to:
if the proposed development consists only of the creation of fortifications – refuse the application; or
in any other case – impose conditions in respect of any consent to or approval of the proposed development prohibiting the creation of the fortifications.
The duty pursuant to Section 37A(6) of the Act, if the Delegate acting on the basis of a determination of the Commissioner under subsection 37A(2) refuses an application or imposes conditions in respect of a development authorisation, to notify the applicant that the application was refused, or the conditions imposed, on the basis of a determination of the Commissioner under Section 37A of the Act.
Public Notice and Consultation
The duty, pursuant to Section 38(3) of the Act, where a person applies for a consent in respect of the Development Plan for a Category 1 development, to not on the Delegate's own initiative seek the views of the owners or occupiers of adjacent or other land in relation to the granting or refusal of development plan consent.
Where a person applies for a consent in respect of the Development Plan for a Category 2A development, -



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the duty pursuant to Section 38(3a)(a) of the Act to:
subject to any exclusion or qualification prescribed by the Regulations – give an owner or occupier of each piece of adjoining land; and
give any other person of a prescribed class,
notice of the application; and
the duty pursuant to Section 38(3a)(b) of the Act, to:
give consideration to any representations in writing made in accordance with the Regulations by a person who is entitled to be given notice under paragraph (a) of Section 38(3a) of the Act; and
forward to the applicant a copy of any representations that the relevant authority must consider under subparagraph (i) of Section 38(3a)(b) of the Act and allow the applicant an opportunity to respond in writing, to those representations within the period prescribed by the Regulations; and
if a representation is received under paragraph (b) of Section 38(3a) of the Act within the prescribed number of days, the power pursuant to Section 38(3a)(c) of the Act to, in the Delegate's absolute discretion, allow the person who made the representation to appear personally or by representative before it to be heard in support of the representation.
The duty pursuant to Section 38(4) of the Act to give notice of a proposal for a Category 2 development.
The duty pursuant to Section 38(5) of the Act to give notice of a proposal for a Category 3 development.
The duty pursuant to Section 38(8) of the Act to forward to an applicant a copy of any representation made regarding the proposed development, and to allow the applicant to respond in writing to those representations.
The power pursuant to Section 38(10)(a) of the Act, in respect of a Category 2 development, to determine whether to allow a person who made a representation to appear personally or by representative before the Delegate.



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The duty pursuant to Section 38(10)(b) of the Act, in respect of a Category 3 development, to allow a person who made a representation and who as part of that representation indicated an interest in appearing before the Delegate, a reasonable opportunity to appear personally or by representative to be heard in support of the representation.
The duty pursuant to Section 38(11) of the Act to allow an applicant to appear personally or by representative before the Delegate or the Council in order to respond to any relevant matter.
The duty pursuant to Section 38(12) of the Act, where representations have been made under Section 38 of the Act, to give notice of the decision on the application to each person who made a representation and in respect of a Category 3 development of the person's appeal rights under the Act, and give notice to the Court.
The power, pursuant to subsection 38(17) of the Act, where a relevant authority is acting under Section 38 of the Act in relation to a Category 2A or Category 2 development, to not take into account under Section 38 of the Act a representation made by a person who is not entitled to be given notice of the relevant application under Section 38 of the Act.
The power, pursuant to subsection 38(18) of the Act, to not take into account under Section 38 of the Act, a representation that is not made in accordance with any requirement prescribed by the Regulations for the purposes of Section 38.
Application and Provision of Information
The power pursuant to Section 39(2) of the Act to request an applicant to:
provide such additional documents or information to enable assessment of the application;
remedy any defect or deficiency in any application or accompanying document or information required by or under the Act;
consult with an authority or body prescribed by the Regulations;
(where required by the Regulations) prepare a statement of effect in relation to non-complying development; and
comply with any other requirement prescribed by the Regulations.
If:



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a development is of a kind that is complying development; and
the development falls within a class of development prescribed by the Regulations for the purpose of Section 39(2a)(b) of the Act; and
the applicant has complied with the requirements of Section 39(1)(a), (c) and (d),
C. the duty, pursuant to Section 39(2a) of the Act, to, in making an assessment as to development plan consent, assess the application without requesting the applicant to provide additional documents or information.
If:
a development falls within a class of development prescribed by the Regulations for the purposes of Section 39(2b)(b) of the Act; and
the applicant has complied with the requirements of Section 39(1)(a), (c) and (d) of the Act,
D. the power and duty pursuant to Section 39(2b)(c) of the Act, to;
in making an assessment as to development plan consent, request the applicant to provide additional documents or information in relation to the application on 1 occasion only; and
E. the duty pursuant to Section 39(2b)(d) of the Act, to;
make that request within a period prescribed by the Regulations.
Pursuant to Section 39(3)(b) of the Act, where a request is made under Section 39(2) of the Act and the request is not complied with within the time specified by the Regulations, the power pursuant to Section 39(3)(b) of the Act to:
subject to Section 39(3)(b)(ii) of the Act, refuse the application; and
refuse the application in prescribed circumstances (including, if the Regulations so provide, in a case involving development that is complying development).
The duty, pursuant to Section 39(3a) of the Act, in dealing with an application that relates to a regulated tree, to seek to make any assessment as to whether the tree is a significant tree without requesting the applicant to provide an



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expert or technical report relating to the tree, unless the Delegate considers that special circumstances apply.
The duty, pursuant to Section 39(3b) of the Act, in dealing with an application that relates to a regulated tree that is not a significant tree, to seek to assess the application without requesting the applicant to provide an expert or technical report relating to the tree, unless the Delegate considers that special circumstances apply.
The power pursuant to Section 39(4)(a) and Section 39(5) of the Act to permit an applicant to vary an application or vary any plans, drawings, specifications or other documents that accompanied an application.
The power pursuant to Section 39(4)(b) and Section 39(5) of the Act to permit an applicant to lodge an application without the provision of any information or document required by the Regulations.
The power pursuant to Section 39(4)(c) and Section 39(5) of the Act to waive payment of whole or part of the application fee or refund an application fee (to the extent that such fees are payable to the Council).
The power pursuant to Section 39(4)(d) of the Act and Regulation 17(3)(a) of the regulations to refuse an application that relates to a development of the kind that is described as a non-complying development under the Development Plan without proceeding to make an assessment of the application.
The power pursuant to Section 39(4)(e) of the Act, if there is an inconsistency between any documents lodged with the Council for the purposes of Division 1 of Part 4 of the Act, or between any such document and a development authorisation that has already been given that is relevant in the circumstances, to return or forward any document to the applicant or to any other person and to determine not to finalise the matter until any specified matter is resolved, rectified or addressed.
The power pursuant to Section 39(7) of the Act to approve an application for variation of the conditions of the development authorisation previously given under the Act, or to extend the period for which such authorisation remains operative.
The power, pursuant to section 39(7)(c) to determine whether representations relate to any aspect of the development under consideration on account of an application for variation, and to determine whether, in the circumstances of the case, it is unnecessary to deal with the matter as Category 3 development.



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The power, pursuant to section 39(7)(d) of the Act, to approve the seeking of a variation to extend the period for which the relevant authorisation remains operative.
Where granting an application for variation of a development authorisation pursuant to section 39(6), the power, pursuant to section 39(7a), to make specific provision for the variation of a condition imposed with respect to the original authorisation in its decision on the application for variation.
The power pursuant to Section 39(8) of the Act to issue a consent which provides for the undertaking of development in stages.
The power pursuant to Section 39(9) of the Act to determine that the applicant is entitled to a refund of the application fee in the event that an application is withdrawn.
Determination of Application
The duty pursuant to Section 40(1) of the Act to give notice of a decision in accordance with the Regulations (and in the case of a refusal, the duty to include the reasons for the refusal and any appeal rights that exist under the Act.)
The power pursuant to Section 40(3) of the Act to extend the period of time within which a development authorisation remains operative.
Time Within Which Decision Must be Made
The duty, pursuant to Section 41(1) of the Act to deal with an application as expeditiously as possible and within the time prescribed by the Regulations.
If:
the relevant authority does not decide an application that relates to development that is a complying development within the time prescribed under Section 41(1) of the Act; and
the applicant gives the relevant authority a notice in accordance with the Regulations on the basis that the decision on the application has not been made,
F. the duty pursuant to Section 41(5)(d) of the Act, subject to any exclusion or qualification prescribed by the Regulations, to refund the fee received by the relevant authority under Section 39(1)(d) in relation to the application.



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Conditions
The power pursuant to Sections 42(1) and (3) of the Act to attach such conditions as the Delegate thinks fit or as may be prescribed by regulation to any decision under Division 1 of Part 4 of the Act.
The duty, pursuant to Section 42(4) of the Act, in accordance with Section 42(5) of the Act and subject to Sections 42(6) and (8) of the Act, if a development authorisation provides for the killing, destruction or removal of a regulated tree or a significant tree, to apply the principle that the development authorisation be subject to a condition that the prescribed number of trees (of a kind determined by the Delegate) must be planted and maintained to replace the tree (with the cost of planting to be the responsibility of the applicant or any person who acquires the benefit of the consent and the cost of maintenance to be the responsibility of the owner of the land).
The power, pursuant to Section 42(6) of the Act, on the application of the applicant, to determine that a payment of an amount calculated in accordance with the Regulations be made into the relevant fund in lieu of planting one or more replacement trees under Section 42(4) of the Act.
The power, pursuant to Section 42(8)(b) of the Act, after taking into account any criteria prescribed by the Regulations and if the Minister concurs, to determine that it is appropriate to grant an exemption under Section 42 of the Act in a particular case.
Cancellation by a Relevant Authority
The power pursuant to Section 43 of the Act to cancel a development authorisation previously given by the Council or the Delegate.
Investigation of Development Assessment Performance
The power pursuant to Section 45A(2) of the Act to explain the Council's actions and to make submissions (including, if relevant, an indication of undertakings that the Council is willing to give in order to take remedial action) to the Minister within a period (being at least 28 days) specified by the Minister.
The duty pursuant to Section 45A(14) of the Act to comply with a direction under Section 45A(11) or (13) of the Act.
The power pursuant to Section 45A(12) of the Act to make submissions to the Minister on the report on which the action under Section 45A(11) of the Act is based within a period (being at least 28 days) specified by the Minister.



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Crown Development and Public Infrastructure
The power pursuant to Section 49(4a) of the Act to receive notice from the Development Assessment Commission containing the prescribed particulars of the development in accordance with the Regulations.
The power pursuant to Section 49(5) of the Act to report to the Development Assessment Commission on any matters contained in a notice from the Development Assessment Commission under Section 49(4a) of the Act.
The power pursuant to Section 49(9) of the Act to withdraw opposition to a State agency proposed development.
Electricity Infrastructure Development
The power pursuant to Section 49A(4a) of the Act to receive notice from the Development Assessment Commission containing the prescribed particulars of the development in accordance with the Regulations.
The power pursuant to Section 49A(5) of the Act, where notice of a proposal to undertake development for the purposes of the provision of electricity infrastructure has been given to the Council pursuant to Section 49A(4a) of the Act, to report to the Development Assessment Commission on any matters contained in the said notice.
The power pursuant to Section 49A(9) of the Act, in circumstances where the Council's report to the Development Assessment Commission under Section 49A(5) of the Act expressed opposition to the proposed development, to withdraw that opposition.
Open Space Contribution System
The power pursuant to Section 50(1) of the Act, with respect to an application for the division of land into more than 20 allotments where one or more allotments is less than one hectare in area, to require:
that up to 12.5% in area of the relevant area be vested in the Council to be held as open space; or
that the applicant make the contribution prescribed by the regulations in accordance with the requirements of by Section 50 of the Act; or
that the land be vested in the Council and that the applicant make a contribution determined in accordance with Section 50(7) of the Act,



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according to the determination and specification of the Council or Delegate.
The power pursuant to Section 50(1) of the Act, when proposing to take any action that is at variance with the Council's Development Plan to seek the concurrence of the Development Assessment Commission.
The power pursuant to Section 50(3) and 50(2)(d) of the Act to enter into an agreement on behalf of the Council with the Development Assessment Commission and the applicant under which certain land described by the relevant plan of division will be vested in the Council.
The power pursuant to Section 50(3a) of the Act to concur on behalf of the Council to the vesting of land in the Council pursuant to a requirement of the Development Assessment Commission that an area of the site of the development be kept as open space or in some other form that allows for active or passive recreation under Section 50(3a)(a) of the Act.
The power pursuant to Section 50(10) of the Act to receive payment of monies from an applicant under Section 50(1) of the Act and the duty to immediately pay that money into a special fund established for the purposes of Section 50 and to apply that money for the purpose of acquiring or developing land as open space.
The power pursuant to Section 50(11) of the Act to determine that the division of land is being undertaken in stages such that Section 50 of the Act does not apply to an application for development authorisation to the extent that an earlier application in respect of the same development has addressed the requirements of Section 50 of the Act in respect of the area of land as a whole.
Carparking Fund
The power pursuant to Section 50A(1) of the Act to establish a car parking fund.
The duty pursuant to Section 50A(1) of the Act to publish a notice in the Gazette in accordance with Section 50A(2) of the Act where the approval of the Minister has been obtained.
The power pursuant to Section 50A(5)(c) of the Act to determine that a proposal does not provide for sufficient spaces for the parking of cars at the site of a development.
The power pursuant to Section 50A(5)(d) of the Act to agree with an applicant that a contribution calculated in accordance with a determination of the Council or the Delegate can be made by the applicant to a car parking fund in lieu of providing a certain number of spaces for the parking of cars at the site of



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a development.
The power pursuant to Section 50A(5) of the Act to make a determination for the purpose of calculating amounts to be paid into a carparking fund.
The duty pursuant to and in accordance with Section 50A(6) of the Act to publish a determination for the purpose of calculating amounts to be paid into a carparking fund and any variations from time to time in the Gazette.
The power pursuant to and in accordance with Section 50A(7) of the Act to invest any money in a carparking fund and to pay any resultant income into the fund.
The power pursuant to and in accordance with Section 50A(8) of the Act to apply money standing to the credit of the car parking fund.
Urban Trees Fund
The power, pursuant to Section 50B(1) of the Act, with the approval of the Minister, to establish an urban trees fund for an area designated by the Delegate (a designated area).
The duty, pursuant to Section 50B(2) of the Act, to effect establishment of the fund by notice in the Gazette.
The duty, pursuant to Section 50B(3) of the Act, to define a designated area by reference to an area established by the relevant Development Plan.
The power, pursuant to Section 50B(5) of the Act, to invest any money in an urban trees fund that is not for the time being required for the purpose of the fund and the duty to pay any resultant income into the fund.
The power, pursuant to Section 50B(6) of the Act, to apply money standing to the credit of an urban trees fund to:
maintain or plant trees which are, or will (when fully grown) constitute, significant trees under the Act; or
purchase land within the designated area in order to maintain or plant trees which are, or will (when fully grown) constitute, significant trees under the Act.
The duty, pursuant to Section 50B(7) of the Act, if the Council subsequently sells land purchased under Section 50B(6)(b) of the Act, to pay the proceeds of sale into an urban trees fund maintained by the Council under Section 50B of the Act subject to the following qualifications as prescribed by Sections



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50B(7)(a) and (b) of the Act:
if an urban trees fund is no longer maintained by the Council, the proceeds must be applied for a purpose or purpose consistent with Section 50B(6)(a) or (b) of the Act;
if money from an urban trees fund only constituted a proportion of the purchase price of the land (the designated proportion), the money that is subject to these requirements is the designated proportion of the proceeds of sale.
Certificate in Respect of the Division of Land
The duty pursuant to Section 51(2) of the Act to provide appropriate information to the Development Assessment Commission (upon request by the Development Assessment Commission) before it issues a certificate in respect of the division of land.
Saving Provisions
The power pursuant to Section 52(4) of the Act to extend the limitation period referred to in Section 52(2) of the Act in order to avoid or reduce hardship.
Avoidance of Duplication of Procedures Etc
The power pursuant to Section 52A(2)(a) of the Act to accept a document under the Commonwealth Environment Protection and Biodiversity Conservation Act, 1999 (and defined in Section 52A(9) of the Act, as a 'Commonwealth Act document') as an application, notice or other document for the purposes of the Act, if (subject to the provisions of Section 52A(7)) the document complies with the requirements of the Act.
The power pursuant to Section 52A(2)(b) of the Act where a document has been accepted for the purposes of the Act, to direct that a procedure taken under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 in relation to the said document will be taken to have fulfilled the requirements for a procedure in relation to the relevant document under the Act, if the requirements of the Act in relation to the procedure have been complied with under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.
The power pursuant to Section 52A(2)(c) of the Act to adopt or accept the whole or part of a document (whether a plan, report, statement, assessment or other document of the same kind or not) used or to be used for the purposes of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 as the document required under the Act, if (subject to the



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provisions of Section 52A(7) of the Act) the document has been prepared in compliance with the Act, and complies with the requirements of the Act.
The power pursuant to Section 52A(5) of the Act where a controlled action under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 is an activity or part of an activity or includes an activity for which a development authorisation is required under the Act to, when considering an application for a development authorisation or for the variation of a development authorisation, for the activity, use information and other material provided to the Commonwealth Minister under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 for the purposes of the Commonwealth Minister deciding to give approval to the controlled action under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.
Where a controlled action under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 is an activity or part of an activity, or includes an activity, for which a development authorisation is required under the Act:
in circumstances where:
the Commonwealth Minister has given his or her approval to the controlled action; and
the applicant for the development authorisation or the Commonwealth Minister has informed the relevant authority of that fact;
the duty pursuant to Section 52A(6)(a) of the Act to consider whether the conditions (if any) to be attached to the development authorisation should be consistent with the conditions (if any) attached to the Commonwealth Minister's approval under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999; and
the power pursuant to Section 52A(6)(b) of the Act to attach a condition to the development authorisation that requires compliance with all or some of the conditions attached to the Commonwealth Minister's approval under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.
Requirement to Upgrade Building in Certain Cases
Where an application is made for building rules consent for building work in the nature of an alteration to a building constructed before the date prescribed



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by regulation for the purposes of subsection 53A(1) of the Act, the power pursuant to Section 53A(1) of the Act to form the opinion that the building is unsafe, structurally unsound or in an unhealthy condition and therefore require as a condition of consent that building work that conforms with the requirements of the Building Rules be carried out to the extent reasonably necessary to ensure that the building is safe and conforms to proper structural and health standards.
Where an application is made for building rules consent for building work in the nature of an alteration of a class prescribed by the Regulations the power pursuant to Section 53A(2) and subject to Section 53A(3) of the Act, to form the opinion that the affected part of the building does not comply with the performance requirements of the Building Code in relation to access to buildings and facilities and services within buildings, for people with disabilities and therefore require as a condition of consent that building work or other measures be carried out to the extent necessary to ensure that the affected part of the building will comply with those performance requirements of the Building Code.
Urgent Building Work
The power pursuant to Section 54(2)(d) of the Act to issue any directions and specify a period of time with respect to building work performed as a matter of urgency.
Action if Development Not Substantially Completed
The power pursuant to Section 55(1) of the Act to apply to the Court for an order under Section 55(3) of the Act where the development to which an approval relates has been commenced but not substantially completed within the period prescribed by the Regulations for the lapse of the approval.
The power pursuant to Section 55(5) of the Act where the Court makes an order under Section 55(3)(a), (b) or (ca) of the Act and a person fails to comply with the order within the period specified by the Court, to cause any work contemplated by the order to be carried out and to recover the cost of that work as a debt from the person.
The power pursuant to Section 55(6) of the Act where an amount is recoverable from a person under Section 55(5) of the Act, by notice in writing to the person, fix a period being not less than 28 days from the date of the notice within which the amount must be paid.
Completion of Work
The power pursuant to Section 56(1) of the Act to issue a notice in writing requiring



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an owner of land to complete a development on the land within a period specified in the notice.
The power pursuant to the Section 56(2) of the Act to cause the necessary work to be carried out where an owner has failed to carry out work as required by a notice under Section 56(1) of the Act.
The power pursuant to Section 56(3) of the Act to recover the reasonable costs and expenses incurred by the Council or any person acting on behalf of the Council under Section 56 of the Act as a debt due from the owner.
The power pursuant to Section 56(4) of the Act to, by notice in writing to the person, fix a period being not less than 28 days from the date of the notice, within which the amount must be paid by the person where an amount is recoverable from the person under Section 56(3) of the Act.
Council to Establish Development Assessment Panels
The duty pursuant to Section 56A(3) of the Act to appoint a presiding member to the council development assessment panel in accordance with the requirements set out in Section 56A(3)(b) of the Act.
The duty pursuant to Section 56A(3) of the Act to appoint the remaining members of the council development assessment panel in accordance with the requirements set out in Section 56A(3)(c) of the Act.
The duty pursuant to section 56A(3)(d) of the Act to ensure that, unless granted an exemption by the Minister, at least 1 member of the panel is a woman and at least 1 is a man and to ensure that insofar as is reasonably practicable, the panel consists of equal numbers of men and women.
The duty pursuant to Section 56A(3)(e) to determine the term of office for a member of the council development assessment panel, which period cannot exceed 2 years.
The duty pursuant to Section 56A(3)(f) of the Act to determine any other conditions of appointment of the members of the council development assessment panel.
The power pursuant to Section 56A(3)(g) of the Act to remove a member of the council development assessment panel from office for:
breach of, or failure to comply with, the conditions of appointment; or
misconduct; or



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neglect of duty; or
incapacity to carry out satisfactorily the duty of his or her office; or
failure to carry out satisfactorily the duty of his or her office; or
failure to comply with a requirement under Section 34(6) or (7) of the Act or a breach of, or failure to comply with, a code of conduct under Section 21A of the Act.
The duty pursuant to and in accordance with Section 56A(5) of the Act to give notice of an appointment.
The duty pursuant to Section 56A(15)(b) of the Act and in accordance with Section 56A(17) of the Act to make minutes of meetings of a council development assessment available for reasonable access by members of the public.
The duty pursuant to and in accordance with Section 56A(20) of the Act to provide information to the Minister where requested by the Minister.
The duty pursuant to Section 56A(22) of the Act to appoint a public officer (who must not be a member of the council development assessment panel).
The duty pursuant to Section 56A(23) of the Act to ensure that notice of the appointment of a public officer (including the public officer's name and contact details) is published in the Gazette.
The power pursuant to Section 56A(27) of the Act to make an application to the Minister to exempt the Council from the requirement to establish a council development assessment panel under Section 56A of the Act.
The power pursuant to Section 56A(28) of the Act to consult with the Minister in relation to revoking an exemption under Section 56A(27) of the Act.
Building Rules Assessment Audits
The duty pursuant to Section 56B(2) to have its building assessment auditor audit the Council's activities in relation to the undertaking of assessments of proposed developments against the provisions of the Building Rules in accordance with the requirements of Section 56B.
The duty pursuant to Section 56B(5) to ensure that after the expiration of the periods prescribed in Section 56B(4) an audit under Section 56B is completed at least once in every prescribed period.
The power pursuant to Section 56B(10) to respond to a report prepared by a



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building assessment auditor prepared in relation to the Council under Section 56B.
The power pursuant to Section 56B(14) to make submissions to the Minister in relation to a matter concerning the possible exercise of the Minister's powers under Section 56B(12).
The duty pursuant to Section 56B(16) to comply with a direction given to the Council under Sections 56B(12) or 56B(15).
37A. Development Plan Assessment Audits
37A.1 The power and duty pursuant to Section 56C(2) of the Act to have the Council's activities in relation to Development Plan assessments audited by a development assessment auditor in accordance with the requirements of Section 56C of the Act.
37A.2 The power pursuant to Section 56C(10) of the Act to provide a response to an auditor with a view to correcting any error or fact.
37A.3 The power pursuant to Section 56C(14) of the Act to make submissions in relation to the matter to the Minister.
37A.4 The power pursuant to Section 56C(15) of the Act to, if
37A.4.1 the Minister makes a recommendation to the Council under Section 56C(12)(a) of the Act; and
37A.4.2 the Minister subsequently considers that the Council has not, within a reasonable period, taken appropriate action in view of the recommendation,
consult with the Minister.
Land Management Agreements
The power pursuant to Sections 57(2) and 57(2a) of the Act to enter into an agreement relating to the development, management, preservation or conservation of land within the area of the Council with the owner of the land.
The duty pursuant to and in accordance with Section 57(2c) of the Act and Regulation 98A of the Regulations to establish and keep a register available for public inspection (without charge).
The duty pursuant to Section 57(2e) of the Act, in relation to the granting of



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development plan consent with respect to a Category 2A, Category 2 or Category 3 development, to note the existence of the agreement (or the proposal to enter the agreement), and the availability of copies of the agreement for public inspection on the notice of the relevant authority's decision.
The power pursuant to Section 57(3) of the Act to carry out on private land any work for which provision is made by agreement under Section 57 of the Act.
The power pursuant to Section 57(5) of the Act, to apply to the Registrar-General to note the agreement against the relevant instrument of title or, in the case of land not under the provisions of the Real Property Act 1886, against the land.
The power pursuant to Section 57(8) of the Act to apply to the Registrar-General where an agreement in relation to which a note has been made under Section 57 of the Act has been rescinded or amended, to enter a note of the rescission or amendment made against the instrument of title or against the land.
The power pursuant to Section 57(11) of the Act to consent to the remission of rates payable to the Council provided for in an agreement entered into by the Minister.
Land Management Agreements - Development Applications
The power pursuant to and subject to Section 57A(1) of the Act to enter into an agreement under Section 57A of the Act with a person who is applying for a development authorisation under the Act.
The duty pursuant to Section 57A(3) of the Act to have regard to:
the provisions of the appropriate Development Plan.
the principle that the entering into of an agreement under Section 57A by the Council should not be used as a substitute to proceeding with an amendment to a Development Plan under the Act.
The duty pursuant to Section 57A(5) of the Act to register agreements entered into under Section 57A in accordance with the Regulations.
The duty pursuant to Section 57A(6) of the Act to keep a register available for public inspection (without charge) in accordance with the Regulations.
The power pursuant to Section 57A(7) of the Act to provide a person, on payment



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of the prescribed fee, a copy of an agreement registered under Section 57A(5) of the Act.
The duty, pursuant to Section 57A(8) of the Act, where an agreement is entered into under Section 57A of the Act, in connection with an application for a development authorisation with respect to a Category 2A, Category 2 or Category 3 development, to include a note of the existence of the agreement on the notice of the relevant authority's decision under the Act.
The power pursuant to Section 57A(14) of the Act to apply to the Registrar-General to note the agreement against the relevant instrument of title, or in the case of land not under the provisions of the Real Property Act 1886, against the land.
The power pursuant to Section 57A(16) of the Act to apply to the Registrar-General where an agreement under Section 57A has been rescinded or amended to enter a note of the rescission or amendment against the instrument of title, or against the land.
The power pursuant to Section 57A (18) of the Act where an agreement under Section 57A does not have effect under Section 57A within the prescribed period, to, by notice given in accordance with the regulations, lapse the relevant development approval (and the agreement will then be rescinded by force of Section 57A(18) of the Act).
Notification During Building
The power pursuant to Section 59(3) of the Act to direct that building work stop when a mandatory notification stage has been reached.
Classification of Buildings
The power pursuant to Section 66(2) of the Act to assign to any building a classification that conforms with the Regulations and the duty pursuant to Section 66(4) of the Act to give notice in writing to the owner of the building to which the classification has been assigned.
Certificates of Occupancy
The duty pursuant to and in accordance with the requirements of Sections 67(2), (3), (4), (5) and (6) of the Act to give a certificate of occupancy.
The power pursuant to Section 67(3)(a) of the Act to require information from an applicant for a certificate of occupancy.
The duty pursuant to Section 67(10) of the Act to give written notice to an applicant



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of the refusal of the certificate of occupancy.
The power pursuant to Section 67(13) of the Act to revoke a certificate of occupancy in prescribed circumstances.
Temporary Occupation
The power pursuant to Sections 68(1) and (2) of the Act to approve the occupation of a building on a temporary basis without a certificate of occupancy and subject to such conditions as the Delegate thinks fit to impose.
The duty pursuant to and in accordance with Section 68(3) of the Act to give written notice to an applicant of the refusal of approval for temporary occupation of a building.
Emergency Orders
Where an owner of land fails to comply with the requirements of an emergency order issued under Section 69(1) of the Act:
the power pursuant to Section 69(4) of the Act to cause the required work to be carried out; and
the power pursuant to and in accordance with Sections 69(5) and 69(6) of the Act to recover the reasonable costs and expense of that work from the owner as a debt.
44A Fire Safety
44A.1 The power pursuant to Sections 71(18) and (19) of the Act to establish and designate a body as an appropriate authority.
44A.2 The power pursuant to Section 71(19)(a)(i) of the Act to appoint a person who holds prescribed qualifications in building surveying to the appropriate authority.
44A.3 The power pursuant to Section 71(19)(a)(ii) of the Act to determine if a person is to be nominated to the appropriate authority by the Chief Officer of the South Australian Metropolitan Fire Service or the Chief Officer of the South Australian Country Fire Service (after taking into account the nature of the Council or Council's area(s)).
44A.4 The power pursuant to Section 71(19)(a)(iii) of the Act to appoint a person with expertise in the area of fire safety to the appropriate authority.
44A.5 The power pursuant to Section 71(19)(a)(iv) of the Act to determine and



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select a person to be appointed to the appropriate authority.
44A.6 The power pursuant to Section 71(19)(b) of the Act to determine the term of the office not exceeding three years of a member of the appropriate authority.
44A.7 The power pursuant to Section 71(19)(d) of the Act to appoint deputy members to the appropriate authority.
44A.8 The power pursuant to Section 71(19)(e) of the Act to determine the procedures of an appropriate authority.
Building Inspection Policies
The duty pursuant to and in accordance with Section 71A of the Act to prepare and from time to time alter a building inspection policy.
Advertisements
The power pursuant to and in accordance with Section 74(1) of the Act to:
form the opinion that an advertisement or advertising hoarding disfigures the natural beauty of a locality or otherwise detracts from the amenity of a locality or is contrary to a character desired for a locality under the relevant Development Plan; and
serve notice in writing requiring the removal or obliteration of the advertisement or the removal of the advertising hoarding (or both).
The power pursuant to Section 74(3) of the Act where a person has failed to comply with a notice under Section 74(1) of the Act, to enter on land, carry out the terms of the notice and recover the costs of doing so as a debt from the person on whom the notice was served.
Enforcement Notices
The power pursuant to and in accordance with Section 84(2) of the Act to issue an enforcement notice where the Delegate has reason to believe on reasonable grounds that a person has breached the Act or a repealed Act.
The power pursuant to Section 84(3) of the Act to determine that a direction under Section 84(2) of the Act is urgently required and can be orally given by an authorised officer.
Where a person has failed to comply with a direction contained in a notice issued pursuant to Section 84(2)(b) of the Act:



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the power pursuant to Section 84(6) of the Act to cause the necessary action to be undertaken; and
pursuant to and in accordance with Sections 84(7) and 84(8) of the Act to recover the costs of doing so as a debt from the person whose failure gave rise to the action.
4. Applications to Court
The power pursuant to Section 85(1) of the Act to apply to the Court for an order to remedy or restrain a breach of the Act, or a repealed Act.
Where the Court has made an order under Section 85(6)(d) of the Act and a person has failed to comply with the order, the power pursuant to and in accordance with Section 85(12) and Section 85(13) of the Act, to cause any work contemplated by the order to be carried out and to recover the costs of doing so as a debt from the person.
General Right to Apply to Court
Where the Council is a party to a dispute referred to in Section 86(1)(e) of the Act, the power pursuant to Section 86(1)(e) of the Act to apply to the Court for determination of the dispute.
Authority to be Advised of Certain Matters
The power pursuant to Section 93(1)(b)(iii) of the Act to require from a private certifier who is making a decision of a prescribed kind in relation to any aspect of building work such other information or documentation as the Delegate or the Council may require.
5. Referrals
The power pursuant to and in accordance with Section 94 of the Act to consent to the referral by a private certifier to the Council or Delegate of any function under the Act.
Professional Advice to be Obtained in Relation to Certain Matters
The power pursuant to Section 101(1) of the Act, in the exercise of a prescribed function, to rely on a certificate of a person with prescribed qualifications.
The duty pursuant to Section 101(2) of the Act to seek and consider the advice of a person with prescribed qualifications or person approved by the Minister in relation to a matter prescribed by the Regulations.



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Transitional Provisions

The power pursuant to and in accordance with Clause 5(1) of Schedule 1 to the Development (Development Plans) Amendment Act 2006 ('the DPA Act'), if the Council or the Delegate has, before the commencement of Clause 5 of Schedule 1 to the DPA Act reached an agreement with the Minister on a Statement of Intent with respect to an amendment to a Development Plan, or taken steps to prepare a Plan Amendment Report on the basis of such a Statement of Intent subject to Clause 5(2) of Schedule 1 to the DPA Act, to continue with the process as set out in Section 25 of the Act (as in force immediately before the commencement of Clause 5 of Schedule 1 to the DPA Act) as if the DPA Act had not been enacted until the relevant amendment is approved (with or without alteration) or otherwise dealt with by the Minister under Section 25(15) of the Act, subject to the qualification that the relevant Plan Amendment Report may be referred to as a Development Plan Amendment.

The power pursuant to Clause 5(2) of Schedule 1 to the DPA Act to agree on a Statement of Intent that is to supersede a Statement of Intent agreed between the Council or the Delegate and the Minister before commencement of Clause 5 of Schedule 1 to the DPA Act.



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Complying Development – Development Plan Consent
The power pursuant to Regulation 8A(1)(a) of the Development Regulations 2008 ('the Regulations'), for the purposes of Sections 33(1) and 35 of the Act (subject to Regulation 8A(2)) of the Regulations to:
in the case of a proposed development lodged for assessment as residential code development – assess the development as being in a form described in Schedule 4 clause 1(2) or (3), 2A, 2B or 2C (including a form specified or provided for in a relevant Development Plan referred to in Schedule 4 clause 1(2) or (3), 2A, 2B or 2C); and
in any other case – to assess the development as being in a form described in Schedule 4 Part 1 (including a form specified or provided for in a relevant Development Plan referred to in Schedule 4 Part 1).
The power pursuant to Regulation 8A(1)(b) of the Regulations, for the purposes of Section 35(1b) of the Act, to:
form the opinion that a variation from <i>complying</i> development (including <i>complying</i> development as declared under Regulation 8A(1)(a) of the Regulations) is minor; and
determine that 2 or more minor variations, when taken together, constitute a 'minor variation from <i>complying</i> development'.
Complying Building Work – Building Rules
The power pursuant to Regulation 8B(1) of the Regulations, for the purposes of Section 36(1) of the Act to, subject to Regulation 8B(2) of the Regulations, assess building work as being in a form specified in Schedule 4 Part 2 (including a form specified or provided for in the <i>Building Code</i> referred to in Schedule 4 Part 2).
Infrastructure Planning
The power pursuant to Regulation 9A(1) to, in preparing the DPA, to the extent (if any) required by the Statement of Intent, seek, in accordance with Regulation 9A(2), the advice of a Minister and any other government agency, specified by the Minister as part of the agreement on the Statement of Intent.



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Consultation with Government Departments or Agencies
The duty pursuant to Regulation 10A(1) of the Regulations if the Council is subject to a requirement under Section 25(7)(a) of the Act to ensure that a copy of any written report received from a Department or agency is furnished to the Minister for the purposes of considering the matter under Section 25(7)(b) of the Act.
Public Consultation – Section 25 & 26
Subject to Regulations 11A(3) and 11A(6) of the Regulations, for the purposes of Sections 25 and 26 of the Act, the duty pursuant to Regulation 11A(1) of the Regulations to give public notice of a DPA by publication in the designated manner of a notice:
advising the time and places at which the DPA is available for inspection (without charge) and purchase by the public; and
inviting any interested person to make written submissions on the amendment to the council within the relevant period specified in the notice; and
stating that the submissions will be available for inspection by any interested person at a place specified in the notice from the expiration of the period specified under Regulation 11A(1)(b) of the Regulations until the conclusion of any public meeting held for the purposes of Section 25(11)(b) or 26(5c)(b) of the Act (or, if no such meeting is to be held, until the decision is made not to hold the meeting); and
providing information about when and where any public meeting is proposed to be held for the purposes of Sections 25(11)(b) or 26(5c)(b) of the Act (subject to a decision being made under the relevant section not to hold a meeting).
If one or more written submissions are made in response to a notice published under Regulation 11A(1) of the Regulations, the duty pursuant to Regulation 11A(3) of the Regulations to make a copy of each submission available for inspection in accordance with the statement included under Regulation 11A(1)(c).
For the purposes of Sections 25(9)(c) and 26(5b)(c) of the Act, the duty pursuant to Regulation 11A(4) of the Regulations to include in the written notice the same information as required for a notice under Regulation 11A(1) of the Regulations.



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<p>The duty pursuant to Regulation 11A(5) of the Regulations, to ensure that a copy of any DPA released for public consultation under Section 25 of the Act is provided to the Minister within 2 business days after that release.</p>
<p>6. Public Meeting</p>
<p>The duty pursuant to and in accordance with Regulation 12 of the Regulations to hold a public meeting if an amendment has been prepared by the Council or the Delegate.</p>
<p>The power pursuant to Regulation 12(4) of the Regulations to adjourn a public meeting from time to time, and place to place if necessary or appropriate.</p>
<p>Application to Relevant Authority</p>
<p>The power pursuant to Regulation 15(1)(c) of the Regulations to require an additional or lesser number of copies of plans, drawings, specifications and other documents and information relating to a proposed development than the number prescribed in Regulation 15(1)(c) of the Regulations.</p>
<p>The duty pursuant to and in accordance with Regulation 15(4) of the Regulations, if an application is lodged with the Council but a regional development assessment panel is the relevant authority, to retain a copy of the application and other accompanying information and to forward the application on to the appropriate person acting on behalf of the regional development assessment panel.</p>
<p>The duty pursuant to and in accordance with Regulation 15(5) of the Regulations, when an application is lodged with the Council but the Development Assessment Commission is the relevant authority, to forward all but one copy of the application and the accompanying information, as well as a written acknowledgment that the appropriate fees have been paid, including details of each fee component paid, to the Development Assessment Commission.</p>
<p>The power pursuant to Regulation 15(7)(b) of the Regulations to indicate, in such manner as may be determined by the Development Assessment Commission, that the Delegate wishes to receive written documentation instead of electronic access to the relevant documents and information via the Internet.</p>
<p>58.4A The power and duty pursuant to Regulation 15(7b) of the Regulations, to within 2 business days of receipt of a copy of an application form under Regulation 15(7a) of the Regulations, furnish to the private certifier:</p> <p style="text-align: center;">the Development Assessment number assigned to the development</p>



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proposed under the application; and
if the private certifier, at the time of forwarding a copy of an application under Regulation 15(7a) of the Regulations, requests advice on the matters set out in subparagraphs (i) and (ii), and if such advice is relevant:
advice about any site contamination that is believed to exist at the site where the development would be undertaken; and
advice about the likely need for approval to alter a public road under section 221 of the Local Government Act 1999 in order to establish a new access point, and
advice about whether the relevant development plan specifies any requirements relating to finished floor levels (expressed by reference to AHD or ARI) in relation to the site where the development would be undertaken.
The power pursuant to Regulation 15(8) of the Regulations to extend the period prescribed in Regulation 15(8) for the lodging of an application for the appropriate development authorisation as required by Section 54(2)(c).
The power pursuant to Regulation 15(11) of the Regulations to modify the requirements of Schedule 5 in relation to a particular application, subject to the following qualifications:.
in the case of an application that is lodged with the Council for assessment as <i>residential code</i> development – the requirements of Schedule 5 may not be modified in any way by the delegate assessing the application (whether so as to require more or less information), except on authority of the Minister under Section 39(1)(a) of the Act;
in any other case, the delegate must not, when requiring plans, drawings, specifications and other documents in relation to the application, require the applicant to provide more information than that specified under Schedule 5 (subject to Section 39 of the Act).
The duty pursuant to Regulation 15(12) of the Regulations to, in exercising the discretion under Section 39(4)(b) of the Act, dispense with the requirements of Schedule 5 in relation to a particular application.



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Nature of Development
The duty pursuant to Regulation 16(1) of the Regulations, where an application requires the assessment of a proposed development against the provisions of the Development Plan, to determine the nature of the development applied for.
The power pursuant to Regulation 16(2) of the Regulations to form the opinion that a development is non-complying, and the duty if the Delegate is of the opinion that an application relates to a kind of development that is non-complying and the applicant has not identified the development as such, by notice in writing to inform the applicant of that fact.
The power pursuant to Regulation 16(3) of the Regulations to, if an application in relation to a proposed development identifies the development as <i>residential code</i> development or designated development, form the opinion that the development is <i>residential code</i> development and the duty to, within 5 business days of receipt of the application, by notice in writing, inform the applicant of that fact.
The power pursuant to Regulation 16(4) of the Regulations to, if an application in relation to a proposed development identifies the development as <i>residential code</i> development or designated development, form the opinion that the development is not <i>residential code</i> development and the duty to, within 5 business days of receipt of the application, by notice in writing, inform the applicant of that fact and the reasons for the Delegate's opinion.
Non-Complying Development
The power pursuant to Regulation 17(3) of the Regulations, after receipt of an application which relates to a kind of development that is described as non-complying development to:
refuse the application pursuant to Section 39(4)(d) of the Act and notify the applicant accordingly; or
resolve to proceed with an assessment of the application.
The duty pursuant to Regulation 17(4) of the Regulations, in situations where the Delegate has resolved to proceed with the assessment of an application for non-complying development, to require the applicant to provide a statement of effect.
The power pursuant to Regulation 17(6) of the Regulations to determine that a proposed development is of a minor nature for the purposes of exemption



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from the requirements to provide a statement of effect.
Notification of Application for Tree-Damaging Activity to Owner of Land
Where the owner of land to which an application for a tree-damaging activity in relation to a regulated tree relates is not a party to the application, the duty pursuant to and in accordance with Regulation 18 of the Regulations:
to give the owner of land notice of the application; and
to give due consideration, in the assessment of the application, to any submission made by the owner within a reasonable time after the giving of notice of the application.
Amended Applications
The power pursuant to Regulation 20(4) of the Regulations to form the opinion that variations to an application are not substantial and that repeating of the referral process under Part 5 of the Regulations, or the giving of notice under Part 6 of the Regulations is not required.
The power pursuant to Regulation 20(5) of the Regulations, where a variation to an application changes the essential nature of a proposed development to (by agreement with the applicant) proceed with the variation on the basis that the application will be treated as a new application.
Withdrawing/Lapsing Application
The duty pursuant to Regulation 22(1) of the Regulations, where an applicant withdraws an application, to notify any agency to which an application was referred under Part 5 of the Regulations and any person who made a representation in relation to the application under Part 6 of the Regulations of the withdrawal.
Where at least two years have passed since the date on which an application for development authorisation under Part 4 of the Act was lodged with the Council the power, pursuant to Regulation 22(2) of the Regulations to lapse the said application.
Before taking action to lapse a development application under Regulation 22(2) of the Regulations the duty, pursuant to and in accordance with Regulation 22(3) of the Regulations to:
take reasonable steps to notify the applicant of the action under consideration; and



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allow the applicant a reasonable opportunity to make submissions to the Council or the Delegate about the proposed course of action, and the power to determine the manner and form of those submissions.
Contravening Development
The power pursuant to Regulation 23(2) of the Regulations, by notice in writing to the applicant to decline to proceed with an application until proceedings under the Act have been concluded.
Referrals
The duty pursuant to Regulation 24(1) of the Regulations to refer an application of a prescribed kind together with a copy of any relevant information provided by the applicant to the relevant body prescribed by Schedule 8 of the Regulations and to not make a decision on the application until a response has been received from the referral body or the time period for receipt of a response has lapsed.
7. Procedure Where Concurrence Required
The duty pursuant to Regulation 25 of the Regulations, if concurrence must be sought from another body prior to issuing a consent or approval to forward to the other body whose concurrence must be sought that information required by Regulation 25(b) of the Regulations.
8. Additional Information or Amended Plans
The duty pursuant to Regulation 27(1) of the Regulations, where an application has been referred to a prescribed body under Part 5 of the Regulations and additional information is received which is materially relevant to the referral, to repeat the referral process where the Delegate is of the opinion that the additional information or amendment is significant and the power to repeat the referral process in all other instances.
Special Provisions – Referrals
The duty pursuant to and in accordance with Regulation 28(3) of the Regulations to refer an application for building rules consent to the relevant fire authority for comment and report where the Delegate considers that:
a proposed alternative solution within the meaning of the Building Code requires assessment against a performance requirement of the Building Code which provides for fire fighting operations of a fire



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authority; or
the proposed development is at variance with a performance requirement of the Building Code which provides for fire fighting operations of a fire authority; or
special problems for fire fighting could arise due to hazardous conditions of a kind described in Section E of the Building Code,
and the duty pursuant to Regulation 28(5) of the Regulations to have regard to any report received from the fire authority under Regulation 28.
The power pursuant to Regulation 28(4) of the Regulations, when a report from a fire authority pursuant to Regulation 28(3) is not received by the Council within 20 business days, to presume that the fire authority does not desire to make a report.
If, in respect of an application referred to a fire authority under Regulation 28, the fire authority:
recommends against the granting of building rules consent; or
concurs in the granting of consent on conditions specified in its report,
but the Delegate:
proposes to grant building rules consent despite a recommendation referred to in Regulation 28(5a)(a) of the Regulations; or
does not propose to impose the conditions referred to in Regulation 28(5a)(b) of the Regulations, or proposes to impose the conditions in varied form, on the grant of consent,
the duty pursuant to Regulation 28(5a) of the Regulations to:
refer the application to the Building Rules Assessment Commission; and
not grant consent unless the Building Rules Assessment Commission concurs in the granting of consent.
The duty pursuant to Regulation 28(6) of the Regulations to provide to the Building Rules Assessment Commission a copy of any report received from a fire authority under Regulation 28(1) that relates to an application referred to the Building Rules Assessment Commission under the Act.



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The duty pursuant to Regulation 28(7) of the Regulations, where building work comprises or includes the construction or installation of a private bushfire shelter, not to grant a building rules consent unless the Building Rules Assessment Commission concurs in the granting of the consent.
Land Division Applications
The duty pursuant to Regulation 29(1) of the Regulations, subject to the provisions in Regulation 29(2) of the Regulations, to withhold making a decision on an application which relates to a proposed development that involves the division of land until a report has been received from the Development Assessment Commission.
The power pursuant to Regulation 29(2) of the Regulations, when a report from the Development Assessment Commission pursuant to Regulation 29(1) of the Regulations is not received by the Council within eight weeks or within such longer period as the Development Assessment Commission may require by notice in writing to the Council, to presume that the Development Assessment Commission does not desire to make a report.
Underground Mains Area
The power pursuant to Regulation 30(1) of the Regulations to seek a report from the relevant electricity authority where the Delegate considers that an area should be declared an underground mains area.
The power pursuant to Regulation 30(2) of the Regulations to declare an area as an underground mains area.
The power pursuant to Regulation 30(4) of the Regulations, where a development includes the division of land within or partly within an underground mains area, to require, as a condition of the decision, that any electricity mains be placed underground.
Preliminary Advice and Agreement - Section 37AA
The power pursuant to Regulation 31A(6)(b) of the Regulations to determine that an application no longer accords with an agreement indicated by the prescribed body.
The power pursuant to Regulation 31A(6) of the Regulations if:
a relevant authority permits an applicant to vary an application under Section 39(4) of the Act; and
the relevant authority determines that the application no longer accords



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with the agreement indicated by the prescribed body, to refer the application (unless withdrawn) to the prescribed body:
to obtain a variation to the agreement under Section 37AA of the Act; or
to obtain a response from the prescribed body for the purposes of Section 37 of the Act.
The power pursuant to Regulation 31A(7) of the Regulations if:
an application is withdrawn by the Applicant; and
the applicant sought to rely on an agreement under Section 37AA of the Act in connection with the application,
to notify the relevant prescribed body of the withdrawal of an application.
The power pursuant to Regulation 31A(8) of the Regulations if:
an application is lapsed by a relevant authority under Regulation 22 of the Regulations; and
the applicant sought to rely on an agreement under Section 37AA of the Act in connection with the application,
to notify the relevant prescribed body of the lapsing of an application.
The power pursuant to Regulation 31A(9) of the Regulations if:
an application seeks to rely on an agreement under Section 37AA of the Act in connection with the application; and
a notice of decision is issued by the relevant authority under Regulation 42 of the Regulations,
to send a copy of the notice to the prescribed body within 5 business days after the notice is given to the applicant under Regulation 42 of the Regulations.
Public Notice Categories
The power pursuant to Regulation 32(2)(5) of the Regulations to determine that a



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form of development comprises 2 or more elements.
Public Inspection of Certain Applications
The duty pursuant to and in accordance with Regulation 34(1) of the Regulations, subject to Regulation 34(4) of the Regulations to ensure that copies of documents referred to in Regulation 34(1) concerning an application are reasonably available for inspection by the public (without charge).
The duty pursuant to Regulation 34(2) of the Regulations, subject to Regulation 34(4) of the Regulations, where a request is made within the time period that applies under Regulation 34(1) of the Regulations and on payment of a fee fixed by Council to provide to a member of the public a copy of any document of information available for inspection under Regulation 34(1) of the Regulations.
The power pursuant to Regulation 34(3) of the Regulations to require that a person who has made a request under Regulation 34(2) of the Regulations verify his or her name, address and contact details in such manner as the Delegate thinks fit.
The power pursuant to Regulation 34(4) of the Regulations to form the opinion that the present or future security of a building would be jeopardised if plans, drawings, specifications or other documents or information relating to the assessment of a proposed development against the Building Rules were to be made available for inspection.
Response by Applicant
The power pursuant to Regulation 36 of the Regulations to extend the time within which an applicant may respond to any representation
Determination of Commission as Relevant Authority
Where the Development Assessment Commission is the relevant authority under Section 34(1)(b) of the Act:
in a case where the Minister has made a declaration under Section 34(1)(b)(iii) or 34(1)(b)(vi) of the Act, the duty pursuant to and in accordance with Regulation 38(2)(a)(i) of the Regulations to forward to the Development Assessment Commission any application received by the Council under the Act and the Regulations in relation to the matter together with accompanying documentation or information and, as appropriate, fees; and



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<p>in any case, the power pursuant to and in accordance with Regulation 38(2)(b) to provide a report on matters under Section 33(1) (as relevant).</p>
<p>Where the Development Assessment Commission is the relevant authority under Section 34(1)(b)(iv) of the Act and the proposed development is to be undertaken within one kilometre of a boundary with the Council, the power, pursuant to Regulation 38(4) of the Regulations, to provide the Development Assessment Commission with comments on the proposed development.</p>
<p>9. Assessment in Respect of Building Rules Referred to the Council</p>
<p>The duty pursuant to and in accordance with Regulation 39 of the Regulations, where the Council is the relevant authority pursuant to Section 34(2) of the Act, not to give any decision in respect of the assessment against the Building Rules until the Development Assessment Commission or the regional development assessment panel (as the case may be) has made its decision.</p>
<p>Notification of Decision to Applicant (Including Conditions)</p>
<p>The duty pursuant to and in accordance with Regulation 42 of the Regulations to give notice of a decision on an application under Division 1 of Part 4 of the Act including, but not limited to, the power to endorse approved plans and documentation under Regulation 42(4).</p>
<p>10. Notification of Decision to a Prescribed Body</p>
<p>The duty pursuant to and in accordance with Regulation 43 of the Development Regulations, to send a copy of the notice of decision issued under Regulation 42 of the Regulations to any prescribed body to which the application had been referred.</p>
<p>The duty pursuant to and in accordance with Regulation 43(3) of the Regulations to send a copy of a notice of a decision on an application, if or when a development authorisation is issued in relation to a proposed division of land, to the Development Assessment Commission.</p>
<p>11. Notification of Decision to Owner of Land</p>
<p>The duty pursuant to and in accordance with Regulation 44 of the Regulations to send a copy of any notice issued under Regulation 42 of the Regulations to the owner of land to which a decision on the application relates where the owner is not a party to the application.</p>



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12. Scheme Description – Community Titles
<p>The duty pursuant to Regulation 45(2) of the Regulations to endorse a scheme description under Section 3 of the Community Titles Act 1996 in the following terms:</p>
<p>All the consents or approvals required under the Development Act 1993 in relation to the division of the land (and a change in the use of the land (if any)) in accordance with the scheme description and the relevant plan of community division under the Community Titles Act 1996 have been granted.</p> <p style="text-align: center;">OR</p> <p>No consent or approval is required under the Development Act 1993 in relation to the division of land (or a change in the use of the land) in accordance with this scheme description.</p> <p>This endorsement does not limit a relevant authority's right to refuse, or to place conditions on, development authorisation under the Development Act 1993 in relation to any other development envisaged by this scheme description.</p> <p>Signed:</p> <p>Dated:</p>
<p>The power pursuant to Regulation 45(2) of the Regulations to include in an endorsement of a scheme description under Section 3 of the Community Titles Act 1996, notes concerning conditions on any consent or approval, and notes concerning additional approvals that may be required in the future and to sign and date the endorsement.</p>
13. Special Provisions Relating to Staged Consents
<p>The duty pursuant to and in accordance with Regulation 46(1) of the Regulations, and in a case where the development is within the ambit of Schedule 1A, subject to, in accordance with Regulations 46(4) and (5) of the Regulations, any step that the Delegate, as the relevant authority considers it needs to take under Section 42 of the Act, to issue a Notice of Approval in the circumstances prescribed by Regulation 46 of the Regulations.</p>
Endorsed Plans
<p>The duty pursuant to Regulation 47 of the Regulations to return to a successful applicant, a copy of the plans, drawings, specifications and other documents and information lodged by the applicant duly endorsed with the building rules consent.</p>



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81A. Minor Variation of Development Authorisation
81A.1 The power pursuant to Regulation 47A(1) of the Regulations, if a person requests the variation of a development authorisation previously given under the Act (including by seeking the variation of a condition imposed with respect to the development authorisation) to form the opinion that the variation is minor in nature and, if the delegate is satisfied that the variation is minor in nature, to approve the variation.
Lapse of Consent or Approval
The power pursuant to Regulation 48(2) of the Regulations to extend the time when any consent or approval under Part 4 of the Act will lapse.
Width of Roads and Thoroughfares
The power pursuant to Regulation 51(4) of the Regulations to dispense with the requirements of Regulation 51(1) and (3) dealing with the width of any proposed road or thoroughfare where the Delegate is of the opinion that the prescribed width is not necessary for the safe and convenient movement of vehicles or pedestrians or for underground services.
The power pursuant to Regulation 51(6) of the Regulations to dispense with the requirements of Regulation 51(5) dealing with the width of a road at the head of every cul-de-sac where it appears that the cul-de-sac is likely to become a through road.
Road Widening
The power pursuant to Regulation 52(1) of the Regulations to require a road widening if land to be divided abuts an existing road.
Requirement as to Forming of Roads
The power pursuant to Regulation 53(1) and (2) of the Regulations to specify the width of roads.
The power pursuant to Regulation 53(4) of the Regulations to dispense with the requirements of Regulation 53(3) of the Regulations that adequate provision be made for the turning of vehicles at the head of a cul-de-sac where the Delegate is of the opinion that the cul-de-sac is likely to become a through road.
The power pursuant to Regulation 53(6) of the Regulations to dispense with the requirements of Regulation 53(5) dealing with the forming of footpaths,



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water-tables, kerbing, culverts and drains on proposed roads.
Construction of Roads, Bridges, Drains and Services
The power pursuant to Regulation 54(1) of the Regulations to require the paving and sealing of the roadway of proposed roads.
Supplementary Provisions
The duty pursuant to Regulation 55(1) of the Regulations to consider and if appropriate approve a road location and grading plan for the forming of any proposed road, including every footpath, water-table, kerbing, culvert and drain.
The duty pursuant to Regulation 55(2) of the Regulations to consider, and if appropriate approve, detailed construction plans and specifications signed by a professional engineer or licensed surveyor for all work referred to in Regulations 53 and 54 of the Regulations.
The duty pursuant to Regulation 55(4) of the Regulations to consider, and if appropriate accept, that all connections for water supply and sewerage services to any allotment delineated on a plan of division have been laid under the surface of a proposed road before the roadway is sealed.
General Land Division
The power pursuant to and in accordance with Regulation 58(1) of the Regulations to enter into a binding arrangement with an applicant for land division for the satisfaction of outstanding requirements.
The power pursuant to and in accordance with Regulation 58(2) of the Regulations to advise the Development Assessment Commission that an applicant has entered into appropriate binding arrangements pursuant to Section 51(1) of the Act.
Division of Land by Strata Title
The power pursuant to Regulation 59(1) of the Regulations to advise the Development Assessment Commission that an applicant has entered into a binding arrangement with the Council for the satisfaction of the requirements of Section 33(1)(d) of the Act and that the arrangement is supported by adequate security.
General Provisions
The power pursuant to and in accordance with Regulation 60(1) of the Regulations



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to enter into a form of arrangement with an applicant to the satisfaction of the Development Assessment Commission for the purposes of Section 51(1) of the Act.
The power pursuant to Regulation 60(7) of the Regulations, for the purposes of Section 51(4) of the Act, to request (in such a manner as may be determined by the Development Assessment Commission) that a copy of a certificate or plan (or certificates and plans) referred to in Regulation 60(4) of the Regulations be furnished to the Council by sending a written copy to the Council.
The power pursuant to Regulation 60(9) of the Regulations to consult with the Development Assessment Commission before it grants an extension of the period prescribed by Regulation 60(8) of the Regulations.
Declaration by The Minister - Section 46
The duty pursuant to and in accordance with Regulation 61(2) of the Regulations, to transmit to the Minister any relevant documentation (including the application and any accompanying documentation or information lodged by the proponent with the Council under Division 1 of Part 4 of the Act) within 10 business days after the receipt of a copy of a notice required by Regulation 61(1) of the Regulations.
At the same time that documents are transmitted to the Minister under Regulation 61(2) of the Regulations, the duty pursuant to Regulation 61(3) of the Regulations to also transmit to the Minister any fees that have been paid by the proponent under Schedule 6 (less any amount that the Minister determines should be retained by the Council).
Where an application lodged with the Minister under Section 46 of the Act requires an assessment against the Building Rules and the assessment against the Building Rules is to be referred to the Council, the power pursuant to Regulation 61(5)(d) of the Regulations, to require from the applicant additional copies of the plans, drawings, specifications and other documents and information required by Regulation 61(4) of the Regulations.
14. Referral of Assessment of Building Work
Where a development application which is subject to the operation of Section 48 of the Act is referred to the Council for assessment in respect of the Building Rules the duty pursuant to and in accordance with Regulation 64(2) of the Regulations, to ensure that the assessment is consistent with any development plan consent previously given under Section 48 of the Act.



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Where the Council acting under Regulation 64(1) of the Regulations determines that it is appropriate to give a certification with respect to the development complying with the Building Rules (and if the assessment of the Council is consistent with any development plan consent) the duty, pursuant to Regulation 64(3) of the Regulations to:
provide the certification in the form set out in Schedule 12A; and
to the extent that may be relevant and appropriate:
issue a schedule of essential safety provisions under Division 4 of Part 12 of the Act; and
assign a classification to the building under the Regulations; and
ensure that the appropriate levy has been paid under the <i>Construction Industry Training Fund Act 1993</i> .
Where the Council issues a certificate in the form set out in Schedule 12A of the Regulations as required by Regulation 64(3)(a) of the Regulations, the duty pursuant to Regulation 64(4) of the Regulations to furnish to the Minister a copy of the certificate together with a copy of any schedule of essential safety provisions.
Notifications During Building Work
The power pursuant to Regulation 74(1)(b) to specify by notice in writing to the building owner, on or before development approval is granted in respect of the work, any stage of the building work, for the purposes of the notification requirements in Section 59(1) of the Act.
The power pursuant to Regulation 74(1)(c) to specify by notice in writing to the building owner, on or before development approval is granted in respect of the work, any stage of the building work, for the purposes of the notification requirements in Section 59(1) of the Act.
The duty pursuant to Regulation 74(4) of the Regulations to make a note on the relevant building file of any notice given in accordance with Regulation 74(3)(d) by a person by telephone.
Essential Safety Provisions
The duty pursuant to Regulation 76(4) of the Regulations, on either the granting of a building rules consent or on application by the owner of a building, to issue a schedule in the form set out in Schedule 16 specifying the essential safety provisions for buildings and the standards and requirements for



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maintenance and testing in respect of those provisions.
The power pursuant to Regulation 76(10) of the Regulations to require compliance with Regulation 76(7) despite Regulation 76(9) of the Regulations if the essential safety provisions were installed under a modification of the Building Rules under Section 36(2) of the Act or the building has been the subject of a notice under Section 71 of the Act.
94A Swimming Pool Safety
94A.1 The power pursuant to Regulation 76D(4a) of the Regulations to, for the purposes of Section 71AA(7) of the Act, subject to Regulation 76(D)(4b) of the Regulations, establish a swimming pool inspection policy.
Building Rules: Bushfire Prone Areas
Where:
application is made for building rules consent for building work in the nature of an alteration to a class 1, 2 or 3 building under the Building Code; and
the building is in a bushfire prone area under Regulation 78(1) of the Regulations; and
the total floor area of the building would, after the completion of the proposed building work, have increased by at least 50% when compared to the total floor area of the building as it existed 3 years before the date of the application (or, in the case of a building constructed since that time, as it existed at the date of completion of original construction),
the power, pursuant to Regulation 78(2) of the Regulations, to require, as a condition of consent, that the entire building be brought into conformity with the relevant requirements of the Building Rules for bushfire protection.
Construction Industry Training Fund
The duty pursuant to Regulation 79(2) of the Regulations to withhold issuing a building rules consent until satisfied that the appropriate levy has been paid under the Construction Industry Training Fund Act 1993 or that no such levy is payable.
The power pursuant to Regulation 79(4) of the Regulations to form an opinion whether the appropriate levy under the Construction Industry Training Fund Act 1993 has or has not been paid, or is or is not payable, and notify the



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applicant that a building rules consent cannot be issued until the Delegate is satisfied that the levy has been paid or is not payable.
The power pursuant to and in accordance with Regulation 79(5)(b) of the Regulations to determine that the application has lapsed.
Classification of Buildings
The power pursuant to Regulation 82(3)(b)(i) of the Regulations to require such details, particulars, plans, drawings, specifications, certificates and other documents as may reasonably be required to determine a building's classification upon application by an owner of a building under Regulation 82(1) or (2) of the Regulations.
The duty pursuant to Regulation 82(4) of the Regulations to assign the appropriate classification under the Building Code to a building upon being satisfied that the building possesses the attributes appropriate to its present or intended use.
<p>The power pursuant to Regulation 82(5) of the Regulations, on assigning a classification to a building (or part of a building), to, if relevant, determine and specify in the notice to the owner under Section 66(4) of the Act –</p> <p>14.1.1 the maximum number of persons who may occupy the building (or part of the building); and</p> <p>14.1.2 If the building has more than one classification – the part or parts of the building to which each classification relates and the classification currently assigned to the other parts of the building.</p>
Certificates of Occupancy
The power pursuant to Regulation 83(2)(c) of the Regulations to require from an applicant for a certificate of occupancy reasonable evidence that conditions attached to a development approval have been satisfied.
The power pursuant to Regulation 83(2)(d) of the Regulations where an application relates to the construction or alteration of part of a building and further building work is envisaged in respect of the remainder of the building, to require from an applicant for a certificate of occupancy reasonable evidence that in the case of a building of more than 1 storey, the requirements of Minister's Specification SA 83 have been complied with, or in any other case the building is suitable for occupation.
The power pursuant to Regulation 83(3) of the Regulations to dispense with the requirement to provide a Statement of Compliance under Regulation



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83(2)(a) if the Delegate is satisfied that a person required to complete 1 or both parts of the Statement has refused or failed to complete that part and that the person seeking the issuing of the certificate of occupancy has taken reasonable steps to obtain the relevant certification(s) and it appears to the Delegate that the relevant building is suitable for occupation.
Where:
a building is required by the Building Rules:
to be equipped with a booster assembly for use by a fire authority; or
to have installed a fire alarm that transmits a signal to a fire station; and
facilities for fire detection, fire fighting or the control of smoke must be installed in the building pursuant to an approval under the Act,
the duty pursuant to Regulation 83(4) of the Regulations to not grant a certificate of occupancy unless or until a report has been sought from the fire authority as to whether those facilities have been installed and operate satisfactorily.
The power pursuant to Regulation 83(5) of the Regulations, when a report from the fire authority pursuant to Regulation 83(4) is not received within 15 business days, to presume that the fire authority does not desire to make a report.
The duty pursuant to Regulation 83(6) of the Regulations to have regard to any report received from a fire authority under Regulation 83(4) before issuing a certificate of occupancy.
The power pursuant to Regulation 83(9) of the Regulations to revoke a certificate of occupancy.
Certificate of Independent Technical Expert in Certain Case
The power pursuant to Regulation 88(3) of the Regulations, in circumstances where Regulation 88 of the Regulations applies, to rely on the certificate of an independent technical expert.
Fees
The power pursuant to Regulation 95(2) of the Regulations to require an applicant to provide such information as the Delegate may reasonably require to



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calculate any fee payable under Schedule 6 and the power to make any other determination for the purposes of Schedule 6.
The power pursuant to the provisions of Regulation 95(3) of the Regulations to calculate any fee on the basis of estimates made by the Delegate where the Delegate believes that any information provided by an applicant is incomplete or inaccurate.
The power pursuant to Regulation 95(4) of the Regulations to, at any time, and despite any earlier acceptance of an amount in respect of the fee, reassess a fee payable under the Regulations.
The duty pursuant to Regulation 95(5) of the Regulations, on a reassessment under Regulation 95(4) of the Regulations:
if it appears that an overpayment has occurred, to refund any amount due in accordance with the reassessment; and
if it appears that an underpayment has occurred, to charge any further amount payable in accordance with the reassessment.
Register Of Applications
The duty pursuant to Regulation 98 of the Regulations to keep available for public inspection a register of applications for consent, approval, or the assignment of building classifications under the Act.
The power pursuant to Regulation 98(3) to fix a fee and upon payment of that fee, make available to a member of the public a copy of any part of a register or document kept for the purposes of Regulation 98(1).
Registration of Land Management Agreements
The duty pursuant to and in accordance with Regulation 99(2) of the Regulations to establish a register of agreements entered into by the Council under Section 57(2) of the Act.
The power pursuant to Regulation 99(3) of the Regulations to determine what other information may be contained in the Register.
Land Management Agreements - Development Applications
The duty pursuant to Regulation 100(2) of the Regulations to establish a register of agreements entered into by the Council under Section 57A of the Act.
The duty pursuant to Regulation 100(3) of the Regulations to include in the register



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a copy of each agreement entered into by the Council under Section 57A of the Act and other information the Delegate considers appropriate.
The duty pursuant to Regulation 100(5) of the Regulations to keep the register at the principal office of the Council.
The duty pursuant to Regulation 100(6) of the Regulations to keep the register available for public inspection during normal office hours for the office where the register is situated.
The duty pursuant to Regulation 100(9) to give a copy of a notice under Regulation 100(8) to any owner of the land who is not a party to the agreement.
Documents to be Preserved by a Council
104.0 The power and duty pursuant to Regulation 101(a1) of the Regulations to retain a copy of each document provided to the Council by a private certifier in relation to any application for a development plan consent assessed by the private certifier.
The duty pursuant to Regulation 101(1) of the Regulations to retain a copy of the documents listed in Regulation 101 of the Regulations in relation to any building work approved under the Act.
104.1A The power and duty pursuant to Regulation 101(1a) of the Regulations to preserve any document referred to in Regulation 101(a1) for a period of at least 10 years.
The duty pursuant to Regulation 101(2) of the Regulations to preserve any document referred to in Regulation 101(1) of the Regulations until the building to which the document relates is demolished or removed.
The power pursuant to and in accordance with Regulation 101(3) of the Regulations to offer to give plans and specifications in the Council's possession to a building owner and if the building owner declines the offer, the power to destroy the documents.
The power pursuant to and in accordance with Regulation 101(4) of the Regulations to make available for inspection at the offices of the Council during normal office hours any document retained by the Council under Regulation 101(a1) or (1) of the Regulations (without charge) and to fix a reasonable fee for a copy of any document retained by the Council under Regulation 101(a1) or (1) of the Regulations.
The power pursuant to Regulation 101(5) of the Regulations to not make available



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of any plans, drawings specifications or other documents or information:
for inspection under Regulation 101(4)(a) if to do so would:
in the opinion of the Delegate, unreasonably jeopardise the present or future security of a building; or
constitute a breach of any other law; or
for copying under Regulation 101(4)(b) if to do so would:
in the opinion of the Delegate, unreasonably jeopardise the present or future security of a building; or
involve an infringement of copyright in matter contained in a document; or
constitute a breach of any other law.
104A Documents to be Provided by Private Certifier
104A.1 The power pursuant to Regulation 102(2) of the Regulations to request a private certifier to produce to the Council within a reasonable period, a copy of any document that has been submitted to the private certifier for the purposes of an application for development plan consent (and that it is not already held by the Council under the Regulations) so that the Council can respond to a request from a member of the public for access to such document.
Transfer of Development Potential
The duty pursuant to Regulation 104 of the Regulations, wherever the provisions of the Development Plan provide for the transfer of development potential, to maintain a register of development rights containing the information prescribed in Regulation 104(1) and to make the said register available for public inspection on payment of the appropriate fee.
System Indicators
The duty pursuant to Section 115(1)(a) of the Regulations to keep and collate the information specified in the system indicators document on a quarterly basis.
The duty pursuant to Section 115(1)(b) of the Regulations to provide the information for each quarter to the Minister in a manner and form



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determined by the Minister, within 21 days after the end of the quarter.
The power pursuant to Regulation 115(2) of the Regulations to apply to the Minister to exempt the Council from a requirement in the system indicators document.
Schedule 1A – Demolition
The power, pursuant to Clause 12(3) of Schedule 1A of the Regulations, to make an application to the Minister for an area to be declared by the Minister to be a designated area.
The power pursuant to Clause 12(9) of Schedule 1A of the Regulations, before the Minister takes action to vary or revoke a declaration under Clause 12(3) of Schedule 1A of the Regulations or a condition under Clause 12(7) of Schedule 1A of the Regulations, to in response to a notice in writing from the Minister, show, within the specified time, why the proposed course of action should not be taken.
Schedule 4 – New Dwellings
The power pursuant to Clause 2B(4)(b) of Schedule 4 of the Regulations to form the belief that the allotment is, or may have been, subject to site contamination as a result of a previous use of the land or a previous activity on the land or in the vicinity of the land other than a previous use or activity for residential purposes.
Schedule 6 - Fees
The power pursuant to Clause 1(7) of Schedule 6 to the Regulations to determine the amount of the fee to be charged to an applicant to cover the Council's reasonable costs in giving public notice of the application under Section 38(5) of the Act.
Schedule 8 – Development Near The Coast
The power pursuant to Item 1(b) of Clause 2 of Schedule 8 of the Regulations, where development is on coastal land, to form the opinion that the development is of a minor nature only, and comprises the alteration of an existing building or the construction of a building to facilitate the use of an existing building.
Schedule 8 - Development Adjacent To Main Roads
The power pursuant to Item 3 of Clause 2 of Schedule 8 of the Regulations to form



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the opinion that development is likely to:
alter an existing access; or
change the nature of movement through an existing access; or
create a new access; or
encroach within a road widening setback under the Metropolitan Adelaide Road Widening Plan Act 1972,
in relation to an existing or proposed arterial road, primary road, primary arterial road or secondary arterial road, or within 25 metres of a junction with an existing or proposed arterial road, primary road, primary arterial road or secondary arterial road (as delineated in the relevant Development Plan).
Schedule 8 - State Heritage Places
The power pursuant to Item 5(1) of Clause 2 of Schedule 8 of the Regulations to form the opinion that a development materially affects the context within which a State Heritage place is situated
Schedule 8 – Mining – General
The power pursuant to and in accordance with Item 7 of Clause 2 of Schedule 8 of the Regulations to form the opinion that development is of a minor nature only.
Schedule 8 - Activity of Environmental Significance
The power pursuant to Item 10(b) of Clause 2 of Schedule 8 of the Regulations, where development involves, or is for the purposes of an activity specified in Schedule 21 of the Regulations (including, where an activity is only relevant when a threshold level of capacity is reached, development with the capacity or potential to operate above the threshold level, and an alteration or expansion of an existing development (or existing use) where the alteration or expansion will have the effect of producing a total capacity exceeding the relevant threshold level), other than development which comprises the alteration of, or addition to, an existing building, to form the opinion that the development does not change the use of the building, and is of a minor nature only, and does not have any adverse effect on the environment.
Schedule 8 – Aquaculture Development



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The power pursuant to and in accordance with Item 15 of Clause 2 of Schedule 8 of the Regulations to form the opinion that development involves a minor alteration to an existing or approved development.
Schedule 8 – Development Within the River Murray Floodplain Area
The power pursuant to and in accordance with Item 19(b) of Clause 2 of Schedule 8 of the Regulations to form the opinion that development materially affects the context within which a State Heritage place is situated.
Schedule 8 – Development Within the River Murray Tributaries Area
The power pursuant to and in accordance with Item 20(a) of Clause 2 of Schedule 8 of the Regulations to form the opinion that development materially affects the context within which a State Heritage place is situated.
Schedule 9 - Part One, Category One Development and Part Two Category Two Development
The power pursuant to Clause 1 of Part 1 to Schedule 9 of the Regulations in circumstances where a development would be a complying development under the Regulations or the relevant Development Plan but for the fact that it fails to meet the conditions associated with the classification, to form the opinion that the failure to meet those conditions is of a minor nature only.
The power pursuant to Clause 2(1)(g) of Part 1 to Schedule 9 of the Regulations to form the opinion that a development is of a kind which is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.
The power pursuant to the following designated sub-paragraphs of Clause 3 of Part 1 to Schedule 9 of the Regulations, where a development is classified as non complying under the relevant Development Plan, to form the opinion that:
the alteration of, or addition to, a building is of a minor nature only, pursuant to sub-paragraph (a);
the construction of a building to be used as ancillary to or in association with an existing building and which will facilitate the better enjoyment of the purpose for which the existing building is being used constitutes development of a minor nature only pursuant to sub-paragraph (b).
The power pursuant to Clause 5 of Part 1 to Schedule 9 of the Regulations to form



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the opinion:
that the division of land (including for the construction of a road or thoroughfare) is for a proposed use which is consistent with the objective of the zone or area under the Development Plan; and
whether the division will change the nature or function of an existing road.
The power pursuant to Clause 11 of Part 1 to Schedule 9 of the Regulations, in circumstances where development comprises a special event and the special event will not be held over more than 3 consecutive days, to form the opinion that an event of a similar or greater size or of a similar or greater impact on surrounding areas, has not been held on the same site (or substantially the same site) within 6 months immediately preceding the day or days on which the special event is proposed to occur.
Pursuant to Clause 17 of Part 1 of Schedule 9 to the Regulations for the purpose of determining whether a development should be considered to be of a minor nature only:
the duty to not take into account what is included within Schedule 3 of the Regulations; and
the power to take into account the size of the site of the development, the location of the development within that site, and the manner in which the development relates to the locality of the site; and
the power to conclude, if relevant, that the development is of a minor nature only despite the fact that it satisfies some, but not all, of the criteria set out in item 2(d) of Part 1 of Schedule 9 to the Regulations.
The power pursuant to Clause 21 of Part 2 to Schedule 9 of the Regulations, except where development is classified as non complying development under the relevant Development Plan, to form the opinion:
that in respect of a proposed division of land that the applicant's proposed use of the land, is for a purpose which is consistent with the zone or area under the Development Plan; and
whether the proposed division will change the nature or function of an existing road.



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SCHEDULE OF CONDITIONS

**CONDITIONS OR LIMITATIONS
APPLICABLE TO DELEGATIONS
CONTAINED IN THIS INSTRUMENT**

Paragraph(s) in instrument to which conditions/limitations apply	Conditions / Limitations
Nil	Nil

CORPORATE AND COMMUNITY SERVICES REPORT NO. 28/2017

SUBJECT: LOCAL GOVERNMENT ASSOCIATION OF SA – PROPOSED CHANGE TO VOTING METHOD IN LOCAL GOVERNMENT ELECTIONS

REF: AF11/950

The Local Government Association of SA are consulting on an Adelaide Hills Council proposal to change the voting method for local government elections. The proposed change would avoid informal ballots arising where 2nd and subsequent preferences are not indicated.

Under the current voting method to be formal a ballot paper must indicate preferences commencing with the number 1 (or a ✓ or ✕) followed by consecutive numbers (1, 2, 3....etc) at least up to the number of vacancies/candidates to be elected.

In the case of the 2014 Mount Gambier local government elections preferences up to the number 10 were required for an Area Councillor ballot paper to be formal. 420 informal ballot papers (approximately 6%) were recorded but the gazetted results did not specify the proportion that were informal due to insufficient preferences being indicated.

The report prepared by the Adelaide Hills Council (Attachment 1) makes reference to an SA Electoral Commission audit finding that unacceptable preferences accounted for 62.9% of informal ballots and insufficient further preferences accounted for 41.5%. A correlation was identified between the number of vacancies and an increased percentage of informal ballots.

The proposed change in voting method would contribute to making every vote count toward the election result and potentially increase participation by simplifying the voting process.

It should be further noted that amendment to Section 45 of the Local Government (Elections) Act 1999 would be necessary to effect such a change in the voting method.

RECOMMENDATION

- (a) Corporate and Community Services Report No. 28/2017 be received;
- (b) the Adelaide Hills Council proposal to change the voting method for Local Government elections to accept as formal ballots containing an insufficient indication of 2nd and subsequent preferences, and the Mayor be supported to vote in favour of any Local Government Association Board Motion to progress such a proposal.



Michael McCARTHY
MANAGER GOVERNANCE & PROPERTY

Sighted:



Mark McSHANE
CHIEF EXECUTIVE OFFICER

Background

Concerns raised by the Adelaide Hills Council community regarding the potential for the rate of informal voting to increase because of the decision to maintain 12 councillors while abolishing wards prompted an investigation into the rate of informal voting in the 2014 Council elections.

Informal Voting in Council Elections

It was identified that the concerns were in fact valid as there was a trend across all councils not divided into wards for the informal vote to increase as the number of vacancies (councillor positions) increase. As part of the investigation the informal votes in councils divided into wards were also considered and revealed a trend where the rate of informal votes actually decreased as the number of vacancies increased.

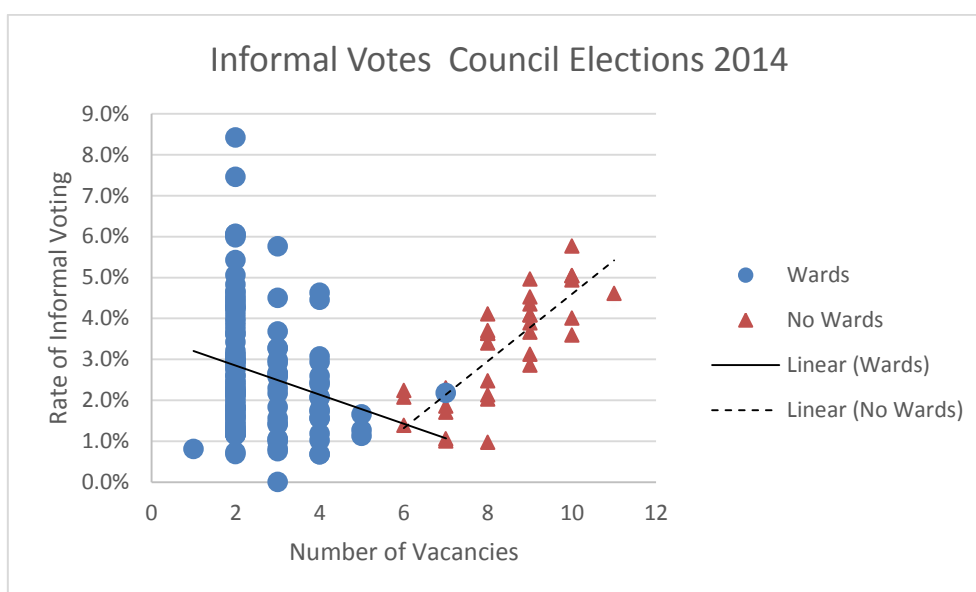


Figure 1 Informal voting trends in wards and no wards

The variability in the rate of informal vote with respect to the number of vacancies was considerable in wards with small numbers of vacancies and a review of the rate of informal voting against the number of candidates showed a trend for the rate of informality to decrease as the number of candidates increased. One possible explanation for this phenomenon is that when a small pool of candidates is available some voters may not find enough acceptable candidates and choose not to complete the required number of preferences. The highest number of informal votes of 8.4% occurred in a ward with two vacancies and only three candidates. As the pool of candidates increased it was easier for voters to find enough acceptable candidates to complete a formal vote.

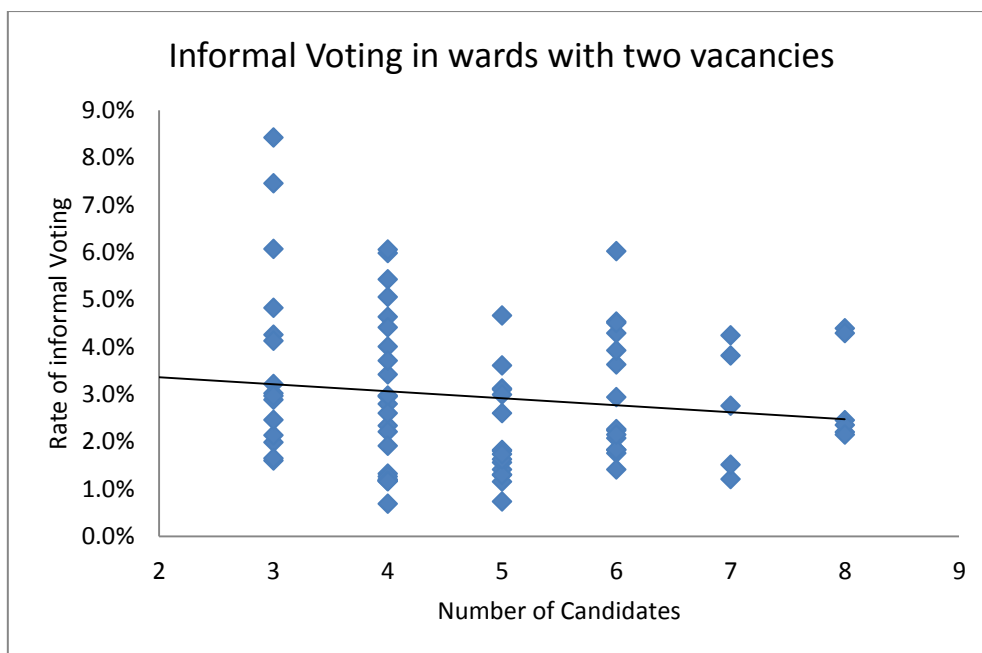


Figure 2 Informal voting in wards with 2 vacancies

The Electoral Commission in its last four Local Government Election Reports has commented on the fact that a large portion of the informal votes it sampled were informal because of insufficient preferences. The current legislation requires a voter to indicate preferences up to the number of vacancies anything less is considered an informal vote.

Unacceptable preferences refers to ballot papers that, while informal under current legislation which requires electors to consecutively number boxes on the ballot paper up to at least the number of candidates to be elected, would be formal under either optional preferential or first past the post voting;

- *Unacceptable preferences accounted for 62.9% of informal ballot papers audited, representing a minor increase from 58.5% recorded in 2010;*
- *Single 1st preference but insufficient further preferences accounted for 41.5% of informal ballot papers.¹*

The single 1st preference informal votes in the three previous elections were 42.0%, 51.7% & 75%

Thus, the number of informal votes would have been reduced substantially if these votes, which had no fault other than insufficient preferences, had been accept as formal votes.

Exhausted votes

In situation where there are at least twice as many candidates as vacancies it is possible for a formal vote to become exhausted. A vote will become exhausted if all of the candidates allocated preferences on the ballot paper have eliminated and there are no more preferences available. When votes become exhausted it is possible that not enough votes are left for the remaining candidates to

¹ ECSA, Local Government Election Report 2014 p46

achieve a quota. In these circumstances the candidates with the highest number of votes will be elected in descending order until all vacancies have been filled. These candidates are described as having been elected under quota. In 2014 seventy one (71) councillors and 8 Mayors were elected under quota. A number were in excess of 20% under quota. In a couple of wards with two vacancies both councillors were elected under quota but these were the exception not the rule.

Discussion

By removing the necessity to vote for candidates who are not known or liked it is hoped that more people will be encouraged to vote. With turnouts averaging 35% to 40% any change which makes it easier for people to engage in the political process should be embraced. With more than 50% of South Australian Councils having no wards there are many situations which require voters to indicate between 6 and 12 preferences. Simplifying the voting system can only help the voters of these councils.

Voting is voluntary so a registered voter can choose not to vote. However, under the current legislation, if a registered voter decides to cast a vote they do not have the choice of when they stop indicating preferences if they want their vote to be formal. The idea that it is OK to not vote but not OK to stop numbering preferences is inconsistent. To argue that candidates elected under quota is unfair or unreasonable is to ignore the fact that, on average, only 35% to 40% of people vote. Those who do not vote have chosen to leave it up to others who do vote to elect the councillors. It is entirely consistent with this approach to allow voters to stop indicating preferences before they reach the number of vacancies as they would then have chosen to leave the final choice up to others.

The voting system needs to be change to encourage more people to vote and reduce the number of informal votes.