



# **CEO's DELEGATED AUTHORITY REGISTER**

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Reviewed by  
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## TABLE OF CONTENTS

<b>INTRODUCTION .....</b>	<b>1</b>
<b>1. ADMINISTRATION .....</b>	<b>1.1-1</b>
1.1 Person's Right to Inspect Information .....	1.1-1
1.2 Representing the Shire in Court.....	1.2-1
1.3 Certifying a Copy to be a True Copy.....	1.3-1
<b>3. LAW, ORDER &amp; PUBLIC SAFETY .....</b>	<b>3.1-1</b>
3.1 <i>Cat Act 2011</i> – Extension of Time .....	3.1-1
3.2 <i>Cat Act 2011</i> – Withdrawal of Notice .....	3.2-1

### INTRODUCTION

#### Purpose of Delegating Authority

The aim of delegated authority is to assist with improving the time taken to make decisions within the constraints allowed by the relevant legislation. This is consistent with the Shire of Gingin's commitment to a strong customer service focus.

The Delegated Authority Register details the head of power for each delegation, including legislation and Council policies, to enable easier cross-referencing. The Register will be reviewed on an annual basis in accordance with the requirements of s. 5.46 of the *Local Government Act 1995*, with the coordination of the review to be performed by the Chief Executive Officer.

#### Legislation

The *Local Government Act 1995* allows for a local government to delegate to the Chief Executive Officer the exercise of any of its powers or the discharge of any of its duties under the *Local Government Act 1995*, except for those listed in s. 5.43.

All delegations made by the Council must be by Absolute Majority [s. 5.42(1)].

Apart from the *Local Government Act 1995*, its regulations and the Shire of Gingin's local laws created under the Act, a number of other pieces of legislation also provide for the delegation of authority by the Council including (but not limited to):

- *Building Act 2011*
- *Bush Fires Act 1954*;
- *Caravan Parks and Camping Grounds Act 1995*;
- *Control of Vehicles (Off-road Areas) Act 1978*;
- *Dog Act 1976*;
- *Environmental Protection Act 2005*;
- *Food Act 2008*;
- *Freedom of Information Act 1992*;
- *Health Act 1991*;
- *Land Administration Act 1997*;
- *Litter Act 1979*;
- *Local Government (Miscellaneous Provisions) Act 1960*;
- *Planning and Development Act 2005*; and
- *Strata Titles Act 1985*.

Note – Reference to an Act also includes any associated regulations and/or Shire of Gingin local laws that may be established under that Act.

### Delegation by the Chief Executive Officer

Many of the pieces of legislation (including the *Local Government Act 1995*) which provide for delegation of authority by Council to the Chief Executive Officer also allow the Chief Executive Officer to further delegate a particular power or powers to another employee. Usually this delegation must be made in writing, and must include any conditions or limitations placed by Council on the original delegation. The Chief Executive Officer may usually also place additional conditions or limitations on the delegation as he or she considers necessary.

The Chief Executive Officer may also delegate the exercise of any power or the discharge of any duty granted under the *Local Government Act 1995* by right of his or her position as Chief Executive Officer, other than the power of delegation itself [s. 5.44].

Under s. 5.46(1) and s. 5.46(2) of the *Local Government Act 1995*, a Register of Delegations relevant to the Chief Executive Officer and other Shire employees is to be kept and reviewed at least once in every financial year. Officers are also required to keep certain records whenever they exercise a power or duty which has been delegated to them [s. 5.46(3)].

This record must contain the following information [Reg. 19 – *Local Government (Administration) Regulations 1996*]:

- How the person exercised the power or discharged the duty;
- When the person exercised the power or discharged the duty; and
- The persons or classes of persons, other than Council or committee members or employees of the local government, directly affected by the exercise of the power or discharge of the duty.

Officers with delegated powers are responsible for ensuring that the requirements of Reg. 19 are complied with.

A person to whom a power is delegated is considered to be a 'designated employee' under s. 5.74(b) of the *Local Government Act 1995* and is required to complete a Primary Return when commencing in the position and an Annual Return for each financial year thereafter.

### Acting Through Another Person

#### ***Local Government Act 1995 – Section 5.45 (2)***

Nothing in this Division (Division 4 – Local Government Employees) is to be read as preventing –

- (a) a local government from performing any of its functions by acting through a person other than the CEO; or

- (b) a CEO from performing any of his or her functions by acting through another person.

*The key difference between a delegation and “acting through” is that a delegate exercises the delegated decision making function in his or her own right. The principal issue is that where a person has no discretion in carrying out a function, then that function may be undertaken through the “acting through” concept. Alternatively, where the decision allows for discretion on the part of the decision maker, then that function needs to be delegated for another person to have that authority.*

This difference is reinforced by s. 56 of the *Interpretation Act 1984*, which states:

56. “May” imports a discretion, “shall” is imperative

- (1) *Where in a written law the word “may” is used in conferring a power, such word shall be interpreted to imply that the power so conferred may be exercised or not, at discretion.*
- (2) *Where in a written law the word “shall” is used in conferring a function, such work shall be interpreted to mean that the function so conferred must be performed.*

## **1. ADMINISTRATION**

### **1.1 PERSON'S RIGHT TO INSPECT INFORMATION**

**Legislative authority to delegate**      *Local Government Act 1995 – s. 5.44*

**Power exercised or duty delegated**      *Local Government Act 1995 – s.5.95(1)(b)*

**Delegation to**      Executive Manager Corporate and Community Services

**Delegation**      To determine a person's right to inspect information referred to in s.5.94 of the *Local Government Act 1995*, where a discretion is provided to the Chief Executive Officer.

**Conditions and exceptions**      Nil

**Minimum reporting requirement**      Record to be placed on appropriate file.

<b>Version</b>	<b>Decision Reference</b>	<b>Synopsis</b>
1.	20/05/2008 – Item 11.2.3	Delegation adopted.
2.	18/06/2013 – Item 11.1.3	Position titles amended . Delegation removed from Council's Delegated Authority Register and placed in separate CEO's Delegated Authority Register.

### 1.2 REPRESENTING THE SHIRE IN COURT

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*Repealed by decision of CEO – 23 June 2014  
Replaced by letter of appointment.*

### 1.3 CERTIFYING A COPY TO BE A TRUE COPY

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*Repealed by decision of CEO – 23 June 2014  
Replaced by Authorisation Memo.*

### **3. LAW, ORDER & PUBLIC SAFETY**

#### **3.1 CAT ACT 2011 – EXTENSION OF TIME**

**Legislative authority to delegate** *Cat Act 2011 – s.45*

**Power exercised or duty delegated** *Cat Act 2011 – s.64*

**Delegation to** Executive Manager Planning and Development

**Delegation** To extend, in a particular case, the period of 28 days within which the modified penalty may be paid. The extension may be allowed whether or not the period of 28 days has elapsed.

**Conditions and exceptions** Nil.

**Minimum reporting requirement** Record to be placed on appropriate file.

<b>Version</b>	<b>Decision Reference</b>	<b>Synopsis</b>
1.	05/07/2013	Delegation instituted by CEO.
2.	24/08/2017	Delegation to Executive Manager Regulatory Services deleted. Delegation to Executive Manager Planning and Development added.

**3.2 CAT ACT 2011 – WITHDRAWAL OF NOTICE**

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<b>Legislative authority to delegate</b>	<i>Cat Act 2011 – s.45</i>
<b>Power exercised or duty delegated</b>	<i>Cat Act 2011 – s.65</i>
<b>Delegation to</b>	Executive Manager Planning and Development
<b>Delegation</b>	To withdraw an infringement notice within one year after the notice is given and whether or not the modified penalty has been paid.
<b>Conditions and exceptions</b>	Nil
<b>Minimum reporting requirement</b>	Record to be placed on appropriate file.

Version	Decision Reference	Synopsis
1.	05/07/2013	Delegation instituted by CEO.
2.	24/08/2017	Delegation to Executive Manager Regulatory Services deleted. Delegation to Executive Manager Planning and Development added.