

**INSTRUMENT OF DELEGATION TO COUNCIL'S ASSESSMENT PANEL UNDER THE DEVELOPMENT ACT 1993, DEVELOPMENT (DEVELOPMENT PLANS) AMENDMENT PLANS)
AMENDMENT ACT 2006 AND DEVELOPMENT REGULATIONS 2008**

Conditions/Limitations:

1. Any development application that could foreseeably be contentious or the subject of an appeal will be referred to Council at the earliest opportunity for information.
2. Land division application determination will be assessed in accordance with the Development Plan and Council Policy EI001 – Residential Land Division – Statement of Requirements (as amended).

| INSTRUMENT OF DELEGATION TO COUNCIL'S ASSESSMENT PANEL UNDER THE DEVELOPMENT ACT 1993, DEVELOPMENT (DEVELOPMENT PLANS) AMENDMENT PLANS) AMENDMENT ACT 2006 AND DEVELOPMENT REGULATIONS 2008 | | DELEGATE | |
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| | | <ul style="list-style-type: none"> • CAP: Council Assessment Panel | |
| PROVISION | Item delegated to the Council Assessment Panel | Date of Delegation to CAP | Conditions and Limitations |
| s33 s33(1)(c) s33(1)(d) | <p>10. <u>Matters Against Which Development Must be Assessed</u></p> <p>10.1 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):</p> <p>10.1.1 the provisions of the appropriate Development Plan;</p> <p>10.1.2 the provisions of the Building Rules;</p> <p>10.1.3 in relation to a proposed division of land (otherwise than under the Community Titles Act 1996 or the Strata Titles Act 1988) on the satisfaction of the conditions specified in Section 33(1)(c) of the Act;</p> <p>10.1.4 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;</p> <p>10.1.5 the requirement that any encroachment of a building over, under, across or on a public place has been dealt with in a satisfactory manner.</p> <p>10.1.6 Such other matters as may be prescribed.</p> | June 2018 | Nil |
| s33(3) | 10.2 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. | June 2018 | Nil |
| s35(1d) s35(1e) s35(1c) | <p>12. <u>Special Provisions Relating to Development Plan Assessment</u></p> <p>12.3 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.</p> | June 2018 | Nil |
| s35(2) | 12.4 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. | June 2018 | Nil |
| s35(3)(a) | 12.5 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. | June 2018 | Nil |
| S37A(1) | <p>16. <u>Proposed Development Involving Creation Of Fortifications</u></p> <p>16.1 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").</p> | June 2018 | Nil |
| S37A(5) | 16.3 The duty pursuant to Section 37A(5) of the Act if the Commissioner determines that the proposed development involves the creation of fortifications to – | June 2018 | Nil |

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| | <p>(a) if the proposed development consists only of the creation of fortifications – refuse the application; or</p> <p>(b) in any other case – impose conditions in respect of any consent to or approval of the proposed development prohibiting the creation of the fortifications.</p> | | |
| S38(10)(a) | <p>17. <u>Public Notice and Consultation</u></p> <p>17.6 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.</p> | June 2018 | Nil |
| S38(10)(b) | <p>17.7 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.</p> | June 2018 | Nil |
| S38(11) | <p>17.8 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.</p> | June 2018 | Nil |
| S38(17) | <p>17.10 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.</p> | June 2018 | Nil |
| S38(18) | <p>17.11 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.</p> | June 2018 | Nil |
| S39(2) | <p>18. <u>Provision of Additional Information</u></p> <p>18.1 The power pursuant to Section 39(2) of the Act to request an applicant to:</p> <p>18.1.1 provide such additional documents or information to enable assessment of the application;</p> <p>18.1.2 remedy any defect or deficiency in any application or accompanying document or information required by or under the Act;</p> <p>18.1.3 consult with an authority or body prescribed by the Regulations;</p> <p>18.1.4 (where required by the Regulations) prepare a statement of effect in relation to non-complying development; and</p> <p>18.1.5 comply with any other requirement prescribed by the Regulations.</p> | June 2018 | Nil |
| S39(2a) | <p>18.2 If:</p> <p>18.2.1 a development is of a kind that is complying development; and</p> <p>18.2.2 the development falls within a class of development prescribed by the Regulations for the purpose of Section 39(2a)(b) of the Act; and</p> <p>18.2.3 the applicant has complied with the requirements of Section 39(1)(a), (c) and (d),</p> <p>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.</p> | June 2018 | Nil |

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| S39(7) | 18.12 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. | June 2018 | Nil |
| S39(7)(c) | 18.13 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. | June 2018 | Nil |
| S39(7)(d) | 18.14 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. | June 2018 | Nil |
| S39(7a) | 18.15 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. | June 2018 | Nil |
| S39(8) | 18.16 The power pursuant to Section 39(8) of the Act to issue a consent which provides for the undertaking of development in stages. | June 2018 | Nil |
| S42(1)&(3) | 21. <u>Conditions</u> 21.1 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. | June 2018 | Nil |
| S50(1) | 26. <u>Open Space Contribution System</u> 26.1 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: 26.1.1 that up to 12.5% in area of the relevant area be vested in the Council to be held as open space; or 26.1.2 that the applicant make the contribution prescribed by the regulations in accordance with the requirements of by Section 50 of the Act; or 26.1.3 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, according to the determination and specification of the Council or Delegate. | June 2018 | Nil |
| S50(11) | 26.6 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. | June 2018 | Nil |
| S52A(5) | 31. <u>Avoidance of Duplication of Procedures Etc</u> 31.4 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 | June 2018 | Nil |

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| | Environment Protection and Biodiversity Conservation Act 1999. | | |
| S52A(6)(a & (b)) | <p>31.5 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:</p> <p>31.5.1 in circumstances where:</p> <p>31.5.1.1 the Commonwealth Minister has given his or her approval to the controlled action; and</p> <p>31.5.1.2 the applicant for the development authorisation or the Commonwealth Minister has informed the relevant authority of that fact;</p> <p>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</p> <p>31.5.2 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.</p> | June 2018 | Nil |

| INSTRUMENT OF DELEGATION TO COUNCIL'S ASSESSMENT PANEL UNDER THE DEVELOPMENT REGULATIONS 2008 | | DELEGATE | |
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| | | • CAP: Council Assessment Panel | |
| PROVISION | Item delegated to the Council Assessment Panel | Date of Delegation to CAP | Conditions and Limitations |
| Reg 17(3) | <p>60. <u>Non-Complying Development</u></p> <p>60.1 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:</p> <p>60.1.1 refuse the application pursuant to Section 39(4)(d) of the Act and notify the applicant accordingly; or</p> <p>60.1.2 resolve to proceed with an assessment of the application.</p> | June 2018 | Nil |
| Reg 17(4) | 60.2 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. | June 2018 | Nil |
| Reg 17(6) | 60.3 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 from the requirements to provide a statement of effect. | June 2018 | Nil |
| Reg 30(4) | <p>70. <u>Underground Mains Area</u></p> <p>70.3 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.</p> | June 2018 | Nil |
| Reg 36 | <p>73. <u>Response by Applicant</u></p> <p>73.1 The power pursuant to Regulation 36 of the Regulations to extend the time within which an applicant may respond to any representation.</p> | June 2018 | Nil |
| Reg 51(4) | <p>83. <u>Width of Roads and Thoroughfares</u></p> <p>83.1 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.</p> | June 2018 | Nil |
| Reg 51(6) | 83.2 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. | June 2018 | Nil |
| Reg 52(1) | <p>84. <u>Road Widening</u></p> <p>84.1 The power pursuant to Regulation 52(1) of the Regulations to require a road widening if land to be divided abuts an existing road.</p> | June 2018 | Nil |
| Reg 53(1)&(2) | <p>85. <u>Requirement as to Forming of Roads</u></p> <p>85.1 The power pursuant to Regulation 53(1) and (2) of the Regulations to specify the width of roads.</p> | June 2018 | Nil |

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| Reg 53(4) | 85.2 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. | June 2018 | Nil |
| Reg 53(6) | 85.3 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, water-tables, kerbing, culverts and drains on proposed roads. | June 2018 | Nil |
| Reg 54(1) | 86. <u>Construction of Roads, Bridges, Drains and Services</u> 86.1 The power pursuant to Regulation 54(1) of the Regulations to require the paving and sealing of the roadway of proposed roads. | June 2018 | Nil |