



TOWN OF
MOSMAN PARK

SPECIAL COUNCIL MEETING
TUESDAY 17 NOVEMBER 2020



NOTICE OF MEETING

Councillors are advised that a Special Council Meeting will be held in the Council Chambers, Administration Centre, Bay View Terrace, Mosman Park on Tuesday 17 November 2020 at 5:45pm.

Your attendance is kindly requested.

Carissa Bywater
CHIEF EXECUTIVE OFFICER



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1. DECLARATION OF OPENING

The Presiding Member is to declare the meeting open.

2. RECORD OF ATTENDANCE

Members:

Mayor	B. Pollock
Deputy Mayor	A. Maurice
Councillor	Z. Johnson
Councillor	P. Shaw
Councillor	A. Baird
Councillor	G. Carey

Officers:

Chief Executive Officer	C. Bywater
Director Planning and Operations	A. Nancarrow
Executive Officer	C. Markovic

Apology

Councillor	J. Ledgerwood
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Observers:

Press:

3. PUBLIC QUESTION TIME

Nil

4. DECLARATION OF INTEREST

In accordance with section 5.65 of *the Local Government Act 1995* a member who has an interest in any matter to be discussed at a Council or Committee meeting, that will be attended by the member, must disclose the nature of the interest.

- a) In a written notice given to the CEO before the meeting; or
- b) At the meeting immediately before the matter is discussed.

5. REPORTS OF OFFICERS

5.1 DEVELOPMENT CONTROL DELEGATIONS OF AUTHORITY

File No.:	GOVERN006/NAM29180
Responsible Executive/ Manager:	AMY NANCARROW DIRECTOR PLANNING AND OPERATIONS
Author:	ERINA PARSONS SENIOR PLANNING OFFICER
Author Disclosure of Interest:	NIL
Attachments provided under separate cover:	1. EXCERPT FROM TOWN OF MOSMAN PARK 2020 DELEGATIONS REGISTER – DELEGATION 9.2.1 (DEVELOPMENT CONTROL)

Authority/Discretion

- | | |
|---|--|
| <input type="checkbox"/> Advocacy | When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency. |
| <input checked="" type="checkbox"/> Executive | The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets. |
| <input type="checkbox"/> Legislative | Includes adopting local laws, town planning schemes and policies. It is also when Council reviews decisions made by Officers. |
| <input type="checkbox"/> Quasi-Judicial | When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under <i>Public Health Act 2016</i> , <i>Dog Act 1976</i> or local laws) and other decisions that may be appealable to the State Administrative Tribunal. |
| <input type="checkbox"/> Information Purposes | Includes items provided to Council for information purposes |

OFFICER RECOMMENDATION

That Council:

1. Pursuant to s.82 of the Planning and Development (Local Planning Schemes) Regulations 2015, delegates authority to the Chief Executive Officer to:

- a. Clear conditions and make recommendations to the Western Australian Planning Commission in respect of subdivision applications and associated matters.
 - b. Issue, or refuse to issue, certificates under s.40 of the *Liquor Licence Act 1998*.
2. Authorises the Chief Executive Officer, or an officer nominated by the Chief Executive Officer, to make minor amendments to the Delegations Register to correct administrative errors.

VOTING REQUIREMENTS

Absolute majority.

PREVIOUSLY BEFORE COUNCIL

The Town's delegations of authority were reviewed in June 2020. A new register was approved by Council at a [Special Council Meeting held on 30 June 2020 by resolution SCM-003-2020](#).

PURPOSE OF REPORT

This report seeks three delegations of authority from Council to the Chief Executive Officer:

1. Authority to clear conditions and make recommendations to the Western Australian Planning Commission (WAPC) in respect of subdivision applications and associated matters as detailed in red in **Attachment 1**.
2. Issue, or refuse to issue, certificates under s.40 of the *Liquor Licence Act 1998* as detailed in red in **Attachment 1**.
3. Authority to make minor amendments to the Delegations Register to correct administrative errors.

EXECUTIVE SUMMARY

Delegating the authority sought in this report will make it easier to ensure statutory timeframes are met. Efficiencies will increase as the need to seek Council's approval for certain development control functions are removed. This is consistent with the State's agenda for local governments to be more agile and responsive. Authority is also sought to enable minor amendments to be made to correct administrative errors in the Delegations Register.

BACKGROUND

A report presented to Council in June 2020 sought approval for the annual review of Council's Delegations of Authority to the Chief Executive Officer. In the report, it was noted that further amendments to planning delegations may be proposed after the Director Planning and Operations commenced with the Town.

Now this has transpired, this report seeks approval for additional planning delegations to make some immediate improvements to the efficiency of the planning functions of the Town. Further requests may be made in coming months.

DETAILS

The delegations proposed in this report are required to allow certain development control functions to be carried out efficiently within statutory timeframes.

Delegation of authority to make recommendations on subdivision applications and clear subdivision conditions

Part 10 of the *Planning and Development Act 2005* (the Act) provides that the Western Australian Planning Commission (WAPC) is the determining authority for subdivisions in the State, and it sets out the statutory process for the assessment and determination of subdivision applications.

Part 10, clause 142(2) of the Act sets out the consultation requirements for proposed subdivisions. Where the WAPC considers that a plan of subdivision may affect the functions of a local government it will be forwarded to that local government for objections and/or recommendations. The local government has 42 days after receiving the plan to provide a written response. A response provided by local government under this section of the Act is advice only and is not binding on the WAPC.

The majority of subdivision approvals granted by the WAPC are subject to conditions. On a conditional subdivision approval, the WAPC will assign the relevant local government or State Government agency as the responsible party for the clearance of each condition when it has been satisfied. The clearance of conditions may require site inspection, photographs for the local government's records or requisitions of certain documents to be provided.

When conditions are satisfied, the local government provides written confirmation to the WAPC that conditions have been cleared. The clearance of all conditions on a subdivision approval is required for the WAPC to endorse a Deposited Plan, thereby allowing the subdivision to proceed.

The power to delegate authority to provide advice to the WAPC on subdivision applications and to clear subdivision conditions is found in the *Planning and Development Act 2005*, the *Strata Titles Act 1985* and specifically, R.82, 83 and 84 of the Planning and Development (Local Planning Schemes) Regulations 2015 (Deemed Provisions).

It is recommended Council delegate authority under R.82 of the Deemed Provisions to the Chief Executive Officer to clear conditions and make recommendations to the WAPC in respect of subdivision applications and associated matters. This will amend current delegation 9.2.1 (Development Control) as detailed in red in **Attachment 1**.

The Chief Executive Officer can then exercise the powers under R.83 of the Deemed Provisions to sub-delegate these powers to relevant officers.

Liquor Control Act 1998 – Section 40 Certificates

Applications for a liquor licence for a premise are submitted to the Department of Local Government, Sport and Cultural Industries (the Department). The Department requires the local government to issue a certificate pursuant to s.40 of the *Liquor Control Act 1998* before it will determine an application.

Local Planning Scheme 3 (LPS No.3) is made under the *Planning and Development Act 2005*. Clause 5 of the LPS No.3 provides the Town of Mosman Park is responsible for the enforcement and implementation of LPS No.3 and the execution of any works required to be executed under this Scheme.

Certificates provided for in s.40 of the *Liquor Control Act 1998* are only issued if premises comply with the LPS No.3 and other related planning requirements; and if an application conforms to any planning approvals and/or conditions are already in place. A local government can condition certificates to ensure they comply with any planning approvals, or alternatively recommend refusal.

The power to delegate authority to issue s.40 certificates is found in the *Planning and Development Act 2005*; the *Liquor Control Act 1998*; and specifically, R.82, 83 and 84 of the Planning and Development (Local Planning Schemes) Regulations 2015 (Deemed Provisions).

It is recommended Council delegate authority under R.82 of the Deemed Provisions to the Chief Executive Officer to issue, or refuse to issue, certificates under s.40 of the *Liquor Control Act 1998*. This will amend current delegation 9.2.1 (Development Control) as detailed in red in **Attachment 1**.

The Chief Executive Officer can then exercise the powers under R.83 of the Deemed Provisions to sub-delegate these powers to relevant officers.

Authority to make minor amendments to the Delegations Register

From time to time the need arises to correct administrative errors in the Town's Delegations Register. Authority is sought from Council for the Chief Executive Officer, or an officer nominated by the CEO, to make these corrections.

Strategic Plan Alignment

Request to Council for delegations of authority aligns to the key focus area of Leadership and Governance in the Town's 2020 Strategic Community Plan.

Statutory Implications

Planning and Development Act 2005

“142. Consultation requirements as to proposed subdivision

(1) When, in the opinion of the Commission, a plan of subdivision may affect the functions of a local government, a public authority, or a utility services provider, the Commission is to forward the plan or a copy of the plan to that local government, public authority or utility services provider for objections and recommendations.

(2) A local government, public body or utility services provider receiving such a plan or copy is to, within 42 days of receipt of the plan or copy or within such longer period as the Commission allows, forward it to the Commission with —

(a) a memorandum in writing containing any objections to, or recommendations in respect of, the whole or part of that plan; and

(b) in the case of a local government receiving a plan or copy relating to land within the area to which an assessed scheme (as defined in the EP Act) applies, advice of any relevant environmental condition to which the assessed scheme is subject.

(3) If a local government, public authority or utility services provider does not forward a memorandum within the time allowed under subsection (2), the Commission may determine that it is to be taken to have no objections or recommendations to make or advice to give.”

Strata Titles Act 1985

“12. Registration of strata titles scheme

(1) A strata titles scheme is registered when the following documents (the scheme documents) are registered and incorporated in the Register —

(a) for a freehold scheme —

(i) a scheme notice;

(ii) a scheme plan;

(iii) a schedule of unit entitlements;

(iv) scheme by-laws ...”

Liquor Control Act 1998

“40. Certificate of planning authority as to whether use of premises complies with planning laws

(1) An application made to the licensing authority for the grant or removal of a licence, or for a change in the use or condition of any premises must be supported by a certificate from the authority responsible for planning matters in the district in which the premises to which the application relates are situated, or are to be situated, unless the licensing authority otherwise determines...”

Planning and Development (Local Planning Schemes) Regulations 2015

“82. Delegations by local government

(1) The local government may, by resolution, delegate to a committee or to the local government CEO the exercise of any of the local government’s powers or the discharge of any of the local government’s duties under this Scheme other than this power of delegation.

(2) A resolution referred to in subclause (1) must be by absolute majority of the council of the local government.

(3) The delegation must be in writing and may be general or as otherwise provided in the instrument of delegation.

83. Local government CEO may delegate powers

(1) The local government CEO may delegate to any employee of the local government the exercise of any of the CEO’s powers or the discharge of any of the CEO’s functions under this Scheme other than this power of delegation.

(2) A delegation under this clause must be in writing and may be general or as otherwise provided in the instrument of delegation.

(3) Subject to any conditions imposed by the local government on its delegation to the local government CEO under clause 82, this clause extends to a power or duty the exercise or discharge of which has been delegated by the local government to the CEO under that clause.

84. Other matters relevant to delegations under this Division

The Local Government Act 1995 sections 5.45 and 5.46 apply to a delegation made under this Division as if the delegation were a delegation under Part 5 Division 4 of that Act.”

Town of Mosman Park Local Planning Scheme No 3

“5 Responsibility for Scheme

The Town of Mosman Park is the local government responsible for the enforcement and implementation of this Scheme and the execution of any works required to be executed under this Scheme.”

Policy Implications

Nil.

Financial Implications

Nil.

Community Engagement

Nil.

COMMENT

Delegations of authority from Council to the Chief Executive Officer result in timely decision making. This assists in meeting various timelines set under legislation for certain decisions to be made. The advice provided by the Town on subdivision applications referred by the WAPC must be provided within 42 days of the referral. A delegation will assist in meeting this timeframe.

The clearance of subdivision approval conditions and the granting of s.40 liquor licence certificates involves checking that certain requirements have been completed or complied with. It is suggested that these decisions are not strategic in nature and are appropriately made by the Chief Executive Officer (or their sub-delegate) under delegated authority.

From time to time the need arises to correct administrative errors in the Town's Delegations Register. Approval is sought from Council for the Chief Executive Officer, or an officer nominated by the CEO, to make these corrections.

6. MEETING CLOSURE

The Presiding Member is to declare the meeting closed.