

S14. Instrument of Delegation by CEO for VicSmart Applications under the Planning and Environment Act 1987

Hepburn Shire Council

Instrument of Delegation

by

The Chief Executive Officer

In exercise of the power conferred by section 47(2) of the *Local Government Act 2020* and section 188 of the *Planning and Environment Act 1987*, I, as Chief Executive Officer of Hepburn Shire Council and the responsible authority for the administration and enforcement of the Hepburn Planning Scheme as set out in cl 72.01 of that scheme, by this instrument of delegation -

1. delegate each duty and/or function and/or power respectively described in column 1 of the Schedule (and summarised in column 2 of the Schedule) to the member of Council staff holding, acting in or performing the duties of the office or position respectively described in column 3 of the Schedule;

2. record that a reference in the Schedule to

EMD means **Executive Manager Development**

MSTRP means **Manager Strategic Planning**

MPB means **Manager Planning and Building**

CPLAN means **Coordinator Statutory Planning**

SAP Means **Statutory Planner**

SSP Means **Senior Strategic Planner**

SRP Means **Strategic Planner**

PAO Means **Planning Administration Officer**

DSEO Means **Development Services Enforcement Officer**

SUO Means **Subdivision Officer**

3. declare that this Instrument of Delegation -

3.1 comes into force immediately upon its execution;

3.2 remains in force until varied or revoked; and

3.3 is subject to any conditions and limitations set out in paragraph 4, and in the Schedule;

4. declare that the delegate must not determine the issue, take the action or do the act or thing if the determining of the issue, the taking of the action or the doing of the act or thing cannot be the subject of a lawful delegation, whether on account of section 188 *Planning and Environment Act 1987* or otherwise.

This instrument of delegation is 19 September 2023 and is made by the Chief Executive Officer.
Signed by the Chief Executive Officer of Council



Bradley Thomas

in the presence of



Dannielle Kraak
Witness

INDEX

PLANNING AND ENVIRONMENT ACT 19871
PLANNING AND ENVIRONMENT REGULATIONS 201522
PLANNING AND ENVIRONMENT (FEES) REGULATIONS 201623

SCHEDULE

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.50(4)	duty to amend application	EMD, CPLAN, SSP; SAP	
s.50(5)	power to refuse to amend application	EMD, MSTRP, MPB, CPLAN, SSP, SAP	
s.50(6)	duty to make note of amendment to application in register	EMD, MSTRP, MPB; CPLAN, SSP; SAP; SUO; PAO	
s.50A(1)	power to make amendment to application	EMD, MSTRP, MPB; CPLAN, SSP; SAP	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.50A(3)	power to require applicant to notify owner and make a declaration that notice has been given	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.50A(4)	duty to note amendment to application in register	EMD, MSTRP, MPB; CPLAN, SSP; SAP, SUO, PAO	
s.51	duty to make a copy of every application and the prescribed information supplied in respect of the application available in accordance with the public availability requirements	EMD, MSTRP, MPB; CPLAN, SSP; SAP; SUO; PAO	
s.52(1)(ca)	duty to give notice of the application to owners and occupiers of land benefited by a registered restrictive covenant if may result in breach of covenant	EMD, MSTRP, MPB; CPLAN, SSP; SAP	Notice requirements under s.52(1)(a), (b), (c) and (d) are exempt.

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.52(1)(cb)	duty to give notice of the application to owners and occupiers of land benefited by a registered restrictive covenant if application is to remove or vary the covenant	EMD, MSTRP, MPB; CPLAN, SSP; SAP	Notice requirements under s.52(1)(a), (b), (c) and (d) are exempt.
s.52(1AA)	duty to give notice of an application to remove or vary a registered restrictive covenant	EMD, MSTRP, MPB; CPLAN, SSP; SAP	Notice requirements under s.52(1)(a), (b), (c) and (d) are exempt.
s.52(3)	power to give any further notice of an application where appropriate	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.53(1)	power to require the applicant to give notice under section 52(1) to persons specified by it	EMD, MSTRP, MPB; CPLAN, SSP; SAP	Notice requirements under s.52(1)(a), (b), (c) and (d) are exempt.

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.53(1A)	power to require the applicant to give the notice under section 52(1AA)	EMD, MSTRP, MPB; CPLAN, SSP; SAP	Notice requirements under s.52(1)(a), (b), (c) and (d) are exempt. .
s.54(1)	power to require the applicant to provide more information	EMD, MSTRP, MPB; CPLAN, SSP; SAP	Note: delegates cannot require an applicant to provide more information than what is listed in schs 59 – 59.16 of the planning scheme
s.54(1A)	duty to give notice in writing of information required under section 54(1)	EMD, MSTRP, MPB; CPLAN, SSP; SAP	Note: delegates cannot require an applicant to provide more information than what is listed in schs 59 – 59.16 of the planning scheme
s.54(1B)	duty to specify the lapse date for an application	EMD, MSTRP, MPB; CPLAN, SSP; SAP	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.54A(3)	power to decide to extend time or refuse to extend time to give required information	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.54A(4)	duty to give written notice of decision to extend or refuse to extend time under section 54A(3)	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.57(2A)	power to reject objections considered made primarily for commercial advantage for the objector	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.57(3)	function of receiving name and address of persons to whom notice of decision is to go	EMD, MSTRP, MPB; CPLAN, SSP; SAP	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.57(5)	duty to make a copy of every objection available in accordance with the public availability requirements	EMD, MSTRP, MPB; CPLAN, SSP; SAP; PAO	
s.57A(4)	duty to amend application in accordance with applicant's request, subject to section 57A(5)	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.57A(5)	power to refuse to amend application	EMD, MSTRP, MPB, CPLAN, SSP, SAP	
s.57A(6)	duty to note amendments to application in register	EMD, MSTRP, MPB; CPLAN, SSP; SAP; PAO, PAO	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.57B(1)	duty to determine whether and to whom notice should be given	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.57B(2)	duty to consider certain matters in determining whether notice should be given	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.57C(1)	duty to give copy of amended application to referral authority	EMD, MSTRP, MPB; CPLAN, SSP; SAP, PAO	
s.58	duty to consider every application for a permit	EMD, MSTRP, MPB; CPLAN, SSP; SAP	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.58A	power to request advice from the Planning Application Committee	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s. 59(1)	Power to decide an application without delay	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.60(1)(a)	duty to consider the relevant planning scheme	EMD, MSTRP, MPB; CPLAN, SSP; SAP	Note: VicSmart applications are exempt from the requirements of s.60(1)(b), (c), (e) and (f).
s.60(1)(d)	duty to consider any decision and comments of a referral authority which has been received	EMD, MSTRP, MPB; CPLAN, SSP; SAP	Note: VicSmart applications are exempt from the requirements of s.60(1)(b), (c), (e) and (f).

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s. 60(1A)(i)	power to consider any agreement made pursuant to section 173	EMD, MSTRP, MPB; CPLAN, SSP; SAP	Note: VicSmart applications are exempt from the requirements of s.60(1A)(b) – (h) and (j).
s.60(1B)	duty to consider the number of objectors in considering whether use or development may have significant social effect	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.61(1)	power to determine permit application, either to decide to grant a permit, to decide to grant a permit with conditions or to refuse a permit application	EMD, MSTRP, MPB; CPLAN, SSP; SAP	the permit must not be inconsistent with a cultural heritage management plan under the <i>Aboriginal Heritage Act 2006</i>
s.61(2)	duty to decide to refuse to grant a permit if a relevant determining referral authority objects to grant of permit	EMD, MSTRP, MPB; CPLAN, SSP; SAP	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.61(2A)	power to decide to refuse to grant a permit if a relevant recommending referral authority objects to the grant of permit	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.61(3)(a)	duty not to decide to grant a permit to use coastal Crown land without Minister's consent	Not applicable	
s.61(3)(b)	duty to refuse to grant the permit without the Minister's consent	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.61(4)	duty to refuse to grant the permit if grant would authorise a breach of a registered restrictive covenant	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.62(1)	duty to include certain conditions in deciding to grant a permit	EMD, MSTRP, MPB; CPLAN, SSP; SAP	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.62(2)	power to include other conditions	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.62(4)	duty to ensure conditions are consistent with paragraphs (a),(b) and (c)	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.62(5)(a)	power to include a permit condition to implement an approved development contributions plan or an approved infrastructure contributions plan	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.62(5)(b)	power to include a permit condition that specified works be provided on or to the land or paid for in accordance with section 173 agreement	EMD, MSTRP, MPB; CPLAN, SSP; SAP	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.62(5)(c)	power to include a permit condition that specified works be provided or paid for by the applicant	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.62(6)(a)	duty not to include a permit condition requiring a person to pay an amount for or provide works except in accordance with s.46N(1), 46GV(7) or 62(5)	EMD, MSTRP, MPB	
s.62(6)(b)	duty not to include a permit condition requiring a person to pay an amount for or provide works except a condition that a planning scheme requires to be included as referred to in section 62(1)(a)	EMD, MSTRP, MPB	
s.63	duty to issue the permit where made a decision in favour of the application (if no one has objected)	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.64(5)	duty to give each objector a copy of an exempt decision	EMD, MSTRP, MPB; CPLAN, SSP; SAP	Note: VicSmart applications are exempt from requirements of s.64(1), (2) and (3). This provision applies also to a decision to grant an amendment to a permit - see section 75.

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.64A	duty not to issue permit until the end of a period when an application for review may be lodged with VCAT or until VCAT has determined the application, if a relevant recommending referral authority has objected to the grant of a permit	EMD, MSTRP, MPB; CPLAN, SSP; SAP	This provision applies also to a decision to grant an amendment to a permit - see section 75A.
s.65(1)	duty to give notice of refusal to grant permit to applicant and person who objected under section 57	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.66(1)	duty to give notice under section 64 or section 65 and copy permit to relevant determining referral authorities	EMD, MSTRP, MPB; CPLAN, SSP; SAP, PAO	
s.66(2) & (3)	duty to give a recommending referral authority notice of its decision to grant a permit in the specified circumstances, and include any conditions to which the permit will be subject	EMD, MSTRP, MPB; CPLAN, SSP; SAP, PAO	if the recommending referral authority objected to the grant of the permit or the responsible authority decided not to include a condition on the permit recommended by the recommending referral authority

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.66(4) & (5)	duty to give a recommending referral authority notice of its decision to refuse to grant a permit in the circumstances specified, and include the information required under section 66(5)	EMD, MSTRP, MPB; CPLAN, SSP; SAP, PAO	if the recommending referral authority objected to the grant of the permit or the recommending referral authority recommended that a permit condition be included on the permit
s.66(6)	duty to give a recommending referral authority a copy of any permit which Council decides to grant and a copy of any notice given under sections 64 or 65	EMD, MSTRP, MPB; CPLAN, SSP; SAP, PAO	if the recommending referral authority did not object to the grant of the permit or the recommending referral authority did not recommend that a condition be included on the permit
s.69(1)	function of receiving application for extension of time of permit	EMD, MSTRP, MPB; CPLAN, SSP; SAP; PAO	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.69(1A)	function of receiving application for extension of time to complete development	EMD, MSTRP, MPB; CPLAN, SSP; SAP; PAO	
s.69(2)	power to extend time	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.70	duty to make a copy of every permit that it issues available in accordance with the public availability requirements	EMD, MSTRP, MPB; CPLAN, SSP; SAP; SUO; PAO	
s.71(1)	power to correct certain mistakes	EMD, MSTRP, MPB; CPLAN, SSP	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.71(2)	duty to note corrections in register	EMD, MSTRP, MPB; CPLAN, SSP; SAP; SUO; PAO	
s.73	power to decide to grant amendment subject to conditions	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.74	duty to issue amended permit to applicant if no objectors	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.76	duty to give applicant and objectors notice of decision to refuse to grant amendment to permit	EMD, MSTRP, MPB; CPLAN, SSP; SAP	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.76A(1)	duty to give relevant determining referral authorities copy of amended permit and copy of notice	EMD, MSTRP, MPB; CPLAN, SSP; SAP; PAO	
s.76A(2) & (3)	duty to give a recommending referral authority notice of its decision to grant an amendment to a permit in the circumstances specified, and include any conditions to which the permit will be subject	EMD, MSTRP, MPB; CPLAN, SSP; SAP; PAO	if the recommending referral authority objected to the amendment of the permit or the responsible authority decided not to include a condition on the amended permit recommended by the recommending referral authority
s.76A(4) & (5)	duty to give a recommending referral authority notice of its decision to refuse to grant an amendment to a permit in the circumstances specified, and include the information required under section 76A(5)	EMD, MSTRP, MPB; CPLAN, SSP; SAP; PAO	if the recommending referral authority objected to the amendment of the permit or the recommending referral authority recommended that a permit condition be included on the amended permit
s.76A(6)	duty to give a recommending referral authority a copy of any amended permit which Council decides to grant and a copy of any notice given under section 64 or 76	EMD, MSTRP, MPB; CPLAN, SSP; SAP; PAO	if the recommending referral authority did not object to the amendment of the permit or the recommending referral authority did not recommend a condition be included on the amended permit

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.76D	duty to comply with direction of Minister to issue amended permit	EMD, MSTRP, MPB; CPLAN, SSP; SAP; SUO	
s.83	function of being respondent to an appeal	EMD, MSTRP, MPB; CPLAN, SSP; SAP; DSEO	
s.83B	duty to give or publish notice of application for review	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.84(1)	power to decide on an application at any time after an appeal is lodged against failure to grant a permit	EMD, MSTRP, MPB, CPLAN, SSP, SAP	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.84(2)	duty not to issue a permit or notice of decision or refusal after an application is made for review of a failure to grant a permit	EMD, MSTRP, MPB, CPLAN, SSP, SAP	
s.84(3)	duty to tell principal registrar if decide to grant a permit after an application is made for review of its failure to grant a permit	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.84(6)	duty to issue permit on receipt of advice	EMD, MSTRP, MPB; CPLAN, SSP; SAP; SUO, PAO	
s. 84AB	Power to agree to confining a review by the Tribunal	EMD, MSTRP, MPB, CPLAN, SSP, SAP	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.86	duty to issue a permit at order of Tribunal	EMD, MSTRP, MPB; CPLAN, SSP; SAP; SUO, PAO	
s.87(3)	power to apply to VCAT for the cancellation or amendment of a permit	EMD, MSTRP, MPB, CPLAN, SSP	
s.90(1)	function of being heard at hearing of request for cancellation or amendment of a permit	EMD, MSTRP, MPB; CPLAN, SSP; SAP; DSEO	
s.91(2)	duty to comply with the directions of VCAT	EMD, MSTRP, MPB; CPLAN, SSP; SAP; DSEO	

PLANNING AND ENVIRONMENT ACT 1987			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s.91(2A)	duty to issue amended permit to owner if Tribunal so directs	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.92	duty to give notice of cancellation/amendment of permit by VCAT to persons entitled to be heard under section 90	EMD, MSTRP, MPB; CPLAN, SSP; SAP	
s.93(2)	duty to give notice of VCAT order to stop development	EMD, MSTRP, MPB; CPLAN, SSP; SAP; DSEO	

PLANNING AND ENVIRONMENT REGULATIONS 2015			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS AND LIMITATIONS
r.21	power of responsible authority to require a permit applicant to verify information in an application for a permit or to amend a permit or any information provided under section 54 of the Act	EMD, MSTRP, MPB; CPLAN, SSP; SAP; SUO	

PLANNING AND ENVIRONMENT (FEES) REGULATIONS 2016			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS AND LIMITATIONS
r.20	power to waive or rebate a fee other than a fee relating to an amendment to a planning scheme	Not delegated	
r.21	duty to record matters taken into account and which formed the basis of a decision to waive or rebate a fee under r.19 or r.20	EMD, MSTRP, MPB; CPLAN, SSP	