

TOWN OF PORT HEDLAND **DELEGATION REGISTER**



Town of
Port Hedland



DELEGATION REGISTER

All delegations included within this register were adopted at the Ordinary Council meeting held on XX.

Document Control Register

Delegation/ Subdelegation/ Authorisation No.	Description	Date of change/ Council decision number	Current Version Number
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LOCAL GOVERNMENT ACT REGISTER OF DELEGATIONS

The Local Government Act 1995 allows for a local government to delegate to the Chief Executive Officer (Section 5.42) the exercise of any of its powers or the discharge of any of its duties under the Act, except those under section 5.43, and section 214(2), (3) or (5) of the Planning and Development Act 2005.

The Act allows for the Chief Executive Officer to delegate any of his powers to another employee (Section 5.44), this must be done in writing. The Act allows for the Chief Executive Officer to place conditions on any delegations if he desires. The powers cannot, however, be further sub-delegated.

The purpose of this document is to detail which authorities have been delegated by Council to the Chief Executive Officer or to Council Committees or to other officers.

The manual details the related document(s) where the power to delegate is derived from. This enables easier cross referencing.

Limits On Delegations To The CEO

In accordance with section 5.43 of the Local Government Act 1995 the following are decisions that cannot be delegated to the Chief Executive Officer:

- any power or duty that requires a decision of an absolute majority or 75% majority of the local government;
- accepting a tender which exceeds an amount determined by the local government;
- appointing an auditor;
- acquiring or disposing of any property valued at an amount determined by the local government;
- any of the local government's powers under Sections 5.98, 5.99 and 5.100 of the Act;
- borrowing money on behalf of the local government;
- hearing or determining an objection of a kind referred to in Section 9.5;
- the power under section 9.49(4) to authorize a person to sign documents on behalf of the local government
- any power or duty that requires the approval of the Minister or Governor; or
- such other duties or powers that may be prescribed.

Register Of, And Records Relevant To, Delegations

In accordance with section 5.46 and 5.18 of the Local Government Act 1995 a register of delegations, being this manual, relevant to the Chief Executive Officer, Town employees and/or Council Committees is to be kept and reviewed at least once every financial year.

DELEGATION REGISTER

Other Delegations/Authorisations

For ease of reference, this register also contains delegations and authorisations which are derived from a number of other pieces of legislation that prescribe the power to delegate.

NOTE: This Subdelegation and Authorisation Register is to be read in conjunction with all Town of Port Hedland Policies.

DELEGATION REGISTER

1. LOCAL GOVERNMENT ACT 1995 DELEGATIONS TO CEO

1.1 Authority to Initiate Prosecutions

Legislative Power

Local Government Act 1995 Section 9.24

Delegate

Chief Executive Officer

Function to be Performed

The Chief Executive Officer is delegated authority to commence a prosecution for an offence against this Act or under a local law under Section 9.24 of the Local Government Act 1995.

1.2 Signatories on Municipal, Trust and Reserve Fund

Legislative Power

Local Government Act 1995 Section 6.10

Local Government (Financial Management) Regulations 12 and 13

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer is delegated authority to make payments from the Municipal Fund Bank Accounts, Reserve Bank Accounts and the Trust Fund Bank Accounts. Each payment from the Municipal Fund Bank Accounts and the Trust Fund Bank Accounts is to be noted on a list compiled for each month showing -

- a) The payee's name
- b) The amount of the payment
- c) The date of the payment
- d) Sufficient information to identify the transaction

The list referred to above is to be presented to Council and is to be recorded in the minutes of the meeting at which it is presented.

1.3 Investment of Funds

Legislative Power

Local Government Act 1995 Section 6.14-(1)

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer is delegated authority to implement the Council's Investment Policy (2/010).

The placement or redemption of all investments requires dual authorisation by the Chief Executive Officer or the Director Corporate and Performance, and another Director or Manager as appointed in writing by the CEO.

~~1.4 Write off Debtors (Rates and Others) Up To \$200.00~~

~~Legislative Power~~

~~Local Government Act 1995 Section 6.12(1)~~

~~Delegate~~

~~Chief Executive Officer~~

~~Function To Be Performed~~

~~The Chief Executive Officer is delegated to write off debtors (rates and others) with an invoice balance of \$200.00 or less pursuant to Local Government Act s.6.12(1)(c).~~

~~Subdelegation~~

~~Director Corporate and Performance
Manager Financial Services~~

1.54 Recovery of Debts

Legislative Power

Local Government Act 1995 Part 6 Financial Management

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer is delegated to take action to recover any outstanding debts pursuant to the LG Act 1995, Part 6.

1.65 Waiver of Fees and Charges ~~(Other Than Rates or Service Charge)~~ and Write Off of Debts

Legislative Power

Local Government Act 1995 Section 6.12

Delegate

Chief Executive Officer

Function to be Performed

The Chief Executive Officer is delegated to waive fees and charges (other than rates or service charges) under section 6.12(1)(b) of the Act as per the schedule of fees and charges in the following instances.
~~up to the amount of \$1,000 for Not-For-Profit or Non-Governmental Organisations,~~
~~instances only.~~

1. For an amount of up to \$1,000 (ex GST) for Not-For-Profit or Non-Governmental Organisations.
2. For an amount of up to \$1,000 (ex GST) for individuals for fundraising or charitable purposes.
3. For an amount of up to \$2,000 (ex GST) for Town of Port Hedland organised events.
4. For an amount of up to \$2,000 (ex GST) for landfill fees in relation to Town of Port Hedland projects (per project).
5. For an amount of up to \$200 (ex GST) for promotional purposes (i.e. giving away tickets).
6. Any other amount at the CEO's discretion only.

The Chief Executive Officer is delegated to write off debts (rates and others) with an invoice balance of \$500 or less pursuant to section 6.12(1)(c) of the Act.

Condition

This delegation does not negate the need for community groups or individuals to apply for funding and donation through policy 6/003 'Funding and Donations'.

1.76 Rate Book

Legislative Power

Local Government Act 1995 Part 6 Division 6

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer is hereby delegated the performance of the following functions of the Council:

1. The discharge of the obligations specified in Section 6.39(1) 'Rate Record' of the Local Government Act 1995.
2. The service of Notices of Valuation and Rates referred to in Section 6.41(1) of the Local Government Act 1995 (as amended).
3. The time allowed for the payment of the rate before it becomes in arrear, Section 6.50(2) of the Local Government Act 1995.
4. The powers conferred in Section 6.40 'Effect of Amendment of Rate Record', of the Local Government Act 1995.
5. The exercise of discretion in regard to granting of any extension of time for service of objections to the Rate Book, Section 6.76(4) of the Local Government Act 1995.
6. The recovery of rates by complaint or action pursuant to the provisions of Section 6.56(1) of the Local Government Act 1995.
7. Entering into an agreement in accordance with Section 6.49 'Agreement as to payment of rates and service charges' of the Local Government Act 1995.
8. Requiring a lessee to pay rent to the Council in satisfaction of rates or service charges due and payable in accordance with Section 6.60(2) of the Local Government Act 1995.

1.87 Expression of Interests (EOI) and Tenders

Legislative Power

Local Government Act 1995 Section 3.57

Local Government (Functions and General&G) Regulations 1996

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer is delegated the authority to determine:

1. to call tenders (section 3.57(1) Local Government Act and F&G Reg 11)
2. to call tenders for the disposal of impounded goods confiscated under section 3.43 in accordance with section 3.58 (s3.47(1))
3. the criteria for accepted tenders [F&G Reg 14(2a)].
4. to accept tenders when the consideration involved does not exceed \$~~15300~~0,000 excluding GST provided that the appropriate provision is made in Council's Budget and with reference to the Council's Procurement Policy (2/007) and the Council's Tender Policy (2/011) [F&G Reg18(4) and (6)].
5. to decline any tender [F&G Reg.18(5)].
6. minor variations before entering into a contract [F&G Reg 20].
7. select the next most appropriate tenderer if the successful tenderer does not want to accept the contract with the variation or the CEO and the tenderer cannot reach agreement [F&G Reg 20(2)]
8. when to seek Expressions of Interest and to invite Expressions of Interest to supply goods or services [F&G Reg 21(1)].
9. consider Expressions of Interest which have not been rejected and determine those which are capable of satisfactorily providing the goods or services, [Reg.23(3)].

1.98 Contract Variations

Legislative Power

Local Government (Functions and General) Regulations 1996 ~~R~~egulation 20(1)

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer is delegated authority to approve minor variations prior to entering into a contracts with a successful tenderer~~entered into by Council~~, subject to the funds required to meet the cost of the variations being contained within the amount set aside in the budget adopted by the Council. The definition of minor being not more than 10%, or \$15,000, whichever is the greater, of the original agreed project value let, up to a maximum of the individual officer's authorisation of expenditure.

Conditions:

1. For the purposes of this delegation a contract is defined as a legally binding agreement between the Town and another party for the supply of goods and/or services.
2. The Chief Executive Officer is to ensure that documented procedures are established and agreed in writing, prior to entering into a contract with regard to variations.
3. The Chief Executive Officer is to ensure that proposed variations ~~to contracts~~ are agreed in writing, ~~prior to commencing the additional works and scope~~.

1.409 Disposal of Property

Legislative Power

Local Government Act 1995 ~~(Section 3.58)~~

Delegate

Chief Executive Officer

Function To Be Performed

- 1) That Council delegate authority to the Chief Executive Officer to dispose of property by public tender or public auction or expressions of interest or private treaty where the individual value of the property disposal is less than \$150,000.
- 2) That Council delegate authority to the Chief Executive Officer to gift or donate property with a maximum written down value of \$5,000.
- 3) That Council delegate authority to the Chief Executive Officer to enter into lease arrangements for the leasing of Town owned facilities and property, where the individual value of the property disposal is less than \$150,000.
- 4) Notwithstanding point (1), that Council delegate authority to the Chief Executive Officer to dispose of land within the Kingsford Smith Business Park and the authority to accept offers within ten percent of the market value obtained in accordance with the provisions of the Local Government Act 1995. The below conditions apply:
 - a. all disposals of property below \$2million total value will be advertised locally in accordance with the provisions of Section 3.58 of the Local Government Act 1995 and any submissions received during the requisite minimum two week advertising period will be presented to Council for consideration; and
 - b. all disposals of property exceeding \$2million will be advertised state wide in accordance with the provisions of Section 3.59 of the Local Government Act 1995 and will be presented to Council for consideration and final endorsement.

The above sections do not apply to:

- (a) a disposition of an interest in land under the Land Administration Act 1997 section 189 or 190; or
- (b) a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or
- (c) anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or
- (d) any other disposition that is excluded by regulations from the application of this section. (NOTE: See section 30 of the Local Government Functions and General Regulations 1996).

1.1~~10~~ Certain Provisions about Land

Legislative Power

Local Government Act 1995 (~~Section 3.24 & 3.25~~)

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer ~~is~~^{be} delegated authority ~~as an Authorised Person in accordance with Section 3.24 and 3.25 of the Act to exercise the powers under section 3.25(1) of the Act~~ for the purposes of exercising those powers as defined in Sub Division 2 'Certain Provisions About Land' of the Local Government Act 1995 and as prescribed in Schedule 3.1 'Powers under notices to owners or occupiers of land'.

~~Schedule 3.1—Things a notice may require to be done~~

~~1.12 Liquor - Consumption on Council Property~~

~~Legislative Power~~

~~Local Government Act 1995 (Section 5.42)~~

~~Delegate~~

~~Chief Executive Officer~~

~~Function To Be Performed~~

~~The Chief Executive Officer is delegated authority to approve applications to consume liquor on property under the care, control and management of Council.~~

1.1~~3~~1 Temporary Closure of Roads ~~for Public Events~~

Legislative Power

Local Government Act 1995 ~~(Section 3.50)~~

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer is delegated authority to determine applications for the temporary closure of roads. ~~for public events.~~

The determination shall be in accordance with provisions of the Road Traffic (Events on Roads) Regulations 1991 and section 3.50 of the Local Government Act 1995 and shall, ~~when approved by the Chief Executive Officer~~ contain the following conditions:

1. The closure is to be advertised in a local newspaper in accordance with section 3.50(4) of the Act.
2. Arrangements are to be made for appropriate signposting to effect the closure.
3. The applicant is to take out a Public Risk Insurance policy which indemnifies Council against any damages claims and a copy is to be delivered to Council.
4. The applicant is to notify the Emergency Services Department and ensure that whilst the event is in progress, satisfactory arrangements are made to allow access to premises by Emergency Services.

The Chief Executive Officer may determine other conditions to be imposed on any approvals issued.

1.1~~42~~ Temporary Partial Closure of Roads for Maintenance and Repairs

Legislative Power

Local Government Act 1995 ~~(Section 3.50A)~~

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer is delegated authority to determine applications for the temporary partial closure of roads for maintenance and repairs.

The determination shall be in accordance with the provisions of section 3.50A of the *Local Government Act 1995*.

1.153 Impounding Abandoned Vehicle Wrecks and Goods Involved in Certain Contraventions

Legislative Power

Local Government Act 1995, Part 3, Division, 3, Subdivision 4

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer has delegated authority to undertake the functions and duties required under Part 3, Division, 3, Subdivision 4 of the Local Government Act 1995 in respect of:

1. Section 3.39 – Power to remove and impound
2. Section 3.40 - Vehicle may be removed if goods to be impounded are in or on vehicle
3. Section 3.40A – Abandoned vehicle wreck may be taken
4. Section 3.41 – Impounded perishables goods, notice to collect
5. Section 3.42 – Impounded non-perishable goods
6. Section 3.46 – Goods may be withheld until costs paid
7. Section 3.47 – Confiscated or uncollected goods, disposal of
8. Section 3.47A – Sick or injured animals, disposal of
9. Section 3.48 – Impounding expenses, recovery of

Subject to the following conditions:

1. Requirements of Regulation 29 and 29A of the Local Government (Functions and General) Regulations 1996.

1.1~~64~~ Appointment of Authorised Persons

Legislative Power

Local Government Act 1995 Section 9.10

Delegate

Chief Executive Officer

Function To Be Performed

Pursuant to section 9.10 of the Local Government Act 1995 the Chief Executive Officer has delegated authority to appoint, in writing, persons or classes of persons to be authorised for the purposes of:

- Performing particular functions under the following sections of the Local Government Act 1995:
 - 3.31 General procedure for entering property
 - 3.32 Notice of entry
 - 3.33 Entry under warrant
 - 3.34 Entry in an emergency
 - 3.36 Opening fences
 - 9.11 Persons found committing breach of Act to give name on demand
 - 9.13 Onus of proof in vehicle offences may be shifted
 - 9.16 Giving a notice
- Exercising duties and functions as prescribed in the Town's Local Laws

1.175 Issue Licence to obstruct a public thoroughfare, make and excavation on or adjoining a public thoroughfare, construct a thing on, over or under a public thoroughfare

Legislative Power

Local Government (Uniform Local Provisions) Regulations 1996, Regulations 6, 7A, 7, 11, 15 and 17.

Delegate

- Chief Executive Officer
- ~~Director Development, Sustainability and Lifestyle~~
- ~~Director Infrastructure and Town Services~~
- ~~Senior Strategic Planning Officer~~
- ~~Manager Depot Operations~~
- **Manager Infrastructure and Projects**

Function To Be Performed

Issue notices, issue or renew permission and charge a fee of not more than \$1.00/month/m² in accordance with regulation 11(8) and (10) of the Local Government (Uniform Local Provisions) Regulations 1996 to place on a specified part of public thoroughfare one or more specified things that may obstruct the public thoroughfare and impose conditions; to make or make and leave and excavation of specified dimensions and in a specified way in a specified part of a public thoroughfare or on a specified part of land adjoining a public thoroughfare and impose conditions and to construct a specified thing on, over, or under a specified public thoroughfare or public place that is local government property pursuant to the Local Government (Uniform Local Provisions) Regulations 1996.

The above officers are delegated authority to Issue notices or permission regarding the obstruction of a public thoroughfare pursuant to the Local Government (Uniform Local Provisions) Regulations 1996 Regulations 6, 7A, 7, 11, 15 and 17.

Conditions And Reporting Requirements

Licence fee to be set by Council annually.

Copies of all licences issued are to be retained on the appropriate file or record.

**1.1~~86~~ Authority to Approve Permits and Issue Registrations/Permits
Relative to Environmental Health**

Legislative Power

Local Government Act 1995 (~~Section 5.42~~)

Delegate

Chief Executive Officer

Function To Be Performed

That the Chief Executive Officer be authorised to approve applications for licences, registrations, and permits relating to environmental health under Local Laws of the Town of Port Hedland in accordance with section 5.42 of the *Local Government Act 1995*.

1.1~~97~~ Funding and Donations Policy

Legislative Power

Local Government Act 1995 Section 6.12(1)(b) and (c)

Local Government (Financial Management) Regulations 1996 Section 12(1)(a)

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer is delegated authority to approve Matched Funding Grants and Community Donations that fall within the scope and limits policy 6/003 'Funding and Donations' and its associated guidelines. This approval must be countersigned by the Mayor.

~~The Chief Executive Officer is delegated authority to approve Matched Funding Grants and Community Donations up to the value of \$5,000 that fall outside the limits of the policy and its associated guidelines. Any approvals must be countersigned by the Mayor.~~

Any Matched Funding and Community Donation applications ~~over the value of \$5,000 that~~ fall outside of Policy 6/003 'Funding and Donations' will need to be considered separately by Council.

The Chief Executive Officer is authorised to approve amendments to the guidelines which apply to policy 6/003 'Funding and Donations'.

Legislative Power

Local Government Act 1995 Section 5.36 and 5.42

Delegate

Chief Executive Officer

Function To Be Performed

That the Chief Executive Officer is delegated authority to appoint a senior employee of the Town of Port Hedland subject to policy 3/007 'Senior Employees and Appointing Acting Chief Executive Officer' to act in the capacity of Chief Executive Officer during scheduled absences of the Chief Executive Officer. During unscheduled absences of the Chief Executive Officer or travel outside of the State of Western Australia for any purpose, the Director Corporate and Performance is to act as Chief Executive Officer. This will only apply if the person has been appointed to the Director Corporate and Performance position and not acting in the role. Should this be the case the Director Development, Sustainability and Lifestyle or Director Infrastructure and Town Services will act as Chief Executive Officer during unscheduled absences.

1.219 Complaints Officer

Legislative Power

Local Government Act 1995 Section 5.120

Appointment

- Director Corporate and Performance
- Director Development, Sustainability and Lifestyle
- Director Infrastructure and Town Services

Function To Be Performed

Persons employed and permanently appointed to the above senior employee positions are designated as the Town of Port Hedland Complaints Officer in the order listed. In the absence of the Director Corporate and Performance the Director Development, Sustainability and Lifestyle will be the Complaints Officer and in the absence of the Director Development, Sustainability and Lifestyle the Director Infrastructure and Town Services will be the Complaints Officer.

1.20 Making Payments to Employees in Addition to Contract or Award

Legislative Power

Local Government Act 1995 Section 5.50

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer is delegated the power to approve of making payment to employees in addition to their contract or Award subject to Policy 1/027 'Severance Payment'.

2. DELEGATIONS TO STATUTORY COMMITTEES

2.1 Audit, Risk and Governance Committee

Legislative Power

Local Government Act 1995 (Section 5.18 and 5.16(1))

Function To Be Performed

The Audit, Risk and Governance Committee has been established in accordance with Part 7 of the Local Government Act 1995.

The Audit, Risk and Governance Committee is an advisory committee formally appointed by the Council and is responsible to the Council. The Audit, Risk and Governance Committee does not have executive powers or authority to implement actions in areas over which management has responsibility and does not have any financial responsibility. The Audit, Risk and Governance Committee does not have any management functions and is therefore independent of management.

The ARG committee will primarily focus on relevant matters relating to Audit (internal and external), Risk and Governance.

The Audit, Risk and Governance Committee objective is to assist the Town of Port Hedland Council in liaising with the auditor and overseeing the external audit function and promoting the transparency and accountability of the Town's financial management systems and reporting. The role of the Committee is to report to the Council and provide appropriate advice and recommendations on matters relevant to its terms of reference in order to facilitate decision making by the Council in relation to the discharge of its responsibilities.

Delegation

The Town of Port Hedland Council provides delegated authority to the Audit, ~~Risk and Governance and Finance~~ Committee to meet twice annually with the Town's auditor(s) as required by Section 7.12A(2) of the *Local Government Act 1995*.

3. BUILDING ACT 2011

3.1 Authorised Persons

Legislative Power

Building Act 2011, Section 96(3)

Building Act 2011, Section 100,101,102,103,106 and 133

Delegate

- Chief Executive Officer
- Director Development, Sustainability and Lifestyle
- Senior Strategic Planning Advisor
- ~~Building Surveyor~~
- Legal ~~Compliance Officer~~ Advisor

Function To Be Performed

A local government may, by instrument in writing, designate a person employed by the local government under the Local Government Act 1995 section 5.36, as an authorised person for the purposes of the Building Act 2011 in relation to buildings and incidental structures located, or proposed to be located, in the district of the local government. The powers of authorized persons being:

- s100 - Entry Powers;
- s101 - Powers after entry for compliance;
- s102 - Obtaining information and documents;
- s103 - Use of force and assistance; and
- s106 - Apply for an entry warrant.
- ~~s109~~ – Execution of Warrant
- s133 - Prosecutions

Conditions And Reporting Requirements

All notices and documents are to be retained on the appropriate file or record pursuant to the requirements of Part 11 of the Building Act 2011.

3.2 Building Permits

Legislative Power

Building Act 2011, ~~Part 2, Div. 2,~~ sections 18, 20, 22, 23, 24 and 127

Delegate

- Chief Executive Officer
- ~~Director Development, Sustainability and Lifestyle~~
- ~~Senior Strategic Planning Advisor~~
- **Building Surveyor**

Function To Be Performed

Authority to approve or refuse building permit applications and request further information.

The above Officers are delegated the authority to issue of Building Permits, issue request for further information and issue notice of decision not to grant building permit in the prescribed form pursuant to Building Act 2011, Sections 18, 20, 22, 23, 24.

Conditions And Reporting Requirements

All building permits, requests for further information and notices issued are to be retained on the appropriate file or record pursuant to the requirements of the Building Act 2011.

3.3 Occupancy Permit, Building Approval Certificate, Occupancy Permit – Strata, Building Approval Certificates – Strata, with or without conditions and extension of period of duration of Occupancy Permit or Building Approval Certificate & Notice of decision to not grant an Occupancy Permit or grant Building Approval Certificate, Occupancy Permit – Strata, Building Approval Certificates – Strata

Legislative Power

Building Act 2011, sections 55, 58, 59, 60, 62, ~~and~~ 65 and 127

Delegate

- Chief Executive Officer
- ~~Director Development, Sustainability and Lifestyle~~
- ~~Senior Strategic Planning Advisor~~
- **Building Surveyor**

Function To Be Performed

The authority to approve or refuse the following applications: Occupancy Permit, Building Approval Certificate, Occupancy Permit – Strata, Building Approval Certificate – Strata.

The authority to issue further information requests and an extension of duration of time for Occupancy Permit and Building Approval Certificate, Occupancy Permit – Strata, Building Approval Certificate – Strata pursuant to the Building Act 2011.

The above officers are delegated authority to issue further information requests for, Occupancy Permits, Building Approval Certificates, Occupancy Permit - Strata, Building Approval Certificate- Strata pursuant to the Building Act 2011, Section 55, 59

The above officers are delegated authority to grant or modify Occupancy Permits, grant Building Approval Certificates, Occupancy Permit - Strata, Building Approval Certificate- Strata pursuant to the Building Act 2011, Section 58, 59

The above officers are delegated authority to issue a notice of decision not to grant Occupancy Permits, Building Approval Certificates, Occupancy Permit - Strata, Building Approval Certificate- Strata pursuant to the Building Act 2011, Sections 58, 59, 60

The above officers are delegated authority to impose conditions on Occupancy Permits, Building Approval Certificates, Occupancy Permit - Strata, Building Approval Certificate- Strata and extend the period in which the Occupancy Permit, modification of Building Approval Certificate has effect pursuant to the Building Act 2011, Sections 62 65.

Conditions And Reporting Requirements

All permits, certificates and documentation issued are to be retained on the appropriate file or record pursuant to the requirements the Building Act 2011.

3.4 Approve a Demolition Permit Other Than Buildings Listed on the Local Heritage Inventory or of a Local Historical and/or Cultural Significance

Legislative Power

Building Act 2011, Sections 18, 21, 22, ~~and~~ 24 and 127.

Delegate

- Chief Executive Officer
- ~~Director Development, Sustainability and Lifestyle~~
- ~~Senior Strategic Planning Advisor~~
- **Building Surveyor**

Function To Be Performed

Authority to approve or refuse applications for a Demolition Permit.

The above officers are delegated authority to grant a Demolition Permit, issue a further information request and issue a notice of decision not to grant a demolition permit other than for buildings classified by the National Trust, on the Local Heritage Inventory or of a Local Historical and/or Cultural Significance, pursuant to the Building Act 2011, Sections 18, 21, 22 and 24.

Conditions And Reporting Requirements

All demolition permits, further information requests and notices issued are to be retained on the appropriate file or record pursuant to the requirements the Building Act 2011.

3.5 Issue Notices and/or Building Orders

Legislative Power

Building Act 2011, ~~Part 8, Div. 4,~~ sections 106, ~~and 109~~ ~~Building Act 2011, Part 8, Div. 5,~~
~~sections 110, 111, 112, 114, 117,~~ ~~and 118~~ and 127

Delegate

- Chief Executive Officer
- ~~Director Development, Sustainability and Lifestyle~~
- ~~Senior Strategic Planning Advisor~~
- **Building Surveyor**
- ~~Legal Compliance Officer~~

Function To Be Performed

Pursuant to Part 8 Division 5 s.110 (1) of the Building Act 2011 a permit authority may make an Order (a building Order) in respect of one or more of the following –

- (a) particular building work;
- (b) particular demolition work;
- (c) particular building or incidental structure, whether completed before or after commencement day.

The above Officers are delegated the power to issue Notices of proposed Building Order in accordance with section 110 of the Building Act 2011 other than a building order (emergency) and issue, serve and revoke Building Orders for works in contravention of the Building Act 2011, pursuant to the Building Act 2011 sections 106, 107, 108, 109, ~~110~~, 111, 112, 114 and 117.

The above Officers are delegated the authority to take any action specified in the order, to commence or complete any work specified in the order; or if any specified action was required by the order to cease, to take such steps as are reasonable in the circumstances to cause the action to cease pursuant to the Building Act 2011 section 118.

Conditions And Reporting Requirements

Copies of all orders and notices issued are to be retained on the appropriate file or record pursuant to the requirements of the Building Act 2011.

Building orders must only be issued by officers where there is a failure to comply with a building notice (with the exception of where there is imminent and high risk to people, property or the environment pursuant to section 111(2) of the Building Act 2011).

3.6 Appoint Authorised Persons (Swimming Pool Inspectors)

Legislative Power

Building Act 2011 Section 127

Building Regulations 2012, Regulation 53(1)

Delegate

- Chief Executive Officer
- ~~Director Development, Sustainability and Lifestyle~~
- ~~Senior Strategic Planning Advisor~~

Function To Be Performed

The local government must arrange for authorised person(s) to inspect private swimming pools containing water more than 300mm deep at intervals of no more than 4 years for the purpose of monitoring whether the provisions in regulation 50 and 52 are complied with pursuant to Building Regulations 2012 r. 53 (1).

Conditions And Reporting Requirements

The authorisations must be in writing and recorded on the appropriate file and the person's personal file.

Copies of all reports on swimming pools inspected are to be retained on the appropriate file or record.

3.7 Recover the Charge Imposed for Private Swimming Pool Inspection

Legislative Power

Building Act 2011 Section 127

Building Regulations 2012, Regulation 53(2).

Delegate

- Chief Executive Officer
- ~~Director Corporate and Performance~~

Function To Be Performed

The Chief Executive Officer is delegated the power to recover the amount of a charge imposed for the inspection of a private swimming pool in a court of competent jurisdiction, pursuant to the Building Regulations 2012, Regulation 53(2).

Conditions And Reporting Requirements

Chief Executive Officer to sign any Prosecution Notices.

Corporate ~~Services and Performance~~ to be advised of any charges imposed or recovered.

Details of the recovery and court action to be retained on the appropriate file or record.

3.8 Approve the use of ~~a~~-battery powered smoke alarms

Legislative Power

Building Act 2011 Section 127

Building Regulation 2012, Regulation 61

Delegate

- Chief Executive Officer
- ~~Director Development, Sustainability and Lifestyle~~
- ~~Senior Strategic Planning Advisor~~
- **Building Surveyor**

Function To Be Performed

Approve the use of battery powered smoke alarms pursuant to the Building Regulations 2012.

The above officers are delegated authority to grant or refuse to approve applications for the use in the dwelling or part of the dwelling, of a battery powered smoke alarm pursuant to the Building Regulations 2012 r. 61.

Conditions And Reporting Requirements

All approvals issued are to be retained on the appropriate file or record pursuant to the requirements of the Building Act 2011.

4. PLANNING AND DEVELOPMENT (LOCAL PLANNING SCHEMES) REGULATIONS 2015

4.1 Planning and Development (Local Planning Schemes) Regulations 2015

Legislative Power

Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 10, Division 2 – Delegations, Regulation 82

Delegates

Chief Executive Officer

Function To Be Performed

Part 1

To undertake the following powers and duties of the local government:

- Determine all applications for planning approval under the Town Planning Scheme No. 5 ("Scheme") where the proposed use is a P, I, D, A or X use listed in the zoning table.
- Determine all applications for Performance Criteria based applications for variations under the provisions of the Residential Design Codes.
- Refuse an application for planning approval where an applicant has failed to provide further information within 60 days, 90 days or an extended timeframe considered reasonable, whichever is appropriate.
- Determine the requirement for the advertising of an application for planning approval in accordance with the provisions of the Scheme.
- Determine the extent and nature of information to be made available to notified parties and in the case of full public notification, the public, in relation to a planning application.
- Determine applications, including applications for advertisements, where the recommendation is consistent with the Scheme and Council adopted policy, and where no third party objections have been received.
- Determine planning applications where objections received cannot be substantiated on planning grounds.
- Authority to determine applications for the extension of the approval period.
- Determine applications for a change to condition/s and amendments to plans of planning approvals where made under delegation

1. Conditions

DELEGATION REGISTER

- The approval (including amendment) of planning applications up to \$7,000,000.00 will be subject to no objections being received. If any objection is received the application will be referred to Council for determination.
- Transient workforce accommodation within 20 kilometres of all gazetted townships shall be determined by Council where the proposal does not fall within a transient workforce accommodation zone, and includes the provision of 16 or more beds.

Part 2

To undertake the following powers and duties of the local government:

- Advertise structure plans for public inspection and determine whether and to what extent local development plans require advertising;
- Request further information in relation to the assessment of structure plans and local development plans;
- Consider submissions in relation to structure plans and local development plans;
- Refer structure plans to the Western Australian Planning Commission for approval;
- Determine applications for local development plans for approval, approval with modifications or refusal;
- Determine if minor amendments to structure plans or local development plans require advertising; and
- Determine applications for amendments to local development plans.

~~To undertake the powers and duties of the local government pursuant to Schedule 2, Part 10, Division 2 – Delegations, Regulation 82 of the Planning and Development (Local Planning Schemes) Regulations 2015, subject to the following Exemptions and Conditions.~~

~~1. Exemptions~~

~~The following items, are exempted from the effect of this delegation and are matters to be determined by Council:-~~

Schedule- Regulation-	2- Description-
4(1)-	Initiate preparation of, or amendment to a local planning policy-
4(3)-	Resolve to proceed with/not proceed with local planning policy-
8(3)(d)-	Resolve to enter/not enter a place in the heritage list-
9-	Designation of heritage areas-
10-	Enter a heritage agreement-
19(1)-	Structure Plan(s) – consider submissions – does not include 29(3) minor amendments-
20(2)(e)-	Structure Plan(s) – make report and recommendations to WAPC – does not include 29(3) minor amendments-
35(1)-	Activity Centre Plan(s) – consider submissions – does not include 45(3) minor amendments-

DELEGATION REGISTER

36(2)(e)	Activity Centre Plan(s) — make report and recommendations to WAPC — does not include 45(3) minor amendments
51	Local Development Plan(s) — consider submissions — does not include 59(4) minor amendments
52(1)	Local Development Plan(s) — Determination — does not include 59(4) minor amendments

~~2. Conditions~~

-

~~a) Development Application(s):-~~

~~a. No approval to any application for development approval shall be granted where the application has been advertised pursuant to Clause 4.3 of Town Planning Scheme No. 5 and a negative comment has been received. Where comments of a negative nature have been received the application shall be referred to Council for determination;~~

~~b. Where applications are considered to be of a controversial nature, or is likely to be controversial then the matter shall be referred to Council for determination.~~

-

~~b) Minor Amendments — Structure Plan(s), Activity Centre Plan(s) and Local Development Plan(s):-~~

~~a. The CEO shall refer minor amendments to Council for consideration where in the opinion of the CEO the modification is likely to be controversial.~~

-

~~c) Local Planning Policies~~

~~a. Delegated officers may determine all requests for variation of provisions of all Council adopted Local Planning Policies.~~

5. LAND ADMINISTRATION ACT 1997

5.1 Act on behalf of the Local Government

Legislative Power

Land Administration Act 1997

Authorised

- Chief Executive Officer
- Director Development, Sustainability and Lifestyle
- Senior Strategic Planning Advisor

Function to be Performed

Authorised to liaise with the Minister for Lands on behalf of Council under the Land Administration Act 1997 in relation to the following matters:

1. Dedication of roads through survey plans for Crown land subdivision (section 28)
2. Reserve of Crown land for one or more purposes in the public interest (section 41)
3. Placing reserve under care, control and management of the Town of Port Hedland and amending Management Order to include power to lease (section 46)
4. Grant leases of unmanaged reserves for reserve or other purposes (sections 47 and 48)
5. Revocation of existing Management Order (section 50)
6. Cancellation or change of purpose or amendment of the boundaries of a reserve (section 51)
7. Acquisition as Crown land:
 - i. alienated land designated for a public purpose on plan of survey
 - ii. private road
 - iii. alienated land in abolished townsite (section 52)
8. Grant of a licence over Crown land for any purpose (section 91)
9. Grant of an easement over Crown land for any purpose specified (section 144)
10. Action against a person or persons who commit an offence on Crown land without permission or reasonable excuse (section 267)

5.1 Road Closures and Dedications

Legislative Power

Land Administration Act 1997 sections 38 and 56

Delegates

DELEGATION REGISTER

- ~~Chief Executive Officer~~
- ~~Director Development, Sustainability and Lifestyle~~
- ~~Senior Strategic Planning Advisor~~

Function To Be Performed

~~The delegated officers are authorised to:~~

- ~~1. Initiate a request for a 'Road Closure' and 'Road Dedication' and conform to the statutory advertising requirements. Following the conclusion of the statutory advertising period, the request be forwarded to the next Ordinary Council Meeting.~~
 - ~~2. May forward a request for 'Road Closure' or 'Road Dedication' to the Minister for Lands for approval.~~
-

~~5.2 Accepting and Amending Management Orders~~

~~Legislative Power~~

~~Land Administration Act 1997 section 46(1) and (2)~~

~~Delegates~~

- ~~• Chief Executive Officer~~
- ~~• Director Development, Sustainability and Lifestyle~~
- ~~• Senior Strategic Planning Advisor~~

~~Function To Be Performed~~

~~The delegated officers may accept and amend Management Orders for Crown Land (Reserves) in the name of Town of Port Hedland.~~

6. PLANNING AND DEVELOPMENT ACT 2005

6.1 Subdivision

Legislative Power

Planning and Development Act 2005 ~~(Sections 142 and 143(1)(c))~~

Delegate

- Chief Executive Officer
- Director Development, Sustainability and Lifestyle
- Senior Strategic Planning Advisor

Function To Be Performed

Chief Executive Officer, Director ~~Community and Development, Sustainability and Lifestyle Services~~ and ~~Manager Development Services~~ Senior Strategic Planning Advisor are delegated authority to object to, make recommendations and advise of any relevant conditions in respect of subdivisions for the purposes of Section 142 of the Planning and Development Act 2005 and endorse plans and impose the Town of Port Hedland's accepted standards and specifications on subdivisions.

6.2 Directions regarding Unauthorised/ Illegal Development

Legislative Power

Planning and Development Act 2005 (~~§~~Section 214)

Delegate

- Chief Executive Officer

Function To Be Performed

The Chief Executive Officer has delegated authority under section 5.42(b) of the Local Government Act 1995 to exercise any of its powers or the discharge of any of its duties under section 214(2), (3) or (5) of the Planning and Development Act 2005.

6.3 Powers to Remove Unauthorised/ Illegal Development

Legislative Power

Planning and Development Act 2005 (~~§~~Section 215)

Delegate

- Director Development, Sustainability and Lifestyle
- Senior Strategic Planning Advisor
- Legal Compliance Officer

Function To Be Performed

To authorise the removal, pulling down, taking up or alteration of the development, restoration of the land as nearly as practicable to its condition immediately before the development started, or execute that work, in accordance with a direction issued under section 214 of the Planning and Development Act.

6.4 Responsible Authority Reports to the Development Assessment Panel

Legislative Power

Planning and Development (Development Assessment Panels) Regulations 2011
(Regulation 12)

Delegate

- ~~Director Development, Sustainability and Lifestyle~~
- ~~Senior Strategic Planning Advisor~~ Chief Executive Officer

Function To Be Performed

To submit Responsible Authority Reports to the Development Assessment Panel pursuant to Regulation 12 of the Planning & Development (Development Assessment Panels) Regulations 2011 in relation to applications for planning approval under Town of Port Hedland Town Planning Scheme No.5.

7. FOOD ACT 2008

7.1 — Food Act 2008

Legislative Power

Food Act 2008-

Function To Be Performed

Authority being delegated	Legislative Power	Delegate
Prosecute for breach of the Food Act	Section 118	Chief Executive Officer
Authority to issue a Prohibition order where a food proprietor has not complied with an improvement notice or the order is required to mitigate a serious danger to Public Health	Section 65 (1)	Chief Executive Officer
Officers designated by the Council for the purposes of withdrawing Infringement Notices for breach of the Act. These persons are prohibited by the Act from serving Infringement Notices.	Section 126 (13)	Chief Executive Officer
Designated Officers" listed by the Town for the purposes of serving Infringement Notices for breach of the Act	Section 126 (2)	Manager Environmental Health and Community Safety Senior Environmental Health Officer Environmental Health Officer
"Authorised Officers" listed by the Town for the purposes of administering the Act.	Section 122 (1)	Chief Executive Officer Manager Environmental Health and Community Safety Senior Environmental Health Officer Environmental Health Officer
'Authority to: 1. Register a food business in respect of any premises for the purposed of Part 9 of the Food Act 2008 and issue a certificate of registration; 2. After considering an application, determine to grant (with or without conditions) or refuse the application; 3. Vary the conditions or cancel the registration of a food business in respect of any premises under Part 9 of the Food Act 2008.	Section 110(1) and (5) Registration of food business	Chief Executive Officer Manager Environmental Health and Community Safety Senior Environmental Health Officer Environmental Health Officer

DELEGATION REGISTER

Variation of conditions or cancellation of registration of food businesses	Section 112	Chief Executive Officer Manager Environmental Health and Community Safety Senior Environmental Health Officer Environmental Health Officer
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7.1 Functions of an Enforcement Agency

Legislative Power

Food Act 2008 Sections 110, 112, 122, 125 and 126(13)

Delegate

- Chief Executive Officer

Function To Be Performed

The Chief Executive Officer is delegated the power to carry out the following functions pursuant to the Food Act 2008:

- a) Section 110 and 112 – Registration of food businesses;
 - b) Section 122 – Appointing authorised officers;
 - c) Section 125 – Initiating prosecutions;
 - d) Section 126(13) – Designating authorised officers to be designated officers for the purposes of issuing/withdrawing infringement notices.
-

8. HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911 / PUBLIC HEALTH ACT 2016

8.1 Exercise and Discharge Powers and Functions of the Local Authority

Legislative Power

Health Act 1911 ~~(Section 26)~~

Delegate

- Chief Executive Officer
- ~~Manager Environmental Health and Community Safety~~
- ~~Senior Environmental Health Officer~~
- ~~Environmental Health Officer~~

Function To Be Performed

The Chief Executive Officer is delegated the power to be the local government's deputy to exercise and discharge all or any of the powers and functions of the local government for such time and subject to such conditions and limitations (if any) as the local government shall see fit. Such appointment shall not affect the exercise of discharge by the local government itself of any power or function.

~~, Manager Environmental Health and Community Safety and Environmental Health Officers have delegated authority to serve notices, approve and renew licences and permits and exercise the powers of Council for the expeditious administration of the Health Act.~~

8.2 Issue Certificates of Authority

Legislative Power

Public Health Act 2016 ~~s~~Section 30(2)

Delegate

Chief Executive Officer

Function To Be Performed

The Chief Executive Officer is delegated the power to issue certificates of authority in accordance with section 21(1)(b)(i) of the Public Health Act 2016.

9. CARAVAN PARKS AND CAMPING GROUNDS ACT 1995

9.1 Appointment of Authorised ~~Persons~~ Officers

Legislative Power

Caravan Parks and Camping Grounds Act 1995 ~~s~~Section 17 (1), 18 and 20

Authorised

- Chief Executive Officer
- Manager Environmental Health and Community Safety
- Senior Environmental Health Officer
- Environmental Health Officer
- Senior Ranger
- Ranger(s)
- Trainee Ranger(s)

Function To Be Performed

That Council appoints the ~~Chief Executive Officer, Manager Environment and Community Safety and Environmental Health Officer~~ as authorised persons in accordance with section 17 of the Caravan Parks and Camping Grounds Act 1995, to carry out the local government ~~duties and functions under the Act~~ above officers as authorised officers for the purposes of entry and inspections and other powers as are prescribed by the Act.

9.2 Infringement Notices

Legislative Power

Caravan Parks and Camping Grounds Act 1995 Section 23(2), (5), (7) and 23(11)

Function To Be Performed

Powers of an authorised officer under section 23 of the *Caravan Parks and Camping Grounds Act 1995* for the following purposes:

- Section 2 - Issuing an infringement;
- Section 5 - Withdrawing an infringement; and
- Section 7 - Extending payment of an infringement.

Authorised

Section 23(5) and (7)

- Chief Executive Officer
- Director Development, Sustainability and Lifestyle

Section 23(2)

- Manager Environmental Health and Community Safety
- Senior Environmental Health Officer
- Environmental Health Officer
- Senior Ranger
- Ranger(s)
- Trainee Ranger(s)

DELEGATION REGISTER

10. CAT ACT 2011

10.1 Appointment of authorised persons

Legislative Power

Cat Act 2011 —Section 44

Delegate

Chief Executive Officer

Function To Be Performed

The local government delegates its authority in accordance with section 48(1) of the Cat Act 2011, to the Chief Executive Officer to appoint persons or classes of persons to be authorised for the purposes of performing particular functions under this Act.

10.2 Cat Registrations

Legislative Power

Cat Act 2011 —Section 44

Delegate

Chief Executive Officer

Function To Be Performed

The local government delegates its authority in accordance with section 48(1) of the Cat Act 2011, to the Chief Executive Officer to appoint persons or classes of persons to be authorised for the purposes of performing particular functions under this Act.

11. DOG ACT 1976

11.1 Appointment of authorised persons

Legislative Power Delegated

Dog Act 1976 – Section 10AA

Legislative Power Of Delegation

Dog Act 1976 – Section 29(1)

Delegate

Chief Executive Officer

Function To Be Performed

The local government delegates its authority in accordance with section 29(1) of the Dog Act 1976, to the Chief Executive Officer to appoint persons to exercise on behalf of the local government the powers conferred on an authorised person by this Act.

Note: Only the Chief Executive Officer has the authority to declare a dog to be dangerous pursuant to section 33E of the Dog Act 1976.

11.2 Additional number of dogs kept on premises

Legislative Power Delegated

Dog Act 1976 – Section 10AA

Legislative Power Of Delegation

Dog Act 1976 – Section 26

Delegate

Chief Executive Officer

Function To Be Performed

The local government delegates its authority in accordance with section 29(1) of the Dog Act 1976, to the Chief Executive Officer to determine applications for additional number of dogs kept on premises as per section 26 Limitation as to numbers of the Dog Act 1976.

12. EMERGENCY MANAGEMENT ACT 2005

12.1 Power of local government to destroy dangerous vegetation or premises in cyclone area

Legislative Power

Emergency Management Act 2005

Function To Be Performed

Authority being delegated	Legislative Power	Delegate
Power of local government to destroy dangerous vegetation or premises in cyclone area	Section 46	Chief Executive Officer Director Development, Sustainability and Lifestyle Manager Environmental Health and Community Safety Senior Ranger Ranger(s) Community Emergency Services Advisor
Local government may require owner or occupier of land to take action	Section 47	Chief Executive Officer Director Development, Sustainability and Lifestyle Manager Environmental Health and Community Safety Senior Ranger Ranger(s) Community Emergency Services Advisor
Additional powers when direction given	Section 48	Chief Executive Officer Director Development, Sustainability and Lifestyle Manager Environmental Health and Community Safety Senior Ranger Ranger(s) Community Emergency Services Advisor

13. BUSH FIRES ACT 1954

Legislative Power

Bush Fires Act 1954 [Section 48](#)

Delegate

Chief Executive Officer

Function To Be Performed

To perform any of the local governments functions under the Bush Fires Act 1954.

Note: In accordance with regulation 4(a) of the *Bush Fires (Infringements) Regulations 1978* only the Chief Executive Officer or the Mayor can withdraw an infringement notice.

14. CONTROL OF VEHICLES (OFF ROAD AREAS) ACT 1978

Legislative Power

Control of Vehicles (Off Road Areas) Act 1978 Section 38(3)

Authorised

- Chief Executive Officer
- Director Development, Sustainability and Lifestyle
- Manager Environmental Health and Community Safety
- Community Emergency Services Advisor
- Senior Ranger
- Ranger(s)

Function To Be Performed

The local government appoints the following above officers to be authorised officers for the purpose of this Act either in respect of the whole of its district.

- ~~Chief Executive Officer~~
- ~~Manager Environmental Health and Community Safety~~
- ~~Community Emergency Services Advisor~~
- ~~Senior Ranger~~
- ~~Ranger(s)~~

15. LIQUOR CONTROL ACT 1988

15.1 Issue of Certificates under Sections 39 and 40

Legislative Power Delegated

Liquor Control Act 1988 ~~s~~Section 39 and 40

Delegate

Chief Executive Officer

Function To Be Performed

To determine applications 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 shall be accompanied 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.

16. FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT ACT 1994

16.1 Appointment of Prosecution Officers

Legislative Power

Fines, Penalties and Infringement Notices Enforcement Act 1994 Section 13(2)

Designated Officers

- Chief Executive Officer
- Director Development, Sustainability and Lifestyle
- Manager Environmental Health and Community Safety
- Senior Ranger

Function To Be Performed

Designated officers are nominated as Prosecution Officers for the purposes of signing of enforcement certificates to initiate prosecution (section 16) and signing of withdrawal of proceedings notices (section 22) under the Fines, Penalties and Infringement Notices Enforcement Act 1994.

17. LITTER ACT 1979

17.1 Withdrawal of Infringement Notices

Legislative Power Delegated

Litter Act 1979 section 30 (4) and (4a)

Appointed Persons

- Chief Executive Officer
- Director Development, Sustainability and Lifestyle

Function To Be Performed

The power to sign withdrawal of infringement notices under section 30(4) of the Litter Act 1979.

An infringement notice may, whether or not the prescribed penalty has been paid, be withdrawn, at any time within 28 days after the service of the notice, by the sending of a notice, in the prescribed form, to the alleged offender at his last known place of residence or business, advising the alleged offender that the infringement notice has been withdrawn, and, in that event, the amount of any prescribed penalty that has been paid shall be refunded.