



## Development Act 1993 Delegations Policy

<b>Reference Number:</b>	6.2
<b>Type:</b>	Council
<b>Category:</b>	Planning & Development
<b>Relevant Community Plan Outcome:</b>	<ul style="list-style-type: none"> <li>• Our values, leadership and collaborative approach are bold and courageous and enables us to deliver value for our Community and create a leading liveable City</li> <li>• Open and accountable governance</li> </ul>
<b>Responsible Officer(s):</b>	Manager Planning & Development
<b>First Issued/Approved:</b>	February 2007
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<b>Last Reviewed:</b>	July 2022
<b>Next Review Due:</b>	July 2024
<b>Applicable Legislation:</b>	Development Act 1993 Development Regulations 2008 Local Government Act 1999 Planning, Development and Infrastructure Act 2016 Planning, Development and Infrastructure (General) Regulations 2017
<b>Related Policies:</b>	Delegations Register
<b>Related Procedures:</b>	

### 1. Purpose

The Development Act 1993, viz Section 34(27), requires that Council establish a policy relating to the basis upon which it will provide various delegations for development assessments under the Act. This document seeks to provide detail on the rationale, philosophy and principles.

The establishment of the Council Assessment Panel (CAP) under the Planning Development and Infrastructure Act (PDI Act) in October 2017 replaced the Development Assessment Panel under the Development Act but they are still delegated under the Development Act to undertake assessment of certain applications as prescribed in this policy. This will end when assessment of development is under the PDI Act. From that time the CAP will be a planning authority and will be able to set its own delegations. Likewise the Council Assessment Manager will be a relevant authority and set their own delegations.

### 2. Scope

Section 34(23) of the Development Act 1993 requires a council to delegate its powers and functions as a relevant authority with respect to determining whether or not to grant development plan consent.

Delegations may be provided to:

- the Charles Sturt Council Assessment Panel (CAP);
- a person, for the time being, occupying a particular office, or position (who is not a member of Council) eg the Chief Executive;
- a regional Development Assessment Panel.

Such powers and functions may be further delegated viz Section 34(26) of the Development Act.

### 3. **Policy Statement**

#### **Philosophy and Principles**

It is recognised that pursuant to the legislative requirement under the Development Act 1993 Section 34(23) and for efficient operation the powers for effective decision making must be delegated to the personnel actively involved in day-to-day operations or the CAP. This allows for the Council members to place greater emphasis on determining the overall directions and policies of the organisation and on monitoring performance. This philosophy underlies the issuing of delegations generally of the Council of the City of Charles Sturt.

In the case of development assessment, there are many applications which are “complying” in nature and must be granted planning consent within limited timeframes as prescribed in the Development Regulations 2008, while there are others which are simple. Thus, the majority of development applications are managed and determined by authorised Council officers under delegation except for those applications where officers decline to use their delegated powers and instead refer them to the CAP for determination.

More complex development matters and those involving public notification issues where applicants/respondents wish to be heard are dealt with by CAP.

Delegations to the administration are made to the Chief Executive Officer who is empowered to sub-delegate these, unless specifically prohibited from doing so by legislation. In accordance with Section 34(26) of the Act all staff who exercise delegated powers are responsible to the Chief Executive Officer for the exercise of these powers.

It is also recognised that certain principles must be enacted to ensure the effective operation of a Council’s delegations.

These are:

- The use of delegations involves a two way process involving CAP members and staff providing feedback on the operation of the delegations.
- There is to be sufficient and thorough consultation between Council’s staff, those likely to be affected by the decision, and where warranted, with the CAP.
- If a decision is likely to create a considerable level of local or community interest and/or is sensitive; the matter would be referred back to CAP either directly or via the Development Assessment Unit (DAU) process in consultation with the Presiding Member.

- The Council's staff must keep an adequate record of the circumstances leading to the use of the delegated powers and of the decision made, the extent of recording to have regard to the relative importance of the decision. Quarterly reports will be tabled at CAP.
- In areas of complexity, or in a highly technical situation, consideration should be given to the need to obtain other specialist input or views.

### **Rationale**

Council has resolved to delegate all of its powers and functions as a relevant authority with respect to determining whether or not to grant development plan consent under the Development Act 1993 to the person for the time being occupying the position of Chief Executive Officer and to its Council Assessment Panel, with the exception of the following matters which shall be determined by its Council Assessment Panel:

Other than where the development is a complying form of development;

- (a) Category 2 applications where representations have been received and the representor(s) wish to be heard.(refer to Development Act 1993 Delegations Procedure for application of this delegation)
- (b) Category 3 applications where representations have been received, and the representor(s) wish to be heard.(refer to Development Act 1993 Delegations Procedure for application of this delegation)
- (c) Category 3 Non-complying Development with representations.
- (d) Category 2 Non-complying Development with representations.
- (e) Development (including advice or comment to the Development Assessment Commission or Coordinator General except where of a minor nature or where Council is the vendor or the proponent individually or jointly) that is a significant, controversial or contentious application as listed below;
  - Large scale (greater than 2000m<sup>2</sup>) retail or commercial developments
  - Amendments to licensed premises, or potentially licensed premises, that will increase the hours of trade or numbers of patrons at the venue (excluding restaurants and where these are consistent with policy standards).

In addition to those application types listed above all applications that in the opinion of the relevant officer and having regard to the relevant zone and subject locality are significant, controversial or otherwise contentious; or, any other matter that the CEO, General Manager City Services, Manager, Planning & Development, or Team Leader, Major Planning Assessment consider requires a Panel decision.

- (f) Applications for development involving heritage places or within the Heritage Conservation Area where:
  - Officer's recommendation is contrary to Council's Heritage Advisor's advice; or
  - Council's Heritage Advisor's advice is at odds with the recommendation of State Heritage.
- (g) All refusals, including declining to proceed with a non-complying assessment, other than in relation to further information requests not being responded to within the prescribed time.

- (h) Any form of new dwelling application in the Residential Zone or Residential Character Zone that involves the establishment of a new site area 10% or more below the minimum area specified for a semi-detached dwelling in the relevant Policy Area or Precinct but not including those proposed on site areas appropriate for the relevant form of dwelling in the Policy Area or Precinct.

Further, the CAP can call in applications that undergo the following Development Assessment Unit (DAU) process.

#### *DAU Process*

The DAU process is an intermediary step between straight delegated decisions made by staff and those decided by the CAP

The Unit shall comprise of the Manager Planning and Development or Team Leader Planning Assessment and Development Officers (Senior Planners). The role of the Unit is to consider the following matters;

- (a) Applications which have received representations against the development where the representor does not wish to be heard.
- (b) Determining to proceed with an assessment of a Non-complying application other than where the application is deemed minor and Category 1 pursuant to Schedule 9, Part 1, Section 3.

The agreed recommendation of the DAU is to be circulated to the members of the CAP with a report prepared by the responsible officer and associated application documents.

Should any of the CAP members not agree with the recommended decision the application can be called in to the CAP for a decision. These call in provisions need to be enacted within 5 business days from the date of circulation of the report.

If no member of the CAP calls in the application, the proposal will be decided under delegation by the responsible officer.

#### *Other Matters*

Where the Panel makes a decision that is appealed to the Environment, Resources and Development Court the Panel will consider any compromise proposal put forward by the Applicant.

#### **Review**

In reviewing the Policy the Chief Executive Officer will actively seek the feedback of CAP and the City Services Committee.

#### 4. **Definitions**

Key Term – Acronym	Definition
CAP	Council Assessment Panel
DAU	Development Assessment Unit