

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



**MANSFIELD SHIRE**

**Instrument of Sub-Delegation**

**by**

**The Chief Executive Officer**

***Endorsed by the A/Chief Executive Officer on 11 February 2021***



## Instrument of Sub-Delegation by CEO for VicSmart Applications under the *Planning and Environment Act 1987*

In exercise of the power conferred by s 47(2) of the *Local Government Act 2020* and s 188 of the *Planning and Environment Act 1987*, I, as Chief Executive Officer of Mansfield Shire Council and the responsible authority for the administration and enforcement of the Mansfield 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

CO	Compliance Officer
CP	Co-ordinator Planning
GMIP	General Manager Infrastructure and Planning
MBP	Manager Business and Performance
MPE	Manager Planning and Environment
PAA	Planning Administration Assistant
SP	Statutory Planner

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 s 188 of the *Planning and Environment Act 1987* or otherwise.

This Instrument of Delegation is dated 11 February 2021 and is made by the Chief Executive Officer.

Signed by the Acting Chief Executive Officer )  
of Mansfield Shire Council )  
in the presence of )

.....  
Witness



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Planning and Environment Act 1987			
Provision	Powers and Functions Delegated	Delegate	Conditions and Limitations
s 50(4)	Duty to amend application	CP, MPE, SP	
s 50(5)	Power to refuse to amend application	CP, GMIP, MPE	
s 50(6)	Duty to make note of amendment to application in register	CP, MPE, PAA, SP	
s 50A(1)	Power to make amendment to application	CP, GMIP, MPE	
s 50A(3)	Power to require applicant to notify owner and make a declaration that notice has been given	CP, MPE	
s 50A(4)	Duty to note amendment to application in register	CP, MPE, PAA, SP	
s 51	Duty to make a copy of every application and the prescribed information supplied in respect of the application available for inspection	CP, MPE, PAA, SP	
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	CP, MPE, SP	Notice requirements under s 52(1)(a), (b), (c) and (d) are exempt. Other notice requirements apply
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	CP, MPE, SP	Notice requirements under s 52(1)(a), (b), (c) and (d) are exempt. Other notice requirements apply
s 52(1AA)	Duty to give notice of an application to remove or vary a registered restrictive covenant	CP, MPE, SP	Notice requirements under s 52(1)(a), (b), (c) and (d) are exempt. Other notice requirements apply
s 52(3)	Power to give any further notice of an application where appropriate	CP, MPE	
s 53(1)	Power to require the applicant to give notice under s 52(1) to persons specified by it	CP, MPE	Notice requirements under s 52(1)(a), (b), (c) and (d) are exempt. Other notice requirements apply



## Planning and Environment Act 1987

Provision	Powers and Functions Delegated	Delegate	Conditions and Limitations
s 53(1A)	Power to require the applicant to give the notice under s 52(1AA)	CP, MPE	Notice requirements under s 52(1)(a), (b), (c) and (d) are exempt. Other notice requirements apply
s 54(1)	Power to require the applicant to provide more information	CP, MPE	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 s 54(1)	CP, MPE, SP	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	CP, MPE, SP	
s 54A(3)	Power to decide to extend time or refuse to extend time to give required information	CP, GMIP, MPE	
s 54A(4)	Duty to give written notice of decision to extend or refuse to extend time under s 54A(3)	CP, MPE, SP	
s 57(2A)	Power to reject objections considered made primarily for commercial advantage for the objector	CP, GMIP, MPE	
s 57(3)	Function of receiving name and address of persons to whom notice of decision is to go	CP, MPE, SP	
s 57(5)	Duty to make available for inspection copy of all objections	CP, MPE, PAA, SP	
s 57A(4)	Duty to amend application in accordance with applicant's request, subject to s 57A(5)	CP, MPE, SP	
s 57A(5)	Power to refuse to amend application	CP, GMIP, MPE	



Planning and Environment Act 1987			
Provision	Powers and Functions Delegated	Delegate	Conditions and Limitations
s 57A(6)	Duty to note amendments to application in register	CP, MPE, PAA, SP	
s 57B(1)	Duty to determine whether and to whom notice should be given	CP, MPE, SP	
s 57B(2)	Duty to consider certain matters in determining whether notice should be given	CP, MPE, SP	
s 57C(1)	Duty to give copy of amended application to referral authority	CP, MPE, SP	
s 58	Duty to consider every application for a permit	CP, MPE, SP	
s 58A	Power to request advice from the Planning Application Committee	CP, MPE	
s 59(1)	Power to decide an application without delay	CP, MPE	
s 60(1)(a)	Duty to consider the relevant planning scheme	CP, MPE, SP	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	CP, MPE, SP	Note: VicSmart applications are exempt from the requirements of s 60(1)(b), (c), (e) and (f).
s. 60(1A)(a)	power to consider certain matters before deciding on application any significant social and economic effects of the use or development for which the application is made	CP, MPE	Note: VicSmart applications are exempt from the requirements of s.60(1A)(b) - (h) and (j).
s 60(1A)(i)	Power to consider any agreement made pursuant to s 173	CP, MPE	Note: VicSmart applications are exempt from the requirements of .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	CP, MPE, SP	



## Planning and Environment Act 1987

Provision	Powers and Functions Delegated	Delegate	Conditions and Limitations
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	CP, MPE	The permit must not be inconsistent with a cultural heritage management plan under the Aboriginal Heritage Act 2006 Decisions to refuse a permit must be in accordance with Council Policy.
s 61(2)	Duty to decide to refuse to grant a permit if a relevant determining referral authority objects to grant of permit	CP, MPE, SP	
s 61(2A)	Power to decide to refuse to grant a permit if a relevant recommending referral authority objects to the grant of permit	CP, GMIP, MPE	
s 61(3)(b)	Duty to refuse to grant the permit without the Minister's consent	CP, MPE, SP	
s 61(4)	Duty to refuse to grant the permit if grant would authorise a breach of a registered restrictive covenant	CP, MPE, SP	
s 62(1)	Duty to include certain conditions in deciding to grant a permit	CP, MPE, SP	
s 62(2)	Power to include other conditions	CP, GMIP, MPE	
s 62(4)	Duty to ensure conditions are consistent with paragraphs (a),(b) and (c)	CP, MPE, SP	
s 62(5)(a)	Power to include a permit condition to implement an approved development contributions plan or an approved infrastructure contributions plan	CP, GMIP, MPE	
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 s 173 agreement	CP, MPE	
s 62(5)(c)	Power to include a permit condition that specified works be provided or paid for by the applicant	CP, MPE	



Planning and Environment Act 1987			
Provision	Powers and Functions Delegated	Delegate	Conditions and Limitations
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)	CP, MPE, SP	
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 s 62(1)(a)	CP, MPE, SP	
s 63	Duty to issue the permit where made a decision in favour of the application (if no one has objected)	CP, MPE, SP	
s 64(5)	Duty to give each objector a copy of an exempt decision	CP, MPE, SP	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 s 75
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	CP, MPE, SP	This provision applies also to a decision to grant an amendment to a permit - see s 75A
s 65(1)	Duty to give notice of refusal to grant permit to applicant and person who objected under s 57	CP, MPE, SP	
s 66(1)	Duty to give notice under ss 64 or 65 and copy permit to relevant determining referral authorities	CP, MPE, SP	
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	CP, MPE, SP	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
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 s 66(5)	CP, MPE, SP	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





## Planning and Environment Act 1987

Provision	Powers and Functions Delegated	Delegate	Conditions and Limitations
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 ss 64 or 65	CP, MPE, SP	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	CP, MPE, PAA, SP	
s 69(1A)	Function of receiving application for extension of time to complete development	CP, MPE, PAA, SP	
s 69(2)	Power to extend time	CP, GMIP, MPE	
s 70	Duty to make copy permit available for inspection	CP, MPE, PAA, SP	
s 71(1)	Power to correct certain mistakes	CP, MPE, PAA	
s 71(2)	Duty to note corrections in register	CP, MPE, SP	
s 73	Power to decide to grant amendment subject to conditions	CP, GMIP, MPE	
s 74	Duty to issue amended permit to applicant if no objectors	CP, MPE, SP	
s 76	Duty to give applicant and objectors notice of decision to refuse to grant amendment to permit	CP, MPE, SP	
s 76A(1)	Duty to give relevant determining referral authorities copy of amended permit and copy of notice	CP, MPE, SP	



Planning and Environment Act 1987			
Provision	Powers and Functions Delegated	Delegate	Conditions and Limitations
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	CP, MPE, SP	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 s 76A(5)	CP, MPE, SP	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 ss 64 or 76	CP, MPE, SP	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
s 76D	Duty to comply with direction of Minister to issue amended permit	CP, MPE, SP	
s 83	Function of being respondent to an appeal	CO, CP, MPE, SP	
s 83B	Duty to give or publish notice of application for review	CO, CP, MPE, SP	
s 84(1)	Power to decide on an application at any time after an appeal is lodged against failure to grant a permit	CP, MPE	
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	CP, MPE, SP	
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	CP, MPE, SP	
s 84(6)	Duty to issue permit on receipt of advice	CP, MPE, SP	
s 84AB	Power to agree to confining a review by the Tribunal	CP, GMIP, MPE	



## Planning and Environment Act 1987

Provision	Powers and Functions Delegated	Delegate	Conditions and Limitations
s 86	Duty to issue a permit at order of Tribunal	CP, MPE, SP	
s 87(3)	Power to apply to VCAT for the cancellation or amendment of a permit	CO, CP, GMIP, MPE	
s 90(1)	Function of being heard at hearing of request for cancellation or amendment of a permit	CO, CP, MPE, SP	
s 91(2)	Duty to comply with the directions of VCAT	CO, CP, MPE, SP	
s 91(2A)	Duty to issue amended permit to owner if Tribunal so directs	CO, CP, MPE, SP	
s 92	Duty to give notice of cancellation/amendment of permit by VCAT to persons entitled to be heard under s 90	CO, CP, MPE, SP	
s 93(2)	Duty to give notice of VCAT order to stop development	CO, CP, MPE, SP	



### Planning and Environment Regulations 2015

Provision	Powers and Functions 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 s 54 of the Act	CP, GMIP, MPE	

### Planning and Environment (Fees) Regulations 2016

Provision	Powers and Functions 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	GMIP, MBP, MPE	
r 21	Duty to record matters taken into account and which formed the basis of a decision to waive or rebate a fee under rr 19 or 20	CP, MBP, MPE, SP	