

## **Instrument of Delegation**

**The Chief Executive Officer**

**to**

**Members of Council Staff**

**(s14)**

**VicSmart Applications and Future Homes Applications under  
the *Planning and Environment Act 1987***

**4 June 2024**

**Version 0.1**

# Instrument of Delegation by CEO for VicSmart Applications and Future Homes 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 Whittlesea City Council and the responsible authority for the administration and enforcement of the Whittlesea Planning Scheme as set out in cl 72.01 of that scheme for the VicSmart Application and cl 53.24 for Future Homes Applications, 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

Title	Position
CDCI	Coordinator Development Contributions & Infrastructure
CEO	Chief Executive Officer
CPPI	Coordinator Planning Policy & Implementation
CSLUP	Coordinator Strategic Land Use Planning
DPD	Director Planning & Development
LPGAP	Lead Principal Growth Area Planner
LPP	Lead Principal Planner
MBP	Manager Building & Planning
MSF	Manager Strategic Futures
PO	Planning Officer
PP	Principal Planner
SP	Senior Planner
SSO	Senior Subdivisions Officer
SSP	Senior Strategic Planner
UMGAP	Unit Manager Growth Areas Planning
UMPE	Unit Manager Planning Enforcement
UMS	Unit Manager Subdivisions
UMSP	Unit Manager Strategic Planning
UMSTP	Unit Manager Statutory Planning

**Group Title**

Title	Position
SPG	CDCI, CPPI, CSLUP, LPP, MBP, MSF, PO, PP, LPGAP, SP, SSP, UMGAP, UMSTP, UMSP
SSG	DPD, MBP, SO, SSO, UMGAP, UMS, UMSTP
STLG	CDCI, CPPI, CSLUP, UMGAP, UMPE, UMS, UMSTP, UMSP


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

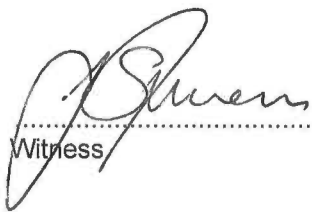
3.3 is subject to any conditions and limitations set out in paragraph 4, and in the Schedule;

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 *Planning and Environment Act 1987* or otherwise.

**This Instrument of Delegation** is dated 4 June 2024 and is made by the Chief Executive Officer.

Signed by the Chief Executive Officer of Council )  
in the presence of: )



  
.....  
Witness

# SCHEDULE

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<b>PLANNING AND ENVIRONMENT ACT 1987<sup>1</sup></b>			
<b>PROVISION</b>	<b>THING DELEGATED</b>	<b>DELEGATE</b>	<b>CONDITIONS &amp; LIMITATIONS</b>
s 50(4)	Duty to amend application	SPG, SSG	
s 50(5)	Power to refuse to amend application	SPG, SSG	
s 50(6)	Duty to make note of amendment to application in register	SPG, SSG	
s 50A(1)	Power to make amendment to application	SPG, SSG	
s 50A(3)	Power to require applicant to notify owner and make a declaration that notice has been given	SPG, SSG	
s 50A(4)	Duty to note amendment to application in register	SPG, SSG	
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	SPG, SSG, DPD, MBP, UMS, SSO, UMSTP, PO	
s 52(1)(a)	Duty to give notice of the application to owners/occupiers of adjoining allotments unless satisfied that the grant of permit would not cause material detriment to any person	SPG, SSG	Applicable for Future Homes Applications only Note: VicSmart Applications are exempt from the notice requirements under s 52(1)(a), (b), (c) and (d).
s 52(1)(b)	Duty to give notice of the application to other municipal council where appropriate	SPG, SSG	Applicable for Future Homes Applications only Note: VicSmart Applications are exempt from the notice requirements under s 52(1)(a), (b), (c) and (d).

<sup>1</sup> All provisions are applicable for both VicSmart and Future Home applications, unless stated otherwise.

<b>PLANNING AND ENVIRONMENT ACT 1987<sup>1</sup></b>			
<b>PROVISION</b>	<b>THING DELEGATED</b>	<b>DELEGATE</b>	<b>CONDITIONS &amp; LIMITATIONS</b>
s 52(1)(c)	Duty to give notice of the application to all persons required by the planning scheme	SPG, SSG	Applicable for Future Homes Applications only Note: VicSmart Applications are exempt from the notice requirements under s 52(1)(a), (b), (c) and (d).
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	SPG, SSG	
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	SPG, SSG	
s 52(1)(d)	Duty to give notice of the application to other persons who may be detrimentally effected	SPG, SSG	Applicable for Future Homes Applications only Note: VicSmart Applications are exempt from the notice requirements under s 52(1)(a), (b), (c) and (d).
s 52(3)	Power to give any further notice of an application where appropriate	SPG, SSG	
s 53(1)	Power to require the applicant to give notice under s 52(1) to persons specified by it	SPG, SSG	
s 53(1A)	Power to require the applicant to give the notice under s 52(1AA)	SPG, SSG	
s 54(1)	Power to require the applicant to provide more information	SPG, SSG	Note: for VicSmart applications, delegates cannot require an applicant to provide more information than what is listed in Schedules to clause 59 of the planning scheme

<b>PLANNING AND ENVIRONMENT ACT 1987<sup>1</sup></b>			
<b>PROVISION</b>	<b>THING DELEGATED</b>	<b>DELEGATE</b>	<b>CONDITIONS &amp; LIMITATIONS</b>
s 54(1A)	Duty to give notice in writing of information required under s 54(1)	SPG, SSG	Note: for VicSmart applications, delegates cannot require an applicant to provide more information than what is listed in Schedules to clause 59 of the planning scheme
s 54(1B)	Duty to specify the lapse date for an application	SPG, SSG	
s 54A(3)	Power to decide to extend time or refuse to extend time to give required information	SPG, SSG	
s 54A(4)	Duty to give written notice of decision to extend or refuse to extend time under s 54A(3)	SPG, SSG	
s 55(1)	Duty to give copy application, together with the prescribed information, to every referral authority specified in the planning scheme	SPG, SSG	
s 57(2A)	Power to reject objections considered made primarily for commercial advantage for the objector	CEO, DPD, MBP	
s 57(3)	Function of receiving name and address of persons to whom notice of decision is to go	SPG, SSG	
s 57(5)	Duty to make a copy of every objection available in accordance with the public availability requirements	SPG, SSG	
s 57A(4)	Duty to amend application in accordance with applicant's request, subject to s 57A(5)	SPG, SSG	
s 57A(5)	Power to refuse to amend application	STLG, DPD, MBP	
s 57A(6)	Duty to note amendments to application in register	SPG, SSG	



<b>PLANNING AND ENVIRONMENT ACT 1987<sup>1</sup></b>			
<b>PROVISION</b>	<b>THING DELEGATED</b>	<b>DELEGATE</b>	<b>CONDITIONS &amp; LIMITATIONS</b>
s 57B(1)	Duty to determine whether and to whom notice should be given	SPG, SSG	
s 57B(2)	Duty to consider certain matters in determining whether notice should be given	SPG, SSG	
s 57C(1)	Duty to give copy of amended application to referral authority	SPG, SSG	
s 58	Duty to consider every application for a permit	SPG, SSG	
s 58A	Power to request advice from the Planning Application Committee	CEO, DPD, MBP	
s 59(1)	Power to decide an application without delay	DPD, MBP, UMS, SSO, UMSTP, PO, PP, SP	
s 60	Duty to consider certain matters	SPG, SSG	Note: VicSmart applications are exempt from the requirements of s 60(1)(b), (c), (e) and (f).
s 60(1)(a)	Duty to consider the relevant planning scheme	SPG, SSG	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	SPG, SSG	Note: VicSmart applications are exempt from the requirements of s 60(1)(b), (c), (e) and (f).
s 60(1A)(i)	Power to consider any agreement made pursuant to s 173	SPG, SSG	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	SPG, SSG	

PLANNING AND ENVIRONMENT ACT 1987 <sup>1</sup>			
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & 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	STLG, DPD, MBP, UMS, SSO,	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	SPG, SSG	
s 61(2A)	Power to decide to refuse to grant a permit if a relevant recommending referral authority objects to the grant of permit	SPG, SSG	
s 61(3)(a)	Duty not to decide to grant a permit to use coastal Crown land without Minister's consent	DPD, MBP	
s 61(3)(b)	Duty to refuse to grant the permit without the Minister's consent	SPG, SSG	
s 61(4)	Duty to refuse to grant the permit if grant would authorise a breach of a registered restrictive covenant	SPG, SSG	
s 62(1)	Duty to include certain conditions in deciding to grant a permit	SPG, SSG	
s 62(2)	Power to include other conditions	SPG, SSG	
s 62(4)	Duty to ensure conditions are consistent with paragraphs (a), (b) and (c)	SPG, SSG	
s 62(5)(a)	Power to include a permit condition to implement an approved development contributions plan or an approved infrastructure contributions plan	SPG, SSG	
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	SPG, SSG	

<b>PLANNING AND ENVIRONMENT ACT 1987<sup>1</sup></b>			
<b>PROVISION</b>	<b>THING DELEGATED</b>	<b>DELEGATE</b>	<b>CONDITIONS &amp; LIMITATIONS</b>
s 62(5)(c)	Power to include a permit condition that specified works be provided or paid for by the applicant	SPG, SSG	
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)	SPG, SSG	
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)	SPG, SSG	
s 63	Duty to issue the permit where made a decision in favour of the application (if no one has objected)	SPG, SSG	
s 64(5)	Duty to give each objector a copy of an exempt decision	SPG, SSG	Note: VicSmart and Future Home 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	SPG, SSG	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	SPG, SSG	
s 66(1)	Duty to give notice under ss 64 or 65 and copy permit to relevant determining referral authorities	SPG, SSG	

**PLANNING AND ENVIRONMENT ACT 1987<sup>1</sup>**

PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
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	SPG, SSG	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)	SPG, SSG	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 ss 64 or 65	SPG, SSG	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	SPG, SSG	
s 69(1A)	Function of receiving application for extension of time to complete development	SPG, SSG	
s 69(2)	Power to extend time	STLG, DPD, MBP, UMS, SSO, UMSTP, PO, PP, SP	

**PLANNING AND ENVIRONMENT ACT 1987<sup>1</sup>**

<b>PROVISION</b>	<b>THING DELEGATED</b>	<b>DELEGATE</b>	<b>CONDITIONS &amp; LIMITATIONS</b>
s 70	Duty to make a copy of every permit that it issues available in accordance with the public availability requirements	SPG, SSG	
s 71(1)	Power to correct certain mistakes	SPG, SSG	
s 71(2)	Duty to note corrections in register	SPG, SSG	
s 73	Power to decide to grant amendment subject to conditions	SPG, SSG	
s 74	Duty to issue amended permit to applicant if no objectors	SPG, SSG	
s 76	Duty to give applicant and objectors notice of decision to refuse to grant amendment to permit	SPG, SSG	
s 76A(1)	Duty to give relevant determining referral authorities copy of amended permit and copy of notice	SPG, SSG	
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	SPG, SSG	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)	SPG, SSG	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

<b>PLANNING AND ENVIRONMENT ACT 1987<sup>1</sup></b>			
<b>PROVISION</b>	<b>THING DELEGATED</b>	<b>DELEGATE</b>	<b>CONDITIONS &amp; LIMITATIONS</b>
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	SPG, SSG	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	SPG, SSG	
s 83	Function of being respondent to an appeal	SPG, SSG	
s 83B	Duty to give or publish notice of application for review	SPG, SSG	
s 84(1)	Power to decide on an application at any time after an appeal is lodged against failure to grant a permit	STLG, DPD, MBP	
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	SPG, SSG	
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	SPG, SSG	
s 84(6)	Duty to issue permit on receipt of advice	SPG, SSG	
s 84AB	Power to agree to confining a review by the Tribunal	CEO, STLG, DPD, MBP	
s 86	Duty to issue a permit at order of Tribunal	SPG, SSG	
s 87(3)	Power to apply to VCAT for the cancellation or amendment of a permit	STLG, DPD, MBP	

<b>PLANNING AND ENVIRONMENT ACT 1987<sup>1</sup></b>			
<b>PROVISION</b>	<b>THING DELEGATED</b>	<b>DELEGATE</b>	<b>CONDITIONS &amp; LIMITATIONS</b>
s 90(1)	Function of being heard at hearing of request for cancellation or amendment of a permit	SPG, SSG	
s 91(2)	Duty to comply with the directions of VCAT	SPG, SSG	
s 91(2A)	Duty to issue amended permit to owner if Tribunal so directs	SPG, SSG	
s 92	Duty to give notice of cancellation/amendment of permit by VCAT to persons entitled to be heard under s 90	SPG, SSG	
s 93(2)	Duty to give notice of VCAT order to stop development	SPG, SSG	



# Maddocks

<b>PLANNING AND ENVIRONMENT REGULATIONS 2015</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>PROVISION</b>	<b>THING DELEGATED</b>	<b>DELEGATE</b>	<b>CONDITIONS AND LIMITATIONS</b>
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	SPG, SSG	
r 25(a)	Duty to make copy of matter considered under s 60(1A)(g) in accordance with the public availability requirements	SPG, SSG	Applicable for Future Homes Applications only



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	SPG, SSG	
r 21	Duty to record matters taken into account and which formed the basis of a decision to waive or rebate a fee under regulation 19 or 20	SPG, SSG	