

2.4: NEW BUILDING ACT 2011

Land Description	: Whole of Municipality
Proponent	: City of Albany
Attachment	: Delegation of Authority – Appointment of Authorised Persons
Responsible Officer	: A/Executive Director Planning & Development Services (S Lenton)

IN BRIEF

- Council consideration on an additional delegation of power associated with the *Building Act 2011*.

**ITEM 2.4: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

THAT Council adopts a delegation to allow the Chief Executive Officer to appoint authorised persons, as shown in Attachment 1, which will take effect as from 1 May 2012.

CEO:

RESPONSIBLE OFFICER:

BACKGROUND

1. At its Ordinary Meeting held on 13 December 2011, Council considered a report on the changes to building control in Western Australia resulting from the *Building Act 2011* and resolved to endorse the following delegations:
 - Section 20 - Approve or refuse a Building Permit;
 - Section 21 - Approve or refuse a Demolition Permit;
 - Section 22 - Further grounds for refusing to grant a Building or Demolition Permit;
 - Section 58 - Issue of Occupancy Permit and Building Approval Certificate;
 - Section 65 - Consider Extending the period of duration of a Occupancy Permit or Building Approval Certificate;
 - Section 110 - Issue Building Orders;
 - Section 117 - Revoke Building Orders; and
 - Section 139 - Authority to commence prosecutions.
2. Section 96 of the *Building Act 2011* enables the City to effectively and efficiently fulfil its obligations under the Act through the appointment of authorised persons.
3. To ensure good governance in building control, it is necessary to delegate the authority to appoint authorised persons for the purposes of the *Building Act 2011* to the Chief Executive Officer.

DISCUSSION

4. The new building legislation (Act and Regulations) will alter the role of local governments in the assessment and processing of building permit applications and the enforcement of construction standards. This new legislation prescribes the roles, responsibilities and authority of various parties involved in the building permit process including local governments.
5. Some of the main changes are:
 - Applicants will have the option of engaging the services of a registered private building surveyor or a registered local government building surveyor.
 - The provision of a definition on what constitutes a building and clear exemptions from the building permit process.
 - The establishment of permit authorities, which can be state government, local government or a special permit authority consisting of a group of local governments;
 - The establishment of timelines and penalties for dealing with permit applications, for example:
 - Certified applications (private building surveyor) - 10 business days.
 - Uncertified application (local government building surveyor) - 25 business days.
 - Occupancy certificates - 10 business days.

Should a local government fail to determine an application within the prescribed timeframes the *Building Act 2011* requires all fees paid for the assessment of the application to be refunded and the local government will still be required to determine the application.

- Sets out the documentation and information to be submitted by a builder/applicant with an application for a Building Permit. Local governments have the authority to return incomplete applications.
- A building permit application is deemed refused if a builder/applicant fails to meet the prescribed timeframe for the submission of additional information. **The application fee will be retained by local government and applicants will be required to submit a fresh application with full fees payable.**
- Extends the statute of limitations from two to three or six years depending on the offence.

GOVERNMENT CONSULTATION

6. Building Services team officers have undertaken informal consultation with Building Commission staff regarding the implementation of the *Building Act 2011* and *Building Regulations 2012*.

PUBLIC CONSULTATION / ENGAGEMENT

7. Industry and community consultation regarding the implementation of the *Building Act 2011* and how it affects the Western Australian building industry is the responsibility of the Building Commission.

STATUTORY IMPLICATIONS

9. The *Building Act 2011* and the *Building Regulations 2012* apply to the whole of the City of Albany.

STRATEGIC IMPLICATIONS

10. This item relates to the following elements from the City of Albany Strategic Plan (2011-2021):

Key Focus Area:

Organisational Performance

Community Priority

Nil

Proposed Strategies

Develop clear processes and policies and ensure consistent, transparent application across the organisation.

POLICY IMPLICATIONS

11. There are no policy implications associated with this item.

RISK IDENTIFICATION & MITIGATION

12. The risk identification and categorisation relies on the City's Risk Management Framework.

Risk	(L)	(C)	Risk Rating	Mitigation
<i>Proposed delegation not adopted.</i>	<i>Possible.</i>	<i>Medium</i>	<i>High</i>	<i>Adopt the proposed delegations.</i>

FINANCIAL IMPLICATIONS

13. There are no financial implications associated with this item.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

14. The *Building Act 2011* provides local governments with greater power to ensure that the community building standards are maintained. The penalties have been set to reflect the severity of the offence, for example the penalty for building without a building permit, when one is required, ranges from \$50,000 to \$100,000 with 12 months imprisonment provided the prosecution is within the statute of limitations.
15. To ensure the City of Albany has the ability to enforce the requirements of the *Building Act 2011* it is necessary to provide authority to allow officers to enter building sites and investigate possible or alleged offences. It is therefore essential that authorised persons are appointed to undertake this role. Should the delegation not be provided the City's building surveyors will not have the legal authority to enter building sites to carry out their enforcement role.

SUMMARY CONCLUSION

16. To enable the City to effectively and efficiently fulfil its obligations, it is necessary to delegate the authority to appoint authorised persons for the purposes of the *Building Act 2011* to the Chief Executive Officer.

Consulted References	<i>Building Act 2011</i>
File Number (Name of Ward)	All Wards
Previous Reference	OCM 13/12/2011 - Item 2.5



Delegation of Authority

APPOINTMENT OF AUTHORISED PERSONS

Function to be performed:	Authority to appoint authorised persons pursuant to section 96 of the <i>Building Act 2011</i> .
Delegator:	Council of the City of Albany
Delegate:	Chief Executive Officer
Sub-delegation to:	Executive Director Planning and Development Services Executive Manager Building and Health Services Senior Building Surveyor Building Surveyors
Legislative Powers:	Sections 96 and 127 of the <i>Building Act 2011</i>
Conditions and Exceptions:	1) Be employed by the City of Albany in accordance with section 5.36 of the <i>Local Government Act 1995</i> ; and 2) Hold the appropriate qualifications as set out under Regulation 6 of the <i>Local Government (Building Surveyors) Regulations 2008</i>
Duration of delegation:	Until next annual review
Origin of Delegation:	
Delegation last reviewed:	