

APPENDIX 3

INSTRUMENT OF DELEGATION UNDER THE COMMUNITY TITLES ACT 1996

NOTES

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.
2. Refer to the relevant Council resolution(s) to identify when these delegations were made, reviewed and or amended.

Sub-delegation

In exercise of the power provided to me by the Council on the 21 February 2017 as above, I, Colin John Davies, Chief Executive Officer on this Twenty-First day of February 2017 hereby sub-delegate the following powers to the officer or officers of the Council as indicated in the column marked "Subdelegate" (including any person appointed to act in any such position).

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

	SUB-DELEGATE
1. Interpretation	
1.1 The duty pursuant to Section 3(11) of the Community Titles Act 1996 ("the Act") where the Act requires the scheme description lodged with the Registrar-General to be endorsed by the relevant development authority, and:	
1.1.1 all the consents or approvals required under the Development Act 1993 in relation to the division of the land (and a change in the use of the land (if any)) in accordance with the scheme description and the plan of community division have been granted; or	
1.1.2 no consent or approval is required under that Act in relation to the division of the land (or a change in the use of the land),	
to, as the relevant development authority, endorse a scheme description to the effect of either subsection	

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3(11)(b)(i) or (ii) of the Act.	
2. Application	
2.1 The power pursuant to Section 14(1) of the Act, where the Council is the registered proprietor of an estate in fee simple in:	
2.1.1 land comprising an allotment or allotments;	
2.1.2 land comprising a primary lot or a secondary lot,	
to apply to the Registrar-General for the division of the land by a plan of community division.	
3. Application May Deal With Statutory Encumbrances	
3.1 The power pursuant to Section 15A(b)(i) of the Act, where the Council is the holder of a statutory encumbrance, to sign a certificate certifying that the requirements of the Act under which the encumbrance was entered into, or is in force, as to the variation or termination of the statutory encumbrance (if any) have been complied with.	
4. Consents to Application	
4.1 The power pursuant to Section 16(1)(a) of the Act,	
4.1.1 where the Council is the holder of a registered encumbrance over the land to be divided; or	
4.1.2 where deposit of the plan in the Lands Titles Registration Office will affect the estate or interest of the Council in land outside the community parcel; or	
4.1.3 where deposit of the plan in the Lands Titles Registration Office will operate to vest an estate or interest in land (whether within or outside the community parcel) in the Council to consent to the application	
5. Application to Amend Schedule of Lot Entitlements	
5.1 The power pursuant to Section 21(4)(a) of the Act, where the Council is	

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<p>5.1.1 the owner of a community lot at the relevant time but did not have the opportunity of voting against the resolution of the corporation authorising the proposed amendment because the Council was not a member of the corporation when the vote was taken; or</p>	
<p>5.1.2 a prospective owner at the relevant time of a community lot; or</p>	
<p>5.1.3 a registered encumbrancee or prospective encumbrancee at the relevant time of a community lot; or</p>	
<p>5.1.4 where the Council is a person referred to in Section 21(5) of the Act, to consent to the proposed amendment.</p>	
<p>5.2 The power pursuant to Section 21(5) of the Act:</p>	
<p>5.2.1 where the corporation is a primary corporation and a primary lot is divided by a secondary plan, and where the Council is:</p>	
<p>5.2.1.1 a person who is the owner of a secondary lot at the relevant time but did not have the opportunity of voting against the proposed amendment because the Council was not a member of the secondary corporation when the vote was taken; or</p>	
<p>5.2.1.2 a prospective owner at the relevant time of a secondary lot; or</p>	
<p>5.2.1.3 a registered encumbrancee or prospective encumbrancee at the relevant time of a secondary lot; or</p>	
<p>5.2.2 where the corporation is a primary corporation and a primary lot is divided by a secondary plan and a secondary lot created by that plan is divided by a tertiary plan or where the corporation is a secondary corporation and a secondary lot is divided by a tertiary plan, and where the Council is:</p>	
<p>5.2.2.1 a person who is the owner of a tertiary</p>	

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	lot at the relevant time but did not have the opportunity of voting against the proposed amendment because the Council was not a member of the tertiary corporation when the vote was taken; or	
	5.2.2.2 a prospective owner at the relevant time of a tertiary lot; or	
	5.2.2.3 a registered encumbrancee or prospective encumbrancee at the relevant time of a tertiary lot, to grant consent.	
6.	Encroachments	
6.1	The power pursuant to Section 27(1)(b)(i) of the Act to consent to the encroachment of a building over land not included in a community parcel where the encroachment is over land vested in, or under the control or management of the Council.	
7.	Scheme Description	
7.1	The power pursuant to Section 30(4) of the Act as the relevant development authority to require modifications to a scheme description before endorsing the scheme description to:	
	7.1.1 add any information that is necessary or desirable; or	
	7.1.2 clarify any part of the description; or	
	7.1.3 remove any unnecessary detail.	
8.	Amendment of Scheme Description	
8.1	The power pursuant to Section 31(3) of the Act as the relevant development authority to endorse a certified copy of an amended scheme description.	
9.	Persons Whose Consents are Required	
9.1	The power pursuant to Section 32(1) of the Act, where the Council is:	
	9.1.1 a person who is the owner of a community lot at the relevant time but did not have	

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	the opportunity of voting against the resolution of the corporation amending the scheme description because the Council was not then a member of the corporation; or	
9.1.2	the prospective owner at the relevant time of a community lot;	
9.1.3	the owner or prospective owner at the relevant time of a development lot;	
9.1.4	a registered mortgagee or prospective mortgagee and a registered lessee or prospective lessee at the relevant time of a community lot or development lot; or	
9.1.5	the owner or prospective owner at the relevant time of a development lot in a secondary or tertiary scheme that comprises part of the community scheme to which the scheme description relates; or	
9.1.6	a person referred to Section 32(2) of the Act, to grant consent.	
9.2	The power pursuant to Section 32(2) of the Act:	
9.2.1	where the corporation is a primary corporation and a primary lot is divided by a secondary plan and the Council is:	
9.2.1.1	a person who is the owner of a secondary lot at the relevant time but did not have the opportunity of voting against the proposed amendment to the scheme description because the Council was not then a member of the secondary corporation; or	
9.2.1.2	the prospective owner at the relevant time of a secondary lot; or	
9.2.1.3	a registered mortgagee or prospective mortgagee and a registered lessee or prospective lessee at the relevant time of a	

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	secondary lot or development lot; or	
9.2.2	where the corporation is a primary corporation and a primary lot is divided by a secondary plan and a secondary lot created by that plan is divided by a tertiary plan or where the corporation is a secondary corporation and a secondary lot is divided by a tertiary plan and the Council is:	
9.2.2.1	a person who is the owner of a tertiary lot at the relevant time but did not have the opportunity of voting against the proposed amendment to the scheme description because the Council was not then a member of the tertiary corporation; or	
9.2.2.2	the prospective owner at the relevant time of a tertiary lot; or	
9.2.2.3	a registered mortgagee or prospective mortgagee and a registered lessee or prospective lessee at the relevant time of a tertiary lot or development lot, to grant consent	
9A. By-laws		
9A.1	The power pursuant to Section 34(6)(e) of the Act, to, within 60 days after service of the notice, apply to the Magistrates Court for revocation of the notice.	
9A.2	The power pursuant to Section 34(6)(g) of the Act to withdraw or otherwise discontinue the application for revocation.	
9B. By-law as to the Exclusive Use of Part of the Common Property		
9B.1	The power pursuant to Section 36(5) of the Act to provide written consent to the community corporation to make a by-law under Section 36 of the Act.	

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<p>9C. Enforcement of Development Contract</p>	
<p>9C.1 The power pursuant to Section 49(2) of the Act, where the Council is an owner or occupier of a lot, who is, by virtue of Section 49(1) of the Act, a party to a development contract, to take proceedings for its enforcement (including damages for breach of the contract) in the Magistrates Court against:</p>	
<p>9C.1.1 the developer; and</p>	
<p>9C.1.2 if the contract is for the development of a development lot or a community lot – the subsequent owner or owners (if any) of the lot,</p>	
<p>even though no obligations attach to the corporation, owner and occupier under the contract.</p>	
<p>9C.2 The power pursuant to Section 49(2a) of the Act to make application to the Magistrates Court to transfer the proceedings to the District Court.</p>	
<p>9C.3 The power pursuant to Section 49(2b) of the Act to make application to a court to:</p>	
<p>9C.3.1 transfer an application under Section 49 of the Act to the Supreme Court on the ground that the application raises a matter of general importance; or</p>	
<p>9C.3.2 state a question of law for the opinion of the Supreme Court.</p>	
<p>10. Application for Amendment</p>	
<p>10.1 The power pursuant to Section 52(1)(a)(ii) of the Act to make an application for the amendment of a deposited community plan, where the Council is the owner of a community lot that will be affected by the amendment.</p>	
<p>10.2 The power pursuant to Section 52(2)(b) of the Act, if the boundaries of a community lot or a development lot are affected by the amendment or if a community lot or a development lot is extinguished by the amendment, and the Council is:</p>	
<p>10.2.1 the owner of the lot (not being an</p>	

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	applicant in accordance with Section 52(1)(a)(ii) of the Act; or	
10.2.2	a person who holds a registered encumbrance over the lot,	
	consent to the amendment.	
10.3	The power pursuant to Section 52(2)(c) of the Act, where amendment of the plan will operate to vest an estate or interest in land in the Council, to consent to the application.	
11.	Status of Application for Amendment of Plan	
11.1	The power pursuant to Section 53(2) of the Act, where the Council has consented to an application, to consent to an application being withdrawn or amended.	
11.2	The power pursuant to Section 53(3) of the Act to amend the application in order to comply with the Act or the <i>Real Property Act 1886</i> or with a requirement of the Registrar-General under the Act or the <i>Real Property Act 1886</i> .	
12.	Application May Deal With Statutory Encumbrances	
12.1	The power pursuant to Section 53A(b)(i) of the Act, where the Council is the holder of a statutory encumbrance, to sign a certificate certifying that the requirements of the Act under which the encumbrance was entered into, or is in force, as to the variation or termination of the statutory encumbrance (if any) have been complied with.	
13.	Alteration of Boundaries of Primary Community Parcel	
13.1	The power pursuant to Section 57(2)(b) of the Act, if part of an allotment is to be included in the primary parcel and the Council is the registered proprietor of the allotment to be divided from outside the parcel, to make the application jointly with the community corporation.	
14.	Amendment of Plan Pursuant to Development Contract	
14.1	The power pursuant to Section 58(1) of the Act and in accordance with Sections 58(2), (3) and (4) of the	

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Act, where the Council is the registered proprietor of an estate in fee simple in a development lot, to apply to the Registrar-General for the division of the development lot in pursuant of the development contract and for the consequential amendment of the community plan.	
15. Amendment by Order of ERD Court	
15.1 The power pursuant to Section 59(1) of the Act and in accordance with Sections 59(2) and (3) of the Act to apply to the ERD Court to amend a community plan.	
15.2 The power pursuant to Section 59(3a) of the Act to make submissions to the court in relation to the matter.	
16. Persons Whose Consents are Required	
16.1 The power pursuant to Section 61(1) of the Act, where the Council is:	
16.1.1 a person who is the owner of a community lot at the relevant time but did not have the opportunity of voting against the resolution of the corporation authorising the proposed amalgamation because the Council was not then a member of the corporation; or	
16.1.2 the prospective owner at the relevant time of a community lot; or	
16.1.3 the owner or prospective owner at the relevant time of a development lot; or	
16.1.4 a registered encumbrancee or prospective encumbrancee at the relevant time of a community lot or a development lot; or	
16.1.5 a person referred to in Section 61(2) of the Act, to consent to the amalgamation.	
16.2 The power pursuant to Section 61(2) of the Act,	
16.2.1 where the plans to be amalgamated are primary plans and a primary lot is divided by a secondary plan where the Council is:	

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<p>16.2.1.1 a person who is the owner of a secondary lot at the relevant time but did not have the opportunity of voting against the proposed amalgamation because the Council was not then a member of the secondary corporation; or</p>	
<p>16.2.1.2 the prospective owner at the relevant time of a secondary lot; or</p>	
<p>16.2.1.3 the owner or prospective owner at the relevant time of a development lot in the secondary scheme; or</p>	
<p>16.2.1.4 a registered encumbrancee or prospective encumbrancee at the relevant time of a secondary lot or development lot; or</p>	
<p>16.2.2 where the plans to be amalgamated are primary plans and a primary lot is divided by a secondary plan and a secondary lot created by that plan is divided by a tertiary plan or where the plans to be amalgamated are secondary plans a secondary lot is divided by a tertiary plan where the Council is:</p>	
<p>16.2.2.1 a person who is the owner of a tertiary lot at the relevant time but did not have the opportunity of voting against the proposed amalgamation because the Council was not then a member of the tertiary corporation; or</p>	
<p>16.2.2.2 the prospective owner at the relevant time of a tertiary lot; or</p>	
<p>16.2.2.3 the owner or prospective owner at the relevant time of a development lot in the tertiary scheme; or</p>	
<p>16.2.2.4 a registered encumbrancee or prospective encumbrancee at the</p>	

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	relevant time of a tertiary lot or development lot, to consent.	
17. Deposit of Amalgamated Plan		
17.1	The power pursuant to Section 62(3) of the Act, where the Council is:	
17.1.1	the owner of the servient land; or	
17.1.2	a person who appears from the Register Book to hold a registered encumbrance over the servient land (other than an easement that will not be affected) to endorse an application for amalgamation with the Council's consent.	
18. Persons Whose Consent is Required		
18.1	The power pursuant to Section 66(1) of the Act, to, where the Council is:	
18.1.1	an owner at the relevant time of a community lot and a development lot (if any); or	
18.1.2	the prospective owner at the relevant time of a community lot or a development lot; or	
18.1.3	a registered encumbrancee or prospective encumbrancee at the relevant time of a community lot or development lot, to give consent to the application.	
18A. Application to ERD Court		
18A.1	The power pursuant to Section 67(1) of the Act, to make an application to the ERD Court for an order cancelling a community plan.	
18A.2	The power pursuant to Section 67(1a) of the Act to make submissions to the Court in relation to the matter.	
19. Cancellation		
19.1	The power pursuant to Section 69(2)(e) of the Act to consent to the cancellation of a community plan where the Council is the owner of the servient land	

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or holds a registered encumbrance over the servient land (other than an easement that will not be affected).	
19.2 The power pursuant to Section 69(6) of the Act to where the Council is the registered proprietor of the servient land or the dominant land (if any) request an easement be reinstated on cancellation of a plan.	
20. Division of Primary Parcel Under Part 19AB	
20.1 The power pursuant to Section 70(2) of the Act, where the Council is:	
20.1.1 an owner of a primary lot or an owner of a development lot (if any) comprising the primary parcel;	
20.1.2 if a primary lot is divided by a secondary plan – an owner of the secondary lot and an owner of the development lot (if any) comprising the secondary parcel; or	
20.1.3 if a secondary lot is divided by a tertiary plan – an owner of a tertiary lot and the owner of a development lot (if any) comprising the tertiary parcel, to endorse a plan of division lodged with the application with the Council’s consent.	
21. Voting at General Meetings	
21.1 The power pursuant to Section 84(3) of the Act, subject to Section 84(8) of the Act and in accordance with Sections 84(5), (5a) and (6) of the Act, to nominate another person to attend and vote at meetings on the Council’s behalf.	
21.2 The power pursuant to Section 84(11) of the Act, to exercise an absentee vote on a proposed resolution by giving the secretary written notice of the proposed vote at least six hours before the time of the meeting.	
22. Administrator of Community Corporation’s Affairs	
22.1 The power pursuant to Section 100(1) of the Act to make application to the District Court or the Magistrates Court to appoint an administrator of the community corporation, or remove or replace an	

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	administrator previously appointed.	
23.	Power to Enforce Duties of Maintenance and Repair etc	
23.1	The power pursuant to Section 101(6) of the Act, where:	
23.1.1	the Council incurs costs in complying with a notice under Section 101(1) of the Act; or	
23.1.2	the corporation recovers costs from the Council under Section 101(5) of the Act; and	
23.1.3	the circumstances out of which the work was required are attributable to the act or default of another person, to recover those costs from that other person as a debt.	
24.	Right to Inspect Policies of Insurance	
24.1	The power pursuant to Section 108(1) of the Act, to request to inspect policies of insurance that are in force and were taken out by or on behalf of the community corporation.	
24.2	The power pursuant to Section 108(2) of the Act, to request to inspect policies of insurance that are in force and were taken out by or on behalf of the primary community corporation.	
24.3	The power pursuant to Section 108(3) of the Act, to request to inspect policies of insurance that are in force and were taken out by or on behalf of the primary or secondary corporation.	
25.	Information to be Provided by Corporation	
25.1	The power pursuant to Section 139(1) of the Act to, make application to a community corporation to:	
25.1.1	provide a statement setting out:	
25.1.1.1	particulars of any contribution payable in relation to the lot (including details of any arrears of	

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	contributions in relation to the lot); and	
25.1.1.2	particulars of the assets and liabilities of the corporation; and	
25.1.1.3	particulars of any expenditure that the corporation has incurred, or has resolved to incur, and to which the owner of the lot must contribute, or is likely to be required to contribute; and	
25.1.1.4	particulars in relation to any other matter prescribed by regulations; and	
25.1.2	provide copies of:	
25.1.2.1	the minutes of general meetings of the corporation and meetings of its management committee (if any) for such period, not exceeding two years, specified in the application; and	
25.1.2.2	the statement of accounts of the corporation last prepared by the corporation; and	
25.1.2.3	current policies of insurance taken out by the corporation; and	
25.1.3	make available for inspection such information as is required to establish the current financial position of the corporation including:	
25.1.3.1	a copy of the accounting records of the corporation; and	
25.1.3.2	the minute books of the	

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	corporation; and	
	25.1.3.3 any other documentary material prescribed by regulation; and	
	25.1.4 if the community corporation is a party to a contract with a body corporate manager – make available for inspection a copy of the contract; and	
	25.1.5 make available for inspection the register maintained under Section 135 of the Act.	
	25.2 The power pursuant to Section 139(1a) of the Act to, subject to Sections 139(2) and (4) of the Act, make application to a community corporation to provide, on a quarterly basis, ADI statements for all accounts maintained by the corporation.	
26.	Information as to Higher Tier of Community Scheme	
	26.1 The power pursuant to Section 140(1) of the Act to apply to the primary corporation for information under Section 139 of the Act.	
	26.2 The power pursuant to Section 140(2) of the Act to apply to the primary or secondary corporation for information under Section 139 of the Act.	
27.	Persons Who May Apply for Relief	
	27.1 The power pursuant to Section 141(1) of the Act to apply for relief under Part 14 of the Act.	
28.	Resolution of Disputes, etc	
	28.1 The power pursuant to Section 142(2) of the Act, subject to Section 142(1) of the Act, to make an application to the Magistrates Court.	
	28.2 The power pursuant to Section 142(3) of the Act to apply for the permission of the District Court, to bring an application under Section 142 of the Act in the District Court.	
	28.3 The power pursuant to Section 142(3) of the Act to, with the permission of the District Court, bring an application under Section 142 in the District Court.	

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<p>28.4 The power pursuant to Section 142(4) of the Act to make an application to the District Court that proceedings that have been commenced in the Magistrates Court be transferred to the District Court.</p>	
<p>28.5 The power pursuant to Section 142(6) of the Act to make an application to a court to:</p>	
<p>28.5.1 transfer an application under Section 142 of the Act to the Supreme Court on the ground that the application raises a matter of general importance; or</p>	
<p>28.5.2 state a question of law for the opinion of the Supreme Court.</p>	
<p>29. Holding of Deposit and Other Contract Moneys When Lot is Pre-sold</p>	
<p>29.1 The power pursuant to Section 142A(3) of the Act, in the event of a contravention of Section 142A(1) of the Act, to, by notice in writing given at any time before the plan of community division is deposited in the Lands Titles Registration Office, avoid the contract of sale.</p>	
<p>29.2 The power pursuant to Section 142A(4) of the Act, if the plan of community division is not deposited in the Lands Titles Registration Office:</p>	
<p>29.2.1 within such period after the date of the contract as is specified in the contract in accordance with any requirements specified in the regulations; or</p>	
<p>29.2.2 if the contract does not specify a period in accordance with Section 142A(4)(a) of the Act, within 6 months after the date of the contract, to, by notice in writing to the vendor, avoid the contract of sale at any time before the plan is deposited.</p>	
<p>30. Entry onto Lot or Common Property</p>	
<p>30.1 The power pursuant to Section 146(1) of the Act, subject to Sections 146(2) - (9) of the Act, where the Council needs to enter another lot or the common property, in order to exercise rights under</p>	

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an easement for the establishment, maintenance and repair of part of the service infrastructure, to:	
30.1.1 give notice to the owner of the lot to be entered; or	
30.1.2 where it is necessary to enter the common property, to give notice to the corporation.	
30.2 The power pursuant to Section 146(4) of the Act, if notice is not given (in an emergency) or the period of the notice has expired and it is not possible to gain entry without using force, to use such force as is reasonable in the circumstances.	
30.3 The power pursuant to Section 146(6) of the Act, in an emergency to enter another lot or the common property to assist a person on the lot or common property or to prevent or reduce damage to the lot or another lot or to the common property.	

