

TOWN OF COTTESLOE



ENVIRONMENTAL HEALTH DELEGATED AUTHORITY REGISTER 2016/2017

Delegated Authority Register 2016/2017 for Environmental Health matters

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1. Food Act 2008

1.1 Registration of Food Businesses	
Function Delegated	Authority to Register a Food Business.
Statutory Power Delegated	<i>Food Act 2008</i> Section 110 Registration of food businesses
	<p>110. Registration of food businesses</p> <p>(1) <i>The appropriate enforcement agency may register a food business in respect of any premises for the purposes of this Part.</i></p> <p>(2) <i>The proprietor of a food business may apply, in the approved form, to the appropriate enforcement agency for the registration of the food business in respect of any premises under this Part.</i></p> <p>(3) <i>The application must be accompanied by —</i></p> <ul style="list-style-type: none"> (a) <i>if required by the appropriate enforcement agency — the design and fit-out specifications, in a form approved by the appropriate enforcement agency, of the premises, if food is to be handled in the course of conducting the food business at those premises;</i> (b) <i>any other information that the appropriate enforcement agency requires to determine the priority classification of the food business; and</i> (c) <i>subject to subsection (4), the fee, if any, prescribed by the regulations.</i> <p>(4) <i>If the appropriate enforcement agency is a local government —</i></p> <ul style="list-style-type: none"> (a) <i>any fee prescribed by the regulations for the purposes of subsection (3)(c) does not apply to an application to the agency under this section; and</i> (b) <i>the fee for an application to the agency under this section may be imposed and recovered by the agency under the Local Government Act 1995 Part 6 Division 5 Subdivision 2.</i> <p>(5) <i>The appropriate enforcement agency may, after considering an application for registration —</i></p> <ul style="list-style-type: none"> (a) <i>grant the application, with or without conditions; or</i>

	<p>(b) <i>refuse the application.</i></p> <p>(6) <i>If the appropriate enforcement agency grants an application for registration, the appropriate enforcement agency must issue the applicant with a certificate of registration, in the approved form, that specifies the premises in respect of which the registration is granted and sets out any conditions to which the registration is subject.</i></p> <p>(7) <i>A condition to which the registration is subject may relate only to compliance with this Act.</i></p> <p>(8) <i>If the appropriate enforcement agency refuses an application for the registration of a food business in respect of any premises, the appropriate enforcement agency must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.</i></p>
Power Originally Assigned To	Enforcement Agency (The Local Government)
Statutory Power of Delegation	<i>Food Act 2008</i> Section 118 Functions of enforcement agencies and delegation
Power Delegated To	Chief Executive Officer
Chief Executive Officer's Sub Delegation to	Manager Development Services Principal Environmental Health Officer
Policy Guidance	Exercised in accordance with the Town's policies generally.

1.2 Variation of Conditions of Cancellation or Registration of Food Businesses	
Function Delegated	Authority to vary the conditions or cancellation of registration of a food business.
Statutory Power Delegated	<i>Food Act 2008</i> Section 112 Variation of conditions or cancellation of registration of food businesses
	<p>112. Variation of conditions or cancellation of registration of food businesses</p> <p>(1) <i>The appropriate enforcement agency may vary the conditions of, or cancel, the registration of a food business in respect of any premises under this Part.</i></p> <p>(2) <i>The registration of a food business in respect of any premises may be cancelled on one or more of the following grounds —</i></p> <p style="padding-left: 40px;">(a) <i>any annual or other fee —</i></p> <p style="padding-left: 80px;">(i) <i>prescribed by the regulations in relation to the registration of the food business in respect of those premises has not been paid by the time the regulations require the payment to be made; or</i></p> <p style="padding-left: 80px;">(ii) <i>if subsection (3) applies — imposed by the appropriate enforcement agency in relation to the registration of the food business in respect of those premises has not been paid by the time the agency requires the payment to be made;</i></p> <p style="padding-left: 40px;">(b) <i>the food business has ceased to be conducted at those premises;</i></p> <p style="padding-left: 40px;">(c) <i>at the request of the holder of the certificate of registration that specifies those premises.</i></p> <p>(3) <i>If the appropriate enforcement agency is a local government, then for the purposes of subsection (2)(a) in relation to the registration of a food business in respect of any premises —</i></p> <p style="padding-left: 40px;">(a) <i>any annual or other fee prescribed by the regulations for the purposes of that provision does not apply to the registration of the food business in respect of those premises by the agency; and</i></p> <p style="padding-left: 40px;">(b) <i>an annual or other fee in relation to the registration of the food business in respect of those premises by the agency —</i></p>

	<p>(i) <i>may be imposed and recovered by the agency under the Local Government Act 1995 Part 6 Division 5 Subdivision 2; and</i></p> <p>(ii) <i>must be paid by the time the agency requires the payment to be made.</i></p> <p>(4) <i>The appropriate enforcement agency may vary the conditions of, or cancel, the registration of a food business in respect of any premises only —</i></p> <p>(a) <i>after having given the holder of the certificate of registration that specifies those premises —</i></p> <p>(i) <i>written reasons for the agency’s intention to vary or cancel; and</i></p> <p>(ii) <i>an opportunity to make submissions;</i> <i>and</i></p> <p>(b) <i>after having considered any submissions duly made by that person.</i></p> <p>(5) <i>Subsection (4) does not apply to the cancellation of the registration at the request of the holder of the certificate of registration that specifies the relevant premises.</i></p> <p>(6) <i>A variation of the conditions of, or the cancellation of, the registration of a food business in respect of any premises —</i></p> <p>(a) <i>must be by notice in writing;</i></p> <p>(b) <i>must be served on the holder of the certificate of registration that specifies those premises; and</i></p> <p>(c) <i>takes effect on the day on which the notice is served or on a later day specified in the notice.</i></p>
Power Originally Assigned To	Enforcement Agency (The Local Government)
Statutory Power of Delegation	<i>Food Act 2008 Section 118 Functions of enforcement agencies and delegation</i>
Power Delegated To	Chief Executive Officer
Chief Executive Officer’s Sub Delegation to	Manager Development Services Principal Environmental Health Officer
Policy Guidance	Exercised in accordance with the Town’s policies generally.

1.3 Infringement Notices	
Function Delegated	Authority to designate authorised officers for the purpose of issuing, extending payment periods and withdrawing infringement notices.
Statutory Power Delegated	<i>Food Act 2008</i> Section 126 Infringement notices
	<p>126. Infringement notices</p> <p>(1) <i>In this section —</i></p> <p>designated officer means an authorised officer designated by an enforcement agency under subsection (13) to be a designated officer;</p> <p>prescribed means prescribed by the regulations.</p> <p>(2) <i>A designated officer who has reason to believe that a person has committed a prescribed offence under this Act may, within 28 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.</i></p> <p>(3) <i>An infringement notice must be in the prescribed form and must —</i></p> <p style="margin-left: 40px;">(a) <i>contain a description of the alleged offence;</i></p> <p style="margin-left: 40px;">(b) <i>advise that, if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to a designated officer within a period of 28 days after the giving of the notice; and</i></p> <p style="margin-left: 40px;">(c) <i>inform the alleged offender as to who are designated officers for the purposes of receiving payment of modified penalties.</i></p> <p>(4) <i>In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice must be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.</i></p> <p>(5) <i>The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.</i></p> <p>(6) <i>A designated officer may, in a particular case, extend the period of 28 days within which the modified penalty may be paid, and the extension may be allowed whether or not the period of 28 days has elapsed.</i></p> <p>(7) <i>A designated officer may, whether or not the modified penalty</i></p>

	<p><i>has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.</i></p> <p><i>(8) If an infringement notice is withdrawn after the modified penalty has been paid, the amount paid must be refunded.</i></p> <p><i>(9) Subsection (10) applies if the modified penalty specified in an infringement notice has been paid within 28 days or any further time that is allowed and the notice has not been withdrawn.</i></p> <p><i>(10) If this subsection applies, it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.</i></p> <p><i>(11) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.</i></p> <p><i>(12) Unless subsection (8) requires it to be refunded, an amount paid as a modified penalty must be dealt with as if it were a penalty imposed by a court as a penalty for an offence.</i></p> <p><i>(13) An enforcement agency may, in writing, designate authorised officers appointed by the agency under Part 10 Division 3 or designated by the agency under the Public Health Act 2016 section 24(1) to be designated officers for the purposes of subsection (2), (3), (6) or (7) or for the purposes of 2 or more of those subsections, but a person who is a designated officer for the purposes of giving infringement notices under subsection (2) is not eligible to be a designated officer for the purposes of any of the other subsections.</i></p>
Power Originally Assigned To	Enforcement Agency (The Local Government)
Statutory Power of Delegation	<i>Food Act 2008 Section 118 Functions of enforcement agencies and delegation</i>
Power Delegated To	Chief Executive Officer
Chief Executive Officer's Sub Delegation to	<p>Recommended authorisations:</p> <p>Authorised Officer to issue infringement notices – Principal Environmental Health Officer.</p> <p>Authorised Officer to extend payment periods of or withdraw infringement notices – Manager Development Services.</p>
Policy Guidance	Exercised in accordance with the Town's policies generally.

2. Health (Miscellaneous Provisions) Act 1911

2.1 Certificate of Approval	
Function Delegated	Authority to issue a certificate of approval in relation to public buildings.
Statutory Power Delegated	<i>Health (Miscellaneous Provisions) Act 1911</i> Section 178 Certificate of Approval
	<p>178. Certificate of approval</p> <p>(1) <i>A person shall not open or use a public building unless the local government has issued a certificate of approval in relation to the public building specifying —</i></p> <p style="padding-left: 40px;">(a) <i>the purpose or purposes for which the public building may be used; and</i></p> <p style="padding-left: 40px;">(b) <i>the maximum number of persons that the building may be used to accommodate.</i></p> <p>(2) <i>Where a public building has been extended or altered the certificate of approval issued in relation to the public building before such extension or alteration ceases to be valid and any person who desires to open or use the public building shall apply for the issue of a certificate of approval under subsection (1) in relation to the public building as so extended or altered.</i></p> <p>(3) <i>A person shall not —</i></p> <p style="padding-left: 40px;">(a) <i>use a public building, or permit a public building to be used, for a purpose other than a purpose specified in the certificate of approval; or</i></p> <p style="padding-left: 40px;">(b) <i>use a public building, or permit a public building to be used, to accommodate any number of persons in excess of the number specified in the certificate of approval.</i></p> <p>(4) <i>A person who contravenes a provision of this section commits an offence.</i></p>
Power Originally Assigned To	Local Government
Statutory Power of Delegation	<i>Health (Miscellaneous Provisions) Act 1911</i> Section 26 Powers of local government
Power Delegated To	Chief Executive Officer
Chief Executive Officer's Sub Delegation to	Manager Development Services Principal Environmental Health Officer
Policy Guidance	Exercised in accordance with the Town's policies generally.

3. Health (Asbestos) Regulations 1992

3.1 Infringement Notices	
Function Delegated	Authority to appoint authorised officers for the purpose of issuing infringement notices and appoint approved officers for the purpose of extending payment periods and withdrawing infringement notices.
Statutory Power Delegated	<i>Health (Asbestos) Regulations 1992</i> Section 178 Certificate of Approval
	<p>15D. Infringement notices</p> <p>(1) <i>The offences specified in Schedule 1 are offences for which an infringement notice may be issued under the Criminal Procedure Act 2004 Part 2.</i></p> <p>(2) <i>The modified penalty specified opposite an offence in Schedule 1 is the modified penalty for that offence for the purposes of the Criminal Procedure Act 2004 section 5(3).</i></p> <p>(3) <i>The Chief Health Officer may, in writing, appoint persons or classes of persons to be authorised officers or approved officers for the purposes of the Criminal Procedure Act 2004 Part 2.</i></p> <p>(4) <i>The Chief Health Officer must issue to each authorised officer a certificate, badge or identity card identifying the officer as a person authorised to issue infringement notices.</i></p> <p>(5) <i>A local government may, in writing, appoint persons or classes of persons to be authorised officers or approved officers for the purposes of the Criminal Procedure Act 2004 Part 2.</i></p> <p>(6) <i>Each local government that appoints a person as an authorised officer under subregulation (5) must issue to the officer a certificate, badge or identity card identifying the officer as a person authorised to issue infringement notices.</i></p> <p>(7) <i>A certificate of authority given to a person under the Public Health Act 2016 section 30 has effect for the purposes of subregulation (4) or (6), whichever is relevant, if it meets the requirement in the subregulation.</i></p> <p>(8) <i>For the purposes of the Criminal Procedure Act 2004 Part 2 —</i></p> <p style="padding-left: 40px;"><i>(a) the prescribed form of an infringement notice is set out in Schedule 2; and</i></p> <p style="padding-left: 40px;"><i>(b) the prescribed form of a notice to withdraw an infringement notice is set out in Schedule 3.</i></p>

Power Originally Assigned To	Local Government
Statutory Power of Delegation	<i>Health (Miscellaneous Provisions) Act 1911</i> Section 26 Powers of local government
Power Delegated To	Chief Executive Officer
Chief Executive Officer's Sub Delegation to	Recommended authorisations: Authorised Officer to issue infringement notices – Principal Environmental Health Officer. Approved Officer to extend payment periods of or withdraw infringement notices – Manager Development Services.
Policy Guidance	Exercised in accordance with the Town's policies generally.

4. Public Health Act 2016

4.1 Enforcement Agency may delegate	
Function Delegated	Authority to appoint a person to exercise the powers conferred on an authorised person by the Health Act 1911.
Statutory Power Delegated	<i>Public Health Act 2016</i> Section 21 Enforcement Agency may delegate
	<p>21. Enforcement agency may delegate</p> <p>(1) <i>A power or duty conferred or imposed on an enforcement agency may be delegated —</i></p> <p style="padding-left: 40px;">(a) <i>if the enforcement agency is the Chief Health Officer, in accordance with section 9; or</i></p> <p style="padding-left: 40px;">(b) <i>if the enforcement agency is a local government, to —</i></p> <p style="padding-left: 80px;">(i) <i>the chief executive officer of the local government; or</i></p> <p style="padding-left: 80px;">(ii) <i>an authorised officer designated by the local government;</i></p> <p style="padding-left: 40px;"><i>or</i></p> <p style="padding-left: 40px;">(c) <i>if the enforcement agency is a person or body, or a person or body within a class of persons or bodies, prescribed by the regulations, to an authorised officer designated by the agency.</i></p> <p>(2) <i>A delegation under subsection (1)(b) or (c) must be in writing.</i></p> <p>(3) <i>Without limiting the Interpretation Act 1984 section 59, the exercise or performance by a delegate of an enforcement agency of a power or duty delegated under subsection (1)(b) or (c) is subject to any condition or restriction imposed under section 20 on the exercise or performance by the enforcement agency of the power or duty.</i></p> <p>(4) <i>Subsection (5) applies if —</i></p> <p style="padding-left: 40px;">(a) <i>the regulations expressly authorise a delegated power or duty of an enforcement agency referred to in subsection (1)(b) or (c) to be further delegated; and</i></p> <p style="padding-left: 40px;">(b) <i>the delegated power or duty is further delegated to a person or body in accordance with those regulations.</i></p> <p>(5) <i>If this subsection applies, subsection (3) applies to the exercise or performance by the person or body of that power or duty as if it were exercised or performed, and delegated, as described in subsection (3).</i></p>

Power Originally Assigned To	Enforcement Agency (Local Government)
Statutory Power of Delegation	<i>Public Health Act 2016</i> Section 21 Enforcement Agency may delegate
Power Delegated To	Chief Executive Officer
Chief Executive Officer's Sub Delegation to	Nil
Policy Guidance	Exercised in accordance with the Town's policies generally.

4.2 Registration of registerable activity	
Function Delegated	Authority to register a registerable activity.
Statutory Power Delegated	<i>Public Health Act 2016</i> Section 68 Registration of registerable activity
	<p>68. Registration of registerable activity</p> <p>(1) <i>The appropriate enforcement agency may register a registerable activity in respect of any premises for the purposes of this Division.</i></p> <p>(2) <i>A person who proposes to carry on a registrable activity at any premises may apply, in the approved form, to the appropriate enforcement agency for the registration of the registrable activity in respect of those premises under this Division.</i></p> <p>(3) <i>The application must be accompanied by —</i></p> <p style="padding-left: 40px;">(a) <i>any plans, specifications or other documents or information that the appropriate enforcement agency reasonably requires for a proper consideration of the application; and</i></p> <p style="padding-left: 40px;">(b) <i>either —</i></p> <p style="padding-left: 80px;">(i) <i>if the appropriate enforcement agency is a local government, the fee, if any, imposed by the agency in accordance with section 294; or</i></p> <p style="padding-left: 80px;">(ii) <i>in any other case, the fee, if any, prescribed by the regulations.</i></p> <p>(4) <i>After considering the application, the appropriate enforcement agency may —</i></p> <p style="padding-left: 40px;">(a) <i>grant the application, with or without conditions; or</i></p> <p style="padding-left: 40px;">(b) <i>refuse the application.</i></p> <p>(5) <i>In deciding whether to grant or refuse the application, the appropriate enforcement agency must have regard to any matters prescribed by the regulations for the purposes of this subsection.</i></p> <p>(6) <i>If the appropriate enforcement agency grants the application, the agency must issue the applicant with a certificate of registration, in the approved form, that —</i></p> <p style="padding-left: 40px;">(a) <i>specifies the premises and the registrable activity in</i></p>

	<p><i>respect of which the registration is granted; and</i></p> <p><i>(b) sets out any conditions to which the registration is subject.</i></p> <p><i>(7) If the appropriate enforcement agency refuses the application, the agency must give written notice of the refusal to the applicant setting out the reasons for the refusal.</i></p>
Power Originally Assigned To	Enforcement Agency (Local Government)
Statutory Power of Delegation	<i>Public Health Act 2016</i> Section 21 Enforcement Agency may delegate
Power Delegated To	Chief Executive Officer
Chief Executive Officer's Sub Delegation to	Manager Development Services
Policy Guidance	Exercised in accordance with the Town's policies generally.

5. Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law

5.1 Approve or Refuse an Application for a Permit to Trade, Conduct a Stall or Outdoor Eating Facility	
Function Delegated	Authority to approve or refuse an application for a permit to trade, conduct a stall or outdoor eating facility.
Statutory Power Delegated	<i>Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law</i> Section 6.2 Decision of application for permit
	<p>6.2 Decision on application for permit</p> <p>(1) <i>The local government may –</i></p> <p style="padding-left: 40px;">(a) <i>approve an application for a permit unconditionally or subject to any conditions; or</i></p> <p style="padding-left: 40px;">(b) <i>refuse to approve an application for a permit.</i></p> <p>(2) <i>If the local government approves an application for a permit, it is to issue to the applicant a permit in the form determined by the local government.</i></p> <p>(3) <i>If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.</i></p> <p>(4) <i>Where a clause of this local law refers to conditions which may be imposed on a permit or which are to be taken to be imposed on a permit, the clause does not limit the power of the local government to impose other conditions on the permit under subclause (1)(a).</i></p> <p>(5) <i>Where a clause of this local law refers to the grounds on which an application for a permit may be or is to be refused, the clause does not limit the power of the local government to refuse the application for a permit on other grounds under subclause (1)(b).</i></p>
Power Originally Assigned To	The Local Government
Statutory Power of Delegation	<i>Local Government Act 1995</i> Section 5.42 Delegation of some power or duties to the Chief Executive Officer
Power Delegated To	Chief Executive Officer
Chief Executive Officer's Sub Delegation to	Manager Development Services Principal Environmental Health Officer
Policy Guidance	Exercised in accordance with the Town's policies generally.

6. Liquor Control Act 1988

6.1 Authority to Issue Certificates of Local Government	
Function Delegated	The Power to issue a Section 39 health clearance certificate for premises applying for a liquor licence.
Statutory Power Delegated	<i>Liquor Control Act 1988</i> Section 39 Certificate of Local Government as to whether premises comply with laws
	<p>39. Certificate of local government as to whether premises comply with laws</p> <p>(1) <i>An application made to the licensing authority for the grant or removal of a licence, or for a change in the use or condition of any premises shall be accompanied by a certificate from the local government for the district in which the premises to which the application relates are situated, or are to be situated, unless the licensing authority otherwise determines.</i></p> <p>(2) <i>A certificate referred to in subsection (1) shall state —</i></p> <p style="padding-left: 40px;">(a) <i>whether or not the premises comply with all relevant requirements of —</i></p> <p style="padding-left: 80px;">(i) <i>the Health Act 1911; and</i></p> <p style="padding-left: 80px;">(ia) <i>the Food Act 2008; and</i></p> <p style="padding-left: 80px;">(ii) <i>any written law applying to the sewerage or drainage of those premises; and</i></p> <p style="padding-left: 80px;">(iii) <i>the Local Government Act 1995; and</i></p> <p style="padding-left: 80px;">(iv) <i>the Building Act 2011;</i></p> <p style="padding-left: 40px;"><i>and</i></p> <p style="padding-left: 40px;">(b) <i>where the premises do not so comply, the manner in which the premises could be made to comply or that the premises could not reasonably be made to comply.</i></p> <p>(3) <i>The licensing authority may, where it is satisfied that it is desirable to do so, impose a condition on a licence relating to the submission, or further submission, to the licensing authority of a certificate referred to in subsection (1).</i></p>
Power Originally Assigned To	The Local Government
Statutory Power of	<i>Liquor Control Act 1988</i>

Delegation	Section 39(1) Certificate of Local Government as to Whether Premises Comply with Laws
Power Delegated To	Chief Executive Officer Principal Environmental Health Officer
Chief Executive Officer's Sub Delegation to	Nil
Policy Guidance	Liquor (Licensed Premises) Policy